

**TCS'24**

# **WORLD INTELLECTUAL PROPERTY ORGANIZATIONS**

**DEFINE JUSTICE TOGETHER**



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## **2. LETTER FROM SECRETARY GENERAL**

Dear participants, it is my privilege to introduce you to Themis Court Simulations 2024 as the Secretary General of the Conference.

This year, we are once again hosting Turkey's leading moot court conference with academic saturation as well as organizational excellence. As Themis Court Simulations, our goal is to continue this tradition and provide you with a unique and exciting experience.

This year, we are continuing a tradition with additions. Our perspective was to have courts in the most exciting, competitive, and instructive areas of law and in this context, we have prepared six interesting courts.

On behalf of the academic team who prepared these exciting courts and my Deputy Secretary General Ece Koç, I would like to welcome you all to Themis Court Simulation. Likewise, our organizing team will welcome you with their kind hospitality to make your experience as easy as possible.

I would also like to thank all my academic team in advance. I can see that I have the opportunity to work with a great group of people, so I am happy to have such a team. With their potential, this journey will be incredibly enjoyable. I would also like to thank my fellow Director General Mr. Can Deryahan and Deputy Director Generals Ms. Berfin Rabia İstek and Ms. Nur Damla Karadurmuş for their tireless organizational team.

In closing, on behalf of Themis Court Simulations, I would like to welcome you once again all to this year's event and look forward to defining justice together!

Best regards,

**Kaan Ünder**

**Secretary General of Themis Court Simulations 24**

### **3. LETTER FROM UNDER-SECRETARY GENERAL**

Distinguished participants of THEMIS'24,

On behalf of the World Intellectual Property Organization (WIPO) academic team, I would like to extend a warm welcome to all participants of THEMIS'24 conference. My name is Irmak Gül, I study law at Bahçeşehir University Law Faculty and it is my privilege to serve as the Under Secretary General.

First and foremost, I would like to express my deepest gratitude to all those who have contributed to making this conference a reality. Your efforts have been invaluable in bringing us together for this momentous conference. Our heartfelt thanks go to Secretary-General Kaan Ünder for being incredibly supportive. We also extend our appreciation to Deputy Secretary General Ece Koç who have been invaluable companions throughout the process. A special acknowledgement goes to our Director General Can Deryahan and Deputy Directors General Berfin Rabia İstek and Nur Damla Karadurmuş for their exceptional organizational skills.

I would also like to take a moment to acknowledge and appreciate the incredible association with my dearest Academic Assistants İlkim Damla Birtay and Rûmeysa Kaya. Without their dedication and hard work, this endeavor would not have reached the level of excellence it has achieved. I extend my heartfelt thanks to İlkim and Rûmeysa for their unwavering commitment.

We invested considerable time and thoroughly enjoyed creating this guide and fictional case. We are confident that you will successfully navigate the challenges presented by the case. We sincerely hope that you have a remarkable three-day experience, embracing our case while enhancing your skills, acquiring knowledge, and deepening your comprehension of WIPO.

Throughout the conference, We will be readily available to address your queries, provide resources, and offer guidance. Please do not hesitate to approach me with any concerns or assistance you may require via [irmak.gul@bahcesehir.edu.tr](mailto:irmak.gul@bahcesehir.edu.tr)

Once again, I extend my sincere appreciation to all of you for your participation and contributions. Your dedication and your commitment to making a difference are truly inspiring. I am thrilled to embark on this conference with all of you, and I am confident that together, we will create a memorable and impactful experience in the conference.

Welcome to THEMIS'24

Best regards,

Irmak Gül

Under Secretary General of WIPO

### 3. LIST OF ABBREVIATIONS

WIPO	World Intellectual Property Organization
ADR	Alternative Dispute Resolution
Inc.	Incorporated
Ltd.	Limited
AŞ	Anonim Şirketi
UDRP	Uniform Domain Name Dispute Resolution Policy
UK	United Kingdom
RROP	Renkli Rüyalalar Oteli Prodüksiyonu
SSP	Silver Screen Production

## **4. INTRODUCTION TO THE ARBITRAL TRIBUNAL**

### **5.1. Introduction to the International Commercial Arbitration**

#### **5.1.1. History of Arbitration**

The beginnings of modern international arbitration can be linked back to the Jay Treaty (1794) between Great Britain and the United States. This treaty established three arbitration commissions to address issues and settle claims arising from the American Revolution. Over the 19th century, various agreements were forged, resulting in the creation of ad hoc arbitration tribunals tailored to handle specific cases or manage multiple claims. Arbitration, a dispute-resolution tool with ancient roots, has evolved significantly over thousands of years. Initially existing alongside traditional courts, arbitration gained acceptance globally in the early 20th century, with laws enforcing arbitration agreements and limiting judicial review. Over the past century, a strong pro-arbitration policy has emerged, making arbitration prevalent in various fields, including family law, property, commercial transactions, trusts, estates, and labor. Ancient examples, such as King Solomon's judgment, highlight arbitration's historical role in family law. Despite its historical significance, some argue that modern arbitration increasingly resembles traditional litigation, losing some of its initial advantages in time and cost savings. This article explores the history and evolution of arbitration into its current form.

### 5.2.1 Operation of Arbitration

Arbitration involves submitting a dispute, with the parties' mutual consent, to one or more arbitrators who issue a final and enforceable decision. By selecting arbitration, parties prefer a private dispute resolution method over litigation in court. There are some features which should be taken into consideration. These features are;

1. Arbitration is consensual,

Arbitration is contingent upon mutual agreement from both parties involved. For potential future conflicts arising from a contract, parties include an arbitration clause within the pertinent agreement. If there's an ongoing dispute, parties can opt for arbitration through a submission agreement. Unlike mediation, withdrawal from arbitration isn't feasible for a single party; it requires mutual consent.

2. The parties choose the arbitrator(s),

According to the WIPO Arbitration Rules, parties have the option to jointly choose a single arbitrator. Alternatively, in the case of a three-member arbitral tribunal, each party appoints one arbitrator, and these two individuals subsequently come to an agreement on the presiding arbitrator.

3. Arbitration maintains neutrality,

When parties enter an arbitration agreement, they commit to a neutral tribunal for determining their rights and duties. Arbitration, often categorized as an alternative dispute resolution, differs from mediation or conciliation. While mediators or conciliators can only propose outcomes, leaving the choice to the parties, an arbitration tribunal possesses the authority to issue binding decisions.

4. Navigating Enforcement Challenges in Cross-Border Arbitration,



Arbitration's appeal lies in its relative ease of cross-border enforcement compared to court judgments. However, enforcement methods vary, warranting careful consideration of enforcement prospects before investing substantial resources in arbitration. This consideration becomes especially crucial when financial implications are a significant factor in the arbitration decision-making process.

## **5.2 Introduction to the World Intellectual Property Organization**

### **5.2.1. WIPO Arbitration and Mediation Center**

Arbitration is a process where parties agree to present their dispute to one or more arbitrators, who then render a binding decision. Opting for arbitration means selecting a private dispute resolution method over going to court.



## WIPO Arbitration:

The World Intellectual Property Organization is one of the specialized agencies of the United Nations. WIPO was established in 1967 with the aim of 'promoting the protection of intellectual property rights worldwide and encouraging creative activity. Its key aspects include;

- Consensual Nature: For arbitration to proceed, both parties must agree to it. In contracts, an arbitration clause is often included for handling future disputes. Existing disputes can also be directed to arbitration through a submission agreement between parties. Unlike mediation, a unilateral withdrawal from arbitration isn't allowed,
- Arbitrator Selection: According to WIPO Rules, parties can jointly choose a single arbitrator. If they prefer a three-member tribunal, each party appoints one arbitrator, who then agrees on the presiding arbitrator. Alternatively, the Center can suggest or directly appoint arbitrators with expertise in intellectual property from a comprehensive database.
- Neutrality in Arbitration: Parties have the authority to determine crucial elements such as applicable law, language, and venue. This ensures fairness, preventing any party from gaining an advantage based on jurisdictional familiarity,
- Arbitration is a confidential procedure: Arbitration, as outlined by the WIPO Arbitration Rules, ensures strict confidentiality concerning the proceedings' existence, any disclosures made during the process, and the final award. These rules even allow parties, under certain circumstances, to control access to sensitive information, such as trade secrets, presented to the arbitral tribunal or a confidentiality advisor,
- The decision of the arbitral tribunal is final and easy to enforce: Moreover, decisions made by the arbitral tribunal are conclusive and easily enforceable in accordance with the WIPO Rules. Parties commit to promptly implementing the tribunal's decisions. International awards find enforcement through national courts, facilitated by the New York Convention. This convention limits instances where awards can be challenged or set aside and boasts participation from over 120 States.

### Mediation Center:

Mediation involves a neutral mediator assisting parties in reaching a mutually agreeable resolution for their dispute, formalized in a binding contract. It's observed that intellectual property litigation commonly concludes in settlement, and mediation stands as an efficient, cost-effective method to achieve this while maintaining or even strengthening relationships between parties.

Key characteristics of mediation include its non-binding nature, controlled entirely by the involved parties. Unlike arbitrators or judges, a mediator doesn't decide but aids in reaching a settlement. Parties retain the freedom to abandon the process if it no longer serves their interests, though active participation usually continues once started.

Confidentiality is integral to mediation. Parties can withhold sensitive information, ensuring that any disclosed details remain strictly confidential, even in subsequent court or arbitration proceedings according to WIPO Mediation Rules. This confidentiality facilitates more open and productive negotiations.

Moreover, mediation revolves around interests rather than solely legalities. Parties can focus on their business interests, leading to outcomes that benefit their future relationship beyond past conduct. Dialogue often yields settlements that create more value than if the dispute hadn't occurred.

Due to its non-binding and confidential nature, mediation poses minimal risk for parties while generating significant benefits. Even when a settlement isn't reached, mediation succeeds in defining the dispute's facts and issues, laying the groundwork for potential arbitration or court proceedings.

### **5.2.2. History of WIPO**

The WIPO Arbitration and Mediation Center, established in 1994 and headquartered in Geneva, Switzerland, focuses on resolving intellectual property disputes through alternative dispute resolution methods. It developed the WIPO Mediation, Arbitration, and Expedited Arbitration Rules in collaboration with prominent ADR and intellectual property experts to achieve this goal.

As the sole international provider specializing in intellectual property ADR services, the Center advises and administers procedures guided by the WIPO Rules. It maintains an extensive database of over 1,000 experienced intellectual property and ADR specialists available to act as impartial parties. Leveraging its robust network within the World Intellectual Property Organization, the Center ensures that WIPO procedures remain at the forefront of IP dispute resolution. Additionally, it actively contributes to shaping custom dispute resolution processes.

Comprising highly skilled and multilingual legal professionals with expertise in intellectual property and ADR, the Center's team remains dedicated to its mission.

### 5.2.3. Differences between mediation and Arbitration

#### Distinguishing Mediation and Arbitration:

- Customizable Elements: Parties in arbitration not only select impartial representatives of suitable nationality but also determine key factors like applicable law, language, and arbitration venue. This prevents any party from gaining an unfair advantage due to familiarity or preference.
- Nature of Agreement: When parties enter into an arbitration agreement, they commit to having a neutral tribunal settle their dispute, defining their rights and responsibilities. While often grouped as alternative dispute resolution methods, arbitration differs from mediation or conciliation. Mediators or conciliators can suggest outcomes, but parties retain the choice to accept or reject these suggestions. In contrast, an arbitration tribunal holds the authority to make binding decisions for the involved parties.

- Enforceability Across Borders: One advantage of arbitration lies in its typically smoother enforceability of awards in foreign countries compared to the enforcement of court judgments. However, the ease of enforcement varies across different jurisdictions. It's crucial to consider the prospects of enforcement when deciding whether and how to proceed with arbitration, especially if maintaining accessible funds is a critical factor in the arbitration process.

## **6. CASE INFORMATION (Silver Screen Production v. Renkli Rüyalar Oteli Prodüksiyonu)**

### **6.1. Overview of the Case**

On October 29, 2023, Silver Screen Production Ltd., Inc. (SSP) orchestrated a significant concert in London, commemorating the 100th anniversary of the Republic of Turkey. Hosted at the esteemed Wembley Arena, the event featured a diverse array of Turkish and international artists, spanning genres from traditional Turkish music to classical compositions and rock anthems. Serving as a testament to Turkey's historical legacy and democratic principles, the concert not only underscored the nation's rich heritage but also emphasized the pivotal role of music in Turkish societal dynamics.

This extensive three-hour cultural showcase, boasting performances by over 100 artists, was meticulously curated by a proficient team of over 1,000 professionals. Its global impact was further amplified through a live-streaming broadcast on YouTube, captivating the attention of millions worldwide.

Beyond its cultural significance, the concert emerged as a financial triumph, amassing a staggering revenue exceeding \$10 million. Its artistic brilliance and production values garnered widespread acclaim, solidifying its status as a critical success.

In the aftermath of this cultural spectacle, Renkli Rüyalalar Oteli Prodüksiyonu AŞ., Inc. (RROP), a Turkish production entity, perceived the concert as an endeavor of public interest. Consequently, RROP unilaterally opted to rebroadcast the recorded content on its YouTube channel, absent the formal acquiescence of SSP.

This unilateral decision triggered a legal dispute, with SSP lodging a formal complaint against RROP with the World Intellectual Property Organization (WIPO). SSP posited that RROP's rebroadcasting of the concert amounted to a violation of copyright. SSP grounded its claim in its status as both the orchestrator and recorder of the event, asserting proprietary rights over the intellectual property in question.

Conversely, RROP justified its actions by contending that the livestreaming of the concert fell within the ambit of fair use, citing the event's intrinsic public interest nature. The ensuing legal battle stemming from this clash of perspectives not only raises pertinent questions about the boundaries of copyright protection for live-streamed events but also delves into the nuanced application of fair use doctrines in the contemporary digital landscape.

#### **6.1.1. The Parties**

The Claimant is SilverScreen Production Ltd., Inc., London/United Kingdom.

The Respondent is Renkli Rüyalalar Oteli Prodüksiyon Rüyalalar Oteli Prodüksiyonu.

### **6.1.2. Relevant Individuals**

The legal conflict between Silver Screen Production and Renkli Rüyalar Oteli Prodüksiyonu unfolds against the backdrop of their unique business activities and creative endeavors. And the legal dispute arises from an alleged infringement upon Silver Screen Production's intellectual property rights by Renkli Rüyalar Oteli Prodüksiyonu, stemming from the unauthorized recording and dissemination of a special concert organized by Silver Screen Production to commemorate the 100th anniversary of the Republic.

Silver Screen Production, based in London, United Kingdom, stands out as a pioneering force in the field of multimedia production, being owned by a Turkish proprietor. Specializing in the creation of visually captivating and emotionally resonant content, Silver Screen Production has garnered acclaim for its innovative approach to storytelling.

The company's portfolio includes groundbreaking documentaries that explore cultural narratives, immersive virtual reality experiences, and high-profile online events. Renowned for its commitment to artistic excellence, Silver Screen Production has successfully positioned itself as a trailblazer in the entertainment industry.

Renkli Rüyalar Oteli Prodüksiyonu, headquartered in İstanbul, Turkey, represents a visionary force in the hospitality and production sectors. Fusing the realms of filmmaking and hospitality, the company has gained recognition for its unique concept of creating visually stunning promotional films for luxury hotels and resorts.

Renkli Rüyalar Oteli Prodüksiyonu's diverse portfolio includes collaborations with prestigious hotel chains, crafting cinematic narratives that transport viewers into the opulent world of luxury accommodations. Their commitment to elevating the marketing strategies of high-end establishments through artistic storytelling sets them apart as a creative force in the production industry.

## **6.2. Procedural History**

The WIPO Arbitration and Mediation Center (the "Center") received the Complaint on Nov 2, 2023, initiated by SilverScreen Production against Renkli Rüyalar Oteli Production regarding alleged copyright infringement associated with the online broadcast of a special concert organized during the celebrations of the 100th anniversary of the Republic. The Complaint outlined SilverScreen Productions' claim of unauthorized use of their intellectual property rights by Renkli Rüyalar Oteli Production, specifically related to the online dissemination of the concert content beyond the borders of Turkey.

Upon receiving the Complaint, the Center conducted the necessary procedures, including a request for verification from the relevant Registrar regarding the domain or content in question. The Registrar responded with information that disclosed the registrant and contact details associated with the allegedly infringing content. This information matched from the named Respondent and contact details provided in the original Complaint.

The Center verified that both the original Complaint and the amended Complaint complied with the formal requirements stipulated by the Uniform Domain Name Dispute Resolution Policy



(UDRP), the Rules for Uniform Domain Name Dispute Resolution Policy (UDRP Rules), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy.

Commencing on Nov 4, 2023, the Center officially notified Renkli Rüyalar Oteli Production of the Complaint, initiating the proceedings. Consequently, the Center notified Renkli Rüyalar Oteli Production's default on Nov 25, 2023.

#### 6.2.1. Timeline of the Case

October 29, 2023	<p>Silver Screen Production Ltd., Inc. (SSP) organizes a concert commemorating the 100th anniversary of the Republic of Turkey at Wembley Arena, London.</p> <p>The concert features diverse Turkish and international artists and is live-streamed on YouTube.</p>
Following the concert	<p>Renkli Rüyalar Oteli Prodüksiyonu AŞ., Inc. (RROP) rebroadcasts the recorded concert on its YouTube channel without SSP's permission.</p>

November 2, 2023	<p>SSP files a complaint against RROP with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center (the Center).</p> <p>SSP claims copyright infringement due to the unauthorized online rebroadcast of the concert.</p>
November 4, 2023	The Center officially notifies RROP of the complaint and initiates proceedings.
November 25, 2023	RROP is declared in default for not responding to the complaint.
February, 2024	The dispute will be heard at WIPO.

## **6.3 Claims of the Parties**

### **6.3.1. Claims of the SilverScreen Creations**

The Claimant is SilverScreen Production Ltd., Inc., London/United Kingdom. The claimant, Silver Screen Production Ltd., Inc., has initiated legal proceedings against the respondent, Renkli Rüyalar Otelı Prodüksiyonu AŞ., Inc., alleging copyright infringement and geographical indication violations due to unauthorized use.

According to the claimant , the SilverScreen Production has ownership of the broadcast rights to the concert held on October 29,2023 for the 100th anniversary of the Republic of Turkey. and alleges that the respondent (Renkli Rüyalar Otelı ) unauthorizedly re-broadcasted this content on their YouTube channel.

The Claimant's allegation of copyright infringement relies on centering on the unauthorized rebroadcast of the concert and highlighting the infringement of intellectual property rights associated with the recorded content.

The Claimant alleges geographical indication violations, contending that the Respondent's actions may create confusion regarding sales governance. This claim is rooted in WIPO Article 8, emphasizing the "Right of Distribution," granting performers the exclusive right to authorize the public availability of their performances through transfer of ownership.

In contrast to the Respondent's position, Silver Screen Production Ltd., the Claimant, asserts its ownership rights over the intellectual property, presenting itself as the event organizer and recorder. The Claimant emphasizes copyright infringement stemming from the unauthorized rebroadcast of the concert, along with geographical indication violation aimed at addressing potential confusion regarding sales governance. Additionally, the Claimant seeks a monetary order for damages, referring to economic rights, and requests the Respondent to bear the costs of

arbitration, excluding legal representation fees due to the removal of the contractual breach element.

### **6.3.2. Response of the Renkli Rüyalar Oteli Prodüksiyonu AŞ. Inc.**

The Respondent is Renkli Rüyalar Oteli Production AŞ. Inc and alleges the copyright infringements are irrelevant due to the conditions of the case.

According to the Respondent, the main profit of the company comes videocreations for luxury hotels and restaurants. Rebroadcasting of the concert was only aimed to share this celebratory event with the Turkish Republic nation. This type of videocreating never was the RROP's portfolio before.

Broadcasting on the platform YouTube was a first for the RROP. Concert's broadcast was the first content on the channel of RROP. RROP is not intended to make profit out of neither concert's re-broadcast nor any online stream platforms.

The anniversary of the Turkish Republic is a momentous day and event for both Turkish Republic and Turkish nation. The intention for the re-broadcasting is only to share the enthusiasm with the celebrators of the 100th anniversary as a whole with the Turkish citizens who residence in the UK and UK citizens who would like to share the bliss. The owner of the Silver Screen Production is a Turkish citizen himself who resident in the UK and that explains the situation perfectly for reuniting people for this momentous, joyfull celebration.

The respondent contends that, in accordance with the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations, the reliance is placed on the broadcast's objective of unification, which encompasses the intentions of the claimant.

As October 29 is presently regarded as a geographical indication, the broadcasting of this concert by RROP serves solely public interest and general welfare objectives. It should be assessed within the scope of fair use.

## **6.4 Request for Relief**

### **6.4.1. Claimant**

- 1.To Declare that Silver Screen Production Ltd., the Claimant, affirms ownership rights over the intellectual property as the event organizer and recorder, in accordance with WIPO (Moral Rights).
2. To Declare that, in response to Renkli Rüyalar Oteli Prodüksiyonu AŞ.'s unilateral rebroadcasting without formal consent, the Claimant challenges fair use under WIPO (Moral Rights), emphasizing the event's public interest nature.
- 3.To Declare copyright infringement based on the unauthorized rebroadcast of the concert.
4. To Declare geographical indication violations (Article 8) to address potential confusion about sales governance.
- 5.To Declare an order for the Respondent to pay monetary damages resulting from contractual breach, referencing economic rights (Article 6, Article 8, Article 11).
- 6.To Declare a request for the Respondent to cover the costs of arbitration proceedings, including legal representation fees.

#### **6.4.2. Respondent**

1.To declare that due to the intention for publishing the concert on Youtube was public welfare respondent refer to fair use doctrine. (Fair use doctrine sub 1)

2. To declare that publishing the concert intended for personal use and not for profit. (Turkish Copyright Law Article 38)

2.To Declare a request for the Claimant to cover the costs of arbitration proceedings, including legal representation fees.

### **7. APPLICABLE LAW**

#### **7.1 Beijing Treaty on Audiovisual Performances**

##### **Article 1**

##### **Relation to Other Conventions and Treaties**

*(1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the WPPT or the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome on October 26, 1961.*

*(2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.*

*(3) This Treaty shall not have any connection with treaties other than the WPPT, nor shall it prejudice any rights and obligations under any other treaties.*

## **Article 2**

### **Definitions**

*For the purposes of this Treaty:*

*(a) “performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;*

*(b) “audiovisual fixation” means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device;*

*(c) “broadcasting” means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;*

*(d) “communication to the public” of a performance means the transmission to the public by any medium, otherwise than by broadcasting, of an unfixed performance, or of a performance fixed in an audiovisual fixation. For the purposes of Article 11, “communication to the public” includes making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public.*

## **Article 11**

### **Right of Broadcasting and Communication to the Public**

*(1) Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.*

*(2) Contracting Parties may in a notification deposited with the Director General of WIPO declare that, instead of the right of authorization provided for in paragraph (1), they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they will set conditions in their legislation for the exercise of the right to equitable remuneration.*

*(3) Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.*



## **7.2 Berne Convention for the Protection of Literary and Artistic Works**

### **Article 2**

**Protected Works: 1. “Literary and artistic works”; 2. Possible requirement of fixation; 3. Derivative works; 4. Official texts; 5. Collections; 6. Obligation to protect; beneficiaries of protection; 7. Works of applied art and industrial designs; 8. News**

*(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.*

*(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.*

*(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.*

*(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.*

*(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.*

*(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.*

*(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.*

*(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.*

## Article 6

### **Possible Restriction of Protection in Respect of Certain Works of Nationals of Certain Countries Outside the Union: 1. In the country of the first publication and in other countries; 2. No retroactivity; 3. Notice**

*(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.*

*(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.*

*(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as “the Director General”) by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.*

## **Article 9**

### **Right of Reproduction: 1. Generally; 2. Possible exceptions; 3. Sound and visual recordings**

*(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.*

## **Article 10**

### **Certain Free Uses of Works: 1. Quotations; 2. Illustrations for teaching; 3. Indication of source and author**

*(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.*

*(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.*

*(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.*

## **Article 10bis**

### **Further Possible Free Uses of Works**

#### **1. Of certain articles and broadcast works;**

## **2. Of works seen or heard in connection with current events**

*(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.*

*(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.*

### **Article 6bis**

**Moral Rights: 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author's death; 3. Means of redress**

*(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.*

*(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.*

*(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.*

## **Article 11**

**Certain Rights in Dramatic and Musical Works: 1. Right of public performance and of communication to the public of a performance; 2. In respect of translations**

*(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:*

*(i) the public performance of their works, including such public performance by any means or process;*

*(ii) any communication to the public of the performance of their works.*

*(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.*

## **Article 11bis**

**Broadcasting and Related Rights: 1. Broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, public communication of broadcast by loudspeaker or analogous instruments; 2. Compulsory licenses; 3. Recording; ephemeral recordings**

*(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:*

*(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;*

*(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;*

*(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.*

*(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.*

*(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.*

## **Article 11ter**

### **Certain Rights in Literary Works: 1. Right of public recitation and of communication**

*(1) Authors of literary works shall enjoy the exclusive right of authorizing:*

*(i) the public recitation of their works, including such public recitation by any means or process;*

*(ii) any communication to the public of the recitation of their works.*

*(2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.*

### **7.3 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations**

#### **Article 3**

##### **Definitions**

**(a) Performers; (b) Phonogram; (c) Producers of Phonograms; (d) Publication; (e) Reproduction; (f) Broadcasting; (g) Rebroadcasting] For the purposes of this Convention:**

*(a) “performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;*

*(b) “phonogram” means any exclusively aural fixation of sounds of a performance or of other sounds; (c) “producer of phonograms” means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;*

*(d) “publication” means the offering of copies of a phonogram to the public in reasonable quantity;*



*(e) “reproduction” means the making of a copy or copies of a fixation;*

*(f) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds;*

*(g) “rebroadcasting” means the simultaneous broadcasting by one broadcasting organisation of the broadcast of another broadcasting organisation.*

## **Article 6**

### **Protected Broadcasts: 1. Points of Attachment for Broadcasting Organizations; 2. Power to Reserve**

*1. Each Contracting State shall grant national treatment to broadcasting organisations if either of the following conditions is met:*

*(a) the headquarters of the broadcasting organisation is situated in another Contracting State;*

*(b) the broadcast was transmitted from a transmitter situated in another Contracting State.*

*2. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organisation is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. Such notification may be*

*deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.*

## **Article 10**

### **Right of Reproduction for Phonogram Producers**

*Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.*

## **Article 13**

### **Minimum Rights for Broadcasting Organizations**

*Broadcasting organisations shall enjoy the right to authorize or prohibit:*

*(a) the rebroadcasting of their broadcasts;*

*(b) the fixation of their broadcasts;*

*(c) the reproduction:*

*(i) of fixations, made without their consent, of their broadcasts;*

*(ii) of fixations, made in accordance with the provisions of Article 15, of their broadcasts, if the reproduction is made for purposes different from those referred to in those provisions; page 5/9*

*(d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised.*

## **Article 15**

### **Permitted Exceptions: 1. Specific Limitations; 2. Equivalents with copyright**

*1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:*

*(a) private use;*

*(b) use of short excerpts in connection with the reporting of current events;*

*(c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;*

*(d) use solely for the purposes of teaching or scientific research.*

*2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organisations, as it provides for, in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works. However, compulsory licenses may be provided for only to the extent to which they are compatible with this Convention.*

## **Article 27**

### **Applicability of the Convention to Certain Territories**

*1. Any State may, at the time of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for whose international relations it is responsible, provided that the Universal Copyright Convention or the International Convention for the Protection of Literary and Artistic Works applies to the territory or territories concerned. This notification shall take effect three months after the date of its receipt.*

*2. The notifications referred to in paragraph 3 of Article 5, paragraph 2 of Article 6, paragraph 1 of Article 16 and Articles 17 and 18, may be extended to cover all or any of the territories referred to in paragraph 1 of this Article.*

## **7.4 WIPO Copyright Treaty (WCT)**

### **Article 8**

#### **Right of Communication to the Public**

*Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.*

### **Concerning Article 8:**

*It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in Article 8 precludes a Contracting Party from applying Article 11bis(2).*

### **Relevant Domestic Law**

#### **Fair Use Doctrine**

*sec.107 USCA*

*n(...) the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.*

*nIn determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include*

*(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*

*(2) the nature of the copyrighted work;*

*(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*

*(4) the effect of the use upon the potential market for or value of the copyrighted work*

## **7.5 United Kingdom Copyright, Designs and Patents Act 1988:**

### **Part I Copyright**

#### **Chapter I Subsistence, ownership and duration of copyright**

##### **1. Copyright and copyright works.**

*(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—*

*(a) original literary, dramatic, musical or artistic works,*

*(b) sound recordings, films [or broadcasts], and*

*(c) the typographical arrangement of published editions.*

*(2) In this Part “copyright work” means a work of any of those descriptions in which copyright subsists.*

*(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 153 and the provisions referred to there).*

## **6. Broadcasts.**

*(1) In this Part a “ broadcast ” means an electronic transmission of visual images, sounds or other information which—*

*(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or*

*(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public, and which is not excepted by subsection (1A); and references to broadcasting shall be construed accordingly.*

*(1A) Excepted from the definition of “broadcast” is any internet transmission unless it is—*

*(a) a transmission taking place simultaneously on the internet and by other means,*

*(b) a concurrent transmission of a live event, or*

*(c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.]*

*(2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.*

*(3) References in this Part to the person making a broadcast, [or a transmission which is a broadcast] are—*

*(a) to the person transmitting the programme, if he has responsibility to any extent for its contents, and*

*(b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission; and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.*

*(4) For the purposes of this Part, the place from which a [wireless] broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth).]*

*(4A) Subsections (3) and (4) have effect subject to section 6A (safeguards in case of certain satellite broadcasts).]*

*(5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.*

*(5A) The relaying of a broadcast by reception and immediate re-transmission shall be regarded for the purposes of this Part as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.]*

*(6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast.*

## **6A. Safeguards in case of certain satellite broadcasts.**

*(1) This section applies where the place from which a broadcast by way of satellite transmission is made is located in a country other than [the United Kingdom] and the law of that country fails to provide at least the following level of protection—*

*(a) exclusive rights in relation to [wireless] broadcasting equivalent to those conferred by section 20 ([infringement by communication to the public]) on the authors of literary, dramatic, musical and artistic works, films and broadcasts;*



- (b) a right in relation to live [wireless] broadcasting equivalent to that conferred on a performer by section 182(1)(b) (consent required for live broadcast of performance); and*
- (c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the [wireless] broadcasting of sound recordings.*

*(2) Where the place from which the programme-carrying signals are transmitted to the satellite (“the uplink station”) is located in [the United Kingdom] —*

*(a) [the United Kingdom] shall be treated as the place from which the broadcast is made, and*

*(b) the person operating the uplink station shall be treated as the person making the broadcast.*

*(3) Where the uplink station is not located in [the United Kingdom] but a person who is established in [the United Kingdom] has commissioned the making of the broadcast—*

*(a) that person shall be treated as the person making the broadcast, and*

*(b) [the United Kingdom] shall be treated as the place from which the broadcast is made.]*

## **7.6 Turkish Copyright Law - Law No. 5846 of December 5, 1951, on Intellectual and Artistic Works**

## **PART ONE**

### **INTELLECTUAL AND ARTISTIC WORKS**

#### **B. TYPES OF INTELLECTUAL AND ARTISTIC WORKS**

##### **II. Musical Works**

###### **Art. 3.**

*Musical works are all types of musical compositions, with or without lyrics.*

#### **C. ADAPTATIONS AND COLLECTIONS**

###### **Art. 6.**

*Intellectual and artistic products created by benefiting from another work but that are not independent of such work are adaptations, of which the main types are listed below:*

- 1. Translations;*
- 2. Converting a work like novel, story, poem or play, from said types to another type;*
- 3. 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;*
- 4. Musical arrangements and compositions;*
- 5. Transforming works of fine arts from one form to another;*

6. *Making a collection of all or the same type of works of one author;*
7. *Making a collection of selected works according to a specific purpose and in accordance with a specific plan;*
8. *Making an unpublished work ready for publication as a result of scientific research and study (ordinary transcriptions and facsimiles that are not the result of scientific research and study are excluded);*
9. *Annotating, commenting or abridging the work of another person;*
10. *(Addition: 7.6.1995 - 4110/3) Adaptation, editing or any modification of a computer program;*
11. *(Addition: 7.6.1995 - 4110/3) Databases obtained by the selection and*

## **D. WORKS MADE PUBLIC AND PUBLISHED WORKS**

### **Art. 7.**

*A work disclosed to the public with the consent of the rightholder shall be deemed to have been made public. A work shall be deemed to have been published, if copies obtained by reproduction of the original are supplied to the public by way of selling, distributing or otherwise putting into commercial circulation with the consent of the rightholder. The provisions of paragraph two of article 3 of the Press Law No. 5680 are reserved.*

## **PART THREE INTELLECTUAL RIGHTS**

### **A. RIGHTS OF THE AUTHOR**

## **I. In General**

### **Art. 13.**

*The economic and moral interests of authors in their intellectual and artistic works shall be protected under this Law.*

*The rights and authorities granted to authors shall extend over the entire work and its parts.*

*(Addition: 21.2.2001 - 4630/7; Amendment: 3.3.2004 - 5101/10) Film producers that make the first fixation of films and phonogram producers that make the first fixation of sounds shall have their productions containing cinematographic and musical works recorded and registered for the purpose of preventing violation of their rights, facilitating proof of rightholdership and tracking the authority to exercise economic rights, and without the aim of creating any rights. The recording and registration of all the works protected under this Law may be made for the same purpose upon demand of the authors; the authority to exercise economic rights may also be recorded. The Ministry can not be held responsible for these procedures which are made based on declaration. However, persons who make a wrong declaration in the procedures on which the recording and registration shall be based, with regard to moral or economic rights which they do not own or whose non-existence was known or should have been known to them, shall be subject to the legal and criminal sanctions set out in this Law. All fees regarding recording and registration procedures carried out under this Law shall be determined by the Ministry. The rules and procedures of recording and registration, the determination of the fees and other matters shall be set out in a by-law to be issued by the Ministry.*

## **II. Moral Rights**

### **(1) Authority to Disclose the Work to the Public**

#### **Art. 14.**

*The author shall exclusively determine whether or not his work shall be disclosed to the public and  
and the time and manner of its publishing. Only the author may give information on the contents of a work of which the whole or a substantial part has not yet been made public, or whose main features have not yet been introduced to the public in any way. (Addition: 21.2.2001 - 4630/8) The author may prohibit, even if he has given written approval to others, the promotion to the public or the publishing of both the work and its adaptation, where the manner of disclosing to the public or publishing of the work is of such a nature as would damage the honor and reputation of the author. Waiving such power of prohibition by contract shall be null and void. The other party's right to compensation is reserved.*

#### **IV. Economic Rights**

##### **(e) Right to Communicate a Work to Public by Devices Enabling the Transmission of Signs, Sounds and/or Images.**

#### **Art. 25.**

*(Amendment: 21.2.2001 - 4630/15) The author shall have the exclusive 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 author has 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.*

*The distribution and supply of works by means of communication to the public as regulated under this article, shall not prejudice the author's right of distribution.*

## **B. LIMITATIONS**

### **III. Due to the Interest of Individuals**

#### **(1) Personal Use**

#### **Art. 38.**

*(Amendment: 7.6.1995 - 4110/14; 21.2.2001 - 4630/19) 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.*

*(Second paragraph revoked: 21.2.2001 - 4630/36) In the absence of specific contractual provisions, the reproduction and adaptation of a computer program by the lawful acquirer is permitted where necessary for the use of the computer program in accordance with its intended purpose, including for error correction. The loading, running and error correction of a computer program by a person who has lawfully acquired the program may not be prohibited by contract. The making of a backup copy by a person having the right to use the computer program may not be prevented by contract insofar as it is necessary to ensure the use of such program. The person who has acquired the right to use a computer program may observe, analyze or test the functioning of the program in order to determine the ideas and principles underlying any element of the program while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do. Where reproduction of the code and translation of its form in the sense of reproduction and adaptation of the computer program are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, the performing of such acts shall be permitted, provided that the following conditions are met:*

- 1. That these acts are performed by the licensee or by another person having the right to use a copy of the program or by a person authorized to do so in their name;*
- 2. That the information necessary to achieve interoperability was not made available to the persons specified in subparagraph one;*
- 3. That these acts are confined to the parts of the program which are necessary to achieve interoperability. The paragraph above does not entitle the information obtained under that paragraph;*

- 1. To be used for purposes other than to achieve the interoperability of the independently created computer program;*
- 2. To be given to others, except where necessary for the interoperability of the independently created computer program*

3. *To be used for the development, production or marketing of a computer program substantially similar in its expression or for any other act which infringes copyright. The provisions of the sixth and seventh paragraphs may not be interpreted in a way that conflicts with the normal exploitation of the program or that unreasonably prejudices the rightholder's legitimate interests.*

## **8. RELEVANT CASE LAW**

### ***Football Association Premier League Ltd and Others v. QC Leisure and Others***

In a significant legal case (Case C-403/08 and C-429/08), the FA Premier League ("FAPL") confronted challenges to its broadcasting rights and licensing practices. FAPL, responsible for the commercial exploitation of Premier League football matches, granted live transmission licenses on a territorial basis for three-year terms. These licenses, awarded through an open competitive tender process, aimed to maximize the broadcasting rights' value. The territorial basis, often national, depended on demand, as broadcasters primarily served domestic markets. Winning bidders gained exclusive rights for live transmission in their designated areas, a crucial element for FAPL to realize optimum commercial value. To protect territorial exclusivity, broadcasters committed to preventing public access outside their licensed areas, ensuring secure encryption for satellite broadcasts, and restricting decoding devices. In a specific case (C-429/08), a public house manager, Ms. Murphy, faced charges for using a foreign decoding device to screen Premier League matches, challenging FAPL's claims of intellectual property rights infringement. The legal proceedings raised questions about the legality of licensing practices within the European Union, leading to a CJEU decision on October 4, 2011, with potential implications for sports broadcasting and the broader domain of intellectual property and competition law.

### ***Viacom International Inc. v. Youtube LLC***

This legal case is United States Court of Appeals for the Second Circuit decision regarding liability for copyright infringement committed by the users of an online video hosting platform. In 2007



Viacom file a lawsuit against the two big tech companies Google and You tube. Viacom alleges You tube and Google infringe the copyrights by making available to upload videos owned by Viacom. The case was first heard at New York in 2008. Viacom asked for and obtained a court order requiring YouTube to provide information that outlined the viewing patterns of all users who had ever watched videos on the platform. Judge of this case Louis Stanton ordered YouTube to hand over documents totaling about 12 terabytes of data. On the contrary judge declined the request of Viacom which is YouTube handing over the source code of its search engine, due to it was a trade secret. As a result of this data share order Viacom drew a reaction. Users express their disturbance in this situation. It has significant influence in other cases in various fields. Meanwhile,

## **9. ESTABLISHED AGENDA**

The Court should decide...

- ...whether the concert by Renkli Rüyalar Otelı Prodüksiyonu AŞ., which was illegally rebroadcasted, amounts to copyright infringement, as asserted by SilverScreen Production Ltd.
- ...whether the respondent's activities violated any intellectual property rights pertaining to the recorded content.

- ... whether Silver Screen Production Ltd.'s assertion that it is the event organizer and recorder and that it owns the intellectual property, based on WIPO Article 5 (Moral Rights), should be accepted.
- ... If the respondent's claims about the public interest and general welfare objectives are the only reasons for the Renkli Rüyalalar Oteli Prodüksiyonu AŞ. concert being streamed on YouTube.
- ... whether the transmission falls under the purview of fair use in light of the historic significance of October 29 for the Turkish Republic.

## **10. BIBLIOGRAPHY**

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[https://www.wipo.int/pressroom/en/articles/2012/article\\_0012.html](https://www.wipo.int/pressroom/en/articles/2012/article_0012.html)

## **11. FURTHER READINGS**

You can find a detailed list of these participating countries to WIPO at <https://www.wipo.int/members/en/>

An article about exceptions and limitations to copyright  
<https://certificates.creativecommons.org/cccerteducomments/chapter/2-4-exceptions-and-limitations-to-copyright/>