

19 October 2006

Screening report

Turkey

Chapter 7 – Intellectual property law

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Bilateral meeting: 2 – 3 March 2006

I. CHAPTER CONTENT

The *acquis* on intellectual property law specifies harmonised rules for protection of copyright and neighbouring rights, for industrial rights and contains provisions on enforcement.

In the area of **copyright and neighbouring rights**, the objectives of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) are to adapt legislation on copyright and related rights to reflect technological developments and to transpose into Community law the main international obligations arising from the two treaties on copyright and related rights adopted within the framework of the World Intellectual Property Organisation (WIPO). Directive 93/83/EEC aims at facilitating the cross border transmission of audiovisual programmes, particularly broadcasting via satellite and retransmission by cable. The objective of the Directive on the resale right for the benefit of the author of an original work of art (2001/84/CE) is to provide a balance between the economic situation of authors of graphics and plastic works of art and that of other creators who benefit from successive exploitations of their works. The protection of semiconductor's topographies is harmonised through Directive 87/54/EC. The Directive 96/9 EC on the legal protection of Databases creates a new *sui-generis* right for database producers, to protect their investment. Directive (93/98/EEC) harmonises the terms of protection of copyright and neighbouring rights for each type of work and each related right in the Member States. Directive 92/100/EEC harmonises the provisions relating to rental and lending rights as well as on certain rights related to copyright. The Directive 91/250/EEC harmonizes Member States' legislation regarding the protection of computer programmes.

In the field of **industrial property rights (IPR)**, the *acquis* sets out harmonised rules for the legal protection of trademarks and designs, as well as a harmonised regime for patents. These include conditions for compulsory patent licensing. An important element of the EU-wide patent system is the participation to the European Patent Convention and European Patent Organisation. Other specific provisions apply for biotechnological inventions, pharmaceuticals and plant protection products. The *acquis* also establishes a common playground for the protection of industrial designs, and a Community trademark and Community design system. Moreover provisions exist concerning supplementary protection certificates (SPCs), which serves to provide inventors an additional protections, when they could not benefit of the protections from a patent, for the entire period for which the patent was granted.

The Directive 2004/48 on the **enforcement** of intellectual and industrial property rights such as copyright and related rights, trademarks, designs or patents requires all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting of goods and piracy and so create a level playing field for right holders in the EU. Customs Administrations play an important role to prevent the circulation of products infringing copyright or industrial property.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Turkey and the discussion at the screening meeting. Turkey indicates that it can accept the *acquis* regarding intellectual property rights and that it will have no difficulties in implementing the *acquis* by accession. Turkey has not presented plans for further alignment with the *acquis* and the reinforcement of its administrative capacity.

II.a. Copyright and neighbouring rights

In the area of copyright, Turkey has adhered to the Bern Convention for the protection of literary and artistic works, and the Rome Convention on the protection of performers, producers and phonogram and broadcasting organisations. The law of reference for intellectual property rights is Law 5846 on intellectual and artistic works.

Provisions covered by the Information Society Directive are regulated by the Law on Intellectual and Artistic Works. The relevant rights are the reproduction right, the distribution right and the right of communication to the public. The right of reproduction belongs to authors for the original or copies of their work, to performers for their fixed performance, to phonograms and film producers for their fixations and to radio and TV for the fixation of their broadcasts. The right of communication to the public belongs exclusively to the author of the work, who has the right to authorise or prohibit the sale, distribution or presentation of his original work. The right of communication to the public belongs to the same subjects as the right of reproduction. The author and the holders of related rights also have an exclusive right of distribution. Limitations to the rights for personal use must comply with the three steps test, i.e. they must comply with the legislation, and they may not prejudice the lawful interest of the right holder and may not conflict with the normal exploitation of the work.

Computer programs, and preparatory works which subsequently lead to a program, are protected by Law 5846 on intellectual and artistic works as per the Bern Convention, as scientific or literary works. The relative right may belong to a natural or a legal person, irrespective of the nationality of the author, if the work has been communicated to the public for the first time in Turkey. Programs of foreign authors are protected in Turkey if communicated to the public in Turkey or subject to the relevant provisions of international treaties to which the Country is party.

Exhaustion is implemented at national level. The exceptions to the exclusive rights regard personal use, acts necessary for the use of the program by the legal acquirer (including correction of errors), back-up copy, and reverse engineering. Decompilation is also allowed, under certain conditions specified in the Law, and the three steps test has to be complied with. The duration of protection is 70 years from the death of the author.

Technological protection measures for copyright and neighbouring rights are allowed for computer programs, and penal measures are foreseen for the possession and distribution for commercial reasons of technical instruments aimed at removing them.

The Law also foresees compulsory exceptions. The person having legally acquired the program may reproduce it for personal use, adaptation and error correction.

The definition of distribution rights includes rental and public lending rights. These are regulated by Law 5846. The distribution right is exclusive and belongs to the author. Therefore, performers, phonogram producers, film producers and radio and television institutions have the power to allow or prohibit the sale, distribution, renting and public lending of their respective works, or fixations. The law considers that the director, the composer of the music, scriptwriter and dialog writer are joint authors of cinematographic works. Distribution rights of the author are exhausted after the first sale, but not renting and lending rights. Exhaustion of rights is implemented at national level.

An exclusive right of communication to the public belongs to authors and related right owners. In case of public transmission of performance fixed on phonograms and films by

any mean, the authors, as well as to the performing artists and producers, or the relevant collecting societies always have the right to a reasonable remuneration by those who use their protected works or broadcasts.

Collection of fees deriving from broadcasting or transmission to the public may be performed exclusively through collecting societies. This applies to retransmissions by radio and television networks and by satellite and cable broadcast, as well as other means of retransmission yet to come. There is not such obligation concerning cinematographic works.

Copyright and neighbouring rights are transferable by the authors or their heirs. The limitations to these rights must comply with the three steps test, i.e. they may not prejudice unjustly the lawful interest of the right holder nor can they conflict with the normal use of the work.

Artist's resale right is also regulated by law 5846, as amended by law 5101. It gives the right to remuneration for sales successive to the first one, if performed at an auction, or through professional selling channels. Resale right applies to works of fine arts, original manuscripts of scientific, literary and musical works, when there is a considerable disproportion between the first sale and the resale price. The author may manage his right individually or through a collecting society, and the payment is therefore due to the author, or his heirs, or in their absence to a collecting society. These provisions apply both to Turkish nationals and to foreign nationals under the conditions of the international conventions to which Turkey is party (Bern and Rome Convention, and TRIPS agreement). The professionals involved in a sale have an obligation of information to the author, but if this obligation is not fulfilled the author will only have the right to judiciary recourse.

The cross-border transmission and retransmission of programmes is organised, since 1994, in accordance with the European Convention on Transfrontier Television of the Council of Europe. The licence for the transmission/retransmission is granted by right-holders themselves or by collecting societies further to a contractual. In case of disagreement, the parties can have recourse to the Reconciliation Committee and, if they do not agree with its decision, they only have a judicial recourse at their disposal.

Protection of semiconductors topographies is regulated by Law 5147 in force since 2004, and the Turkish patent institute is responsible for the registration of topographies. The protection is granted to Turkish nationals, legal or natural persons residing in Turkey, and those protected under international conventions or by reciprocity agreements. The rights belong to the physical individual persons or collectively, or to legal persons, and is protected as from the first utilisation, for ten years, even if prior to the registration. The design of the topography alone is protected, not the information possibly stored or the processes it performs. Owner of the right are the physical persons or the company employing them. The law grants the rights to allow or prohibit the reproduction, the import and the sale of the topography. Limitations to the right include the right of reproduction for evaluation, analysis, teaching, and also innocent infringement by a person not aware of the right, as well as a person having created the same topography independently. The Council of ministers may grant a compulsory license, *inter alia*, in case of national security, public health, development of vital sectors of the economy and need for use for non commercial purposes. Terms of protection foresee 10 years of protection from the first commercial exploitation or from the registration of the topography.

Law 5846 on intellectual and artistic works also provides for the protection of databases. It distinguishes between copyright of the author of an original database and *sui-generis* right of the producer of databases of non-original databases. The authors of an original database can

be natural or legal persons. The author of the database enjoys moral and economic rights, such as right of adaptation, reproduction, distribution performance and communication to the public. Protection under the *sui-generis* right is granted provided that the producer of the database has put a substantial investment in the creation, presentation or verification of the database. Exceptions are foreseen to allow acts necessary for the normal use of the database, for private use, pedagogical purposes, freedom of quotation, public security, and in judicial procedures, provided that they do not conflict with the normal exploitation of the work. These exceptions are not limited to electronic databases. The protection under the *sui-generis* right is granted for 15 years from the presentation to the public of the database, or from when "substantial changes" were introduced. The protection is granted to all works of Turkish and non Turkish nationals, communicated for the first time in Turkey and works existing in Turkey, though not communicated to the public, as well as works not communicated to the public in Turkey, as foreseen by international obligations, and on a base of reciprocity. Exhaustion of the distribution right is limited to national territory.

Provisions on terms of protection for author's right guarantee protection for 70 years from the death of the author, or from the death of the last surviving author, in the case of joint ownership, or from when the work was communicated to the public. Right of the authors of compound works are protected separately for each author. Related rights of performers and producers are also protected for 70 years from the date of fixation. If the performance has not been fixed, the term begins with date when the performance was made public. The protection is granted to works communicated to the public, as well as works existing in Turkey but not communicated to the public, irrespective of the nationality of the author. Protection is also granted for works which have been communicated to the public outside Turkey, under the provisions of the international conventions to which Turkey is party, if the right is not expired in the foreign country.

Concerning the management of rights, authors, right holders and publishers may establish collecting societies (CS). They are regulated by Law 5846 and the By-Law on Collecting Societies and Federations of Authors' of Intellectual and Artistic Works and Holders of Related Right nr 99/12574, as amended in 2002. Collecting societies may start operating after receiving the authorisation of the Ministry of Culture, which also exerts a financial and administrative supervision on them. They are also compelled to have their accounts verified by a certified accountant.

The Societies are in charge of managing the rights conferred to them, collecting the fees and royalties, and redistributing them to the members, and to protect their common interest. They may also determine the tariffs and royalties. There may be several collecting societies for the same type of right, and therefore, they have no territorial monopoly. There are currently 22 operating in the areas of literary works, musical works, works of fine arts, cinematographic works, rights of performers and radio and TV, of phonogram producers and film producers. The societies distribute the fees to their members four times a year, after deduction of the share of the society.

To operate in Turkey, a society needs to be established in the Country. Collecting societies may establish federations, but have not done so, and may become members of international federations, or co-operate with foreign societies. They need to inform the Ministry of such co-operations. Foreigners' right may therefore be protected either through an agreement between the CS to which they belong or by conferring their rights to a Turkish CS. On the contrary, Turkish citizens may not be member of foreign CS. CS may refuse applications of anyone willing to participate, but will have to justify the rejection. They may also refuse to establish a licence agreement. In case of dispute, the Ministry of Culture may act as intermediary, to reach out court dispute settlement. In particular, if a dispute arises between

the CS and a user on tariffs, the Ministry may establish a conciliation board to settle the dispute.

World repertoire is managed by Turkish CS, on the basis of bilateral agreements between them and foreign similar societies.

II.b. Industrial property rights

Turkey is party to the Paris convention of 1925, WIPO, GATTs and TRIPS agreements, as well as to the Madrid protocol, though not to the Madrid Agreement, the Nice and Vienna agreements and the Trademark Law Treaty.

Concerning trademarks, the Turkish legislation consists of the Decree 556 of 1995, amended in 2004, and implementing provisions. Decree 556 provides for protection of registered marks. Non registered trademarks are protected under the provisions of the Turkish Commercial Code concerning unfair competition. The Turkish Patent Institute is in charge of managing trademarks applications. The trademarks protected may be individual, collective and guaranteed marks. The signs can be trade marks if they consist of words, designs, letters, numerals or particular shapes or packages, if they are distinctive, and can be represented graphically. The registration procedure foresees a formal and substantive examination before the publication of the application. After publication of the application, if no opposition is lodged, the mark is registered. In case of refusal, it is possible to lodge an appeal to a re-examination board within TPI. Further appeal is possible before the competent Court. The persons entitled to obtain protection are nationals of Turkey, of a Country signatory of the Paris Convention, or WTO members, or natural and legal persons having a domicile in the same Countries, as well as from countries enjoying reciprocity with Turkey.

The mark grants to its owner the absolute right to make use of it, prevent the use of signs which are identical or that could lead to confusion, or that could take unfair advantage of, or be detrimental to the distinctive character or reputation of the mark protected. Exhaustion of rights is foreseen at national level. The proprietor of the mark may not oppose to its use, if the products have been put onto the market with his consent. The trademark must be used within 5 years or can be revoked. Trade marks may be transferred, licensed totally or partially (i.e. that the licence may cover only some goods or services protected), may be used as a security, and is subject to inheritance. The right of priority and the exhibition priority extend to marks for which a previous application was filed in a State party to the Paris Convention or a national application within 6 months.

The protection is granted for 10 years from the date of filing, and can be renewed. Grounds for invalidity can be relative and absolute. They include the failure to use the mark, whether the mark has become a common name, or has become misleading, or, in the case of a collective or a guarantee mark, is used in breach of technical regulations. The right will be terminated if not renewed at expiry or if is surrendered. As Turkey is party to the Madrid Protocol, it can be designated from 65 Countries, and on the base of a Community Trade Mark. Despite this, 85% of the applications are national.

Turkish provisions concerning patents are contained in the Decree-Law No 551 pertaining to the Protection of Patent Rights as amended by Decree Law 566, in force since 1995, Law N° 4128 in force since 1995, Law N° 5194 in force as from 25 June 2004 and the by-law implementing the Decree-Law in force as from 5 November 1995, as amended on 6 December 1998. In addition to the organisations and convention concerning industrial property in general, Turkey is party to the Paris Convention, the Patent Cooperation Treaty (PCT), the Strasbourg agreement and the Budapest Treaty on the Deposit of Micro-

organisms, as well as the European Patent Convention. Turkey has also signed the Patent Law Treaty.

Patents are granted for 20 years, to any invention in any field of technology, which is novel, involves an inventive step and is susceptible of industrial applications. Inventions which are contrary to public order or morality, plant and animal varieties or breeding processes are not patentable. Utility models may also be protected as per the same legislation. They need to be novel and present industrial applicability. The duration for consensual patents, i.e. without substantial examination, is of 7 years and 10 years for utility models. A grace period of 12 months before the filing of the patent application is granted, during which the provision of certain information does not prevent the patentability of the item to which this information refers. The provisions of the Paris convention concerning priority rights are applicable, for 12 months from the date of filing.

To obtain a patent, the application is lodged to the Turkish Patent Institute (TPI). A formal examination of the application is performed before publication, but no substantial examination. A search report may be produced by TPI (for limited number of classes of the IPC) or another patent institute upon demand to the TPI and upon the choice of the applicant. Third parties may formulate observations to the report or objections to the patentability. In the latter case, a substantive examination is performed. In 2005, the large majority of patents granted in Turkey came through the European Patent Convention system (2025 patents out of 2853). Pharmaceuticals can be patented in Turkey since 1999. Specific issues concerning the transitional periods for regulatory data protection for pharmaceuticals dealt with under the screening report on chapter 1 – Free movement of Goods.

Administrative appeals are possible and may be lodged to the re-examination board in TPI, until the patent is granted. A re-examination of an application rejected is possible twice. An appeal for a third re-examination, or an appeal against a patent which is granted, may be made to the Court.

Turkey has been member of the European Patent Organisation since 2000 and participates to European Patent Organisation bilateral as well as multi-lateral cooperation programmes.

The Legal basis for the protection of biotechnological inventions (excluding plant varieties) is the same as for patents and the Turkish Patent Institute is also in charge of granting patents related to biotechnological inventions. Plant varieties are protected by Law 5042 on the protection of Breeders' Rights for New Plant Varieties. (See Chapter 12 – Food safety, veterinary and phytosanitary policy.) In addition to the international agreements mentioned concerning industrial property and patents, Turkey is party to the Budapest Treaty on the deposit of Micro-organisms, but is not party to the UPOV Convention (International Union for the Protection of New Varieties of Plants).

Only two articles of Decree Law 551 concern biotechnological inventions and micro-organisms. The implementing provisions of Directive 98/44/EC are not yet issued, but preparations are ongoing. Therefore, patents for biotechnological products may be issued by the TPI under the normal provisions of the Patent Law, on the basis of search and examination reports produced by another Patent Institute, with which TPI has relations.

Turkey has not introduced provisions concerning Supplementary Protections Certificates (SPC). Turkey indicated that they will be introduced during the preparation for accession to the EU.

Compulsory licensing of patents may be obtained in Turkey. The rights obtained in this way may not be exclusive. A compulsory licence may be granted, if the owner of a patent fails to use it within three years from obtaining the patent, or if the use of a patent is needed in order to use another one (dependency of the patent). Public interest is the other possible reason. In the first two cases, the request for a compulsory licence is lodged to the competent Court, i.e. the Court specialised for IPR. If the rationale is the public interest, the decision belongs to the Council of Ministers, upon opinion of the Ministry competent for regulations concerning the product covered, (Ministry of health for pharmaceutical products, etc). The person requiring a compulsory licence may also request the mediation of the TPI in order to obtain a consensual licence by the patent owner. The latter may refuse to engage in the mediation, or the mediation may fail to lead to an agreement. The decisions of TPI may be appealed to the IPR Court, and those may be appealed to the Supreme Court.

The provisions concerning industrial designs are contained in Decree Law 554 on the protection of Designs, and the implementing Decree, both of 1995. Turkey is party to the Geneva Act of the Hague agreement concerning the international registration of designs, and the Locarno Agreement on classification for industrial designs. Designs may be registered or not. If they are not registered they are protected by the provisions of the Commercial Code concerning unfair competition.

The design has to be new and present an individual character. Designs solely dictated by the technical function, designs of interconnections, and contrary to public order or morality may not be protected. Duration of protection is for 5 years, renewable up to 25 years. The holder of a design has the exclusive right to prevent others from using it. Limitations to the exclusive design rights include acts done privately and for non-commercial purposes, experimental purposes, pedagogical purposes, and the equipment on ships and aircraft registered in a third country when they enter the territory of the Turkish Republic temporarily, as well the importation of spare parts and accessories for the purpose of repairing such craft and execution of the repairs. Use of protected designs for repair of complex products, made in order to restore its original appearance, after three years from the first putting onto the market are not considered as infringements of the design.

In order to register a design, the request is addressed to the TPI. After the formality check of a design application, the application is registered and published in the Official Bulletin for 6 months. During this period, the registration may be opposed by third parties. The TPI transmits the opposition to the applicant who may then reply within 1 month. The Locarno classification is used. Multiple applications are possible, provided that they belong to the same sub-class of the Locarno classification or are part of a complex product or a get-up. Administrative appeal is possible within TPI, a re-examination Board is in charge of re-examining applications rejected. Design cases are handled by Courts specialised in IPR.

The principle of nationality applies to industrial property rights protection, and only design registered in TR may be protected. Unregistered designs can benefit from the copyright protection and unfair competition provision of the commercial code. Therefore, to protect his design in Turkey, a European industrial design right holder must register his design at the TPI via a national application or the Hague international application.

II.c. Enforcement

In order to enforce copyrights and related rights, original books, non periodical publications, CDs, DVDs, computer programs and games, etc. need to obtain a so-called banderole from the Ministry of Culture before being placed onto the market. The banderole is a sticker,

affixed to every single original item. The absence of banderole implies that the product is counterfeited.

The enforcement directive is not implemented into a single act, but its provisions are contained in the Code of Civil Procedure, Law 5846 on intellectual and artistic work and in legislation specific to each type of right protected.

The Turkish Patent Institute is the main administrative body. It is responsible for granting patents, utility models, register designs, dealing with trademarks, circuits' topographies, and geographical indications. In 2005 it received around 60.000 trademarks applications and registered slightly less than 35.000. Around 5.300 applications for design are received and more than 5200 are registered in the same year. Designs registrations requests are predominantly of Turkish origin. TPI also manages on line instruments and searchable databases.

Right holders whose rights have been infringed may take action to protect their rights through civil and criminal procedures against the infringer. Civil procedures include action for cessation of infringement and prevention of possible infringement, as well as measures for compensation of moral and material damages, including indemnities and appropriation of unfair profits made by the infringer. The persons entitled to apply for civil measures are holders of rights, or authorised by them, their successors and collecting management bodies. These may request precautionary measures, separately from the main action, to prevent substantial damages or sudden danger, as well as seizure, confiscation and destruction of the infringing goods as well as machines used for their production. A security for the compensation of damages may also be requested. The right owner may also request other preventive measures aimed at preventing the continuation of the violation, such as removal of trademarks, etc. Any interested party may also lodge a claim of non-infringement. Right owners also have a right of information, which allows them to request information to the infringer to assess the damage suffered. The Court may order the party holding the information to submit evidence, including evidence of financial transactions.

In the judicial area 10 specialised Courts have been established. These are in Istanbul, Ankara and Izmir, 5 are civil and 5 are criminal courts. Where there are no specialised Courts, ordinary ones, designated by the Supreme Board of judges and public prosecutors can rule on IPR cases. A Court of appeal has been established from June 2006 and its organisation is not yet entirely defined. The Court of Cassation constitutes the judicial recourse of last resort, and includes two sessions specialised in civil and criminal IPR cases. Lawyers registered to the Bar are enabled to promote the cases before the Courts, and they actually file the majority of applications

Provincial anti-piracy commissions are also involved in the enforcement of IPR, as they can inspect goods to ensure that the banderoles are regularly affixed, and they can also fine sellers of pirated material. The sections responsible for anti-smuggling and organised in the Turkish Police and Gendarmerie are in charge of IPR investigations.

Enforcement authorities including police, municipal police, and gendarmerie, and anti piracy provincial commissions, can start ex-officio action in case of violation of copyright or related rights, but may not do so in presence of violation of industrial property rights, even obvious, where proceedings need to be initiated upon complaint.

The Police has established an IPR office within its General Directorate and enforcing officials in all the bodies are receiving ad hoc training.

In terms of results, the number of items seized has doubled every year since 2002 and 3.7 million items were seized in 2005, essentially CDs and VCDs, in a total of 3.800 operation in 2005.

Border controls are regulated by Customs Law 4458 and its implementing regulation. Necessary measures for infringements are taken in accordance with this legislation.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Turkey has reached a considerable level of legislative alignment with the acquis in the area of IPR. However, administrative capacity is yet insufficient to ensure an effective enforcement of intellectual property law.

Turkey has not submitted plans detailing how it intends to complete alignment with the acquis and develop the administrative capacity. Development of administrative capacity and enforcement involve substantial investments, including in the judiciary, and needs to be monitored carefully.

The national exhaustion of a number of rights, instead of the Community exhaustion constitutes a deviation from the acquis and has to be corrected by accession to the EU.

III.a. Copyright and neighbouring rights

Turkey's legislation is aligned to a large extent with the acquis in the area of copyright and neighbouring rights, but certain gaps exist, which will need to be addressed.

The main provisions of the information society directive are largely aligned. However, certain provisions of Turkish Law on Intellectual and Artistic Works need to be amended and/or completed. The provisions on the legal protection of technical measures (Art. 6 of the Directive) have not been implemented. Currently, Art. 71(3) of Turkish Law only provides for sanctions in relation to technical measures applied to "secure" computer programmes and not to secure other works or subject matter. The notion of "fair compensation", which is e.g. linked to the private copying exception, does not occur in Turkish Law. In the case of private copying, the application of technological measures should be duly taken into account. Turkey should implement an exception in relation to temporary acts of reproduction (Art. 5(1) of the Directive), since this is a mandatory exception provided for under the Directive. The compatibility of Art. 47 of Turkish law (expropriation of economic rights by the State) with the acquis needs to be further discussed. Even if the provision applies to works deemed to be of importance to the country, it may also affect the economic rights of nationals of EU Member States with a residence in Turkey (works created in Turkey).

Distribution rights, rental and public lending rights, right of communicating to the public are overall in line with the acquis, although the legislation on the means to switch from an exclusive to a financial right is not yet adopted. Right owners may manage their rights of cable retransmission in Turkey, while Directive 93/83/EC allows this to be done only through collecting societies. Legislation on artist's resale right is overall in line with the acquis, but implementing provisions are not drafted and practical elements of implementation needs to be defined, such as the means to evaluate the difference of price between the first and successive sales. The provision limiting the existence of a resale right when there is a considerable disproportion between the first sale and resale price is not in line with the acquis. Moreover the payment of this right may not be done to a collecting

society. Finally, in case of dispute with the seller of his works, the fact that the author will only have the right to judiciary recourse is also not in line with the *acquis*.

Protection granted to computer programs is also comparable to the one granted by the *acquis*, with the general exception of exhaustion. A more specific, although minor discrepancy with the *acquis*, concerns protection of preparatory material.

The legislation on the protection of databases is partially aligned with the *acquis*. The exception for private use does not distinguish between electronic and non-electronic databases and, concerning the *sui-generis* right, Law 5846 foresees more exceptions than the Database Directive (Article 9).

Concerning terms of protection, the duration of the protection is comparable, but not identical to the one foreseen by the Community *acquis*. The Turkish legislation calculates the right depending on publication, while the *acquis* refers to the date of creation. Protection for related rights stands at 50 years in the EU *acquis*, Turkey provides 70 years. Moreover, the protection for unpublished works is also 70 years, while the community *acquis* foresees 25 years.

In the field of management of copyright and related rights, under the current legislation, only societies established in Turkey can provide management services in Turkey directly. This results in a limit to the freedom of collecting societies in the EU to provide services.

III.b. Industrial property rights

The Turkish legislation on industrial property rights is also aligned to a large extent with the *acquis*. More in detail, trademarks provisions are to a large extent in line with Community Law and international agreements. Similarly, patents provisions are to a large extent aligned with the *acquis* and Turkey is party to the relevant international conventions and agreements, except provisions on protection of biotechnological invention and the patent litigation agreement, which is anyway not required immediately. Turkey is participating to the European Patent Organisation, but has not implemented the agreement on patent litigation. There are no provisions in Turkey's legislation concerning Supplementary Protection Certificates. These gaps will need to be addressed during accession negotiations.

Provisions on compulsory licensing are overall aligned with the *acquis*. However, a compulsory licence may be requested in order to export a certain product. This provision is not aligned with the Community Law.

The Turkish legislation is overall aligned with the *acquis* in the area of industrial designs. The fact that protection of topographies is ensured through this channel, however, constitutes a deviation from the *acquis*. Moreover, the scope of certain exceptions will need to be clarified in due course, notably those concerning equipment installed on ships and aircrafts.

III.c. Enforcement

Concerning enforcement, legislative alignment with the *acquis* is advanced and collective management societies operate in Turkey. Nevertheless, shortcomings of the administrative capacity reduce considerably the enforcement of the legislation

The Police can take ex-officio action in case of violation of copyright. This is facilitated by the obligation to affix banderoles to prove the compliance of products with copyright legislation. Ex officio action is not allowed in case of violation of industrial rights.

Moreover, law enforcement forces do not have sufficient staff, and training to pursue effectively violations of IPR.

The requirement to affix a banderole is not contained in the *acquis communautaire*, but constitutes an enforcement tool. However, the effectiveness of this tool has been questioned, because this would require inspections and verification of the existence of the banderole on the products, more frequent and systematic than it is the case. Moreover, forged banderoles have been found on protected items, and banderoles have been stolen from the Ministry of Culture and affixed.

Even when violations of IPR are ascertained by enforcement forces, the legislation is not applied evenly throughout the country. The number of convictions and of judgements enforced remains insufficient, in particular as far as trademarks violations are concerned. Moreover, recent cases have demonstrated that Courts are reluctant to provide injunctions, and this results in the continuation of infringements. Judgements emanating from specialised IPR courts are considered as fair, and appropriate. However, these courts deal with a too high number of cases compared to their actual capacity. Inconsistent application of IP law by non-specialised Courts is a source of concern. Moreover, there is evidence of rightholders rights not having been taken into sufficient account, and imposition of burdensome requirements to the complainant. The too frequent recourse to experts' opinion in IPR cases has also reduced the effectiveness of judicial proceedings. Training of judges, as well as reinforcing IPR specialised courts are necessary and activities in this sense are ongoing.

As a consequence of the shortcomings in the implementation capacity, pirating activities are carried on by organised networks, and pirated material continues to be largely available. This includes copying of books, DVDs, musical CDs and software, textiles, and pharmaceutical. The statistics available indicate that a substantial number of books in English on the market are pirated. For entertainment software, the ratio of games/consoles sold in western Europe is 8:1, and in Turkey is 0,1:1, which indicates a massive piracy of both software and hardware. A large quantity of the products violating IPR are sold on flea markets and in tourist resorts. In terms of exports, on the basis of seizures at the EU Customs, Turkey ranks as 4th Country in terms of origin of counterfeited goods.