



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Observatory

Country Guide Turkey 2013

Version 0.2 – 13/11/2013

Project/Service	Project 6 2013		
Status	DRAFT		
Approved by owner			
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Revision History

Version	Date	Author	Description
0.1	01/08/2013	VOR	Approved for circulation to COM
0.2	13/11/2013	VOR	Incorporation of external comments

Quality Criteria (to be used by reviewers)

Clear and precise language Information up to date
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Introduction

This guide is written to provide basic assistance to intellectual property (IP) rights holders and their advisers, on the IP protection and enforcement system in Turkey.

The guide is intended to provide simple guidelines on how rights holders can protect their IP assets and what do if their rights are infringed.

1. Background

The IP system in Turkey is continually being developed to raise awareness of the growing value and importance of IP and to help rights holders protect and enforce their rights.

Some improvements have taken place in Turkey such as the tracking of piracy as a result of training organised jointly by the Ministry of Culture and Tourism (MoCT), the Ministry of Interior (police), anti-piracy commissions and the judiciary. Anti-piracy commissions are working efficiently, and specialised IPR police units have conducted successful operations in the fight against piracy. The administrative capacity of the Turkish Patent Institute (TPI) has further improved as a result of tailor-made and jointly organised training programmes. Jointly organised events also helped improve the dialogue among IPR stakeholders. Consistency of the TPI final decisions with IPR courts has improved and appeals decreased.

Turkey is a signatory to:

- The Paris Convention – which means that someone from another signatory state can apply for a patent or trade mark and expect the same rights as a national rights holder

http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html

- The Hague Agreement Concerning the International Deposit of Industrial Designs (Geneva Act.)

http://www.wipo.int/treaties/en/remarks.jsp?cnty_id=1801C

- The Madrid Protocol which allows the owner of an application for or a registration of a trade mark and which is an entity in any of the other members of the Protocol a simple means of applying for registration of the trademark in Turkey. This is an alternative route for applying for registration of a trade mark in Turkey.

<http://www.wipo.int/madrid/en/>

- The Patent Cooperation Treaty – which allows someone to obtain a set of patent applications, in different countries, through a single application

http://www.wipo.int/treaties/en/notifications/pct/treaty_pct_108.html

- The Rome Convention – which extends copyright protection to performers, producers of phonograms and broadcasting organizations

http://www.wipo.int/treaties/en/ShowResults.jsp?country_id=23C

- The UPOV Convention – which lays down a harmonized system for plant breeders' rights.
http://www.wipo.int/treaties/en/notifications/upov/treaty_upov_104.html
- The Berne Convention – which ensures that parties to the convention, give equal recognition to copyright holders from other convention member states.
http://www.wipo.int/treaties/en/remarks.jsp?cnty_id=1041C

Turkey is a contracting State of the European Patent Convention.

<http://www.epo.org/about-us/organisation/member-states/date.html>

Turkey is also a member of the World Trade Organisation (WTO) and is a signatory to the TRIPS Agreement.

http://www.wto.org/english/thewto_e/countries_e/turkey_e.htm

2. Turkey's Legal Framework

A range of criminal, civil and administrative laws are in place to support IP rights holders. These include:

- Criminal Code: http://www.justice.gov.tr/basiclaws/Criminal_Code.pdf
- Criminal Procedure Code: <http://www.justice.gov.tr/basiclaws/cmkn.pdf>
- Trademarks Law http://www.tpe.gov.tr/dosyalar/EN_khk/Trademark_DecreeLaw.pdf
- Patents Law http://www.tpe.gov.tr/dosyalar/EN_khk/Patent_DecreeLaw.pdf
- Industrial Design Law http://www.tpe.gov.tr/dosyalar/EN_khk/IndustrialDesign_DecreeLaw.pdf
- Geographical Signs Law
http://www.tpe.gov.tr/dosyalar/EN_khk/GeographicalSigns_DecreeLaw.pdf
- Copyright (Law on Intellectual and Artistic Works)
http://www.wipo.int/wipolex/en/text.jsp?file_id=246493
- Customs Law No. 5911

3. How to protect your IPR through registration (patent, trade mark, designs, others)

As explained IP laws in Turkey cover a range of fields including trademarks, patents, geographical indications, trade secrets, semi-conductor designs and industrial designs.

The following links provides basic information regarding registration of intellectual property rights in Turkey.

Trade marks: http://www.tpe.gov.tr/portal/default_en.jsp?sayfa=131

Patents: http://www.tpe.gov.tr/dosyalar/EN_khk/Patent_DecreeLaw.pdf

Industrial designs: http://www.tpe.gov.tr/dosyalar/EN_khk/IndustrialDesign_DecreeLaw.pdf

Geographical signs: http://www.tpe.gov.tr/dosyalar/EN_khk/GeographicalSigns_DecreeLaw.pdf

4. Civil and criminal enforcement

Turkey is a civil law country with 23 specialised criminal and civil IP courts in cities including Ankara, Istanbul and Izmir and a special prosecutor's bureau responsible for IPR investigations¹. Civil and criminal cases cannot be heard by the same court.

Civil IP courts may order a preliminary injunction to stop the infringement and/or to seize the infringing products which can be claimed before or alongside the proceedings, however such an injunction is rarely granted, unless very strong evidence of infringement is available.

An IP holder may request a civil IP Court to issue a judgment ordering the defendant to stop infringing actions and make compensation for damages. The judgment of the IP Court may also include the confiscation and destruction of counterfeit products, along with machinery and other equipment used to produce the counterfeits.

For criminal proceedings, a right holder must file a complaint against the infringer with the public prosecutor. Criminal actions are commonly used and are the most effective tool in anti-counterfeiting tasks. Only lawyers who are registered with one of the Turkish bars can represent parties before the courts. Patent attorneys cannot represent a party in legal proceedings or formally appear before the Turkish courts.

National police conduct raids upon the instruction of prosecutors or *ex officio* for some copyright infringements and upon complaint for counterfeit materials. In the current organisation structure, the General Directorate of Police consists of central and provincial units. These are the police departments at the General Directorate and State Security Sections in the provinces.

The IPR office was established in 2003 under the General Directorate of Turkish Police in order to enhance cooperation with other relevant bodies, ensure implementation in all provinces and keep the infringement statistics on copyright frauds.

As for the share of responsibilities, State Security Units deal with intellectual and industrial property rights frauds, whereas Organized Crimes Units are responsible for organized intellectual and industrial property rights frauds. The prosecutors instruct these units in accordance with this job separation.

5. Customs Authorities

Customs applications are an effective tool used by the customs authorities to protect IP. Customs applications and enforcement Customs applications can be filed for intellectual and artistic works (copyrights), patent and utility model rights, industrial design rights, geographical indications, trademarks, supplementary protection certificates and other intellectual and industrial property rights.

¹ International Intellectual Property Alliance (IIPA), 2011 Special 301 Report on Copyright Protection and Enforcement, Turkey: <http://www.iipa.com/rbc/2011/2011SPEC301TURKEY.pdf>

The customs applications can be filed electronically at the Turkish customs authorities by using an electronic data exchange system. If the rights holder is located abroad, a representative specifically appointed by an attorney or other authorised person can file a request on behalf of the rights holder.

The rights holder can file centralised applications for customs at Turkish Customs <http://www.gtb.gov.tr/>. It is important for the rights holder to provide information to allow the customs authorities to easily recognise the goods during their routine checks.

6. Weak points in IPR enforcement legislation, administration systems etc.

The European Commission (DG Trade IPR survey 2010) contains an assessment of the situation.² Serious deficiencies are still being reported by respondents. Issues linked to bad faith and similar trade marks and industrial designs remain unresolved (although a positive development in this area is the on-going elaboration of new Examination Guidelines for the registration of patents, designs and trademarks). Existing structured dialogue mechanisms, such as consultation meetings between the TPI and IPR-holders, are still too weak to address systemic problems. Judicial procedures, including injunctions, search and seizure warrants are still lengthy and the decisions of different courts in similar cases are inconsistent. The number of specialised IPR judges has decreased in recent years. Concerning customs enforcement, the centralised customs database and IT management system is not used by the customs points to effectively prevent counterfeit goods from entering the market.

Although Turkish IPR laws are mainly in compatible with EU legislation and provide sufficient legal basis in combating against IP infringement, some obstacles for an effective protection remain. In particular IIPA in its report³ among others highlighted a growing backlog of both criminal and civil cases and the lack of overall deterrence in results.

7. Basic Advice

- Protect your rights through their registration where this is possible and by applying to customs. Contact: <http://www.gtb.gov.tr/>
- Seek advance professional advice from lawyers and investigators on how to protect supply chains and secure evidence
- Ensure colleagues, employees and business partners have substantial knowledge about your products and can easily identify counterfeits.
- Put protective measures in place in respect of confidential information and trade secrets
- Engage lawyers and enforcement as quickly as possible and take appropriate action

8. Statistics

Statistics on registration of IPRs can be found at:

http://www.wipo.int/ipstats/en/statistics/country_profile/countries/tr.html

9. Contact information (online and otherwise)

- For registration of Trade marks, Patents, Industrial designs, Geographical signs:

² http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150792.pdf

³ *ibidem*

- Turkish Patent Institute
- 115 Hipodrom Street (06330) Yenimahalle / ANKARA
- <mailto:info@turkpatent.gov.tr>
http://www.tpe.gov.tr/portal/default_en.jsp
- European Union Delegation to Turkey: Delegation-turkey@ec.europa.eu
- Attorneys: Local firms in Turkey can offer you legal advice and services specific to your business. The Chambers and Partners website offers a search facility listing local Turkish law firms <http://www.chambersandpartners.com/Europe/Editorial/74413>