



## **SCREENING CHAPTER 7 INTELLECTUAL PROPERTY LAW**

### **AGENDA ITEM IX : ENFORCEMENT (Directive 2004/48/EC)**

**Country Session: The Republic of TURKEY  
2-3 March 2006**



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## **RELATED LEGISLATION**

- 1- Law No 5846 on Intellectual and Artistic Works**
- 2- Decree-Law No 551 on the Protection of Patent Rights**
- 3- Decree-Law No 554 on the Protection of Industrial Designs**
- 4- Decree-Law No 555 on the Protection of Geographical Indications**
- 5- Decree-Law No 556 on the Protection of Trademarks**
- 6- Law No 4128 regarding Criminal Sanctions on Industrial Property Rights**
- 7- Law No 5147 on the Protection of Integrated Circuits Topography (LPICT)**
- 8- Law No 5042 on the Protection of the Plant Breeder's Rights**
- 9- Code of Civil Procedure**



## CRIMINAL SANCTIONS IN COPYRIGHT AND RELATED RIGHTS

### Law No 5846 on Intellectual and Artistic Works

#### Infringement of moral rights (Art.71)

Any person who wilfully and without consent of the rightholder,

- communicates to the public or publishes
- places a title on a work or on the reproduced copies of the work
- makes false allegation about ownership
- fails to cite the source
- cites the source in a false/ incomplete/misleading way
- makes changes on a work

is imprisoned from 2 years to 4 years or a fine will be charged or both applies.  
(fine is between 50.000 YTL (31.250 Euro) to 150.000 YTL (93.750 Euro))



### **Infringement of economic rights (Art. 72)**

- Any person selling or distributing the copies of a work or an adaptation by reproducing them in contrary to the provisions of an existing agreement is imprisoned from 3 months to 2 years or a fine will be charged or both applies

(fine is between 10.000 YTL (6.250 Euro) and 50.000 YTL (31.250 Euro))

- Any person selling a work or its reproduced copies on the streets or similar open areas without the permission of the rightholder is imprisoned from 3 months to 2 years or a fine will be charged or both applies

(fine is between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro))



- Any person who, without the permission of the rightholder
  - adapt, reproduce or distribute a work in any way
  - import copies of a work through legal or illegal ways, make them subject of trade
  - disseminate or display publicly or disseminate or assist in dissemination including digital transmission of a workis imprisoned from 2 years to 4 years or fine will be charged or both applies (fine is between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro))

## Other offences (Art. 73)

- Any person who
  - keeps for commercial purposes infringed copies of a work knowing or ought to know they are reproduced contrary to the Law
  - transfers an economic right or a license knowing it is non-existent or inaccessible
  - circulates or posses for commercial purposes any technical device which facilitates the unauthorised removal or circumvention of any technical means applied to a computer programme

is imprisoned from 2 years to 4 years or fine will be charged or both applies  
(fine is between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro))



- Any person who,
  - reproduce or disseminate copies of works, productions and phonograms exactly like original copies

is imprisoned from 3 years to 6 years or fine will be charged or both applies  
(fine is between 20.000 YTL (12.500 Euro) and 200.000 YTL (125.000 Euro))





## Infringement of the related rights (Art. 80)

- Any person who
  - sells the copies of a performance, phonogram or production reproduced without permission on open areas

is imprisoned from 3 months to 2 years or fine will be charged or both applies  
(fine is between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro))

- violates other rights indicated in this Article

is imprisoned from 2 to 4 years or fine will be charged or both applies  
(fine is between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro))



## Offences regarding banderols- *Ex officio* prosecution (Art. 81)

• Any person who

➤ sells copies of musical and cinematographic works and non-periodical publications on the street or similar open areas without banderoles;

is imprisoned from 3 months to 2 years or fine will be charged or both applies  
(fine is between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro))

➤ reproduces and disseminates the said items without banderoles

is imprisoned from 2 to 4 years or fine will be charged or both applies  
(fine is between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro))



## Offences regarding banderols (Art. 81)

- Any person who
  - obtains banderoles unlawfully
  - uses banderoles for purposes other than they are intended for

is imprisoned from 2 to 4 years or fine will be charged or both applies  
(fine is between 20.000 YTL (12.500 Euro) and 200.000 YTL (125.000 Euro))

- manufactures forged banderoles
- has commercial interest in the forged banderoles

is imprisoned from 3 to 6 years or fine will be charged or both applies  
(fine between 50.000 YTL (31.250 Euro) and 250.000 YTL (156.250 Euro))



## **Infringement of the rights management information (Add. Art. 4)**

- Any person who
  - removes or alters any rights management information without authority
  - distributes, imports for distribution, broadcasts, communicate or making available to the public of original works or copies of them, phonograms and performances fixed on the phonograms from which rights management information has been removed or altered without authority

is imprisoned from 3 months to 2 years or fine will be charged or both applies.

(fine is between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro))

## Infringement of database *sui generis* rights (Add. Art. 8)

- Any person who

- violates the rights granted by Additional Article 8

is imprisoned from 2 to 4 years or or fine will be charged or both applies

(fine is between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro))



## CRIMINAL SANCTIONS IN INDUSTRIAL PROPERTY RIGHTS

- Any person who
  - Makes false declaration about ownership
  - Removes without authority, the signs of an industrial property right
  - Falsely presenting himself/herself as the right holder of an application for an industrial property right or of an industrial property right

is imprisoned from 1 to 2 years or fine will be charged or both applies

(fine is between 14.000 YTL (8.750 Euro) and 27.000 YTL 16.875 Euro))

(Decree-Law No 551 Art. 73/A-a, Decree-Law No 554 Art. 48/A-a, Decree-Law No 555 Art.24/A-a, Decree-Law No 556 Art. 61/A-a)

According to Article 39(1) of the Law on the Protection of Integrated Circuits Topography(LPICT): imprisonment from 1 to 2 years and a fine between 10.000 YTL (6.250 Euro) and 20.000 YTL (12.500 Euro)



(cont.)

- Transfers a patent right, trademark, design or license without authority
- Acts as if there is protected industrial property right even if it does not exist

is imprisoned from 2 to 3 years or fine will be charged or both applies

(fine is between 27.000 YTL (16.875 Euro) and 46.000 YTL (28.750 Euro))

(Decree-Law No 551 Art. 73/A-b, Decree-Law No 554 Art. 48/A-b, Decree-Law No 555 Art. 24/A-b, Decree-Law No 556 Art. 61/A-b)

According to Article 39(2) of the (LPICT): imprisonment from 2 to 3 years and fine between 20.000 YTL (12.500 Euro) and 30.000 YTL (18.750 Euro)



(cont.)

➤ commits any act of infringement specified in the following articles providing that the acts establishing infringement: Article 136 of Decree-Law No 551, Article 48 of Decree-Law No 554, Article 24 of Decree-Law No 555, Article 61 of Decree-Law No 556)

is imprisoned from 2 to 4 years or fine will be charged or both applies, furthermore, the premise can be closed down for a period not less than one year and to prevent from practicing any commercial activity during the same period.

(fine is between 27.000 YTL (16.875 Euro) and 46.000 YTL (28.750 Euro))

(Decree-Law No: 551 Art.:73/A-c, Decree-Law No: 554 Art.: 48/A-c, Decree-Law No: 555 Art.:24/A-c, Decree-Law No: 556 Art.:61/A-c)

According to Article 39(3) of the LPICT: imprisonment from 2 to 4 years and a fine between 20.000 YTL (12.500 Euro) and 30.000 YTL (18.750 Euro) furthermore, the premise can be closed down for 1 to 2 years.





## **Article 66 of the Law on the Protection of the Plant Breeder's Rights**

envisages imprisonment from 13 months to 2 years and fine, furthermore closing down the premises for a period not less than one year and to prevent the offender from practicing any commercial activity during the same period.



## CRIMINAL MEASURE IN INDUSTRIAL PROPERTY RIGHTS

### Seizure, Confiscation and Destruction

Relevant provisions of Turkish Penal Code and Code of Criminal Procedure applies to the seizure, confiscation or destruction of the goods and equipment and machinery used to produce goods infringing the rights on copyrights and industrial property rights.

(-Law No 5846 Art. 79,  
-Decree-Law No 551 Art. 73/A-last par., Decree-Law No 554 Art. 48/A-last par., Decree-Law No 555 Art. 24/A-last par., Decree-Law No 556 Art. 61/A-last par.)



## **PERSONS ENTITLED TO APPLY FOR THE APPLICATION OF THE CRIMINAL MEASURES**

- 1- The holders of copyrights and industrial property rights
- 2- Licensee
- 3- Consumer associations (for industrial property)
- 4- Collective rights management bodies (for copyright and related rights)
- 5- The Ministry of Culture and Tourism (for copyright and related rights)
- 6- The Ministry of National Education (for copyright and related rights)
- 7- Press Organisations (for copyright and related rights)



## CIVIL MEASURES AND REMEDIES IN COPYRIGHT AND RELATED RIGHTS AND INDUSTRIAL PROPERTY RIGHTS

### 1-Actions for infringement

Holder of copyrights or industrial property rights, whose rights have been infringed, may take legal action for the cessation of occurred infringement and prevention of probable infringement.

(-Law No 5846 Art. 66-69-80(9).

-Decree-Law No 551 Art.137/a, Decree-Law No: 554 Art. 49/b, Decree-Law No 555 Art. 25/b, Decree-Law No 556 Art. 62/a.

- LPICT Art. 24.

-The Law on the Protection of the Plant Breeder's Rights Art. 57/a)



## 2-Action for damages

Any person whose rights are infringed may take legal action for compensation of moral and material damages.

(-Law No 5846 Art. 70,

-Decree-Law No 551 Art. 137/b (General rule)-138(material damages)-140(Calculation of the non-realized income)-142(Moral damages), Decree-Law No 554 Art. 49/c-50-52-54, Decree-Law No 555 Art. 25/c-26-, Decree-Law No 556 Art. 62/b-64-66-68.

- LPICT Art. 26/c (General rule)-28 (Calculation of the non-realized income).

-The Law on the Protection of the Plant Breeder's Rights Art.:57/b(General rule)-58(material damages)-59 (Calculation of the non-realized income).



### **Action for damages in the case of infringement of moral rights**

Any person whose moral rights are infringed may take legal action to receive moral indemnity (No need for the infringer to be at fault).

Person whose rights are infringed may also claim, in addition to indemnity, any unfair profits made by the infringer.

(-Law No 5846 Art. 70)



## **Action for damages in the case of infringement of economic rights**

If the infringer is at fault, the person whose economic rights have been infringed may claim damages according to the provisions governing tort. (He/she may claim both moral and material damages)

(-Law No 5846 Art. 70)



**(cont.)**

If a work has been

- translated without the author's consent,
- published outside the scope of the contract or in excess of the number stipulated in the contract,
- adapted in some other way or broadcast by radio or television or performed,

the author may claim compensation of up to three times the damages incurred, based on the current value.

(-Law No 5846 Art. 68)





## **Action for damages in the case of infringement of industrial property rights**

The damage suffered by the proprietor of the industrial property rights includes

- the value of the effective loss, and
- the income non-realized because of the infringement.



### **3-Action for Determination of Evidences**

Any person entitled to bring action against the infringement of intellectual and industrial property rights, may apply for the determination of the acts which may be considered to infringe such rights.

- (- Civil Procedure Law Art. 236-374. (For intellectual property rights)
- Decree-Law No: 551 Art. 150,  
Decree-Law No: 554 Art. 62,  
Decree-Law No: 555 Art. 33,  
Decree-Law No: 556 Art. 75.
- The Law on the Protection of Integrated Circuits Topography Art. 26/1-a.
- The Law on the Protection of the Plant Breeder's Rights Art. 62)



## 4-Precautionary measures (PM)

Persons whose rights have been infringed or threatened to be infringed may apply for precautionary measures.

The request for PM shall be examined separately from the main action.

### **Conditions:**

- a) PM should be taken to prevent substantial damages or sudden danger
- b) the court should be convinced of a high probability of realization of the above.



**(cont.)**

**Nature:**

PM shall be able to ensure the enforcement of the decision of the court and particularly provide the following:

- a) to perform certain acts or to abstain from performing them,
- b) to close the premises where the act is committed or to open that place for investigation etc.,
- c) to stop the acts of infringement,



**(cont.)**

- d) to seize within the borders of Turkey and keep in custody the produced or imported goods which have infringed the rights,
- e) to provide a security for compensation of the damages

(-Law No 5846 Art. 77,

-Decree-Law No 551 Art. 151,

Decree-Law No 554 Art. 63,

Decree-Law No 555 Art. 34,

Decree-Law No 556 Art. 76.

-The Law on the Protection of Integrated Circuits Topography Art. 34.

-The Law on the Protection of the Plant Breeder's Rights Art. 63.)



## 5- Seizure, Confiscation and Destruction

A proprietor of an industrial property whose rights are infringed may

- request for the confiscation of the products, and the equipment and machinery used in their production, which have infringed the industrial property rights and whose production and use constitute a felony,
- request for the ownership of the products and the means confiscated.



**(cont.)**

- request for necessary measures for the **prevention of the continuance of the infringement**, in particular ;

a) modification of the shapes of the products and means (removal of the trademark from the products and vehicles confiscated) or

b) if it is imperative for the preclusion of the acts of infringement, destruction of the products and vehicles confiscated.

(-Law No:5846 Art.68/2-3.

-Decree-Law No: 551 Art.137/1-c-d-e,

Decree-Law No: 554 Art.49/1-d-e-f,

Decree-Law No: 555 Art.25/1-d-f,

Decree-Law No: 556 Art.62/1-c-d-e.

- LPICT Art.26/1-d-f-g.

-The Law on the Protection of the Plant Breeder's Rights Art.57/1-c-d-e)



## **CIVIL MEASURES AND REMEDIES EXCLUSIVE TO INDUSTRIAL PROPERTY RIGHTS**

### **1-Action for a Declaration of Invalidity of Industrial Property Rights**

Prosecutor or relevant authorities and any person who has suffered from infringement may request invalidity of the patent and trademark before the court.

Any person may request invalidity of geographical indications and designs.

(-Decree-Law No: 551 Art.129-130,

Decree-Law No: 554 Art.43-44,

Decree-Law No: 555 Art.21-22,

Decree-Law No: 556 Art.43-44.

- LPICT Art.19-20.

-The Law on the Protection of the Plant Breeder's Rights Art.52-53.)





## 2-Claims of Non-infringement

Any interested party may institute proceedings against the holder of the right of design, trademark, patent and geographical indication in order to determine by means of a court decision that her/his actions do not constitute an infringement.

(-Decree-Law No: 551 Art.149,  
Decree-Law No: 554 Art.61,  
Decree-Law No: 555 Art.32,  
Decree-Law No: 556 Art.74.)



## **PERSONS ENTITLED TO APPLY FOR THE APPLICATION OF CIVIL MEASURES, PROCEDURES AND REMEDIES**

- 1-The holders of copyright and industrial property rights
- 2-All other persons authorised to use those rights (including licensee)
- 3-Collective rights management bodies
- 4-Successors



## RIGHT OF INFORMATION

The proprietor of an industrial property right may request from the infringing party the documents related to the use of industrial property without his/her consent for the evaluation of the damage suffered.

(-Decree-Law No: 551 Art.139,

Decree-Law No: 554 Art.:51,

Decree-Law No: 555 Art.:27,

Decree-Law No: 556 Art.:65.

-The Law on the Protection of Integrated Circuits Topography Art.:27)



**(cont.)**

If the evidence to be submitted to the court is not in possession of the party wishing to submit it, the court should order the other party to submit the evidence. (Code of Civil Procedure Art.242(2))

With respect to other matters for securing evidence, relevant provisions of the Code of Civil Procedure shall apply.

(-Decree-Law No: 551 Art.:153,

Decree-Law No: 554 Art.:65,

Decree-Law No: 555 Art.:36,

Decree-Law No: 556 Art.:78.

-The Law on the Protection of Integrated Circuits Topography Art.:35

-The Law on the Protection of the Plant Breeder's Rights Art.:64.)

According to the articles stated above, the courts may order, on application by a party, the submission of documents regarding bank transactions, financial or commercial documents etc. under the control of the other party.



## LEGAL COSTS

### Code of Civil Procedure Art.416

Legal costs incurred by the successful party shall be borne by the unsuccessful party.



## PUBLICATION OF JUDICIAL DECISIONS

The successful party may request the publication of the final judgement at the expense of the other party.

The form and contents of the text to be published shall be specified in the court order.

Right of publication shall be void, if not exercised within three months as from the judgement becoming final. (This provision does not exist in the Law No 5846)

(-Law No:5846 Art.78,

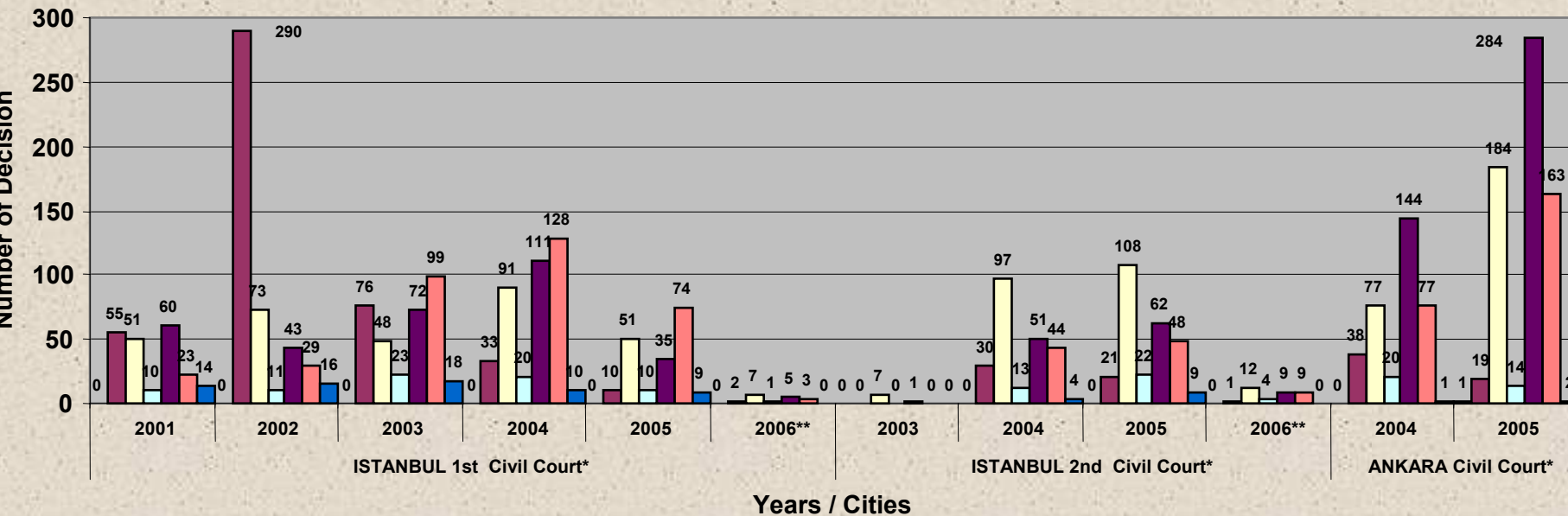
-Decree-Law No: 551 Art.147, Decree-Law No: 554 Art.59, Decree-Law No: 555 Art.31, Decree-Law No: 556 Art.72,

- LPICT Art.32.

-The Law on the Protection of the Plant Breeder's Rights Art.69)



FIGURES CONCERNING THE DECISIONS ON INDUSTRIAL PROPERTY RIGHTS OF IPR CIVIL COURTS

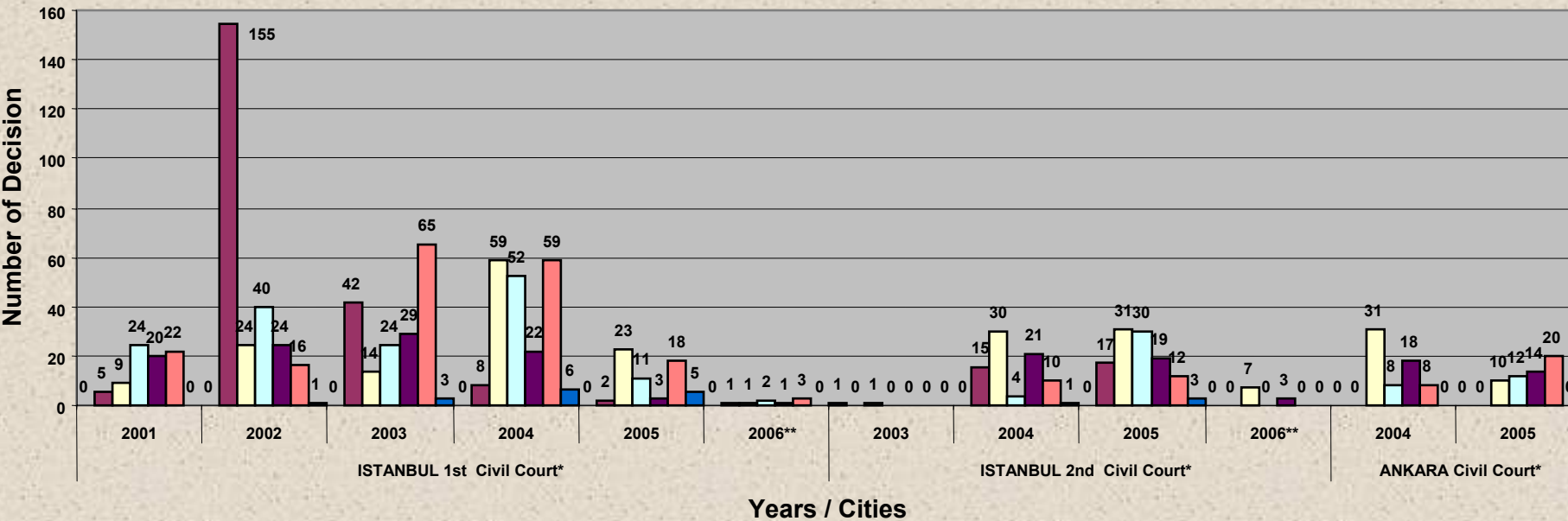


- Prescription
- Dismissal because of not proved
- Whole Admission
- Settlement
- Lack of Jurisdiction
- Renunciation
- Partly Acceptance / Partly Dismissal

\*Istanbul 1st IPR Civil Court started its function in March 2001. Istanbul 2nd and Ankara IPR Civil Court started their functions in December 2003.  
\*\* as of February 2006.



FIGURES CONCERNING THE DECISIONS ON COPYRIGHT AND RELATED RIGHTS OF IPR CIVIL COURTS



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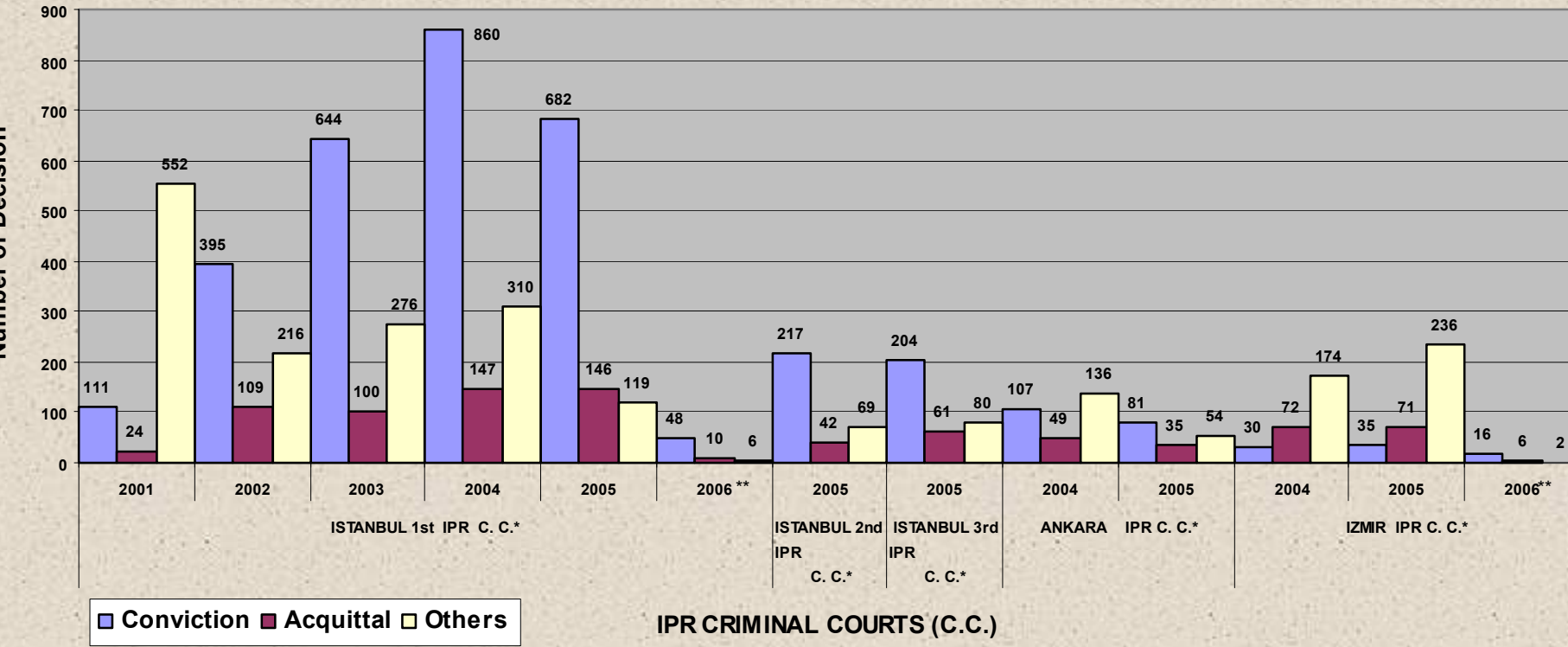




**SCREENING CHAPTER 7  
INTELLECTUAL PROPERTY LAW  
AGENDA ITEM IX : ENFORCEMENT**



**FIGURES CONCERNING THE DECISIONS ON INDUSTRIAL PROPERTY RIGHTS OF IPR CRIMINAL COURTS**



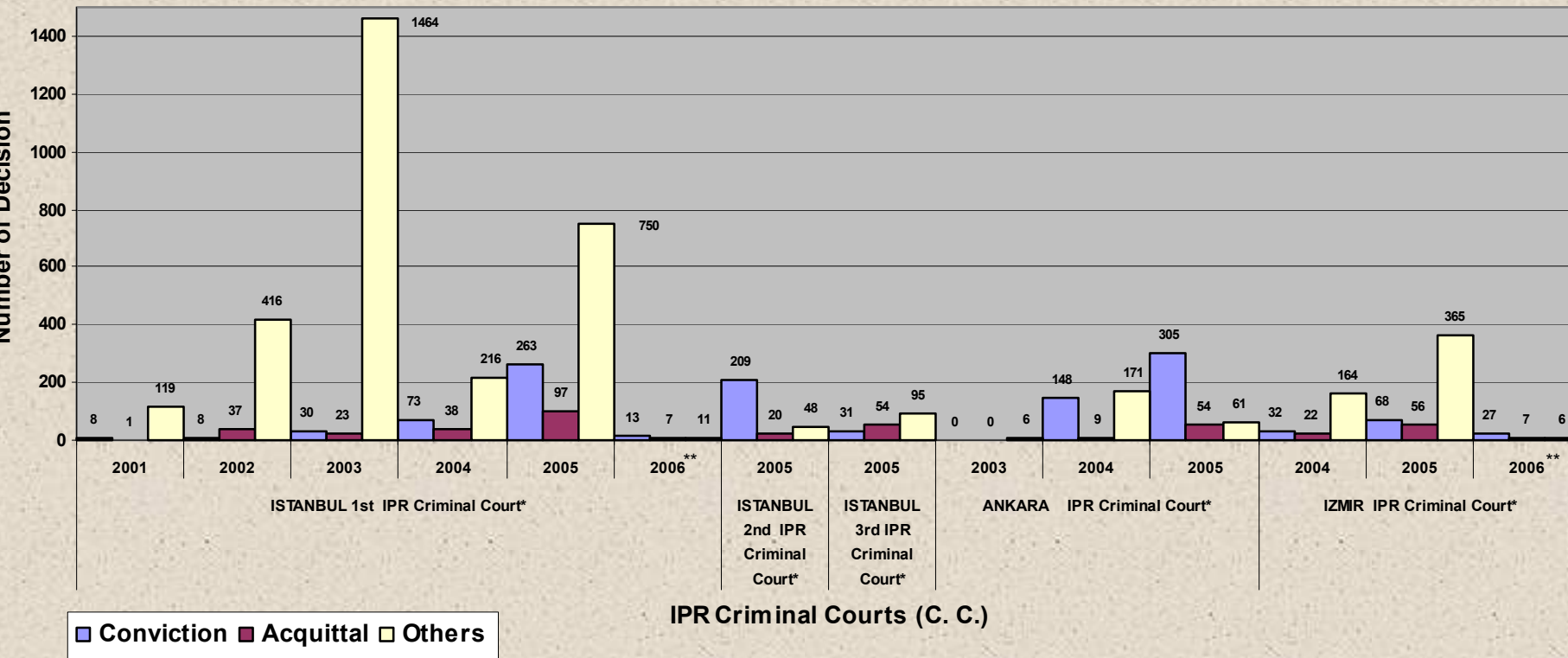
Istanbul 1st IPR Criminal Court started its function in January 2001. Ankara and Izmir IPR Criminal Court started their functions in December 2003. Istanbul 2nd and 3rd IPR Criminal Court started their functions in September 2005. \*\*Data as of February 2006



# SCREENING CHAPTER 7 INTELLECTUAL PROPERTY LAW AGENDA ITEM IX: ENFORCEMENT



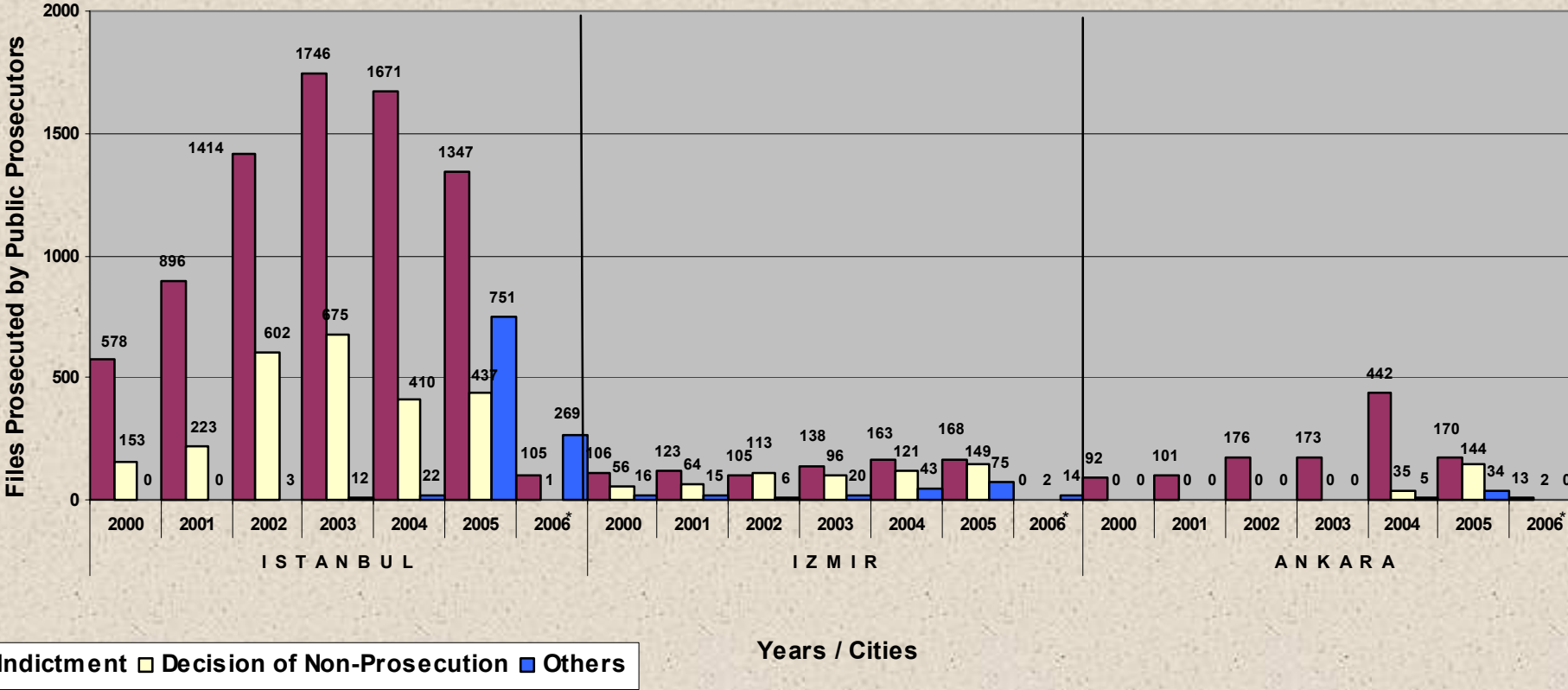
### FIGURES CONCERNING THE DECISIONS ON COPYRIGHT AND RELATED RIGHTS OF IPR CRIMINAL COURTS



Istanbul 1st IPR Criminal Court started its function in January 2001. Ankara and Izmir IPR Criminal Court started their functions in December 2003. Istanbul 2nd and 3rd IPR Criminal Court started their functions in September 2004. \*\*Data for 2006 is preliminary as of February 2006



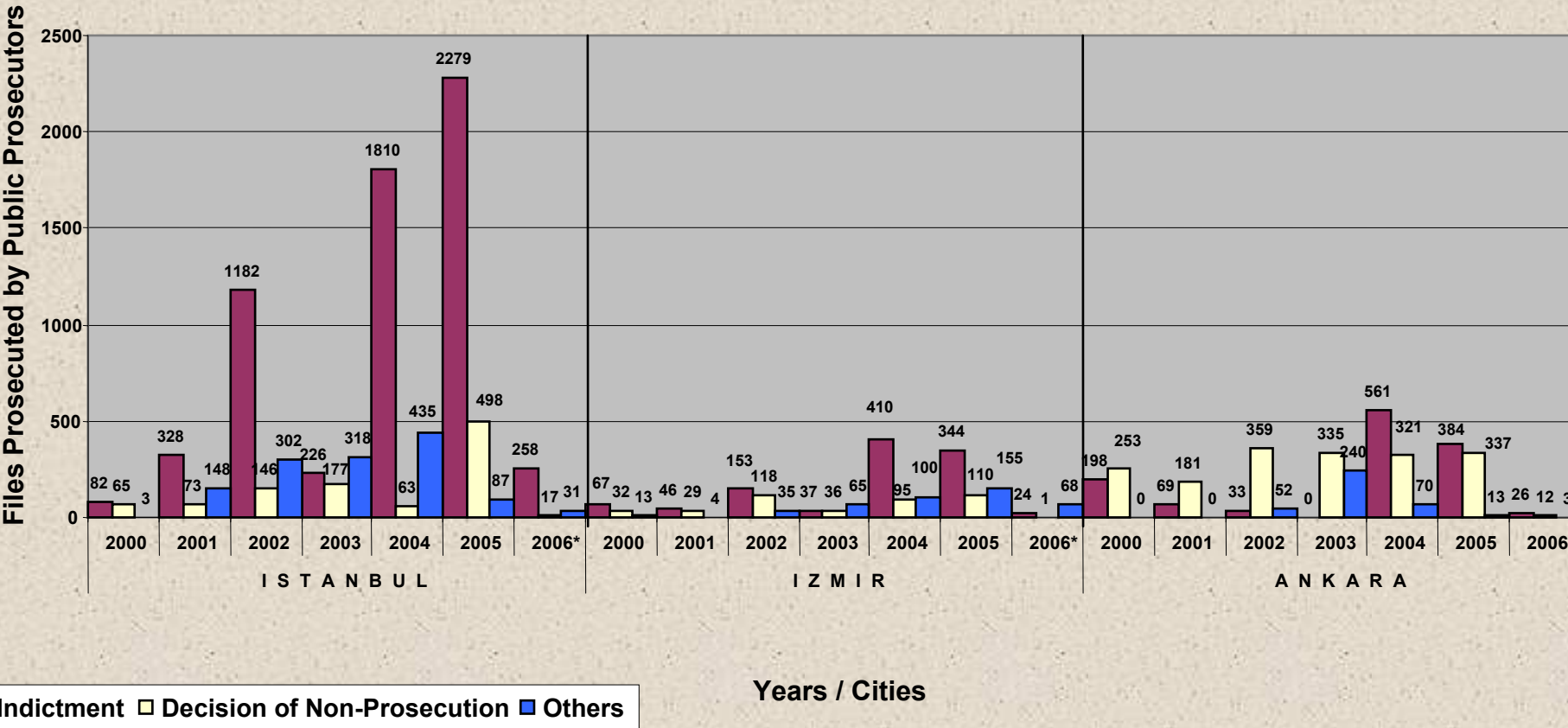
**FIGURES ON THE PRELIMINARY INVESTIGATION  
ON INDUSTRIAL PROPERTY RIGHTS**



of February 2006



**FIGURES ON THE PRELIMINARY INVESTIGATION  
ON COPYRIGHTS AND RELATED RIGHTS**



Indictment □ Decision of Non-Prosecution ■ Others

Years / Cities

of February 2006



**THANK YOU FOR YOUR ATTENTION**