

**NON-EXHAUSTIVE LIST OF ISSUES AND QUESTIONS  
TO FACILITATE PREPARATIONS FOR THE BILATERAL MEETINGS  
CHAPTER 7 INTELLECTUAL PROPERTY LAW**

**COPYRIGHT AND RELATED RIGHTS**

**Question 1:**

*In relation to the Directive 2001/29 on the harmonisation of copyright and related rights in the Information Society, the way in which the notion of 'fair compensation' for private copying and reprography has been or will be dealt with in your national legislation; the availability and scope of application of technological protection measures in your national market.*

**Answer:**

**Notion of “fair compensation” for private copying and reprography:**

Art.38/1 of the Law No. 5846 states that: “It shall be permissible to reproduce intellectual and artistic works for personal use not involving purposes of publication or exploitation for profit. However, such reproduction may not unreasonably prejudice the legitimate interests of rightholders or conflict with normal exploitation of a work.”

In the existing legislation, there is no direct provision regarding “fair compensation” for private copying and reprography. However, in order to strengthen the enforcement of intellectual property system, maximum 3% of the production or importation cost of any kind of blank video cassette, audio cassette, computer disc, compact disc, DVD and all kind of technical devices used for reproduction of intellectual and artistic works is allocated in a special account (Art. 44). This amount is subject to decision of the Council of Ministers.

**The availability and scope of application of technological protection measures:**

In relation with the technological protection measures, in the Article 73/1/c of the Law, it is foreseen as; “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 program shall be sentenced to imprisonment or a heavy fine between or both considering the gravity of the damages”

**Question 2:**

*Concerning the Term Directive, the kind of protection for joint authorship and collective works, for works published in volumes, parts, instalments, issues or episodes, for cinematographic or audiovisual works, for previously unpublished works, for critical and scientific publications, for photographs, and the eventual measures to introduce to protect the rights of third parties.*

**Answer:**

In the Law No 5846 on Intellectual and Artistic Works, the work has been defined as all kinds of artistic and intellectual products of science and literary (including all types of photographic works of a technical or scientific nature and also critical and scientific publications), music, artistry (including the photographic works having an aesthetical value) or cinematography (including audio-visual) which are carrying the mark of its author. The author of the work is the person that creates the work.

In Turkish Law, term of protection shall start as from the date of being first made available to the public. Article 7 of the Law states: "A work made available to the public with the consent of the rightholder shall be deemed to have been made available to the public."

According to the Law, the economic rights granted to authors shall be limited in time and any person may exploit the economic rights granted to author after expiry of the term of protection. (Art.26)

The term of protection shall not start to run until the work has been made available to the public and last for the lifetime of the author and for 70 years after his death (Art. 27)

In case of joint authorship, this term shall expire 70 years after the death of last surviving joint-author.

The term of protection for works, which have been first made available to the public after the death of the author, shall be 70 years after his death. However, after the expiry of the copyright protection (70 years) beginning with the date of the author's death, the protection shall terminate even if the work has not been made available to the public. (In Law No 5846, there is no specific provision regarding subsequent rightholders).

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 available to the public.

Terms of protection starting to run;

- on the date of author's death and
- on the date on which the work has been made available to the public

shall be calculated from the first day of the year following the relevant event.

For the works published in volumes, parts, instalments, the publication date of the last instalment shall be deemed the date on which the work was made available to the public and the term of protection lasts 70 years.

For works comprising several consecutive volumes published at intervals and for works such as bulletins, magazines, periodicals and annuals, the date of publication shall be the date of publication of each volume or issue and the term of protection shall last 70 years for each such item separately.

As regards the collective works;

If a work created by more than one person can be divided into parts, each person shall be deemed the author of the part created by him. And the terms of protection applicable to the divisions of the work shall be independent of each other. (Art.9)

Rights of the third parties, including holders of related rights (Art. 88)

Regarding the protection of the rights of the third parties, the provisions of the Law shall apply:

1. To all works communicated to the public for the first time in Turkey and to all works existing in Turkey but not as yet communicated to the public, as also to all letters and pictures existing in Turkey, irrespective of the nationality of the author (Art. 88/1)

2. 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 party (Art. 88/3)

3. To all foreign works, fixed performances and phonograms which have been produced in other countries party to international contracts and agreements to which Turkey is also a party and which have not become public because of the fact that the term of protection has not expired in those countries (Additional Art. 2/2)

**Question 3:**

*Concerning the Rental and Lending Rights Directive, the kind of protection adopted for the public lending right (exclusive right or remuneration) and the means to finance it, as well as the possible exemptions, the kind of protection for the broadcasting and communication to the public rights, as well as the rules applied for ensuring the equitable remuneration, and the possible limitations.*

**Answer:****Rental and Lending Rights**

In Turkish law, the author has the exclusive right of distribution. Rental and public lending right takes place under the title of “distribution right” (Art 23). Distribution right is defined in the Law No 5846 as “renting, lending, placing on sale or distributing in any manner of the original work or reproduced copies”.

The Law provides that authors have the exclusive right of broadcasting the original work or the reproduced copies by means of organizations broadcasting by wires or by wireless broadcasting organizations like radio-television, satellite and cable broadcasting by devices used for transmitting signs, sounds and/or images included digital transmission, and the right of communicating these works to the public via re-broadcasting by different broadcasting organizations after obtaining materials from the previous broadcasts. (Art. 25)

Additionally, the author shall have the right to give permission or to prohibit the sale, distribution or presentation of his original work or reproduced copies to the public by wired and wireless devices and making available to the public of works by providing any access from a place and at a time chosen by the natural persons. (Art. 25)

In our legislation, the author has the exclusive right concerning public lending. Nevertheless, there is no provision corresponding fully to the provisions in EC legislation regarding equitable remuneration to the author in the case of public lending.

**As regards holders of related rights (Article 80):**

**A performing artist**, who performs a work in an original manner by the permission of its author shall have the exclusive right of permitting and prohibiting public transmission and re-transmission and presentation by means of instruments enabling transmission of signs, sounds and/or images of their fixation. A performing artist has also the right to grant authorization for or to prohibit the sale of the original or reproduced copies of his fixed performance through instruments, whether by cable or over the air, or their public distribution or presentation in any other manner and their public transmission by providing access of the natural persons to his performance at the time and place chosen by them.

**The phonogram producers** shall have the exclusive right to grant authorization for the public transmission and re-transmission of fixations by means of instruments enabling transmission of signs, sounds and/or images. A phonogram producer has also the right to grant authorization for or to prohibit the sale of the fixations of the performances through instruments, whether by cable or over the air, or their public distribution or presentation in any other manner and their public transmission by providing access of the natural persons to the fixations at the time and place chosen by them.

**The film producers** shall have the exclusive right to grant authorization for the public transmission and re-transmission of fixations by means of instruments enabling transmission of signs, sounds and/or images. Producers also have the right to grant authorization for or to prohibit the sale of film fixations through instruments, whether by cable or over the air, or their public distribution or presentation in any other manner and their public transmission by providing access of the natural persons to the fixations at the time and place chosen by them.

**Radio and television institutions** have the exclusive rights of permitting or prohibiting the simultaneous transmission by other broadcasting organizations, delayed transmission, re-transmission and distribution via satellite or cable of their broadcasts; the transmission of their broadcasts in public places.

**Radio and television institutions** have also the exclusive rights of permitting the public transmission of their fixed broadcasts for natural persons to access their broadcasts at the time and place of their choice.

In case of public transmission of performances fixed on phonograms and films by any means whatsoever, those persons using them are liable to **pay equitable remuneration** to the authors as well as the performing artists and producers or the professional associations of the related field.

#### **Limitations:**

Certain limitations are envisaged for the rights of holders of related rights in the Law No 5846, provided that those limitations do not prejudice unjustly the interests of the author and not conflict with normal exploitation of the work.

In the cases below, the written permission of the holder of related rights is not required:

- Performance and presentation to the public of intellectual and artistic works for purposes of public order, education and instruction, scientific research or news, without aiming profit
- Reproduction of intellectual and artistic works and radio-television programmes for personal use, without aiming to publish and profit
- Temporary fixations with short duration made by radio and television institutions on their own and for their own use in broadcasts
- For reasons of public policy (Art.30)
- Speeches delivered during official meetings with the aim of giving information and news (Art. 32)
- Selected and collected works for educational and instructional purposes (Art. 34)
- Freedom of quotation (Art.35)
- Right of use by the state (Art. 46)
- Expropriation (Art. 47)
- Concerning disabled persons, only for educational and assistance purposes (Add. Art.11)

#### **Questions 4 and 5:**

*- As regards satellite broadcasting, the applicable law for broadcasts from other countries and the criteria in force for the payment of the copyright and the related rights to be acquired.*

*- In relation to retransmissions of programmes from other countries via cable, the steps to be followed by cable operators in order to obtain a licence from rightholders.*

#### **Answers:**

Turkey signed the European Convention on Transfrontier Television of the Council of Europe on 07.09.1992. This Convention came into force on 01.05.1994 in Turkey. The Convention includes all kinds of television programme services and aims to facilitate, among the parties, the transfrontier transmission and retransmission.

Transmission means the initial emission by terrestrial transmitter, by cable, or by satellite of television programme services, in encoded or un-encoded form. This Convention shall apply to any programme service transmitted or retransmitted by entities or by technical means within the jurisdiction of a party, whether by cable, terrestrial transmitter or satellite and which can be received directly or indirectly in one or more other parties.

According to this Convention, each transmitting party shall ensure that all programme services transmitted by broadcasters within its jurisdiction comply with the terms of this Convention. In this framework, all items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others.

Thus, as regards satellite broadcasting and retransmission of programmes from other countries via cable, the transmitting party will be responsible on these broadcasts.

**Question 6:**

*With regard to resale right, the categories of works protected, the dealers of art concerned, as well as the beneficiaries (authors and/or persons entitled after his/her death).*

**Answer:**

**Works Subject to Resale Right (Art. 45)**

a) Works of fine arts and their copies produced in limited numbers by the author itself or by others under the author's control and with his permission and considered as original works for having been signed or otherwise marked by the author, with the exception of architectural works.

Fine art works, which have an aesthetical value are: the paintings, drawings, pastels, engravings, scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar method, calligraphy, silk screen printing; sculptures, reliefs and carvings; handicraft and minor works of art, miniatures and works of ornamentation, textiles, fashion designs; photographic works; graphic works; caricatures; typefaces. (Art. 4)

b) Original manuscripts of the scientific and literary works. Scientific and literary works are defined as all works of language and writing in any form of expression. (Art. 2/1)

c) Original manuscripts of the musical works. Musical works are defined as all kinds of musical compositions, with or without words (Art. 3).

**Payment of the Resale Right**

During the term of protection, if the work is successively transferred by sale at an exhibition or an auction or in a shop engaged in the sale of such items or by other means, the author's royalty on resale will be paid by the seller (natural or legal person).

The owner of the enterprise where the sale takes place shall be jointly liable with the seller.

**Beneficiaries of the Resale Right**

The royalty will be paid to the author of work, after the author's death, the author's spouse, and his/her first and second degree inheritors who are children, adopted child, mother, father, sister, brother, grandmother, grandfather, grandchild.

In the absence of spouse and legal inheritors of first and second degree, the royalty will be paid to the relevant collecting society.

Law No 5846 envisages the adoption of secondary legislation concerning threshold amount exempted from royalty and calculation of royalty (which should not exceed 10 % of the difference between the first and the following prices) to be paid to the rightholder. The secondary legislation has not been adopted to date.

**Question 7:**

*In relation with several directives, how would the principle of EC exhaustion, as opposed to international exhaustion, be implemented?*

**Answer:**

Exhaustion principle is implemented at national level in Turkey. It is regulated by Law No 5846 Article 23, under the title of "Right of Distribution". According to this Article, the distribution right of the author is exhausted by the first sale or distribution of reproduced copies of a work. This principle is valid for holders of related right. Renting and lending right shall not be exhausted by any sale or other act of distribution of originals and copies of works.

**Question 8:**

*Concerning international obligations, the candidate countries could give an update concerning membership to Berne and Rome Conventions, WCT, WPPT and clarify whether they have deposited reservations/notifications to these treaties and conventions.*

**Answer:**

Turkey has become a party to Berne Convention, which is amended at Paris in 1979, with a reservation in 1995. This reservation is related to Article 33/1 of the Convention.

Turkey has become a party to Rome Convention in 2004. There is no reservation about provisions of this convention.

Turkey signed the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. The ratification process is underway.

**INDUSTRIAL PROPERTY RIGHTS****Question 1:**

*The implementation of some regulations requires the appointment of national competent authorities and related administrative procedures to be established, e.g. for the grant of supplementary protection certificates and concerning compulsory licensing in relation to patents and supplementary protection certificates concerning the manufacture and sale of pharmaceutical products. Candidate countries are invited to describe, if known, the approach and timetable they will take in respect of these provisions.*

**Answer:****Supplementary Protection Certificates:**

In the current Turkish patent legislation, term of patent protection is 20 years without any extension. This term is also applied to pharmaceutical products. There is no provision relating to supplementary protection.

During the accession process, necessary adaptations will be made in consultation with the European Commission.

**Compulsory Licensing:**

National courts are the competent authorities for compulsory licensing on grounds of failure to use the patented invention and dependency of subject matters of patents. The Council of Ministers is the competent authority for compulsory licensing on grounds of public interest.

Turkish patent legislation comprises comprehensive provisions (Decree-Law No 551, Arts. 99-120) related to compulsory licensing.

The exportation of the patented invention shall not be accepted to constitute a ground for compulsory license according to Article 102 of the Decree-Law. It seems to be inconsistent with the Proposal for a Regulation (EC) No 2004/258. Technical studies for alignment in this field are underway.

**Question 2:**

*As regards biotechnological directive it would be useful to know how the directive has been applied at national level and if the National Patent Office encountered any particular problem in the examination process.*

**Answer:**

Biotechnological inventions are protected according to Arts. 6 and 46 of Decree Law No. 551. Technical studies are continuing for the preparation of detailed provisions relating to biotechnological inventions.

**Question 3:**

*What is the general structure of your trade mark system (e.g. existence of opposition procedure? Ex officio search of earlier rights)?*

**Answer:**

Trademark applications are examined according to the provisions referring to the absolute and relative grounds for refusal under the Decree Law No 556 by the Trademarks Department, one of the main units in the Turkish Patent Institute (TPI).

There are three main stages during the examination of a trademark application:

- *Formal examination:* This stage consists of conformity with the formal requirements, classification of the goods/services and figurative elements according to international agreements, similarity search of earlier trademarks registrations and applications and data capture.
- *Ex-Officio examination of the absolute and relative grounds for refusal:* The characteristic of this examination is the non-registerability of the applications on absolute grounds. Additionally, trademarks identical or confusingly similar with an earlier registered or applied trademark, in respect of identical or same type of goods or services, and well-known marks in the sense of Article 6*bis* of the Paris Convention will not be registered ex-officio. The decision can be the publication in the Official Trademark Bulletin, refusal or partial refusal.
- *Examination of the relative grounds for refusal upon opposition:* All third parties have right to file an opposition against published trademark applications, this right can only be used in three months time limit after the publication in the Official Trademark Bulletin, which is published monthly by TPI.

All the decisions of the Trademarks Department could be appealed in 2 months time limit, therefore anyone who is not satisfied by a decision has the right to lodge an appeal.

If there are no further obstacles against the registration of an application, the mark is registered in the TPI's Trademarks Register upon the payment of the registration fee and the registration is published in the Official Trademark Gazette.

**Question 4:**

*Is there an interpretation as regards what constitutes "graphical representation" of a sign?*

**Answer:**

According to the Article 5 of the Decree Law 556, provided that it is capable of distinguishing the goods and services of one undertaking from the goods and services of other undertakings, a trademark may consist of all kinds of signs being represented graphically such as words, including personal names, designs, letters, numerals, shape of the goods or their packaging and by similar descriptive means capable of being published and reproduced by printing.

In TPI practice, while combination of colours is registrable, the single colours are not found registrable. Three-dimensional marks are registrable, if they have distinctive character.

**Question 5:**

*What absolute grounds for refusal/invalidity exist?*

**Answer:**

Absolute grounds for refusal/invalidity are stated in Articles 7 and 42 of the Decree Law No 556. These articles are mentioned below:

*Absolute Grounds for Refusal for Registry of a Trademark*

Article 7 - Following signs shall not be registered as a trademark:

- a) signs which do not conform with the provisions of Article 5,
- b) trademarks identical or confusingly similar with a trademark registered earlier or with an earlier filing date for registration in respect of an identical or same type of product or services,
- c) trademarks which consist exclusively of signs or indications which serve in trade to indicate the kind, characteristics, quality, intended purpose, value, geographical origin, or designate the time of production of the goods or of rendering of the service or other characteristics of goods or services,
- d) trademarks which consist exclusively of signs and names used to distinguish specific groups of craftsmen, professionals or tradesmen or have become customary in the current and established practices of the trade,
- e) signs containing the shape of the product which results from the nature of the good, which is necessary to obtain a technical result or which gives substantial value to the good,
- f) trademarks which are of such a nature as to deceive the public, such as to the nature, quality, place of production or geographical origin of the goods and services,
- g) trademarks which have not been authorized by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention,
- h) trademarks containing badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention which have not been authorized by the competent authorities and are of particular historical and cultural public interest,
- i) well known marks according to 6bis of the Paris Convention, use of which are not permitted by their owners,
- j) trademarks which contain religious symbols,
- k) trademarks which are contrary to public policy and to accepted principles of morality.

The provisions of (a), (c) and (d) cannot be invoked to refuse the registration of a trademark which has been used before the registration and has acquired through this usage distinctive character in respect of the goods and services for which it is to be registered.



### *Invalidity*

**Article 42** - A registered trademark shall be declared invalid by the court in following cases:

a) where in breach of Article 7, (However, the action regarding well-known trademarks as specified subparagraph (i) of Article 7 has to be instituted within five years from the date of registration. If there is bad faith time limit shall not apply.)

Where the invalidity is involved only for some of the products or services, partial invalidity shall be ruled with respect of those products and services.

Where the trademark having been used before the registration has acquired through this usage distinctive character in respect of the goods and services for which it is to be registered, the provisions of (a), (c) and (d) can not be invoked to invalidate the registration.

#### **Question 6:**

*Are any absolute grounds for refusal/invalidity as the ones mentioned in Article 3(2) of Directive 89/104/EEC (TMD) included in your national system?*

#### **Answer:**

Two grounds specified in Article 3(2) of Directive 89/104/EEC (TMD) among the four grounds stated for the absolute grounds of refusal/invalidity are included Article 7 of Decree-Law 556 as follows;

- “h) trademarks containing badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention which have not been authorized by the competent authorities and are of particular historical and cultural public interest,
- j) trademarks which contain religious symbols,
- k) trademarks which are contrary to public order and to accepted principles of morality.”

#### **Question 7:**

*Do you have an absolute ground for refusal/invalidity in relation to Regulation 2081/92 (see as example Article 7(1)(k) Regulation of 40/94)?*

#### **Answer:**

The similar provision is mentioned in Article 18 of the Decree Law No 555 pertaining to the Protection of Geographical Indications. Any trademark application consisting of a geographical indication registered in accordance with the applicable provisions of Decree Law No 555 is refused under Article 7 (1)(c) of Decree Law No 556 in the same manner.

#### **Question 8:**

*What other grounds for refusal/invalidity are included in your system (see Article 4 TMD)?*

#### **Answer:**

Other grounds for refusal/invalidity are stated in Articles 7, 8 and 42 of Decree Law No 556. These articles are mentioned below:

#### *Absolute Grounds for Refusal for Registry of a Trademark*

**Article 7-** Following signs shall not be registered as a trademark:

- b) trademarks identical or confusingly similar with a trademark registered earlier or with an earlier filing date for registration in respect of an identical or same type of product or services,
- i) well known marks according to 6bis of the Paris Convention, use of which are not permitted by their owners,

### *Relative Grounds for Refusal for Registry of a Trademark*

Article 8 - Upon opposition by the proprietor of an application for registration of a trademark or of a registered trademark, the trademark applied for shall not be registered under following conditions:

a) If the trademark applied for is identical with a registered trademark or a trademark that has an earlier application date and the protection is sought for the identical goods and services,

b) If because of its identity with or similarity to a trademark which has an earlier application date or a registered trademark and because of the identity or similarity of the goods and services covered by the trademarks there exists a likelihood of confusion on the part of the public and the likelihood of confusion includes the likelihood of association with the registered trademark or with the trademark which has an earlier application date.

Upon opposition by the proprietor of a trademark, a trademark shall not be registered where an agent or representative of the proprietor of the trademark has applied for registration thereof his own name without the proprietor's consent and without a valid justification.

Upon opposition by the proprietor of a non-registered trademark or of another sign used in the course of trade, the trademark applied for shall not be registered provided that;

a) the rights to the sign were acquired prior to the date of filing for registration of the trademark, or the date of priority claimed for the application for registration,

b) the sign confers on its proprietor the right to prohibit the use of a subsequent trademark,

A trademark applied for which is identical or similar to a registered trademark or to a trademark with an earlier filing date may be used for different goods and services. However, where in the case of a registered trademark or of a trademark which has an earlier filing date for registration, the trademark has a reputation and where the use without due cause of trademark applied for would take unfair advantage of, or be detrimental to the distinctive character or repute of the registered trademark or of the trademark with an earlier application date, upon opposition by the proprietor of the earlier trademark, the trademark applied for shall not be registered even to be used for goods and services which are not similar to those for which the earlier trademark is registered.

Upon opposition by the holder of the relevant right, the trademark applied for shall not be registered if it contains the name, photograph, copyright, or any industrial property rights of the third parties.

Upon opposition, trademark applied for which is identical or similar to a collective or a guarantee mark shall not be registered within three years from the date of expiry of the collective or of the guarantee mark.

Trademark applied for which is identical or similar and which is to be registered for the identical or similar goods and services of a trademark which has not been renewed, upon opposition shall not be registered within two years of the expiry date.

### *Invalidity*

Article 42 - A registered trademark shall be declared invalid by the court in following cases:

b) where in breach of Article 8, (However, regarding the proceedings instituted under the last paragraph of Article 8, if the previous rightholder has not used his trademark within the two years after the expiry of the period of protection it will not constitute a reason for invalidity.)

c) where in breach of Article 14, (However, serious use between the date of instituting of the proceedings and the expiry of the 5 year period shall not constitute a reason of invalidity. If use has been made upon realisation that proceedings are to be instituted, in such a case the court shall not take into consideration the use within three months prior of the institution of the proceedings.)

d) where the trademark has become generic in respect of the goods or services by the acts of the proprietor of the trademark,

e) where as result of the use made by the proprietor or by the person authorised by him, there exists a likelihood of confusion on the part of the public as to the nature, quality, place of production and geographical origin in respect of the goods or services it is registered,

f) where used in breach of Article 59.

**Question 9:**

*What rights are conferred by a trade mark (see Article 5 TMD)?*

**Answer:**

*Rights Conferred by a Registered Trademark*

Article 9 - The proprietor of a trademark shall be entitled to prevent all third parties not having his consent from using the trademark as described herewith:

- a) use of any sign which is identical with the registered trademark in relation to goods and services which are identical with those for which the trademark is registered,
- b) use of any sign where, because of its identity with or similarity to the registered trademark and identity or similarity of the goods and services covered by the registered trademark and sign, there exists a likelihood of confusion on the part of the public including likelihood of association between the sign and the trademark,
- c) use of any sign which is identical with or similar to the registered trademark in relation to goods or services which are not similar to those for which the trademark is registered, where the use of that sign without due cause takes unfair advantage of or is detrimental to the distinctive character or the repute of the registered trademark.

The following may be prohibited under the first paragraph,

- a) affixing the design to the goods or to the packaging thereof,
- b) offering the goods, putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder,
- c) importing or exporting the goods under that sign,
- d) using the sign on business papers and in advertising.

The rights conferred by a registered trademark shall prevail against third parties from the date of publication of the registration of the trademark. Compensation may be claimed in respect of matters arising after the date of publication of a trademark application. However, the rights arising from the publication of an application shall be considered within the rights conferred by the publication of the registration of a trademark. The Court may not decide upon the merits of the case until the registration has been published.

**Question 10:**

*Do you intend to use the option laid down in Article 5(2) TMD?*

**Answer:**

The rights mentioned in Article 5(2) of TMD are regulated by Article 9(1)(c) of the Decree-Law as follow:

“use of any sign which is identical with or similar to the registered trademark in relation to goods or services which are not similar to those for which the trademark is registered, where the use of that sign without due cause takes unfair advantage of or is detrimental to the distinctive character or the repute of the registered trademark”.

**Question 11:**

*What limitations to the rights conferred by a trade mark does your system know (see Article 6 TMD)?*

**Answer:**

Limitations to the rights conferred by a trademark are regulated by Article 12 of the Decree-Law, according to which;

“The proprietor of a trademark cannot prevent the third parties from using in the course of trade his own name or address, indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the services, or other characteristics of the goods or services, provided the use is effected in accordance with honest practices in industrial or commercial matters.”

**Question 12:**

*Under what circumstances is a trade mark right exhausted?*

**Answer:**

Article 13

“The acts related with a product containing the registered trademark shall not constitute a breach of the rights of a registered trademark, where such acts have occurred after the product has been put on the market in Turkey by the proprietor or with his consent.

The proprietor have the right, even within the provision of the first paragraph, to oppose further commercialization of the goods, especially where the conditions of the goods is changed or impaired after they have been put on the market.”

**Question 13:**

*Does your system know a "use requirement" and, if so, what constitutes "use" and what are the consequences of non-use (Articles 10-12 TMD)?*

**Answer:**

Article 14

“If, within a period of five years following the registration, trademark has not been put to use without a justifiable reason or if the use has been suspended for an uninterrupted period of five years, the trademark shall be repealed.

The following shall be understood to constitute use:

- a) use of the registered mark in a form differing in elements which do not alter the distinctive character of the trademark,
- b) use of the trademark on goods or their packaging solely for export purposes,
- c) use of the trademark with the consent of the proprietor,
- d) importing of the goods carrying the trademark.”

**Question 14:**

*Are there any consequences if a trade mark proprietor of an earlier right acquiesced the use of a later trade mark (see Article 9 TMD)?*

**Answer:**

There is no direct limitation in consequences of acquiesce for the trademark proprietor of an earlier right in the provisions of the Decree-Law. However there is indirect reference in Article 42 (a) as follows:

“A registered trademark shall be declared invalid by the court in following cases:

- a) where in breach of Article 7, (However, the action regarding well-known trademarks as specified subparagraph (i) of Article 7 has to be instituted within five years from the date of registration. If there is bad faith time limit shall not apply.)

**Question 15:**

*What are grounds for revocation of a mark exist (see Article 12 TMD)?*

**Answer:**

The grounds for revocation are regulated under Article 42 (c), (d), (e) and (f), which are stated below;

“c) where in breach of Article 14, (However, serious use between the date of instituting of the proceedings and the expiry of the 5 year period shall not constitute a reason of invalidity. If use has been made upon realisation that proceedings are to be instituted, in such a case the court shall not take into consideration the use within three months prior of the institution of the proceedings.)

d) where the trademark has become generic in respect of the goods or services by the acts of the proprietor of the trademark,

e) where as result of the use made by the proprietor or by the person authorised by him, there exists a likelihood of confusion on the part of the public as to the nature, quality, place of production and geographical origin in respect of the goods or services it is registered,

f) where used in breach of Article 59 (using of a collective or a guarantee mark which constitutes a violation of the technical regulation).”

**Question 16:**

*Does your system know collective, guarantee or certification marks, and, if so, are there any particular reasons for not registering such marks, for revoking them or for declaring them invalid (see Article 15 TMD)?*

**Answer:**

Turkish Trademarks System provides protection to guarantee and collective marks under Articles 56-59 as follows:

Article 56 - When filing an application for registration of a guarantee or a collective mark, a regulation specifying the ways and means of using the mark must be filed.

The guarantee mark regulation shall contain provisions regarding the common characteristics of the goods and services under guarantee and supervision procedures as to the use of the mark and the penalties to be administered when necessary.

The collective mark regulation shall specify the undertakings authorised to use the mark. Proprietors of a collective mark shall act collectively for the registration of a collective mark.

Application by one of the parties shall be sufficient for the renewal of a collective mark.

Article 57 - Technical regulations cannot be altered unless approved by the Institute.

Any changes to be made in the technical regulations where they are in violation of the second and third paragraphs of Article 56 or contrary to public order or morality shall be rejected by the TPI.

Article 58 - Where a technical regulation does not conform to the requirements of Article 56, Institute shall notify the proprietor of the mark to undertake the necessary alterations. Where the proprietor of the mark does not make the changes requested and alter the regulation accordingly the request for the registration of the collective mark or the guarantee mark shall be rejected.

Article 59 - Where the proprietor of a mark disregards a use of a collective or a guarantee mark which constitutes a violation of the technical regulation, and neglects to remedy the infraction within the time determined by the court in respect of an action brought by one of the parties, the mark shall be repealed by the court.

## ENFORCEMENT, INCLUDING ADMINISTRATIVE/INSTITUTIONAL FRAMEWORK

### **Question 1:**

*Civil and penal sanctions available in relation to infringements of intellectual property law*

### **Answer:**

#### **A) Ministry of Interior/Administrative Fines**

According to Law No 5846 on Intellectual and Artistic Works, Additional Art.10-(Additional: 3.3.2004-5101/26) an administrative fine shall be imposed in the following cases:

- 1) 3.000 YTL (1.898 Euros) on those selling on roads, squares, open air markets, sidewalks, piers, bridges or similar locations legally reproduced copies bearing banderoles protected within the framework of this Law.
- 2) 10.000 YTL (6.329 Euros) for small enterprises, 30.000 YTL (18.987 Euros) for medium sized enterprises, and 100.000 YTL (63.291 Euros) for larger enterprises on those operating without obtaining the certificates that need to be obtained in accordance with Article 44, or reproducing intellectual works and works of art requiring banderoles without obtaining a copy of the obligation form indicated in Article 81.
- 3) 5.000 YTL (3.164 Euros) on those failing, in contrary to the provisions in Additional Article 5, to submit within the designated time period the works that need to be compiled and adapted.

Administrative fines foreseen in this Article shall be imposed by the governors.

#### **B) Ministry of Justice/Civil and Penal Sanctions**

Civil and penal sanctions available in relation to infringements of copyright and related rights are provided in Law No 5846 on Intellectual and Artistic Works dated 1951 (Amended in 1983, 1995, 2001, 2004).

Civil and penal sanctions available in relation to infringements of industrial property rights are provided in the following legislation;

- 1-Decree-Law No.551 on the Protection of Patent Rights
- 2-Decree-Law No.554 on the Protection of Industrial Designs
- 3-Decree-Law No.555 on the Protection of Geographical Indications
- 4-Decree-Law No.556 on the Protection of Trademarks
- 5-The Law on the Protection of Integrated Circuits Topographies
- 6-The Law on the Protection of the Plant Breeder's Rights.

**Civil and penal sanctions envisaged in the above-mentioned legislation will be explained according to the plan below:**

- ❖ **CRIMINAL SANCTIONS IN COPYRIGHT AND RELATED RIGHTS**
- ❖ **CRIMINAL SANCTIONS IN INDUSTRIAL PROPERTY RIGHTS**
- ❖ **CRIMINAL MEASURES (Seizure, Confiscation and Destruction)**
- ❖ **CIVIL SANCTIONS AND REMEDIES IN COPYRIGHT AND RELATED RIGHTS AND INDUSTRIAL PROPERTY RIGHTS;**
  - 1-Actions for infringement
  - 2-Action for damages (in general)
    - A-Action for damages (In the case of infringement of the moral rights)

**B-Action for damages (In the case of infringement of the economic rights)**

**C-Action for damages (In the case of infringement of industrial property rights)**

**3-Action for Determination of Evidences**

**4-Precautionary measures**

**5-Seizure, Confiscation and Destruction**

❖ **CIVIL SANCTIONS AND REMEDIES EXCLUSIVELY FOR INDUSTRIAL PROPERTY RIGHTS**

**1-Action for a Declaration of Invalidity of an industrial property rights**

**2-Claims of Non-infringement**

---

❖ **CRIMINAL SANCTIONS IN COPYRIGHT AND RELATED RIGHTS**

**Law No 5846 on Intellectual and Artistic Works**

I-Infringement of moral rights (Art.71):

In violation of the provisions of law, any person who wilfully

1. communicates to the public or publishes, without the written consent of the author or his successor in title, a work whether or not it has already been made public;

2. places a title on a work or on the reproduced copies of the work without the written consent of the author or his successor in title;

3. alleges that the work of others is his own or that his own works are those of others or who acts contrary to the second paragraph of Article 15;

4. fails to cite the source in the case provided in Articles 32, 33, 34, 35, 36, 37, 39 and 40, or cites the source in a false, Incomplete or misleading way,

5.Makes changes on a work without the written consent of the author.

will be sentenced to imprisonment from two years to four years or judicial fine between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro), or both depending on the severity of the damages.

**II-Infringement of economic rights (Art.72)**

Those who act in contravention of this law by deliberately:

**1-selling or distributing the copies of a work or an adaptation by reproducing them despite an existing agreement with the right-owner, in contrary to the provisions of the said agreement, shall be sentenced to imprisonment from three months to two years or judicial fine between 10.000 YTL (6.250 Euro) and 50.000 YTL (31.250 Euro) or both considering the severity of the damages;**

**2-selling a work or its reproduced copies in the places indicated in the seventh paragraph of Article 81 of this Law without the permission of the rights owner shall be sentenced to imprisonment from 3 months to 2 years or judicial fine between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro) or both considering the severity of the damages;**

**3-and without the permission of the rights owner,**

- a) adapting a work in any manner,
- b) reproducing a work in any manner,
- c) distributing a work in any manner,

- d) importing copies of a work into the country through legal or illegal ways and make them an object of trade in any manner,
- e) displaying or presenting a work publicly, organizing for such a display or disseminating it or assisting in its dissemination by such means as used for the transmission of all kinds of signals, sounds, and/or images including digital transmission,

shall be sentenced to imprisonment from 2 years to 4 years or judicial fine between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro) or both considering the severity of the damages.

### **III-Other offences (Art.73):**

The following provisions shall be applied to crimes other than those indicated in Articles 71, 72, 80, 81 of this Law.

#### **1-Those who deliberately,**

- a) Keep in their possession for commercial purposes copies of a work they know, or ought to know, to have been reproduced in contrary to the provisions of this Law;
- b) Transfer or give or put up for security or make the object of any transaction a economic right or a license they know to be non-existent or inaccessible to them;
- c) Putting into circulation or possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical device which may have been applied to protect a computer programme shall be sentenced to imprisonment from 2 years to 4 years or judicial fine between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro) or both considering the severity of the damages.

2- Those who deliberately reproduce or disseminate reproduced copies, phonograms, and productions of works that have been reproduced and distributed in accordance with the provisions of this Law by way of making and distributing facsimiles along with the differentiating title, trademark and identifying information of the reproduction and distribution right-owners, by means of signs, writing, sound, moving or still images or employing devices or methods used for data reproduction shall be sentenced to imprisonment from 3 years to 6 years or judicial fine between 20.000 YTL (12.500 Euro) and 200.000 YTL (125.000 Euro) or both considering the severity of the damages.

### **IV-Infringement of the related rights (Art.80/last paragraph):**

Those who violate the rights of related right-owners shall be sentenced to,

a) imprisonment from 3 months to 2 years or judicial fine between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro) or both considering the severity of the damages in the case of violations involving the sale of the copies of a performance, phonogram, or production reproduced without permission in the places indicated in the seventh paragraph of Article 81 of this Law;

b) imprisonment from 2 years to 4 years or judicial fine between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro) or both considering the severity of the damages in the event of a violation of the other rights indicated in this Article.

### **V-Offences regarding banderols (Art.81/9):**

Those who, in contrary to the provisions of this article, deliberately:

1- commit the following offences involving non-periodical publications and carrying materials such as cassettes, CDs, DVDs, and VCDs on which the works, performances, and productions requiring banderols as per this Law are fixed shall be sentenced to:

- a) imprisonment from 3 months to 2 years or judicial fine between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro) or both considering the gravity 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 2 years to 4 years or judicial fine between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro) or both considering the gravity of the damages for reproducing and disseminating the said items without having obtained banderoles, or distributing them without charge in infringement of the rights of the author or associated rights owner, or distributing them with or without charge without affixing on them as prescribed in the relevant laws and regulations the banderoles obtained in conformity with this Law and the relevant legislation;

**2-** obtain banderoles by deceiving the Ministry or the organizations authorized by the Ministry with forged papers or documents or in any other manner in the absence of an entitlement to receive banderoles in accordance with this Law and the relevant legislation, or use for other than their intended purpose the banderoles issued for non-periodical publications and carrying materials such as cassettes, CDs, DVDs, and VCDs on which the works, performances, and productions exclusively requiring banderoles as per this Law are fixed shall be sentenced to imprisonment from 2 years to 4 years or judicial fine between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro) or both considering the gravity of the damages;

**3-** manufacture forged banderoles, use them, and/or obtain commercial gain from the forged banderole in any manner shall be sentenced to imprisonment from 3 years to 6 years or judicial fine between 50.000 YTL (31.250 Euro) and 250.000 YTL (156.250 Euro) or both considering the gravity of the damages.

#### **VI-Infringement of the rights management information (Additional Art.4/last paragraph)**

-The removal or alteration of any rights management information without authority.

-The distribution, importation for distribution, broadcasting, communication or making available to the public of original works or their copies, phonograms and performances fixed on the phonograms from which rights management information has been removed or altered without authority: imprisonment from 3 months to 2 years or judicial fine between 5.000 YTL (3.125 Euro) and 50.000 YTL (31.250 Euro) or both considering the severity of the damages.

#### **VII-Infringement of database rights (Additional Art.8/last paragraph)**

-Violating the rights granted per this Article (Add. Art. 8): Imprisonment from 2 years to 4 years or judicial fine between 50.000 YTL (31.250 Euro) and 150.000 YTL (93.750 Euro) or both considering the severity of the damages.

#### **❖ CRIMINAL SANCTIONS IN INDUSTRIAL PROPERTY RIGHTS**

**1- A)** Making false declaration with respect to the right owner, or

**B)** Removing, without authority the sign indicating the existence of an industrial property right rightfully placed on a product or on its packaging; or

**C)** Falsely presenting themselves as the rightholder of an application for an industrial property right or of an industrial property right:

(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)

⇒imprisonment from 1 years to 2 years or judicial fine between 14.000 YTL and 27.000 YTL or both.

(Article 39/1 of the Law on the Protection of Integrated Circuits Topography provides that the imprisonment from 1 years to 2 years and judicial fine between 10.000 YTL and 20.000 YTL for the similar actions.)

**2- A)** Without authority, transferring, entitling, placing of security or performing any other such action for utilising any one of the rights on patent, trademark and design or transferring to some other person the license pertaining to such right.

**B)** Acting as if there is protected industrial property right even if that right does not exist, (affixing signs on a product or on its packaging, or on commercial documents or on advertising material in such a way that would convey the impression as if a relationship exists with under protection, or of using to the same effect writings, signs or expressions in the newspapers, advertisements and commercials without being the rightholder or after the expiry of the term of protection or after the invalidation or after the termination)

⇒ Imprisonment from 2 years to 3 years or judicial fine between 27.000 YTL and 46.000 YTL or both.

(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

(Article 39/2 of the Law on the Protection of Integrated Circuits Topography provides that the imprisonment from 2 years to 3 years and judicial fine between 20.000 YTL and 30.000 YTL).

**3-** Committing any one of the acts consisting of infringement in terms of civil procedure (specified under 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).

⇒ Imprisonment from 2 years to 4 years or judicial fine between 27.000 YTL and 46.000 YTL or both. Furthermore, judgment shall be ruled to close down the premises of their undertaking for a period not to be less than one year and to prevent them from practicing any commercial activity during the same period.

(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

(Article 39/3 of the Law on the Protection of Integrated Circuits Topography provides that the imprisonment from 2 years to 4 years and judicial fine between 20.000 YTL and 30.000 YTL. Furthermore to close down the premises of their undertaking for a period between 1 year and 2 years and to prevent them from practicing any commercial activity during the same period)

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

Article 66 of the Law on the Protection of the Plant Breeder's Rights provides that three type of penalties :

**A)** Those who deliberately commit the acts indicated in the article 56 sub paragraph a, b, e and f shall be sentenced to imprisonment from 13 months to 2 years and judicial fine between 5.000 YTL and 10.000 YTL, furthermore to close down the premises of their undertaking for a period not to be less than one year and to prevent them from practicing any commercial activity during the same period .

**B)** Those who deliberately commit the acts indicated in the article 56 sub paragraph c, d and g shall be sentenced to judicial fine between 5.000 YTL and 10.000 YTL.

**C)** Those who falsely present themselves as the rightholder of an application or of the right shall be sentenced to judicial fine between 5.000 YTL and 10.000 YTL.

#### **❖ CRIMINAL MEASURES**

## **Seizure, Confiscation and Destruction**

Both the Law on Intellectual and Artistic Works and the Decree Laws on industrial property rights refer to the related provisions of Turkish Criminal Code and Code of Criminal Procedure concerning the seizure, confiscation or destruction of the goods and the equipment and machinery used to produce these goods infringing the rights on intellectual and industrial property (-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.).

Article 54 of Turkish Criminal Code provides that the goods used to commit deliberately a crime or allocated to committing a crime or emerged from the result of committing a crime shall be confiscated. The goods of which the production, possession, using, bearing and buying or selling consists of a crime shall also be confiscated.

Articles 256, 257, 258 and 259 of Code of Criminal Procedure provide that the principles of confiscation procedure.

## **❖ CIVIL SANCTIONS AND REMEDIES IN COPYRIGHT AND RELATED RIGHTS AND INDUSTRIAL PROPERTY RIGHTS**

**1-Actions for infringement:** A right owner of an intellectual or industrial property rights whose rights have been infringed may take legal action for the cessation (of occurred infringement) and prevention (of probable infringement) the acts of infringement against the infringer.

(-Law No. 5846 Art.66 (for the cessation of occurred infringement) -69 (prevention of probable infringement)-80/9 (the cessation and prevention of infringement of the related rights),

-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.

- Law on the Protection of Integrated Circuits Topography Art.24.

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

There is special provision regarding the requests of the right owner in the case of action for the cessation (of occurred infringement):

If a work has been translated without the author's consent, has been published outside the scope of the contract or in excess of the number stipulated in the contract, or has been adapted in some other way or broadcast by radio or television or performed, the author may require the payment of compensation of up to three times the damages incurred, based on the current value.

If interest is made of a work by unauthorized reproduction and the reproduced copies have not been put into commercial circulation, the author

-may require destruction of the reproduced copies and of devices such as films, plates and the like used in reproduction, or

-may require the reproduced copies and the devices such as films, plates and the like used in reproduction, to be handed to him in return for suitable remuneration not exceeding their cost price, or

-may require payment of three times the amount he would have demanded if a contract had been concluded. These claims shall not remove the legal liability of the person undertaking the unauthorized reproduction.

If copies of a work reproduced without the consent of the author have been put into commercial circulation or if the nature of the sale constitutes an infringement, the author shall have a choice of the alternatives referred to in the second paragraph with respect to copies in the possession of the infringer.

Any person demanding compensation may claim all the rights and prerogatives he would have enjoyed, had he concluded a contract.

(-Law No: 5846 Art.68)

**2-Action for damages (in general):** Any person whose rights are infringed may sue to take material and moral damages in response to the infringement he/she had been exposed to.

(-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)".  
- The Law on the Protection of Integrated Circuits Topography 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).

**A-Action for damages (In the case of infringement of the moral rights):**

Any person whose rights are infringed may take legal action for compensation of **moral** damages. (There is no need the infringer is at fault) The court may order that punitive damages be awarded instead of or in addition to ordinary damages.

In this case, any person whose rights are infringed may also claim, in addition to damages, that the profits made be surrendered to him. In such case, any sum claimed in accordance with Article 68 shall be deducted from the above amounts.

(-Law No. 5846 Art.70/1-3)

Material damages can also be claimed under the provisions of the Code of Obligations in the case of infringement of moral rights.

**B-Action for damages (In the case of infringement of the economic rights):**

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

In this case, any person whose rights are infringed may also claim, in addition to damages, that the profits made be surrendered to him. In such case, any sum claimed in accordance with Article 68 shall be deducted from the above amounts.

(Law No. 5846 Art.70/2-3)

If a work has been translated without the author's consent, has been published outside the scope of the contract or in excess of the number stipulated in the contract, or has been adapted in some other way or broadcast by radio or television or performed, the author may require the payment of compensation of up to three times the damages incurred, based on the current value. (-Law No. 5846 Art.68)

**C-Action for damages (In the case of infringement of industrial property rights):**

The damage suffered by the proprietor of the industrial property rights includes, not only the value of the effective loss, but also includes the income non-realized because of the infringement of the industrial property rights.

The non-realized income shall be calculated in accordance with one of the following evaluation methods; on the option of the proprietor of the industrial property rights who has suffered damage:

a)According to the income that the proprietor of the patent might have possibly generated if the competition of the infringing party did not exist;

b)According to the income generated by the infringing party from the use of the patent;

c)According to a license fee that would have been paid if the party, infringing the patent right, would have lawfully utilized the patent under a licensing contract.

(-Decree-Law No. 551 Art.140, Decree-Law No. 554 Art.52, Decree-Law No. 556 Art. 66.

- The Law on the Protection of Integrated Circuits Topography Art. 28 (Calculation of the non-realized income).

-The Law on the Protection of the Plant Breeder's Rights Art. 59 (Calculation of the non-realized income).

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

Any person entitled to bring action against the infringement of intellectual and industrial property rights, may sue to determine the acts which may/can 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:**

Persons who are to institute or who have instituted proceedings or whose rights have been infringed or endangered or the person who has authority to claim, may require of the court to order precautionary measures. The request for PM may be filed before or with the institution of proceedings or filed later. The request for PM shall be examined separately from the main action.

#### **Conditions:**

a) PM should be taken to prevent an essential damages or sudden danger or any other reason,

b) the court should convince of a high probability of the claims.

#### **Nature:**

PM shall be in nature to enable securing of the judgement and particularly provide the following:

a) to perform certain acts or to abstain from performing them,

b) to close the district that the act is being done or to open that place,

c) cessation of the acts of infringement of the rights of the plaintiff,

d) injunction to arrest within the borders of Turkey, including the customs, free ports or free trade areas and keep in custody the produced or imported goods which have infringed the rights,

e) to order the placement of security for damages to be compensated.

(-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 to produce these products those having infringed the industrial property right and whose production and use is a felony,

- request for the ownership over the products and means confiscated in accordance with subparagraph three of this present paragraph. In such case, the value of said products shall be deducted from the amount of compensation awarded. (This provision is not valid for geographical indications)

- request for taking necessary measures for the prevention of continuation of the infringement, in particular;

a) modification of the shapes of the products and means (erasing of the trademark from the products and vehicles confiscated according to subparagraph (c)) or

b) if it is essential for the preclusion of the acts of infringement, destruction of the products and vehicles confiscated particularly in accordance with subparagraph (c).

(-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.

- The Law on the Protection of Integrated Circuits Topography Art.26/1-d-f-g.

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

## ❖ **CIVIL SANCTIONS AND REMEDIES EXCLUSIVELY FOR INDUSTRIAL PROPERTY RIGHTS**

### **1-Action for a Declaration of Invalidity of an industrial property rights**

Any person who has suffered, prosecutor or related official authorities may request for invalidity of patent utility model, design and trade mark at the court.

Invalidity of geographical indications and design can be requested by everybody.

(-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.

- The Law on the Protection of Integrated Circuits Topography Art.19-20.

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

### **2-Claims of Non-infringement**

Any person who has got interest may institute proceedings against the holder of the right of design, trademark, patent and geographical indications to obtain a judgement on 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.)

### **Question 2:**

*The allocation of responsibilities among, as well as the powers and resources available to the various public authorities involved in the enforcement of IPRs, including policy-making, law enforcement, technical services, prosecutors, the judiciary (for example if specialised judges, chambers or courts exist), etc.*

### **Answer:**

## **Allocation of Responsibilities in respect of Enforcement**

Regarding enforcement of protection of intellectual property, there are three main public institutions, which are authorized by the Law No 5846. These are;

- Ministry of Interior
- Ministry of Justice
- Undersecretariat for Customs

### **❖ Ministry of Interior**

#### **1- General Directorate of Turkish Police/Gendarmerie**

##### **General Directorate of Turkish Police**

It is the unit responsible for leading and coordinating the units about the tasks relating to intellectual and industrial property rights, making law studies (proposing laws), creating projects, identify strategies and goals, making evaluations and preparing circulars about this issue, determining training needs about the subjects requiring expertise, preparing training plans and programs, implementing and coordinating training activities such as courses, seminars and so on organized both in Turkey and abroad, preparing the statistics about combating with the violation of intellectual and industrial property rights. (*Assessment of Complaint and Denunciation, conduct ex officio operations*) regarding IPR Frauds

##### **General Directorate of Turkish Police - Anti-Smuggling and Organized Crimes Department**

It is the unit responsible for taking actions regarding the related laws when *criminal organizations* violate the intellectual and industrial property rights.

##### **Gendarmerie - Anti-Smuggling and Organized Crimes Department**

It is responsible for fulfilling the procedures (*Assessment of Complaint and Denunciation, conduct ex officio operations*) regarding IPR Frauds.

#### **2 - Governors**

##### **According to Law No 5846, Art. 81:**

Governors might always supervise whether banderole is affixed or not. In addition to this a commission formed by provincial governors at the provinces from the representatives of the Ministries of Interior, Police, Gendarmerie and Municipality Police), Finance and Culture, professional associations of authors and/or right owners affiliated with authors may always supervise whether banderole is affixed or not.

##### **According to Law No 5846, Add. Art. 10:**

In case of infringement, governors are allowed to fine perpetrators who sell banderoled material, legally duplicated and protected under this law, on open places.

#### **3- Police, Gendarmerie and Municipality Police at Provincial Level**

- To conduct ex-officio operations against IPR frauds according to IPR Law and to apply the judicial and administrative procedures. (Art. 81)
- To apply the judicial and administrative procedures upon the complaint by injured parties.

#### **4- Inspection Board**

Inspectors might always inspect the duties of Governors, General Directorate of Turkish Police, General Directorate of Gendarmerie, Police Sections in Provinces and Districts, Gendarmerie Sections of Provinces Police, Municipality Police.

### **❖ Ministry of Justice**

Legislation is not solely enough for effective protection of IPR. It is necessary to be strengthened the administrative and judicial infrastructure in order to apply existing legislation properly and effectively.

Judicial infrastructure consists of the courts, the offices of public prosecutor and the Ministry of Justice.

The role of the Ministry of Justice on the intellectual and industrial property rights (IPR) starts when the protection of these rights through judicial system comes in the agenda in case of the infringement of these rights. The Ministry of Justice is responsible:

- for the establishment of the courts which deal with IPR cases together with Supreme Board for Judges and Prosecutors (Main responsibility belongs to the Supreme Board),
- for providing the courts to operate effectively and
- for training of the judges and public prosecutors and other court staff working in the courts which deal with IPR cases with Justice Academy (Main responsibility belongs to Justice Academy)

Turkish judicial system had been based on two instances court system before the Law on Establishment of the Appeal Courts enacted on September 26, 2004, No. 5235. This Law entered into force on 1st of June 2005. The Appeal Courts are going to be set up by 1<sup>st</sup> of June 2007 and then the judicial system will have been three instances including;

- First instance courts,
- Appeal Courts, and
- Supreme Court.

### **THE COURT OF CASSATION**

The Court of Cassation examines the decisions taken by the first instance courts both material and procedural point of view.

There are twenty-one civil divisions and eleven criminal divisions in the Court of Cassation. Each division of the Court of Cassation has got approximately 5 members and 15 rapporteur judges.

- **Eleventh Civil Division** examines the appealed decisions on IPR **civil** cases.
- **Seventh Criminal Division** examines the appealed decisions on IPR **criminal** cases.

### **THE COURTS OF APPEAL**

The Courts of Appeal are the second instance courts. According to Provisional Article 2 of the Law on Establishment of the Appeal Courts, the Appeal Courts shall be established by 1<sup>st</sup> of June 2007.

The Courts of Appeal shall examine the applications against the judgements and decisions, which were taken by the first instance courts and are not final.

Each Courts of Appeal shall consist of at least three civil and two criminal divisions. The Board of the Presidents of each Court of Appeal will determine which civil and criminal divisions should deal with the IPR cases.

### **SPECIALIZED IPR COURTS**

There are specialised courts at the level of first instance like juvenile courts, family courts, IPR courts etc. in Turkey.

IPR Courts were established firstly in 2001 in İstanbul. The number of IPR Courts was increased in 2003 and 2004. There are currently 8 IPR Courts in İstanbul, İzmir and Ankara. Five of them are IPR Criminal Courts, three of them are IPR Civil Courts.



Seven judges who had been trained on IPR within the framework of the joint Project of The Ministry of Justice and the EU Commission were appointed to these courts by the Decision of the Supreme Board for Judges and Prosecutors in October 2003 and July 2004.

General civil courts and general criminal courts are competent to deal with IPR cases where specialised IPR courts have not been established yet, according to the Decision of the Supreme Board for Judges and Prosecutors numbered 188, dated 24 March 2005.

(If there is one or two general civil or criminal courts, **the first one** has got the competence to deal with IPR cases. If there are more than three general civil or criminal courts, **the third one** has got the competence to deal with IPR cases.)

## **PUBLIC PROSECUTORS**

In big cities like İstanbul, Izmir and Ankara, there is division of labour between prosecutors. More than one bureau, which is responsible for different topics like offences committed through the press, offences committed by government officers etc., carries out the preparatory investigation. Some of prosecutors are just responsible for carrying out the preparatory investigation in these bureaus. Some of them just participate in trial in general criminal courts, felony courts and specialised criminal courts including IPR Criminal Courts.

Other towns and cities, there is not this kind of specialisation in the public prosecutor offices.

### **❖ Undersecretariat For Customs**

Undersecretariat for Customs executes service under the Prime Ministry in connection with the Deputy Prime Minister. As headquarter and Regional Customs Administrations, Customs Undersecretary is composed of two parts. There are 18 Regional Customs and Enforcement Directorate all around Turkey and 141 customs offices connected to these Regional Directorates with approximately 8000 customs officers.

Undersecretariat for Customs has the sole responsibility to apply the border enforcement measures in Turkey and act as the supreme body over the Regional Customs Directorates and customs offices. On the contrary of the Customs Undersecretary's advisory position, customs offices have a processor position on this subject. Customs offices have the rights to decide to suspend or implement the suspension decision to the customs procedures of the counterfeit trademark or pirated copyright goods. All of the customs offices have the right in question pursuant to Article 57 of Customs Law No. 4458.

Customs offices' responsibilities, which are not limited with above-mentioned procedures, are;

- to evaluate and accept or reject the application made by rightholders for the protection of their rights in the customs,
- to suspend all the customs procedures or detained the goods where there is a suspicious about an infringement and notify the person concerned thereof,
- to release the goods in case of an absence of a court case within 10 days.
- to seize the goods if a court case is filed and to finalize customs procedures in accordance with the court decision
- to destroy or release the goods according to the court decision,
- to act ex-officio in case of an absence of an application and suspend all the customs procedures or detained the goods where there is a suspicious about an infringement
- to notify the rightholder to enable him to submit a valid written application in 3 days
- to release the goods if a written application is not submitted

and conduct other formalities pursuant to the Article 57 of the Customs Law No. 4458 and Articles 105-111 of the Implementing Provisions of the Customs Law.

Undersecretariat Headquarters' role on the fight against counterfeiting can be divided into two main part: The first part is legislation and the second part is training. Undersecretariat follow the international and EU legislation and make the relevant changes to provide harmonization on necessary areas and to solve the problems faced during the implementation of the legislations.

Undersecretariat also organizes training seminars for the customs officers about the IPR on issues like implementing the legislation applicable and differentiating counterfeit and original goods in order to abstain from problems that may arise from the enforcement of the legislation and to avoid implementational differences. On this aspect Headquarter organizes in service training twice a year for the customs officers in the field about the implementation of the legislation, to make customs officers participate in the seminar supported by the rightholder to increase the ability of the officers on differentiating the fake and original goods and to make presentation to the economic operators to increase their awareness about the border measures implementation about IPR in the customs. Undersecretariat also hosted and willing to host seminars with TAIEX to make EU customs officers share their experience with the Turkish customs officers especially on the targeting subject.

On the other hand as the advisory position of the Headquarter, the disputes arising from the implementation of the related regulations settled by the Headquarter.

**Question 3:**

*The organisation, staffing and workload of your industrial property office and, if different, the authority responsible for copyright matters (such as the supervision of collecting societies)*

**Answer:**

**1. The Ministry of Culture and Tourism**

**Responsibilities and Duties**

Policy making and legislation responsibility in terms of copyrights and related rights has been given to the Ministry of Culture and Tourism. The legal base of this responsibility comes from the Law 4848, which is about duties and responsibilities of the Ministry. Hence, the Ministry of Culture and Tourism is responsible for making necessary policies related to Intellectual and Artistic Works. The most important duty of the Ministry in strengthening intellectual property rights is to support all related sectors as a legal regulator.

The responsible unit within structure of the Ministry of Culture and Tourism in the field of copyrights and related rights is the General Directorate of Copyright and Cinema. Duties of the General Directorate of Copyright and Cinema, as described in the Law 4848, are;

- Executing the tasks and duties taking place in the Law on Intellectual and Artistic Works (Law 5846),
- Providing supervision of the collecting societies from administrative and financial point of view.
- Regulating the relations between the Ministry and rightholders and collecting societies.
- Executing, controlling and auditing of the studies on registration of the intellectual and artistic Works.
- Making cooperation with international organizations and carrying out necessary studies in the field of copyright.

The duties of the Ministry of Culture and Tourism in terms of enforcement stated in the Law 5846 as;

- Determination of all fees pertaining to all recording and registration procedures. (Art 13)
- Permitting the establishment and supervision of Collecting Societies. (Art 42/B)
- In addition to the persons whose rights are infringed, the Ministry is also authorized to file complaints.(Art. 75)
- The use of holograms for the exercise of rights and combating piracy. (Art. 81)
- Formation of a database for the purpose of ensuring the enforcement and protection of intellectual property rights and utilization in supervisions and prosecutions. Additional Art. 9 (Additional: 3.3.2004-5101/26)

There is a Deputy General Directorate under General Directorate of Copyright and Cinema and it is responsible for the Copyright Department in the field of copyright. The main duties of this department are as follows;

1. Legislation studies
2. Combating piracy
3. Procedures related to collecting societies
4. Preparing database
5. Relations with international organizations

The Copyright Department is under the Deputy General Directorate and has 4 units related to copyright;

- Research, Development and Legislation Unit
- Monitoring and Supervision of Intellectual Rights Unit
- Registration and Record Unit
- Collecting Societies and Sectoral Supporting Unit
- İstanbul Provincial Directorate of Copyright and Cinema

İstanbul Provincial Directorate of Copyright and Cinema is also under this Deputy General Directorate.

### **Supervision of the Collecting Societies**

Collecting Societies are subject to administrative and financial supervision of the Ministry. While the Ministry itself can at any time supervise whether the collecting societies are fulfilling their duties and obligations arranged by this law, it may also request the collecting societies to have accredited audit firm undertake the said supervision. A copy of the audit report is to be submitted to the Ministry (Law 5846 Art. 42).

### **Staff in the Existing Institutional Structure**

The General Directorate of Copyright and Cinema has 37 staff in total for the enforcement of the intellectual property system. Among these, there are 8 administrators, 13 experts and 26 officers.

## **2. Turkish Patent Institute**

The Turkish Patent Institute (TPI) is the competent authority for the registration of industrial property rights. The organisational structure of the TPI is defined in the “Law For The Establishment and The Functions of The Turkish Patent Institute” (Law No. 5000). According to Article 4 of the said Law the Institute composed of the following organs and administrative units:

### **Organs and Administrative Units**

Article 4 - Institute shall be composed of the following organs and administrative units:

- a) Managing Board,
- b) Advisory Board,
- c) Presidency,
- d) Re-examination and Evaluation Board,
- e) Main Administrative Units,
- f) Auxiliary Service Units,
- g) Consultancy Unit.

### **Management Board**

Article 5 - Management Board is the highest management and decision-making organ of the Institute.

President of the Institute shall act as the Chairman of the Management Board.

### **Advisory Board**

Article 7 - Advisory Board as the consultative unit of the Institute shall be composed of:

One member each from the Ministries of Justice, Defence, Foreign Affairs, Finance, National Education, Health, Agriculture and Rural Affairs, Transportation, Environment and Forestry, Industry and Trade, and Culture and Tourism; one member each from the Undersecretariats for the State Planning Organisation, Treasury, Foreign Trade, and Customs, one member from the Turkish Scientific and Technical Research Institute, five members from the Universities to be appointed by the High Education Council, one member each from the Turkish Atomic Energy Institute, the National Productivity Centre, the Small and Medium Industry Development Organization, the Union of Chambers of Commerce, Industry, Maritime and Trade,

the Turkish Veterinary Medical Association, the Turkish Pharmacists Association, the Union of Chambers of Architects and Engineers. One member each from the Confederations of the Labour Unions and the Employers Unions selected from confederations with the highest number of members.

#### **Presidency**

Article 9 - President is the highest executive officer and represents the Institute. Presidency is composed of the President and the two Vice-presidents.

#### **Main Administrative Units**

Article 11 - The main administrative units of the Institute are:

- a) Patents Department,
- b) Trademarks Department,
- c) Industrial Designs Department,
- d) International Affairs Department.

#### **Auxiliary Service Unit**

Article 16 - The Auxiliary Service Units of the Institute are:

- a) Personnel Department,
- b) Administration and Finance Department,
- c) Information, Documentation and Electronic Data Processing Department.

#### **Consultative Unit**

Article 20 - Consultative Unit of the Institute is:

- a) Legal Advisory Department.

#### **Staffing and Workload of the TPI**

The TPI employs 208 staff except for the Management and the Advisory Boards, which are composed of representatives from different Ministries and organizations. The number of staff consists of 36 managers, 58 patent and trademark examiners and 114 support personnel. In addition, the TPI employs 180 support staff from contractor firms.

In 2005, the TPI processed 221.617 incoming and 297.467 outgoing documents with total of 519.084 excluding internal communication documents. The number of applications for each industrial property right emphasizes the workload of the TPI, which was 59.112 applications for trademarks, 3.477 applications for patents, 5.334 applications for industrial designs and 31 applications for geographical indications in 2005. Because of multiple-application, the number of designs applied for registration, which was 28.050 in 2005, is much higher than the number of applications.

#### **Question 4:**

*The procedures and institutions to promote co-ordination among all the relevant public authorities, including at both policy-making (e.g. inter-ministerial working group, national anti-piracy commission, etc.) and working-level (including sharing of operational information between different public authorities*

#### **Answer:**

##### **1. Ministry of Justice**

The Ministry of Justice makes cooperation with other Ministries, institutions and organizations to provide effective enforcement of IPR besides its own studies.

The most important example for this cooperation is workings on the establishment of a computer network between the Specialized IPR Courts, the Ministry of Justice, Turkish Patent Institute, Customs Administration and Documentation Center for IPR at Ankara University Law Faculty within the framework of the EU and the Ministry of Justice's Project called "Effective Enforcement

of IPR<sup>1</sup>. The hardware of the computer network has been provided and the software of the network has been prepared within the framework of the Project. Connection between the related institutes, the Ministries, the courts and the Documentation Centre will be completed after the completion of the network systems of all related institutions and the ministries.

Training programmes organized in cooperation with other ministries and institutions are the other examples for the coordination procedures. The Ministry of Justice organizes training programmes especially in cooperation with the Police, the Customs Administration and the Universities. It also makes contribution to the training activities organized by the police, the Customs Administration, Turkish Patent Institute and the Universities.

The Ministry of Justice also makes contributions to the studies made by various institutions and at the level of government in IPR area.

## **2. Ministry of Culture and Tourism**

### **Inter-ministerial Anti-piracy Commission**

In order to promote the coordination among relevant public authorities, an Inter-ministerial Anti-piracy Commission was established under the name of "Fight against Piracy Commission" in December 2005. The purpose of the Commission is to discuss about the legal and administrative regulations and pursuit of the enforcement. This commission consists of the representatives of the Ministry of Culture and Tourism, the Ministry of National Education, the Ministry of Justice, the Ministry of Interior, the Ministry of Finance and Collecting Societies which are:

- *Turkey's Collecting Society of Authors of Musical Works (MESAM),*
- *The Collecting Society of Performers of Musical Works (MÜYORBİR),*
- *The Collecting Society of the Group of Authors of Musical Works (MSG),*
- *The Collecting Society of Related Rightholders Phonogram Producers (MÜ-YAP),*
- *The Collecting Society of Authors of Literary and Intellectual Works (EDİSAM),*
- *Turkey's Collecting Society of Authors of Intellectual and Literary Works (İLESAM).*

### **Provincial Anti-piracy Commissions**

Law No 5101 making amendments to the Intellectual and Artistic Works Law No 5846 granted authority to the security forces and the municipality police in combating piracy. The security forces and the municipal police can carry out enforcement action ex officio when deemed necessary. During the supervisions, they confiscate the copies and publications pressed and published unlawfully, without authorization and also all the instruments used for pressing them, and the other proof, and they submit them to the public prosecutor's office with a crime report.

---

<sup>1</sup> This Project has been co-financed by the EU Commission and the Ministry of Justice. The Project has got five components:

- Training of the 8 judges and prosecutors for ten months in the European Union Institutions specialised on IPR.
  - Setting up 7 specialised courts for the disputes concerning IPR.
  - Setting up an IPR Documentation Centre in the IPR Research Institute under the umbrella of the University of Ankara, Faculty of Law.
  - Establishment of a computer network between the specialised IPR courts, the Documentation Centre, the Ministry of Justice, Turkish Patent Institute and the Customs Administration.
  - Organizing an international symposium on IPR in Turkey.
- All components of the Project were completed on 6-7 May 2004 with the International symposium held in Istanbul.

Eight judges and public prosecutors were trained in different IPR relevant institutions in six EU Countries between September 2002 and June 2003 within the framework of this Project.

One civil and two criminal IPR courts in addition to the existing one civil and one criminal IPR court were established in Istanbul on September 2003 and on September 2004.

One civil and one criminal IPR court were established in Ankara, one criminal IPR court was established in Izmir on September 2003. Six of the judges who have been trained within the framework of the Project have been working at these IPR courts since 2003. One of them has been working in the General Directorate for the EU Affairs of the Ministry of Justice. One of them has been working in the 11<sup>th</sup> Civil Division of the Supreme Court.

An IPR Documentation Centre in the IPR Research Institute under the umbrella of the University of Ankara, Faculty of Law has been established.

Apart from the security forces and the municipal police, the anti-piracy commissions have been established within 81 Provincial Administrations, which also have the authority for supervision. In this context these commissions work as mentioned below;

- When deemed necessary, the local administrative authorities may form an “anti-piracy commission” in provinces either on their own initiative or upon the Ministry’s directive.
- When required, representatives of the Ministry and representatives of the collecting societies in the relevant field can also take part in these commissions.
- Anti-piracy commissions, in all provinces in which they are active, are supported by the Ministry by means of providing the technical equipments, office rents etc.
- For the purpose of sharing the operational information, anti-piracy commissions work in cooperation with Security General Directorate and activate the security forces by denouncing the in violation of the Law 5846. In this regard in combating piracy, the Ministry of Culture and Tourism, the Directorates of Culture and Tourism in Provinces and the Ministry of Interior work in coordination.

### **3. Ministry of Interior**

**Inspection Committee:** (IPR LAW NO. 5846 Art.81) when deemed necessary, the local administrative authorities may form an “Inspection Committee” in provinces either on their own initiative or upon the Ministry’s directive. When required, representatives of the Ministry and the representatives of the professional union in the relevant field can also take part in these committees.

#### **Trainings**

- On 31 November 2004 a training protocol was signed between Ministry of Interior and Ministry of Culture and Tourism in order to instruct police on IPR regulations and enforcement.
- Regarding to this protocol; Training Seminar on the fight against Intellectual Property Right Frauds organized in co-operation with Ministry of Culture and Tourism held in Antalya from 2-4 March 2005 by the participation of all 81 state security divisions’ police chiefs who are responsible of fighting against IPR infringements.
- Training Seminar on the fight against Intellectual Property Right Frauds organized in co-operation with Ministry of Justice.
- In addition to these Police participates trainings and seminars held by other competent bodies. Such as Ministry of Justice, Undersecretariat for Customs, Ministry of Culture and Tourism and Patent Institute.

### **4. Undersecretariat for Customs**

Undersecretariat for Customs organizes in service training seminars twice a year for the customs officers in the Staff Training Department of our Undersecretary and invite the experts from other public authorities to make them present their subject about IPR and its protection. Within this framework, Specialists from the Ministry of Justice, Ministry of Culture and Tourism (Copyrights) and Turkish Patent Institute (trademarks and patents) participate in these seminars. This kind of gathering create a coordination among the officers from different public authorities and to have them know each other and in case of a problem provide them to share information unofficially which is very fast and efficient.

And also with the aim of informing the operators in customs and the rightholders about their right in customs and customs legislation on IPR our experts participated on the seminars conducted by the other government offices and organizations.

### **5. Turkish Patent Institute (TPI)**

Functions of the TPI are defined by the “Law For The Establishment and The Functions of The Turkish Patent Institute” (Law No. 5000). One of the functions of the TPI is “to undertake co-operation with national and international organisations which are pursuing technology and

research & development activities, and create documentation centres and supply information to the public” (Article 3-h). Another function is defined as “to undertake necessary studies and action to inform the public on the developments in industrial property matters” (Article 3-j).

In the light of the Law, The TPI closely cooperates with universities, with chambers of industry and trade, with governmental institutions, such as the Small and Medium Industry Development Organization (KOSGEB) and the Scientific and Technological Research Council Of Turkey (TUBİTAK), and with non-governmental organizations, in order to create synergy in the IPR awareness activities. Various training programs are organized in this context. SME experts of KOSGEB, R-D project managers of TUBİTAK, and representatives of other related bodies are participated these activities. In addition, training activities for judges are organized in cooperation with Ministry of Justice.

Besides, 25 Information bureaus are opened throughout the country in cooperation with universities, chambers of commerce and industry.

### **Advisory Board of the Turkish Patent Institute:**

In the “Law For The Establishment and The Functions of The Turkish Patent Institute” (Law No. 5000 Article-7) defines the Advisory Board of the Turkish Patent Institute as:

#### **“Advisory Board**

Article 7 - Advisory Board as the consultative unit of the Institute shall be composed of:

One member each from the Ministries of Justice, Defence, Foreign Affairs, Finance, National Education, Health, Agriculture and Rural Affairs, Transportation, Environment and Forestry, Industry and Trade, and Culture and Tourism; one member each from the Undersecretariats for the State Planning Organisation, Treasury, Foreign Trade, and Customs, one member from the Turkish Scientific and Technical Research Institute, five members from the Universities to be appointed by the High Education Council, one member each from the Turkish Atomic Energy Institute, the National Productivity Centre, the Small and Medium Industry Development Organization, the Union of Chambers of Commerce, Industry, Maritime and Trade, the Turkish Veterinary Medical Association, the Turkish Pharmacists Association, the Union of Chambers of Architects and Engineers. One member each from the Confederations of the Labour Unions and the Employers Unions selected from confederations with the highest number of members.

The Managing Board may call experts to attend the meetings where required.

The duration of the terms of the members of the Advisory Board shall be two years. Members may be re-elected upon termination of their term.

The procedures of work of the Advisory Board shall be defined by an Implementing Regulation to be issued by the Ministry.

The Advisory Board shall convene at least once a year. The meeting shall be chaired by the Ministry of Industry and Trade or by the person appointed by him.

#### **The Functions of the Advisory Board**

Article 8 - The Advisory Board, to assist the Institute in performing its activities, shall provide advice and observations on the effective means of protecting industrial property rights, creating a competitive environment and promoting technological development of Turkey within the perspectives of the development plans and the annual programs, on the Institute's principles of operation, on the Institute's activity reports and financial reports.”

## **6. Coordination Committee for the Improvement of Investment Climate (YOİKK)**

Council of Ministers, accepted a decree on “The Reform Program for Improving the Investment Climate in Turkey” (December 2001). According to the reform program, “Coordination Committee for the Improvement of Investment Climate” (YOİKK) commenced its studies on March 2002.

YOİKK has a joint structure, both from government agencies and from the private sector, and chaired by the Minister of State (in charge of Economy, and Treasury).

The structure of YOİKK is unique. It is the only joint platform, to advise and propose legal changes to government for preventing administrative barriers, where public sector and private sector meet together. Within YOİKK, there are 10 Technical Committees on the key reform areas. Technical committee-VII (TC-VII) is on the Intellectual Property Rights.

President of the Turkish Patent Institute and the Deputy Undersecretary of Ministry of Culture and Tourism are co-chairmen of the TC-VII meetings. Representatives of Related governmental and private sector bodies and NGOs participate the meetings of TC-VII.



## 7. The Committee for Coordination with World Trade Organization (DTÖKK)

The DTÖKK was established by Communiqué 2002/39 of the Prime Ministry. According to the Communiqué;

DTÖKK is chaired by the Minister of State (in charge of Foreign Trade) or in his absence, by the Undersecretary of Foreign Trade. The members of DTÖKK are the representatives of Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Public Works and Settlement, Ministry of Health, Ministry of Agricultural and Rural Affairs, Ministry of Industry and Trade, Ministry of Culture and Tourism, Ministry of Environment and Forestry, Undersecretariat for State Planning Organization, Undersecretariat for Treasury, The Turkish Patent Institute.

The function of the DTÖKK is “to achieve coordination among public agencies and to set out Turkey’s position on issues under negotiation in WTO”. One of the issues is Intellectual Property Rights.

## 8. State Planning Organization (SPO)

The State Planning Organization is responsible for the preparation of Development Plans and its implementation through Annual Programmes in the field of intellectual property rights. For this purpose, an Ad-Hoc Committee is established in every five years period. All relevant public institutions, non-governmental organizations, researchers and private sector representatives are invited to work for the determination of the future intellectual property policies for the next five years plan period.

## 9. Research Center for Intellectual and Industrial Property Rights (FISAUM)

FISAUM was established in 1997 within the Ankara University with the following objectives:

- To promote and apply research projects
- To contribute and support researchers and projects
- To organise conferences, symposiums and seminars at national and international level
- To arrange expertise training programmes
- To provide consulting services for public and private sector
- To publish academic reports, bulletins, books, periodicals etc.

### **Question 5:**

*An assessment of the main challenges your country faces in order to improve enforcement, including a description of the main types of infringements, main economic sectors affected, and the characteristics of the illicit trade in your country (the relative importance of domestic production vs. importation/transit, wholesale vs. retail channels, etc.)*

### **Answer:**

#### **1. Ministry of Justice**

The main challenge of the Ministry of Justice is training of the judges and public prosecutors who deal with IPR cases in the general civil and general criminal courts where specialized IPR Courts do not exist. These judges and prosecutors are target people for the training programme in IPRs. The Ministry of Justice gives a great importance to training of judges and public prosecutors on IPR and organizes regularly training activities by itself or in cooperation with other institutions and ministries.

#### **2. Ministry of Interior**

To improve the awareness and enforcement capacity of police officers on IPRs.

### 3. Undersecretariat for Customs

The main challenges faced in the customs are the lack of experience of the customs officers and the lack of awareness of the rightholders or the customs operators.

### 4. Ministry of Culture and Tourism

To improve utilisation of IT technologies, develop existing expertise and continue raising public awareness.

### 5. Turkish Patent Institute

Further promotion of innovation and creativity for the development of Turkish economy by supporting a widespread and effective IPR system. In this context, particular importance will be attributed to:

- Awareness raising and dissemination of information
- Consolidation of industrial property culture in the society overall and in the stakeholders

#### **Question 6:**

*Detailed statistics concerning activities designed to combat piracy and counterfeiting, including law enforcement actions (raids, seizures, cases reported to prosecutors/courts, etc.), indictments and prosecutions, as well as convictions (distinguishing between civil and criminal cases).*

#### **Answer:**

#### **1. Ministry of Interior**

##### **01/01/2000 – 31/12/2000**

Books	:	98.587
CD/VCDs	:	104.515
Video Cassettes	:	3.588
Magnetic Cassettes	:	41.608
TOTAL MATERIALS	:	248.298

##### **01/01/2001 – 31/12/2001**

Books	:	62.566
CD/VCDs	:	620.216
Video Cassettes	:	6.680
Magnetic Cassettes	:	29.059
TOTAL MATERIALS	:	718.521

##### **01/01/2002 – 31/12/2002**

Books	:	100.931
CD/VCDs	:	510.430
Video Cassettes	:	5.436
Magnetic Cassettes	:	50.606
TOTAL MATERIALS	:	667.403

##### **01/01/2003 – 31/12/2003**

Books	:	81.370
CD/VCDs	:	1.227.577
Video Cassette	:	3.553
Magnetic Cassettes	:	71.736
TOTAL MATERIALS	:	1.384.236

**01/01/2004 – 31/12/2004**

Number of operations in all over the Country	:	3.164
Number of accused people	:	4.178
Non-Banderolled CD/VCDs	:	2.149.225
Non-Banderolled DVDs	:	59.569
Non-Banderolled Books	:	279.685
Non-Banderolled Video cassettes	:	675
Non-Banderolled Magnetic Cassettes	:	59.972
Pornographic Publication	:	51.831
Banderolled CD/VCDs	:	4.649
Banderolled DVDs	:	0
Banderolled Books	:	3.783
Banderolled Magnetic Cassettes	:	3.623
TOTAL MATERIALS	:	2.613.012
***Sticker	:	4.000.000

**01/01/2005 – 31/12/2005**

Number of operations in all over the Country	:	3.823
Number of accused people	:	4.020
Non-Banderolled CD/VCDs	:	3.057.212
Non-Banderolled DVDs	:	317.599

Non-Banderolled Books	:	230.626
Non-Banderolled Video cassettes	:	128
Non-Banderolled Magnetic Cassettes	:	50.294
Pornographic Publication	:	57.739
Banderolled CD/VCDs	:	659
Banderolled DVDs	:	419
Banderolled Books	:	1.480
Banderolled Magnetic Cassettes	:	3.489
TOTAL MATERIALS	:	3.719.645
***Sticker	:	4.500.000

**01/01/2006 – 17/02/2006**

Number of operations in all over the Country	:	692
Number of accused people	:	745
Non-Banderolled CD/VCDs	:	502.669
Non-Banderolled DVDs	:	60.619
Non-Banderolled Books	:	25.853
Non-Banderolled Video cassettes	:	428
Non-Banderolled Magnetic Cassettes	:	2.564
Pornographic Publication	:	9.523
Banderolled CD/VCDs	:	112
Banderolled DVDs	:	0
Banderolled Books	:	942
Banderolled Magnetic Cassettes	:	178
TOTAL MATERIALS	:	602.888
***Sticker	:	500.000

**Statistics On Industrial Rights Operations****01/01/2000 – 17/02/2006**

Number of Operations	2.783
Number of Suspects	3.819

## **2. Undersecretariat for Customs**

From early 2000 to 2005, 633 procedures in total were fulfilled by our Customs Offices concerning goods under suspicion of infringing the intellectual property rights. 5 of them took place in 2000, 22 in 2001, 55 in 2002, 85 in 2003, 189 in 2004 and 277 in 2005.

Detailed statistics are available in the presentation regarding enforcement.

## **3. Ministry of Justice**

Statistics concerning

1- the files prosecuted by the public prosecutors and the results of them between the years 2000 and 2006 (until February) in İstanbul, Ankara and İzmir.

2- the cases and their results between the years 2001 and 2006 (until February) in İstanbul, Ankara and İzmir

are available in the presentation regarding enforcement.

(Ankara, İstanbul and İzmir are the cities where IPR cases are the most intensive. Statistics includes the figures belonging to the towns depending on these cities in judiciary point of view).