

# LAW ON INTELLECTUAL AND ARTISTIC WORKS<sup>1</sup>

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<sup>1</sup> Parts I – III of the Law have been translated by Dr. Gül Okutan Nilsson (İstanbul Bilgi University Faculty of Law, Parts IV to VI have been translated by Dr. Feyzan Hayal Şehirali Çelik (Ankara University Faculty of Political Sciences). All rights of the authors are reserved.

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**PART ONE**  
**INTELLECTUAL AND ARTISTIC WORKS**

**A. PURPOSE**

*Art. I.* The purpose of this Law is to establish and protect the moral and economic rights of authors who create intellectual and artistic works, performers who perform or interpret such works, phonogram producers that make the first fixation of sounds, producers that make the first fixation of films, and radio-television organizations on their products; to regulate the conditions of exploitation of such products and to determine the sanctions for exploitation in breach of such rules and procedures.

**Scope**

*Art. I/A.* This Law covers the moral and economic rights of authors who create intellectual and artistic works and performers who perform or interpret such works, phonogram producers that make the first fixation of sounds, producers that make the first fixation of films and radio-television organizations on their products, the rules and procedures regarding transactions on such rights, ways of legal recourse and sanctions, together with the duties, authorities and responsibilities of the Ministry of Culture.

**Definitions**

*Art. I/B.* The following terms have the following meanings:

- a) **Work:** Any intellectual or artistic product bearing the characteristic of its author, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work.
- b) **Author:** The person creating the work.
- c) **Adaptation:** Intellectual and artistic product bearing the characteristic of the adaptor, which is created by benefiting from another work but which is not independent of such work.
- d) **Collection:** Works such as encyclopedias and anthologies whose content consists of selection and arrangements, which are the results of intellectual creativity, provided that the rights on the original work are reserved.
- e) **Fixation:** The act of recording sounds or representation of sounds or sounds and images in an apprehensible, reproducible and transmittable manner.
- f) **Phonogram:** The physical medium that carries sounds in which sounds of a performance or other sounds or representations of sounds are fixed, excluding fixation of sounds that are comprised in audiovisual works such as cinematographic works.
- g) **Computer program:** A set of computer instructions arranged in a way that will make a computer system carry out a special process or task and the preparatory work that will lead to the creation and development of such set of instructions.

- h) **Interface:** The parts of a program that form the interaction and connection between the hardware and software elements of a computer.
- i) **Interoperability:** The ability of computer program parts to jointly function, to interact and to mutually use the exchanged information.
- j) **Related rights:** The rights that belong to holders of neighbouring rights and film producers that make the first fixation of films, provided that the moral and economic rights of the author are not prejudiced.
- k) **Neighbouring rights:** The rights that belong to performers who interpret, introduce, recite, sing, play and perform a work in various ways and in an original form with the permission of the author, phonogram producers that make the first fixations of sounds that are the result of a performance or other sounds and radio-television organizations, provided that the moral and economic rights of the author are not prejudiced.
- l) **Ministry:** The Ministry of Culture and Tourism.

## **B. TYPES OF INTELLECTUAL AND ARTISTIC WORKS**

### **I. Literary and Scientific Works**

*Art. 2.* The following are literary and scientific works:

1. Works that are expressed by language and writing in any form, and computer programs expressed in any form together their preparatory designs, provided that the same leads to a computer program at the next stage.
2. All kinds of dances, written choreographic works, pantomime and similar theatrical works without dialogue;
3. All kinds of technical and scientific photographic works, all kinds of maps, plans, projects, sketches, drawings, geographical or topographical models and similar works, all kinds of architectural and urban designs and projects, architectural models, industrial, environmental and theatrical designs and projects, lacking in aesthetic quality.

Ideas and principles on which any element of a computer program is based, including those on which its interfaces are based, are not deemed works.

### **II. Musical Works**

*Art. 3.* Musical works are all types of musical compositions, with or without lyrics.

### **III. Works of Fine Arts**

*Art. 4.* Works of fine arts are the following works, which have aesthetic value:

1. Oil paintings or water colors, all types of drawings, patterns, pastels, engravings, artistic scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar methods, calligraphy, silk screen printing;
2. Sculptures, reliefs and carvings;

3. Architectural works;
4. Handicraft and minor works of art, miniatures and works of ornamentation, textiles, fashion designs;
5. Photographic works and slides;
6. Graphic works;
7. Cartoons;
8. All kinds of personifications.

The use of sketches, drawings, models, designs and similar works as industrial designs does not affect their status as intellectual and artistic works.

#### **IV. Cinematographic Works**

*Art. 5.* Cinematographic works are works such as films of an artistic, scientific, educational or technical nature or films recording daily events or movies, that consist of a series of related moving images with or without sound and which, regardless of the material in which they are fixed, can be shown by the use of electronic or mechanical or similar devices.

#### **C. ADAPTATIONS AND COLLECTIONS**

*Art. 6.* Intellectual and artistic products created by benefiting from another work but that are not independent of such work are adaptations, of which the main types are listed below:

1. Translations;
2. Converting a work like novel, story, poem or play, from said types to another type;
3. Converting musical works, literary and scientific works or works of fine arts into films, or converting them into a form which is suitable for filming or for broadcasting by radio and television;
4. Musical arrangements and compositions;
5. Transforming works of fine arts from one form to another;
6. Making a collection of all or the same type of works of one author;
7. Making a collection of selected works according to a specific purpose and in accordance with a specific plan;
8. Making an unpublished work ready for publication as a result of scientific research and study (ordinary transcriptions and facsimiles that are not the result of scientific research and study are excluded);
9. Annotating, commenting or abridging the work of another person;
10. Adaptation, editing or any modification of a computer program;
11. Databases obtained by the selection and compilation of data and materials according to a specific purpose and a specific plan, which are in a form that can be read by a device or in any other form (This protection can not be extended to the data and materials contained in the database.)

Adaptations bearing the characteristic of the person making the adaptation, which are created without prejudice to the rights of the author of the original work, shall be

deemed works under this Law.

## **D. WORKS MADE PUBLIC AND PUBLISHED WORKS**

*Art. 7.* A work disclosed to the public with the consent of the right holder shall be deemed to have been made public.

A work shall be deemed to have been published, if copies obtained by reproduction of the original are supplied to the public by way of selling, distributing or otherwise putting into commercial circulation with the consent of the right holder.

The provisions of paragraph two of article 3 of the Press Law No. 5680 are reserved.

## **PART TWO THE AUTHOR**

### **A. DEFINITION**

#### **I. In General**

*Art. 8.* The author of a work is the person who has created it.

The author of an adaptation or collection is the person who has made the adaptation, provided that the rights of the original author are reserved.

In the case of cinematographic works, the director, the composer of original music, the scriptwriter and the dialogue writer are joint authors of the work. For cinematographic works which are produced with the technique of animation, the animator is also among the joint authors of the work.

#### **II. Multiple Authors**

*Art. 9.* If a work created jointly by more than one person can be divided into parts, each person shall be deemed the owner of the part he created.

Unless otherwise agreed, each of the persons who have jointly created the work may request the other persons' participation in the modification or publication of the whole work. If the other party refuses to participate without good reason, permission may be granted by the court. The same provision shall apply to the exercise of economic rights.



### **III. Union of Authors**

*Art. 10.* If a work created by the participation of more than one person constitutes an indivisible whole, the author of the work is the union of the persons who created it.

The provisions on ordinary partnership shall apply to such union. If one of the authors refuses without good reason to permit a joint transaction, then such permission may be granted by the court. Each of the authors may act individually if the interests of the union are violated.

Technical services or assistance pertaining to detail rendered for the creation of a work shall not be deemed a basis for participation.

If a work created by the participation of more than one person constitutes an indivisible whole, the rights on the joint work shall be exercised by the natural or legal person who has assembled the authors, provided that nothing to the contrary is stipulated in a contract or in the terms of service or in any law that was in force at the time of creation of the work. Rights regarding cinematographic works are reserved.

### **B. PRESUMPTION OF AUTHORSHIP**

#### **I. Works on Which the Name of the Author is Given**

*Art. 11.* The person whose name or known pseudonym is given as the author of a work on the published copies of a work or on the original of a work of fine arts, shall be deemed the author of the work until it is proven otherwise.

The person who is introduced in the customary manner as the author of a work at conferences or performances made in public premises or broadcast by radio and television, shall be deemed the author of the work, unless another person is deemed the author by way of the presumption given in the first paragraph.

#### **II. Works on Which the Name of the Author is Not Given**

*Art. 12.* So long as the author of a published work can not be established under article 11, the rights and authorities belonging to the author may be exercised by the publisher, and, if the publisher can not be determined, by the person making the reproduction, in his own name.

Such authorities shall belong to the person giving the conference or the person having the performance made, in cases where the author can not be determined by the presumption under the second paragraph of article 11.

The provisions on mandate shall apply to the relations between the persons authorized under this article and the real right holders, unless agreed otherwise.

## **PART THREE**

### **INTELLECTUAL RIGHTS**

#### **A. RIGHTS OF THE AUTHOR**

##### **I. In General**

*Art. 13.* The economic and moral interests of authors in their intellectual and artistic works shall be protected under this Law.

The rights and authorities granted to authors shall extend over the entire work and its parts.

Film producers that make the first fixation of films and phonogram producers that make the first fixation of sounds shall have their productions containing cinematographic and musical works recorded and registered for the purpose of preventing violation of their rights, facilitating proof of rightholdership and tracking the authority to exercise economic rights, and without the aim of creating any rights. The recording and registration of all the works protected under this Law may be made for the same purpose upon demand of the authors; the authority to exercise economic rights may also be recorded. The Ministry can not be held responsible for these procedures which are made based on declaration. However, persons who make a wrong declaration in the procedures on which the recording and registration shall be based, with regard to moral or economic rights which they do not own or whose non-existence was known or should have been known to them, shall be subject to the legal and criminal sanctions set out in this Law. All fees regarding recording and registration procedures carried out under this Law shall be determined by the Ministry. The rules and procedures of recording and registration, the determination of the fees and other matters shall be set out in a by-law to be issued by the Ministry.

##### **II. Moral Rights**

###### **(1) Authority to Disclose the Work to the Public**

*Art. 14.* The author shall exclusively determine whether or not his work shall be disclosed to the public and the time and manner of its publishing.

Only the author may give information on the contents of a work of which the whole or a substantial part has not yet been made public, or whose main features have not yet been introduced to the public in any way.

The author may prohibit, even if he has given written approval to others, the promotion to the public or the publishing of both the work and its adaptation, where the manner of disclosing to the public or publishing of the work is of such a nature as would damage the honor and reputation of the author. Waiving such power of prohibition by contract shall be null and void. The other party's right to compensation is reserved.

## **(2) The Authority to Designate the Name**

*Art. 15.* The author shall have the exclusive authority to decide whether the work shall be disclosed to the public or published with or without the name of the author or under a pseudonym.

The name or mark of the original author must be shown in the manner which is agreed upon or is customary, on copies of a work of fine arts created by reproduction and on the original and copies of an adaptation, and it must be clearly depicted that the work is a copy or an adaptation.

The real author of a work may ask the court to establish his rights, if the creator of the work is disputed or if another person claims to be the author of the work.

For architectural constructions that have the quality of a work, the name of the author shall be inscribed in an indelible way with material considered suitable by the author on a visible part of the work, upon written request.

## **(3) Prohibition of Modification**

*Art. 16.* No abbreviations, additions or other modifications may be made to a work or to the name of its author without his consent.

A person who adapts, discloses to the public, reproduces, publishes, performs or otherwise distributes a work in any manner under the permission of the law or the author may make modifications that are deemed indispensable due to the technique of adaptation, reproduction, performance or publication, without special permission by the author.

The author may prohibit all modifications, which prejudice his honour and reputation or damage the nature and characteristics of the work, even if he has given written and unconditional permission. Waiving the power of prohibition shall be null and void even if agreed by contract.

## **(4) Rights of the Author against Persons Who Own or Possess a Work**

*Art. 17.* Where necessary the author may, provided that the conditions for protection are fulfilled, demand the owner or possessor of the original to temporarily avail him of the original of works of fine arts listed in the first and second subparagraphs of article 4 and works that are listed in the first subparagraph of article 2 and in article 3, provided that the latter are handwritten by authors or composers. Persons who trade the work shall disclose such right of the author in auction or sale catalogues or related documents to buyers or acquirers of the work.

The owner of the original of a work may dispose of it according to the terms of the contract he has concluded with the author. However, he may not damage or destroy the work or prejudice the rights of the author.

If the work exists in a single original form, the author may request the work for use in retrospective works and exhibitions covering all of his working periods, subject to conditions of protection and to be returned.

### **III. Exercise of Rights**

#### **(a) In General**

*Art. 18.* The authority to exercise economic rights belongs exclusively to the author.

The rights in works created by civil servants, employees and workers during the execution of their duties shall be exercised by the persons who employ or appoint them; provided that the contrary may not be deduced from a special contract between such persons or from the nature of the work. This rule shall also apply to the organs of legal persons.

The producer or publisher of a work may exercise the economic rights only in accordance with a contract to be concluded with the author.

#### **(b) Persons Entitled to Exercise Rights**

*Art. 19.* If an author has not determined the manner in which the authorities granted to him by the first paragraphs of Articles 14 and 15 are to be exercised or has not left this matter to another person, these rights shall be exercised after his death by the executor, or, if no executor has been appointed, successively by the surviving spouse, his children, his testamentary heirs, his parents, his siblings.

After the death of the author, those persons set out in the preceding paragraph may exercise the rights granted to the author under the third paragraphs of Articles 14, 15 and 16, in their own name and for a period of 70 years after the death of the author.

If the author or the persons authorized under the first and second paragraphs do not exercise their authorities, any person who has acquired an economic right from the author or from his successor may, provided that he proves a legitimate interest, exercise in his own name the rights granted to the author under the third paragraphs of Articles 14, 15 and 16.

Where there are more than one authorized persons who can not agree on an action, the court shall settle the conflict in summary proceedings, according to the presumed intentions of the author.

If there are no authorized persons under Article 18 or the preceding paragraphs or if such persons exist but they do not exercise their rights or if the terms laid down in the second paragraph have expired, the Ministry of Culture and Tourism may exercise in its own name the rights granted to the author under the third paragraphs of Articles 14, 15 and 16 if the work is deemed to be important for national culture.

## **IV. Economic Rights**

### **(1) In General**

*Art. 20.* The right to exploit, in any manner or form, a work that has not yet been made public belongs exclusively to the author. The exclusive right granted to the author to exploit a work that has been made public consists of the rights stipulated as economic rights by this Law. Economic rights are independent of one another. The disposal and exercise of one does not affect the other.

The author of an adaptation may exercise the economic rights granted to him in such capacity, to the extent permitted by the author of the original work, except the cases where adaptation is free.

### **(2) Types**

#### **(a) Right of Adaptation**

*Art. 21.* The right to exploit a work by adapting it belongs exclusively to the author.

#### **(b) Right of Reproduction**

*Art. 22.* The right to reproduce the original or copies of a work in any form or by any method, in whole or in part, directly or indirectly, temporarily or permanently belongs exclusively to the author.

The making of a second copy of the original of the work or the recording of the work on all types of devices now known or to be developed in the future enabling the transmission or repetition of signs, sounds and images, all kinds of sound and music recordings as well as the application of plans, projects and sketches of architectural works are deemed reproduction. The same provision shall apply to molds with relief or perforation.

The right of reproduction also covers the acts of loading, displaying, running, transmitting and storing a computer program to the extent that such acts require the temporary reproduction of the computer program.

#### **(c) Right of Distribution**

*Art. 23.* The exclusive right to rent, lend, put up for sale or distribute in any other way, the original or copies of a work, belongs to the author.

The author has the exclusive right to import copies of a work that have been reproduced abroad with his permission and to exploit such works by distribution. Copies that are reproduced abroad may not under any circumstances be imported without the permission of the author and/or the holder of the right of distribution who has the author's permission. Provided that the authorities of rental and public lending remain with the author, the resale of specific copies following their first sale or distribution within the country by way of

transfer of ownership as a result of the exercise of the distribution right by the rightholder shall not infringe the right of distribution granted to the author.

The distribution of a work or its copies by way of rental or lending, may not lead to a widespread copying of the work in a manner prejudicing the right of reproduction of the author. The rules and procedures regarding the application of this article shall be regulated with a by-law to be issued by the Ministry of Culture and Tourism.

#### **(d) Right of Performance**

*Art. 24.* The right to exploit a work by performing it in such ways as reciting, playing, acting or displaying it on public premises either directly or by means of devices enabling the transmission of signs, sounds or images belongs exclusively to the author.

The right to transmit the performance, from the premises where the performance to the public took place to any other location by means of a technical device also belongs to the author.

The right of performance may not be exercised by other natural or legal persons without the written permission of the author, or if the author is a member of a collecting society, the written permission given by such collecting society in accordance with the authorities set out in the authorization certificate. However, the provisions of articles 33 and 43 are reserved.

#### **(e) Right to Communicate a Work to Public by Devices Enabling the Transmission of Signs, Sounds and/or Images.**

*Art. 25.* The author shall have the exclusive right to communicate the original of a work or its copies to public by way of broadcasting by organizations that broadcast by wire or wireless means such as radio and television, satellite or cable, or by devices enabling the transmission of signs, sounds and/or images including digital transmission, or by way of re-broadcasting by other broadcasters that obtain the work from such broadcasts.

The author has the right to permit or prohibit the sale or other distribution or supply of the work or its reproduced copies to the public by wire or wireless devices and the communication of the work to the public by providing access to it at a time and place chosen by natural persons.

The distribution and supply of works by means of communication to the public as regulated under this article, shall not prejudice the author's right of distribution.

### **(3) Terms**

#### **(a) In General**

*Art. 26.* The economic rights granted to the author are limited in time. Except for the cases in articles 46 and 47, all persons may exercise the economic rights granted to the author following the expiry of the term of protection.

Terms of protection granted for the original of a work and its adaptations are independent of each other.

This provision shall also apply to works mentioned in the first paragraph of article 9. The term of protection shall not begin to run until the work is made public.

For works that are published in sections or fascicles, the publication date of the last part or fascicle shall be deemed the date on which the work was made public. For works that are composed of several volumes published at intervals and for works such as bulletins, pamphlets, periodicals and annuals, the date on which the work is made public shall be the date of publication of each volume or each such work.

Terms that begin on the date on which the work was made public shall be calculated starting from the first day of the year following the year in which the work was first made public or is deemed to have been made public under paragraph four.

Terms that begin on the date of the author's death shall be calculated from the first day of the year following the year of the author's death. In the cases determined in the first paragraph of article 10, the term shall start to run on the date of the death of the last surviving author.

#### **(b) Duration of Term of Protection**

*Art. 27.* The term of protection shall last for the lifetime of the author and for 70 years after his death. If there is more than one author, this period shall end upon the expiry of 70 years after the death of the last remaining author.

The term of protection for works that have been first made public after the death of the author shall be 70 years after the date of death.

The term of protection in the cases determined in the first paragraph of Article 12 shall be 70 years from the date on which the work was made public, unless the author reveals his name before expiry of such term.

If the first author is a legal person, the term of protection shall be 70 years from the date on which the work was made public.

#### **(c) Term of Protection for Translation Into Turkish**

*Art. 28.* (Revoked: 21.2.2001 - 4630/36)

#### **(d) Term of Protection for Handicraft, Minor Works of Art, Photographic and Cinematographic Works**

*Art. 29.* (Revoked: 21.2.2001 - 4630/36)

### **B. LIMITATIONS**

## **I. Due to Public Order**

*Art. 30.* The rights granted to authors shall not prevent a work from being used as evidence in court or before other authorities or from being the subject matter of police or criminal proceedings. Photographs may be reproduced and distributed in any form by official authorities or on their instructions due to public security or for judicial reasons without the author's consent.

Reserved are the provisions of public law that prohibit putting a work into commercial circulation by any means, its performance or exploitation in any other form or that make them subject to permission or control.

## **II. Due to Public Interest**

### **(1) Legislation and Court Decisions**

*Art. 31.* The reproduction, distribution, adaptation or exploitation in any other form of laws, by-laws, regulations, notifications, circulars and court decisions that have been officially published or announced is permitted.

### **(2) Speeches**

*Art. 32.* The reproduction, public recitation or broadcasting by radio and distribution by any other means, of speeches and addresses made in the Grand National Assembly and at other official assemblies and congresses, in courts of law or at public meetings, is permitted for the purpose of giving news and information.

Where the nature of the event or of the situation does not so require, the names of the speakers do not need to be cited.

The right to reproduce or distribute speeches and addresses for purposes other than those mentioned in the first paragraph belongs to the author.

### **(3) Freedom to Perform**

*Art. 33.* Published works may be freely performed in all educational institutions for the purpose of face-to-face education and without directly or indirectly aiming for profit, provided that the name of the author and the work is announced in the customary manner.

### **(4) Selected and Collected Works for Educational and Instructional Purposes**

*Art. 34.* It is free to create selected or collected works, which are dedicated to educational purposes, by way of making quotations in an amount justified by the purpose, from published musical, literary and scientific works and works of fine arts that are made public. Works of the type set out in the third subparagraph of article 2 and first and fifth subparagraphs of the first paragraph of article 4 may only be quoted to explain the content of the selected and collected work. However, this freedom may not be used in a way which



would prejudice the legitimate interests of the author without good reason or which would conflict with the normal exploitation of the work.

The first paragraph shall also apply to school radio broadcasts made exclusively for schools and approved by the Ministry of Education.

The permission of the author is necessary for making selected or collected works for purposes other than education, by way of quotations of published musical, literary and scientific works and works of fine arts that are made public.

In all such cases, the name of the work and the author shall be cited in the customary manner.

### **(5) Freedom of Quotation**

*Art. 35.* Quotations of a work are permitted in the following cases:

1. Quoting a few sentences or passages of a work made public, in an independent literary or scientific work;
2. Incorporating certain elements of a published composition, at the most such as themes, patterns, passages or ideas, into an independent musical work;
3. Reproducing works of fine arts that have been made public and other published works, in a scientific work for the purpose of explaining its content and to the extent justified by such purpose;
4. Displaying works of fine arts that have been made public by projection or similar means in order to explain a subject at scientific conferences or lectures.

The quotation must be made in a manifest way. In scientific works, it shall be necessary to mention not only the name of the work and the author but also the passage from which the quoted part has been taken.

### **(6) Contents of Newspapers**

*Art. 36.* Article 15 of the Press Law being reserved, daily news and information communicated to the public by the press or radio may be freely quoted.

Articles or features on social, political or economic issues of the day published in newspapers or journals may be freely quoted in their original or adapted form in other newspapers or journals and may be broadcast by radio or disseminated by any other means, except where the right to quote them has been expressly reserved. Even where the right to quote is reserved, it is permitted to abridge such articles and features as a press review and to so quote, broadcast by radio or disseminate them in any other manner.

In all such cases, mention must be made of the name, the issue and the date of the newspaper, of the journal, of the agency and of any other source from which the quotations have been made, together with the name, the pseudonym or the mark of the author of the articles.

## **(7) News**

*Art. 37.* It is permitted to record parts of an intellectual or artistic work on devices enabling the transmission of signs, sounds and/or images in relation to current events, provided that this is has the nature of news and does not exceed the limits of giving information. The reproduction, distribution, performance and broadcasting by devices such as radio and television of passages quoted in such a manner are free. This freedom may not be used in a way which may prejudice the legal interests of the right holder or which may conflict with the normal exploitation of the work.

## **III. Due to the Interest of Individuals**

### **(1) Personal Use**

*Art. 38.* It is permitted to reproduce all intellectual and artistic works for personal use without pursuing profit. However, such reproduction may not prejudice the legitimate interests of right holders without good reason or conflict with the normal exploitation of the work.

In the absence of specific contractual provisions, the reproduction and adaptation of a computer program by the lawful acquirer is permitted where necessary for the use of the computer program in accordance with its intended purpose, including for error correction.

The loading, running and error correction of a computer program by a person who has lawfully acquired the program may not be prohibited by contract. The making of a backup copy by a person having the right to use the computer program may not be prevented by contract insofar as it is necessary to ensure the use of such program.

The person who has acquired the right to use a computer program may observe, analyze or test the functioning of the program in order to determine the ideas and principles underlying any element of the program while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

Where reproduction of the code and translation of its form in the sense of reproduction and adaptation of the computer program are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, the performing of such acts shall be permitted, provided that the following conditions are met:

1. That these acts are performed by the licensee or by another person having the right to use a copy of the program or by a person authorized to do so in their name;
2. That the information necessary to achieve interoperability was not made available to the persons specified in subparagraph one;
3. That these acts are confined to the parts of the program which are necessary to achieve interoperability.

The paragraph above does not entitle the information obtained under that paragraph;

1. To be used for purposes other than to achieve the interoperability of the

- independently created computer program;
2. To be given to others, except where necessary for the interoperability of the independently created computer program
  3. To be used for the development, production or marketing of a computer program substantially similar in its expression or for any other act which infringes copyright.

The provisions of the sixth and seventh paragraphs may not be interpreted in a way that conflicts with the normal exploitation of the program or that unreasonably prejudices the right holder's legitimate interests.

## **(2) Right of Composers**

*Art. 39.* (Revoked: 21.2.2001 - 4630/36)

## **(3) Reproduction and Exhibition**

*Art. 40.* Works of fine arts permanently placed on public streets, avenues or squares may be reproduced by drawings, graphics, photographs and the like, distributed, shown by projection in public premises or broadcast by radio or similar means. For architectural works, this freedom is only valid for the exterior form.

Works of fine arts may be publicly exhibited by their owners or by others with their consent, unless the author has expressly prohibited such exhibition.

Works to be sold by auction may be exhibited to the public. Works exhibited in public premises or placed at an auction may be reproduced and distributed by way of catalogues, guides or similar printed matter published for such purposes by persons organizing the exhibition or auction.

The name of the author may be omitted in such cases unless there is a contrary customary usage.

## **(4) Principles Concerning the Use in and/or Communication in Public Premises of Works, Performances, Phonograms, Productions and Broadcasts**

*Art. 41.* Public premises where the entrance may or may not be subject to a fee, shall conclude a contract in accordance with article 52 with right holders or collecting societies to which the right holders are members, in order to obtain permission for the use and/or communication of works, performances, phonograms, productions and broadcasts and make the payments for economic rights stated in such contracts in accordance with this article.

Public premises which use and/or communicate works, performances, phonograms, productions and broadcasts shall be classified or left out of classification taking into consideration the characteristics of the region where the public premises are located, the quality and quantity of the premises, whether or not the works, performances, phonograms, productions and broadcasts that are the subject of intellectual property are an integral part of, or contributing to, the product or services supplied by the premises and similar issues.

For the sectors in which they operate, collecting societies of authors and/or related rights holders shall set the tariffs for fees arising from the use and/or communication of works, performances, phonograms, productions and broadcasts in conjunction with the classification made. Contracts between the collecting societies and public premises shall be concluded based on the amounts which shall be determined according to such tariffs or amounts that may be agreed on by negotiations of the parties.

Contracts concerning tariffs shall be based on the calendar year and such tariffs shall be valid starting from the beginning of the calendar year.

In order to ensure the performance of the provisions of this article:

1. Collecting societies are obliged to submit to the Ministry information about their members and the works, performances, phonograms and productions which they represent. Such notification shall be updated every three months and shall be opened to the access of related parties on a common database to be formed by the Ministry.
2. Authors' collecting societies or collecting societies of related rights holders or collecting societies that operate in the same sectors, may determine joint tariffs by concluding a joint protocol. The joint tariffs are binding for the collecting societies that are parties to them.

Collecting societies shall notify the tariffs or joint tariffs in the ninth month of each calendar year to the Ministry and to professional associations representing users, which are set up by law as public institutions. They shall also announce them to the public. Public premises may negotiate the tariffs or joint tariffs and conclude contracts also through the professional associations to which they are members, by giving them binding authorization regarding negotiation and contract conclusion. However, where the tariffs are determined on a lump sum basis, public premises may only negotiate and conclude contracts through professional associations.

In case no agreement can be reached and no contract can be concluded on the tariffs or joint tariffs between collecting societies and public premises or professional associations by the tenth month, collecting societies and/or professional associations may demand the negotiation of such tariffs at a conciliatory commission which shall be formed by the Ministry.

Upon the request of one of the parties and the approval of the Ministry, the conciliatory commission shall be formed by the Ministry within fifteen days from the date of request, in order to negotiate the tariffs. The commission shall comprise one representative of the Ministry, two of the Competition Authority, and one each of the concerned collecting societies and professional associations representing the users. The representative of the Ministry is at the same time the chairman of the commission. As many substitute members as the number of commission members shall also be elected in the same manner. The secretarial work of the commission shall be conducted by the relevant department of the Ministry.

The commission shall prepare a report and notify it to the Ministry and related parties within fifteen days of its formation. Public premises and collecting societies may conclude contracts within fifteen days of the declaration of the report based on the tariffs set by the collecting societies or agreed as a result of negotiations.

Where no contract is concluded based on the tariffs or joint tariffs set by the collecting societies, the parties may have recourse to courts. Public premises which had a contract in the preceding year may continue using and/or communicating works, performances, phonograms, productions and broadcasts by paying  $\frac{1}{4}$  of the tariff at dispute in a bank account opened in the name of the collecting societies every three months until the end of the adjudication process, provided that the collecting societies do not prohibit such use. The permission of the collecting societies is necessary for the use of and/or communication of works, performances, phonograms, productions and broadcasts in the manner set out in this paragraph by public premises which had no contract in the preceding year and those that are to make a contract for the first time. Amounts paid in this way until the end of the court proceedings shall be deducted from the amount of the tariff determined by the court.

Principles regarding the determination of tariffs laid down by paragraph three of article 42/A of this Law shall be taken into consideration in the determination of tariffs and the settlement of disputes.

Natural or legal persons who have rights on works, performances, phonograms, productions and broadcasts which are used and/or communicated at the public premises may demand payments for such use and/or communication only through collecting societies that they have authorized. The application of this provision is not obligatory for cinematographic works.

Other rules and procedures regarding classification, fees to be collected by the Ministry in case of recourse to the conciliatory commission and the functioning of the commission shall be determined with a by-law to be issued by the Ministry.

#### **IV. Authorities Granted to the Government**

##### **(1) Creation of Collecting Societies**

**Art. 42.** Authors and related rights holders and those persons who reproduce and distribute non-periodical publications by way of acquiring powers to exercise economic rights by contracts concluded in accordance with article 52 of this Law [or] by way of exercising rights on literary and scientific works in accordance with article 10 of this Law, may set up more than one collecting societies in areas which shall be determined pursuant to regulations and uniform statutes to be prepared by the Ministry of Culture and Tourism and approved by the Council of Ministers, in order to protect the mutual interests of their members, the management and pursuit of the rights granted by this Law and the collection and distribution of fees to the rightholders. Natural or legal persons who carry the qualifications to become members must apply to the Ministry in order to obtain permission to operate as a collecting society. The number of applicants must be, for authors or performers, four times the number of full members of compulsory organs and for producers or radio-television organizations, twice the number of full members of the

compulsory organs. After obtaining such permission, collecting societies shall operate in the field for which they are set up.

In order that another collecting society may be founded in the same field, an application for permission to operate shall be made to the Ministry by natural or legal persons carrying the qualification to become members, such persons being as many as one third of the total number of members of the collecting society with the largest number of members set up for that field, provided that such number is not less than the number of founding members given above. They shall operate in case the Ministry approves of such application and grants permission. Each society may set up and operate branches in accordance with its necessities. A minimum of two collecting societies founded in the same field may set up a federation according to principles and procedures laid down by the regulations and uniform statutes prepared by the Ministry. No more than one federation may be established in the same field.

Collecting societies and the federation are legal persons subject to private law. Their members may not be obliged to participate in capital, profit and loss or legal liability.

General assembly, board of directors, board of audit, technical-scientific board and the discipline committee shall be regulated as compulsory organs in the uniform statutes of the collecting societies and the federation. The Ministry shall, after obtaining the views of related organizations, prepare a regulation in order to regulate the principles and procedures regarding the foundation, supervision and audit of such societies and federations, the minimum number of members necessary for their first general assemblies to be convened, the manner of formation of other voluntary organs and the number and duties of their members, conditions for becoming a member, resigning from membership and expulsion, the determination of regions where they can set up branches, their relations with public entities and organizations in the country and abroad, their rights and competences in such relations, their monetary relations with their members, the distribution of collected royalties and compensations and other matters.

Article 21, second paragraph, Articles 30, 37, 40, 42, 43, 44, 45, 48, 65, 66, 67, 68, 69, 70 and 90 of the Law on Associations, No. 2908, dated October 6, 1983, shall apply, together with the criminal provisions, to the collecting societies and the federation to be established in accordance with this Article.

The rights granted by this Law to authors and related rights holders may not be pursued by any unions, associations or similar organizations other than collecting societies founded within the country in accordance with this Article. Matters regulated by this Article such as membership, number of founding members and the total number of members, shall also apply for collecting societies founded before the entry into force of this Law. All collecting societies must comply with the principles laid down by this Article within six months following the entry into force of this Law. Collecting societies that have not complied with this condition within the given period of time shall be considered automatically dissolved.

## **(2) Duties of the Collecting Societies and Principles concerning the Determination of Tariffs**

**Art. 42/A.** Collecting societies founded in order to administer rights for the purposes set out in Article 42 of this Law are obliged to;

1. Notify the Ministry of all information concerning their members and the works, performances, phonograms and productions they represent and to update, every three months, this information which shall be open to concerned parties;
2. To provide, in an equitable way, the management of the rights resulting from the activities of their members;
3. To distribute the income obtained from their activities concerning the management of their members' rights to the rights holders in accordance with a distribution plan;
4. To give information concerning the works, performances, phonograms and productions they represent, to persons who make written requests;
5. To act in an equitable manner in the conclusion of contracts regarding the rights they manage; to provide discounts and facilitated payment methods that they deem necessary for their economic and/or moral interests;
6. To determine the payment tariffs regarding the rights they manage in due time for contracts to be made and to announce such tariffs and any changes in such tariffs in due time;
7. To have their accounts approved by sworn financial consultants.

The records of the Radio and Television Supreme Council shall be used as a reference for the application of the paragraph above with respect to the broadcasts of radio-television organizations.

In the determination of the tariffs; tariffs should be determined at a reasonable level by considering the adaptability of international practices to the economic and social conditions of the country; an impact which damages the structures of the sectors where works, performances, phonograms, productions and broadcasts are created and used, which hampers production and use and which prejudices generally accepted practices should be avoided; anti-competitive conditions should not be created; and the determination should be based on the classification made, product prices in the relevant sectors and the shares of these sectors in the gross domestic product, the frequency with which works, performances, phonograms, productions and broadcasts are used and/or communicated, unit price or lump sum payment, payment plan and similar issues.

Societies that operate in the same field and/or sector may act jointly in the determination of tariffs, conclusion of contracts and other actions and transactions regarding the application of this Law.

Where a joint tariff is made, collecting societies which operate in the same field must determine their capacity of representation in the field and the usage ratio of the works, performances, phonograms, productions and broadcasts that they represent and notify them to the Ministry. In case an agreement can not be reached in the determination of these ratios and/or they are not notified to the Ministry, a commission formed by the Ministry shall make that determination. Until such determination is made, users that have made a contract shall deposit the amount they are supposed to pay at a place of deposit determined by the court on demand of the Ministry. The amount so collected shall be distributed, after the working expenses of the commission are deducted, between the collecting societies according to the usage ratio which is determined by the commission or, in case the

societies can come to an agreement at any stage, according to the ratio on which they agree. The commission shall be formed of one representative each of the Ministry, The Competition Authority and the concerned collecting societies. The representative of the Ministry shall at the same time act as the president of the commission. The decision of the commission is subject to judicial review; the competent court is the relevant specialized court.

The Ministry may ask for an interlocutory injunction to be issued against the distribution accounts of the collecting societies which are identified as not having fulfilled their duties of notification as required by this Article, until the completion of such duties.

The pursuit of the rights regarding all works, performances, phonograms, productions and broadcasts that are made public or published, of authors or related rights holders that are members of a collecting society, shall be carried out according to the authorization certificate to be given to the collecting society. The rules and procedures regarding the authorization certificate shall be determined with a by-law to be issued by the Ministry.

### **(3) The Supervision of Collecting Societies**

*Art. 42/B.* Collecting societies are under the supervision of the Ministry with regard to administrative and financial issues. The Ministry may itself always audit whether collecting societies are fulfilling their duties and obligations set out by this law, as well as asking the collecting societies to have this audit done by an independent audit firm. A copy of reports issued by such audit firms on the audit they have carried out shall be sent to the Ministry.

During the audit, it is compulsory to present or submit all kinds of books, document and information requested by those who are appointed to make the audit, to have the safe or cash register controlled, to fulfill requests such as entering management areas, branches and annexes.

If it is established that collecting societies,

1. Do not fulfill their duties and obligations laid down by this article and articles 42 and 42/A of this Law;
2. Do not make collections and distributions in compliance with contracts or make wrong or unfair distributions;
3. Do not set tariffs in compliance with the principles laid down by the third paragraph of article 42/A;

the concerned collecting societies shall be warned once by writing; and if the fault has not been remedied within thirty days from the receipt of the warning, the collecting society shall be warned for a second time.

In case the faults mentioned in the paragraph above are still not remedied within thirty days following the second warning or if legal irregularities in the records of the society or in its other actions and transactions are determined during the audits, the Ministry shall



invite the members to hold an extraordinary general assembly at the latest within three months. Those persons who are observed to have misused their authority in the actions and transactions of the society shall be dismissed from service as a precautionary measure until the extraordinary general assembly is held; the Ministry shall make a new appointment in their place, or the substitute member next in line shall be called to duty.

The provisions of this article and articles 42 and 42/A of this Law shall also apply to federations that shall be established under article 42.

#### **(4) Principles on the Broadcasting and/or Transmission of Works, Performances, Phonograms and Productions**

*Art. 43.* Radio-television organizations, cable and satellite broadcasting organizations and organizations that shall carry out broadcasting and/or transmission by using technical means now known or to be developed in the future, are obliged to obtain prior permission from right holders regarding opera, ballet, and similar staged works that they shall use in their broadcasts.

For works, performances, phonograms and productions other than staged works, these organizations are obliged to obtain permission from the collecting societies of the relevant field, by concluding a contract in accordance with article 52, to make the payments for such broadcasts and/or transmissions to such societies and to inform such societies of the lists of works, performances, phonograms and productions that they have used.

Radio-television organizations that operate under the Law no. 3984 on the Establishment of Radio and Television Enterprises and their Broadcasts shall be classified by the Radio and Television Supreme Council; other organizations that carry out broadcasting and/or transmission that are outside of said Law shall be classified by the Ministry.

For the sectors in which they operate and in connection with the classification made, collecting societies of authors and/or related rights holders shall determine the tariffs for the payments arising from the broadcasting and/or transmission of the works, performances, phonograms and productions. Contracts between collecting societies and organizations shall be concluded based on these tariff amounts or based on other amounts that shall be determined as a result of negotiations to be made by the parties.

Paragraphs four to thirteen of article 41 of this Law shall apply to the notification obligation of collecting societies regarding their members and works, performances, phonograms and productions that they represent, the determination, announcement and negotiation of tariffs, conclusion of contracts, settlement of disputes and other matters. However, the application of the last sentence of paragraph six of article 41 is not compulsory with regard to organizations that carry out broadcasting and/or transmission.

Furthermore, with regard to the application of paragraph 10 of article 41, the Turkish Radio and Television Corporation may use works, performances, phonograms and productions in its broadcasts by paying  $\frac{1}{4}$  of the annual tariff determined by the collecting societies every three months.

## **(5) Marking of Intellectual and Artistic Works**

*Art. 44.* For the purpose of protection and effective pursuit of intellectual property rights, places which manufacture materials serving the fixation or reproduction of intellectual and artistic works and/or carry out the recording, reproduction and sale of such materials or distribute and supply to the public in any way, excluding places that only print periodicals, shall be given a certificate by the Ministry against a fee. Places that are determined by the Ministry are obliged to maintain software approved by the Ministry and hardware complying with criteria to be set by the Ministry, to form the necessary infrastructure and to inform to the Ministry transactions they carry out in each calendar year. Such places and economic rights holders are also jointly obliged to maintain codes complying with international standards and marks and serial numbers that are deemed necessary by the Ministry, on the materials carrying works.

Natural and legal persons who manufacture or import for commercial purposes any kind of materials carrying works such as blank video cassettes, audio cassettes, computer discs, CDs, DVDs and all kinds of technical equipment which serve the reproduction of intellectual and artistic works are obliged to collect every month and deposit, until the middle of the following month at the latest, in a special account to be opened with a national bank in the name of the Ministry of Culture and Tourism, an amount to be determined by the Council of Ministers not exceeding 3% of the manufacturing or importation costs. A quarter of the amounts collected in the special account shall be transferred to the account of the Ministry of Culture Central Accounting Office and shall be recorded as revenue in the budget.

The amounts remaining in this account shall be used the purpose of strengthening the intellectual property system and the execution of cultural and artistic activities. The rules and procedures concerning the distribution and use of these monies shall be determined with a by-law to be issued by the Ministry of Culture and Tourism. The allowance which is necessary for activities concerning the protection of the cultural heritage within and outside the country shall be placed in the budget of the Ministry.

Rules and procedures regarding the application of this article and the fees to be collected shall be determined with a by-law to be issued by the Ministry of Culture.

## **(6) Payment of a Share of Sale Proceeds of Works of Fine Arts**

*Art. 45.* Each time the originals of works of fine arts, excluding architectural works, mentioned in article 4 of this Law or their copies which are deemed to be original works due to the fact that they were produced by the author in limited numbers or under the supervision of the author and with his permission and were signed by the author or marked by him in another way, and the originals of works listed in subparagraph one of article 2 and article 3 that are handwritten by authors and composers change hands, within the protection period, by sale at an exhibition or auction or at a store that sells such goods or in other ways subsequent to the sale by the author or his heirs, if there is a substantial disparity between such sale price and the previous sale price, at each sale, the natural or legal person who effects the sale is obliged to pay an appropriate share of the price difference to the author, or, if the author is deceased, to his legal heirs up to (and including) the second degree and to his spouse and if such persons do not exist, to the collecting

society of the relevant field, in accordance with the rules and procedures to be laid down by a decree to be issued by the Council of Ministers.

The decree shall stipulate;

1. a share tariff to be determined in proportion to the amount of the price difference, not to exceed 10% of such difference;
2. that sales whose proceeds do not exceed the amount laid down in the decree shall be exempt from the payment of a share;
3. which branch of the collecting society is to be deemed the relevant one for each type of work.

The owner of the enterprise where the sale took place shall be jointly and severally liable with the seller.

In the event of an executionary sale, the share shall be paid only after all other debts have been fully paid.

The prescription period for the obligation to pay a share is five years from the sale that gives rise to such obligation.

#### **(7) Right of Use by the State**

*Art. 46.* Works that have not yet been published or made public and whose author has not expressly prohibited reproduction and publication and which are preserved in public libraries, museums or similar institutions, shall belong to the public institution or organization in which they are kept, provided that the term of protection of economic rights has expired. The authority which shall give permission to persons who would like to benefit from such works for scientific and other reasons and public institutions and organizations, the fees to be charged and the cultural purposes for which such fees shall be spent and other matters shall be determined by a regulation to be issued by the Ministry of Culture and Tourism following consultation with relevant institutions.

#### **(8) Expropriation**

*Art. 47.* The authority to exercise economic rights on a work which is deemed important for the culture of the country may be expropriated before the expiry of the term of protection through the payment of an appropriate fee to the right holders and by issuing a decree.

In order for such a decision to be taken, the work must have been created in Turkey or by Turkish citizens outside of Turkey and the published copies of the work must have been out of print since two years and it must be established that the right holder shall not publish a new edition in an appropriate amount of time.

The decree shall stipulate:

1. The name of the author and title of the work;
2. The fee to be paid to persons whose acquired rights are violated;
3. The authority and establishment which shall exercise economic rights;

4. The cultural purposes for which the net profit to be obtained following the full payment of the fee shall be allocated.

## **PART FOUR CONTRACTS AND DISPOSALS**

### **A. DISPOSALS INTER VIVOS**

#### **I. Original Acquisition**

*Art. 48.* The author or his heirs may transfer to others the economic rights granted them by law, unrestricted or restricted as regards duration, place or scope, with or without consideration.

The authority only to exercise the economic rights may also be granted to another person (license).

Acts of disposal specified in the preceding paragraphs shall be null and void, if they relate to a work which has not yet been created or shall be completed in future.

#### **II. Derivative Acquisition**

*Art. 49.* A person who has acquired an economic right or a license to exercise such right from the author or his heirs may transfer such right or license to another person only with the written consent of the author or his heirs.

Where the right of adaptation is transferred, the consent of the author or his heirs shall also be necessary as to the person who has acquired by derivative transfer.

#### **III. Contracts**

##### **(1) Future Works**

*Art. 50.* Commitments regarding the acts of disposal mentioned in Articles 48 and 49 shall also be valid, if they have been made before the creation of work.

Such commitments relating to the whole or a specific category of the works of an author to be created in the future may be terminated by either contracting party with a notice of one year.

Such commitments shall terminate automatically, if the author dies or loses the capacity to complete the work before the completion of work or, if completion of work becomes impossible without any fault of his own. This rule shall also apply in cases when the other party goes bankrupt or is unable to exercise the economic rights transferred to him under the contract or, if the exercise of such rights becomes impossible without any fault of his own.

## **(2) Prospective Possibilities of Exploitation**

*Art. 51.* Contracts concerning the transfer of economic rights, which are likely to be granted to the author by future legislation, or their exercise by other persons, shall be null and void.

The same provision shall apply to contracts concerning the renunciation or transfer of authorities which may arise from the extension of the scope or term of protection of economic rights by future legislation.

## **IV. Form**

*Art. 52.* Contracts and disposals concerning economic rights shall be in writing and the rights constituting their subject matter shall be specified individually.

## **V. Warranty**

### **(1) Non-Existence of Right**

*Art. 53.* A person who transfers an economic right or grants a license to exercise such right shall ensure to the acquirer the existence of the right in accordance with Articles 169 and 171 of the Code of Obligations.

Claims arising from torts and unjust enrichment shall be reserved.

### **(2) Lack of Authority**

*Art. 54.* A person who acquires an economic right or a license to exercise such right from a person without authority to transfer shall not be protected even if he acted in good faith.

A person who, without authority, transfers an economic right or grants a license to exercise such right to another person shall be liable to pay compensation for the damages arising from the invalidity of the disposal, unless he proves that the other person was aware or should have been aware that he had no authority. In case of fault the court may order greater compensation, if equity requires.

Claims arising from torts and unjust enrichment shall be reserved.

## **VI. Rules of Interpretation**

### **(1) Scope**

*Art. 55.* Unless otherwise agreed, transfer of an economic right or the grant of a license shall not extend to translation or other adaptation of a work.

### **(2) License**

*Art. 56.* A license is non-exclusive, if it does not prohibit the holder of economic rights to grant the same license to others, and is exclusive, if it is granted only to one person.

Unless the contrary may be deduced from law or contract, all licenses shall be deemed to be non-exclusive.

The provisions on usufructuary leases shall apply to non-exclusive licenses and those on usufruct shall apply to exclusive licenses.

### **(3) Transfer of Ownership**

*Art. 57.* Transfer of ownership of an original or of reproduced copies of a work shall not involve the transfer of intellectual rights, unless otherwise agreed.

A person who has acquired the possession of moulds or other devices for reproduction from the owner of the right of reproduction in a work of fine art shall, unless otherwise agreed, be deemed to have also acquired the right of reproduction.

## **VII. Right of Rescission**

*Art. 58.* If the acquirer of an economic right or a license exercises his rights and authorities insufficiently within the agreed period or, where no period has been determined, within a reasonable period of time and if thereby the author's interests are significantly violated, the author may rescind the contract.

The author desiring to exercise the right of rescission shall be obliged to grant the other party, upon notifying him by a notary public, a period of time adequate to sufficiently exercise the rights in the contract. The grant of such a period shall not be necessary, if it is impossible for the other party to exercise such right or, if he refuses to exercise it or, if the grant of such period would significantly jeopardize the author's interests.

The notice issued by the notary public shall give effect to the rescission of the contract, if the expiration date for the granted period exceeds inconclusively or, if it is not necessary to grant such a period. An action for objection against the rescission of the contract shall not be permitted after four weeks from the date of the notice issued by the notary public.

If the acquirer was not at fault for failure to exercise the economic rights, or greater fault may be attributed to the author, the acquirer may claim compensation in cases where equity requires.

The right of rescission may not be waived in advance and limitations precluding its exercise for more than two years shall be null and void.

## **VIII. Reversion of the Right to the Author**

*Art. 59.* If the author or his heirs have transferred an economic right for a specific purpose or for a definite period of time, the right concerned shall revert to the author when the purpose ceases to exist or the period expires. This provision shall not apply in case of death or bankruptcy of the acquirer of an economic right, transfer of which is not permitted under the contract, unless the nature of the work requires that the right be personally exercised by the acquirer.

Licenses granted for a specific purpose or a definite period of time shall terminate in the cases mentioned in the first paragraph.

## **B. RENUNCIATION**

*Art. 60.* The author or his heirs may renounce the economic rights granted them by law by an authenticated document and publication in the official gazette, provided that their previous disposals are not prejudiced.

As of its date of publication, renunciation shall produce the same legal effects as expiry of the term of protection.

## **C. ATTACHMENT AND PLEDGE**

### **I. Not Permitted Subject Matters**

*Art. 61.* The provisions of Articles 24 and 30 of the Law on Execution and Bankruptcy being reserved;

1. Drafts or originals of a work not yet made public that are in the ownership of the author or of one of his heirs;
2. Economic rights in works referred to in subparagraph (1), except cinematographic works;
3. Non-pecuniary claims of the author arising from transactions concerning his economic rights;

may not be the subject matter of legal or contractual pledge, execution or lien.

### **II. Permitted Subject Matters**

*Art. 62.* In accordance with the following provisions;

1. The draft or original of a work that has been made public;
2. Reproduced copies of a published work;
3. Economic rights in a work that has been made public, provided that the author's moral

interests worthy of protection are not prejudiced;

4. Pecuniary claims of the author arising from transactions concerning his economic rights may constitute the subject matter of legal or contractual pledge, execution or lien.

In order to be valid, pledge contracts relating to the subject matters listed in the first paragraph must be stipulated in writing. The pledged items shall be specified in the contract individually.

Moulds and other devices for reproduction relating to the works of fine arts may be temporarily taken from their possessors to the extent deemed necessary for the purposes of execution on the economic rights referred to in the subparagraph (3) of the first paragraph.

Works of fine arts, except for works of architecture, and drafts of musical, scientific and literary works that belong to the author or to his heirs may be temporarily taken from their possessors to the extent deemed necessary for the enforcement of execution on the economic rights referred to in subparagraph (3) of the first paragraph.

## **Ç. INHERITANCE**

### **I. In General**

*Art. 63.* The economic rights granted by this Law shall be transferred by inheritance.

Making testamentary disposals on economic rights is permitted.

### **II. Death of One of the Joint Authors of a Work**

*Art. 64.* If one of the persons who have created a work jointly dies before the work is completed or made public, his portion shall be distributed among the others. These are obliged to pay equitable remuneration to the heirs of the deceased joint author. Should they fail to agree as to the amount of such remuneration, it shall be determined by the court.

If one of the persons who have created a work jointly dies after the work has been made public, the other joint authors shall be free to decide whether or not they continue the union with the heirs of the deceased joint author.

In case they decide to continue the union, the surviving joint authors may request the heirs to appoint a representative to exercise their rights in respect of the union.

If it is not decided to continue the union, the provisions of the first paragraph shall apply.

### **III. Multiple Heirs**

*Art. 65.* Where the estate of a deceased author contains economic rights granted by this Law and if a representative has been appointed in accordance with Article 581 of the Civil Code, the representative is obliged to obtain the consent of the heirs for any transaction on such rights.



**PART FIVE**  
**CIVIL AND CRIMINAL ACTIONS**

**A. CIVIL ACTIONS**

**I. Action for Cessation of Infringement**

**(1) In General**

*Art. 66.* Any person whose moral and economic rights have been infringed may bring an action against the infringer to cease the infringement.

If the infringement has been committed by agents or employees of an enterprise in the execution of their duties, legal action may also be brought against the owner of such enterprise.

It is not necessary that the infringer or the persons referred to in the second paragraph be at fault.

The court shall order appropriate measures as required by the force of circumstances for the cessation of the infringement, by assessing the moral and economic rights of the author, the extent of the infringement, whether there is fault and if there is, degree of fault, and the damages likely to be suffered by the infringer in case of the cessation of infringement.

The author may bring an action for cessation and prevention of infringement in place of his residence as well.

**(2) In Case of Infringement of Moral Rights**

*Art. 67.* Where a work which has not yet been made public is disclosed to the public without the consent of the author or against his wishes, action for cessation of infringement may only be brought, if the reproduced copies have been disclosed to the public by way of publication. This provision shall also apply in cases where the author's name is shown on the work against his wishes.

If the author's name has not been shown on the work or has been shown wrongly or in such a way giving rise to confusion, and if the author has claimed the cessation of infringement in addition to the action for declaratory relief referred to in Art. 15, the infringer shall be obliged to show the author's name on the original work and on the reproduced copies already in circulation. The publication of the judgment in not more than three newspapers may be requested at the expense of the infringer.

The provision of the second paragraph shall apply in the cases set out in Articles 32, 33, 34, 35, 36, 39 and 40, if the source has been wrongly or incompletely designated or no source is given.

If the work has been unlawfully modified, the right holder may claim the following:

1. The author may claim that reproduction, publication, performance and broadcasting by radio of the modified work be prohibited and that the modifications in the reproduced copies already in circulation be corrected by the infringer or restored to their original form. If the modification is made by publication in a newspaper or journal or by radio broadcasting, the author may claim the administrations of such newspapers, journals or broadcasting organizations that have published the modified work to correct the modification at the expense of the infringer.

2. In the case of works of fine art the author may claim an announcement be made declaring that the modification in the original work has not been made by him, or may claim that his name be removed or changed on the original. If it is possible to restore the work to its original form and if removal of the modification does not significantly prejudice the interests of the owner or of the public, the author may restore the work to its original form.

### **(3) In Case of Infringement of Economic Rights**

*Art. 68.* If a work has been translated without permission of the author, has been published outside the scope of the contract or in excess of the number stipulated in the contract, or has been adapted in an other way or broadcast by means like radio or television or performed, the author whose permission was not obtained, may claim the payment of compensation of up to three times of the amount that would have been determined, had the right been granted by contract or of the damages suffered on the base of imputed or current value. In determination of this amount the opinions of the concerned collecting societies shall be given prior consideration.

If a work is being exploited by reproduction without permission and the reproduced copies have not been put up for sale, the author may claim that the reproduced copies, films, moulds and similar devices enabling the reproduction be destroyed or be surrendered to him in return for equitable remuneration not exceeding their cost price or may claim the payment of three times of the amount he would have demanded, if a contract had been concluded. These claims shall not remove the legal liability of the person who has undertaken the reproduction without permission.

If copies of a work reproduced without permission have been put up for sale or if the sale constitutes an unlawful infringement, the author may, as regards copies in the possession of the infringer, choose one of the alternatives mentioned in the second paragraph.

The person who claims remuneration may assert all rights and authorities he would have enjoyed, had he concluded a contract.

## **II. Action for Prevention of Infringement**

*Art. 69.* An author whose moral or economic rights are in threat of being infringed may bring an action to prevent the probable infringement. The same provision shall apply in cases where the infringement is likely to continue or recur.

The provisions of the second, third and fourth paragraphs of Article 66 shall also apply in such case.

### **III. Action for Damages**

*Art. 70.* Any person whose moral rights have been infringed may bring an action for moral damages for the moral injury he has suffered. In place of or in addition to such pecuniary compensation the court may order another sort of compensation for moral damages.

Any person whose economic rights have been infringed may claim compensation under the provisions governing torts, if the infringer is at fault.

In the cases set out in the first and second paragraphs, the infringed person may, apart from the damages, also claim the profits gained by the infringing party. In such case, any sum demanded in accordance with Article 68 shall be deducted from this amount.

## **B. CRIMINAL ACTIONS**

### **I- Offenses**

#### **(1) Infringement of Moral Rights**

*Art. 71.* Any person, who in contravention of the provisions of this Law, intentionally;

1. Publishes a work or discloses it to the public, irrespective of whether it has been made public, without the written permission of the author or his successor;
2. Gives a title to a work or to the reproduced copies of the work without the written permission of the author or his successor;
3. Gives the appearance that the work of another person is his own or his own work is that of another person or who acts contrary to the provision of second paragraph of Article 15,
4. Fails to cite the source in the cases covered by Articles 32, 33, 34, 35, 36, 37, 39 and 40, or cites the source in a wrong , incomplete or misleading way,
5. Modifies a work without the written permission of the author,

shall be sentenced to imprisonment from two years to four years, or a judicial fine between fifty billion TL. and one hundred and fifty billion TL, or both considering the severity of the damages.

#### **(2) Infringement of Economic Rights**

*Art. 72.* Any person, who in contravention of this Law, intentionally;

1. Sells or distributes the copies of a work or adaptations of such work that have been reproduced by him in contrary to the provisions of an existing contract with the right holder shall be sentenced to imprisonment from three months to two years or a judicial fine between ten billion TL. and fifty billion TL. or both considering the severity of the damages;
2. Sells a work and its reproduced copies in places indicated in the seventh paragraph of Article 81 of this Law without the permission of the right

holder shall be sentenced to imprisonment from three months to two years or a judicial fine between five billion TL. and fifty billion TL. or both considering the severity of the damages;

3. Without the permission of the right holder,
  - a) Adapts a work in any manner,
  - b) Reproduces a work in any manner,
  - c) Distributes a work in any manner,
  - d) Lets the copies of a work enter into the country through legal or illegal ways and puts them into commercial use in any manner,
  - e) Displays or performs a work in places open to the public, organizes such display or disseminates it by devices enabling the transmission of all kinds of signs, sounds, and/or images including digital transmission or acts as intermediary for such dissemination,

shall be sentenced to imprisonment from two years to four years or a judicial fine between fifty billion TL. and one hundred and fifty billion TL. or both considering the severity of the damages.

### **(3) Other Offenses**

*Art. 73.* The following provisions shall apply to the offenses other than those referred to in Articles 71, 72, 80 and 81 of this Law.

- 1- Any person, who intentionally;
  - a) Possesses for commercial purposes copies of a work, in the knowledge or with reasonable grounds to know, that they have been reproduced in contrary to the provisions of this Law,
  - b) Transfers or grants an economic right or a license or creates a pledge on, or disposes in any way of such right or license, in the knowledge or with reasonable grounds to know, that such right or license does not exist or that he is not entitled to dispose of such right or license,
  - c) Possesses for commercial purposes or distributes a technical instrument whose sole purpose is to facilitate the neutralization or unpermitted removal of any technical device used to protect a computer program,

shall be sentenced to imprisonment from two years to four years or a judicial fine between fifty billion TL. and one hundred and fifty billion TL. or both considering the severity of the damages.

2- Any person, who intentionally reproduces the copies of works, productions and phonograms, that have been reproduced and distributed in accordance with the provisions of this Law, by way of identical printing and production along with the distinctive title, trademark and identifying information of the right holders of reproduction and distribution, by means of signs, writing, sound, devices or methods enabling repetition of the data or images which are moving or motionless or distributes the copies reproduced by such way shall be sentenced to imprisonment from three years to six years or a judicial fine between

twenty billion TL. and two hundred billion TL. or both considering the severity of the damages.

## **II. Offender**

**Art. 74.** If the offenses referred to in Articles 71, 72, 73 and 80 have been committed by the agents or employees of an enterprise, the owner, manager or the person who, irrespective of his name and title, actually operates such enterprise, who has not prevented the commitment of the offense shall be punished as the offenders. If the act requiring punishment has been committed on the instructions of the owner, manager or the person who actually operates the enterprise, such person shall be punished as the offender and the agent or employees as accomplices.

Any person who, in the knowledge of the unlawful nature of the performance of a work, provides premises for such performance with or without consideration or takes a role or part in the performance, shall be punished as an accomplice.

If any of the offenses specified in Articles 71, 72, 73 and 80 are committed within the framework of business activities of a legal person, such legal person shall be jointly and severally liable together with the other offenders for the expenses and fines.

The provisions of Articles 64, 65, 66 and 67 of the Criminal Code shall be reserved.

## **III. Prosecution and Recidivism**

**Art. 75.** The investigation of the offenses specified in Articles 71, 72, 73 and 80 shall be subject to complaint. Public prosecution shall be initiated upon a complaint, provided that the right holders submit the documents and/or copies proving their rights to the Public Prosecutor. In case these documents and/or copies are not submitted within six months, a decision of non-prosecution shall be issued, the provisions of Article 76 of this Law are reserved. Subparagraph (8) of the first paragraph of Article 344 of the Code of Criminal Procedure, No. 1412 shall not apply to the implementation of the provisions of this Article.

In addition to the persons whose rights have been infringed the following shall also be entitled to file complaints:

1. The Ministry of Education and the Ministry of Culture in the cases covered by subparagraph (4) of Article 71 with respect to acts contrary to the obligation to cite the source as required by Article 35;
2. The Ministry of Culture and the Directorate General of Press and Publication and the institutions representing the Turkish press in the cases covered by subparagraph (4) of Article 71 with respect to the acts contrary to the obligation to cite the source as required by Article 36.
3. The Ministry of Culture in the cases covered by the subparagraph (14) and (15) in the framework of the last paragraph of the Article 19.
4. Collecting societies for the fields in which they operate.

In case of infringement of the rights of authors, related rights holders and other right

holders and upon request of persons who are entitled to file a complaint, the public prosecutor of the place where the infringement has occurred or where it has produced effect may request the competent court to have the unlawfully reproduced copies or publications seized, to have them destroyed, to have the technical devices used to this end sealed and sold and to close down the premises where unlawful reproduction has taken place.

If the authors or right holders fail to file a complaint or any other request to the competent court within fifteen days of the seizure of the copies and non-periodical publications, the competent court shall, upon the request of the public prosecutor, order to have adequate number of copies preserved to provide basis for the case and the rest destroyed or, if there are possibilities enabling their re-use as raw material, to have them sold as raw material in their present form or after degrading their characteristics in such a way as to preclude their re-use. The provisions of the Article 68 of this Law shall apply in case the authors or right holders file a complaint or request within the stipulated time period. The rules and procedures regarding the destruction of seized copies and non-periodical publications, their re-use as raw material, and their sale as raw material shall be set out in a by-law to be issued by the Ministry.

In cases where delay is considered to be detrimental, public prosecutor may, *ex-officio*, issue an order for seizure and sealing to be submitted for approval to the competent court within three days.

Right holders may file a request to the Chief Public Prosecutor with the documents which prove their rights, within six months beginning from the date on which they acquired knowledge of the infringement and the identity of the perpetrator, provided that the offense remains in the prescription term of the action. As regards this offense the trial procedure of the Law on Procedure in Flagrant Offenses No 3005 shall apply regardless of whether the stipulation concerning place in the subparagraph (A) of the first Article of the said Law and the stipulation concerning time laid down in the Article 4 of the same law are met.

If a person who has been convicted (*res judicata*) of an offense specified in this Law recommit the same offense within two years, the sentence for the new offense shall be increased by one fold. Sentences of imprisonment imposed upon a repetition of the offense may not be suspended and converted to a fine or an alternative measure for imprisonment. The related provisions of the Law on the Struggle against Organized Crime Aimed at Unlawful Gain and Benefit shall apply to the offenses referred to in this Law, provided that the requirements of the said Law are fulfilled.

## **C. MISCELLANEOUS PROVISIONS**

### **I. Jurisdiction and Evidence**

**Art. 76.** Specialized courts to be established by the Ministry of Justice shall be competent for litigations arising from the legal relationships regulated by this Law regardless of the amount in controversy or the level of punishment prescribed by the Law. Until the specialized courts are established and until they commence their proceedings, The

Supreme Council of Judges and Prosecutors shall, upon the proposal of Ministry of Justice, determine which criminal and civil courts of first instance are to be designated as specialized courts and the jurisdiction of such courts.

If a personal action is initiated, Article 358 of the Code of Criminal Procedure shall apply. If the criminal case is disposed of by acquittal and a claim for damages is also involved, the file shall *ex-officio* be referred to the civil court for a decision on these issues.

In the litigations to be initiated under this Law, the court may order that documents of permissions and authorizations and/ or the lists of all protected works, phonograms, performances, films and broadcasts be submitted by those who use such works, phonograms, performances, films and broadcasts, if the plaintiff submits sufficient evidence to form a strong opinion as to the validity of his claims. The failure to submit such documents and/or lists shall constitute a presumption, that all works, phonograms, performances, films and broadcasts have been unlawfully used.

## **II. Precautionary Measures and Provisional Seizure at the Customs**

**Art.77.** Upon the request of the person whose rights have been violated or are under threat of violation or the persons entitled to file a complaint, the court may order the other party, before or after the commencement of the proceedings on the merits of the case, to perform certain acts or to refrain from performing them as well as it can order closing the premise where the act is being committed or opening that place, furthermore as a precautionary measure the provisional seizure of the reproduced copies of a work or moulds and other devices for reproduction like these exclusively enabling the manufacture of such copies, if such an order is deemed necessary for the prevention of a substantial injury or an instantaneous danger or accomplished facts or it is necessary for any other reason and if the claims asserted are considered to be strongly probable. It shall be stated in the order that non-compliance with the order shall be resulted in criminal consequences as provided in Article 343 of the Law on Execution and Bankruptcy.

The provision of Article 57 of the Customs Law and the related provisions of the Law No. 4926 on Combating Smuggling and Trafficking shall apply during the import or export of the copies, which require sanctions in case an infringement of rights is likely to occur.

The procedure regarding the seizure of such copies by the Customs Authorities shall be implemented in accordance with the related provisions of the Customs Regulation.

## **III. Publication of the Judgment**

**Art. 78.** Except for the case referred to in the second paragraph of Article 67, the successful party may request that the final judgment (*res judicata*) be published, in full or in part, by newspaper or similar means at the expense of the other party, if he has a justified reason or interest.

The form and content of the publication shall be laid down in the judgment.

The right to request such publication shall lapse, if not exercised within three months from the date on which the judgment becomes final.

#### **IV. Seizure, Confiscation and Destruction**

*Art. 79.* Article 36 of the Criminal Code and Articles 392, 393 and 394 of the Code of Criminal Procedure shall apply to the seizure, confiscation and destruction of reproduced copies, manufacture or distribution of which are subject to punishment under this Law and of moulds and similar devices enabling the reproduction of these copies.

### **PART SIX**

#### **MISCELLANEOUS PROVISIONS**

##### **A. RELATED RIGHTS AND PREVENTION OF INFRINGEMENT**

###### **I. Related Rights**

*Article 80.* The related rights are as follows:

###### **1. Neighbouring rights:**

Without prejudice to the moral and economics rights of the author and with the permission of the author performers who interpret, introduce, recite, sing, play and perform a work in various ways and in an original form, phonogram producers that make the first fixation of sounds that are the result of a performance or other sounds, and radio-television organizations shall have the following neighbouring rights.

###### **A. Performers shall have the following rights:**

(1) Independently of performers' economic rights, and even after the transfer of those rights, the performers shall as regards their fixed performances have the right to claim to be identified as the performer of their performances except where omission is dictated by the manner of the use of the performance and claim the prevention of any distortion and mutilation of their performances that would be prejudicial to their reputation.

(2) A performer who interprets a work in an original form with the permission of its author shall have the exclusive right of authorizing or prohibiting the fixation of such performance, reproduction, sale, distribution, rental and lending of such fixation, communication of such fixation to the public by devices permitting transmission of signs, sounds and/or images as well as its re-transmission and performance.

(3) A performer shall have the right of authorizing or prohibiting the distribution by sale or any other way of the original or the copies of his fixed performances which have not yet been put up for sale or distributed in any other way in the domestic market.



(4) A performer shall have the right of authorizing or prohibiting the sale of the original or reproduced copies of his fixed performance by wire or wireless means, or the distribution or other supply and communication of such performance or reproduced copies to the public by providing access to them at a time and place chosen by natural persons. Distribution and supply of performances by means of communication to the public shall not prejudice performer's right of distribution.

(5) Performers may transfer these rights to a producer by contract in return for equitable remuneration.

(6) Where the performance is carried out by an orchestra, a chorus or a theatrical group, the permission of only the conductor in case of orchestra or chorus or of the director in case of theatrical group shall be sufficient.

(7) As regards performances carried out as a result of the business activity of an entrepreneur and on the basis of a contract, the permission of the entrepreneur shall also be required.

**B.** Phonogram producers that make the first fixation of sounds which are the result of a performance or other sounds shall have the following rights after acquiring authority to exercise economic rights from the author and the performer.

(1) The right of authorizing or prohibiting the direct or indirect reproduction, distribution, sale, rental and lending to the public of the fixation which was made with the permission of the author and performer shall belong exclusively to the phonogram producer. Producers shall have the exclusive right of authorizing the communication of their fixations to the public by devices permitting the transmission of signs, sounds and/or images and re-transmission of such fixations.

(2) A phonogram producer shall have the right of authorizing and prohibiting the distribution by sale or any other way, of the original or the reproduced copies of his fixations which have not yet been put up for sale or distributed in any other way in the domestic market.

(3) A phonogram producer shall have the right of authorizing or prohibiting the sale of the fixations of the performances by wire or wireless means or the distribution or other supply and communication of such fixations to the public by providing access to them at a time and place chosen by natural persons. Distribution and supply of fixations by means of communication to the public shall not prejudice producer's right of distribution.

**C.** Radio-television organizations shall fulfill the obligations prescribed by this Law. Radio-television organizations shall have the following exclusive rights on the broadcasts they produce:

- 1) Authorizing or prohibiting the fixation of their broadcasts, their simultaneous transmission by other broadcasting organizations, their delayed transmission, their re-transmission, and their distribution via satellite or cable;

- 2) Authorizing or prohibiting the direct or indirect reproduction and distribution by any technique or method of their broadcasts except for private use;
- 3) Authorizing or prohibiting the transmission of their broadcasts at public premises;
- 4) Authorizing the communication of their fixed broadcasts to the public by providing access to them at a time and place chosen by natural persons.
- 5) Authorizing or prohibiting the communication of their broadcast signals on communication satellites or signals directed at them to the public by another broadcasting organization or cable operator or other third parties as well as the decrypting of their encrypted broadcasts.

2. Film producers that make the first fixation of films shall have the following rights after acquiring authority to exercise economic rights from the author and the performer.

(1) A film producer shall have the exclusive right of authorizing or prohibiting the direct or indirect reproduction, distribution, sale, rental and lending to the public of the fixation, which was made with the permission of the author and the performer. Producers shall have the exclusive right of authorizing the communication of their fixations to the public by devices permitting the transmission of signs, sounds and/or images and their re-transmission.

(2) A film producer shall have the right of authorizing or prohibiting the distribution by sale or any other way, of the original or the reproduced copies of film fixations which have not yet been put up for sale or distributed in any other way in the domestic market.

(3) A film producer shall have the right of authorizing or prohibiting the sale of film fixations by wire or wireless means, or the distribution or other supply and communication of such fixations to the public by providing access to them at a time and place chosen by natural persons. Distribution and supply of fixations by means of communication to the public shall not prejudice producer's right of distribution.

In case performances fixed on phonograms and films are communicated to the public in any manner, persons using them shall be obliged to pay an equitable remuneration to the authors as well as the performers and producers or the collecting societies of the related field.

A natural or legal person whose name appears in the usual manner on a cinematographic work shall, in the absence of proof to the contrary, be presumed as the producer that has made the first fixation of the film.

After transferring their economic rights to the producer making the first fixation of films, joint authors of cinematographic works may not object to the dubbing or subtitling of the film, provided that nothing to the contrary or no special provision is stipulated in the contract .

The author of a musical work shall maintain the right to broadcast and perform his work, provided that the provisions of the contract concluded between him and the producer making the first fixation of films are reserved.

The permissions granted by neighbouring rights holders and the producers that make the first fixation of films must be in writing.

The written permission of the neighbouring rights holders and the film producer shall not be necessary in the cases set out below;

1. Performance and communication of intellectual and artistic works to the public for purposes of public order, education and instruction, scientific research or news without aiming for profit;
2. Reproduction of intellectual and artistic works and radio television programs for broadcasting and personal use without aiming for profit;
3. Ephemeral fixations made by radio-television organizations by means of their own facilities and for their own broadcasts;
4. The cases specified in Articles 30, 32, 34, 35, 43, 46 and 47 of this Law.

However, such application may not prejudice the legitimate interests of the right holders without good reason or conflict with the normal exploitation of the work.

Like authors, related rights holders shall also enjoy the right to bring actions for cessation and prevention of infringement as well as for compensation.

Those, who violate the rights of related rights holders, shall be sentenced to,

- a) Imprisonment from three months to two years or a judicial fine between five billion TL. and fifty billion TL. or both considering the severity of the damages in case of violations pertaining to the sale at the places indicated in the seventh paragraph of Article 81 of this Law of the copies of a performance, phonogram, or production reproduced without permission;
- b) Imprisonment from two years to four years or a judicial fine between fifty billion TL. and one hundred and fifty billion TL. or both considering the severity of the damages in case of a violation of the other rights specified in this article.

## **II. Prevention of Infringement of Rights**

**Article 81.** It is compulsory to affix banderoles on the reproduced copies of musical and cinematographic works and on non-periodical publications. It is also compulsory, upon the request of the author or right holder, to affix banderoles on the reproduced copies of other works that can be easily copied. Banderoles shall be printed and sold by the Ministry. Banderoles may also be sold through the agency of the collecting societies at the sale price determined by the Ministry.

In order to obtain banderoles for a work, the applicant must fill out an obligation form declaring him/her to be the legitimate right holder. Applications shall be accompanied by other documents required by the Ministry. Upon this application the Ministry is obliged to issue banderoles within ten working days without the need for further action. The Ministry can not be held responsible for these procedures which are based on declaration.

Places which manufacture materials enabling the fixation and reproduction of copies on which the affixation of banderoles is compulsory and/or those which carry out the recording and reproduction of such materials shall be obliged to obtain a copy of the obligation form referred to in this Article, keep it, and submit it to the competent authorities when requested.

The Ministry and local representatives of central government may always inspect, whether the copies and non-periodical publications on which banderoles should be affixed, bear banderoles or not. In order to carry out such inspection the local representatives of central government may, *ex-officio* or upon the request of the Ministry, form an “inspection commission” in provinces when deemed necessary. When required, representatives of the Ministry and the representatives of the collecting societies in the relevant fields may also take duty in these commissions. In cases of violation as stated in this Article, the law enforcement authorities and the municipal police may *ex-officio* and/or upon notification by right holders, inspection commission, collecting societies, the Ministry, and others authorized and assigned by other related laws shall collect copies and publications reproduced and distributed unlawfully and without permission and all kinds of devices enabling the reproduction of these copies and other evidence, put the immovable ones under safeguarding, and deliver the collected evidence to the Public Prosecutor along with a denunciation.

The Public Prosecutor shall request the competent court, within three days, to have the unlawfully reproduced copies or publications seized, to have them destroyed, to have the technical devices used to this end sealed and sold and to close down the premises where unlawful reproduction has been undertaken.

If the authors or right holders fail to file a complaint or any other request to the competent court within fifteen days of the seizure of the copies and non-periodical publications, the competent court shall, upon the request of the Public Prosecutor, order that copies in adequate number be preserved to provide basis for the case, the rest be destroyed or sold as raw-material in their present form or after degrading their characteristics in such a way as to preclude their re-use, if there are possibilities enabling their re-use as raw material. The provisions of the Article 68 of this Law shall apply in case the authors or right holders file a complaint or request within the stipulated time period.

It is prohibited to sell lawfully reproduced copies bearing banderoles which are under the protection of this Law on roads, squares, open air markets, sidewalks, piers, bridges or similar places. Law enforcement authorities and municipal police must seize such copies wherever they are seen and deliver the seized copies to the competent authorities. The manner of making use of the seized copies and publications through sale or any other way shall be determined by the Ministry by taking the opinions of the collecting societies of the relevant field.

The rules and procedures regarding the application of matters laid down in this Article shall be stipulated in a by-law to be issued by the Ministry.

Those who, in contravention to the provisions of this Article, intentionally,

1. Commit the following offenses involving the works, carrying materials such as cassettes, CDs, VCDs and DVDs on which the performances and productions are fixed and non-periodical publications requiring banderoles shall be sentenced to:

a. Imprisonment from three months to two years or a judicial fine between TL. five billion and TL. fifty billion or both considering the severity of the damages for selling the said items in the places stated in the seventh paragraph of this Article without having obtained banderoles;

b. Imprisonment from two years to four years or a judicial fine between fifty billion TL. and one hundred and fifty billion TL. or both considering the severity of the damages for reproducing and distributing the said items without having obtained banderoles, or distributing them without payment in violation of the rights of the author or related rights holders, or distributing them with or without payment the banderoles obtained in accordance to this Law and the relevant legislation without affixing on them as prescribed in the legislation.

2. Obtain banderoles by deceiving the Ministry or the organizations authorized by the Ministry with forged papers or documents or in any other way without authority to get banderoles in accordance with this Law and the relevant legislation, or use for other than their intended purpose the banderoles issued for the works, carrying materials such as cassettes, CDs, VCDs and DVDs on which the performances and productions are fixed and non-periodical publications exclusively requiring banderoles shall be sentenced to imprisonment from two years to four years or a judicial fine between TL. twenty billion and TL. two hundred billion or both considering the severity of the damages;

3. Manufacture forged banderoles, use them, and/or obtain commercial profit from the forged banderole in any manner shall be sentenced to imprisonment from three years to six years or a judicial fine between fifty billion TL. and two hundred and fifty billion TL. or both considering the severity of the damages.

As regards persons, who intentionally commit any of the offenses requiring sanctions as regulated in the preceding paragraph, Law on Procedure in Flagrant Offenses No 3005 shall apply irrespective of the stipulation concerning place cited in Article 1, subparagraph (A) of the said Law and the stipulation concerning time in Article 4 of the same Law and public prosecution shall be initiated even if the requirement stipulated in subparagraph (8) of Article 344 of the Code of Criminal Procedure, Law No. 4212 is not fulfilled.

### **III. Scope and Term of Related Rights**

**Art. 82-** The provisions of this Law pertaining to the performers shall apply to:

1. Performers who are nationals of the Republic of Turkey;

2. Performers not being nationals of the Republic of Turkey, whose performances are carried out on the territory of the Republic of Turkey, included in phonograms or in the first fixations of films to which the provisions of this Law apply and not being fixed in a

phonogram or film, broadcast in radio-television broadcasts to which the provisions of this Law apply,

The provisions of this Law pertaining to the phonograms and the first fixation of films shall apply to phonograms and films:

1. Whose producers are nationals of the Republic of Turkey or;
2. Which are on the territory of the Republic of Turkey.

The provisions of this Law pertaining to the radio-television broadcasts shall apply to radio-television programs:

1. Whose place of origin is situated on the territory of the Republic of Turkey;
2. Which are broadcast from a transmitter situated on the territory of the Republic of Turkey.

The provisions of this Law pertaining to the related rights shall also apply to performers, producers and radio-television organizations that are protected under the provisions of an international treaty to which the Republic of Turkey is party.

The rights of performers shall last for 70 years from the date of first fixation of the performance. If their performances have not yet been fixed, the term shall begin with the date on which the performance is first made public.

The rights of producers shall last for 70 years from the date of first fixation.

The rights of radio-television organizations shall last for 70 years from the date on which the program was first broadcast.

## **B. UNFAIR COMPETITION**

### **I. Titles and Distinctive Signs**

*Art. 83.* The title and distinctive signs of a work and the form of the reproduced copies of such work may not be used in another work or in its reproduced copies in such way as to give rise to confusion.

The provision of the first paragraph shall not apply to titles, distinctive signs and exterior forms that lack a distinguishing character and are in general use.

The application of this article shall not depend on the fulfillment of the requirements laid down in Parts One, Two and Three of this Law.

The provision of Article 14 of the Press Law pertaining to the titles of periodicals shall be reserved.

The provisions governing unfair competition shall apply to persons who infringe provisions of the first paragraph of this Article, even if they are not merchants.

## **II. Sign, Image and Sound**

*Art. 84.* Any person who fixes signs, images or sounds on a device permitting the transmission of such elements or who lawfully reproduces or distributes the same for commercial purposes, may prohibit the reproduction or distribution of the same signs, images or sounds by another person using the same means.

The provisions governing unfair competition shall apply to persons who infringe the provisions of the first paragraph of this Article even if they are not merchants.

The provisions of this Article shall also apply to all kinds of photographs, images fixed by similar means and cinematographic productions that do not qualify as works.

## **III. Letters**

*Art. 85-* Even if they do not qualify as works, letters, memoirs and similar writings may not be published without the consent of their authors or, in case of their death, without the consent of the persons referred to in the first paragraph of Article 19; consent shall not be necessary once ten years have elapsed after the death of the author.

In addition to the conditions prescribed in the first paragraph, letters may not be published without the consent of the addressee or, in case of his death, without the consent of the persons referred to in the first paragraph of Article 19; consent shall not be necessary once ten years have elapsed after the death of the addressee.

The provisions of Article 49 of the Code of Obligations and Articles 197 and 199 of the Criminal Code shall apply to persons who act contrary to the provisions of the preceding paragraphs.

The provisions of Article 24 of the Civil Code shall be reserved in cases where publication is permitted in accordance with the first and second paragraphs of this Article.

## **D. PICTURES AND PORTRAITS**

### **I. In General**

*Art. 86-* Even if they do not qualify as works, pictures and portraits may not be exhibited or disclosed to the public in any other way without the consent of the person depicted in such picture or portrait or, in case of his death, without the consent of the persons referred to in the first paragraph of Article 19, unless 10 years have elapsed after the death of the person depicted.

The consent referred to in the first paragraph shall not be necessary for:

1. Pictures of persons who have played a role in the political and social life of the country;
2. Pictures of parades, official gatherings or public meetings at which the depicted persons participated;

3. Pictures relating to current events, radio and film news.

The provisions of Article 49 of the Code of Obligations and Articles 197 and 199 of the Criminal Code shall apply to persons who act contrary to the provision of the first paragraph.

The provisions of Article 24 of the Civil Code shall be reserved in cases where distribution is permitted under the provisions of the first and second paragraphs.

## **II. Exceptions**

**Art. 87.** Unless otherwise agreed, the picture or portrait of a person made to order may be photographed by the person who ordered it, or the person depicted in it or their heirs.

This provision shall not apply to pictures and portraits made by printing methods. However, if the supply of such pictures and portraits for the persons referred to in the first paragraph is impossible or causes serious difficulty, they may be photographed as well.

## **E. CONFLICT OF LAWS**

**Art. 88.** The provisions of this Law shall apply:

1. Irrespective of the nationality of the author, to all works first disclosed to the public in Turkey and to all works in Turkey which have not been disclosed to the public, as well as to letters and pictures in Turkey;
2. To all works of Turkish nationals which have not yet been disclosed to the public or which have been first disclosed to the public outside Turkey;
3. To all works of foreigners which have not yet been disclosed to the public or which have been disclosed to the public outside Turkey, provided that an international treaty, to which Turkey is a party, has suitable provisions.

Where the state of which the author is a national, grants adequate protection to the rights of Turkish authors or an international treaty allows exceptions and limitations with respect to the matters concerning foreign authors, the Council of Ministers may agree certain exceptions to the provisions of subparagraphs (1) and (3) of this Article.

**Additional Art. 1-** The regulations and by-laws to be issued pursuant to this Law shall be prepared within six months and published in the Official Gazette.

**Additional Art. 2-** The protection granted by this Law shall apply to;

- 1- All works, fixed performances and phonograms existing in Turkey at the moment of entering into force of the amendment of this Article, which have been produced by authors and related rights holders who are nationals of the Republic of Turkey,
- 2- Foreign works, fixed performances and phonograms, which have been produced in other countries that are party to international conventions and agreements to which Turkey is also a party and which have not fallen into the public domain since the term of protection has not expired at the moment of entering into force of the amendment of this Article.



Persons, who own the legal copies of works, fixed performances and phonograms which fall under protection as a result of application of the first paragraph, may sell or dispose of such copies until the end of six months following the date of entry into force of this Law without the requirement of any written permission.

The exercise of rights granted to the authors and other right holders within the framework of this Law concerning works, fixed performances and phonograms shall, however, be subject to the permission of authors or related rights holders.

The provisions of this Law pertaining to the ownership of cinematographic works shall apply to cinematographic works the production of which has been commenced after 12.06.1995 when the Law No. 4110 entered into force.

**Additional Art. 3-** The principles regarding the application of neighbouring rights shall be set out in a by-law to be issued within six months from the date of entry into force of this law.

**Additional Art. 4-** Information which identifies the work, the author of the work, the holder of any right in the work or information about the terms and conditions of use of the work, and any numbers or codes that represent such information attached to a copy of a work or appear in connection with the communication of a work to the public may not be removed or altered. The originals or copies of the works on which the information and numbers or codes representing this information have been altered or removed may not be distributed, imported for distribution, broadcast or communicated to the public.

The provisions of the preceding paragraph shall also apply to phonograms and performances fixed on phonograms.

In case where rights of authors and related rights holders granted by this Law have been violated by providers of service and content through the transmission of signs, sounds, and/or images including digital transmission, the works which are subject of the violation shall, upon the application of the right holders, be removed from the content. Natural or legal persons whose rights have been violated shall to this end initially contact with the content provider and request that the violation be ceased within three days. Should the violation continue, a request shall next be made to the public prosecutor requiring that the service being provided to the content provider persisting in the violation be suspended within three days by the relevant service provider. The service being provided to the content provider shall be restored, if the violation is ceased. Service providers shall submit a list of the names of their content providers to the Ministry on the first working day of every month. Service providers and content providers are obliged to submit all kinds of information and documents when requested by the Ministry. The rules and procedures regarding the application of the provisions of this Article shall be stipulated in a by-law to be issued by the Ministry.

The provisions in subparagraph (2) of Article 72 of this Law shall be applied to those who commit the acts indicated in the first paragraph intentionally and without authority and to the content providers who persist in violation of the rights granted by this Law.

**Additional Article 5-** The reproduced intellectual and artistic works which are protected under this Law shall be collected by the Ministry of Culture for the purpose of protection

and maintenance of the cultural heritage.

Natural or legal persons, who reproduce intellectual and artistic works and are authors or right holders, are obliged to submit at least five copies of the reproduced works within one month from the date of reproduction.

The rules and procedures regarding the works to be collected, those who shall submit such works and their responsibilities, the units to carry out collection procedures, the quantity of copies to be collected, the institutions where such copies shall be submitted and other rules and procedures regarding the collection shall be stipulated in a by-law to be issued by the Ministry of Culture.

**Additional Art. 6-** The expression “Culture and Tourism” as referred to in this Law has been amended as “Culture”.

**Additional Art. 7-** The fees to be received;

- a) For recording and registration in accordance with Article 13;
- b) For recourse to the Conciliatory Commission in accordance with Article 41;
- c) For obtaining banderoles in accordance with Article 81 of this Law

shall be deposited in the account of the Central Accounting Office of the Ministry of Culture and Tourism and shall be entered as revenue in the budget. An allocation for banderole costs shall be charged in the budget of the Ministry.

An amount to be calculated by multiplying the index value of 2000 by the monthly coefficient for civil servants shall be paid per meeting day as attendance fee to the members of the commissions to be set up in accordance with Article 41 – not exceeding ten meeting days per annum.

**Additional Art. 8-** The maker of a database who has made qualitatively and/or quantitatively substantial investment in either creation, verification or presentation of the contents shall have the right of permitting or prohibiting;

- a) Permanent or temporary transfer to another medium by any means and in any form,
- b) Distribution or sale, rental or communication to the public in any way,

of all or a substantial part of the content of the database contents with the exceptions specified in this Law and required by purposes of public security and administrative and judicial procedures.

Term of protection granted to the maker of a database shall be 15 years from the date of being made public of the database.

After every qualitative and quantitative addition, removal, or modification producing a substantial change in the contents of the database and requiring a new investment, the new database resulting from such investment shall qualify for its own conditions of protection.

The provisions of Article 72, subparagraph (3) of this Law shall apply to those who violate the rights granted by this Article.

**Additional Art. 9-** For the purpose of ensuring the pursuit and protection of intellectual property rights and in order to use in investigations and prosecutions, the Ministry shall form a joint database including the collecting societies, public premises, the radio-television organizations mentioned in this Law, and the places which manufacture materials enabling the fixation and reproduction of intellectual and artistic works and/or carry out the recording, reproduction and sale of such materials or distribute them in any way.

All other matters relating to the technical infrastructure and equipment required, access, use, authorization, and formation of the database shall be stipulated in a by-law to be issued by the Ministry.

**Additional Art. 10-** An administrative fine shall be imposed in cases set out below:

1. A fine of three billion TL. shall be imposed to those who sell on roads, squares, open air markets, sidewalks, piers, bridges or similar places lawfully reproduced copies bearing banderoles protected under this Law,

2. A fine of ten billion TL. shall be imposed to small enterprises, thirty billion TL. to medium-sized enterprises, and one hundred billion TL. to large enterprises that operate without having obtained the certificates which should have been obtained in accordance with Article 44, reproduce intellectual and artistic works requiring banderoles without having obtained a copy of the obligation form indicated in Article 81,

3. A fine of five billion TL. shall be imposed to those who in contravention of the provisions of Additional Article 5 fail to submit the works to be collected within the stipulated time period.

Administrative fines prescribed in this Article shall be imposed by the local representatives of central government by stating their justification.

Fines must be paid within ten days as of the date of notification of the record. Fines not paid within ten days shall be increased by two fold and the payment period shall be extended for an additional period of ten days. Fines not paid during the extended period shall be increased by three fold. Payment of a fine shall not mean relief from obligations. The fines imposed pursuant to this Article shall be collected in accordance with the provisions of Law No. 6183 on the Procedures for the Collection of Public Receivables.

Fines shall be duly notified to the persons concerned. Objections may be raised against fines to the competent administrative court within ten days of the date of notification. Objections shall not suspend procedures. Court decisions relating to the objections shall be final. Objection shall, where not deemed necessary, be finalized promptly as a result of a review on the documents.

**Additional Art. 11-** It is permitted to reproduce or lend scientific and literary works in writing including school books that have been made public or published, without obtaining the permissions prescribed by this Law and without any commercial purpose in the form of cassettes, CDs, Braille alphabet, and similar formats by a person with disability for his/her own use or by another person acting on behalf of him in a single copy, or by educational institutions, foundations, associations, and the like providing services for the benefit of the people with disability in the quantity required, provided that no such copies have already

been produced for the use of people with disability. Such copies may in no way be sold, put into commercial use and used and allowed to be used for other than their intended purpose. Furthermore, it is compulsory to show information relating to right holders and indicate the purpose of reproduction on the copies.

**Additional Art. 12- Premium-** In case where copies and publications which have been reproduced in contravention to the Art. 81 of this Law are captured, the president and members of the inspection commission, charged with the duty of prevention, monitoring and investigation, who are public servants and have actually participated in the process of capture of the materials constituting the subject of the offense within the framework of the provisions of this Law and other related legislation, shall be paid a premium.

The aggregate amount of the premium to be paid to the president and members of the inspection commission as a result of the seizures made in the framework of an operation of inspection may not exceed the amount calculated by multiplying the index value of 50000 by the monthly coefficient for civil servants. The premium shall be shared equally among the persons concerned. The annual aggregate amount of the premium to be paid per person may not exceed the amount calculated by multiplying the index value of 40000 by the monthly coefficient for civil servants.

Fifty percent of the premium shall be paid after the decision of confiscation of the court, if copies and publications have been captured without their possessors, and after the public prosecution has been initiated, if they have been captured with their possessors, the remaining fifty percent shall be paid within one month from the final decision of confiscation or conviction from the relevant item of the Ministry budget.

No premium shall be paid in case legal copies which have been sold at the premises, where sale is prohibited according to subparagraph (7) of Article 81 of this Law, are seized.

The premium to be paid in accordance with this article shall not be subject to tax and other deductions.

The rules and procedures regarding the formation and principles of operation of inspection commissions and indexes to be determined in the calculation of premium by taking into consideration the nature and quantity of the seized material and other rules and procedures regarding the implementation of this Article shall be stipulated in a by-law issued by the Ministry upon the approval of Ministry of Interior and Ministry of Finance.

## **F. PROVISIONAL ARTICLES**

### **I. Transitional Provisions**

#### **(1) In General**

**Provisional Art. 1.** Unless otherwise determined in the following articles, the provisions of this Law shall also apply to works first disclosed to the public on the territory of the Republic of Turkey or entered in the register prior to the entry into force of this Law. This provision shall apply even where the Copyright Law of May 8, 1326 (1910), did not apply to such works or products.

The term of protection for works which had been made public prior to the entry into force of this Law shall be calculated in accordance with this Law.

The terms "copyright," "literary property," "property of fine arts" and similar expressions used in other laws and treaties shall be deemed to mean rights and authorities granted by this law in similar conditions.

If the rights in a work or exercise of such rights have been granted in whole or in part to another person prior to the entry into force of this Law, the new and broader rights and authorities granted by this Law to the author shall not be deemed to have been transferred. The same provision shall also apply, if the term of protection under this Law is longer than the term granted by the former Law or, if the former Law did not protect works and products protected by this Law.

## **(2) Protection of Acquired Rights**

**Provisional Art. 2.** If the term of protection granted by the former Law is longer, such term shall apply to works published prior to the date of publication of this Law.

If a lawful translation or adaptation of a work was published prior to the entry into force of this Law, the rights and authorities acquired in accordance with the former Law by the person who translated or adapted shall not be prejudiced.

If the publication of a translation permitted by the former Law but prohibited by this Law was commenced prior to the entry into force of this Law such publication may be completed. Such publication period may however not exceed one year. This provision shall also apply to translations delivered to be performed by performing organizations in the public premises.

If the reproduction was permitted under the former Law, but is prohibited under this Law and the reproduction of a work had been commenced at the date of entry into force of this Law, reproduction may be completed and the reproduced copies may be distributed.

The distribution of copies existing at the date of entry into force of this Law and whose reproduction was permitted under the provisions of the former Law may be continued.

The same provision shall apply to devices enabling the transmission of signs, images and sounds and to moulds and similar means enabling the reproduction of works of fine arts.

Any person desiring to exercise the authority granted by the preceding paragraph shall be required to declare such copies and devices to the competent authority and have them sealed within six months of the date of entry into force of this Law.

Where necessary, details may be specified in a by-law.

**Provisional Art. 3.** The president and members of the boards of the compulsory organs of the collecting societies and the federation shall be determined by a Decree of the Council of Ministers, upon the proposal of the Ministry of Culture, until the number of members required by the regulation for convening the first general assembly has been attained and an election can be held.

**Provisional Art. 4.** Decree of the Council of Ministers No. 8/423 of March 15, 1980, issued pursuant to Article 43 of Law No. 5846 on Intellectual and Artistic Works, and the

payment tariffs to be issued pursuant to that Decree, shall, being effective as from March 15, 1980, apply until to December 31, 1985.

Payments made in accordance with the payment tariffs to be issued under the Decree of the Council of Ministers shall be made to the relevant collecting society to be distributed to the right holders in case of works which have been transferred to the collecting society through a certificate of authorization and, in other cases, directly to the holders of the economic rights. Such payment shall be finalized by the Turkish Radio and Television Corporation not later than December 31, 1985.

After deduction of its own share from the amount set in the payroll sent by the Turkish Radio and Television Corporation, the collecting society shall pay the remaining amount to the right holders who are its members within two years following the date on which payment has been made to it.

Royalties that have not been claimed by members within two years shall be deposited in accordance with Article 44 in a special account to be opened with a national bank in the name of the Ministry of Culture.

**Provisional Art. 5.** Collecting societies founded before the entry into force of this Law shall under the supervision of the Ministry of Culture be converted to new collecting societies within one year from publication of their uniform statutes in accordance with the related provisions of the Law and with the principles of uniform statutes and shall form their new organs in a general assembly to be held within that period.

Collecting societies that have not complied with the provisions of the first paragraph shall be considered automatically dissolved on expiry of the first year.

**Provisional Art. 6.** The procedure prescribed in Articles 41 and 43 of this Law regarding the determination of tariffs and the conclusion of contracts shall, irrespective of periods stipulated in these articles, apply as of the date of publication of this Law by considering the current year as basis.

The broadcasting contracts concluded between collecting societies on the one hand and public premises and broadcasting organizations on the other hand prior to the date of publication of this Law shall remain effective with all their provisions until the expiry of the periods stipulated in the contracts.

The classification mentioned in Articles 41 and 43 of this Law shall be made not later than one month from the date of entry into force of this Law. Public premises and/or broadcasting organizations that apply to collecting societies to obtain permission and conclude a contract within six months from the initial announcement of the tariffs by the collecting societies made within no later than one month as of the date of such classification may continue to use and/or transmit works, performances, phonograms, productions, and broadcasts for a maximum period of six months by paying  $\frac{1}{4}$  the tariff of the collecting societies for periods of three months at a time. The provisions of this paragraph shall not preclude the application of the procedure prescribed in Articles 41 and 43 of this Law.

**Provisional Art. 7.** All instruments, equipment and materials of inspection commissions formed in provinces before the date of publication of this Law whose operations are no longer needed within the framework of Article 81 shall be transferred to the provincial Directorates of Culture and Tourism.

**Provisional Art. 8.** The by-laws provided for in the articles amended by this Law shall be prepared and put into force within six months as of the date of publication of this Law. The database indicated in Additional Article 9 of this Law shall be formed within one year as of the date of publication of this Law.

## **II. Revoked Provisions**

**Art. 89-** The Copyright Law of May 8, 1326 (1910), and any provisions of other laws contrary to the provisions of this Law are hereby revoked.

## **G. FINAL PROVISIONS**

### **I. Entry into Force**

**Art. 90-** Articles 42 and 43 of this Law shall enter into force from the date of publication of this Law and the remaining Articles shall enter into force on January 1, 1952.

### **II. Authority Entrusted With the Implementation of this Law**

**Art. 91-** This Law shall be implemented by the Council of Ministers.