

ALAI QUESTIONNAIRES 2017- TURKEY

1-) The Traditional Justifications for Copyright And Related Rights

As it is known, Works are protected due to being products that bear the characteristic of its owner. In other words carry the sufficient level of individuality. Whereas related rights are protected to basically invest in art and culture. Even if this fact is not mentioned explicitly in the text of law of our Country, it is actually traceable in such a way that; in Copyright Law, it is recorded that the owners of the related rights shall not conflict with the author or shall not perform harmful acts against. (The Law No 5846 on Intellectual and Artistic Works art.1).

In our literature this distinction is especially highlighted and the reasons of protection are clearly stated on consensus.

Both the intellectual properties in the form of “Works” and “the investments and executions” in the cultural sector are protected by the Copyright Law. Within this context, producers, publishers / broadcasters and performers who contribute to the dissemination of the work itself within the community are also protected by the mentioned law. The entrepreneurs who organize a performance are also cited among the owners of the related rights. (The Law No 5846 on Intellectual and Artistic Works Art.80/A, b. 7) In light of these explanations, as it is understood, the rights of the owner of the works and the owner of the related rights are different from each other in terms of qualification.

Legal Framework

The longstanding and deep-rooted history of Turkey in the field of copyright should be remembered when describing the existing system in the country. Legislative efforts that date back to 1850, when the Regulation establishing the Ottoman Academy of Sciences was enacted, have been continuing with a steadily increasing momentum since the foundation of the Republic of Turkey. The modernization process of the copyright system in Turkey has further gained momentum following the Customs Union established as per the Decision No 1/95 by the EC-Turkey Association Council and EU accession negotiations. The legislation on copyright in Turkey has been amended several times due to various reasons, such as harmonizing with the international conventions and EU Acquits, catching up with technological advances, rendering the collective management system effective and combating piracy; and finally the current copyright system has been developed in the light of international developments and national requirements.

Currently Applicable Legislation

The Law No 5846 on Intellectual and Artistic Works (Turkish Copyright Law) is the basic law that covers the legal arrangements regarding copyright in Turkey. The Law No 5846 primarily contains provisions on the economic and moral rights of work owners and holders of related rights (performing artists, phonogram producers, movie producers and radio and television entities), on their respective products as well as on the procedures and principles for the exercise of such rights, including legal remedies and sanctions in connection therewith. In addition to this law, 2 Cabinet Decrees, 2 by-laws, 10 regulations and 1 statute are presently applicable to the functioning of the copyright system.

The current Copyright Law consists of the following chapters: Chapter 1, Intellectual and Artistic Works; Chapter 2, Author; Chapter 3, Intellectual Rights; Chapter 4, Contracts and Disposals; Chapter 5, Civil And Criminal Actions; Chapter 6, Miscellaneous Provisions (Related Rights etc.)

Work

The Turkish Copyright Law defines ‘work’ as ‘any intellectual or artistic product demonstrating the characteristic of its author, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work.’ (Art. 1/B (a) of Law no 5846).

Works can include: (Articles 2-5 of Law no 5846)

- Literary and scientific works (such as maps, technical photographs, drawings, plans, computer programs, choreographies);
- Musical works (all type of musical compositions with or without lyrics);

- Works of fine arts (such as paintings, sculptures, architectural works, cartoons, handicrafts, photographs);
- Cinematographic works (series of related moving images with or without sound).

It should be mentioned that copyright protection also extends to adaptations and collections such as translations, conversions of works into another type (for example a book adapted into a film), commentaries, collections of several works of a specific author, databases. (Article 6 of Law no 5846) Author (owner) of Work (Articles 8-10 of Law No 5846)

The general rule of copyright is that the author (owner) of a work is the person who has created it. The author of an adaptation or collection is the person who has made the adaptation, 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. 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 she/he created. 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.

Rights Granted To Right Holders

Economic rights:

The authority to exercise economic rights belongs exclusively to the author. These rights include: right of adaptation (Art. 21); right of reproduction (Art.22); right of distribution including the right to rent, lend, put up for sale or distribute in any other way (Art. 23); right of performance (Art. 24); right to communicate to.

Related Rights:

In Turkey, the protection of related rights has been provided since 7 June 1995. The Turkish Copyright Law protects the related rights of performers, phonogram producers, radio and television organizations and producers of the first fixation of films. The owners of related rights may also exercise the rights of filing cases of elimination of violation, prevention of violation and indemnification as well as the authors. (Art. 80 of Law No: 5846).

2-) Economic aspects of copyright and related rights

Study on the Economic Contribution of Copyright Industries in Turkey

Since 2003, WIPO has been carrying out a series of surveys entitled *National Studies on the Economic Contribution of Copyright Industries* and studies have been completed so far in more than 40 countries. This study was initiated in cooperation with WIPO in March 2013 and was carried out on the basis of three year data encompassing the period between 2009 and 2011; it was concluded in March 2014.

This study follows the methodological guidelines of WIPO's *Guide on Surveying the Economic Contribution of Copyright Industries (2003)*. This guide groups the copyright industries under four categories based on the industry's level of dependence on copyrighted work. These groups are:

- (a) Core Copyright Industries
- (b) Interdependent Copyright Industries
- (c) Partial Copyright Industries
- (d) Non-dedicated Support Industries

Executive Summary of The Study

Public authorities and researchers in Turkey have also been interested in the size of the copyright industries in Turkey and the contribution of these industries to the Turkish economy. As a result, the Turkish Ministry of Culture and Tourism expressed to the World Intellectual Property Organization (WIPO) its desire to carry out a study to measure the economic contribution of copyright industries in Turkey. Having received WIPO's consent, this study was initiated and was carried out under its auspices. The objectives of the study can be expressed as follows:

- To analyze the national policy and legal and institutional framework of copyright in Turkey;
- To measure the economic size of the copyright industries in terms of turnover, value added, employment, and foreign trade (import and export);
- To assess the contribution of copyright industries to GDP, employment, and foreign trade;
- To compare the economic size and contribution of copyright industries with those of other sectors within the national economy;
- To compare the economic size and contribution of Turkey's copyright industries with those of other selected countries;
- To identify trends in the economic indicators (turnover, value added, employment, foreign trade) of copyright industries;
- To analyze recent developments in selected copyright industries;
- To formulate recommendations to improve the economic contribution of copyright industries based on the analyses; and
- To identify statistical difficulties encountered during the study and recommend remedies.

This study follows the methodological guidelines set out in WIPO's *Guide on Surveying the Economic Contribution of Copyright Industries (2003)*. A project team comprised of experts from different entities (the Ministry of Culture and Tourism, the Ministry of Development, the Ministry of the Economy of the Republic of Turkey, TURKSTAT specialists and academicians), all specialized in their respective disciplines, was set up in order to ensure that this study was performed accurately and to an appropriate standard, and the study was carried out by this project team.

First of all, national policies and the legal and institutional framework relating to copyright in Turkey were analyzed. Next, statistical analyses were carried out following the methodological approach explained in WIPO's *Guide on Surveying the Economic Contribution of Copyright Industries (2003)*. This methodological approach has been accepted as an international standard and has been followed in all the studies commissioned by WIPO. It was necessary to identify the copyright industries in order to gather statistical data. The WIPO guide defines an industry as 'a cluster of activities which can be identified and are statistically measurable' and classifies copyright industries into four groups based on the industry's level of dependence on copyrighted work. We also followed the same classification in this study. These groups and the industries they covered are explained as follows:

- **Core Copyright Industries:** All the activities of these industries are related to the creation of copyright products (writing, composing, programming, etc.), and the production (printing, filming, etc.), screening, staging, performance, broadcasting, distribution, wholesaling and retailing of such subject-matter. These industries have the highest level of dependence on copyright. Industries in this group are: press and literature; music, theatrical productions, operas; motion picture and video; radio and television; photography; software and databases; visual and graphical arts; advertising services; and copyright collective management societies.

- **Interdependent Copyright Industries:** The activities of these industries are related to the production and sale of equipment for creating, producing or making use of copyrighted work. Examples of these industries are: the manufacture, wholesale and retail of TV sets, radios, VCRs, CD players, DVD players, cassette players, computers and equipment, musical instruments, etc.

- **Partial Copyright Industries:** A portion of the activities of these industries is related to the creation, production and sale of copyrighted work. Examples of these industries are: apparel, textiles, footwear, jewelry and coins, furniture, etc.

- **Non-Dedicated Support Industries:** A portion of the activities of these industries is related to the transportation, distribution and sale of copyrighted work. These industries are: general wholesale and retailing; general transportation; the internet.

After the copyright industries had been classified into the four major groups, specific types of data required under these classifications were identified and it was decided to collect data relating to the turnover, value added, employment, exports, and imports of the above-mentioned copyright industries. After deciding on the types of data to be collected, research was conducted as to the specific sources and methods to use for compiling such data. As a result of this research, it was found out that TURKSTAT has been collecting statistics relating to turnover, value added and employment since 2009,

in harmony with the economic activity classifications presented in the Statistical Classification of Economic Activities in the European Community (NACE Rev.2). After determining the NACE Rev.2 activity classification codes that applied to the copyright industries, data on the turnover, value added and employment were compiled from the TURKSTAT database. It was found that some activity codes covered several copyright industries, or also covered some industries that were not based on copyright. Additional data was obtained from the Ministry of Finance, while experts' opinions were sought in order to disaggregate these mixed codes. The data relating to foreign trade (exports and imports) was compiled using two methods. The foreign trade data in connection with goods was mainly compiled from the TURKSTAT database and if not available on the database was obtained from the relevant professional organizations. Data regarding various payments and collections made to and received from foreign countries in connection with copyrighted works (copyright, TV program broadcasting rights, TV program formats, digital music proceeds, cinematographic movie screening rights, etc.) was obtained from the relevant professional organizations as well as leading companies in the respective industries. Finally, the copyright factors regarding the partial copyright industries were determined on the basis of the comments obtained from the Sectoral Assemblies of the Union of Chambers and Commodity Exchanges of Turkey and from other experts.

The results of the analyses may be summarized as follows:

The combined copyright industries posted a turnover of 197,235,775,754 TL at current prices in 2011. Of this turnover, 30.13%, 22.62%, 36.91% and 10.34% were accounted for by the core copyright industries, interdependent copyright industries, partial copyright industries and nondedicated support industries, respectively.

The highest turnover among the core copyright industries was posted by press and literature (31.32%). This was followed by software and databases (18.53%), and radio and television (16.15%).

The highest turnover among the interdependent copyright industries was posted by computers and equipment (42.82%). This was followed by TV sets, radio, VCR, CD players, etc. (27.80%) and paper (23.30%).

The highest turnover among the partial copyright industries was posted by apparel, textiles and footwear (73.11%). This was followed by furniture (20.51%), and architecture, engineering and surveying (2.73%).

The combined copyright industries generated value added of 35,463,814,234 TL at current prices in 2011. This value added accounted for 2.73% of Turkey's GDP, which was 1,297,713,210,117 TL at current prices in 2011. Of the value added, 45.52%, 14.28%, 32.97% and 7.23% were generated by the core copyright industries, interdependent copyright industries, partial copyright industries and non-dedicated support industries, respectively.

Although the highest turnover among the copyright industries was posted by the partial copyright industries (36.91%), the highest value added was generated by core copyright industries (45.52%). This situation indicates that the core copyright industries have high value added and make a significant contribution to the economy thanks to this aspect.

The highest value added among the core copyright industries was generated by radio and television (31.36%). This was followed by press and literature (25.39%) and software and databases (21.68%).

The highest value added among the interdependent copyright industries was generated by computers and equipment (32.25%). This was followed by TV sets, radio, VCR, CD Players, etc. (30.81%) and paper (28.43%).

The highest value added among the partial copyright industries was generated by apparel, textiles and footwear (70.19%). This was followed by furniture (21.50%) and architecture, engineering and surveying (5.59%).

The combined copyright industries employed 1,301,527 persons in 2011. This employment accounted for 5.40% of Turkey's total employment in 2011, which was 24,110,000 persons. Out of the employment total, 32.44%, 13.25%, 46.96% and 7.35% were generated by the core copyright industries,

interdependent copyright industries, partial copyright industries, and other non-dedicated support industries, respectively.

The highest employment among the core copyright industries was generated by press and literature (35.71%). This was followed by advertising services (19.84%) and software and databases (16.84%)

The highest employment among the interdependent copyright industries was generated by computers and equipment (30.39%). This was followed by paper (29.43%) and TV sets, radio, VCR, CD players, etc. (28.76%).

The highest employment among the partial copyright industries was generated by apparel, textiles and footwear (67.19%). This was followed by furniture (26.51%), and architecture, engineering and surveying (4.33%).

The combined copyright industries achieved exports of 9,272,261,947 US\$ in 2011. This represented 6.87% of Turkey's total exports in 2011, which amounted to 134,906,869,000 US\$. The shares of Turkey's total exports in 2011 contributed held by the core copyright industries, interdependent copyright industries, and partial copyright industries in Turkey's exports in 2011 were 0.29 %, 3.13 % and 3.46 %, respectively. Imports of all the copyright industries combined (excluding software and databases) totaled 9,231,967,406 US\$ in 2011. This sum represented 3.83% of Turkey's total imports in 2011, which amounted to 240,841,676,000 US\$.

Exports of the copyright industries were greater than their imports in 2011. However, *imports did not include software and databases*, because no reliable data could be obtained in connection with software and databases imports. Representatives of the software industry noted that imports of software and databases were very high. This fact must be taken into account when interpreting the foreign trade data. Turkey has a negative trade balance (imports are higher than exports) in all the core copyright industries.

The shares of the core copyright industries (excluding software and databases), interdependent copyright industries, and partial copyright industries in Turkey's imports in 2011 were 0.12%, 3.08% and 0.64%, respectively.

A comparison between the value added generated by the copyright industries and that generated by other industries in Turkey indicates that the contribution made by the copyright industries to GDP in 2011 was greater than the contribution made by the industries of healthcare and social services; hotels and restaurants; electricity, gas, steam and air conditioning generation and distribution. It was very close to the contribution made by financial services and the education sector.

A comparison between the employment created by the copyright industries and the employment created by other industries in Turkey indicates that the copyright industries created more jobs in 2011 than many major industries such as education, health care, financial services, hotels and restaurants, transportation and storage, and communications. The contribution made by the copyright Industries to employment was almost at the same level as the contribution made by public administration and defense. This is an indication that the copyright industries create a significant amount of employment. However, it is worth re-emphasizing that the highest contribution to employment was made by the partial copyright industries, which also covered the apparel, textile and footwear, and furniture industries. These industries are labor-intensive. An analysis of the contribution made by the value added of the copyright industries to Turkey's GDP shows that this contribution is not at a desired level. In particular, the contribution of core copyright industries is low. The structure of the Turkish economy, the expenditure pattern of households, and the interest of the population in the works of core copyright industries are the causes of this low level of contribution of core copyright industries to the economy.

Although Turkey has legal and institutional frameworks concerning copyright which are in line with World standards, piracy is still a problem. Digital piracy, especially, is a major problem for the music industry. This situation also affects the economic size of the core copyright industries.

Core copyright sectors have not been fully industrialized in the same way as other mature industries. This fact also has an impact on the economic size of these industries.

We can say that there is great growth potential in the software and databases, motion picture and video, and radio and television sectors. Growth in the radio and television sector also positively affects the advertisement sector.

Public awareness should be increased and legal procedures should be sped up in order to fight against piracy.

Education from an early age is necessary in order to increase the interest of the population in cultural and literary works.

Core copyright industries should be accepted as distinct industries, like other manufacturing and service industries, and special incentives should be designed to support their growth.

As for the statistical difficulties, TURKSTAT has initiated a study on how it can better compile cultural statistics, including foreign trade data concerning payments and collections related to copyright. This study will be finalized soon.

Economic Size of Copyright Industries (2011) The table below shows the economic size of copyright industries in 2011. The economic size was represented in the form of turnover, value added and the share of value added in GDP as well as employment and its share in total employment figures.

Table 3-4: Economic Sizes of Copyright Industries (2011 – At Current Prices)

Copyright Industry	Turnover (TL)	Value Added (TL)	Share in GDP (%)	Employment	Share in Total Employment (%)
Core	59,419,312,540	16,144,108,400	1.24	422,229	1.75
Interdependent	44,621,151,032	5,065,810,051	0.39	172,491	0.72
Partial	72,791,767,554	11,691,522,839	0.90	611,174	2.53
Non-dedicated support	20,403,544,629	2,562,374,944	0.20	95,632	0.40
All copyright Industries	197,235,775,754	35,463,816,234	2.73	1,301,527	5.40
Turkish Economy		1,297,713,210,117	100	24,110,000	100

As shown in Table 3.4 above, in 2011 all copyright industries contributed to GDP and employment, by 2.73% and 5.40%, respectively. Core copyright industries made the most substantial contribution (1.24%) to GDP. Partial copyright industries made the largest contribution to employment (2.53%); the most important reason for this is the fact that the textiles and apparel and furniture industries are under the partial copyright industries and both are labor-intensive industries. Especially, the textile and apparel industry enjoys a very important position within the Turkish economy. The copyright factor of the furniture industry is relatively higher, which reveals that Turkey is capable of making original furniture designs.

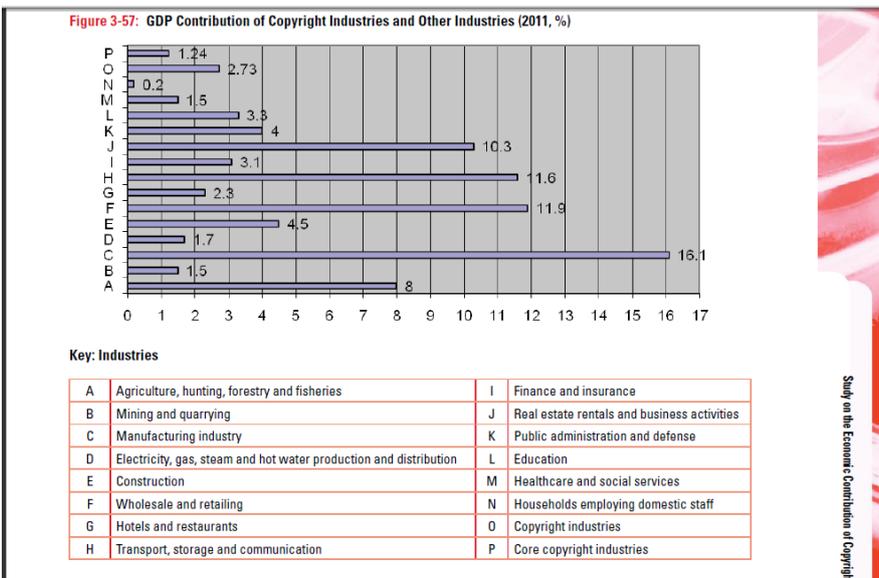
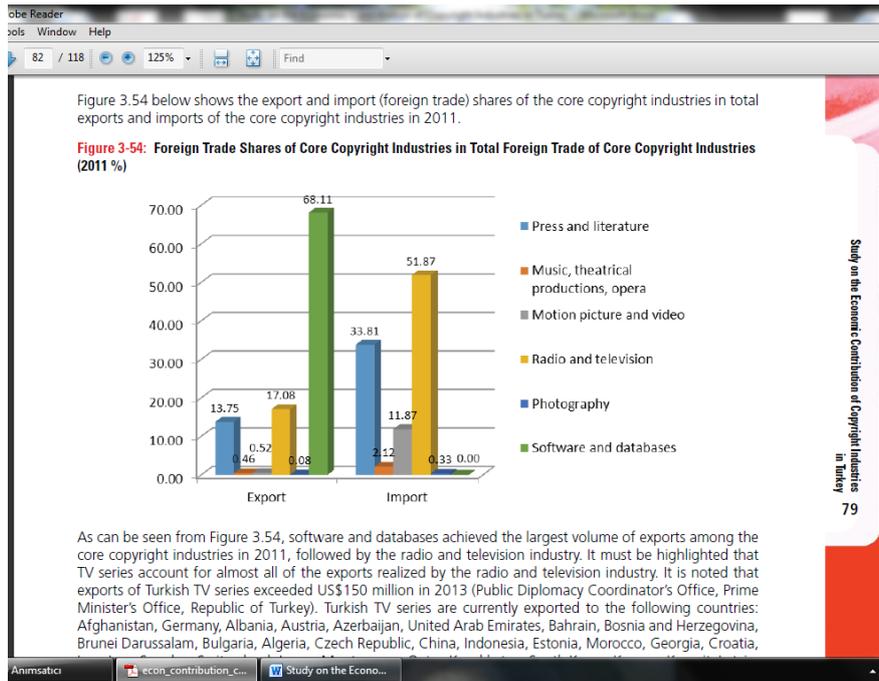
3.5.1 The Turnover Posted by Core Copyright Industries (2011)

The core copyright industries posted a total turnover of 59,419,312,540 TL in 2011. This figure amounted to 30.13% of 197,235,775,754 TL, which was the total turnover posted by all copyright industries in 2011. Table 3.9 below shows the turnover of the core copyright industries in 2011:

Table 3-9: Turnover of Core Copyright Industries (2011)

Core Copyright Industries	Turnover (TL)
Press and literature	18,612,114,634
Music, theatrical productions and operas	2,137,600,031
Motion picture and video	1,212,613,088
Radio and television	9,598,567,422
Photography	462,899,967
Software and databases	11,012,426,480
Visual and graphical arts	460,402,237
Advertising services	15,922,688,681

Figure 3.15 below indicates the individual shares of turnover achieved by the core copyright industries in 2011, within the total turnover of core copyright industries:



Overall Assessment

This study was performed to assess the economic contribution of the copyright industries in Turkey. It was concluded that the value added share of the copyright industries in GDP was not adequate: in particular, there is a clear need to improve the economic contribution of the core copyright industries in Turkey. Based on this conclusion, the weights of the products produced, especially by the core copyright industries and interdependent copyright industries in household consumption, were analyzed. According to the latest survey carried out by TURKSTAT, the weight of the products produced by the industries involved in total household consumption is approximately 1.53%. TV sets, computers and peripheral equipment industries account for the biggest portion of this weight. This once again underlines Turkey's hardware-dominant structure. The rate of the products produced by the core copyright industries in household consumption is approximately 0.69%. Literature holds the biggest weight among these industries (0.29%), followed by newspapers (0.10%) and motion pictures (0.06%). Consumption of music and theatrical productions is very low. However, the use of cable TV services must be noted: the weight of cable TV subscriptions in household consumption is 0.20%. Considering that households also receive TV broadcasts through other means (dish antennas, etc.) apart from cable TV, TV programs stand out as the most important item among the core copyright products consumed by households. The fact that the products produced by the core copyright industries have a low weight in household

consumption reveals a problem on the demand side. The majority of households in Turkey do not consume these products (excluding TV programs). Figure 4.1 below shows entertainment and media expenditures *per capita* in 2010, using PwC data.

3-) Individual and collective licensing as a means of improving the functioning and acceptance of copyright and related rights

Collective Management

Copyright Collective Management Societies are set up by work owners, related right holders and publishers of scientific and literary works in order to manage and enforce their rights recognized by law and to collect remuneration from these rights and distribute it to the right holders. In our country, collective management societies gain legal entity status upon submission of the documents stipulated in the legislation to the Ministry of Culture and Tourism, and they may start operating upon authorization issued by the Ministry. Several collective management societies can be opened in the same field and societies operating in the same field can be organized into a federation.

All collective management societies are subject to administrative and financial audits by the Ministry of Culture and Tourism. The 'By-Law on Collective Management Societies and Federations of Intellectual and Artistic Work Owners and Related Right Holders' is applicable to the establishment of collective management societies and their federations as well as their duties and authorities.

Collective management societies may be set up in the following areas pursuant to the abovementioned bylaw:

1. As regards the work owners:

- (a) Owners of scientific and literary works;
- (b) Owners of musical works;
- (c) Owners of fine arts;
- (d) Owners of cinematographic works;
- (e) Owners of adaptations and collections.

2. As regards the related rights holders

- (a) Performers;
- (b) Phonogram ss;
- (c) Radio and television entities;
- (d) Producers of first fixation of films;

3. Publishers reproducing and distributing non-periodical publications

At present, there are a total of 27 collective management societies, of which 13 represent work owners, 11 represent related right holders and three are in the area of broadcasting, and there is one federation representing the scientific and literary work publishers in the country.

Music Sektor

Collective right management is only applied to Music industry in Turkey. There is no licensing practice in other sectors such as Science, literature, film, fine arts. As to the collective management system in music industry, the actualized licensing is only 1/10 of the amount it should be.

Let us further state that there are 27 Collective Societies 6 of which is in music industry and one publisher's federation in Turkey. There are 4 collective societies who actively involved in licensing (MESAM, MSG, MÜYAP & MÜYOBİR). The other 2 Collective Societies (MUZİKBİR & MÜYABİR) have very limited licensing activity. As to the Collective Societies in sectors other than music, it is quite right to say that they basically act as an association rather than a Collective Society.

"Directorate general for copyright" is working on a new draft Copyright Law which brings substantial amendments in order to change / terminate this situation in Turkey. Within this frame it is expected that the collective societies will be strengthened and will have an income. In this way, it is aimed to have a more effective licensing in the music industry and licensing in other sectors will start practicing as well.

It is important to note that, since there is no licensing in scientific and literary Works field, reprography is also not licensing in Turkey.

One final note; levy's in Turkey are collecting by the Ministry of Culture but not being delivered to the right owners. With the new legislative regulation this practice is also expected to be changed.

Which Models, Limitations and Exceptions are there in your Country?

Turkish copyright law dated 1907 was inspired from the former German Copyright Act. In addition to this Turkey is a member of almost all of the agreements in this field such as Bern, Roma, WCT, WPPT, and TRIPS. Moreover, during the EU accession process, Turkey also neatly transposed EU legal acquis. Due to the reasons explained above, personal use exception, all of the basic principles of the three-step test also neatly transposed into national law. Conversely, the new exception types such as reprography, replication for the purposes of keeping archive and use are still being worked on. New exceptions are expected to be brought upon the enactment of the new draft law that is being worked on.

In our country, as required by law, collective rights management, could only be executed through professional associations. However, the Constitutional Court, with a decision in 2010, cancelled this provision of law stating that it is against the right to legal remedies that causes a monopoly. Today, apart from the collective rights management, individual rights tracking also became possible.

The Draft Law introduces compulsory licensing system in terms of some right categories. More importantly mandatory licensing is to be executed through common licensing units (CLU) in such a way that 4 separate CLUs will be founded. For example, there will be only one CLU for music sector and thus for the matters subject to mandatory licensing one-stop shop system will be provided (the principle of one addressee).

There is no extended licensing in the existing regulation. Whereas in the draft law in terms of musical works; right to Communicate a work to public is subject to extending licensing by means of Use in and/or Communication in Public Premises of Works, Performances, Phonograms. In addition the the rights of owners of works, performers, phonogram and film producers will also be subject to the same system. Extended licensing is not projected for any subject other than the mentioned ones.