

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

TURKEY

EXECUTIVE SUMMARY

Special 301 Recommendation: We recommend that Turkey remain on the Priority Watch List.

Priority Actions Required in 2006:

- **Continue Vigorous Enforcement, Including More Book, Retail, and Optical Disc Targets:** Turkey remains one of the world's worst book piracy markets. However, significant raiding toward the end of 2005 and key criminal convictions point to signs that the tide is turning. The motion picture industry similarly noted a dramatic up-tick in the sheer number of raids in 2005. This raiding must be sustained in 2006, and key pirates of all kinds of products (books, motion pictures, recorded music, business software, entertainment software) need to be driven out of business before right holders will be able to claim solid success in opening up the Turkish market to legitimate business.
- **Address Business Software Piracy:** The business software industry suffers from some unique problems – hard-disk loading and unauthorized use of software in a business setting. In 2006, the authorities should work with the software industry to launch meaningful campaigns to rid the country of as much unauthorized software usage as possible.
- **Increase Court Efficiencies:** Courts are backlogged, and while many cases moved through to successful conclusion in Turkey in 2005, particularly some important criminal cases, other cases languished or were beset by a number of procedural hurdles. The simplest approach would be to establish more courts (and judges in each of them specially trained to deal with IP cases), since court dockets remain overflowed, and ease restrictions on the ability for right holder representatives to assist in case management without the need to hire local counsel for every step of a litigation.
- **Improve Customs Procedures:** With pirate imports increasing again in 2005, Customs should be, but is not, getting more involved in interdicting pirate imports. Customs procedures are marred by bureaucratic hurdles (such as filing an application with each Customs official throughout the country on a monthly basis). Turkish Customs should strictly enforce copyright at the borders, including by taking *ex officio* actions to interdict shipments of suspected pirate goods and materials and implements used to produce pirate goods.
- **Stop Fake Banderoles:** There were instances once again in 2005 of the use of fraudulent banderoles in the Turkish market on blatantly pirate materials. The Turkish authorities must run a market sweep to clear the shelves of product with fraudulent banderoles if the credibility of this program is to be preserved. Otherwise, as right holders continue to find the program burdensome, it should be scrapped.
- **Improve Optical Disc Regulation:** The remedies for operating an optical disc plant without certification should include seizure and forfeiture of all equipment and goods found in such a plant, closure of the plant, and criminal liability including deterrent fines and imprisonment, and including individual liability to pierce the veil of the company engaging in uncertified production.
- **Amend Copyright Law to Prohibit Circumvention of Technological Protection Measures, and Join the WCT and WPPT:** The Copyright Law of 2001 omits protection for

technological measures used by right holders to protect their products. The law should be amended to prohibit the act of circumvention of technological protection measures and the trafficking in circumvention devices. The Government of Turkey should also accede to the WCT and WPPT.

For more details on Turkey's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.

TURKEY Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2001-2005¹										
	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Books²	23.0	NA	23.0	NA	25.0	NA	25.0	NA	27.0	NA
Records & Music	18.0	80%	15.0	70%	15.0	75%	18.0	75%	3.5	35%
Business Software³	119.2	64%	107.0	66%	81.0	66%	38.5	58%	22.4	58%
Entertainment Software⁴	NA	NA	NA	NA	NA	NA	NA	NA	23.7	90%
Motion Pictures⁵	NA	NA	50.0	45%	50.0	45%	50.0	45%	50.0	40%
TOTALS⁶	160.2+		195.0		171.0		131.5		126.6	

PIRACY AND ENFORCEMENT UPDATES IN TURKEY

Book Piracy Continues to Be Serious, But Publishers Worked Toward Some Enforcement Successes in 2005: Book piracy continues to be a major problem all over Turkey, severely affecting the markets for both Turkish and foreign publishers. Illegal commercial photocopying (at up to a 90% piracy rate) and organized printing of books (with lower piracy levels than photocopying but still hovering at or above 50%) combine to give Turkey the region's lead in book piracy. Virtually all types of books are affected, including local fiction, nonfiction and school books, as well as local and imported college texts and imported English language teaching (ELT) texts. Pirates are well connected and highly organized.

In 2005, publishers redoubled their efforts to lead a new campaign in Turkey against book piracy, gathering intelligence, conducting raids, and seizing pirated books. Since piracy

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2006 Special 301 submission at www.iipa.com/pdf/2006spec301methodology.pdf.

² Local estimates of book piracy in Turkey range from 40% to 90% (photocopying), depending on the kind of book. The Turkish Publishers' Association assesses the piracy level at 53% for "cultural" books (general trade titles); 50% for imported books (ELT and college) and 50% for local textbooks.

³ BSA's 2005 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Turkey, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2004 piracy statistics were preliminary at the time of IIPA's February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

⁴ ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report.

⁵ MPAA's trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

⁶ Total losses due to piracy of records & music, business software, and books went up from \$145 million in 2004 to \$160.2 million in 2005.

impacts local publishers as much as it does international publishers, international publishers have been able to ally themselves with the Turkish Publishers Association and, more specifically, its anti-piracy committee, EDISAM. From July through November 2005, working with the Police, this group conducted 57 raids, resulting in the seizure of 21,000 pirate books and 10,000 pirate book covers. Unfortunately, outside of Istanbul and Ankara, police have been reluctant to act in a timely and vigorous manner; there are also some indications of leaks/collusion by police and the pirates in outside locales. There have been some successes in the courts, including five prison sentences since January 2005. One conviction against key Ankara pirate, Ince Mehmet, who received a sentence (for book piracy only) of four years imprisonment, and three pending cases against Metin Can, described as the biggest book pirate in Istanbul (mainly of educational and academic books) are positive signs that the court system can work and the authorities in Turkey are taking book piracy more seriously than before.

Retail Piracy: As with book piracy, the retail markets in Turkey have long been plagued by rampant street piracy, which is now predominantly in digital formats like “burned” optical discs (VCDs, DVDs, CDs, etc.). The number of imported discs once again increased in 2005,⁷ with Customs procedures not working efficiently to interdict such shipments.⁸ For the first time in 2005, right holders detected some locally produced pirate discs (see discussion below). In 2004, after the passage of amendments banning street sales, the immediate increase in enforcement actions reduced the number of street vendors, especially in Istanbul (a decrease of 80%) and Ankara (a decrease of over 50%). The year 2005 once again saw some impressive raid results including pirate product, and materials and implements used in producing pirate product.⁹ Remaining street vendors offer pirate product to order, but not as openly as before. Still, the sale of pirate “burned” CD-Rs remains a serious problem, especially in cities outside Istanbul and Ankara (such as Izmir and Antalya), and continues to have a detrimental effect on the legitimate market for copyright materials.¹⁰ There is also at least some evidence of organized criminal involvement in the piracy trade.¹¹ The good news is that the Istanbul Security Office Department has started to take *ex officio* actions with the authority given to them by the 2004 Copyright Law amendments, although these actions appear to be limited to big cities such as Istanbul, Ankara and Izmir.

Business Software Interests Not Served: The experience of the business software industry has not been so positive. While the Ministry of Culture is tasked with dealing with copyright in general, they claim to lack authority for enforcement against hard-disk loading, leaving it to the Police; unfortunately, they remain largely unaware and/or refuse to act *ex officio* against this type of piracy. When software companies try to take self-help measures, computer

⁷ Imported discs are reportedly coming in from Russia, Malaysia, Thailand, and Bulgaria, and possibly transshipped through Ukraine. Pirate DVDs of newly released titles with Turkish subtitles can be found in retail stores for about US\$8 to US\$10. Entertainment software products in optical disc format (typically factory-produced silver discs) continue to be imported from Asia, while cartridge-based games continue to be imported from China.

⁸ The motion picture industry reports that Customs procedures are too complicated and time-consuming. The local anti-piracy group apparently needs to apply every month to every Customs office with tens of copies of the same application form, as one copy is required for each Customs official. Despite these efforts, cooperation with Customs authorities did not improve in 2005.

⁹ In the first three quarters of 2005, 600 raids were conducted involving motion picture piracy, resulting in the seizure of 569,122 CD-Rs, 15,909 DivX, 129,170 DVDs, 5,882 DVD-Rs, 86 PCs, 279 CD-Writers, 68 DVD-Writers, 19 DVD ROMs, 37 CD-ROMs, 7 Silk Screens, 1 Raw Material Dryer and 11 Mould Parts.

¹⁰ The business software industry notes that the continued presence of these vendors has a marked negative impact on consumers, who believe it is acceptable to use pirated software as a result. The motion picture industry reports that box office revenues slightly increased due to some popular local movies, but not for U.S. theatrical releases, and that the decrease in piracy levels is not reflected in greater legitimate sales of CDs or DVDs.

¹¹ In a house raid on September 11, 2005 during an operation against the terrorist group PKK/KONGRA-GEL, some pirate CDs and music cassettes were seized.

resellers resort to selling stripped PCs to avoid detection. In addition, unauthorized use of business software by company end-users causes right holders significant losses in Turkey. Unlike other industries, which have benefited from market sweeps, the dilemma of unauthorized use of business software in corporate settings requires a slightly different approach, including campaigns aimed at getting inside information from companies using illegal software, inspections against such companies, and hands-on programs to explain to the Government and businesses the basics of software asset management. The business software industry has found the current approach of the Turkish Government to be inadequate.

Entertainment Software Piracy: Piracy of entertainment software is rampant, with a piracy level of over 70%. Pirated entertainment software for play on personal computers and PlayStation® consoles are imported into Turkey from Bulgaria, possibly Iran, and possibly transshipped through Ukraine, while counterfeit cartridge-based games continue to be imported from China. Though cooperation with Turkish Police and Customs authorities has been good, the retail market remains dominated by piracy. Of increasing concern are reports that the country is serving as an export and transshipment point for pirated entertainment software products from Asia and the Middle East.

Internet Piracy Threat Emerging: The growth of broadband connectivity in Turkey in 2005 is at once an exciting development, providing the prospect for healthy electronic commerce which can benefit all in Turkey, and a deeply disturbing one, since the Government has not shown signs of being readily equipped to tackle the issue of Internet piracy. Broadband connectivity grew rapidly in 2004 and 2005. In the second half of 2004, Turkey added over 150% to its broadband installed base, and broadband connectivity grew 73.6% during the second quarter of 2005, ranking first in the world.¹² Turkey ranked fourth overall in the world in 2005 in terms of percentage of growth of broadband, and ninth overall in the world in terms of absolute number of lines added through September 2005. There are already signs that these gains in broadband are translating into increased online piracy, and it is particularly disturbing that Turkish Telecom, in promoting broadband Internet connections, advertises its services by pointing to how many songs or movies can be downloaded in a particular time frame with a particular speed connection. There also remains trade in hard goods advertised through websites or newsgroups. Some industries now regularly send cease and desist letters to Internet service providers and site operators, and organize raids with the police against the homes of pirates engaging in such activities.

Optical Disc Production Capacity Grew Again in 2005: There are now 10 optical disc production plants in Turkey with a total of 25 production lines (including at least 3 DVD and 21 VCD lines). While pirate production had not been a problem in previous years, in 2005, illegal locally pressed DVDs appeared for the first time, even including some Turkish-produced product destined for export.¹³ In April 2005, a Regulation requiring certification of all optical disc plants went into force. Almost immediately, the Turkish authorities worked with industry to inspect the plants to collect “exemplars” (samples of discs to do forensic tests). Upon detecting some illegal activity, investigations ensued,¹⁴ and on July 6, 2005, a major raid was carried out against “Uçar CD,” located in the Kagithane district of Istanbul, by fifteen officers from the Security Department at Istanbul Police Headquarters, accompanied by motion picture industry representatives and technical experts from the recording industry. The raid resulted in seizures

¹² Point Topic Ltd., *World Broadband Statistics Q3 2005*, December 2005, Press Rel. at <http://www.point-topic.com/content/dslanalysis/ukbb051229.htm>.

¹³ In late 2005, a seizure of over 2,000 pirated videogames, originating in Turkey, was made in Germany.

¹⁴ After the initial plant visit, samples of pirate discs with fraudulent stickers (“banderoles”) found in the local market were tested and found to match exemplars collected during the earlier plant visit.

of pirate VCDs, DVDs, and silkscreens (used for printing professional-looking labels),¹⁵ including pirate copies of *Sin City* (not yet theatrically released in Turkey), *Batman Begins*, *Monster in Law*, and *Coach Carter*. Unfortunately, due to a mistake in the initial warrant, the lines could not be sealed that day, and by the next day they had vanished (the DVD line was eventually found on October 27).¹⁶ At the first hearing in October, the owner of the plant was taken into custody and imprisoned for two months for having removed the evidence (the lines that had vanished), but was released after appealing his detention in late December 2005. Finally, on January 17, 2006, the owner of the plant was sentenced to a term of imprisonment of 5 years, 7 months and 15 days for copyright offenses and for distributing products without banderoles. The court also ordered that the sentence be published in three newspapers having a circulation of over 100,000. The defendant was also fined approximately US\$120,000 with respect to the two missing VCD lines that were wrongfully removed from the plant after the July 6 raid.¹⁷ This is the most severe penalty ever imposed in a piracy case in Turkey and IIPA hopes this case will have a considerable impact on piracy in the market. The press coverage of this case has been very positive, and hopefully reinforces the deterrent message of this arrest.

Successful Court Actions Increased in 2005, But Bottlenecks Remain: The courts in Turkey meted out more deterrent results in 2005, the above case being one key example. The motion picture industry oversaw initiation of 581 legal actions in 2005, almost all criminal, and nearly 50 court decisions have been obtained.¹⁸ Finally, some important decisions were also obtained from the Adana Court, sentencing pirate street vendors to unsuspended prisons terms and/or fines because of their recidivist nature.¹⁹ These favorable decisions obtained from different provinces of Turkey demonstrate that the judiciary is finally beginning to recognize piracy as a serious crime and is imposing more serious sentences.

¹⁵ The raid lasted a total of five-and-a-half hours, and the plant owner was temporarily detained for questioning. Unfortunately, the original search warrant issued by the judge did not allow for the sealing of the lines at the plant, but upon obtaining a warrant and proceeding to the plant to seal the lines the following day, the machines had been moved. A number of other locations associated with the plant were then raided, but these yielded little additional information or evidence. In all in that raid, 8,650 pirate VCDs, 4,700 pirate DVDs, and 10 infringing silkscreens ready for printing were seized.

¹⁶ The missing DVD line and a silkscreen printer were found on the top floor of a two-story building in Umraniye. Three individuals were found on the premises, one of whom is understood to be associated with a textile business, whose premises were also searched in July 2005 and that is believed to have also been once used for pirate disc production. When the raiding party entered the building, the three men were conducting test runs on the DVD line. The raid also yielded 50 silkscreens, 39 DVDs, and 3 stampers, together with order documentation, files and contact lists. The equipment and the premises were sealed by the Police, and the other materials and documents were all confiscated. Following this operation, the operating license of Uçar CD was cancelled by the Ministry of Culture and Tourism.

¹⁷ It should also be noted that a further prosecution has been instituted against the defendant's sister, whose name appeared on the rental contract for the building where the missing DVD line was found in October 2005.

¹⁸ For example, on December 8, 2004, a local warehouse owner was fined TL50 billion (US\$37,764) by the Izmir Specialized IP Court. On March 9 2005, two video shop owners in Istanbul were each sentenced to unsuspended prison terms of two years by the Istanbul Specialized IP Court, with the severity of the sentences based on the fact that these pirates had been raided several times but had continued to engage in illicit activity. The judge in the case noted that the two individuals had been raided several times in 2004 but had not been deterred. Thus, deterrent sentences had to be imposed because people were ignoring the rights of copyright owners and the State was losing significant tax revenues?. He also emphasized that IP crime was a field where organized crime would proliferate unless a deterrent environment was established. The raids leading to the prosecution in this case were conducted by the police (with assistance from industry) on January 18, 2005, resulting in the seizure of 27 pirate CD-Rs and 8,500 inlays.

¹⁹ In one case which arose from an AMPEC (the motion picture industry's anti-piracy group in Turkey) operation against a street vendor in 2005, a defendant was sentenced to 14 months imprisonment and a fine. Although the case involved only 56 pirate CD-Rs, the court refused to suspend the sentence, because the defendant was a repeat offender. In a second case, the defendant was sentenced to five months imprisonment, but the sentence was suspended, because of his previous good conduct.

Despite the recent relative successes, problems still remain in court adjudication in Turkey. The courts' dockets remain seriously overloaded (leading to delays in adjudication of copyright cases). Courts take six months to two years to decide such cases and an additional 18 months to decide appeals.²⁰ There are simply too many files and too many actions brought every year, but there are only two civil courts and three criminal courts dealing with IP matters. New courts with greater numbers of specialist judges should be established. Additionally, seeing criminal actions through the court process can often be cumbersome and expensive for injured parties under the current system.²¹ The courts still do not provide presumptions of ownership to right holders, but instead impose burdensome documentary requirements on right holders to prove ownership.²² Another problematic feature of judicial enforcement in Turkey involves the difficulty of obtaining *ex parte* civil searches, as required by TRIPS.²³ Finally, courts must award reasonable costs and fees in civil and administrative actions.

Fraudulent Banderoles Continue to Cause Problems in Turkey: It remains the case in Turkey that the banderole (sticker) system does not function well as an anti-piracy tool. Some strengthened provisions were introduced in the 2001 copyright law (including the possibility of criminal penalties for unauthorized uses of banderoles or dealing in works without banderoles), but those remain largely untested. Some plants continue to hold unnecessarily large quantities of unused banderoles, which are not secured adequately. As noted above, in the "Uçar CD" raid case, fraudulent banderoles were found on pirate discs in the market. The entertainment software industry faces the same situation, with banderoles being issued and applied to pirated video games in the market.²⁴ If the government decides to keep the banderole system, it must

²⁰ For example, the entertainment software industry has cases pending from as far back as 1999. Such time frames cannot provide the deterrent needed for an industry whose product has a short shelf life.

²¹ A typical criminal action in Turkey starts with a complaint by the right holder to the Public Prosecutor and a raid with the police under the Copyright Law. In order to ensure that pirate products are confiscated, private parties must file criminal complaints, and the public prosecutor has to approve a police raid. As an additional burden in force since mid-2003, public prosecutors always require a special search warrant from the judge giving approval for any action. In addition, the Attorneyship Law requires a local lawyer to be hired to act on behalf of the right holder for five key phases of any case: (1) to file an initial complaint with the public prosecutor; (2) to obtain a special search warrant from the judge; (3) to obtain a search warrant from the public prosecutor; 4) to conduct a raid with the police; and (5) to have the public prosecutor press charges and to provide assistance in the courtroom to obtain a conviction. Following a raid where suspect material is seized, the public prosecutor presses criminal charges, and the industry representative in the country (for example, on behalf of the motion picture industry, this is AMPEC) must immediately submit a petition to intervene, to avoid procedural hurdles dooming the case. Securing practical copyright protection can thus be a long and expensive process.

²² In cases brought by publishers in the past, many judges demanded notarized translations of original contracts between the author and publisher in order to prove copyright ownership for each title. Since this contract is in English, it must be translated and notarized. The notaries in Turkey have apparently added to the burden by charging inordinate fees. The audiovisual industry experienced similar problems. Judges and public prosecutors often ask for the proof of copyright ownership and sometimes even request the establishment of "chain of title" by presenting all the relevant contracts, despite the presumption in Article 15 of the Berne Convention and Articles 11 and 80 of Turkish Copyright Law (which provide presumptions of ownership). In addition, Article 13 of the Copyright Law provides for a registration system in Turkey for movies that will be distributed theatrically in Turkey, but there is no such registration for movies not distributed theatrically, causing chain of title problems for such titles. When regulations for Article 13 of the law are issued, it will be possible for film companies to register their works with the Minister of Culture, which hopefully will relieve right holders of this burden.

²³ For example, the business software industry relies on civil *ex parte* searches in order to carry out enforcement against unlicensed uses of software in a business setting (so-called "end-user" piracy of business software), and others (e.g., U.S. publishers) need this mechanism as well. The 2001 Copyright Law provides for *ex parte* civil searches.

²⁴ Entertainment software publishers continue to be plagued by the banderole system which is already severely compromised as pirates have been able to obtain these stickers with great ease. Although pirates use false documentation claiming to be authorized distributors for a company, MOCT has refused to take action, claiming they are not responsible for verifying the authenticity of the documents being used to obtain the banderoles. In one case, a

take immediate steps to ensure that those who are caught dealing in copyright works without banderoles, using banderoles without authorization, or using fraudulent banderoles, are prosecuted to the full extent of the copyright law (Article 81 provides for fines and imprisonments for such offenses). Otherwise, with the system so severely compromised, the government would do well to simply abolish the program entirely.

Unauthorized Public Performances and Broadcast Piracy: Other problems for the motion picture industry include unauthorized public performances of new and popular films using DVDs and VCDs on wide screen systems at schools, cafes and bars, cultural centers, and unlicensed video theaters,²⁵ and broadcast piracy. There is also music broadcast piracy in Turkey, with only a small minority of over 1,500 radio and television broadcasters having a proper license agreement with the local recording industry group, MÜ-YAP. A new phenomenon in music piracy has recently occurred, especially in Turkey's tourist hot spots: hotels (including well known international hotels), bars and clubs selling made-on-the-spot, illegal CD-R copies of the music they play. Moreover, most of the sources of music played in bars and discos are illegal copies or Internet downloads.

TRAINING

Copyright owners organized several trainings and participated in many more in Turkey in 2005. For example:

- The Business Software Alliance organized an IP training for prosecutors and judges jointly with Ministry of Justice and Ministry of Culture to discuss enforcement issues in general.
- The Business Software Alliance participated and supported a couple of trainings jointly with the European Union and local Chambers of Commerce's to educate regulatory bodies and owners of small and medium-sized business about the importance of copyright protection.
- The motion picture industry's local anti-piracy representatives, AMPEC, organized or attended several training seminars in 2005:
 - In March 2005, AMPEC participated in the training seminar "The Struggle on the Violations of Intellectual Property Rights" attended by the Directors of Security Departments of all 81 provinces of Turkey. The training seminar was organized in Antalya by the Directorate General of Security Forces in cooperation with the Ministry of Culture and Tourism.
 - In October 2005, AMPEC organized a technical training seminar for 30 police officers of the Istanbul Headquarters' Security Department (that is the main authority dealing with piracy in Istanbul and having the *ex-officio* power to do so).
 - AMPEC also participated in seminars put on by the Istanbul Bar Association and Turkish Patent Institute (Trademark Office) organized in cooperation with local universities, and these seminars were also important for raising public awareness.

COPYRIGHT LAW AND RELATED ISSUES

New Regulation on "Certification of Businesses" Includes Some Key Components of Good Optical Disc Regulation: The Ministry of Culture and Tourism (MOCT) issued the

pirate seller had over 70,000 pirated products for which he was able to obtain banderoles, yet the Ministry refused to revoke the banderoles.

²⁵ AMPEC is very active in this area and is regularly sending cease and desist letters and organizing raids with the police.

“Regulation on the Certification of Businesses Undertaking the Distribution or the Recording, Reproduction and Sale of Materials on which Intellectual Property and Works of Art Are Fixed” on April 18, 2005, requiring facilities involved in recording (including optical disc), exhibiting, and distributing copyright works to receive certificates from the MOCT. Although all concerned premises were supposed to obtain such certificates by October 18, 2005, the MOCT had to postpone the deadline to December 2006 due to the very low number of applications received.

These regulations provide some essential elements of effective optical disc regulation, including the following:

- **Coverage of Any Business Engaged in Producing Discs Containing Content:** The Regulation does not seem to distinguish between businesses that produce large-scale factory produced discs and those that “burn” content onto recordable discs. This means all those businesses must be certified, and failure to do so can lead to fines.
- **SID Code Required for “Fixing Facilities”:** All facilities “where intellectual property and works of art are fixed and reproduced” must use SID Code (mastering LBR code and mould code are not specified, however, and should be?).
- **“Fixing Facility” Information Requirement:** “Fixing facilities” must furnish reports indicating their “capacity and that they have the necessary technical equipment,” “[a]n itemised list of the technical equipment at the premises as well as copies of invoices or sale transfer documents of the same,” and “SID code document” and to “inform the General Directorate of all changes in the type of activity, equipment and capacity within ten days and to place the SID code and the certificate numbers on the fixing materials.”
- **Inspection Authority:** MOCT appears to have broad authority to run surprise inspections.
- **Cancellation Remedy:** The sanction for a breach of the Regulations is cancellation of the certificate, if “it is determined that the certified facilities no longer meet the requirements for obtaining certificates,” or “there exists a finalised court conviction arising from having violated the law,” upon notification of such “by the rights owners, professional associations of the relevant field of activity or local authorities.”
- **Administrative Fines:** The only remedy for operating one of the businesses specified without a certificate is an “administrative fine.”

This Regulation requires that optical disc production facilities in Turkey (the 10 known plants and any more that come on line in the future) obtain a certificate from the MOCT (including production of blank recordable discs, see Article 5(a)). This is very positive. In addition, it appears that any premises engaging in “burning” of content onto recordable optical discs also must be certified (such operations would, on their face, be included in locations where “intellectual property and works of art are fixed and reproduced”).

Unfortunately, the Regulation suffers from two major weaknesses. First, the certification authority is overly broad, veering into areas like “[m]ovie theatres and similar places undertaking public display and transmission of cinematographic films,” “[p]remises ... importing, distributing or selling empty fixing materials,” and “[p]remises undertaking sale, distribution, importation and marketing of intellectual property and works of art and fixing materials concerning productions entailing intellectual property and works of art through any means and techniques including digital transmission and those that rent these out.” This broad certification authority unfortunately undercuts the purpose of the legislation, since it requires legitimate businesses (in sectors where the risk of piracy is low) to be certified and subject to the regime, while illegal businesses will never come forward to be certified. This has already proved to be the case, as noted, since MOCT had to postpone the deadline. While it is true that one category of operators

having to be certified includes those engaging in Internet distribution, again, we underscore that legitimate businesses with legitimate business models in the Internet environment will be burdened by such a certification requirement, while those engaged in online piracy will ignore it. Second, while the Regulation calls for “administrative fines” for operating without certification, in the case of optical disc factories, it is feared this remedy is not enough to deter going underground. The remedies for operating an optical disc plant without certification must include seizure and forfeiture of all equipment and goods found in such a plant, closure of the plant, and criminal liability including deterrent fines and imprisonment, and including individual liability to pierce the veil of the company engaging in un-certified production.

Copyright Law Still Missing Protections Against Circumvention of Technological Protection Measures: Modern-day copyright law in Turkey dates back to a 1951 copyright law (Law No. 5846), which was amended by Law No. 4630 (2001), and further amended in 2004 by Law No. 5101 (amending several laws including the copyright law). The 2001 amendments brought Turkey’s copyright regime considerably closer to international treaties standards and implemented many of the requirements of the WIPO Internet Treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. A notable exception is the failure to prohibit the act of circumvention of technological protection measures and the trafficking in circumvention devices. The Government of Turkey should amend its law to provide such protections as soon as possible and should also accede to the WCT and WPPT.

Proposed Trademark Law Provision Would Exempt Infringing Goods Produced Outside Turkey: A draft amendment to the Turkish trademark law was recently proposed by a member of Parliament, providing that “in order that a penalty may be imposed for a trademark infringement, infringing goods or services should be produced in Turkey.” This bizarre provision, which would certainly violate TRIPS, would appear to exempt all counterfeit goods not produced in Turkey. IIPA understands that it is very unlikely that this proposal would be accepted by the Parliament. Nonetheless, we are watching this situation closely, and all steps should be taken to ensure that such a provision is never enacted in Turkey.

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