

**Bilge Saltan**

### **Recent Lawsuits for Collection of “Grand Rights” in Turkey**

Despite the Turkish Code of Intellectual and Artistic Works No. 5846 was enacted on 5 December 1951, the application of the law to the practice is not very old and established. However, with the increasing awareness of copyrights in Turkey, more right owners started to claim for their financial rights. But since the users of the works are not very accustomed to make copyright payments, the right owners face significant difficulties in collecting their rights.

Recently, a couple of foreign right owners, being tired of endless negotiation processes, filed lawsuits against various state opera and bale managements which are dispersed to different cities of Turkey. The claims of the right owners are composed of the collection of the so-called grand rights which appear with “the dramatic performance of a musical work in combination with another work” and hiring fees of the notes used by the orchestras.

In fact both grand rights and hiring fees of notes have appeared in copyright practice and these are not clearly determined by the law despite it is based on the representation right of the work owner. But the grand rights create more financial revenue than the other types of financial rights. So this vague position of Turkish legislation creates significant difficulties for right owners in reaching their rights.

The main obstacle of the right owner is created by article 68 of the law numbered 5846. Pursuant to article 68 of the law, the work owner, in case of an unauthorized use of a work, may claim an amount to be calculated up to three times of a fee determined in the agreement between the work owner and the performer. However, in case there is not any agreement between the parties, such fee is calculated as per the sample agreements made by the work owner or by considering the market price of such work.

In case of the application of the second alternative, that is to say, in circumstances where there is not any agreement between the work owner and the unauthorized user, the work owner, while claiming compensation for the unauthorized use, should prove the price of the work in the market, by relying on the other agreements made in relation to the work in question. Since the prices determined in other countries than Turkey for the use of the work are significantly high and since it is pretty hard to find any sample agreement concluded in Turkey for the use of such work, the work owners while proving the price of the work, try to rely on these agreements concluded in abroad. In such a situation, the compensations claimed by the work owners may be interpreted as excessive considering the prices valid in Turkish market. In fact, any work owner should be in a position to claim any price which he/she deems appropriate for the work or at least the unauthorized users should not be in a position to discuss the price of the work after committing the infringement.

However, for now, the courts try to solve this problem by taking the views of the professional unions for copyright collection or by taking expert opinions. But due to the lack of established practice in Turkey in this respect, the views of experts or professional unions are far from satisfying the parties.