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Different aspects of Turkish Copyright Law

In entertainment sector, the business owners mostly would like to possess all the rights of the productions which are produced by them. However, some aspects of Turkish Copyright Law, which are rather different than the provisions of foreign copyright laws, may create obstacles before foreign producers.

Although being mainly shaped by international agreements, Turkish Copyright Law has its own peculiarities. For instance, under Turkish law, the work owner, as a rule, can only be the real person who creates the work and he/she receives his/her rights in relation to the work at the moment of the creation of the work. Therefore, including the production companies, no other legal entity may automatically receive the rights of the work; there shall be a need for a legal transaction providing the transfer of the rights of the work.

The producers acting in Turkish entertainment market should also pay attention to the legal provisions creating a distinction between the financial rights and moral rights of a work owner as being one of the main differences of Turkish Copyright Law from the foreign legislations.

Under Turkish law, the moral rights of the work owner are defined under the Code of Intellectual and Artistic Works numbered 5846 as authority to present to the public, authority to state the name and authority to prohibit the changes on the work. The moral rights exclusively belong to the owner of the work. So the moral rights cannot be transferred to any third party nor waived. But, the work owner may assign the right to use of his/her rights to any third party.

On the other hand, the financial rights, which are determined by law as right to adapt, right to duplicate, right to disseminate, right to perform and right to broadcast, different from the moral rights, may be transferred to the third parties by the work owner or be subject to the legal transactions.

The foreign producers who intend to transfer the financial rights via a legal transaction should pay attention to the fact that the agreements and deposits regarding financial rights must be in writing and the rights subject to these legal transactions must be stipulated separately as making direct and clear references to the rights. Also, the legal transactions regarding financial rights shall be void should they relate to a work which is not created yet or which will be completed. However, the undertakings regarding these procedures shall be valid even if they are made prior to the creation of the work.

Another important difference of Turkish law is related to the concept of “future media”. The producers, while transferring the financial rights of the work owner tend to receive the right to perform of the work in all types of media and for providing a full coverage they insert that all types of media also includes future media. However, under Turkish law, for providing a larger protection to the work owner, it is generally accepted that any third party which would like to use the work of the right owner on any media, such media/platform should be named distinctly, such as TV, radio, digital platform etc. and the statement “*all media including future media*” does not give the right to use the work of the right owner on the platforms which are discovered and started to be used after the execution of the agreement signed between the right owner and the assignee. Therefore there shall be a need to conclude another agreement for covering such newly discovered media to use the work on that media.

As briefed above, Turkish Copyright Law provides some major differences from the other legal systems. Also, this area of Turkish law is considered as related to the public order. So, it is not possible to make a choice of law for the legal transaction between the work owner and any third party to be saved from these provisions of Turkish law. Therefore, before investing important sums into entertainment productions to be created in Turkey, it is better to provide a full legal coverage considering the different peculiarities of Turkish Copyright Law.