

Regulations on Neighbouring Rights to the Authors of Works

TABLE OF CONTENTS

		<i>Article</i>
Part One:	General Provisions	
	Purpose.....	1
	Scope.....	2
	Legal Justification.....	3
	Definitions	4
	Limitations	5
Part Two:	Rights of Performers	
	Nature of Right	6
	Approval of Performing Artist	7
	Signature of a Contract.....	8
	Transfer or Rights Arising from Performance of Choral, Orchestral or Theatrical Works	9
	Display of the Names of Artists	10
	Several Performers.....	11
Part Three:	Rights of Sound Carrier Producers	
	Producer's Written Approval	12
	Use of Rights by Producers.....	13
	Rebroadcast.....	14
Part Four:	Rights of Publishing Organisations	
	Rights of Publishers	16
	Written Approvals of Publishing Organisations.....	17
	Partial Reproduction	18
	Compliance with the Contract Provisions	19
Part Five:	Common and Final Provisions	
	Implementation for Aliens	20
	Protection Period.....	21
	Means of Protection	22
	Transfer and Assignment of Rights.....	23
	Exceptions.....	24
	Entry into Force	25
	Enforcement.....	26

Part One General Provisions

Purpose

1. The purpose of these regulations is to protect and determine the limits of the Adjacent rights of persons with respect to those holding intellectual and artistic works rights and to introduce rules governing the relations *inter se* of the former and those between the adjacent and primary right holders.

Scope

2. These regulations cover the principles and guidelines governing the rights adjacent to the those of the holders of intellectual and artistic works, without prejudice to the material and intellectual rights of the owners, with respect to performers thereof and to radio and television directors as well as to the manufacturers of sound-recording media making the initial records of such works.

Legal Justification

3. These regulations are prepared pursuant to the additional article 3 added by the Law No. 4110 dated 7 June 1995 to the Law No. 5846 on the Intellectual and Artistic Works and to the Rome Convention of 26 October 1961 on the Protection of the rights of Performers, Phonogram Producers and Broadcast Organisations.

Definitions

4. The following terms used herein will denote the following meanings indicated therefor:

(a) *Adjacent rights* as used herein will denote the rights of persons performing an intellectual or artistic work in an original manner or participating to its performance and of physical or legal persons recording a performance or sounds for the first time and reproducing, leasing and broadcasting by cabled or wireless means and performing them at places open to the public.

(b) *Performers* are vocal artists, singers, musicians, dancers and other persons who interpret the works of art or folkloric works in an original manner, promoting, singing, incarnating and describing them.

(c) *Sound carrier producers* are the physical or legal persons making the initial recording of all sounds with or without lyrics and undertaking the legal responsibility thereof.

(d) *Broadcasting organisations* are the radio and television systems.

(e) *Recording* is the registry of sounds on any material means permitting their audial observation, reproduction or otherwise transmission to the public.

(f) *Sound carrier* is the means designed to retain sounds or works produced by electronic means.

(g) *Broadcasting* is the presentation to public via wired or wireless means of the sounds, images or both in a manner that permits the public to hear and/or see them.

(h) *Simultaneous broadcast* is the broadcast of one organisation also by others in a synchronous manner.

(i) *Hiring* is the change of hands for commercial purposes for a given period of the possession of the material means on which the sounds and/or images are recorded.

Limitations

5. The adjacent rights may not impair the material and intellectual rights of the original right holders. The adjacent right holders may not restrict the rights of the owners in using this right.

Part Two Rights of Performers

Nature of Right

6. The rights arising from the performance of the works by the performing artist may not be used in a manner that impairs the original right holder reflecting to the public.

Approval of Performing Artist

7. The approval in writing of the performing artist is required under following circumstances:

- (a) Recording of performances not recorded previously.
- (b) Leasing of the performances reproduced for commercial purposes.
- (c) Reproduction of performances of which the initial recordings are made without permit in advance.
- (d) Reproduction for purposes other than the intended ones of works for which reproduction permit is granted.
- (e) Broadcast by radio and television systems of performances not made from a recording offered to public for commercial purposes or not constituting a radio or television broadcast.

Signature of a Contract

8. Where the rights of duplicating, leasing, broadcasting or performing by wired or wireless means are granted to a producer for a certain consideration under a contract by and between the performing artist and a producer, the written consent of the performing or interpreting artist will not be sought. If, however, the contract foresees the transfer of only a certain part of these rights to the producer, the written consent of the performing or interpreting artist and the owner of the works will be sought for the parts not included in the contract.

Where the recordings of the performances made or required to have been made by the artists pursuant to the contract signed are intended to be used for purposes other than those indicated therein, the terms and conditions of such use will be determined in a contract to be entered into by and between the producer and the performing artist.

Transfer or Rights Arising from Performance of Choral, Orchestral or Theatrical Works

9. For recording, reproducing and leasing of the performances of choral, orchestral or theatrical works and broadcasting thereof via wired or wireless means, approval only of the conductor is sufficient.

Display of the Names of Artists

10. Performers, conductors and soloists in choral and orchestral works, directors and *dramatis personæ* in theatrical works have the right to demand that their names are displayed in the generics of media used for the transmission of signals, images and sounds.

Several Performers

11. Where a work is performed by several artists and it may be divided into parts, each of the artists performing a particular part is deemed to be the owner of the relevant rights. If, however, the product so obtained constitutes an inseparable entity, the owner thereof is the union of all performers creating it. The performers of such products are under the obligation of respecting in priority the rights of each other. The performers may act in unison or empower one from among themselves for the protection of their rights arising therefrom. Where one of the performers objects without reasonable cause to the action intended to be

taken by the others, the approval therefor may be granted by the competent court. Each of the performers may act on his or her own in case the group's rights are violated.

Part Three Rights of Sound Carrier Producers

Producer's Written Approval

12. Written approval of the producer of sound carrier media is necessary in the following situations:

- (a) Direct or indirect reproduction of recorded sounds.
- (b) Lease of copies of sound carrier media.
- (c) Broadcast or performance of works on sound carrying media on commercial circulation by the radio and television organisations or other entities or their performance in locals open to the public.

Use of Rights by Producers

13. Where a sound carrying medium on which is recorded an artist's performance is put on the market for commercial purposes, the producer of sound carrying medium may request the payment under general provisions of law of a part of the revenue secured therefrom by the performing artist.

Rebroadcast

14. Approval of the performers or of the manufacturers of the sound carrying media is not necessary for the rebroadcast of a performance or of a theatrical work. The rebroadcasting organisation is nevertheless held to pay a royalty to the said persons.

Part Four Rights of Publishing Organisations

Rights of Publishers

- 16.** The publishing organisations have the rights
- (a) to produce publications in any field whatsoever,
 - (b) to reproduce their publications,
 - (c) to reproduce their publications to the public by other means and at other locations, and
 - (d) to market the reproduced copies of such publications or to distribute them through other methods.

Written Approvals of Publishing Organisations

17. The written approval of the organisation making the initial publication or presentation of the work is necessary if

- (a) the initial publication are rebroadcast by wired or wireless means simultaneously or subsequently by other broadcasting organisations, or

(b) the publication is offered to the public by other persons or organisations at locations where an admission fee is charged.

Partial Reproduction

18. The reproduction of a part of a publication for information purposes without impairing the rights on the whole of the work is not subject to the procedure of approval in advance.

Compliance with the Contract Provisions

19. The rights of publishing organisations are used by the producers in conformance with the contracts entered into with the producers, owners and performers.

Part Five Common and Final Provisions

Implementation for Aliens

20. Provisions of the provisions hereof will be implemented under the following circumstances for the performers, producers and publishers whose rights are protected under the international conventions of which the Republic of Turkey is a party:

(a) For the performing artists

1. If the performance is made within the territory of a signatory State.
2. If the performance is recorded on a medium protected for its nationality, determination and broadcasting criteria.

(b) For the manufacturers of sound carrying media:

1. If the manufacturer of the sound carrying medium is a national of a State which is a party to the convention.
2. If the sound is originally recorded in the territory of another State which is a party to the convention.
3. If the original recording of the sound is made in the territory of another State which is a party to the convention.

(c) For the publishing organisations:

1. The existence of the head or management office of the publishing organisation in the territory of another State which is a party to the convention.

2. Transmission of the broadcast through a relay station located in the territory of another State which is a party to the convention.

Protection Period

21. Rights of the performing artists will continue for seventy years starting from the date of original recording of the work. Where such recording is not made, the date on which the work becomes public knowledge will be used.

Rights of producers will continue for seventy years from the date of initial commercialisation of recorded media.

Rights of radio and television organisations will continue for seventy years starting from the date of initial broadcast.

Means of Protection

22. Holders of adjacent rights may avail themselves of the rights to demand the termination of violation and/or indemnity.

Transfer and Assignment of Rights

23. Transfer and assignment of the adjacent rights are subject to the general provisions of the Law No. 5846.

Exceptions

24. Following are the cases that do not necessitate the approval of adjacent rights:

(a) Private performances made within a family at no charge.

(b) Reproductions and home recordings made for private use not entailing a joint usage activity.

(c) Analyses and short recordings made for the promotion of the work or for scientific purposes.

(d) Presentations and speeches made for general and current information purposes.

(e) Uses by broadcasting organisations for promotional and informative purposes.

(f) Sketches and cartoons compliant with the general rules applicable thereto and not designed to impair or ridicule the primary or adjacent right holder and not capable to damage his or her Personality or individual rights.

(g) Performance of intellectual and artistic works for the public order, education, training, scientific research or interview without pecuniary benefit considerations.

Entry into Force

25. The present regulations will enter into force upon its publication.

Enforcement

26. Provisions of the present regulations will be enforced by the Ministry of Culture.
