

THE LAW NO 4630 FOR THE AMENDMENT OF CERTAIN ARTICLES OF THE LAW NUMBERED 5846 ON INTELLECTUAL AND ARTISTIC WORKS

Article 1- Article 1 of the Law dated 5.12.1951 and numbered 5846 on Intellectual and Artistic Works has been amended as shown below including the heading thereof.

"Purpose

Article 1- *The purpose of this law is to determine and protect the moral and financial rights of authors creating intellectual and artistic works, performing artists performing or interpreting such works, phonogram producers enabling the first fixation of sounds, producers enabling the first fixation of films, and radio and television institutions, to regulate the conditions for benefiting from intellectual and artistic works, and to determine sanctions in case of any unfair benefiting in breach of the principles and procedures provided for."*

Article 2- The following articles have been added to come after Article 1 of the Law numbered 5846.

"Scope:

Article 1a- This law consists of the moral and financial rights of authors creating intellectual and artistic works, performing artists performing or interpreting such works, phonogram producers enabling the first fixation of sounds, producers enabling the first fixation of films, and radio and television institutions, the principles and procedures for disposition of such rights, trial procedures and sanctions, and the duties, powers and responsibilities of the Ministry of Culture."

"Definitions

Article 1b- Of the definitions referred to in this Law .

- a) Work means any kind of intellectual and artistic creation bearing the characteristics of its author and which is considered scientific, literary, musical, artistic or cinematographic.
- b) Author means a real person creating the work.
- c) Adaptation means any work bearing the characteristics of the person who made the adaptation and which is produced benefiting from another work, but which is not independent of the said work.
- d) Compilation means a work which is a result of a creative thought and the content of which is formed by selections and arrangements, such as encyclopedias and anthologies provided that the rights on the original work are reserved.
- e) Fixation means the process of recording the sounds or sound representations or sounds and images on a device in a way that they can be understood, reproduced and transmitted.
- f) Phonogram means a sound-carrying physical medium on which sounds in a performance or other sounds or sound representations other than sound fixations in audio-visual works such as cinematographic works are fixed.
- g) Computer Program means a computer command system arranged in a way to ensure that a computer system makes a special transaction or performs a duty, and the preparatory studies to ensure the formation and development of such command system as well.
- h) Interface means program elements constituting the mutual interaction and connection between the hardware and software of the computer.
- i) Interoperability means the functional cooperation and interaction of the computer's program elements and the ability to use the information exchanged.

j) Affiliated Rights mean the rights held by the owners of neighboring rights and the film producers enabling the first fixation of films on condition that the moral and financial rights of the author are not prejudiced.

k) Neighboring Rights mean the rights held by performing artists who interpret, introduce, narrate, sing, play a work and perform it in various ways in an original manner, producers of phonograms enabling the first fixation of products of performance or other sounds, and radio and television institutions, based on the consent of its author and on the condition that the moral and financial rights of the author are not prejudiced.

Article 3- Article 5 of the Law Numbered 5846 on Intellectual and Artistic Works has been amended as shown below.

"IV. Cinematographic Works

Article 5- Cinematographic works are a series of interrelated motion pictures with or without sound such as films or movies as may be of all aesthetic, scientific, instructive or technical natures or as depicting news of the day which can be shown through electronic or mechanical means and similar devices irrespective of the material on which they are fixed."

Article 4- The heading of Article 6 of the Law Numbered 5846 has been amended as "Adaptations and Compilations", and referring to the said article, the expression "and readable through a device or in any other form" has been inserted to follow the expression "are the result of" in paragraph 11 of the first sub-article, and the expression "formed on condition that the rights of the author of the work from which it is benefited shall not be prejudiced and" has been inserted at the beginning of Sub-article 2.

Article 5- The amended Article 8 of the Law Numbered 5846 has been amended as shown below.

"A) Description

I- In general,

Article 8- The author of a work is its creator.

The owner of an adaptation and a compilation is the person who made the adaptation, provided that the rights of the author of the original work are duly safeguarded.

In the case of cinematographic works, the director, the composer of original music and the scenario and dialogue writers form a joint authorship. In the case of cinematographic works which are made through the animation technique, the animator is also among the joint authors of the work."

Article 6- The following sub-article has been added to Article 10 of the Law Numbered 5846.

"In case a work created by the contributions of more than one person constitutes an indivisible whole, the rights on the co-production shall be exercised by real persons or legal entities bringing the owners of the work together, unless otherwise provided for under a contract or the terms of service or under any law in force during the time the work was created. The rights regarding cinematographic works are reserved."

Article 7- The following sub-article has been inserted at the end of Article 13 of the Law Numbered 5846.

"Authors of cinematographic and musical works and producers shall arrange for the record and registration of those works with a view to avoid the breach of the financial and moral rights they have, provide convenience in evidencing with respect to determination of their authorship, and follow up the dispositions of financial rights, without having a purpose of establishing rights. To this end, dispositions of works and financial rights can be kept under record upon request by the author of the work in the case of other work groups as well. The principles and procedures regarding record and registration shall be laid down by the regulations to be executed by the Ministry of Culture."

Article 8- The last sub-article of Article 14 of the Law Numbered 5846 has been amended as shown below.

"If the nature of presentation to public or publication of the work is such as to degrade the honour and reputation of its author, the author may prohibit the public introduction or publication of the work whether in original or adapted version even if the author may have granted written permission to others. Any renunciation of this authority to prohibit by contract is null and void. The indemnification right of the other party shall be reserved."

Article 9- The last sub-article of Article 16 of the Law Numbered 5846 has been amended as shown below.

"The author may prohibit any modifications that are derogatory to the nature and character of his work or prejudicial to his honour and reputation, even if he has given his unconditional written approval. Any renunciation of this authority to prohibit by contract is null and void."

Article 10- The first sub-article of the amended Article 17 of the Law Numbered 5846 has been amended as shown below.

"The author may claim where necessary from the owner and possessor of the original work the right to benefit from the originals of the works created in the handwriting of writers and composers of such kind referred to in Article 3 and in paragraph 1 of Article 2, and the artistic works referred to in paragraphs 1 and 2 of Article 4 for a temporary period of time, provided that the conditions of protection are fulfilled. Such right of the author shall be stated in auction and sales catalogues or related documents by persons involved in trading of such works to those purchasing or acquiring the work."

Article 11- Article 18 of the Law Numbered 5846 has been amended as shown below including the upper heading thereof and the succeeding headings have been arranged to occur accordingly.

III. Exercise of Rights

a) In general,

Article 18- The authority to exercise the financial rights shall exclusively rest with the author.

Unless construed otherwise from the specific contract or the nature of the business between them, the rights on the works created by the officials, employees and workers during the time they were in charge shall be exercised by those who employ or appoint them. This rule shall also be applicable to the organs of the legal entities.

The producer or publisher of a work may exercise the financial rights only according to the contract to be concluded with the author of the same."

Article 12- Sub-article two of the amended Article 19 of the Law Numbered 5846 has been amended as shown below.

"After the death of the author, the persons enumerated in the preceding sub-article may exercise in their own name the rights conferred upon the author according to the third sub-articles of Articles 14, 15 and 16 for a period of 70 years after the death of the author."

Article 13- The first sub-article of the amended Article 22 of the Law Numbered 5846 has been amended as shown below.

"The right to reproduce the original or copies of a work wholly or in part, in any manner or through any method, whether directly or indirectly and whether temporarily or permanently belongs exclusively to the author."

Article 14- The amended Article 23 of the Law Numbered 5846 has been amended as shown below.

c) Right of Dissemination

Article 23- The right to rent out, lend, put up for sale or distribute by other means the original or the reproduced copies of a work belongs exclusively to the author.

The right to bring the copies reproduced abroad upon the permission of the author to the country and to make benefit from them by way of dissemination belongs exclusively to the author. The copies reproduced abroad cannot be imported by any means whatsoever without the permission of the author and/or the owner of the dissemination right holding the permission of the author. Where specified copies of the work are first placed for sale or distributed within the territory as a result of the owner's exercising his right of dissemination within the territory, further re-sale subsequent to such transfer of property shall not infringe the author's dissemination rights, provided that the rights of renting and public lending shall remain with the author.

The dissemination of a work or its reproduced copies by way of rental or lending may not cause an extensive copying of the work in a manner as to be prejudicial to the reproduction right of the author. The principles and procedures relating to the application of this article shall be laid down by a regulations to be executed by the Ministry of Culture."

Article 15- Article 25 of the Law Numbered 5846 has been amended together with its heading as shown below.

"d) Right of Public Transmission Through Devices Enabling Transmission of Signs, Sounds and/or Images:

Article 25- The right to broadcast the original or the copies reproduced from the original through institutions making broadcasts by wire or over the air such as radio-television, satellite and cable or through instruments enabling transmission of signs, sounds and/or images including digital transmission and to transmit such broadcasted works publicly by way of rebroadcasting the same through other broadcasting institutions benefiting from the broadcasts of the aforementioned institutions, belongs exclusively to the author.

The author also has the right to grant authorization for or prohibit the sale of the original or reproduced copies of his work through instruments, whether by cable or over the air, or their public distribution or presentation in any other manner and their public transmission by providing access to his work at the time and place designated by real persons.

Distribution and presentation of the works through public transmission as laid down by this article shall not infringe author's dissemination right."

Article 16- The following sentence has been added to come after the first sub-article of the amended Article 27 of the Law Numbered 5846.

"In case of co-authors, this term will expire upon the lapse of 70 years from the death of the last surviving author."

Article 17- Article 33 of the Law Numbered 5846 has been amended as shown below.

"3. Freedom of Presentation

Article 33- The presentation of a published work in all educational and instructional institutions for the purposes of face-to-face education and instruction with no intention of profit whether directly or indirectly is permitted provided that the name of the author and the title of the work are mentioned in the usual manner."

Article 18- The following third sub-article has been added to come after the second sub-article of the amended Article 34 of the Law Numbered 5846.

"It is possible to quote from published musical, scientific and literary works and publicly exhibited art works, only upon the permission of the author, in order to create selections and compilations, which are made for purposes other than education and instruction."

Article 19- Article 37 of the Law Numbered 5846 has been amended as shown below.

"7. News

Article 37- It is possible to record on devices enabling the transmission of signs, sounds and/or images certain passages of intellectual and artistic works related to current events, provided that they have the nature of news and that they do not exceed the scope of giving information. The reproduction, dissemination, representation or broadcast through instruments such as radio and television of such passages taken in this manner are permitted. However, this right may not be exercised in a manner as prejudicial to the legal interests of the owner of right or as to be inconsistent with normal exploitation of the work.”

Article 20- The amended Article 41 of the Law Numbered 5846 has been amended together with its heading as shown below.

“4. The Use of Sign, Sound and/or Image Carriers on Public Premises:

Article 41- It is obligatory to affix banderoles on sign, sound and/or image carriers on which intellectual and artistic works are recorded for performance at public premises having commercial purposes and whether or not charging a fee for admission.

After a contract granting permission of performance has been concluded between the user and the authors or the concerned professional association and after the charges for banderoles have been paid, banderoles shall be provided by the Ministry of Culture or the concerned Professional Association.

In case the sign, sound and/or picture carriers do not bear banderoles relating to usage at public premises, this shall constitute infringement of financial rights.”

Article 21- The first, second and last sub-articles of the amended Article 42 of the Law Numbered 5846 have been amended as follows.

“Authors and right owners affiliated with the rights of authors may establish more than one professional association within the fields to be determined in accordance with the by-laws and uniform statutes drawn up by the Ministry of Culture and approved by the Council of Ministers in order to protect the common benefits of their members, to ensure the collection of fees and distribution of same to the right owners. In the case of authors or performing artists, real persons, who have membership qualifications and are four times more than the number of principle members of the compulsory organs; and in the case of radio-television institutions real persons or legal entities who have membership qualifications and are two times more than the number of the principle members of such organs shall have to apply to the ministry in order to obtain a permit required for operation as a professional association. Professional associations shall operate within the field they are founded in after obtaining such permit.”

“In order to found another professional association within the same field, real persons or legal entities who have membership qualifications and are 1/3 of the total number of members of the professional association founded in the same field with the highest number of members shall apply to the Ministry in order to obtain a permit for activity, provided that such number shall not be less than the number of aforementioned founders. The said professional association shall operate in case the Ministry deems such application suitable and gives the aforesaid permit. Each professional association may work through opening branches in accordance with its needs. A federation might be established by minimum two professional associations founded in the same field within the framework of the by-laws and uniform statutes drawn up by the Ministry of Culture. However, it is not possible to establish several federations in the same field.”

“The rights of authors and right owners affiliated with the rights of authors granted with this Law shall be monitored by the professional associations founded pursuant to this Article to the exclusion of all other associations, societies and similar institutions. The matters such as membership, number of founders and total number of members in this article are also necessary for the professional associations established prior to this Law comes into force. All professional associations must be in parallel to the principles in this article within six months after the Law comes into force. Professional associations that do not meet this condition within this period shall be considered abolished automatically.”

Article 22- The amended Article 43 of the Law Numbered 5846 has been amended together with its heading as shown below.

"2. Payments Relating to the Intellectual and Artistic Works Broadcasted and/or Transmitted Through Media such as Radio and Television:

Article 43- Radio and television institutions have to obtain prior permission of the authors relating to works performed on stage from which they shall make benefit for their broadcasts.

Radio and television institutions and satellite and cable broadcasting institutions and those institutions broadcasting by utilizing from the technical means whether existing or to be discovered in the future shall be obliged in respect of the intellectual and artistic works, other than stage works used by them in their broadcasting, to obtain permission by executing a written collective agreement conforming to Article 52 with the authors and/or right owners affiliated with authors or the professional associations which they are affiliated with and to effect the payment for such usage to the authors and/or affiliated right owners or the professional associations which they are affiliated with.

The procedures and principles applicable to such usage shall be laid down by a regulations to be executed by the Ministry of Culture through obtaining the opinion of Supreme Board for Radio and Television and the respective professional associations."

Article 23- The second and third sub-articles of the amended Article 44 of the Law Numbered 5846 have been amended as shown below.

"Real persons and legal entities producing or importing for commercial purposes all kinds of empty video cassettes, sound cassettes, computer diskettes and carriers such as CDs, DVDs and all types of technical devices enabling reproduction of intellectual and artistic works must deposit to a special account to be opened in a national bank in the name of the Ministry of Culture, the amount obtained at the end of the month after deducting the portion to be fixed by the Council of Ministers not exceeding three percent over the production cost or importation cost, within the first half of the following month at the latest."

"The Ministry shall use the amount deposited in this account for the reinforcement of the intellectual property system and in activities carried out for purposes of protection and maintenance of the cultural heritage both in the country and abroad. The procedures and principles related to distribution and usage of such amounts shall be laid down by a regulations to be executed by the Ministry of Culture."

Article 24- Sub-article two of Article 47 of the Law Numbered 5846 has been amended as shown below.

"In order for a decision to be taken in this respect, the work must be created in Turkey or by Turkish nationals outside of Turkey, and also, published copies of the work must have been unavailable for two years and it must be obvious that the right owner will not publish any new edition of the work within a reasonable period."

Article 25- Sub-article one of the amended Article 68 of the Law Numbered 5846 has been amended as shown below.

"If the work has been translated without the author's consent, or published outside the scope of the contract or in excess of the number indicated in the contract, or adapted in some other way or broadcast or performed by radio or television or similar media, the author whose consent has not been obtained may claim for up to maximum three times the amount which he might have obtained in the case of execution of a contract or which is paid for the like works used or the amount of damages sustained thereby according to the current value. The opinion of the concerned professional associations shall be taken in priority as the basis in the determination of the like price."

Article 26- Paragraph (5) has been inserted into Sub-article one of the amended Article 71 of the Law Numbered 5846 and the last Sub-article of the same has been amended as shown below.

"5. Where any person changes a work without the written consent of its author,"

"a prison sentence from two year to six years and a heavy fine from 50 billion liras to 150 billion liras may be imposed."

Article 27- Paragraphs (4), (5) and (6) of Sub-article one of the amended Article 72 of the Law Numbered 5846 have been amended as shown below, and the last Sub-article of the same has been amended as shown below.

"Where a person

4. performs a work or exhibits such work on public premises or organizes such performance or disseminates the same by means of devices enabling transmission of all types of signs, sounds and/or images, including digital transmission or acts as intermediary for the dissemination thereof;
5. rents out a work or lends it to public;
6. importing copies whether by legal or illegal means and places in commercial circulation in any manner whatsoever and uses such copies;

a prison sentence from four years to six years and a heavy fine from 50 billion liras to 150 billion liras may be imposed."

Article 28- The last Sub-article of the amended Article 73 of the Law Numbered 5846 has been amended as shown below.

"In respect of those, a prison sentence from two years to four years and a heavy fine from 10 billion liras to 50 billion liras may be imposed."

Article 29- Article 75 of the Law Numbered 5846 has been amended together with its heading as shown below.

III- Prosecution and Recidivism

Article 75- Prosecution for offenses enumerated in Articles 71, 72 and 73 is conditional on filing of a complaint.

Parties who have a right to make a complaint other than those who have suffered from the infringement are;

1. In cases specified in paragraph 4 of Article 71 for acts in violation of the obligation to indicate a source in conformity with Article 35, the Ministry of National Education and of Culture;
2. In cases specified in paragraph 4 of Article 71 for acts in violation of the obligation to indicate a source in conformity with Article 36, the Ministry of Culture, the General Directorate of Press-Publication and institutions representing the Turkish press;
3. In cases provided under sub-articles three of Articles 14 and 16 within the framework of the last sub-article of Article 19 the Ministry of Culture;
4. The Professional Associations according to their fields of activity.

In case of infringement of the rights of authors, rights owners affiliated with the rights of authors or other right owners, upon the application of those who have the right to make a complaint, the Public Prosecutorship of the province, where the infringement or the consequences thereof occurred, may demand before a competent court to close down the place, where unauthorized reproduction was performed and to seize the copies or publications thereat and further to take the technical equipment used in the infringing act under seal.

Where delay is deemed inadvisable, the Public Prosecutor may directly adopt a resolution for seizure and taking under seal, and submit the same to the competent court within three days.

The right owners may file an application accompanied by documents evidencing their rights with the Public Prosecutorship within a period of 6 months as of the date when the infringement and offender come to their attention provided that the offense remains within the period of limitation of actions. The trial procedure provided in the Law Numbered 3005 on the Trial Procedure of Flagrans Crimen shall be applicable to such offense irrespective of the conditions regarding location as provided under paragraph (A) of Article 1 and time as provided under Article 4 of the said Law."

If any person on whom there is a finalized criminal sentence due to the offenses stated in this Law commits the same offense once again within a period of two years, the punishment to be imposed by reason of the new offense shall be increased by one fold."

Article 30- Article 76 of the Law Numbered 5846 has been amended as follows including the heading and the first sub-article thereof and the following sub-article has been added at the end of the said Article.

"I- Competence and Presumption"

"In connection with legal actions arising from legal relations established by the present law, Specialized Courts to be established by the Ministry of Justice are competent irrespective of the amount at issue and the penalty provided by law. Until the Specialized Courts are established and commence the trial proceedings, whether the Civil Court of First Instance or the Criminal Court of First Instance shall be designated as the Specialized Court and the jurisdiction of such courts are determined by the Supreme Board of Judges and Public Prosecutors upon the request of the Ministry of Justice."

"In connection with legal actions to be filed within the framework of this law, in case the plaintiff submits evidences sufficient to form strong opinion about the truth of the claim, the court may request those who are using the works, phonograms, performances, films and broadcasts being protected to present the written contracts indicating that they have obtained the permissions and authorizations provided by law and also the lists of all works, phonograms, performances, films and broadcasts they have benefited from. Failure to present the documents and/or lists mentioned above shall constitute presumption in respect of unfair usage of all works, phonograms, performances, films and broadcasts."

Article 31- The amended Article 77 of the Law Numbered 5846 has been amended together with its heading as shown below.

"II. Interlocutory Injunction and Temporary Seizure by the Customs"

Article 77- Where it is deemed essential and allegations presented appear highly probable, the Court may, in order to prevent substantial damage or sudden danger or a fait accompli, or for any other reason, direct the other side, before or after commencement of the legal action and on demand by the person whose rights recognized by the present Law are to be prejudiced or endangered or those who are authorized to file a complaint, to do or refrain from doing a certain act or to close down or open the place where the act is performed and the Court may also issue an interlocutory injunction for temporary seizure of reproduced copies of a work or of the moulds and other analogous devices for reproduction thereof. The decision shall specify that failure to comply with the order shall result in the penalties set out in Article 343 of the Execution and Bankrupt Law.

The provisions of the Article 57 of the Customs Law Numbered 4458 shall apply at the time of import or export of copies necessitating a sanction due to the possibility of constitution of infringement of the rights on the work.

The transactions relating to seizure of copies necessitating a sanction due to the possibility of constitution of infringement of rights on the work by customs authorities at the time of import or export shall be governed by the related provisions of the Customs Regulations."

Article 32- The amended Article 80 of the Law Numbered 5846 has been amended including the upper heading thereof as shown below.

"A) Rights Affiliated with the Rights of the Authors and Prevention of Infringement"

I- Rights affiliated with the Rights of the Authors

Article 80- The rights affiliated with the rights of the author are as follows:

I. Neighboring rights to the rights of the author

Performing artists who interpret, introduce, narrate, sing, play a work and perform it in various ways in an original manner, and producers of phonograms enabling the first fixation of products of performance or other sounds, and radio and television institutions have the following neighboring rights, based on the consent of its author and on the condition that the moral and financial rights of the author are not prejudiced.

A. Performing Artists have the following rights

(1) Performing artists shall be entitled to request to be introduced as the owners of their performances and request the prevention of corruption and falsification of their performances in a way to degrade their reputation, independent of financial rights and even after the transfer of such rights, except required by application conditions related to their fixed performances.

(2) A performing artist who performs a work in an original manner by the permission of its author shall have the exclusive right to grant authorization for or to prohibit the exploitation by way of fixation of such performance, reproduction of such fixation, sale, distribution, renting out and lending and public transmission and re-transmission and presentation by means of instruments enabling transmission of signs, sounds and/or images.

(3) A performing artist shall be entitled to the right to grant authorization for or to prohibit the distribution, whether through sale or any other way, of the original or the reproduced copies of his fixed performances which have not yet been placed for domestic sale or distribution in any other way.

(4) A performing artist has also the right to grant authorization for or to prohibit the sale of the original or reproduced copies of his fixed performance through instruments, whether by cable or over the air, or their public distribution or presentation in any other manner and their public transmission by providing access of the real persons to his performance at the time and place designated by them. Distribution and presentation of performances through public transmission shall not infringe performing artist's dissemination right.

(5) Performing artists may transfer these rights to a producer by contract and for reasonable remuneration.

(6) Where the performance is carried out by an orchestra, a chorus or a theatrical group, the permission of only the conductor in case of orchestra or chorus or of the director in case of theatrical group is sufficient.

(7) In respect of the performances carried out as a result of the action of an entrepreneur and based on a contract, the permission of the entrepreneur is also required.

B. Producers of phonograms enabling the first fixation of products of performance or other sounds are entitled with the following rights after taking over the authorization to exercise financial rights from the author and the performing artist.

(1) The right to grant authorization for or to prohibit the reproduction, distribution, sale, renting out and public lending of the fixation whether directly or indirectly, which fixation is carried out upon the permission of its author and the performing artist, shall exclusively belong to the phonogram producer. The producers shall have the exclusive right to grant authorization for the public transmission and re-transmission of fixations by means of instruments enabling transmission of signs, sounds and/or images.

(2) A phonogram producer shall be entitled to the right to grant authorization for or to prohibit the distribution, whether through sale or any other way, of the original or the reproduced copies of his fixations which have not yet been placed for domestic sale or distribution in any other way.

(3) A phonogram producer has also the right to grant authorization for or to prohibit the sale of the fixations of the performances through instruments, whether by cable or over the air, or their public distribution or presentation in any other manner and their public transmission by providing access of the real persons to the fixations at the time and place designated by them. Distribution and presentation of fixations through public transmission shall not infringe producer's dissemination right.

C. The Radio-Television Institutions shall be entitled to the right to grant authorization for or to prohibit fixation of their broadcasts, reproduction of those fixations, rebroadcast by means of all types of instruments, whether by cable or over the air, and display of the same at places charging a fee for admission.

2. Producers of films enabling the first fixation of films are entitled with the following rights after taking over the authorization to exercise financial rights from the author and the performing artist.

(1) The right to grant authorization for or to prohibit the reproduction, distribution, sale, renting out and public lending of the fixation whether directly or indirectly, which fixation is carried out upon the permission of its author and the performing artist, shall exclusively belong to the film producer. The producers shall have the exclusive right to grant authorization for the public transmission and re-transmission of fixations by means of instruments enabling transmission of signs, sounds and/or images.

(2) A film producer shall be entitled to the right to grant authorization for or to prohibit the distribution, whether through sale or any other way, of the original or the reproduced copies of film fixations which have not yet been placed for domestic sale or distribution in any other way.

(3) A film producer also has the right to grant authorization for or to prohibit the sale of film fixations through instruments, whether by cable or over the air, or their public distribution or presentation in any other manner and their public transmission by providing access of the real persons to the fixations at the time and place designated by them. Distribution and presentation of fixations through public transmission shall not infringe producer's dissemination right.

In case of public transmission of performances fixed on phonograms and films by any means whatsoever, those persons using them are liable to pay a suitable amount to the authors as well as the performing artists and producers or the professional associations of the related field.

A real person or legal entity whose name is cited in the usual manner in a cinematographic work is considered as the producer of the said cinematographic work unless there is evidence otherwise.

After the co-authors of the cinematographic works transfer their financial rights to the producer enabling the first fixation of films, they cannot object to the dubbing or subtitling of the film unless otherwise is provided for or unless there is a special provision in the contract.

The author of the musical work maintains the right to broadcast and perform his work provided that the provisions of the contract entered into between the producer enabling the first fixation of films are reserved.

The permissions granted by neighboring right owners and the producers enabling the first fixation of films shall have to be in writing.

The written permission of the neighboring right owner and the producer is not required under the following conditions:

1. Performance and presentation to the public of intellectual and artistic works for purposes of public order, education and instruction, scientific research or news and without aiming at profit;

2. The reproduction of intellectual and artistic works and radio television programs for personal use without aiming to publish and to profit;

3. Temporary fixations with short duration made by radio and television institutions on their own and for their own use in broadcasts;

4. The cases specified in Articles 30, 32, 34, 35, 43, 46 and 47 of the present Law.

Such application however may in no way prejudice unjustly the lawful interests of the rights owner and may not conflict with normal exploitation of the work.

Like authors, those owners of rights affiliated with the rights of the authors are entitled to exercise rights of Action to Stop or Prevent Infringement and for Indemnity.

Those who infringe the rights of owners of affiliated rights shall be subjected to a prison sentence from two years to four years and a heavy fine from 10 billion liras to 50 billion liras.”

Article 33- The amended Article 81 of the Law Numbered 5846 has been amended as shown below.

“II. Prevention of Infringement of Rights

Article 81- It is obligatory to affix banderoles on non-serial publications and the reproduced copies of the musical and cinematographic works. Furthermore, it is obligatory to affix banderoles on the reproduced copies of other works suitable for easy copying, upon the request of the author or the right owner.

Banderoles shall be arranged to be printed and sold by the Ministry of Culture. The Ministry may also carry out banderole sale through the Professional Associations. Banderole revenues shall be deposited in an account to be established with a national bank for and on behalf of the Ministry. The revenues shall be disposed of for activities aiming at reinforcing the intellectual property system and the protection and maintenance of the cultural entities both in the country and abroad

In order to obtain banderoles for a work, the person asking for banderoles should fill in a written engagement evidencing that he is the legal right owner. Application is made with other documents and deeds to be determined by the Ministry of Culture. Upon such application, banderoles are provided within ten days without any further transactions.

The cases to constitute infringement in relation to obtaining and using banderoles are as follows:

1. To reproduce, sell, distribute, rent out, lend, present to public or place in commercial circulation in any manner whatsoever or use or exploit in any other manner, without obtaining banderoles, a work for which banderoles are required pursuant to this Law;
2. To produce false banderoles, to affix them on copies of works, to make benefit from such false banderoles for commercial purposes in any manner whatsoever;
3. To obtain banderoles, although not qualified to obtain the same pursuant to this law and the related regulations, by issuing false deeds or documents or by misleading in any manner the Ministry of Culture or the institutions assigned by the Ministry;
4. To affix banderoles on copies reproduced without the permission of the author or to make benefit from such copies for commercial purposes or to disseminate these copies gratuitously in a way to violate the rights of the author;
5. To use banderoles provided exclusively for a work for another work;
6. To disseminate or exploit in any other manner the copies of works, gratuitously or non-gratuitously, without affixing the banderoles obtained in accordance with this Law and the related regulations, on such copies in the specified way.

A commission to be formed by provincial governors at the provinces from the representatives of the Ministries of Interior, Finance and Culture, professional associations of authors and/or right owners affiliated with authors may always supervise whether banderole is affixed or not, on works mentioned in sub-article two and required to bear banderole. In cases of infringement mentioned in this article, the police authorities, upon the application of authors, affiliated right owners or other right owners to the Commission or upon the application made ex-officio by the Commission to take action and confiscate such copies, publications and any or all devices used in reproduction and other evidences, and after safe-keeping the immovable ones they submit the evidences to the Public Prosecution together with the notice of accusal. The Public Prosecution may demand before a competent court within three days to close down the place, where unauthorized reproduction was performed and

to seize the copies or publications thereat and further to take the technical equipment used in the infringing act under seal and sell the same.

The procedures and principles regarding the application of the issues indicated in this article and the formation of the Commission shall be laid down by a regulations to be executed by the Ministry of Culture within 6 months as of the date of publication of this Law.

Those committing one of the above-mentioned infringement acts shall be subjected to a prison sentence from four years to six years and a heavy fine from 50 billion liras to 150 billion liras.

Article 34- Referring to the amended Article 82 of the Law Numbered 5846, the heading of the said article has been amended as "The Scope and Terms of Rights Affiliated with the Rights of the Authors", the phrase "on sound carriers" in paragraph (2) of the first sub-article has been amended as "on phonograms or first film fixations", the term "on a sound carrier" as "on a phonogram or a film", and the phrase "sound carriers" in the first sentence of the second sub-article has been amended as "phonograms and first film fixations", the punctuation mark "," at the end of paragraph (1) has been amended as "or" and the phrase "on sound carriers" in paragraph (2) has been amended as "on phonograms and films" and the punctuation mark "," at the end of paragraph (1) of sub-article three has been amended as "or" and the phrase "with neighboring rights" in sub-article four has been amended as "with affiliated rights" and sub-articles five and six of the same Article have been amended as shown below.

"The term of rights of performing artists shall commence with the date when the first fixation of performance is made and continue for 70 years. If the performance has not yet been fixed, such period shall commence with the date of the performance first becoming public.

The term of rights of producers is 70 years, commencing with the date of the first fixation being made."

Article 35- Additional Article 2 of the Law Numbered 5846 has been amended as shown below.

"Additional Article 2- The provisions governing the terms of protection in the present Law are, during the time the amendment made in this Article has taken effect, applicable to

- 1- all works, fixed performances and phonograms available in Turkey and produced by authors and right owners affiliated with the rights of authors who are citizens of Republic of Turkey;
- 2- foreign works, fixed performances and phonograms which have been produced in other countries party to international contracts and agreements which Turkey is also a party to and which have not become public since the term of protection has not expired in those countries.

Those who hold the possession of the legal copies of works, fixed performances and phonograms which are under protection as a result of application of Sub-article one, may sell or dispose of such copies until the end of six months following the date on which the law takes effect, without the necessity of any written permission.

However, the exercise of rights with respect to works, fixed performances and phonograms granted to authors and other right owners within the framework of the present law shall be subject to the permission of the authors or affiliated right owners.

The provisions of the present law with respect to ownership of cinematographic works are applicable to cinematographic works the production of which has started after 12.06.1995 when the Law Numbered 4110 entered into force."

Article 36- The following items regarding the Law Numbered 5846 and dated 05.12.1951 on Intellectual and Artistic Works have been repealed:

- a) under Sub-article one of Article 24, the expression "the original or adaptation of a work" following the expression "from a work",

- b) amended Article 28,
- c) amended Article 29,
- d) under Sub-article one of the amended Article 38, the expression "publication or" and sub-article two,
- e) amended Article 39,
- f) last Sub-article of Article 57,
- g) paragraph (4) of the amended Article 73.

Article 37- *The following Supplementary Article 4 has been added to the Law numbered 5846.*

"Supplementary Article 4- The information placed on the copies of the work or seen during the public presentation of the work in relation to the work, the author, owner of any of the rights on the work or the terms and conditions regarding the usage of the work, and the figures and codes related to such information cannot be removed or amended without authorization. The originals or the copies of the works whose information or figures and codes containing such information are amended or removed in an unauthorized manner cannot be distributed, imported in order to be distributed, published or transmitted to the public.

The provisions of the aforementioned sub-article shall be applicable to phonograms and performances fixed on phonograms as well.

The procedures and principles regarding the application of the issues set forth in this article shall be laid down by a regulations to be executed by the Ministry of Culture.

Those committing the acts mentioned in the first sub-article, in an unauthorized manner, on purpose shall be subject to the provisions of the last sub-article of Article 73 of this Law.

Article 38- *The following supplementary article 5 has been added to the Law numbered 5846.*

"Supplementary Article 5- The reproduced intellectual and artistic works being protected within the scope of the present Law are compiled by the Ministry of Culture with the purpose of protection and maintenance of cultural heritage of intellectual and artistic works.

The real persons or legal entities who reproduce intellectual and artistic works and are authors or right owners should submit for compilation at least five copies of the reproduced works within one month as of the date of reproduction.

The procedures and principles regarding the works to be compiled, those who shall submit such works and their responsibilities, the units to carry out compilation transactions, the number of copies to be compiled, the institutions where such copies shall be submitted and other transactions related to the compilation shall be laid down by a regulations to be executed by the Ministry of Culture."

Those who fall against the provisions of this article and fail to submit the works required to be compiled within due time shall be subjected to a fine of 5 billion Turkish Liras. The fines stipulated under this article shall be imposed by the Provincial Culture Manager of the Ministry of Culture.

The fine must be paid within 10 days as of the date of announcement of the minutes. The amount of the fine not paid within 10 days shall be multiplied and the term of payment shall be extended, and the fines not paid within such extended period shall be tripled. The fact that the fine has been paid shall not repeal the liability to submit the copies of reproduced works.

The fines shall be duly notified to those concerned. An objection might be made before the competent Criminal Court of First Instance within 10 days as of the date of notification. The transactions shall not cease upon the objection made. The resolutions adopted by court upon the objection shall be final. When it is not deemed compulsory, the objection shall be finalized within a short term after the documents are examined. The fines imposed in accordance with this article shall be collected pursuant to the provisions of the Law on the Collection Procedures of Public Receivables.

The amount collected as such shall be transferred to the special account indicated under the second sub-article of the Amended Article 44 of the present Law.

Article 39- The following supplementary article has been added to the Law numbered 5846.
"Supplementary Article 6- The expressions "Culture and Tourism" as referred to in the present Law have been amended as "Culture".

Article 40- The present Law shall take effect as of the date of publication.

Article 41- The Council of Ministers is entrusted with the execution of the present Law.
