



SCREENING CHAPTER 7 INTELLECTUAL PROPERTY

AGENDA ITEM VII: LEGAL PROTECTION OF DATABASES

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



RELATED LEGISLATION:

LAW NO 5846 ON INTELLECTUAL AND ARTISTIC WORKS



PROTECTION UNDER COPYRIGHT (Art. 6)

The databases come out by selection and collection of the data and material, including legible ones by any tool, according to a particular purpose and within a particular plan are protected under the Law No 5846 as compiled works

The criterion for copyright protection is intellectual creation



AUTHORSHIP (Art.1b, 9, 10)

- **The author of a database can be a natural or legal person (Art.1b)**
- **If a database 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)**

PROTECTION UNDER COPYRIGHT

The author of database has economic and moral rights:

- **Economic Rights**
 - Adaptation (Art. 21)
 - Reproduction (Art. 22, Add Art. 8-a)
 - Distribution (Art. 23, Add. Art. 8-b)
 - Performance (Art. 24)
 - Broadcasting (Art. 25)



PROTECTION UNDER COPYRIGHT

- **Moral Rights**
 - **Right of making known to the public (right of divulgation) (Art.14)**
 - **Right of paternity (Art.15)**
 - **Right of integrity (Art.16)**



PROTECTION UNDER COPYRIGHT

Exceptions to the author's rights

- Personal use (Art.38)
- Freedom of performance for the purpose of education and instruction (Art.33)
- Illustrating contents of the selected or collected work (Art.34)
- Freedom of quotation (Art.35)
- Exploitation for public security and administrative and judicial procedures (Add. Art.8)



PROTECTION UNDER COPYRIGHT

Exceptions to the author's rights (Art. 38)

- It is permissible to reproduce intellectual and artistic works for personal use.
- Such reproduction may not conflict with normal exploitation of a work

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



***SUI GENERIS* RIGHT**

Criterion for protection (Add. Art.8)

Substantial investment regarding the quality and quantity in the creation, verification and presentation of the database



***SUI GENERIS* RIGHT (cont.)**

Scope of the right

- **To permit or prohibit a considerable part or whole of the contents of the database:**
 - **Permanent or temporary transfer to another medium via any means and in any manner,**
 - **Distribution, sale, rental and being made public in any manner, of a portion or the whole of the database contents,**
- **The new database resulting from every significant change in the contents of the database, will be entitled to protection terms in its own right.**



***SUI GENERIS* RIGHT (cont.)**

Exceptions to the sui generis right

- **Personal use (Art.38)**
- **Freedom of performance for the purpose of education and instruction (Art.33)**
- **Illustrating contents of the selected or collected work (Art.34)**
- **Freedom of quotation (Art.35)**
- **Exploitation for public security and administrative and judicial procedures (Add. Art.8)**

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



***SUI GENERIS* RIGHT (cont.)**

Term of protection

- **15 years from the date of which the work has been made public for the first time (Add. Art.8)**
- **The term is calculated from the first day of the year following the year when the work has been made public for the first time (Art. 26)**
- **If “substantial changes” entails a new investment, the new database will be protected for another term of 15 years (Add. Art.8)**



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 to which Turkey is a party**



CONTINUED APPLICATION OF LAW NO 5846

The amended provisions of Law No 5846 shall apply also to databases created before the date 3.3.2004 (Law No 5101 amending Law No 5846) without prejudice to any acts concluded and rights acquired before that date



THANK YOU FOR YOUR ATTENTION