



SCREENING CHAPTER 7 INTELLECTUAL PROPERTY

AGENDA ITEM II: COMPUTER PROGRAMMES

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



RELATED LEGISLATION

**LAW NO 5846 ON INTELLECTUAL AND ARTISTIC WORKS
(As amended by Law No 4110; 07.06.1995)**



OBJECTIVES OF THE LAW IN RESPECT OF COMPUTER PROGRAMMES

- **Information society in which capital and development is created by knowledge**
- **Computer programmes are essential tools to improve information society**
- **Computer programmes require comprehensive legal regulation against illicit activities**
- **Legal environment of computer programmes will afford a degree of protection for unauthorised production of computer programmes**



OBJECT OF PROTECTION (Art. 1b)

- **Computer programmes are protected as scientific or literary works within the framework of the Bern Convention**
- **Computer programmes expressed in any forms of expression and their preparatory works, which subsequently lead to a programme**



OBJECT OF PROTECTION (Art. 2)

- Concepts or principles, which underlie any element of a computer programme or its interfaces, are not protected by copyrights**
- A computer programme is protected if it includes author's own intellectual creation**

AUTHORSHIP (Art.1b, 9, 10)

- **The author of a computer programme can be a natural or legal person (Art.1b)**
- **If a computer programme is created by more than one person, there are two provisions:**
 - **If the work can be divided into independent parts, each person shall be deemed the author of the part created by him/her (Art.9)**
 - **If the work is an indivisible whole, the community of authors shall be deemed the author (Art.10)**



AUTHORSHIP (Art.18)

Unless otherwise provided in the contract or there is an exception originating from content of the work, the employer exercise economic rights on the work created by his/her employees while carrying out their duties



BENEFICIARIES OF PROTECTION (Art. 88)

The provisions of the Law No 5846 shall apply:

- Irrespective of the nationality of the author, to all works communicated to the public for the first time in Turkey and to all works existing in Turkey but not yet communicated to the public**
- To all works of Turkish nationals which have not yet been communicated to the public or which have been communicated to the public for the first time outside Turkey**
- To all works of foreigners which have not yet been communicated to the public or which have been communicated to the public outside Turkey, subject to the relevant provisions of the international conventions which Turkey is a party**



EXCLUSIVE RIGHTS OF THE AUTHOR (Art. 6, 22, 23)

- **Adaptation, editing or any modification of computer programmes**
- **Reproduction of computer programme**
- **Renting, lending or placing on sale or distribution of reproductions of his/her original works**
- **Exhaustion principle is implemented at national level**



EXCEPTIONS TO EXCLUSIVE RIGHTS – PERSONAL USE (Art. 38)

- Reproduction of intellectual and artistic works for personal use (not involving publication or exploitation for profit)**
- In the absence of specific contractual provisions, the reproduction and adaptation of a computer programme by the lawful acquirer shall be permissible where necessary for the use of the computer programme in accordance with its intended purpose, including for error correction**



EXCEPTIONS TO EXCLUSIVE RIGHTS – PERSONAL USE (Art. 38)

- **The loading, running and error correction of a computer programme by the lawful acquirer may not be prohibited by contract. The making of a back-up copy by a person having the right to use the computer programme may not be prevented by contract insofar as it is necessary for that use**
- **It is permissible for a person who has acquired the right to use a computer programme to observe, analyse or test the functioning of the programme in order to determine the ideas and principles underlying any element of the programme if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the programme which he is entitled to do**

EXCEPTIONS TO EXCLUSIVE RIGHTS – PERSONAL USE (Art. 38) (Decompilation Exception)

- **Where reproduction of the code and translation of its form within the meaning of reproduction and adaptation of the computer programme are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer programme with other programmes, the performing of such acts shall be permissible,**
 - These acts are performed by the licensee or by another person having a right to use a copy of the programme or on their behalf by a person authorized to do so**
 - The information necessary to achieve interoperability shall not be made available to the persons specified above**
 - These acts are confined to the parts of the programme which are necessary to achieve interoperability**



EXCEPTION TO EXCLUSIVE RIGHTS – PERSONAL USE (Art. 38)

**All these exceptions are regulated in line with the
three-step-test**



CRIMINAL AND CIVIL MEASURES (Special measures of protection)

Although there is no special arrangement regarding computer programmes, criminal and civil measures envisaged by the Law No 5846 for all works will be applied to computer programmes, since computer programmes are considered as literary works

Provisions concerning infringement of copyrights are contained in Articles 66, 68, 69, 70, 71, 72, 73 and 81 of the Law No 5846



CRIMINAL AND CIVIL ACTIONS (Art. 73) (Technological measures)

Those, who deliberately keep in their possession for commercial purposes or distribute a technical instrument used solely for the purpose of disabling or removing without authorization a technical device applied solely in order to protect a computer programme shall be subject to penal sanction



TERM OF PROTECTION (Art. 27)

- **The term of protection shall last for the lifetime of the author and for 70 years after his death**
- **This term shall expire 70 years after the death of last joint-author in case of the existence of more than one author**
- **The term of protection for works, which have been first made public after the death of the author, shall be 70 years after his death**
- **If the holder of the rights in the original work is a legal person, the term of protection shall be 70 years as from the date on which the work has been made public**

Term of protection starts from the first day of following year of the date of author's death or the date on which the work has been made public



CONTINUED APPLICATION OF LAW NO 5846

The amended provisions of Law No 5846 shall apply also to programmes created before 7.6.1995 (Law No 4110 amending Law No 5846) without prejudice to any acts concluded and rights acquired before that date



THANK YOU FOR YOUR ATTENTION