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TECHNOLOGY POLICIES AND INNOVATION MANAGEMENT
DEPARTMENT OF INTELLECTUAL PROPERTY LAW

PIRACY IN COPYRIGHT LAW: POLICIES AND PROPOSED SOLUTIONS
FOR PREVENTION

LL.M. Thesis

Asya Ela YILDIRIM

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DECLARATION

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To the Directorship of the Graduate School of Social Sciences

I hereby declare that all information in my master's thesis named "**PIRACY IN COPYRIGHT LAW: POLICIES AND PROPOSED SOLUTIONS FOR PREVENTION**" has been prepared under the supervision of Assoc. **Prof. Dr. Selin ÖZDEN MERHACI** has been gathered and submitted in compliance with academic rules and ethical conduct principles. As required by these rules and principles, I have fully indicated and cited all sources that are not original to this work. I also declare that I have acted according to scientific research and ethical rules during the study process, and if it is proven otherwise, I will accept all legal consequences.

26.08.2024

Asya Ela YILDIRIM

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ABBREVIATIONS

art.	: article
CMOs	: Collective Right Management Organisations
CJEU	: Court of Justice of the European Union
etc.	: et cetera (and other similar things)
EU	: European Union
EUROJUST	: European Union Agency for Criminal Justice Cooperation
FSEK	: Law on Intellectual and Artistic Works (Law No. 5846)
ibid.	: (ibīdem) In the same source
IMO	: International Maritime Organisation
InfoSoc	: EU Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
IP	: Intellectual property
IPRED	: EU Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights
MÜ-YAP	: Phonogram Producers Collecting Society of Türkiye
MÜYORBİR	: Music Performers Collecting Society of Türkiye
MÜZFED	: Musical Federation (The federation established by the collective management organisations MÜYAP, MÜYORBİR, MÜYABİR, MÜZİKBİR, and TSMB operates within the music industry to protect the rights of phonogram producers and performers.)
RMI	: rights management information
TPM	: technological protection measures
trs.	: translated
TRIPS	: Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCLOS	: United Nations Convention on the Law of the Sea
YAYBİR	: Publishers Copyright and Licensing Collecting Society of Türkiye
WCT	: WIPO Copyright Treaty
WPPT	: WIPO Performances and Phonograms Treaty

INTRODUCTION

This study covers copyright piracy, especially in Türkiye. Accordingly, it includes a brief discussion of the copyright legislation in Türkiye, copyright piracy and its meaning, roots, and the damages it causes, followed by existing anti-piracy policies and proposed solutions to prevent copyright piracy.

The main reason that triggered us to study this subject was the European Commission Reports on Türkiye. From 2019 to 2024, every report mentions that Türkiye is the second-largest source country for pirated and counterfeit products entering the European Union.

However, while doing initial research for this study, it became clear that copyright piracy is an old problem that keeps growing despite the measures taken. In 2001 and 2004, new amendments were made in the name of preventing copyright piracy acts in Türkiye. As is evident, these changes are not affecting the outcome and are also in need of updates because of the rapid technological developments and their impact on copyright piracy.

As a result, the reports mentioned and reports of previous years stated that the Law on Intellectual and Artistic Works was incompatible with the EU acquis. This is because it was adopted in 1951 and has only been kept up to date with several amendments and additions. It was repeatedly advised that the legislation regulating copyrights needs to be renewed thoroughly. Türkiye essentially prepared a draft Copyright Code in 2017. However, the draft could not be enacted, and the Law dated 1951 is currently in use.

Even though, Turkish copyright legislations seem to provide protection against piracy on paper, in practice, these regulations are enforced inefficiently. The courts' hesitancy in applying the sanctions they find severe, lengthy judicial proceedings, the cost of court

proceedings, and the unsatisfactory results are all part of the problem. This attitude, in turn, prevents the copyright-holders from protecting their rights and encourages piracy.

As a result, the public does not consider copyright infringements in any manner, including piracy, as a crime or consider it a victimless crime. It is safe to argue that there are major gaps in practice, the most obvious one being the increase in pirated copyright content on the internet. Neither the individuals who are committing acts of piracy via the internet nor the ones who benefit from these are aware that their actions indeed constitute a crime.

The European Commission drew attention to the increasing issue of online pirated content with its Türkiye report of 2021, and the same warning continued in 2022, 2023 and 2024. Below is a brief text from the report of 2021:

“Even though physical piracy by street vendors decreased due to the COVID-19 pandemic conditions, unauthorised use of copyrighted material via online platforms increased. Pirate traders were opening e-shops at well-known e-commerce websites. Economic interests of consumers and producers were infringed without efficient redress...”¹

Although there has been a decrease in online piracy activities in recent years because of streaming platforms the platform fees, the adequacy of the content qualities they provide, and lastly, the increasing number of these platforms seem to make pirated options attractive to consumers again.

In this context, to get a better understanding and possibly prevent piracy, it is only logical to discuss how and why piracy finds new ways of emerging with every new

¹ European Commission, *Türkiye 2021 Report*, https://enlargement.ec.europa.eu/turkiye-report-2021_en, pp. 82-83, Accessed 12 January 2025

technology. For this reason, this study also touches upon the background of pirated activities, the reason behind the unending demand, and the sources of copyright piracy.

However, before providing solutions or explaining its many causes, it is important to give a clear understanding of copyright piracy. The reason is that there is no harmonised meaning of the term piracy in intellectual property law, and the definitions made by scholars vary. Since proposing solutions to problems we do not understand would be insufficient at best, it was essential to show what copyright piracy is. Consequently, showing the economic and social impact of piracy gives us an understanding of why the conditions surrounding this problem need immediate improvement.

As the reports above repeatedly suggest, Turkish legislation on copyrights, which has been amended several times since it entered into force to keep up with the technology, needs to be updated yet again. These updates should address the damaging practices listed above. In addition, copyright piracy policies also need to be updated. The aims should be to inform the public about piracy, determine the CMOs' roles in protecting copyrights, and find new and enforceable solutions to address the piracy problem.

Accordingly, after explaining current legal provisions and policies in place, several propositions to prevent copyright piracy will be provided based on several suggestions made in the literature.

§ SECTION ONE: THE CONCEPT OF COPYRIGHT AND ITS EVOLUTION

Although there are some references to other countries' legislation in the upcoming chapters, this work is primarily based on Turkish legislation. Therefore, before delving into our main topic, it is necessary to clarify some key terms and concepts related to intellectual property and copyright law in Türkiye. This will be beneficial for getting a better understanding of the subject.

After explaining some general concepts about intellectual property in Türkiye under the first heading, it will be delved into copyright law and some key concepts. Lastly, in the third heading, the digital age, its importance and impacts on copyright law will be mentioned.

I. Intellectual Property Rights

The human mind has continued to create since the dawn of time. Be it for staying fed, alive, engaged, or entertained. However, protecting the creations of the human mind is a relatively new concept.

Protecting the intellectual labour of the human mind has several significant purposes. First and foremost, protecting intellectual property promotes authentic production which in turn, encourages the development of science and technology and ensures the future of society.² Also, by protecting intellectual property, society celebrates intellectual labour, and recognises the individuals who contribute to the culture, science and industry. This encourages people to create more. Therefore, increasing production and development.

² KARASU, R., SULUK C., NAL T., *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 7th Edition, Ankara 2023, p. 67.

In the last decades, the importance of information has overcome the importance of the industry, because production nowadays is based upon information.³ This is why having a proper intellectual property system and enforcing it to protect intellectual property (IP) rights is more important than ever.

A. Definition of Intellectual Property Rights

The protection is provided through intellectual property law, which is the branch of law that protects intellectual property rights. The subject matter of intellectual property rights is intangible properties resulting from creative ideas.⁴ Therefore, intellectual property is a property that is not bound to a tangible object. Since intellectual property rights protect the intellectual labour of authors behind creations.⁵

For example, someone who possesses a copy of a book can burn or shred the physical copy, but intellectual property rights in the book would still be intact. Moreover, in the instance of all the copies of a book that exist, destroyed to a degree that no physical copy to be found, intellectual property rights in that book would still exist, because the creative ideas are not bound to physical copies. Regardless of the copies of a work and/or a product, the intellectual property of the creator will exist forever.⁶

Within the scope of Turkish Intellectual Property Law, the term intellectual rights means intellectual property rights. However, because it is a different term it has multiple meanings. In broad terms, intellectual rights (intellectual property law) embody both industrial property rights and copyrights. The term ‘intellectual rights’ in the narrow

³ SULUK, C., ORHAN, A., *Uygulamalı Fikri Mülkiyet Hukuku II : Genel Esaslar Fikir Ve Sanat Eserleri*, Arıkan Yayıncılık, 2005, p. 43.

⁴ AYITER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 4.

⁵ HIRSCH, E. Ernst *Fikri ve Sınai Haklar*, Ankara Basımevi, 1948, p. 1.

⁶ *ibid.*

sense is used for the rights over intellectual and artistic works or as the term is used in practice, copyright.⁷

Since the subject of our study is copyright, there will only be a general explanation of industrial property rights, also similarities and differences between copyrights and intellectual property rights will be briefly touched upon.

B. Industrial Property Rights

Industrial property rights are rights over products created by intellectual labour to be used in trade or industry.⁸ There are mainly two types of industrial property rights namely; rights on products and rights to distinctive signs and names.

Rights on products are usually about production.⁹ For example, the idea behind granting a patent is to give a monopoly over an invention to the inventor in exchange for technological development. An invention is a solution to a technical problem. However, to be patentable, an invention needs to have a technical character. Another example of the rights on products is industrial designs. Industrial design is about the appearance of a product. It covers the aesthetic and/or ornamental aspects of products. In industrial design, the protection is not on the function but on the products' appeal to customers. As can be seen, these two rights protect the rights over products. Other industrial property rights on products are new plant varieties, utility models, and integrated circuit topographies.

On the other hand, the rights to distinctive signs and names differentiate products or producers from each other.¹⁰ For instance, trademarks are names or signs that

⁷ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara 2009, p. 27.

⁸ KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara 2023, p. 6.

⁹ ibid.

¹⁰ ibid

distinguish the goods and services of someone (or an entity) from others. Similarly, geographical indications are marks for distinguishing goods with a specific geographical origin, whose qualities or reputation depend on the origin. The other industrial property rights to distinctive signs and names are tradenames and domain names.

C. Similarities Between Industrial Property Rights and Copyrights

Essentially, there is no clear line between industrial property rights and copyrights.¹¹ Both rights protect the creativity of the human mind, have a limited duration of protection and grant their owners absolute and monopoly rights.¹² To explain these and other similarities in more detail:¹³

i. Novelty:

Intellectual property rights are primarily about protecting novel creations of intellectual labour. Therefore, both industrial property rights and copyrights require certain aspects of novelty. For example, in copyright, the expected “novelty” is indicated in the personality criteria. Which does not require the uniqueness of a work but a work to bear the characteristic of its author. This concept will be explained later. However, in patents, an invention is required to be novel in a way that has never been done in history to be protected.

ii. Duration of protection:

Intellectual property rights, unlike property rights, have a limited duration of protection. The duration of protection varies from every other intellectual property right.

¹¹ AYITER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 3.

¹² EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara 2009, p.27.

¹³ KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara 2023, pp. 77-94.

iii. Transfer of rights:

Intellectual property rights are capable of being transferred. These rights may be licensed to third parties or passed on to heirs through inheritance.

iv. The written form requirement for legal validity in contracts:

In the Turkish Code of Obligations, freedom of form is the general rule for contracts. However, contracts regarding intellectual property require a written form for the contract to be valid.¹⁴

D. Differences Between Industrial Property Rights and Copyrights

At their core, differences between copyrights and industrial property rights arise from the scope of their protection and the circumstances under which legal protection is granted and the.¹⁵ Copyright, for instance, arises automatically upon the creation. Obtaining copyright protection involves no registration or any other formalities. Industrial property rights, on the other hand, often provide protection after the start of the registration procedure. Again, to explain this and other differences in more detail¹⁶:

i. Aims:

As mentioned above, industrial property rights establish protection over products that are created for the sole purpose of utilisation in trade or industry. On the other hand, copyrights protect intellectual and artistic works. Copyright protection is provided apart from any commercial purpose.

¹⁴ *ibid.*

¹⁵ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara 2009, p. 27.

¹⁶ KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara 2023, pp. 94-103.

ii. The acquisition of rights:

Intellectual and artistic works acquire copyright protection upon creation. There are no formalities required for protection. In contrast, to acquire industrial property rights, some formalities like registration and/or publication are needed.

iii. Obligation of use:

There is no obligation for authors to use their work in any way for copyright protection to be maintained. Whereas, for some industrial property rights, namely patents and trademarks, there is an obligation of use. In the event of a legal dispute, where the defence of non-use is invoked if there is no evidence of usage, these rights can be cancelled.

iv. Legal sanctions of nullity and cancellation:

As discussed in the paragraph above, in certain situations, industrial property rights may face sanctions of nullity and cancellation. On the other hand, there is no such concept in copyrights. Unlike industrial property rights, copyright protection is gained upon the creation of a work, and there is no registry to be cancelled or nullified.¹⁷

¹⁷ Ibid., 103

II. Copyright

As mentioned above, in Turkish legislation, the term copyright defines the rights of the literary work's owners.¹⁸ For example, in Turkish law, copyright is regulated under a statute called the Law on Intellectual and Artistic Works (FSEK)¹⁹. However, in recent years, the term copyright has also come to be used to refer to the law on literary and artistic works. Though some scholars firmly believe the term copyright should not be used instead of law on intellectual and artistic works, it will be used as such in this study, as it is dominantly used in practice.

Copyright is an intellectual property right. That is to say, like other intellectual property rights, copyright protects intellectual products that come alive thanks to the labour of the human mind and creativity.

Hirsch, one of the scholars who laid down the foundation of Turkish copyright law, describes copyright in his own words as follows:

“Since the imitation, plagiarism and reproduction of the aforementioned works for commercial purposes would deprive the author of the reward of their efforts, the government grants the author a privileged legal status known as ‘copyright’, which is limited in time. By virtue of this right, the author who discloses their work to the public may exclusively benefit from the rights to print, publish, commercialise and exploit the work in any form.”²⁰

Again, according to WIPO, copyright is defined as:

¹⁸ AYITER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 5.

¹⁹ Law No. 5846 on Intellectual and Artistic Works (FSEK), (trs.) <https://telifhaklari.ktb.gov.tr/Eklenti/106878,law-on-intellectual-and-artistic-works-no5846pdf.pdf?0>, Accessed 08 April 2025

²⁰ HIRSCH, E. Ernst *Fikri ve Sınai Haklar*, Ankara Basımevi, 1948, p. 3.

“Copyright (or author’s right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.”²¹

As can be seen from the texts above, copyright refers to the bundle of rights owned by the author over the work they have created. Therefore, to properly understand the concept of copyright, as also emphasised by the definitions cited above, it is necessary to have a clear understanding of the notions of work, authorship, and the types of rights granted by copyright protection.

A. Work

“Work”, understandably, is the subject matter of copyright. The term “work” is defined in Art. 1/B of the FSEK as “Any intellectual or artistic product bearing the characteristic of its author, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work.”. Here, the word “product” has a broader scope than work. Product in this context encompasses not only the “work” but also the concept of related rights.²²

Within its definition, legislators also outline specific criteria that must be present for an intellectual product to be protected as a work. Some of these are as named in the article above, “bearing the characteristic of its author”, “deemed a scientific and literary or musical work or work of fine arts or cinematographic work” in addition to these criteria

²¹ WIPO Official Website, *Copyright*, <https://www.wipo.int/en/web/copyright#what>, Accessed 11 April 2025

²² TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 103.

“being shaped to a degree that bears the characteristic of its author” and last but not least “being a product of intellectual labour”.²³

The criteria for an intellectual production to be recognised as work vary between legal systems. For example, in America and most common-law countries, the criteria are originality and fixation. With the emphasis on the difference between the idea and expression. In the European Union, on the other hand, there are only two elements required: originality and expression.

Before delving deeper into the explanation of these criteria, it needs to be mentioned that most scholars state that there are only two criteria in Turkish copyright law for a work to fulfil: subjective and objective. Subjective criterion is, bearing the characteristic of its author, and objective criterion is, being shaped to a degree that bears the characteristic of its author *and* is deemed to belong in one of the categories: scientific, literary, musical, fine arts, or cinematographic work.²⁴

While we acknowledge and agree with this distinction of the criteria for a work to be protected, we believe that presenting the criteria in parts will enhance clarity. Hence, we will proceed to explain it in four parts.

i. Bearing The Characteristic of Its Author (Reflecting the Author’s Personality)

First of all, since the term “bearing characteristic of its author” in the translation of FSEK is not likely to be used in practice, we will be using the more widely known term “reflecting the author’s personality” or, in short, personality criterion.

²³ *ibid.*

²⁴ SULUK, C., ORHAN, A., *Uygulamalı Fikri Mülkiyet Hukuku II : Genel Esaslar Fikir Ve Sanat Eserleri*, Arıkan Yayıncılık, 2005, p. 118.

In the aforementioned dual distinction, the subjective criterion is considered to reflect the author's personality or personality. This criterion encompasses elements such as individuality, originality, and idea/expression distinction while providing a clearer understanding of how these elements are to be interpreted.

Let's start with the individuality element. This element is the essence of the personality criterion. It emphasises the importance of the author's personality and accumulated knowledge reflected in the work, as each creation should bear traces of its creator's individuality and character. Indeed, under EU law, works that do not embody a fragment of the author's personal imprint are not eligible for copyright protection.

Tekinalp finds that individuality shows itself in the manner of expression. This manner of expression is the sign of the author since it reflects their artistic personality, creativity and intellectual labour. To fulfil the individuality element, the work only needs to bear the imprint/sign of the author. There is no need to be a new creation or to be loved to get protection.²⁵

Ayiter finds individuality in the form of creation. The author's way of shaping the matter, may it be words, colours or marble, with their ideas is their unique way of expressing themselves.²⁶

Second element: originality. When discussing the differences between copyright and industrial property rights, we have addressed the "novelty" issue. There, we pointed out that the level of novelty needed for a work to be copyrighted is a lot less than, for instance, for an invention to be patented. Indeed, in copyright, it is not much of a "novel" or an "original" work that is protected, but more of a different approach and the personal touch.

²⁵ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 105.

²⁶ AYİTER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 38.

Arslanlı explains this situation as a truly original intellectual creation being born out of imagination, and these particular types of works being rarely encountered in life. And goes on to emphasise that imposing such a stringent requirement of originality for every work would considerably restrict the scope of copyright protection.²⁷

Overall, Arslanlı views the originality element of a work as the relative independence of the intellectual effort. Also, he thinks that, since all creative works are built upon prior ideas that a human being collects over the duration of their life, absolute independence is unattainable. Therefore, the essential criterion should be the author's individual contribution, and that the copyright law provides protection against the unauthorised use of others' work where no personal intellectual input or creative effort has been made.²⁸

On the other hand, Hirsch's take on originality as criticised by Arslanlı, is more shaper. In Hirsch's perspective, only the intellectual product which is unique and cannot be replicated by just anyone can be a copyrightable work.²⁹

In our humble view, this kind of stringent requirement of originality would be in significant conflict with contemporary conceptions of art. In today's world, even objects like a banana taped to a wall, a toilet or an everyday item like a toothbrush can be regarded as artistic expressions. While the classification of these examples as works of art remains open to debate, it is an undeniable reality that the expanding boundaries of modern art render overly restrictive frameworks inadequate. As a result, a sizable amount of contemporary works would remain unprotected under such a limited take on originality.

²⁷ ARSLANLI, Halil, *Fikri Hukuk Dersleri: 2. Fikir ve Sanat Eserleri*, İstanbul Üniversitesi Yayınları, 1954, p. 6.

²⁸ *ibid.*

²⁹ HIRSCH, E. Ernst, *Fikri ve Sınai Haklar*, Ankara Basımevi, 1948, p. 131.

Notably, a comparable approach is also reflected in Erel's view. She defines the reflecting author's personality criterion as the work needing to be the result of an independent creation, thus bearing the imprints of the author's creativity. However, she emphasises that the creativity and individuality aspects of this explanation should not be understood in absolute terms.³⁰

According to Erel, the fact that a work is inspired and/or benefited from pre-existing works or information doesn't mean it is not an independent creation as long as it does not amount to plagiarism or unlawful appropriation. Also, provided that the author produces something different from what already exists, the element of originality is deemed to be met.³¹

Moreover, Erel argues that if the author's explicit or implicit intention is to create a work, objects which appear to be ordinary everyday items, such as those mentioned above, should be presumed as copyrightable works.³² To be fair, this approach offers a broader and more flexible understanding of creativity that aligns more with today's conception of art.

In conclusion, when assessing the element of originality, the issue is not finding an absolute novel creation but rather a work that is differentiable from pre-existing work that reflects the personality of its author.

The third element of the personality criterion is the idea/expression distinction. In Art. 9/2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), this distinction has been addressed as:

³⁰ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, pp. 53-54.

³¹ *ibid.*

³² *ibid.*

“Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.”

It can be seen that member states need to protect the expression aspect of a creation under copyright law. In TRIPS, it is clearly stated that ideas, procedures, and so forth cannot be protected under copyright law. This is because, for example, procedures protected by patents, therefore, copyright protection is not needed. Again, mathematical concepts are facts, and facts cannot be protected by copyrights. Ideas, unless expressed or embodied in a tangible form, do not qualify for legal protection, which we will explain in more detail in the next criterion.

The expression in this element is the personality or individuality of the author. As stated above, an author can be inspired by others' works, can use already existing facts, concepts, etc. However, copyright only protects the way these are expressed by the author with their free and creative choices. The unique way in which the author tells a story, paints a portrait, relays historical information or performs a musical work.

All in all, if in making the work the author has made their creative choices that bear their personal imprint, and not entirely the same with any other work that comes before it, then it can be concluded that this work fulfils the personality criterion.

ii. Being Shaped to A Degree That Bears the Characteristic of Its Author (Fixation)

For copyright protection to be enacted, ideas need to be expressed or embodied in a tangible form. A mere thought is not protected unless it is expressed in a manner that renders it perceptible to other members of society. As discussed before, intellectual property aims to safeguard knowledge that is beneficial to society. If society cannot benefit from ideas, there is no need for protection.

Moreover, ideas or mere thoughts cannot reflect the author's personality. For example, explaining how a painting is to be made or how a song is to sound could not bear the personality of the painter or producer.³³

Hirsch, on the other hand, approaches fixation as the capability of reproduction. Because if an intellectual product can be reproduced, it is also suitable for economic exploitation. He also explains that the suitability for economic exploitation in this sense is being able to be produced, distributed, and offered in the relevant market, thus making the product beneficial to the public.³⁴

Today, no requirement of economic benefit is sought for a work to be eligible for protection. However, copyright protection is linked to the fixation requirement because a work must be expressed in a form that can be perceived by the public.

The fixation element is also a part of the objective criterion of protectable works. Which is explained above as being shaped to a degree that carries the characteristic of its author. This criterion also appears in Art. 2/2 of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention).

“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.”

It can be understood here that, according to the Berne Convention, intellectual creations that have not been ‘fixed in some material form’ are not eligible for protection by member states. In addition, the issue of protecting works under specified categories or with a general description is left to the member states. In FSEK, works are protected

³³ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 108.

³⁴ HIRSCH, E. Ernst, *Fikri ve Sınai Haklar*, Ankara Basımevi, 1948, p. 130.

under specified categories, and the other half of the objective protection criterion is to be included in one of these categories.

iii. Deemed A Scientific and Literary or Musical Work or Work of Fine Arts or Cinematographic Work (Types of Intellectual and Artistic Works)

In FSEK, there are four categories of work described in Art. 2 to Art. 5. The four categories of works cannot be changed. The *numerus clausus* principle applies in work categories, meaning that no new categories can be created. Whereas, under the four categories, new work types can be added.³⁵ Following these main categories, the law also defines adaptations and collections separately.

Contrary to Turkish law, the Berne Convention does not categorise types of works but simply states which type of embodiments are deemed ‘literary and artistic works’, then lists some of their forms under Art. 2/1.³⁶

Regardless of the chosen technique to state the types of works, once an intellectual product is expressed in one of the recognised forms, the legal presumption of a work will arise. This presumption is the most significant legal consequence of the fixation criterion.³⁷

Without further ado, as can be seen from the title, the main work categories in Turkish law are literary and scientific works, works of fine arts, musical works, and last but not

³⁵ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 114.

³⁶ 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 dramatico 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.

³⁷ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 56.

least, cinematographic works. The law provides definitions for each category, then lists illustrative examples fitting these categories. As previously mentioned, these examples are not exhaustive therefore, any intellectual product that falls within the scope of these definitions is recognised as work. Even the intellectual product is not defined as one of the examples given under the articles.

a. Literary and scientific works,

These are regulated under Art. 2, encompass all types of works expressed through words, writing, formulas, numbers, or similar means. This category includes scientific works, computer programs, nonverbal stage works such as choreography and pantomime, as well as non-aesthetic and/or non-artistic technical and scientific photographs, maps, drawings, and models.

b. Musical works,

These are, verbal or non-verbal works that express a thought or emotion through sound and are perceived by hearing.³⁸ For this category of works, sound functions as the medium of expression.³⁹ The nature of the instrument or source producing the sound, be it a musical instrument, a glass, the human voice, electronically generated sounds, or even a tin can, does not prevent the resulting product from being a musical work.

c. Works of fine arts

These are the types of works that have artistic character, aesthetic value and are expressed through shapes and/or colours.⁴⁰ The term ‘aesthetic value’ refers to works

³⁸ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 123.

³⁹ KARASU, R., SULUK C., NAL T., *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 7th Edition, Ankara, 2023, p. 96.

⁴⁰ *ibid.*, p. 98

that conform to certain standards of beauty and are generally appreciated. However, this kind of definition significantly limits the scope of works of fine arts, and also conflicts with today's understanding of art. Indeed, a painting may continue to qualify as a 'work of art' even if it contains grotesque or visually disturbing themes. Therefore, the evaluation of the term 'aesthetic value' should be based on the premise that the work will be assessed regardless of how unpleasant or repulsive the emotions it evokes may be.⁴¹ Some works listed under this category are paintings, sculptures, architectural works, miniatures, fashion designs, graphic works, cartoons, photographic works, all kinds of personifications and so on.

d. Cinematographic works

These are works composed of sequential and interrelated images that can be viewed in any manner, regardless of the devices or technologies used for storing or displaying the images. The subject matter of the work can be artistic, scientific, educational, technical or daily events. The films without dialogue, cartoons and even computer games can be protected under this category as long as they bear the personality of their creator.

As mentioned above; after listing the main categories, the law defines collections and adaptations under Art. 6 as "Intellectual and artistic products created by benefiting from another work but that are not independent of such work..." indeed, adaptations are made by utilising primary works and still carry some characteristics of them, but they are not independent from the primary works.⁴²

⁴¹ *ibid.*, p. 99.

⁴² KARASU, R., SULUK C., NAL T., *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 7th Edition, Ankara, 2023, p. 104.

To be protected as works, adaptations need to bear the personality of their authors and also stay true to the primary work.⁴³ Collections, on the other hand, do not need to bear characteristics of their authors but rather have a creative approach while assembling the other works.

In Turkish copyright law, authorisation of the primary work's author is required if the adaptation will be used beyond personal purposes. Because in the absence of authorisation, the author of the adaptation would infringe on the modifying right of the primary work's author.⁴⁴ Again, the connection with the primary work must be indicated to an extent sufficient for the adaptation to be recognised as such.⁴⁵ The absence of this connection will result in plagiarism. On the other hand, the authorisation of the primary work's author is not required for the adaptation to be recognised as a work.

Some examples of adaptations are translations, transforming works of fine arts from one form to another, writing a novel from a story and so on. Some examples of collections are making a collection of all stories of Ömer Seyfettin, making a collection of caricatures of Erdil Yaşaroğlu, or a collection of American romance novels from the 1950s.

At this point, we need to address the distinction between adaptation and inspiration. Inspiration is when a work influences at the level of inspiring an idea.⁴⁶ For example, when a dialogue from a novel inspires a song, a painting or a dance choreography. In these examples, the primary work is in another form and the content is completely different from the inspired work. In the instance of inspirations, there is no requirement

⁴³ EREL N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 76.

⁴⁴ KARASU, R., SULUK C., NAL T., *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 7th Edition, Ankara, 2023, p. 106.

⁴⁵ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 79

⁴⁶ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 134.

to have authorisation from the author of the primary work. However, if the influence exceeds this boundary and the new work is created in the same form and/or the content is recognisable, then there is an adaptation of the primary work, therefore, authorisation is required.

e. Being A Product of Intellectual Labour (Intellectual Labour)

This criterion comes with the notion of a “work” being a product of intellectual labour. Within the intellectual property rights section, it has been explained that all intellectual property rights, including copyrights, protect the product of intellectual labour.

This criterion is pointed out again in this section because, in copyright, there is an emphasis on humans being the sole living species capable of doing intellectual labour and making intellectual creations.⁴⁷ Therefore, a picture captured by a chimpanzee⁴⁸ cannot be protected under copyright.

Again, this can be the answer to the question, ‘Can machine-made or digital artworks be copyrightable?’. The answer can be found with another question. ‘Can every human get the same result?’ if the answer is yes and there are no creative options so every human can get the same results from the same process like a Xerox machine then there is no protection.⁴⁹ However, if there is human intellectual labour then we can discuss if there is a work that can be copyrightable.

B. Authorship

In FSEK, the definition of authorship is made under Art. 8 as “The author of a work is the person who has created it.”. According to this article, the law adopts the creation

⁴⁷ Ibid., p. 113.

⁴⁸ *Naruto v Slater* 888 F.3d 418 (9th Cir. 2018)

⁴⁹ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 113.

principle as the basis of authorship. Meaning, with the creation of the work, the legal system grants copyright protection to the author. There are four conclusions of adopting the creation principle.⁵⁰

Firstly, only natural persons can be recognised as authors because a work must reflect the personality of its author. Since the creation of a work is a factual act and not a legal transaction, authorship does not require having legal capacity to act.⁵¹ Hence, the painting of a five-year-old is deemed a work and the child is the author. In the case that the rights of the author are transferred, whether by contract or by the operation of law, the transfer does not affect the authorship.⁵² This also applies to the work of the employees, which will be discussed below.

Secondly, because of the personality criterion, the creation principle enables us to distinguish the author from people who merely provide technical services as well as from people who make unauthorised copies, piracy and plagiarism.⁵³

Thirdly, there is no need for registration to become an author. As mentioned before, copyright protection given to the author arises upon creation.

Lastly, the distinction between the author and those who benefit from the work. The beneficiaries are merely the users of the author's copyrights.⁵⁴ This distinction is especially important because beneficiaries can only use the rights given by the author or by the operation of law.

Art. 8 also regulates the author of the adaptations and collections as;

⁵⁰ KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 183.

⁵¹ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p.143

⁵² KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 184

⁵³ *ibid.*

⁵⁴ *ibid.*

“The author of an adaptation or collection is the person who has made the adaptation, provided that the rights of the original author are reserved.”.

As mentioned under the title types of works, the author of an adaptation is the one who adapted the primary work with their personal imprint. The mentioned “reserved right” of the primary work’s author (original author) refers to the authorisation that must be obtained from the author of the adaptation.

Again, in Art. 8, a special regulation has been made for the authorship in cinematographic works. Directors, composers of the film’s original music, scriptwriters and dialogue writers are considered co-authors of the work. For animations, animators are also deemed among the authors. As can be seen, individual authorship is rejected for cinematographic works. Also, the producer is not recognised as an author because a producer generally does not contribute any creative or characteristic input.⁵⁵ However, as stated in Art. 80/2, producers, “after acquiring authority to exercise economic rights from the author and the performer”, can enjoy the exclusive right of authorising or prohibiting the direct or indirect reproduction, sale, distribution, and so forth.

The authorship status of the employees is regulated in Art. 18. According to the article, the economic rights of “works created by civil servants, employees and workers during the execution of their duties” can be exercised by their employers. Here, the rights granted to employers to exercise economic rights of employees are absolute. Therefore, they may be asserted against all third parties.⁵⁶ Nevertheless, the employees retain their status as authors and hold the moral rights to their works.

Articles nine and ten regulate authorship in works created by more than one author. The main distinction here is whether the individual contribution of the authors retains the

⁵⁵ TEKİNALP Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 148.

⁵⁶ *Ibid.* p. 145

status of a work when separated from the whole.⁵⁷ These situations will be examined under the two titles below.

i. Multiple Authors

Multiple authorship occurs when, divided into parts, parts of the work that are created by different authors still retain the status of a work. In this kind of joint authorship, each individual is deemed the author of the parts they created. The authorship status is acquired for each part before the joint work is assembled.⁵⁸

Here, the authors combine their works in a way that they can be separated again at their will. The difference between collections and this kind of joint work is that joint works, as opposed to collections created through the collaborative efforts of multiple authors who intend to share rights in the work as a whole.⁵⁹ The author of a collection, on the other hand, is the sole right holder of a collection.

Each author holds independent moral rights over their parts, while also sharing moral rights for the work as a whole. However, economic rights are only exercised over the work as a whole.⁶⁰ Each author can make and/or prevent modifications to their part without the consent of the other authors. On the other hand, before taking action on the whole work, every author should consult with other authors.⁶¹

ii. Union of Authors

In this authorship, the individual contribution of the authors does not retain the status of a work when separated from the whole. Even if the parts are physically detachable, they

⁵⁷ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 89.

⁵⁸ *Ibid.*, p. 93.

⁵⁹ *Ibid.*, p. 94.

⁶⁰ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 151.

⁶¹ *Ibid.*

cannot be regarded as works. In Art. 10, this issue is addressed by using the term “indivisible whole”

In a work that is an indivisible whole, the fact that the contributions of all authors have the same nature or intensity does not mean that each one of them will not be the author of the joint work.⁶² However, each author must reflect their creative personality in the joint work. Otherwise, as regulated in Art. 10;

“Technical services or assistance pertaining to detail rendered for the creation of a work shall not be deemed a basis for participation.”

Unlike the situation in multiple authors, for this type of joint authorship -the union of authors- the co-authors cannot act independently concerning the entire work or their individual contributions.⁶³ Even so, all authors can act individually if the interests of the union are violated.

The rights of this kind of joint authorship can only be exercised by the unanimous consent. Nevertheless, each author can object to any use of the work that infringes on their moral rights.⁶⁴

As a final note, it is important to touch upon the presumption of authorship set under articles eleven and twelve. Accordingly, if the work has someone’s name on it, then they are presumed to be the author. In case of objection to authorship, anyone challenging this presumption will bear the burden of proof.

In the absence of the name of the author, Art. 12 shall apply. In this situation, the rights and authorities of the author, depending on the type of work, are exercised by the person

⁶² EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 90.

⁶³ *Ibid.*, p. p. 91

⁶⁴ *Ibid.*

who publishes, reproduces, or communicates the work to the public through performance.

C. Rights Granted by Copyright Protection

We have mentioned before that copyrights arise when the work is created. These rights cover the work as a whole and every part of the work that can be divided.

In legal systems that protect moral rights, there are two systems regarding the protection of copyrights. One of these systems protects moral and economic rights collectively, while the other system protects them separately. In Turkish law, moral rights and economic rights are protected independently.

In practice, however, moral and economic rights are often interdependent. Indeed, in many cases, the infringement of a moral right will also result in the infringement of economic rights.⁶⁵

The law, taking into account the differences between moral and economic rights, regulated them separately. Under this title, we will try to explain these rights accordingly. Additionally, we will address related rights.

i. Moral rights

Moral rights are constituted based on the need to protect the emotional bond established between the author and their work, and the author's personal imprint reflected in the work.

Tekinalp also approaches moral rights as rights that serve to protect cultural assets. With the author's passing, moral rights, despite being inalienable, continue to exist after. In this case, the authority to exercise these rights is given to certain people and

⁶⁵ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 135.

institutions authorised by law. To summarise, he suggests that this situation is rooted in the assumption that moral rights aim to safeguard cultural heritage.⁶⁶ The law also touches upon this issue in the last sentence of Art. 19.

Moral rights are absolute, exclusive and inalienable rights. Technically, as moral rights are inalienable, they cannot be transferred; only the right to exercise can be granted by the author. This principle also applies to the inheritance law. The author's heirs do not acquire ownership of moral rights but merely the authority to exercise them. Furthermore, they cannot be subjected to seizure or pledge.⁶⁷

In Turkish law, the *numerus clausus* principle applies to moral rights, and there are four of them, which are explained below.

a. Authority to disclose the work to the public:

This right gives the author the right to decide whether or not to disclose their work to the public. In this context, the term public should be understood as a number of people that cannot be individually identifiable or controllable, that is to say, an indeterminate and broad group of individuals.

In the scope of this right, the author also enjoys the right to determine when, how and where to disclose their work.

Moreover, the right to inform the public regarding any content of a work that has not been disclosed belongs exclusively to the author. An up-to-date example of this right would be the beloved author J.R.R. Martin giving any and all hints about his most-awaited next book in the series *Game of Thrones*. This explanation can only be made by

⁶⁶ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 161.

⁶⁷ KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 147.

the author or the person(s) who have given written approval by the author. Otherwise, infringement of this right occurs.

As can be assumed, the law regulates that this right can be exercised by others with the author's permission. However, even with the given permission, this right shall not be exercised in a manner that can damage the honour and reputation of the author. If used in this manner, the author can prohibit the disclosure of the work to the public.

b. Authority to designate the name:

First of all, this right concerns the name of the author, not the title of the work. If conditions are met, the name of a work can be protected under unfair competition law.⁶⁸

The author has the right to decide whether to disclose their work to the public under their legal name, a pseudonym or anonymously. In the scenario where the author chooses anonymity, the presumption of authorship cannot be invoked. Therefore, if the author decides to disclose their identity later, they must prove that they are the creator of the work.⁶⁹

The authority to designate the name also entitles the author to request that their name be mentioned in every instance where their work is used.

The requirement of the author's name to be used also applies to works of fine arts in which the author's work is used. In addition, it must be indicated if the work is an original, a copy or an adaptation.

This right seeks to ensure the author's intellectual labour in their work is recognised. Therefore, it is appropriate that the author may demand that their name be clearly

⁶⁸ *ibid.*, p. 250.

⁶⁹ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 169.

indicated whenever their work is used in a manner that avoids any confusion regarding their relationship with their work.

c. Prohibition of modification:

The author has the right to prohibit any additions, abbreviations or other modifications made to their work without their consent. The purpose of establishing such a right is that the name of the author, the title, the content and the form of a work unitedly constitute a unified whole. The author, as the creator, has a moral interest in the preservation of this integrity.⁷⁰ Which is why any unauthorised alteration of the above is prohibited by law.

However, this prohibition does not apply to necessary technical modifications made by persons or institutions who use, reproduce, or distribute the work with the author's permission. Nonetheless, the author can prohibit modifications if the changes harm the author's honour and reputation or damage the nature and characteristics of the work. Even if the modifications were made with the author's authorisation. Any agreement made to prevent an author from using this right shall be deemed null and void.

d. Rights of the author against persons who own or possess a work:

This right covers the situation where the author's rights limit the right of the possessor of the work. The underlying purpose is to ensure that the author of the work to access

⁷⁰ EREL, N. Şafak, Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 145.

and benefit from the works they have created.⁷¹ The law has deemed this necessary in three circumstances. This right is also limited to the types of works named in Art. 17.⁷²

The first instance of this right applied enables the author to access their original work, when it is strictly necessary, for a limited time. To exercise this right, the possessor of the work must be informed about the possibility of the usage of this right at the time of the transfer.⁷³ During the access period, the author is responsible for protecting the work.

With this right, the author also has the authority to prevent the possessor from damaging, destroying and infringing their rights on their original works.

Lastly, the author may request temporary access to their original work, if there is only one, for inclusion in exhibitions or a comprehensive study encompassing all periods of their artistic career.

ii. Economic Rights

These are absolute and exclusive rights that allow the owner to exploit their work economically and determine how to do it. The author can also prevent third parties from using their work thanks to their economic rights.⁷⁴

The main principle governing economic rights is that the author profits as many economic benefits as possible from their work.⁷⁵ Economic rights can be transferred,

⁷¹ KILIÇOĞLU, Ahmet M., *Sinai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 259.

⁷² “Oil paintings or water colors, all types of drawings, patterns, pastels, engravings, artistic scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar methods, calligraphy, silk screen printing; Sculptures, reliefs and carvings”, *if hand written by the author*, “Works that are expressed by language and writing in any form, and computer programs expressed in any form together with their preparatory designs, provided that the same leads to a computer program at the next stage” and “Musical works”

⁷³ KILIÇOĞLU, Ahmet M., *Sinai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 260.

⁷⁴ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 180.

⁷⁵ *ibid.*, p. 181.

inherited, and may be the subject of legal transactions. Furthermore, unlike moral rights, they can be subjected to seizure and/or pledge.

These rights are independent of one another, and each one may be exercised separately. Indeed, an author can authorise different people to reproduce, distribute or perform their work.

Like moral rights, the *numerus clausus* principle also applies to economic rights. There are five of them, which are explained below.

a. Right of adaptation:

Adaptations have been explained above, under the title different types of works. As mentioned before, the right to make adaptations based on their work and exploit the adapted work economically or in any other way belongs exclusively to the author. If there is no legal ground regulated by law, unauthorised adaptations and exploitation of them will constitute an infringement of this right.

b. Right of reproduction:

The scope of this right is considerably vast. The reason can be that this right regulates the act of “copying”, which is the historical root of copyright.

Reproduction rights give the author the authority to make copies of their works by any means. That way, the work can be available for a large audience to use, and as a result, the author can obtain more economic benefit.⁷⁶

⁷⁶ KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 264.

In the scope of reproduction right, the authority to copy a whole or just a part of a work, from an original or a copy of a work, permanently or temporarily, with devices now known or to be developed in the future, belongs to the author.

The law also considers, for the computer programs, that even the temporary acts of displaying, running, loading, transmitting, and storing fall within the scope of reproduction.

According to Art. 22, recording a work onto a device is regarded as a form of reproduction. Meaning, recording a film shown in a cinema with a camera would infringe the reproduction right.

c. Right of distribution:

Art. 23 explains the distribution as lending, renting, putting up for sale or distributing in any other way. Here, the acts listed above may be utilised by the author in relation to their original work or its copies. Right of distribution is also applied to the copies of the works reproduced abroad, then brought into the country.

Distribution right frequently overlap with the disclosure to the public right. It is also closely linked to the reproduction right, as it can be exercised on copies of the work.⁷⁷

The same article also regulates the first sale doctrine. Accordingly, distribution right on the copy of the work are exhausted after the first authorised sale of the work within Türkiye.

⁷⁷ *ibid*

d. Right of performance:

The meaning of the term performance in this context is; exploiting a work to the public by means other than distribution in a way that is perceived with the senses, hearing and sight, either directly or with the help of mechanical devices.⁷⁸ Performing a theatrical work on stage, singing a song on the street or playing a movie in a car park for customers are all performances.

e. Right to communicate a work to the public by devices enabling the transmission of signs, sounds and/or images (right to communicate a work to the public by mass media):

This right constitutes a specific form of the right of performance.⁷⁹ The author has the exclusive right to make her work available to the public using mass media.⁸⁰ For instance, broadcasting a song on the radio, broadcasting an episode on TV or uploading a video on YouTube.

f. Payment of a share of sale proceeds of works of fine arts:

In cases where the original or specially qualified copies of certain works listed in the law⁸¹ are resold at a price significantly higher than the price of the first authorised sale, the author could receive a share from the subsequent sales. However, resales must meet

⁷⁸ EREL, Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p.175.

⁷⁹ İbid 185.

⁸⁰ KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 274.

⁸¹ “Oil paintings or water colors, all types of drawings, patterns, pastels, engravings, artistic scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar methods, calligraphy, silk screen printing; Sculptures, reliefs and carvings; Handicraft and minor works of art, miniatures and works of ornamentation, textiles, fashion designs; Photographic works and slides; Graphic works; Cartoons; All kinds of personifications.”, If hand written “Musical works are all types of musical compositions, with or without lyrics.”

specific conditions such as sale at an exhibition, auction or at a store that sells such goods or in other ways.

iii. Related and Neighbouring Rights

Related rights protect the interests of phonogram and film producers, performers, and lastly radio-television organisations. Unlike the rights of the author, these are not protections over creative labour but rather the contributions to the dissemination of the works to the public.⁸² These contributions must be made with the authorisation of the author. Related rights give protection to the contributors.

Related right holders can exercise their rights without prejudice to the moral and economic rights of the author. These rights will be examined below:

Performers enjoy both moral and economic rights over their performances. The moral rights granted to the performers are: the authority to designate the name, prohibit modifications and prohibit any use of their rights in a manner that would prejudice the performer's reputation. The economic rights granted to the performers are: the right to authorise the fixation of the performance, distribution, performance, communicating performances to the public by mass media.

Phonogram and film producers, unlike performers only granted economic rights. Namely, reproduction, distribution, performance, and the right to communicate phonograms to the public by mass media. Radio-television organisations enjoy the same rights. In addition, radio-television organisations can prohibit the fixation of their broadcasts.

⁸² KARASU, R., SULUK C., NAL T., *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 7th Edition, Ankara, 2023, p. 156.

D. Purpose of Copyright

The primary purpose of intellectual property rights is to protect the cultural heritage that humanity has created throughout history. Copyright law protects intellectual creations that constitute this heritage.⁸³

Today, cultural life has become more important than before because it is now seen as a social necessity.⁸⁴ Indeed, it became an independent economy and a benchmark for measuring the development level of a country. Therefore, for cultural life to flourish, it is essential to show respect to the authors and their creations and to ensure that their rights are adequately protected.

Secondly, copyrights grant authors and right holders the right to protect their works from infringements by third parties and to earn profits, whether in the form of money, fame, or status from their intellectual labour. In a manner, copyrights give authors the incentive to create more works. Therefore, the cultural heritage of humankind grows.

At the same time, copyright protection must contain a delicate balance. Indeed, society needs to be nourished by knowledge and art. To achieve this, creative production must be supported and encouraged. This can be ensured through the protection of the rights outlined above, as well as by allowing authors to gain respect, recognition and economic benefits from their works. However, the necessity of safeguarding authors' rights must be balanced with public interest in access to knowledge and culture, which requires a reconciliation of conflicting interests.

On one hand, if the balance is disrupted in favour of the author's benefit, the number of infringements can arise because the public can be tempted to access the works through new illegal means. On the other hand, if the balance shifts in favour of public interest

⁸³ AYITER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 1.

⁸⁴ Ibid.

and fails to protect authors' rights, the result may be a slowing of creative production, which in turn, can lead to a decline in the level of knowledge, education, and culture in society.

Copyright law has been continuously evolving and being updated throughout history, along with every technological development, to keep and perfect this balance. Also to protect the future of society by safeguarding artistic and educational works.

III. The Digital Shift and Its Impact on Copyright

Throughout history, great advances in technology have almost always been followed by changes and updates to copyright law. In fact, the invention of the printing press is the most significant development that triggered the birth of copyright.⁸⁵

A. A Brief History of Copyright Law

Even before the printing press was invented, people were opposed to the idea of copying without permission from the author. In Ancient Rome, for instance, plagiarism was considered a special form of theft, and the authors also received economic benefits from their works. Although plagiarism was frowned upon in the Middle Ages, too, there was no need for additional protection because during this period, artists generally worked under the churches or palaces as a result, freelance artists were not common.⁸⁶

The reason why a developed system to protect authors' rights wasn't needed prior to the creation of the printing press was primarily due to the natural limit on the number of copies of works. In a period when producing copies was limited by human capabilities, only the original or author-made copies of a work could circulate. Therefore, issues relating to the author's identity were naturally less frequent, and both the control over

⁸⁵ HIRSCH, E. Ernst, *Fikri ve Sınai Haklar*, Ankara Basımevi, 1948, p. 16.

⁸⁶ AYITER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 15.

revenues derived from the work and the detection of possible infringements were significantly easier.

Of course, the existing slow and limited distribution methods also have the same effect on this situation. Indeed, during those times, the speed at which a copy of a work could spread was rather slow, and the geographical area in which it could circulate was equally limited.

However, the printing press also brought problems, such as who could benefit from the economic gains of the copies, who had the right to reproduce a certain work, and how someone could obtain the necessary permission, among other issues. In the beginning, these concerns were addressed through privileges granted to printers for reproducing specific works. The aim was to support the printing industry and the printers' investments. Meanwhile, authors' rights were neither getting any recognition nor protection.

The first privilege granted to an author to safeguard his interests, which resembles modern copyright protection, was granted in 1486, in Venice, followed by the emerging custom of paying authors for their works.

During the Renaissance, as a result of the growing awareness of individual identity, authors began to seek not only economic benefits but also recognition and appreciation through their works.⁸⁷

The first copyright statute was enacted in England in 1709. It granted authors the essential rights to exercise authority over the reproduction of their works.⁸⁸ For this reason, the term "copyright" has since been widely used to indicate the authors' rights

⁸⁷ Ibid., p. 16.

⁸⁸ HIRSCH, E. Ernst, *Fikri ve Sınai Haklar*, Ankara Basımevi, 1948, p. 34.

on their works and the branch of law that protects them. However, because the term copyright emerged relatively early, it does not fully represent all the rights of authors.

In the following years, the theory of intellectual property emerged from natural rights theory, particularly rooted in Germany. Scholars of this theory argued that the rights over the work arise from the author's knowledge, skill, and diligence, and therefore belong to the author.⁸⁹ This new perspective brought a new set of rights with it, which were not limited to the act of copying.

With the growing economic and societal value of works, countries started to regulate authors' rights at a national level. However, because literary and artistic works could not be limited by country borders by nature, the necessity of international regulations that at the very least provide similar sets of rules for protecting copyrights became obvious. The start of this process was the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), adopted in 1886, following approximately a decade of congresses.

Given the increasing speed at which information spreads as a result of advancements in technology, the efforts to harmonise the rules that regulate the copyright law continue to gain greater importance every day.

B. The Developments in Digital Technology

Back in the days when people could only express themselves through music, writing and painting, naturally, the types of works were limited to these. This was the case until the invention of the camera, followed by the phonograph and radio. Today, the works created with the help of these inventions and the rights of broadcasters are protected under copyright.

⁸⁹ AYITER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 17.

Of course, technological developments did not stop there. The invention of computers and the Internet brought new horizons for creative expressions. With the widespread use of these technologies, new types of creations have been brought to light. Today, people rely on copyright protection for a wide range of digital creations. To name some examples, software codes, digitally produced paintings, videos, sounds and video games are all protected by copyrights.

As individuals unceasingly find new ways to express their creative ideas through developing technologies, legislators are continuously adapting copyright law to safeguard their rights. However, it needs to be pointed out that the pace of technological development almost always surpasses the lawmakers' ability to regulate and enforce copyright norms effectively

Technological developments bring not only new types of work, but also novel forms of infringement or new manifestations of existing ones. Legislators often fail to keep up with this rapid evolution of infringements, resulting in increasing rates of irreversible violations of rights. It can be easily observed in landmark cases such as Napster and Google's online library.

The internet, invented around the mid-twentieth century, has been widely used by the public since the mid-1990s. The Internet not only quickened the global exchange of information and communication as never before, but also caused the rapid increase of copyright infringements.

Thanks to its file-sharing capabilities, the Internet has enabled the transmission, reproduction, and dissemination of virtually all categories of works over a globally accessible computer network.⁹⁰ Because the Internet can be used from anywhere in the world and in some cases outside of it, infringing acts may occur across multiple

⁹⁰ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 195.

jurisdictions. This, in turn, significantly complicates the enforcement and monitoring of intellectual property rights.⁹¹

Although copyright infringement and piracy of copyrighted works have coexisted throughout the historical periods mentioned above, with the Internet, both online copyright piracy and the sale of pirated copyrighted goods utilising online shopping have become significantly accessible.

In the upcoming chapters, we will discuss what copyright piracy is, how copyright legislations try to overcome this issue, and suggestions to prevent piracy.

⁹¹ *ibid.*

§ SECTION TWO: DEFINITION AND HISTORY OF PIRACY

Piracy is a term that has existed throughout marine history. Indeed, even now, when we hear the word pirate, we think of a bunch of relatively bad people terrorising the seas. We say relatively bad, because on the other hand, pirates were symbols of power and freedom for some. Think of all the pirate stories from history.

Nowadays, many books, movies and games are being produced that are inspired by these pirate stories. For example, we are all familiar with the movie *Pirates of the Caribbean*, or the character Hook from *Peter Pan*.

Under this section, we will explore piracy from two different perspectives and include a bit of juicy history. Then, we will attempt to highlight some similarities between the two.

I. Definition and Historical Background of Piracy

According to the Cambridge Dictionary, the verb piracy has two meanings:

“...the practice of attacking ships in order to steal from them” and

“Copying: the practice of illegally copying a computer program, music, a film etc. and selling it: software, video piracy”⁹²

While examining the definitions of piracy, due to historical development, we will address the first definition as traditional and the second as copyright piracy. However, the term piracy in the context of copyright law is more complex. This is because the term has not been defined by lawmakers yet.

⁹² Cambridge, *Cambridge Advanced Learner's Dictionary*, Cambridge University Press, 3rd edition, Singapore, 2008, p. 1075.

In this section, piracy in the traditional sense is examined with a brief look back at the history of piracy provided. Subsequently, various definitions of copyright piracy by respected scholars will be analysed.

It should be noted that, since this thesis concerns piracy in copyright law, unless stated otherwise, the term piracy refers to copyright piracy.

A. Defining Piracy in The Traditional Sense

The earliest historical evidence of piracy dates back to the third millennium BC in Sumerian records. In the 14th century BC, ancient pirates raided the coasts of the Mediterranean Sea. Since these attacks were carried out by using ships across the seas, piracy has traditionally been associated with sailors. The word pirate, however, began to be used around the mid-third century BC, meaning risk or attempt.⁹³

Cicero is one of the first scholars to use the term pirate. He identified pirates as “*thieves and the common enemy of all*”. His reason for this argument was that pirates were acting outside of any and every nation’s law, and for this reason, they didn’t have moral obligations.⁹⁴

In his book examining the history of piracy, Bradford describes pirates as robbers at sea who had no orders or connections to any authority or country. He also adds that their primary target was economic gain, but some could have secondary motives like attacking those of another religion, race, etc. Though he diligently explains that pirates

⁹³ AMIREL, S. E., BUCHAN, B., and HÄGERDAL, H., *Piracy in World History*, Amsterdam University Press B.V., Amsterdam, 2021, p. 16.

⁹⁴ *ibid.*

had ships for their crews as well as enough expertise to run them, and that they also had a safe harbour to stay, lick their wounds, sell their treasures and so on.⁹⁵

However, the concept of, so to speak, nomadic violent sailors wasn't always aligned with the actual circumstances of pirates. Indeed, European countries often used violence with the help of maritime forces to get what they deemed worthy at the time. These maritime forces were formed with their own citizens. In the book *Piracy in World History*, this issue is addressed as;

“European governments supporting or condoning piracy committed by their own subjects as a cheap and effective way of furthering their commercial and political objectives overseas. There was, in other words, a great difference between the rhetoric about pirates as the enemies of all and the reality of clandestine connections between pirates and other entrepreneurs of illicit maritime violence, and trading companies and empires.”⁹⁶

The notion of commissioned pirates has been defined as privateers in an attempt to distinguish them from pirates. Indeed, one nation's pirates were another nation's privateers; therefore, in practice, differentiating and providing treatments “civil or criminal” accordingly was excruciatingly hard.⁹⁷

Today, the same problems persist. However, now the act of piracy can also occur in the air, thanks to aircrafts. In modern law, owing to the lessons learned from history, it is understood that piracy is a problem that cannot be solved by nations alone. Accordingly, they aimed to combat piracy through international regulations.

⁹⁵ BRADFORD, Alfred S., *Flying the Black Flag: A Brief History of Piracy*, Preager Publishers, Wesport, Connecticut, 2007, p. xi.

⁹⁶ AMIRELL, S. E., BUCHAN, B., and HÄGERDAL, H., *Piracy in World History*, Amsterdam University Press B.V., Amsterdam, 2021, p. 21.

⁹⁷ *ibid.*

Hence, piracy is defined by the International Maritime Organisation (IMO) in Art. 101 of the United Nations Convention on the Law of the Sea (UNCLOS) as, “any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft...”, and “any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;”⁹⁸

As can be understood from this definition, nowadays, the acts of attacking ships and aircrafts, as well as the seizure or detention of such vessels or their crew members, are in the scope of piracy in the traditional sense.

B. Defining Copyright Piracy

Above, it is mentioned that the word piracy has a second dictionary meaning: the practice of copying a book, computer program, film, music file, etc., illegally. Here, we will analyse this relatively new concept of piracy.

As mentioned before, piracy is not defined in the FSEK. However, courts frequently use the term piracy in their decisions. Therefore, the concept of copyright piracy under Turkish copyright law will be examined with reference to academic literature and court decisions. Subsequently, various definitions of copyright piracy at the international level will be discussed.

⁹⁸ “any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft...”⁹⁸ and directed: on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”

i. In Turkish Academic Literature

While explaining the history of copyright law, Hirsch uses the term “literary pirates”, expressing concern that, due to such people, authors were unable to derive economic benefit from their works.⁹⁹

Erel states that the term piracy is used as a substitute for the notion of infringement of the reproduction right.¹⁰⁰

Tekinalp argues that, although piracy is not explicitly defined as a criminal offence under Turkish copyright law, Art. 71 titled “Infringement of Moral, Economic or Related Rights” essentially regulates the offence of piracy. He asserts that the acts of performing, reproducing, adapting, distributing or communicating a work to the public by mass media without any written authorisation of the author and/or related right holder constitute the offence of piracy.¹⁰¹

Kılıçoğlu elaborates on the concept of piracy under two separate titles. He states that the acts of copying, imitating, plagiarising and pirating do not involve creation; those who commit these acts are simply using the author’s creation.¹⁰² He also states that:

“In imitation or piracy, there is no new work created in relation to the original work. In this case, the infringement in question regards both the original and the derivative work’s author’s copyrights”¹⁰³

In their book, where Orhan and Suluk provide general knowledge and court decisions about copyright, they define piracy as:

⁹⁹ HIRSCH, E. Ernst, *Fikri ve Sınai Haklar*, Ankara Basımevi, 1948, p. 38.

¹⁰⁰ EREL, N. Şafak, *Türk Fikir ve Sanat Hukuku*, Yetkin Yayınları, 3rd Edition, Ankara, 2009, p. 168.

¹⁰¹ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 337.

¹⁰² KILIÇOĞLU, Ahmet M., *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 185.

¹⁰³ *ibid.*, p. 188.

“The concept of piracy is used to describe the unauthorised reproduction of a literary or artistic work, for instance, through physical carriers such as books, cassettes, CDs, and DVDs. Occasionally, the term “counterfeiting” is used instead of piracy.”¹⁰⁴

They also state that due to technological advancements, piracy has evolved, and nowadays it widely involves the unauthorised reproduction and commercial distribution of music, video games, and films via cassettes, CDs, and DVDs.¹⁰⁵

In his book about anti-piracy, Suluk highlights the distinction between imitation and piracy. He states that imitation is a copy or counterfeit of an original product and is predominantly used for industrial property rights. Piracy, however, is essentially associated with copyright.¹⁰⁶ Subsequently defines piracy and pirated goods as:

“When the term piracy is used in a sentence, it refers to copying works such as books, movies and music for which copyright royalties have not been paid.”

“Pirated goods may be defined as products that are directly or indirectly reproduced from an original intellectual or artistic work without the consent of the right holder.”¹⁰⁷

He also firmly states that acts of piracy, which constitute a form of theft, deprive authors of their economic benefits, additionally, due to unpaid taxes, indirectly affect

¹⁰⁴ SULUK, C., ORHAN, A., Uygulamalı Fikri Mülkiyet Hukuku II : Genel Esaslar Fikir Ve Sanat Eserleri, Arıkan Yayıncılık, 2005, p. 763 .

¹⁰⁵ ibid., p. 769 .

¹⁰⁶ SULUK, Cahit, Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele, Hayat Yayıncılık, 2004, p. 17.

¹⁰⁷ Ibid., p. 158.

society at large. Unlike Tekinalp, Suluk argues that even though articles 71, 72, 73 and 80 regulate sanctions for copyright infringements, piracy is regulated under Art. 81.¹⁰⁸

Semiz, in his doctoral thesis, defines the term piracy as reproducing, distributing and communicating to the public of a work without the author's and/or related right holder's permission.¹⁰⁹

As can be seen from the definitions provided above, the majority of Turkish scholars tend to regard piracy as infringement of the reproduction right. However, Tekinalp and Semiz argue that, in addition to reproduction, acts of piracy also constitute infringement of the author's distribution and communication to the public rights. It needs to be noted that Tekinalp and Suluk adopt different interpretations regarding the provisions of the FSEK that impose criminal liability for acts of piracy.

ii. In Turkish Court Decisions

The General Assembly of Criminal Chambers of the Court of Cassation,¹¹⁰ in its decisions dated 2016, 2017 and 2020, made the same statement regarding piracy. All three of these cases concerning the unauthorised sale of illegally reproduced CDs/DVDs containing copyright-protected content without mandatory banderols. The court regarded these CDs/DVDs as pirated products that have no banderols on them, and made the following statement:

“Paragraph 13, which introduces a special concurrence rule within the same article, provides that: 'If the violation of the banderole obligation is committed in connection with the same work alongside the offence defined in subparagraph (1) of the first paragraph of Article 71, the offender shall be

¹⁰⁸ *ibid.*

¹⁰⁹ SEMİZ, Özgür, *Telif Hakları ve Bağlantılı Hakların Toplu Yönetimi ve Kamusal Denetimin Boyutları* Ankara, 2020, p. 125.

¹¹⁰ Yargıtay Ceza Genel Kurulu

sentenced only under Article 71. However, the penalty shall be increased by one third.' This provision aims not only to address the financial damage caused to the state through the violation of the banderole obligation, but also to protect the author or the right holder whose rights have been infringed due to the unauthorised reproduction and distribution of pirated works.”¹¹¹

Although Paragraph 13 of Art. 81 was revoked with the Constitutional Court’s decision; it is understood from the decision above that the General Assembly of Criminal Chambers of the Court of Cassation considers that piracy does not occur from failure to comply with the banderole obligation, but rather from the unauthorised reproduction and distribution of works as defined under Art. 71.

The 11th Civil Chamber of the Court of Cassation, in a case dated 2014 concerning an unauthorised recording of a movie made in a movie theatre, as well as reproducing, distributing, selling copies that have no banderole, and making the pirated recording available online, upheld the decision issued by the First Instance Court, as detailed below.

“...the court dismissed the case on the grounds that the defendant had taken the necessary measures to prevent pirated recordings in its cinemas; that cinema staff were not authorised to search patrons upon entry; that the act of monitoring the screening room with lights during the showing to detect possible recording activities would disturb the audience; and that production companies themselves could implement technical measures to prevent pirated recordings”¹¹²

¹¹¹ Turkish Court of Cassation General Assembly of Criminal Chambers, Case No: 2017/1025, Decision No: 2020/35 (28 January 2020); Case No: 2017/386, Decision No: 2019/451 (21 May 2019); Case No: 2015/906, Decision No: 2016/19 3. (12 April 2016).

¹¹² Turkish Court of Cassation 11th Civil Chamber, Case No: 2013/12312, Decision No: 2014/2782. (18 February 2014)

As can be understood from this decision, the Court of Cassation acknowledges that an unauthorised recording made in a cinema constitutes an act of piracy.

The judgment of the First Instance Court upheld by the Court of Cassation, as cited in the works of Suluk and Orhan, is as follows:

“...the court ruled in favour of the plaintiff on the grounds that the unauthorised reproduction and commercial distribution of the books, over which the claimant holds righthjbhkbkjbhbljts, in the form of pirated editions, constituted a violation of the law.”¹¹³

With this decision, the Court of Cassation acknowledges that the unauthorised photocopies and pirated publication of books infringe the author's exclusive right to reproduce and distribute the work.¹¹⁴

Based on the court decisions provided above, it can be said that Turkish courts recognise that unauthorised reproduction of a work, along with the distribution and communication of these copies to the public, will result in piracy.

iii. In International Academic Literature and Legal Structure

Jennings and Bossler, in their article Digital Piracy, refer to digital piracy as the act of reproducing intellectual property without the author's permission.¹¹⁵ They also state that illegal downloading is only a part of digital piracy, and acts such as reproducing, using, or distributing can lead to piracy. In their own words:

¹¹³ Turkish Court of Cassation 11th Civil Chamber, Case No: 2001/7096, Decision No: 2001/10061. (21 December 2001)

¹¹⁴ SULUK, C., ORHAN, A., *Uygulamalı Fikri Mülkiyet Hukuku II : Genel Esaslar Fikir Ve Sanat Eserleri*, Arıkan Yayıncılık, 2005, p. 764 .

¹¹⁵ JENNINGS, K., BOSSLER, A. M., “Digital Piracy” in *The Palgrave Handbook of International Cybercrime and Cyberdeviance*, HOLT, T. J., BOSSLER, A. M. (eds.), Springer Nature Switzerland AG, 2020, p. 3237.

“It is important to consider ‘digital piracy’ as an umbrella term that encompasses several types of unauthorised behaviours and forms and not just one particular type.”

In Das’s article, piracy is defined as the stealing of intellectual property.¹¹⁶ Another detailed definition in the article is below:

“Piracy means copying, stealing, exploiting, selling, or transmitting the original work without any consent or knowledge to the actual author, creator, or innovator.”¹¹⁷

Taylor and his colleagues, in their article about textbook piracy, define this phenomenon as follows:

“The unlawful use, replication, or distribution of protected textbooks is textbook piracy.”¹¹⁸

In the book *Copyright and Piracy: An Interdisciplinary Critique*, the copyright piracy issue is examined from a broad historical and interdisciplinary perspective.

“‘Piracy’ thus amounts to the unauthorised copying and distribution of copyrighted content. As the IP Crime Group point out: ‘Piracy’ involves the illegal copying of content such as music, film, sports events, literary works, broadcasts, computer games and software for commercial gain.”¹¹⁹

¹¹⁶ DAS, Doyita, Piracy: “A Contravention against Copyright Laws”, *Law Essentials Journal*, vol. 2, no. 2, 2021, p. 120.

¹¹⁷ Ibid.

¹¹⁸ TAYLOR, R. G., MOUSAVIDIN, E., SMITH, M., FULK, H. K., “The Increasing Problem With Textbook Piracy”, *Global Journal of Business Pedagogy*, vol. 8, no. 1, 2024, p. 28.

¹¹⁹ GELSTHORPE, Loraine, “Copyright Infringement: A Criminological Perspective”, *Copyright and Piracy: An Interdisciplinary Critique*, BENTLY, L., DAVIS, J., GINSBURG, J. C. (eds), Cambridge University Press, 2010, p. 391.

As can be seen, scholars define various types of copyright piracy. On the other hand, each definition highlights certain common elements. In all these definitions, piracy is regarded as the reproduction and distribution of a work without the author's consent. They also suggest that piracy is not limited to these two acts, but a plethora of unauthorised acts can result in piracy.

Art. 61 of the TRIPS Agreement, which governs criminal procedures, requires member states to provide for effective enforcement against willful copyright piracy carried out on a commercial scale. It further provides that members may also impose criminal penalties in other cases of infringement of intellectual property rights.

Even though the TRIPS Agreement does not describe what copyright piracy is, in the footnote of Art. 51, it describes pirated copyright goods as follows:

“Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.”

Again, the report titled *Assessment of National Legislative Approaches and Court Practice Regarding Online Copyright Piracy*, published by the European Union Agency for Criminal Justice Cooperation (EUROJUST) in December 2023, explains why the definition made by the TRIPS Agreement in regards to copyrighted goods is outdated in light of today's technologies and online violations of copyrights.¹²⁰

¹²⁰ Intellectual Property Crime (IPC) Project at Eurojust, *Copyright Piracy: Assessment of national legislative approaches and court practice regarding online copyright piracy* <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-copyright-piracy-report.pdf>, Accessed 27 April 2023, p. 12.

Although the report states that the term piracy is widely used to refer to acts of reproduction or dissemination of copyrighted work without the authorisation of the author, it points out that EU member states have different interpretations of the same concept. In their words:

“A copyright infringement is essentially a violation of one of the exclusive rights of copyright owners”

iv. To Conclude

The topic of our thesis is the prevention of copyright piracy. Undoubtedly, offering solutions without understanding the nature of the problem would be futile. It should be noted that some authors use the term piracy without providing an explanation, which has considerably complicated our research. Despite our thorough efforts to analyse the concept of piracy, we were unable to identify a harmonised definition.

For this reason, we have included various definitions of piracy in our study to highlight the challenges of proposing solutions to a concept that lacks a clear definition. As stated in many of the articles forming the basis of our research, achieving a harmonised understanding of the term piracy would be a huge significant step forward in resolving the problem effectively.

We will continue to follow and support both national and international efforts to harmonise the rules regulating piracy. However, it must also be emphasised that the activities of piracy, which exploit the opportunities brought by rapidly advancing technology and continuously evolve with new methods, should not be overlooked. It is crucial to address this growing problem, which has persisted and intensified over the past twenty-five years, as soon as possible.

At last, in light of the definitions presented above, it can be concluded that the majority consider acts that infringe the rights of reproduction and distribution to constitute piracy. However, it needs to be noted that even the authors of these definitions acknowledge that piracy is not limited to the infringement of these two rights.

In our opinion, the notion of copyright piracy should be understood in a broad sense. The unauthorised reproduction of a work, as well as the distribution, performances, communication to the public, including online streaming, and even the adaptation of that copy of the work with the intent of surpassing present copyright protections, all amount to copyright piracy. This is because any of these acts, when carried out without the author's or right holder's authorisation, are likely to cause economic harm or significantly reduce their potential profit.

Another point we need to touch upon is that people who participate acts of piracy do not make any creative additions or adaptations to the original works. There is no new creation in copyright piracy.

In one of the court decisions above (see¹²¹), the plaintiff summarised this issue clearly. Someone recorded a newly released film in a movie theatre and with this copy, made CD copies, offered them for sale and also uploaded the copy to a website for online streaming. All these acts infringe the right holder's reproduction, distribution, and communication to the public rights.

Although this didn't happen in the case above, adaptation of the work in ways, for example, editing the audio, changing certain parts of a movie or splitting the movie into parts to avoid it being removed from platforms like YouTube due to copyright, should also constitute piracy.

¹²¹ Turkish Court of Cassation 11th Civil Chamber, Case No: 2013/12312, Decision No: 2014/2782. (18 February 2014)

II. Factors Contributing to Copyright Piracy

When addressing this topic, it is necessary to briefly revisit piracy in its traditional sense to examine its underlying causes and highlight the parallels with copyright piracy. This approach also helps us to understand why piracy is a reasonable and appropriate term for large-scale commercial infringement of copyright.

In some circles, there is an argument about the use of the term piracy. They believe that describing certain copyright infringements as piracy is problematic, as it tends to evoke feelings of being cool, independent, or modern. However, in essence, the term copyright piracy aligns with its historical use, and in the public consciousness, it creates a strong parallel between copyright infringements and theft. The core issue behind the copyright piracy problem does not lie in the terminology, but rather in the general perception that such acts do not constitute crimes or are regarded as victimless crimes.

The reasons for one to choose to be a pirate in the traditional sense have been listed in Bradford's book as: Poverty, sea-going expertise, opportunity, the tipping point, critical mass, and defence. He explains in detail that individuals who were poor and had a bit of expertise saw piracy as an opportunity to a good life and a way to feed their families.¹²²

However, sometimes certain circumstances pushed people to become pirates. The tipping point was mostly the hard living conditions that came with wars, or witnessing the success of other pirates and the benefits that followed in a relatively easy way. In addition, whenever a pirate group became influential enough, they either gained the support of the masses or forced them to work with them; if not, they cornered them enough to defend themselves by becoming pirates in their eyes.¹²³

¹²² BRADFORD, Alfred S., *Flying the Black Flag: A Brief History of Piracy*, Preager Publishers, Westport, Connecticut, 2007, p. 185.

¹²³ *ibid.*, p. 186.

These unfortunate factors mostly apply to copyright piracy.

During our research, the thesis prepared by Uslu (see¹²⁴) in 2023 has been particularly enlightening. This study, which involved real participants who pirated books online and focused on the online sharing of pirated books, provides valuable insight into the issue.

In the course of his research, Uslu conducted interviews with individuals who scanned the books they already had, purchased or given and shared the scanned copies via various social media platforms. Subsequently, he also investigated the underlying reasons for such behaviour.

The reasons participants offered for supplying and/or benefiting from pirated books can be summarised as follows. The first and most frequent reason behind these acts was the high cost of books and individuals' lack of financial means to afford them. This reason was followed by factors such as the unavailability of certain books, either because they were out of print or for other reasons, and the inadequacy of university and city libraries. Indeed, the number of books per person, even in a university library, is estimated at seven, which is unbelievably low to cover all the fields of study.¹²⁵

Additionally, the difficulty of accessing certain printed publications for individuals living abroad or outside of certain major cities, the insufficient and slow pace of digitisation in the publishing sector, the fact that available digital copies can only be borrowed and cannot be owned by the user, and the lack of accessible formats for individuals with physical disabilities are also counted among the reasons.¹²⁶

Of course, in addition to the factors above, there are also idealistic motivations behind such acts. A significant number of participants expressed the belief that knowledge

¹²⁴ USLU, Şahin, Üretiminden Dağıtımına Dijital Korsan Kitaplar Netnografik Bir Alan Araştırması, Ankara, 2023

¹²⁵ *ibid.*, p. 85.

¹²⁶ *ibid.*

should be free and universally accessible, and stated that they engaged in these acts in order to raise the cultural level of society. Furthermore, some groups dedicate themselves to special projects, aiming to revive so-called "ghost books", copies of works they believe are at risk of disappearing, or to increase public awareness on specific topics by sharing relevant books without seeking any compensation.¹²⁷

In addition to this informative study, we would like to mention another thesis on piracy by Tekin (see¹²⁸). Although nearly two decades have passed since its publication, and some of its data may not reflect current circumstances, the study, which employed the survey method, remains highly informative for our topic.

To summarise the reasons for engaging in acts of copyright piracy in this study, identified as unemployment, the constant demand for pirated content, the failure of competent authorities to fulfil their duties with due diligence, and, finally, the lack of effective enforcement of copyright law in practice.

He explains in detail that unemployed individuals often resort to illegal means to earn an income. Copyright piracy is a great example of an opportunity to create an alternative source of income, especially if they have the expertise to make copies. Moreover, by making and/or selling pirated copies, they could earn more than the minimum wage.¹²⁹

About the demand for pirated content, when survey participants were asked why they preferred piracy, almost 90% responded that the original products were too expensive. Considering the economic conditions in our country, which possibly worsened since this thesis was written in 2006, it appears quite reasonable that consumers tend to

¹²⁷ *ibid.*

¹²⁸ TEKİN, Gökmen, Türkiye’de Fikri Mülkiyet Kültürünün Yerleşmesine Yönelik Korsan Yayıncılığın Etkileri, Ankara, 2006.

¹²⁹ *ibid.*

purchase pirated goods either at a price roughly equal to 10% of the original or for free. Adding the fact that in countries where a culture of intellectual property rights has not yet fully developed, copyright piracy is an offence driven by public demand also does not help to alleviate the problem. After all:

“It is understandable that citizens struggling to meet their basic needs cannot afford to spend money on cinema, original CDs, or books.”¹³⁰

Tekin also points out the lack of coordination among competent authorities and their insufficient efforts in addressing piracy, identifying these as key reasons for the failure to resolve the issue. He highlights the alarming possibility (with a couple of examples) that some of the very actors who are expected to oppose and prevent copyright piracy may use pirated copyrighted products, or worse, may have even contributed to their production.¹³¹

As observed, the primary reason behind copyright piracy is that original works are too expensive and unaffordable in the perception of the public. Indeed, the participants interviewed by Uslu clearly stated that they would not resort to piracy if the prices were reduced.¹³²

Another factor contributing to the copyright piracy market is unemployment. The individuals who recognise the opportunities created by copyright piracy and have sufficient expertise to copy, distribute or communicate the copies to the public in any way, tend to view it as a means of generating income. Even when not motivated by profit, copyright piracy is often used for purposes such as easy access and making free copies available, driven by various personal and/or idealistic interests.

¹³⁰ *ibid.*, p. 56.

¹³¹ *ibid.*, p. 56.

¹³² USLU, Şahin, Üretiminden Dağıtımına Dijital Korsan Kitaplar Netnografik Bir Alan Araştırması, Ankara, 2023

One more important point worth mentioning is that neither those who reproduce, distribute, store or communicate pirated copies to the public, nor the individuals who benefit from pirated copyrighted goods, tend to believe that their actions constitute any crime, let alone copyright piracy, especially when the act takes place in an online environment. Even those who are aware that their acts constitute piracy often do not acknowledge that piracy is unlawful and a crime equivalent to theft.¹³³

In Uslu's study, it was observed that some individuals showed an inclination to cease engaging in copyright piracy after being informed that such actions constitute a criminal offence. However, a significantly larger number of participants continued their involvement in copyright piracy. This group even demonstrated increased effort to continue their acts discreetly. Lastly, a certain group of individuals, despite being aware of the illegality of these acts, tried to justify them by asserting that their actions serve the public interest.¹³⁴

Again, a study carried out in 2004 demonstrated that only 5% of the participants who are millennials considered digital piracy immoral. In another survey made in 2009, it came to light that most new adults didn't think they should pay for music.¹³⁵

In Tekin's study, although vendors selling pirated goods were aware that their actions were illegal, they sought new methods to avoid detection and continued their activities due to a belief that they would not face legal sanctions. No doubt, an attitude attributed to the impunity and lack of effective enforcement of copyright law in practice.¹³⁶

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ JENNINGS, K., BOSSLER, A. M., "Digital Piracy" in *The Palgrave Handbook of International Cybercrime and Cyberdeviance*, HOLT, T. J., BOSSLER, A. M. (eds.), Springer Nature Switzerland AG, 2020, p. 3246.

¹³⁶ TEKİN, Gökmen, *Türkiye'de Fikri Mülkiyet Kültürünün Yerleşmesine Yönelik Korsan Yayıncılığın Etkileri*, Ankara, 2006.

European Commission's Türkiye reports throughout the years also consider the judicial enforcement of the FSEK in sufficient detail. The reports repeatedly point out the impunity problem, inconsistencies between court decisions, the length of the procedure and the burden of the judicial procedures on right-holders are some of them. Here follows a part of the intellectual property observations of the Türkiye report of 2024;

“On judicial enforcement, criminal courts rarely order deterrent fines for commercial scale industrial property infringements, even though legal provisions may provide for higher penalties. Inefficient litigation procedures, including at courts of appeal, remain to be resolved. Difficulties and inconsistencies persist in deciding preliminary injunctions and monetary compensation claims, storage and destruction problems and financial burdens related to the storage of counterfeit goods, and the overuse of expert witness statements.

Difficulties with the issue of search and seizure warrants continue even though strong evidence is provided by right holders about counterfeiting. Enforcement authorities, need to increase the efficiency of action against industrial property infringements.”¹³⁷

As noted at the beginning of this section, the key drivers of piracy in its traditional sense, namely, poverty, expertise, opportunity, the tipping point, critical mass, and defence, remain relevant in the context of copyright piracy. Individuals often perceive copyright piracy as an opportunity due to insufficient income; those with the necessary skills become involved in reproducing infringing copies, or turn to piracy as a means of generating income due to unemployment. Since pirated works can be easily produced

¹³⁷ European Commission, *Türkiye 2024 Report*, https://enlargement.ec.europa.eu/turkiye-report-2021_en, p. 62, Accessed 12 January 2025

and accessed with minimal risk due to technology, more and more people are joining the growing majority who engage in acts constituting piracy.

III. The Economic and Social Impact of Piracy

In order to provide up-to-date information for this subject, we contacted the Ministry of Culture and Tourism through various platforms. We explained the subject of our thesis and requested information regarding the types of intellectual works that can be pirated and the distribution of such activities across online and offline environments. However, no response was given.

Similarly, during our research, it was discovered that most of the CMOs did not monitor piracy activities. Therefore, we will rely on published reports and research findings from various sources.

A. Social Impact of Piracy

For starters, to find effective anti-piracy measures and gain a better understanding of their importance, it is essential to address the harms caused by copyright piracy. This way, the significance of the measures to be adopted can be understood, and such an understanding may lead to the implementation of genuine and effective enforcement of them.

Preventing authors from benefiting from their work by pirating may discourage them from further creative efforts. As a result, the author's contribution to national and global culture can diminish, leading to a decline in the production of high-quality works. Furthermore, when authors and /or right-holders are unable to earn from their works, it becomes increasingly difficult for them to finance future projects and support their lives, also causing losses for the creative sector and ultimately leading to its decline.

The hindrance of legitimate sales caused by the piracy market and the unlawful commercial distribution of pirated goods results in significant tax losses for countries worldwide, preventing national economic development. Moreover, as mentioned in the introduction, such piracy activities draw criticism in international reports evaluating our country. Consequently, this situation undermines the credibility of our cultural sector on global platforms and exposes us to various sanctions.

It can be clearly seen in the Türkiye reports by the European Commission. In the last years, the reports have consequently suggested a new Copyright law to be adopted. One of their insistent primary solutions to copyright piracy is as follows;

“improve enforcement measures to efficiently fight against industrial and intellectual property infringements including online sales of counterfeit and pirated goods, improve the specialisation in Intellectual Property Rights (IPR) courts and the procedures to obtain search and seizure warrants at lower criminal courts;”¹³⁸

In the Türkiye Report of 2024, in the copyright part of the intellectual property section, the commission points out that FSEK is not providing enough protection in light of the technological developments. Thus, Türkiye needs a new and modernised copyright law and to align with the Directive on copyright and related rights in the Digital Single Market.¹³⁹ The following suggestions are;

“... Several issues remain unresolved, particularly the lack of distribution of private copy levies, licensing difficulties, uncertainties in online education exceptions, public performance right problems, unauthorised use of

¹³⁸ European Commission, *Türkiye 2021 Report*, https://enlargement.ec.europa.eu/turkiye-report-2021_en, p. 80, Accessed 12 January 2025

¹³⁹ European Commission, *Türkiye 2024 Report*, https://enlargement.ec.europa.eu/turkiye-report-2021_en, p. 62, Accessed 12 January 2025

copyrighted material via online platforms and well-known e-commerce websites remain to be resolved”¹⁴⁰

As can be understood from repetitive suggestions and the persistent copyright piracy problem, the required steps for development have not been taken.

In most cases, the actors behind the pirate market cannot be identified. It is common for online websites that provide pirated content to generate revenue by stealing personal data and selling it to third parties and/or accessing sensitive information such as banking details, photos and messages to defraud users. Furthermore, the profits gained from these activities or by street vendors are often used to finance organised crime, posing a significant threat to security.¹⁴¹

B. Economic Impact of Piracy

To understand the seriousness and economic impact of piracy, it is necessary to supply certain global and national statistics.

According to the 2004 Administrative Activity Report issued by the General Directorate of Security of the Ministry of Interior, as part of activities to combat crimes of intellectual property, a total of 582 anti-piracy operations were carried out in 2024. These operations resulted in the seizure of 328,144 copies of books without banderols, DVDs, VCDs, CDs, etc., with an estimated market value of 5,470,670 TL. Subsequently, legal action was initiated against 640 individuals.¹⁴²

A part of the statement issued by the Ministry of Culture in July 2023 given below;

¹⁴⁰ *ibid.*

¹⁴¹ TUZCUOĞULLARI, Cemal, *Korsan Yayınların Türk Ekonomisine Etkileri*, Kültür Ajans Yayınları, Ankara, 2011, p. 58.

¹⁴² T.C İçişleri Bakanlığı Emniyet Genel Müdürlüğü, *2024 Yılı İdare Faaliyet Raporu*, https://www.egm.gov.tr/kurumlar/egm.gov.tr/IcSite/strateji/Planlama/EGM_2024_Yili_Idare_Faaliyet_Raporu.pdf, Accessed 5 May 2025, p. 24.

"...as part of the efforts to combat piracy, the Provincial Inspection Commissions operating across all 81 provinces carried out 285 enforcement operations in the first six months of the year, resulting in legal action against 300 individuals. During these inspections, a total of 26,733 infringing materials were seized."¹⁴³

In 2023, the Anti-Piracy Report of 2023¹⁴⁴ published by YAYBİR in January 2024, the number of websites offering pirated books was 3773, while the number of online platforms that share pirated PDF books reached 2786. In addition, a total of 44975 pirated books and 6317 unauthorised photocopies of copyrighted books were seized during operations. This comprehensive report also provides the number of links shared on social media platforms for accessing pirated works, as well as information about the websites hosting pirated content. Furthermore, it includes detailed information on the raids conducted, claims made for prosecution and the legal proceedings initiated in response to these piracy acts.

According to the data presented in the book *Digital Piracy*, which also helped us determine our research topic, 38% of global music consumers accessed musical works through piracy in 2018. Even so, this figure reflects a significant improvement compared to 2008, when 95% of the music available online was unlawfully copied, distributed, and downloaded.¹⁴⁵ Again, the movie and TV sectors also suffer substantial losses due to piracy. In 2017 alone, websites that hosted pirated films and TV series received approximately 106.9 billion and 53 billion visits, respectively. That same year, it was reported that 37% of computers worldwide were operating with pirated software.

¹⁴³ T.C Kültür ve Turizm Bakanlığı, *Korsan Yayıncılığa Geçiş Yok*, <https://basin.ktb.gov.tr/TR-346981/korsan-yayinciliga-gecit-yok.html>, Accessed 5 May 2025.

¹⁴⁴ YAYBİR, *YAYBİR 2023 Yılı Korsanla Mücadele Raporu*, <https://www.yaybir.org.tr/yaybir-2023-yili-korsanla-mucadele-raporu/>, Accessed 8 May 2025

¹⁴⁵ JENNINGS, K., BOSSLER, A. M., "Digital Piracy" in *The Palgrave Handbook of International Cybercrime and Cyberdeviance*, HOLT, T. J., BOSSLER, A. M. (eds.), Springer Nature Switzerland AG, 2020, p. 3244.

The total financial damage caused by such unauthorised uses has reached unbelievable levels.¹⁴⁶

MUSO, a data company that provides observations over global piracy and unlicensed media consumption based in the UK, reports that websites that provide pirated content for film, TV, music, gaming and software sectors were visited 229.4 billion times in 2023.¹⁴⁷

Of course, these reports may not show exact financial losses due to the fact that not every piracy act means a lost sale. There is also the debate that some of these reports are made by profit organisations, so they may try to convey that the problem with piracy is more serious than it is.¹⁴⁸

Although this doesn't change the facts that are publicly visible to anyone with access to the internet. A quick search with the name of a work on any search engine could direct anyone to pirated content.

In fact, nowadays, copyright piracy is being carried out almost exclusively online. Throughout our search, almost every source that has been created after 2019 confirms it. Especially after COVID-19, the period when the internet was the sole means of communication, work, and entertainment, online piracy hit new highs, and streaming piracy exceeded peer to peer piracy.¹⁴⁹

As can be seen, the grand extent of piracy severely sabotages the entertainment and culture industries. The severity of the data presented clearly demonstrates the necessity

¹⁴⁶ *ibid.*, p. 3245.

¹⁴⁷ The MUSO Insights Team, *How To Stop Digital Piracy In 2025; A Practical Guide For Rights - Holders*, https://www.muso.com/magazine/digital_piracy_2025, Accessed 5 May 2025.

¹⁴⁸ JENNINGS, K., BOSSLER, A. M., "Digital Piracy" in *The Palgrave Handbook of International Cybercrime and Cyberdeviance*, HOLT, T. J., BOSSLER, A. M. (eds.), Springer Nature Switzerland AG, 2020, p. 3244.

¹⁴⁹ KISKIS, Mindaugas, "Addressing Evolving Digital Piracy Through Contributory Liability For Copyright Infringement: The Mobdro Case Study", *Masaryk University Journal of Law and Technology*, vol. 17/2, pp.219- 248

of preventing piracy and enhancing the effectiveness of the measures taken. Moreover, combating online piracy is a challenge that countries cannot overcome individually. Pirated copyrighted content that is uploaded to the internet by a citizen of one country can still be reached from anywhere in the world through simple software tools, even if access is blocked by some countries. In this context, anti-piracy regulations must be adopted and enforced on an international level. Otherwise, piracy will remain an uncontrollable threat.

§ SECTION THREE: ANTI-PIRACY LAW AND POLICIES

I. Legal Frameworks

Article 61 of the TRIPS Agreement remarks that member states are expected to regulate piracy conducted on a commercial scale as a criminal offence. In line with this obligation, like other countries and international organisations, Turkish copyright law includes provisions aimed at preventing copyright piracy.

A. Enforcement Mechanisms Against Piracy in Türkiye

As mentioned above, Turkish copyright legislation is 74 years old. Therefore, in order to adapt the law to current conditions, several amendments have been made throughout the years. Kılıçoğlu indicates that the amendments made with Law No. 5101 in 2004 were to combat piracy because of America and the EU states about Türkiye's inefficient efforts to fight piracy.¹⁵⁰

Indeed, the amendments made in 2001 and 2004 aimed to combat piracy. However, the 2001 amendment brought severe criminal sanctions, which were inappropriate and excessive considering the acts penalised. Due to their severity in terms of criminal justice, these sanctions were never enforced in practice. As a result, the 2004 amendments softened these penalties.¹⁵¹ Suluk argues that the revised provisions still failed to provide for sufficiently deterrent sanctions. The relevant criticisms will be elaborated under upcoming titles.

Under this title, for starters, Art. 81, commonly referred to as banderol crimes in practice, will be examined. Because it was exclusively adopted to combat copyright

¹⁵⁰ KILIÇOĞLU, Ahmet M., *Sinai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 57.

¹⁵¹ SULUK, C., ORHAN, A., *Uygulamalı Fikri Mülkiyet Hukuku II : Genel Esaslar Fikir Ve Sanat Eserleri*, Arıkan Yayıncılık, 2005, p. 151.

piracy. Subsequently, other relevant legal provisions aimed at preventing piracy will be discussed.

The crimes regulated under Art. 81 titled “Prevention of Infringement of Rights” are subject to ex officio investigation. To summarise, Art. 81 prohibits the sale of copies of works such as books, music, computer programs, video games and films unless they bear an official banderol. These banderols are issued exclusively by the Ministry of Culture and Tourism and may be distributed either by the Ministry itself or by the authorised CMOs. The banderol requirement aims to ensure a distinction between pirated and legally reproduced copies of works.¹⁵²

This regulation protects the rights of authors, neighbouring rights holders and their successors against piracy.¹⁵³ Legal persons are also liable under this article if guilty, the security measures specific to legal persons will be applied to them. The actions subject to penal sanctions under the provision are listed below. Accordingly, any person who

- Reproduces a work in contravention of the banderole requirements or without a banderole and puts it up for sale, sells, distributes or buys or accepts due to commercial purposes
- Sells even lawfully reproduced copies of copyrighted works bearing banderols on roads, squares, open-air markets, sidewalks, piers, bridges or similar places.
- Produces, puts up for sale, sells, distributes, buys, accepts or uses counterfeit banderols
- Uses duly obtained banderols on another work
- Obtains banderols by collusive behaviours and without authority
- Provides banderols to unauthorised persons

¹⁵² SEMİZ, Özgür, “Bir Kamu Politikası Analizi: Türkiye’de Korsanla Mücadele Odaklı Fikri Haklar Politikası”, *Ankara Barosu Fikri Mülkiyet ve Rekabet Hukuku Dergisi*, vol. 2009/4, no. 9, pp. 9-40.

¹⁵³ TEKİNALP, Ünal, *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 5th Edition, İstanbul, 2012, p. 303.

Shall be punished with imprisonment from four to six years and a judicial fine.

In addition, regarding to this article, inspections may be carried out by the Ministry of Culture and Tourism and the local representatives of the central government in order to detect works that fall within the scope of this article but do not bear a banderole.

Again, Art. 44 titled “Marking of Intellectual and Artistic Works” establishes monitoring the production of copyrighted works and preventing the production of pirated copies of such works. Accordingly, these establishments should have a certificate from the Ministry of Culture and Tourism. These are the establishments which,

- manufacture materials serving the fixation or reproduction of works,
- carry out the recording, reproduction and sale of works,
- distribute and supply the work to the public in any way.

Subsequently, places above and rights holders are also obliged to maintain codes complying with international standards and marks and serial numbers on the materials carrying works. These codes are determined and announced by the Ministry.

It was briefly mentioned above that Tekinalp states that the first paragraph of Art. 71 concerns piracy.¹⁵⁴ According to the article, any person who, without the authorisation of the right holders, willfully commits any of the acts listed below concerning a copyrighted work shall be sentenced to imprisonment for a term of one to five years, or to a judicial fine. The acts are as follows:

“...adapts, performs, reproduces, distributes, communicates to the public by devices enabling the transmission of signs, sounds or images or publishes a work, performance, phonogram or production without written permission of

¹⁵⁴ *ibid.*, p. 337.

right holders or puts up for sale, sells, distributes by renting or lending or in any other way, buys for commercial purposes, imports or exports, possesses or stores for non-private use.”

This crime is subject to a complaint; additionally, to make the complaint valid, the right holders or affiliated collecting societies must submit documents and other evidence proving their rights to the infringed work.

It should also be noted that, in addition to the sanctions mentioned above, if a pirated work damages the honour or reputation of the author or related rights holders due to its poor quality or any other means, they can bring an action for compensation for moral rights according to Art. 70.¹⁵⁵

Suluk emphasises in his book on anti-piracy measures, which he wrote following the 2004 amendments, that the provisions concerning the use of works in public places and the communication of works to the public by mass media such as radio and television constitute specific legal measures against piracy.¹⁵⁶

Both provisions aim to prevent the publication or communication of works without the author’s authorisation. In this way, right-holders can generate income from the authorised use of their works, and individuals or institutions that publicly use or broadcast these works will be discouraged from resorting to piracy.

In addition, the author and/or related rights holders who have suffered harm as a result of acts of piracy may request precautionary measures.¹⁵⁷ Thus, the production, distribution, sale etc. of pirated goods can be prevented before further damage is caused

¹⁵⁵ SULUK, Cahit, *Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele*, Hayat Yayıncılık, 2004, p. 153.

¹⁵⁶ KILIÇOĞLU, Ahmet M., *Sinai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 9th Edition, Ankara, 2023, p. 448.

¹⁵⁷ SULUK, Cahit, *Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele*, Hayat Yayıncılık, 2004, p. 834.

to the rights holders. Moreover, the enforcement of a precautionary measure will also suspend the use of pirated materials during legal proceedings, thereby helping to mitigate or avoid potential losses. These measures can be provided if:

- Such an order is deemed necessary for the prevention of a substantial injury
- An instantaneous danger or accomplished facts or any other reason
- The claims asserted are considered to be strongly probable

In response to such a request, the court may issue orders for offenders to follow under Article 77, as outlined below.

- to perform certain acts or to refrain from performing them
- to open or close the premises where the act is being committed,
- the seizure or preservation of reproduced copies of a work, or of moulds and other reproduction devices used exclusively for its production.

Finally, if the conditions are met, acts of piracy may also be subjected to actions for the prevention of infringement as well as for the compensation of pecuniary and non-pecuniary damages.

Other legislative measures introduced to combat piracy include the ex officio monitoring of pirated materials by law enforcement and municipal officers, the establishment of anti-piracy inspection commissions on a provincial level, and the prosecution of pirated goods under customs and anti-smuggling laws when their import or export is detected.¹⁵⁸

¹⁵⁸ SEMİZ, Özgür, “Bir Kamu Politikası Analizi: Türkiye’de Korsanla Mücadele Odaklı Fikri Haklar Politikası”, *Ankara Barosu Fikri Mülkiyet ve Rekabet Hukuku Dergisi*, vol. 2009/4, no. 9, pp. 9-40, p. 21.

B. International Regulations and Their Role in Combating Piracy

Under this title, we will address the international regulations against piracy. However, before doing so, we believe it would be appropriate to share the esteemed Professor Ayiter's opinion in her book published in 1972. Her view is ahead of both her and our time, and we fully agree with her.

“Works of literature and art possess the ability to spread beyond national borders. With the advancement of technology, the speed of this dissemination has further increased, and it quickly became apparent that protection limited to national boundaries is insufficient. In fact, just as the right of ownership is, in principle, not confined to a single country, so too should intellectual property, which is a form of ownership, be exempt from the principle of territoriality; however, it must be admitted that the legal consciousness in this field has not yet reached the necessary level of maturity.”¹⁵⁹

Unfortunately, even though more than half a century has passed since Ayiter wrote these words, the necessary legal awareness has still not matured. The piracy problem, which, as we have elaborated in detail above, continues to plague the global cultural and entertainment sectors, remains unresolved, let alone all intellectual property rights. This is even though the international community widely acknowledges that the piracy problem cannot be addressed without a unified front.

Although the WIPO Standing Committee on Copyright and Related Rights prepared a draft of the Broadcasting Organisations Treaty in April 2024, it is not yet in action. It regulates minimum standards to protect the programme-carrying signals on a global

¹⁵⁹ AYITER, Nuşin, *Hukukta Fikir ve Sanat Ürünleri*, Ankara Üniversitesi Yayınları, 1972, p. 21.

scale. In its explanatory notes for Art. 1, it is explained plainly that the treaty has an anti-piracy function.

“The reference to ‘unauthorised use of programme-carrying signals of broadcasting organisations’ emphasises the anti-piracy function of the Treaty.”¹⁶⁰

If enacted, it can serve as an anti-piracy instrument for protecting the programme-carrying signals internationally.

The first and most widely participated in international agreement concerning copyright law is the Berne Convention, which defined the fundamental concepts of copyright and established minimum standards of protection to be regulated by the member states. Articles 9 and 11 of the Berne Convention regulate reproduction and broadcasting rights. According to the agreement, piracy as we defined would infringe these rights.

After the Berne Convention, the Stockholm Convention led to the establishment of WIPO to promote and develop the concept of intellectual property. WIPO Copyright Treaty (WCT) was brought upon with the aim of developing uniform and effective protection in the light of impact of the development of information and communication technologies. Indeed, it regulates rights of distribution, rental and communication to the public while also accepting the rights the Berne Convention grants. Art. 11 of WCT prohibits acts of trans passing effective technological protection measures (TPM) for copyright protection, and requires contracting parties to implement adequate legal protections and effective remedies to prevent such acts.

¹⁶⁰ WIPO Standing Committee on Copyright and Related Rights, *Draft of Broadcasting Organizations Treaty*, https://www.wipo.int/edocs/mdocs/copyright/en/sccr_45/sccr_45_3.pdf 4, Accessed 10 April 2025.

Again with Art. 12, WCT regulates rights management information (RMI), which means identifying information of a work, like its author, rightsholders, terms and conditions about its usage, etc. According to this article, contracting parties should provide remedies for anyone who knowingly performs the acts following if these acts will make it possible and easier to infringe any rights under this agreement:

“To remove or alter any electronic rights management information without authority;

to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.”

WIPO Performances and Phonograms Treaty (WPPT), on the other hand, protects the rights of performers and producers of phonograms. It embraces the Rome Convention, which introduced provisions on neighbouring rights. Its aim is the same as WCT. And WPPT regulates the rights of reproduction, distribution and rental. Lastly, WPPT regulates the same provisions as Articles 11 and 12 of WCT in Articles 18 and 19 to protect the neighbouring rights.

As can be seen, both WCT and WPPT, without ever mentioning piracy, summon their contracting parties to provide legal protection to prevent piracy on online platforms. In the Marrakesh Treaty where some exceptions are allowed to make accessible copies of works for those who are handicapped. However, Art. 4 /2(a-3) dictates that such a copy of a work can only be obtained by beneficiary persons, and use of these copies in another way, especially commercially, is prohibited, thus preventing piracy of these copies.

As explained above, the TRIPS Agreement also requires member states to provide for effective enforcement against willful copyright piracy carried out on a commercial scale in Art. 61.

In European Union, main sources of copyright law are as follows: Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc), Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED), Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (E-Commerce Directive). These directives collectively constitute the foundation of copyright protection in the European Union.

Articles 6 and 7 of InfoSoc set up the obligations concerning RMIs and TPMs. According to Art. 6, member states should prohibit the acts of selling, distributing, renting or circulating any form of the devices produced for the purpose of circumventing codes and programs designed to protect copyrights. Art. 7 regulates the prevention of the removal of RMIs from copyrighted products, as well as the circulation of any product from which RMIs has been removed. Together, these provisions aim to prevent both the creation of pirated products and the circulation of such products commercially in the market.

Articles 8 to 10 of IPRED regulate measures to be taken in the event of an infringement and the remedies that may be granted. Including provisional and precautionary measures as well as the right of the author and/or right-holder to get information from infringers, about identities of main infringers and the number of infringing products, etc., in order to prevent the continuation of the infringement. When the court rules that copyright infringement happened, corrective measures such as the recall, definite removal from the market or the destruction of the infringing goods may be ordered. The subsequent

provisions address injunctions, damages and alternative measures in cases of copyright infringement. With this directive, the circulation of pirated goods can be prevented during court proceedings, and the increase in losses caused by piracy may also be prevented.

Liability rules for online intermediaries in the event of copyright infringement are outlined in Articles 12-15 of the E-Commerce Directive. Here, the responsibilities of the internet service providers are shaped. In the case where internet service providers are mere conduits, they do not have any liability. However, in the case of caching, they need to remove or disable access to the information when they obtain knowledge of an infringement. Lastly, when the internet service provider is a host, meaning they supply storage for the information provided by a recipient of the service, the only ways they are not liable are that they do not have any actual knowledge of the illegal activities or they remove or disable access to the information when they obtain knowledge immediately.

Additionally, although the term "piracy" is not explicitly mentioned, the objective of the European Agreement for the Prevention of Broadcasts Transmitted from the Stations Outside National Territories is to prevent unauthorised broadcasts. The agreement aims to prohibit radio transmissions carried out by mounting equipment on ships, aircraft or similar means located beyond national borders.¹⁶¹

Council Regulation (EC) No 3295/94 lays down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods. This regulation states that, in order to prevent the circulation of pirated goods in the market, member states must adopt mutually agreed procedures, ensure cooperation, and implement harmonised measures. It is further emphasised that suspending the circulation until it is determined whether the suspicious products are

¹⁶¹ BORA, Erhan, *Avrupa Birliği'nde ve Türkiye'de Fikri Hak İhlalleri, Taklit, Korsan*, Ankara, 2007, p. 48.

indeed counterfeit or pirated would not only sanction the infringers but also serve as a deterrent to others who may consider engaging in similar activities.¹⁶²

As can be understood from the regulations mentioned above, WIPO and the EU copyright practices generally overlap. While piracy is not explicitly addressed as a standalone offence, both systems include substantially similar provisions to prevent and sanction acts that constitute piracy.

In addition to these, a brief look at the U.S. copyright system reveals that, despite its different approach, especially regarding the recognition of moral rights, it would not be incorrect to state that the country has adopted far more comprehensive measures against piracy. Which is not surprising given the size of its educational, cultural and technological industries.

In U.S. copyright law, third parties can be liable for copyright infringements in addition to actual infringers, depending on the circumstances. This is called secondary liability. This practice aims to deter intermediaries who may facilitate the creation and distribution of pirated content, also encouraging them to withdraw their support from illegal activities and comply with the law.

To hold a third party liable for vicarious infringement; there should be a direct infringement that the third party benefited financially from, and did not stop it despite having the right and ability to supervise the direct infringement.¹⁶³ Here, the financial benefits of the third party can include ad revenues, subscribers, attracting more customers to a location and so on. There are, of course, some exceptions and defenses against the application of secondary liabilities. For example, if the third party is also a

¹⁶² *ibid.*

¹⁶³ PELTERET, Marc *CopyrightX: Lecture Transcripts Based on the Lectures of Prof. William W. Fisher III, Harvard Law School*, UCT 2017, <https://marc.pelteret.co.za/copyrightx/>, Accessed, 03 May 2025, p. 284

dual-use technology, meaning it can be used both to facilitate illegal but also lawful and socially beneficial behaviour, and the social benefits outweigh the illegal uses, then the third party can be spared.

Secondary liability has not been implemented by either Türkiye or internationally. Although the EU also doesn't recognise vicarious infringement, a legislative gap has recently been identified by the Court of Justice of the European Union (CJEU) in the cases C-682/18 YouTube and C-683/18 Cyando. There is now an emerging consensus on the necessity of contributory liability.¹⁶⁴

Although there is no general enforcement of secondary liability, we find it important to include it with an emphasis on the notion of vicarious liability under this section. For, as previously noted, piracy is a constantly and quickly evolving problem, adapting through ever-changing strategies. Therefore, holding liable the owners or the directors of any location (real or online) where pirated copies may be made, distributed or circulated in any measure would undoubtedly reduce piracy.

To set an example, if a shopping mall director knew they would be penalised for knowingly allowing the sale of pirated copies of copyrighted materials, it is highly likely that the directors would refuse to give any places for shops that supply pirated materials to avoid any sanction. When such liability is also applied to online intermediaries, these results can be more significant. In this case, it can be predicted that piracy will decrease significantly.

¹⁶⁴ KIŠKIS Mindaugas, "Addressing Evolving Digital Piracy Through Contributory Liability For Copyright Infringement: The Mobdro Case Study", *Masaryk University Journal of Law and Technology*, vol. 17/2, pp. 219- 248

II. Anti-Piracy Policies

As previously discussed, piracy stems from a variety of underlying causes. A problem that has such diverse and sociological roots cannot be resolved solely through state intervention via laws, penalties, or law enforcement. In fact, piracy is not an issue that the state can solve alone. Solving the problem of piracy requires coordinated action by government institutions, professional associations, companies operating in the cultural and entertainment sectors, rights holders, and society at large.

Accordingly, in the previous section, legal actions that can be taken against piracy were discussed. Under this section, we will focus on other measures and policies developed to prevent and /or combat piracy outside of courtrooms.

A. Collective Management Organisations (CMOs)

The rights described above can be exercised under the author's preferences. The author can choose to reproduce and sell their work themselves, or license some of their rights to be managed by others while retaining others. They can also license each of their economic rights to be managed by different parties, or all rights of their work can be collectively licensed to a single person or entity.

However, in practice, it is not likely for an author to engage with every potential user individually. Similarly, in this fast-paced information age, it is nearly impossible for authors to monitor every potential infringement of their rights, let alone keep track of court proceedings to enforce them.¹⁶⁵ For instance, it would be impossible for Sezen Aksu, a highly talented songwriter and performer, to personally negotiate with every hotel owner, radio station, YouTube, Spotify etc. that wants to use her songs. Even if she can manage these, she would not have any time for creating art, which most of us

¹⁶⁵ SEMİZ, Özgür, *Telif Hakları ve Bağlantılı Hakların Toplu Yönetimi ve Kamusal Denetimin Boyutları* Ankara, 2020, p. 35.

enjoy dearly. This is precisely where collective management organisations (CMOs) come into play.

With the authority granted by its members (the authors and related right-holders), CMOs license the use of their works across various platforms, including those listed above, for a specified fee. The collected licensing fees are then distributed to the relevant authors and related right-holders. CMOs also have the authority to track unauthorised uses and prevent them in any manner, including criminal and civil court proceedings.¹⁶⁶ CMOs can only manage the rights within the scope of the authority granted by the right-holders.

CMOs have also been established to ensure that authors' rights are protected through institutional mechanisms and to provide more effective enforcement against copyright infringements.¹⁶⁷ Since piracy is a form of copyright infringement, one of the primary missions of CMOs is to combat piracy. Indeed, in practice, CMOs such as Phonogram Producers Collecting Society of Türkiye (MÜ-YAP), Music Performers Collecting Society of Türkiye (MÜYORBİR) and Publishers Copyright and Licensing Collecting Society of Türkiye (YAYBİR) have undertaken initiatives against piracy.¹⁶⁸

Suluk argues that CMOs are institutional structures to combat piracy and prevent copyright infringement, also that without this institutionalisation, the market for copyrighted materials would take shape according to the policies pursued by each new elected government. Indeed, the policies of CMOs regarding anti-piracy measures can only be changed with the decisions taken by the organisations themselves.¹⁶⁹

¹⁶⁶ *ibid.*, p. 36.

¹⁶⁷ SULUK, Cahit, *Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele*, Hayat Yayıncılık, 2004, p. 166.

¹⁶⁸ SEMİZ, Özgür, *Telif Hakları ve Bağlantılı Hakların Toplu Yönetimi ve Kamusal Denetimin Boyutları* Ankara, 2020.

¹⁶⁹ SULUK, Cahit, *Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele*, Hayat Yayıncılık, 2004, p. 166.

Currently, multiple CMOs can be established simultaneously within the same field in Türkiye. However, in practice, this rule caused confusion, hindered the proper functioning and establishment of the CMOs system, also ultimately prevented the intended institutionalisation. Although CMOs started to gather under federations in recent years, the speed of progress in implementing the system has been negatively affected by this situation.

Establishing a centralised joint licensing union (one stop shop) can resolve the confusion and inefficiency encountered in practice. The initiative undertaken by musical rights CMOs on this issue can be given as an example. With this move, Musical CMOs have significantly reduced the costs compared to individual licensing and also simplified the licensing process by offering a single point of access to potential users.¹⁷⁰

However, establishing a single CMO for each area of copyright would not only be the most practical solution to eliminate confusion in practice, but could also enable CMOs to operate more effectively. Since one of the important missions of CMOs is preventing copyright piracy, handling this problem with a single focused authority would increase its effectiveness.

B. Public Awareness and Education Campaigns

Under the title Factors Contributing to Copyright Piracy, it was explained that the general public does not perceive piracy as a crime, especially when the acts of piracy are carried out online. There is also the fact that even if they know about the crime aspect, piracy is seen as a victimless crime, as individuals consider that there are no parties that get harmed directly.

¹⁷⁰ SEMİZ, Özgür, Telif Hakları ve Bağlantılı Hakların Toplu Yönetimi ve Kamusal Denetimin Boyutları Ankara, 2020, p. 41.

Eurojust touches upon the issue of piracy being perceived as a victimless crime and its negative effect on the court proceedings in the copyright piracy report as follows.

“...online piracy is too often perceived as a victimless crime – a reality that is reflected in few prosecutions and low sentences handed to those who infringe the rights of creators and innovators. These factors have helped to make online piracy a low-risk, high-profit enterprise, in turn becoming more attractive for individual infringers and organised criminals alike.”¹⁷¹

Similarly, Taylor and others state in their work that students should understand that piracy is not a victimless crime and, in fact, these acts cause serious damage to authors and publishers.¹⁷²

It can be concluded from these passages and our previous titles that the general public needs to be informed about copyright piracy and its effects on the national economy, authors, and all other parties that are harmed. However, education should not be limited to only piracy; it must also aim to instil public awareness of the importance of all intellectual property rights. The negative impacts of disregarding or violating IP rights on both individuals, like authors, producers, performers and the national economy, in addition to the added value that effective protection brings, should be some of the topics that need to be taught.

To foster the necessary cultural awareness, this education should be provided with great care to individuals from all segments of society, starting in primary schools and extending to judges, prosecutors, all law enforcement units, civil servants, and private companies.

¹⁷¹ Intellectual Property Crime (IPC) Project at Eurojust, *Copyright Piracy: Assessment of national legislative approaches and court practice regarding online copyright piracy* <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-copyright-piracy-report.pdf>, Accessed 27 April 2023, p. 5.

¹⁷² TAYLOR, R. G., MOUSAVIDIN, E., SMITH, M., FULK, H. K., “The Increasing Problem With Textbook Piracy”, *Global Journal of Business Pedagogy*, vol. 8, no. 1, 2024, p. 38.

This way, the harms caused by piracy can be fully understood, which can significantly reduce piracy in music, software, books, movies, etc., including the pirated software use encountered in various government departments and private companies.¹⁷³ Furthermore, we believe that including information on the importance of proper law enforcement, the nature of the piracy crime for copyright, as well as the applicable criminal and civil sanctions within the framework of these educations, would have a strong deterrent effect.

As previously emphasised, in a society where people do not have a belief in the value of intellectual and artistic works and have no awareness of the importance of IP, it is impossible to prevent copyright piracy effectively.

The duty of raising awareness about these topics lies primarily and fundamentally with the state.¹⁷⁴ In fact, the Ministry of Culture and Tourism provides a webpage on its official website offering information regarding the fight against piracy.¹⁷⁵ Furthermore, some educational programs have been organised with the contribution of the Copyright Education Centre. Some of these programs are organised for children,¹⁷⁶ young adults who are in high school and middle school age,¹⁷⁷ and the general public.

However, it has been observed that the educational activities that raise awareness, which had been carried out more intensively following the amendments made in the Copyright Act in 2004, have decreased and become rare in recent years. As demonstrated with the

¹⁷³ SULUK, Cahit, *Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele*, Hayat Yayıncılık, 2004, p. 153.

¹⁷⁴ *ibid.*, p. 168.

¹⁷⁵ T.C. Kültür ve Turizm Bakanlığı, Telif Hakları Genel Müdürlüğü, *Korsanla Mücadele*, <https://telifhaklari.ktb.gov.tr/TR-332344/korsanla-mucadele.html>, Accessed 28 May 2025.

¹⁷⁶ Kültür ve Turizm Bakanlığı, Telif Hakları Genel Müdürlüğü, *Dünya Fikri Mülkiyet Günü Etkinlikleri Kapsamında "Keloğlan Korsana Karşı" Çocuk Tiyatrosu Sahnelendi*, <https://telifhaklari.ktb.gov.tr/TR-342509/dunya-fikri-mulkiyet-gunu-etkinlikleri-kapsaminda-keloglan-korsana-karsi-cocuk-tiyatrosu-sahnelendi.html>, Accessed 1 June 2025

¹⁷⁷ Kültür ve Turizm Bakanlığı, Telif Hakları Genel Müdürlüğü, *Esere Saygılı, Korsana Karşıyız 6.Ulusal Slogan Logo ve Afiş Yarışması Sonuçları Açıklandı*, <https://telifhaklari.ktb.gov.tr/TR-332839/esere-saygili-korsana-karsiyiz-6ulusal-slogan-logo-ve-afis-yarismasi-sonuclari-aciklandi.html>, Accessed 1 June 2025

data presented in the previous section, despite the increase in piracy activities, the decrease in educational and awareness efforts for IP, and the lack of systematic and strategic planning from the beginning, play an important role in the persistence of the piracy problem.

C. Technological Solutions

In previous pages, the impact of the technology on copyrights was mentioned. As stated, technological advancements bring new ways to create, but also new ways to infringe upon copyrights. Therefore, there is a growing need for technological solutions to protect authors' rights.

Some of these solutions were listed above as RMIs and TPMs, as regulated under several international treaties. As mentioned above, TPMs are the technologies, components or devices designed to prevent piracy (or any infringing acts). Some of these are paywalls, read-only works, blocking downloads, watermarks (sometimes with the users' info), etc.

RMIs, on the other hand, mean adding information to a work, identifying the work and its author, right holders, terms and conditions of using that work and any code, like QRs, watermarks, embedded data, that carries such information.

There was even a case example of these where producers embedded some information into every copy of the movie, which they rented to movie theatres, in order to identify in which salon a pirated copy was made. This is a great example of an industry-led technological solution to piracy.

YAYBİR has a feature on its website named “No Piracy (Korsana Hayır)” made for the general public to use to inform the CMO about pirated books on any website or anyone suspected of committing piracy acts. It is easy to use and has clear guides for users.¹⁷⁸

Another great example is the application launched by the Ministry of Culture and Tourism to combat piracy. The application aims to verify the authenticity of banderols on books, musical and cinematographic works through scanning the QR code or the number on the banderol. These banderols also carry the information about the works to identify if the banderols were reused illegally on pirated material. In this case, the app urges the user to report piracy.¹⁷⁹

Search engines offer another great tool to fight piracy by lowering the ranking of websites that receive valid notifications about piracy.¹⁸⁰ This then leads to less traffic for websites that contain pirated content. Furthermore, Google also notes if necessary, they can remove pages where piracy acts are carried out, regarding copyright infringement submissions by right holders.

Another effective tool of Google for exposing and filtering pirated content on YouTube. They can detect or be informed about piracy and then remove the pirated content from their servers. This is also the case with the applications on Google Play. If the applications are providing unauthorised access to copyrighted material, they take down the application upon being informed.¹⁸¹ Some other websites, like Facebook, X (formerly Twitter), Yandex, etc., also have industry-led self-regulated notice and takedown systems.

¹⁷⁸ YAYBİR, *Korsana Hayır*, <https://www.yaybir.org.tr/korsana-hayir/>, Accessed 01 June 2025

¹⁷⁹ T.C Kültür ve Turizm Bakanlığı, *Bandrol Sorgulama*, <https://www.yaybir.org.tr/korsana-hayir/>, Accessed 1 June 2025.

¹⁸⁰ Google, *Fighting Piracy*, https://fightingpiracy.withgoogle.com/intl/ALL_tr/, Accessed 01 June 2025

¹⁸¹ *ibid.*

There are also notice and takedown systems in practice for the websites that do not have self-regulated takedown systems. In Türkiye, authors and/or right holders can gather evidence of piracy acts regarding their copyrighted works on a website and subsequently issue a formal notice, containing all necessary information, to the operators of the website. If the pirated content is not removed within three days, right holders can file a complaint with the Prosecutor's Office, requesting that access to the website infringing their rights be blocked.¹⁸²

Takedown notices can also be issued under different legislations in almost the same manner. If the websites ignore the takedown notices, right holders can enforce their rights by putting the relevant regional rules to use. For example, the EU, under the Digital Single Market Directive, and the US, under the Digital Single Market Directive, can be put to use.¹⁸³

Nowadays, artificial intelligence (AI) and the way it multitasks effectively make it easy to use for a variety of tasks. Detecting online copyright infringements or pirated copyrighted materials is a great use of this ground-breaking technology. Although it is still a new and developing solution combating piracy, AI is already being used for the detection and removal of pirated content.¹⁸⁴

Adding to that, another relatively new technological development that can be used is digital assets like NFTs (non-fungible tokens), which are used for proving ownership of a work or other blockchain technologies to track copyrighted works.¹⁸⁵

¹⁸² YAYBİR, *Uyar Kaldır Sistemi*, <https://www.yaybir.org.tr/bilgi-bankasi/uyar-kaldir-sistemi/>, Accessed 01 June 2025

¹⁸³ The MUSO Insights Team, *How To Stop Digital Piracy In 2025; A Practical Guide For Rights - Holders*, https://www.muso.com/magazine/digital_piracy_2025, Accessed 5 May 2025.

¹⁸⁴ EDWARDS, Michael, *Digital Content Piracy: Corporate Responses to Copyright Infringement*, https://michaelledwards.uk/digital-content-piracy-corporate-responses-to-copyright-infringement/#Technological_Responses, Accessed 03 June 2025

¹⁸⁵ *ibid.*

D. The Role of Subscription-Based and Premium Models

With the widespread adoption of the Internet in the nineties, methods of accessing copyrighted works began to change, evolve, and diversify. With the help of this new technology, people discovered brand new ways of accessing and sharing films, music, video games, paintings, and photographs. The ability to access all types of content almost instantly accelerated the circulation of copyrighted works online.

The process for the legal distribution of works online has fallen behind the speed of sharing pirated copies. Measures designed to prevent illegal dissemination of such works were even slower to develop. This gap between developments laid the groundwork for the explosion of online copyright piracy. Platforms such as Napster, Pirate Bay, Bearshare, Limewire, etc. became widely used for pirated content sharing. Indeed, by 2008, over forty billion pirated music files had been shared online. Same year, 95% of music files were downloaded without any payment.¹⁸⁶ As a result, especially the global music industry came to a near standstill due to piracy. The film industry has also declined, leading to the closure of numerous movie theatres.

For these reasons, one of the most successful initiatives of the culture industry's fight against piracy emerged: subscription-based services. Today, people subscribe to platforms such as Spotify, YouTube and Apple Music to listen to music, Netflix, Disney+, HBO to watch movies and series, and Storytell, Audible, and Amazon for accessing books, paying a monthly fee for legal and convenient access to copyrighted content.

Because, this model offers a more affordable alternative to buying music, movies, games or books individually, it has become an increasingly preferred as an easy and

¹⁸⁶ JENNINGS, K., BOSSLER, A. M., "Digital Piracy" in *The Palgrave Handbook of International Cybercrime and Cyberdeviance*, HOLT, T. J., BOSSLER, A. M. (eds.), Springer Nature Switzerland AG, 2020, p. 2268

safe method for the general public to consume copyrighted content.¹⁸⁷ With the price of a single movie ticket, users can now stream a vast number of movies and series from the comfort of their homes.¹⁸⁸ Due to these easily accessible and more affordable services, the speed at which piracy spread slowed down considerably over time. This shift in user preference has reduced online piracy and has contributed to the transformation in the public's streaming habits towards lawful consumption.

For this reason, and also the profit of establishing long-term relationships with customers, the culture industry embraced the subscription-based service model and gradually changed its market strategies accordingly. However, soon, numerous companies recognised the profits of this model and established their own platforms. While the services mentioned above are among the most well-known examples, the number of platforms is certainly not limited to them. By 2019, the average number of subscriptions per person had risen to 12 and in some cases as many as 17.¹⁸⁹

This trend, however, began to reverse in 2020, with the explosion of streaming services during the COVID-19 pandemic and the accompanying shift in streaming habits. Users had difficulties in identifying which platform hosted the content they sought, and the cost of subscribing to multiple platforms, even though every individual subscription was a minor amount, started to accumulate and become a considerable financial burden. All these resulted in subscription fatigue.¹⁹⁰

This development has led to increased interest in copyright piracy and the emergence of entirely new methods. Today, various applications, devices and dedicated platforms

¹⁸⁷ EDWARDS, *Digital Content Piracy: Corporate Responses to Copyright Infringement*, [https://michaelledwards.uk/digital-content-piracy-corporate-responses-to-copyright-infringement/#Technological Responses](https://michaelledwards.uk/digital-content-piracy-corporate-responses-to-copyright-infringement/#Technological%20Responses), Accessed 03 June 2025

¹⁸⁸ Corsearch Blog, *Subscription Fatigue & Anti-piracy Protection for Subscription Businesses & Content Owners*, <https://corsearch.com/content-library/blog/subscription-fatigue-anti-piracy-protection-for-subscription-businesses-content-owners/>, Accessed 05 June 2025

¹⁸⁹ *ibid.*

¹⁹⁰ *ibid.*

offering access to streaming services for a fee have started to emerge and spread in order to access these services illegally. Rising subscription fees, along with the added advertisements in some premium packages, are also quite effective factors that push people to turn to copyright piracy.

In Türkiye, the lean towards piracy arises not only from subscription fatigue but also from the relatively high cost of fees in light of current economic conditions. Moreover, the withdrawal of certain platforms from the Turkish market is due to the incompatibility of their pricing models with local purchasing power and market dynamics.

As can be understood, subscription-based models, while still serving as an effective method of protection against copyright piracy, also brought new forms of piracy, thanks to companies regarding it as a new marketplace and profit source. Consequently, user dissatisfaction has driven a renewed interest towards copyright piracy.

With this example, it can be concluded that any anti-piracy strategies must be developed with careful consideration of the influence of industry practices and profit motives on user behaviour. Data-driven insights must be employed to formulate new and effective solutions for preventing copyright piracy.

§ SECTION FOUR: POLICIES AND PROPOSED SOLUTIONS

FOR THE PREVENTION OF PIRACY IN COPYRIGHT

I. The Balance Between Copyright Protection and Public Interest

While evaluating the amendments made to the FSEK with Law No. 5101, Suluk notes that the FSEK aimed to align itself with international regulations before being fully embraced by the Turkish public.¹⁹¹ This approach may result in the adoption of legal provisions that do not correspond to the Turkish socio-cultural and economic structure, leading to laws that are either unenforceable or inadequately implemented. It is evident that such a situation could have a negative impact on the education and cultural industries. Therefore, when formulating copyright policies, it is essential to identify and balance the structure and interests of society with the rights and expectations of right holders.¹⁹²

Similarly, intellectual property law as a whole is founded on this delicate balance. As explained at the beginning of this thesis, inventors are granted a monopoly for a limited duration to commercially exploit their invention and reap its benefits. However, at the end of this period, the invention is made available for public use.

The same principle applies to a copyrighted work. In Türkiye, a work is protected for the lifetime of the author plus seventy years after their passing. During the protection period, only the author and/or right holder can use and benefit from their work. Once the protection term ends, the work enters the public domain, becomes cultural heritage, and is freely accessible to all.

¹⁹¹ SULUK, Cahit, *Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele*, Hayat Yayıncılık, 2004, p. 180.

¹⁹² *ibid.*

However, it is essential to balance this monopoly granted to the author with the public interest in order to safeguard the benefit of both parties. To achieve the balance, the legislators have introduced several limitations and exceptions to authors' rights. These limitations and exceptions are briefly explained and listed below:

i. Due to public order:

With this limitation, legislators made sure that a work can be used as evidence in criminal proceedings without any time lost for granting authorisations.

ii. Due to public interest:

- Legislation and court decisions can be used and distributed in any manner.
- Public speeches made in official assemblies, congresses, courts, etc. can be used in any manner to give news and information, even without the author's name mentioned. However, except for this kind of use, only the author can reproduce or distribute their speeches.
- In any educational institution, copyrighted works can be directly or indirectly performed for educational purposes.
- The quotation of copyrighted published works is permitted to clarify the content of the selected compilations used in educational materials. Such compilations and school radio programs approved by the Ministry of National Education should be prepared for educational purposes only.
- Citations can be made for scientific and cultural purposes to express and develop opinions within the scope of the work.

- Daily events, news and statements disseminated through the printing press, broadcasted on TV or radio, can be freely quoted. However, Art. 15 of the Press Law, which is excluded from this provision, narrows this limitation significantly on the border of rendering it unusable. Nowadays, in practice, news cannot be quoted without permission.¹⁹³
- Published works may be used within the scope of reporting daily events in the press. Provided that the work is used for the news and does not exceed the scope of conveying related information.

iii. Due to the interest of individuals:

- Reproduction for personal use is permitted as long as it is not for profit reasons, or doesn't conflict with the normal exploitation of the work. Unless the book is reproduced as a whole, the reproduction is made from a pirated copy by removing the codes on the original carrier or circumventing encryption.¹⁹⁴ This provision cannot be implemented for computer programs except for copying from the original to have a backup.
- Works of fine arts, if implemented in a public place permanently, can be distributed, communicated to the public or reproduced by drawings, photos, etc. Unless prohibited by the author, these works and works that sold by auction can be exhibited by third parties.

¹⁹³ KARASU, R., SULUK C., NAL T., *Fikri Mülkiyet Hukuku*, Seçkin Yayıncılık, 7th Edition, Ankara, 2023, p. 138.

¹⁹⁴ *ibid.*, p. 142.

iv. Authorities granted to the government:

Technically, Article 47 regulates a provision about expropriation. However, this provision lost its enforceability due to the first paragraph being annulled by the Constitutional Court following the 2014 amendments.¹⁹⁵

Furthermore, Additional Art. 11 regulates provisions for people with special needs. Works can be reproduced in the necessary special ways without authorisation, in order to provide accessible copies for individuals who are visually or hearing-impaired.

In addition to all these limitations regulated by FSEK, the Creative Commons licence system created by Lessig also serves to protect the balance between the benefits of the public and those of the author. Utilising any type of Creative Commons license, authors can decide the way their works are used by individuals.¹⁹⁶ For example, using a CC0 licence or the author can relinquish their copyright and put their works into the public domain. Using a CC BY-NC licence, users can distribute and adapt the work for non-commercial purposes only, while giving credit to the author. Another similar system is Copyleft, which functions somewhat like Creative Commons.¹⁹⁷

Lessig created Creative Commons because, although he is opposed to piracy, he believes that to create new works, people should be able to reuse already existing content. Also, a way of balancing the benefits mentioned above.¹⁹⁸

Indeed, if this carefully regulated balance is disrupted or favoured one side, the monopoly granted to the authors can hinder one of the fundamental purposes of copyright law: the advancement of education, culture and science. Similarly, despite the

¹⁹⁵ *ibid.*, p. 146.

¹⁹⁶ BARAN, Şebnem, *Online Streaming: A Survey Of Online Sharing And Piracy*, Boğaziçi University, 2012, p. 27.

¹⁹⁷ Creative Commons, *About CC Licenses*, <https://creativecommons.org/share-your-work/cclicenses/>, Accessed 07 June 2025

¹⁹⁸ *ibid.*, p. 28.

limits and systems, some individuals engaging in piracy have argued that they make otherwise inaccessible works available for the greater good and the progress of society.

This view is also defended by the administrators of online pirate content platforms with millions of users. Moreover, these arguments even led to the establishment of a political party named Pirate Party, which operates successfully in 60 countries and has registered in over 20 countries, including Belgium, some states in the USA, France, Germany, Japan, etc.¹⁹⁹

The Pirate Party is formed by people who perceive copyright and intellectual property law in general as an obstacle to humanity's progress.²⁰⁰ The main argument of this international group is that patent and copyright laws prevent individuals' access to information in a way that exceeds the purpose of these protections, limiting both individual and public development. Coming from this reasoning, they want the legislations that regulate patents and copyrights to be reformed.²⁰¹

Within the scope of this thesis, it has been observed that one of the essential reasons causing piracy is the public's inability to access informative, entertaining, and cultural works due to various reasons, and they use piracy as a compensatory tool to address this problem. Although the factors that cause copyright piracy are outlined above, a closer examination of these factors reveals that the imbalance inherent in copyright protection lies at the core of the piracy problem.

Indeed, individuals engaged in copyright piracy often believe in the necessity of intellectual property protection, yet advocate for legal reforms to be made based on a societal consensus. Pirate Party members also state that current IP regulations are

¹⁹⁹ Wikipedia, *List of Pirate Parties*, https://en.wikipedia.org/wiki/List_of_Pirate_Parties, Accessed 08 June 2025

²⁰⁰ ÜNSAL, Önder Erol, *Korsan Parti Hareketi: IPR Korumasında Aşırılığa Karşı Tepki*, <https://iprgyzini.org/2013/10/30/korsan-parti-hareketi-fikri-mulkiyet-haklari-korumasinda-asiriliga-karsi-toplumsal-tepki/>, Accessed 08 June 2025

²⁰¹ *ibid.*

shaped according to the standards of developed countries and can, in fact, hinder rather than support progress in developing countries.²⁰²

Therefore, while proposing solutions or coming up with legal regulations to combat copyright piracy, it would be incredibly beneficial to consider the balance of interests and ensure that this balance works in favour of both parties. In order to eliminate societal incompatibilities that drive people to resort to piracy measures, a copyright system tailored to the structure and needs of the relevant society is required. If this is impossible to acquire, then at the very least, the scope of copyright limitations and exceptions should be re-evaluated in this context.

II. Proposed Solutions for Preventing Copyright Piracy

Undoubtedly, the reason the copyright piracy problem persists is either the absence of effective anti-piracy measures or the lack of sincere enforcement of the existing ones and the sense of impunity this behaviour brings. A crucial factor in the fight against piracy is the position of copyright protection in the consciousness of society. Indeed, if the importance of this situation is not understood by individuals and relevant actors, protective measures will not work consistently.

It is no coincidence that nowadays the countries that place anti-piracy measures on a high priority list are those whose economies are significantly affected by cultural and educational industries. For Türkiye to become a country that not only produces or imports works but also creates and generates economic benefits from copyrights, the piracy problem must be effectively addressed. Only then can such a transformation be

²⁰² *ibid.*

achieved with the encouragement of cultural production and investment in the educational and cultural sectors.²⁰³

In the sections above, piracy and the underlying factors, as well as the existing methods to combat it, have been examined. Under this title, suggestions for improving existing enforcement mechanisms and introducing yet-to-be-implemented approaches will be offered.

A. Education on Copyright and Piracy

As stated several times before, raising public awareness about the importance and benefits of copyright and creating a culture of respect for IP rights as a whole must be the first step in the fight against piracy. Because, unless society fully understands the advantages of protecting these rights or the harms of infringing them, no measure or punishment, regardless of their severity, will be effective in preventing piracy.

To raise awareness about IP rights in the eyes of the public, it is essential to provide regular educational initiatives

As mentioned above, the Ministry of Culture and Tourism has organised certain education programs and initiatives to raise awareness both about piracy and copyrights. However, to achieve a permanent impact, such training must be conducted regularly and systematically over a long time. Some of the steps that can be taken for this purpose are listed below.

- Introducing the concepts of IP rights, Copyrights, the importance of protecting them and the harms of acts consisting of infringement and copyright piracy to

²⁰³ SULUK, Cahit, *Yeni Fikir ve Sanat Eserleri Kanunu Telif Hakları ve Korsanlıkla Mücadele*, Hayat Yayıncılık, 2004.

students, beginning at primary school through high school levels, carefully tailored to their age group and comprehension capabilities,

- Providing mandatory regular educational training on copyrights and the consequences of copyright piracy for legal professionals, starting with judges and prosecutors who make the decisions or take precautions in these cases, as well as law enforcement bodies such as police and municipal officers,
- Making it compulsory to regularly display advertisements and public service announcements on mass media platforms such as radio, TV and websites hosting copyrighted content, which are accessible for individuals of all ages. These should include information such as copyright piracy being a serious and punishable offence, its harms to authors, society and the country.

B. Defining the Term Piracy in Copyright

Another fundamental reason for the persistence of copyright piracy lies in the fact that it is a problem no country, group, corporation, or international organisation can solve individually. In reference to Erel's view mentioned above, IP rights, by nature, exceed national borders. Accordingly, copyright infringements cannot be confined to any country's borders. Indeed, copyright piracy has become a problem that knows no borders, particularly with the contribution of the internet. Therefore, addressing copyright piracy effectively requires a coordinated and harmonised international response.

It is worth noting that such international regulations must also allow for flexible implementation mechanisms that can be adjusted according to the unique socio-cultural and economic structures of individual countries. Because one of the biggest shortcomings of the current legal system is the assumption that identical rules can be

applied uniformly across all jurisdictions. It is clear that these uniform regulations are failing to prevent copyright piracy; therefore, a reform is needed.

However, for these regulations to be made, initially achieving a harmonised understanding of the term copyright piracy would be a huge significant step forward in resolving the problem effectively. As previously discussed, it will be impossible to find solutions to a concept that lacks a definition that doesn't change according to every other person.

One of the reasons why some types of copyright piracy are not even perceived as such, especially in Türkiye, is the absence of a clear legal definition. Individuals often cannot distinguish which of their actions constitutes piracy. This is not always due to a lack of copyright awareness, but rather because of the ambiguity surrounding the term piracy in copyright law. The difficulties and confusions it caused encountered while preparing this thesis are explained under the title Defining Copyright Piracy in detail.

For all these reasons, one of the most crucial steps in combating copyright piracy would be to come up with a clear definition of what the term piracy entails and which actions fall under its scope.

C. Price Adjustments

In earlier sections, various searches involving individuals who produce, distribute, or consume pirated content were discussed. Overall, across nearly all sources, one of the most common reasons for choosing pirated content was undoubtedly the high prices of the copyrighted products.

Despite this common problem, in practice, there is a notable lack of research in the market focusing on price adjustments based on the purchasing power of the targeted consumer. Some authors and right holders have noticed that their works reach higher

sales numbers when they lower prices. The motivation behind lowering their prices varies from making their works more accessible, breaking sales records, to increasing fame and visibility of their work

It is known that global brands leading sectors, such as food, fashion, and technology, conduct market-specific price analysis before launching their products in new regions. A similar approach, conducting price analysis based on the type of work and its target audiences, could help reduce copyright piracy while increasing revenues for authors and right holders.

Indeed, Bora's research indicates that those who are affected by copyright piracy the most are those who set prices without considering factors such as gross national product (GNP) per capita.²⁰⁴ He argues that in order to prevent piracy, authors and right holders must employ several strategies at once. Including cooperating with the public, the legitimacy of the protection of the right, technological tools, scientific studies and the use of dynamic pricing policies.²⁰⁵ His recommendation is as follows:

“...it is necessary to scientifically identify the social and economic conditions that give rise to piracy and counterfeiting on a product-by-product basis and to establish price policies accordingly.”²⁰⁶

In addition to market-based mechanisms, it is also necessary for the relevant scientific experiments and studies to be carried out by the state for the benefit of the public. Given the protection and development of the scientific and cultural heritage functions of copyright. Accordingly, we believe that pricing-related scientific studies and experiments should be conducted regularly by the state. The results of these studies

²⁰⁴ BORA, Erhan, *Avrupa Birliği'nde ve Türkiye'de Fikri Hak İhlalleri, Taklit, Korsan*, Ankara, 2007, p. 73.

²⁰⁵ *ibid.*, p. 85.

²⁰⁶ *ibid.*

should then be published and shared with CMOs and leading companies in the cultural and educational industries, accompanied by tailored pricing recommendations.

In this way, market leaders and those who may be affected by piracy would gain a clear understanding of economic breaking points and be better prepared to identify the thresholds, which piracy can be prevented.

D. Special Applications for Groups Prone to Piracy

Another effective approach for preventing copyright piracy would be to identify groups that predominantly engage in or benefit from piracy and determine targeted anti-piracy strategies for these groups.

For instance, students who have limited economic means or reside outside of major cities often resort to piracy because they cannot access educational materials. It is widely known that an informal business sector is formed where pirated bulk photocopies of exam preparation books for public examinations are reproduced and distributed nationwide. These copies often cost one-tenth of the price of an original book.

This situation could be addressed by broadening the scope of the existing legal exemptions for educational use, implementing differential pricing mechanisms for students from specific socio-economic groups, or providing financial support for them. In addition, agreements with the authors and right holders through CMOs could be arranged by the state to ensure educational works are available in public libraries or online platforms. In return, authors and right holders could be offered tax exemptions or other incentives for contributing to public interest.

E. Mandatory Disclosure and Licensing Requirements for Businesses Utilising Copyrighted Works

This is a suggestion regarding the development of the existing licensing system in Türkiye. Where businesses such as hotels, restaurants and cafes are required to obtain licenses for the copyrighted works they use. Piracy acts made in such commercial settings result in greater financial and tax losses compared to piracy made by individuals.

In this context, while they establish their enterprise, business owners could be required to disclose any type of copyrighted work they need and intend to use, including software, music, films, etc., and provide evidence of having obtained proper licenses and paid any associated fees. If business owners fail to meet these requirements, the permits necessary for the operation of the business could be withheld by the authorities. Additionally, businesses could be held responsible for submitting these documents on a regular basis, as long as their service continues. Businesses could be subjected to regular government inspection regarding meeting these requirements. If this system is implemented effectively and sincerely, it could help prevent copyright piracy on a great scale.

The government may delegate this responsibility to CMOs; however, the effectiveness of such delegation depends on the establishment of a unified licensing body. With the current structure in practice, it is unclear who holds jurisdiction over what content, significantly complicating the licensing process.

F. Collaboration Between the Sectoral Actors

It is mentioned many times that piracy is a problem that cannot be solved individually. This is also the case for companies within the education and cultural sectors. As

discussed under the subscription-based services title, anti-piracy initiatives that are seen as a new marketplace also focus only on generating more profit, without regarding societal impact, often result in increasing piracy acts.

Based on the streaming services example, it would be in the interest of both parties and a big step towards solving the piracy problem if the sector actors declare a ceasefire, find new working methods, and produce solutions that will not disrupt the balance and the interests of society to solve the piracy problem that has brought the sector to a standstill before.

G. Effective Monitoring by CMOs and Adopting Centralised Licensing

As mentioned, under the title about CMOs, establishing a centralised licensing entity would resolve licensing issues in practice and also help with monitoring copyright piracy effectively. Moreover, it is of great importance that CMOs to work transparently, publish regular reports about their activities and consistently conduct research and monitoring activities related to piracy.

In addition, CMOs could be granted specific powers, such as auditing the proper use of copyrighted works and taking urgent action against piracy, which could enhance their effectiveness in fighting piracy.

H. Secondary Liability

As previously discussed concerning US law, holding third parties liable if they are aware or expected to be aware of the piracy activities and fail to take precautions can have a deterrent effect.

Adding this regulation to our legal system, especially to combat online piracy, could prove highly dissuasive for intermediaries and hosting platforms that knowingly allow pirated content to persist.

I. Using An Opt-Out System for Libraries Instead of Opt-In

This proposal envisions a practical solution to the orphan works issue, also registering works in libraries (including online libraries) immediately without the authorisation of authors and right holders.²⁰⁷ The authors and right holders would instead be given the option to request the removal of their works from the system.

This system is solely for non-commercial use for the interest of the public. The system offers opposite rules from the current copyright regulation about authors' authorisation to opt-in for the public domain or certain uses of their works.

Using the opt-out system, the number of available works in the public domain would increase considerably. Also, by serving the interests of the individuals who face difficulties accessing educational and cultural works. Therefore could reduce piracy considerably by addressing one of the fundamental factors causing it.

J. Timely and Effective Legal Remedies Against Piracy

While numerous legal measures exist to combat piracy, the excessive length and complexity of these procedures often cause further violations of rights and a sense of impunity regarding copyright piracy. For example, by the time a court order is obtained to remove pirated content or restrict access, pirated content and even the entire site can be easily moved to a new domain.

²⁰⁷ PELTERET, Marc *CopyrightX: Lecture Transcripts Based on the Lectures of Prof. William W. Fisher III, Harvard Law School*, UCT 2017, <https://marc.pelteret.co.za/copyrightx/>, Accessed, 03 May 2025

To prevent such outcomes, it is essential to implement special rules for copyright infringement procedures, such as time limits for or fast-track legal channels, specifically designed for piracy-related cases.

III. Conclusion

This study addresses the persistent global copyright piracy problem, which continues to evolve and shift in sync with technological developments, and aims to propose solutions for prevention. Within this framework, to understand exactly who and which rights are harmed by piracy, a brief overview has been provided of what a work is, who the author and neighbouring right holders are, and which rights are protected by copyright.

To understand the roots of copyright piracy, a brief review of history and the reasons for traditional piracy is included. At the same time, the causes and consequences of traditional piracy and copyright piracy have been compared, and it is concluded that they overlap.

Indeed, in history, the key factors that drove people to piracy were poverty, sea-going expertise, opportunity, riches, the tipping point, critical mass, and defence. Today, individuals who produce, distribute or benefit from pirated content often perceive copyright piracy as an opportunity due to insufficient income. Those with the necessary skills become involved in reproducing infringing copies or turn to copyright piracy as a means of generating income due to unemployment. Since pirated works can be easily produced and accessed with minimal risk due to technology, more and more people are joining the growing majority who engage in acts constituting piracy.

Subsequently, to emphasise the importance of solving the copyright piracy problem, the statistics about its harmful impact have been mentioned. The data shared reveals that thousands of copyrighted pirated products have been seized during raids. The pirated

content spreads rapidly on the internet, and the difficulty of identifying responsible actors results in significant losses, especially for the film, music, and software sectors, as well as huge tax losses for the country. In addition, it has been pointed out that, due to this situation, authors cannot earn sufficient income from their works to sustain their lives or engage in creative activities, which can hinder developments in culture, science and education.

Given that the term piracy lacks a clear legal definition in neither national nor international law, an attempt was made to reach a common definition within the literature. However, we have come up empty-handed and more confused than before. Therefore, by illustrating the divided opinions that cause the difficulty of defining piracy, various definitions of piracy have been examined in an attempt to clarify the matter.

In light of the court decisions, national and international literature, a general definition for copyright piracy can be as follows:

“The unauthorised reproduction of a work, as well as its distribution, performances, communication to the public, including online streaming, and even the adaptation of that copy of the work with the intent of surpassing current copyright protections, all amount to copyright piracy.”

Anti-piracy regulations of the Turkish Law on Intellectual and Artistic Works, WIPO, the European Union and the United States have been reviewed in order to demonstrate the mechanisms utilised for preventing copyright piracy in practice. Then, some effective anti-piracy policies, such as ongoing education attempts and the role of CMOs are explained.

In this context, it has been revealed that the education efforts were not frequent enough to make a difference, and although subscription-based models as a sectoral initiative initially made a considerable difference in preventing copyright piracy, they are now seen as a new market by the industry, which has led to the development of brand-new piracy methods. Furthermore, it was revealed that in many cases, it is not even clear whether CMOs have taken any action regarding copyright piracy. In addition, the licensing systems are quite complicated for users, and it would be difficult to prevent pirated uses of works unless there is a single accessible licensing system.

Moreover, it has been explained that solutions such as banderol control applications, TPMs and RMIs, brand new technological anti-piracy methods used by industry initiatives such as self-regulated notice, takedown systems, and identification of pirated material with the help of IA and NFTs are in use to prevent piracy.

At the start of the final section, the balance of benefits which makes the very foundation of IP, by extension, copyright, is brought to attention, putting an emphasis on the fact that one of the fundamental reasons for copyright piracy can very well be the disruption of this balance. Indeed, if the balance between the author's rights and the public's interest is not considered, any policies or resulting regulations that do not align with the socio-economic structure of society are likely to remain ineffective in addressing copyright piracy.

In this research, potential solutions to prevent copyright piracy were developed based on recommendations found in the reviewed literature, industry practices, factors that make piracy appealing, and the measures currently in place to combat piracy. Although the responsible actors for these proposed measures may vary depending on the context, the study presents solutions that require the collaboration of governments, collective management organisations (CMOs), and industry stakeholders.

Even the main purpose of the solutions proposed is to prevent piracy, each one approaches the copyright piracy problem from a different angle and addresses distinct contributing factors. As also emphasised by Erel and Suluk, the foremost priority should be on raising public awareness of the importance of intellectual property rights and copyright protection by embedding this understanding into society from an early age. In order to achieve this, it is proposed that the detrimental effects of piracy on both individual, national and international economies be communicated to the public through all available means, including mass media. Moreover, law enforcement officials, as key actors in copyright protection, should be subject to mandatory and regularly updated training programs based on real data.

Given that high pricing of copyrighted content remains may be the most essential factor of piracy, it has been suggested that public authorities conduct and publish market research regularly, and include suggested price ranges based on the findings. Again, private education and culture sector actors are encouraged to adopt pricing strategies that take into account factors such as GNP, the public's purchasing power, and to invest in independent market research. Furthermore, it is emphasised that cooperation among private companies and authors in the educational and cultural sectors is crucial to combat copyright piracy.

To improve the development of society in the fields of education, science and culture, schools, students, and public libraries should be improved. There is also the fact that students are among the groups prone to copyright piracy. They see piracy as an alternative to legal consumption. To address these issues, our solutions are as follows: automatic inclusion of educational works in public libraries with the possibility for authors to opt out rather than opt in; the implementation of differential pricing models; the provision of public or institutional financial support for accessing copyrighted

materials; and the establishment of special arrangements between authors and the state to facilitate wider access to educational content.

To reduce the prevalence of copyright piracy in the market by simplifying the licensing process, a centralised collective licensing system should be implemented by CMOs. It is also important that piracy-related activities should be monitored regularly by related CMOs in their fields, and that collected data be regularly and transparently disclosed to the public. Furthermore, current licensing systems should be developed and made mandatory at the time businesses are established. Regular inspections should also be conducted in these businesses, and the use of pirated content without obtaining the necessary licences should be subject to sanctions, including suspension or closure of the business. Last but not least, proposals for systems that can be implemented within Türkiye's legal framework to expedite current procedures.

First of all, the definition of the term "piracy" and the acts that constitute copyright piracy are critical steps in designing coherent and enforceable anti-piracy policies. Clarifying which actions fall within the scope of piracy, and whether certain types of piracy constitute a criminal offence would resolve legal ambiguities. Moreover, the introduction of the concept of secondary liability into national law, by holding third parties liable if they are aware or expected to be aware of the piracy activities and fail to take precautions, could have a deterrent effect.

To ensure the effective prevention of pirated goods or content distribution, increase the deterrence of penalties against copyright piracy and minimise the loss of rights, special legal arrangements such as time limits or fast-track legal procedures for decisions on search and seizure are proposed.

This study examines copyright piracy from a broad and multi-dimensional perspective. The aim is not only to propose solutions but also to identify and analyse the underlying

factors and various aspects that need to be considered in developing a comprehensive anti-piracy policy. We emphasise that although efforts have been made to prevent copyright piracy, which remains one of the most criticised issues in Türkiye by other countries, recent data and reports clearly indicate that the situation has not improved despite the increased penalties introduced through amendments.

As demonstrated in this study, piracy can be envisioned as a multi-headed monster. Attempting to resolve it solely through legislation or criminal punishments is unlikely to be effective. In fact, this method may even provoke public resistance. Such a negative reaction to this system, which can only be maintained with respect and understanding of intellectual property rights, will cause great losses in the long run.

One of the most striking examples is the emergence of the Pirate Party from the heart of some of the most developed countries. Therefore, this study emphasises the importance of a long-term strategy to change public perception of copyright and to ensure that industry stakeholders adopt pricing and protection measures suited to the country's socio-cultural context. So that a policy can be made to prevent piracy at its roots.

Due to the above-mentioned reasons, no unilateral work will be sufficient to solve a multifaceted problem such as piracy. This is why this study concludes that a sustainable solution requires not only legal sanctions but also coordinated action by government bodies, CMOs, and industry actors to develop a comprehensive public policy aligned with the socio-cultural structure of the country in question. Another upsetting truth about piracy is that, it cannot be solved without global protection due to its borderless nature. Therefore, this coordination should also be adopted internationally.

Within the scope of this thesis, anti-piracy solutions that could be integrated and key factors to be taken into account for a new broader piracy policy have been presented. We believe any future research on piracy could focus on each of these factors in depth,

and developing a policy would make a valuable contribution to the development of effective anti-piracy policies.

It is also of utmost importance that, while developing anti-piracy policies, the monopoly granted to the author by copyright law should be balanced with the public interest to protect the benefit of both parties. Therefore, any upcoming studies on how to maintain this delicate balance would greatly benefit in preventing copyright piracy greatly.

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ABSTRACT

This study examines copyright piracy, which increasingly affects copyright, and possible solutions to prevent it. Copyright is a right granted to the author to protect and benefit from their original and distinctive works, and such works may only be used with the author's permission. Infringement of these rights may not only damage the author's honour and reputation but also restrict their economic benefits. One of these infringements is piracy. However, despite being a global issue, there is no uniform definition of copyright piracy under national or international regulations. With the constant development of new technologies, copyright piracy continues to resurface through new methods every other day, which hampers creativity and cultural development by discouraging authors from producing new works. Moreover, it causes substantial economic losses to authors, the cultural sector, and the state. Due to these and other damages to be discussed, preventing piracy in the field of copyright has remained a priority on the global economic agenda for many years. Legal systems that fail to keep pace with the emerging forms of copyright piracy contribute to increasing losses, and due to the resulting legal ambiguity, individuals often do not even realise that many of their actions may constitute copyright infringement. In countries like ours, where awareness of intellectual property rights is still in its early stages, such rights are often undervalued, leading to more misunderstandings. Consequently, although legislators have introduced relevant legal provisions, there is often a lack of genuine effort in their implementation. While finding a definitive solution to copyright piracy under these circumstances appears unlikely, this study will explore various measures and potential regulatory approaches that may at least contribute to its reduction.

Key Words: Copyright piracy, copyright law, piracy, intellectual property law, works

ÖZET

Bu çalışma, telif haklarını her geçen gün daha fazla etkisi altına alan telif hakkı korsanlığı ve olası korunma yöntemlerini ele almaktadır. Eser sahibine kendi yaratımı olan ve hususiyetini taşıyan eserlerini koruması ve onlardan yararlanması için bahşedilmiş olan telif hakları yalnızca onun izni ile kullanılabilir. Bu hakların ihlali, eser sahibinin onurunu ve saygınlığını zedeleyebileceği gibi, ekonomik gelirlerini de kısıtlayabilir. Bu ihlallerin bir görünümü de korsanlıktır. Ancak, korsanla mücadele global bir sorun olmasına rağmen ulusal ya da uluslararası düzenlemelerde yeknesak bir telif hakkı korsanlığı tanımlaması bulunmamaktadır. Her geçen gün yeni teknolojilerin sunduğu imkanlarla gelişen farklı yöntemler ile yeniden canlanan telif hakkı korsanlığı, eser sahiplerinin üretme heveslerine balta vurması nedeni ile yaratıcılık ve kültürel gelişmenin önüne geçmektedir. Ayrıca, eser sahibinin, kültür sektörünün ve devletin akıl almaz ekonomik kayıplara uğramasına da sebep olmaktadır. Bunlar ve açıklanacak tüm zararları sebebi ile telif haklarında korsanın önlenmesi uzun yıllardır global ekonominin gündeminden düşmemektedir. Telif hakkı korsanlığının her yeni görünümüne ayak uyduramayan hukuk sistemleri sebebi ile kayıplar daha da artmakta, ortadaki anlam karışıklıkları sebebi ile insanlar korsana neden olan bir çok eylemlerinin hukuka aykırı olabileceğini dahi algılayamamaktadırlar. Özellikle ülkemiz gibi fikri mülkiyet bilinci yeni yeni yerleşmeye başlayan ülkelerde bu haklar çok daha geri planda tabiri caizse değersiz görüldükleri için, bahsedilen karışıklıklara daha fazla rastlanılmaktadır. Bunun sonucu olarak kanun koyucu gerekli önlemlere ilişkin düzenlemeler yapmış olsa bile bunların uygulanması için samimi bir çaba gösterilmemektedir. Bu ortamda telif hakkı korsanlığı problemine kesin bir çözüm bulunması mümkün görünmemekle birlikte, bu çalışma kapsamında korsanın hiç değilse azaltılabilmesi için alınabilecek çeşitli önlemler ve getirilebilecek düzenlemelere yer verilecektir.

Anahtar Kelimeler: Telif haklarında korsanlık, telif hakları hukuku, korsanlık, fikri mülkiyet hukuku, eser