
SUBJECT MATTER AND OWNERSHIP IN COPYRIGHT



CONCEPT

- Copyright Law (Telif Hakları)
- Related Rights (Bağlantılı Haklar)



LEGISLATION (MEVZUAT)

- **National Legislation**
 - Law on Intellectual and Artistic Works (1952)
- **International Legislation**
 - Bern Convention (1886/1979)
 - TRIPS (1994)
 - WIPO Copyright Treaty (1996)
 - WIPO Performances and Phonograms Treaty (1996)
 - EU Directives



SUBJECT MATTER

FSEK art. 1-12



DEFINITION OF WORK (ESER) (art.1/B)

Any intellectual or artistic product bearing the characteristic of its author, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work.



Conditions for Protection

an intellectual creation to be deemed a work if it;

- enters one of the categories listed in the law (objective condition)

and

- bears the characteristics of its author (subjective condition) gerekir.
- Registration is not a prerequisite for protection



TYPES OF WORKS

- **Literary and Scientific Works (İlim ve Edebiyat Eserleri)**
- **Musical Works (Musiki Eserleri)**
- **Works of Fine Arts (Güzel Sanat Eserleri)**
- **Cinematographic Works (Sinema Eserleri)**
- **Derivative Works and Collections (İşlenme ve Derlemeler)**



Literary and Scientific Works (art.2)

- Works that are expressed by language and writing in any form,
- Computer programs expressed in any form together with their preparatory designs, provided that the same leads to a computer program at the next stage.
- All kinds of dances, written choreographic works, pantomime and similar theatrical works without dialogue;
- All kinds of technical and scientific photographic works, all kinds of maps, plans, projects, sketches, drawings, geographical or topographical models and similar works,
- All kinds of architectural and urban designs and projects, architectural models, industrial, environmental and theatrical designs and projects, lacking in aesthetic quality.

Musical Works (art.3)

All types of musical compositions, with or without lyrics

Works of Fine Arts (art.4)

- Oil paintings or water colors, all types of drawings, patterns, pastels, engravings, artistic scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar
- Sculptures, reliefs and carvings;
- Architectural works;
- Handicraft and minor works of art, miniatures and works of ornamentation, textiles, fashion designs;
- Photographic works and slides;
- Graphic works;
- Cartoons
- All kinds of personifications

The use of sketches, drawings, models, designs and similar works as industrial designs does not affect their status as intellectual and artistic works.

Cinematographic Works (art.5)

Regardless of the material in which they are fixed, can be shown by the use of electronic or mechanical or similar devices;

- Films of an artistic, scientific, educational or technical nature
- films recording daily events
- movies, that consist of a series of related moving images with or without sound

Derivative Works (İşlenme) (art.6)

Intellectual and artistic product bearing the characteristic of the adaptor, which is created by benefiting from another work but which is not independent of such work



Types of Derivative Works

- Translations;
- Converting a work like novel, story, poem or play, from said types to another type;
- Converting musical works, literary and scientific works or works of fine arts into films, or converting them into a form which is suitable for filming or for broadcasting by radio and television;
- Musical arrangements and compositions;
- Transforming works of fine arts from one form to another;
- Annotating, commenting or abridging the work of another person;
- Adaptation, editing or any modification of a computer program



Collections (art.6)

Works such as encyclopedias and anthologies whose content consists of selection and arrangements, which are the results of intellectual creativity, provided that the rights on the original work are reserved



Monkey selfie:
Artistic work?





Artistic work?



Originality (Sahibinin Hususiyeti)

The work must be;

- author's own intellectual creation
- original (not copied)
- Originality is not concerned with whether the work is inventive, novel or unique
- To be original the author must have exercised the requisite intellectual qualities in producing the work = is there an input from the author?bv



Idea/Expression Dichotomy

- Copyright protects the expression of the idea not the idea itself!!!
 - The abstract intention to create a work is not protected
 - The ideas underlying the work is not protected



Functional elements are not protected

- Copyright protects the originality of the expression, thus functional elements are not protected

Examples:

- A new painting method
- Functional elements in computer programs
- TV program formats
- The idea of using relief letters and prints in postcards and childrens books
- The idea of using magnet letters of different colours and forms



Authorship (Eser sahipliği)

- The author is the person who creates the work
- There is no need for registration in order to acquire the copyright
- The name appears on the work shall be presumed to be the author
- The author of a derivative work or collection is the person who has made the work, provided that the rights of the original author are reserved.
- In the case of cinematographic works, the director, the composer of original music, the scriptwriter and the dialogue writer are joint authors of the work. For cinematographic works which are produced with the technique of animation, the animator is also among the joint authors of the work.
- Employee who creates the work is the author. But the rights are used by the employer



Joint authorship

Multiple authors for different parts:

- If a work created jointly by more than one person can be divided into parts, each person shall be deemed the owner of the part he created
- Unless otherwise agreed, each of the persons who have jointly created the work may request the other persons' participation in the modification or publication of the whole work. If the other party refuses to participate without good reason, permission may be granted by the court. The same provision shall apply to the exercise of economic rights.

Joint authors of indivisible whole:

- If a work created by the participation of more than one person constitutes an indivisible whole, the author of the work is the union of the persons who created it.
- The provisions on ordinary partnership shall apply to such union. If one of the authors refuses without good reason to permit a joint transaction, then such permission may be granted by the court. Each of the authors may act individually if the interests of the union are violated.
- Technical services or assistance pertaining to detail rendered for the creation of a work shall not be deemed a basis for participation.

Rights granted by Copyright

Moral Rights – Economic Rights

FSEK art.13-27



- Moral rights can only be exercised by the author and they cannot be transferred
- The right to exploit a work belongs exclusively to the author (with the Exceptions governed by the law.
- The rights in works created by civil servants, employees and workers during the execution of their duties shall be exercised by the persons who employ or appoint them; provided that the contrary may not be deduced from a special contract between such persons or from the nature of the work.
- The producer or publisher of a work may exercise the economic rights only in accordance with a contract to be concluded with the author.
- Economic rights are independent of one another. The disposal and exercise of one does not affect the other.

Moral Rights

- **Authority to Disclose the Work to the Public (m.14)**
 - The author shall exclusively determine whether or not his work shall be disclosed to the public and the time and manner of its publishing
 - Only the author may give information on the contents of a work
- **The Authority to Designate the Name (m.15)**
 - The author shall have the exclusive authority to decide whether the work shall be disclosed to the public or published with or without the name of the author or under a pseudonym.
- **Prohibition of Modification of Work (m.16)**
 - No abbreviations, additions or other modifications may be made to a work or to the name of its author without his consent
 - The modifications that are deemed indispensable due to the technique of adaptation, reproduction, performance or publication may be made without special permission by the author.
- **Rights of the Author against Persons Who Own or Possess a Work (m.17)**
 - The author may demand the owner or possessor of the original to temporarily avail him of the original of works of fine arts
 - The owner of the original of a work may dispose of it according to the terms of the contract he has concluded with the author. However, he may not damage or destroy the work or prejudice the rights of the author

- **Right of Reproduction (Çoğaltma hakkı) (m.22)**
 - The right to reproduce the original or copies of a work in any form or by any method, in whole or in part, directly or indirectly, temporarily or permanently
 - The making of a second copy of the original of the work
 - The recording of the work on all types of devices now known or to be developed in the future enabling the transmission or repetition of signs, sounds and images, all kinds of sound and music recordings
 - The application of plans, projects and sketches of architectural works
 - The acts of loading, displaying, running, transmitting and storing a computer program to the extent that such acts require the temporary reproduction of the computer program.
- **Right of Distribution (Yayma hakkı) (m.23)**
 - The right to rent, lend, put up for sale or distribute in any other way, the original or copies of a work
 - the resale of specific copies following their first sale or distribution within the country by way of transfer of ownership as a result of the exercise of the distribution right by the rightholder shall not infringe the right of distribution granted to the author. (National exhaustion)
 - First sale of copies does not prejudice the right to rent or lend
- **Right of Adaptation (İşleme hakkı) (m.21)**
 - The right to make derivative works
 - The author of an adaptation may exercise the economic rights granted to him in such capacity, to the extent permitted by the author of the original work
- **Right of Performance (Temsil hakkı) (m.24)**
 - reciting, playing, acting or displaying work on public premises either directly or by means of devices enabling the transmission of signs, sounds or images
- **Right to Communicate a Work to Public by Devices Enabling the Transmission of Signs, Sounds and/or Images (Umuma iletim hakkı) (m.25)**
 - The right to communicate the original of a work or its copies to public by way of broadcasting by organizations that broadcast by wire or wireless means such as radio and television, satellite or cable, or by devices enabling the transmission of signs, sounds and/or images including digital transmission, or by way of re-broadcasting by other broadcasting organisations that obtain the work from such broadcasts
 - The right to permit or prohibit the sale or other distribution or supply of the work or its reproduced copies to the public by wire or wireless devices and the communication of the work to the public by providing access to it at a time and place chosen by natural persons.

Duration of Copyright

- Economic rights
 - Life + 70 years
 - Falls into public domain after the expiration of the term
 - Terms of protection granted for the original of a work and its adaptations are independent of each other
 - The term of protection shall not begin to run until the work is made public
 - If there is more than one author, this period shall end upon the expiry of 70 years after the death of the last remaining author
- Moral rights
 - Debatable



Exploitation of the rights

- The rights are used by the author.
 - Upon death;
 - Economic rights are used by the heirs.
- Third persons need to have licence agreements in order to use the economic rights.



**EXCEPTIONS TO
COPYRIGHT
FSEK art.30-40**

Exceptions

- Exceptions limit the rights of the author
- The Exceptions are introduced to seek a balance the conflicting interests between the rights of the author and the interest of the society in benefiting and making use of the work
- The scope of the exceptions have to be interpreted in compliance with the interest of both sides, The interpretation shouldn't render the rights of the author redundant
- Exceptions limits the rights of the author either completely or partially
- Exceptions are defenses against lawsuits by the rightholder

The List of Exceptions

- Due to Public Order
 - Use and reproduction of work as evidence (art.30)
- Due to Public Interest
 - Legislation and Court decisions (art.31)
 - Speeches (art.32)
 - Freedom to perform in educational institutions (art.33)
 - Selected and Collected Works for Educational and Instructional Purposes (art.34)
 - Freedom of Quotation (art.35)
 - Contents of newspapers (art.36)
 - News (art.37)
 - Exceptions targeting disabled (Additional art.11)
- Due to the Interest of Individuals
 - Personal use (art.38)
 - Reproduction and Exhibition (art .40)

Use and reproduction of work as evidence (art.30)

- The rights granted to authors shall not prevent a work from being used as evidence in court or before other authorities or from being the subject matter of police or criminal proceedings.
- Photographs may be reproduced and distributed by official authorities without the author's consent

Legislation and Court decisions (art.31)

- The reproduction, distribution, adaptation or exploitation in any other form of laws, by-laws, regulations, notifications, circulars and court decisions that have been officially published or announced is permitted

Speeches (art.32)

- The reproduction, public recitation or broadcasting by radio and distribution by any other means, of speeches and addresses made in the Grand National Assembly and at other official assemblies and congresses, in courts of law or at public meetings, is permitted for the purpose of giving news and information.
- The right to reproduce or distribute speeches and addresses for purposes other than giving news and information belongs to the author

Freedom to perform in educational institutions (art.33)

- Published works may be freely performed in all educational institutions for the purpose of face-to-face education and without directly or indirectly aiming for profit, provided that the name of the author and the work is announced in the customary manner

Selected and Collected Works for Educational and Instructional Purposes (art.34)

- It is free to create selected or collected works, which are dedicated to educational purposes, by way of making quotations in an amount justified by the purpose, from published musical, literary and scientific works and works of fine arts that are made public.
- This freedom may not be used in a way which would prejudice the legitimate interests of the author without good reason or which would conflict with the normal exploitation of the work.
- The permission of the author is necessary for making selected or collected works for purposes other than education, by way of quotations of published musical, literary and scientific works and works of fine arts that are made public
- In all such cases, the name of the work and the author shall be cited in the customary manner.

Quotation Exception (İktibas Serbestisi) (art.35)

Quotations of a work are permitted in the following cases:

- Quoting a few sentences or passages of a work made public, in an independent literary or scientific work;
- Incorporating certain elements of a published composition, at the most such as themes, patterns, passages or ideas, into an independent musical work;
- Reproducing works of fine arts that have been made public and other published works, in a scientific work for the purpose of explaining its content and to the extent justified by such purpose;
- Displaying works of fine arts that have been made public by projection or similar means in order to explain a subject at scientific conferences or lectures.

The quotation must be made in a manifest way. In scientific works, it shall be necessary to mention not only the name of the work and the author but also the passage from which the quoted part has been taken.

Amount of quotation must be justified by the purpose.

Contents of newspapers (art.36)

- Articles or features on social, political or economic issues of the day published in newspapers or journals may be freely quoted in other newspapers or journals and may be broadcast by radio or disseminated by any other means, except where the right to quote them has been expressly reserved.
- Even where the right to quote is reserved, it is permitted to abridge such articles and features as a press review
- In all cases, mention must be made of the name, the issue and the date of the newspaper, of the journal, of the agency and the name of the author of the articles.

News (art.37)

- It is permitted to record parts of an intellectual or artistic work on devices enabling the transmission of signs, sounds and/or images in relation to current events, provided that this has the nature of news and does not exceed the limits of giving information.

Personal use (art.38)


- It is permitted to reproduce all intellectual and artistic works for personal use without pursuing profit
- However, such reproduction may not prejudice the legitimate interests of rightholders without good reason or conflict with the normal exploitation of the work.

Reproduction and Exhibition (art.40)

- Works of fine arts permanently placed on public streets, avenues or squares may be reproduced by drawings, graphics, photographs and the like, distributed, shown by projection in public premises or broadcast by radio or similar means.
- For architectural works, this freedom is only valid for the exterior form.
- Works of fine arts may be publicly exhibited by their owners or by others with their consent, unless the author has expressly prohibited such exhibition

CONTRACTS ON COPYRIGHTS FSEK art.48-58



-
- The author or his heirs may transfer or license to others the economic rights granted them by law, unrestricted or restricted as regards duration, place or scope, with or without consideration
 - Moral rights cannot be transferred
 - Contracts and disposals concerning economic rights shall be in writing and the rights constituting their subject matter shall be specified individually.
 - Transfer or licensing of rights which relate to a work which has not yet been created or shall be completed in future is null and void.
 - Unless otherwise agreed, transfer of an economic right or the grant of a license shall not extend to translation or other adaptation of a work
- 

LICENSE AGREEMENTS

- A license is non-exclusive, if it does not prohibit the holder of economic rights to grant the same license to others, and is exclusive, if it is granted only to one person
- Unless the contrary may be deduced from law or contract, all licenses shall be deemed to be non-exclusive



Copyright Protection of Software

- **Computer program:** A set of computer instructions arranged in a way that will make a computer system carry out a special process or task and the preparatory work that will lead to the creation and development of such set of instructions
- The right of reproduction also covers the acts of loading, displaying, running, transmitting and storing a computer program to the extent that such acts require the temporary reproduction of the computer program.
- Article 38 sets out rules regarding the personal use exception of software and limits the possibility of reverse engineering.

Copyright Protection on Internet


Warn-remove:

- Natural or legal persons whose copyright have been violated shall initially contact with the content provider and request that the violation be ceased within three days.
- Should the violation continue, a request shall next be made to the public prosecutor requiring that the service being provided to the content provider persisting in the violation be suspended within three days by the relevant service provider.
- The service being provided to the content provider shall be restored, if the violation is ceased.
- Service providers shall submit a list of the names of their content providers to the Ministry on the first working day of every month. Service providers and content providers are obliged to submit all kinds of information and documents when requested by the Ministry.

COPYRIGHT COLLECTION SOCIETIES

FSEK art.41-43



-
- Authors and related rights holders may set up more than one collecting societies in order to protect the mutual interests of their members, the management and pursuit of the rights granted by this Law and the collection and distribution of fees to the right holders.
 - Public premises where the entrance may or may not be subject to a fee, shall conclude a contract with rightholders or collecting societies to which the rightholders are members, in order to obtain permission for the use and/or communication of works, performances, phonograms, productions and broadcasts and make the payments for the economic rights stated in such contracts
 - The societies have the right to determine tariffs regarding the rights they manage
- 

RELATED RIGHTS

FSEK art.80/82



Related Rights Holders

- Performers (İcracı Sanatçılar)
- Phonogram Producers (Fonogram Yapımcıları)
- Radio-TV Organizations (Radyo-TV Yayınları)
- Film Producers (Film Yapımcıları)

They are not authors, but still the law grants the related right holders some rights similar to the authors' rights such as right to reproduce, right to distribute etc.

They are given these rights because they have put efforts and made investments to avail the works to the public.

