



REVIEW ARTICLE

COPYRIGHT PROBLEMS IN THE TURKISH CYPRIOT LAW WITHIN THE FRAMEWORK OF
COMMUNICATION ETHICS

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ABSTRACT

Regarding the issue of copyright, our study firstly defines the concepts of “visual communication” and “communication ethics”, mentions the origin of copyrights; and then discusses the copyrights in the Turkish Cypriot Law and the copyright issue in terms of Turkish law and Common Law due to the relations with Turkish Cypriot Law. Finally, this study will deliver concrete solution proposals upon the improvement of copyrights from the perspective of Turkish Cypriot Law.

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INTRODUCTION

Copyright issues for artists, writers, academics, etc. have a high degree of importance, as they serve to protect the person or persons as the creator. If protection is not provided through copyrights, the unauthorized use of the art work or works violates the rights of the artist as the creator. The artist whose rights are violated may lose the will to create; this is an undesirable situation. In the UK (Common Law) and Turkey (Turkish Law), which will be dealt with in order to compare our work with the Turkish Cypriot Law, the copyright is protected under certain measures; our focus is in the Turkish Republic of Northern Cyprus (Turkish Cypriot Law), there is a copyright law of 1918, consisting of only four articles. The current regulations are insufficient to overcome this issue. In order to overcome this issue, we will offer various solutions.

General Information

The Concept of “Communication Ethics”

The word of “ethics” with the meaning of “character” represents the values, norms, rules that comprise the core of

social relations and a discipline researching such from the perspective of ethics. The provision of a global power to the states/organisations by the science and technology in a globalised world structure, establishment and adoption of ethical principles are inevitable. Ethical values lead the certain professional groups to establish their own internal supervision and to identify the rights, law and ethical responsibilities. “Firstly, the ethical rules had been implemented in the western world in order to bring knowledge and power into the internal supervision. Such ethical rules had the power of a law as well as became the internal supervision principles of a profession. Under both circumstances, the ethical values/rules include the own-responsibilities towards another person.”¹ Today, the competition in the media and advertisement sector indicates the necessity of re-identifying the ethical values and filling the shortcomings within the framework of unlimited communication opportunities of new period. Particularly, the protection of original visual communication product or works during and after their creation has stood out. The visual communication products/works arising from the creation process of a designer or artist and his/her original ideas shall be protected with the laws based on legal foundations within the communication ethics through the prevention of unauthorized use and change.

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¹ “Etik Kavramı”, <<<http://www.foca.gov.tr/etik-kurulu/etik-kavrami/>>>, (20.05.2016).

The original meaning and style of art and design products as one of the building blocks of human culture shall be protected in order to enlighten the future generations. Therefore, the developed and developing countries shall improve their copyright laws and protect the art and designer.

The Concepts of “Visual Communication Design” and “Product-Work”

Since from the existence of mankind, the world is surrounded by the visual images every day. The mankind has always carried the effort to embody in visual messages and images. The visual creation process started with the mural paintings 15000 years ago has become a necessity serving to various environments together with the technology. The statement of John Berger as “seeing comes before words”² summarized the perception priority of visual elements on the human nature. Since the perception of audience is much quicker in visual communication when compared with the written-audial elements, and that it brings in an aesthetic pleasure among the audience, it has become the most preferred communication method. The launch of using the codes formed by the visual perception in the human consciousness to lead the masses caused the establishment of design-production environments. The fast development of technology has made the mass media such as cinema, television, newspaper and photography significant and leads the visual design processes oriented to the target group. The growth of modern media and advertising sector due to the opportunities of internet has brought the internal visual design-creation competition together.

Origin of Copyrights

In ancient civilizations, the intellectual products had not been considered separately from the material goods that they had been materialised and there was no necessity to protect the creator from the economic or immaterial aspects. During the Middle Age, the intellectual products were not treated as a subject of a separate right. Everybody could copy a work to utilize or got it copied against a fee. The first step regarding the intellectual rights has been the adoption of “printing privileges”. The invention of printing allowed the works that could only be copied in handwriting and in a limited number, to be copied and sold without any limitation. However the printer had to first find a copy that had the possibility to sell and made that copy ready to print. Yet, it was less costly for any other printing house to find such first copy and print the second and further copies of that work, which had lead to unfair competition. Therefore, the administrative authorities issued the “printing privileges” in order to print a work in a specific region for a specific time only by a printer. In this way, the printer was acknowledged as the author in exchange for a price. The privilege owner was defined as “owner of copy” in England and the term of “copy right” was not primarily used for copy right but right to print and copy³. In the middle of 16th century, it had become tradition that the authors got a share from the work. The first writer’s privilege was given to a writer called Sabellicus in 1486 in Venice for a work called “The Merchant of Venice”. The first act protecting the authors is a law adopted in 1709, England called as “Statute of

Anne”⁴. From the perspective of Turkish Law, the first legal document concerning the copyrights is the “Privy Council Regulation”. The copyright was paid upon the review of works in accordance to this document. Then, the Copyright Regulation was adopted in 1857. The first essential law adopted during the Ottoman period was Act of Copyright in 1910. This law was applicable in the Republic of Turkey until 1st of January 1952 and the Law of Intellectual and Artistic Works no. 5846 was adopted in 1st January 1952.

The date of 03.11.1983 is a significant date in the evolution of intellectual rights in Turkey. Some articles in the Law no. 5846 were amended and the Law no. 2936 regarding the addition of two provisional articles in the Law was adopted. Through this law, two crucial amendments were made, first of which is to allow the establishment of four professional associations under the Article 42. The other amendment under the Article 43 is the legalization of almost all articles under the Ordinance no. 3/428 dated 1980 titled as “Principles for the Intellectual and Artistic Works Utilized in the Publications of Turkish Radio-Television Corporation”. Under the Law on Copyrights, the amendments were adopted with the law dated 07/06/1995 No. 4110 regarding the amendment of some articles in the Law on Intellectual and Artistic Works. The most important amendments among all is the amendment under Article 42 concerning the establishment of more than one professional associations in one field. The next amendment was conducted with the Law No. 4630 adopted on 21/02/2001. This amendment was aimed to obstruct the establishment of more than one professional association that was introduced with the amendment of 95, and to put a condition for the establishment of a new professional association in the same field as there should be the adequacy of members with the 1/3 of members of professional association that was already established and had the highest number of members.

In terms of Cyprus Law, the first known regulation on the copyrights is the “Copyright Law” (Chapter 264) to facilitate the implementation of Copyright Law of England enacted in 1911. In the following periods, there have been no new law on copyrights regardless the establishment of 1960 Republic of Cyprus and during the state movements of Turkish Cypriot Community and establishment of TRNC.

Protection of Copyrights within the Communication Design in TRNC

Legal Regulations

Within the subject of our study, the legal regulations regarding the copyrights of the works in the Turkish Cypriot Law are analysed under three main topics as “Copyrights Law” (Chapter 264), “Law of Establishment and Broadcasting of Public and Private Radio and Televisions” (Law No. 39/1997), and “Regulation of Supreme Broadcasting Board on the Principles and Procedures for the Protection of Copyrights and Producer Rights” (Regulation No. 118/2001).

² Berger, John, Görme Biçimleri (Ways of Seeing), (Translation: Yurdanur Salman), İstanbul 2016, p. 8.

³ “Telif Hakkı Nedir?”, <<<http://www.telifhaklari.gov.tr/Telif-Hakki-Nedir>>>, (21.05.2016).

⁴ Bozbel, Savaş, Fikir ve Sanat Eserleri Hukuku, İstanbul 2014, BOUCHOUX, E. Deborah, Intellectual Property: The Law of Trademarks, Copyrights, Patents and Trade Secrets, US 2012, p. 4; p.184; Siphopho, N. Nicole, Copyright And Developing Countries A Critical Examination Of Recent Developments In Copyright Law With Particular Reference To The Impact On Developing Countries And Access To Educational Materials, Kwazulu-Natal, p. 15. Criticism about Act Anne: Patterson, R. Lyman, “The Statute of Anne: Copyright Misconstrued”, 3 Harv. J. on Legis. 223 (1965-1966).

Laws

Copyrights Law (Chapter 264)

In the Turkish Cypriot Law, due to its title and that might be considered to be the primary law, the “Copyrights Law” (Chapter 264) has *-only-* four (4) articles regardless that was expected to regulate the issue in detail. The adoption date of this Law as 25.04.1919 and its aim to be the implementation of Copyrights Law of England dated 1919 in Cyprus could be shown as the rationale behind so little number of articles. The “direct” implementation of English laws in the Turkish Cypriot Law is very common, however this is against the Constitution as the Turkish Republic of Northern Cyprus is independent and sovereign state. Moreover, while the unconstitutionality is not acceptable; the independence and sovereignty absolutely adopted by the constitution are subject to major conflict⁵. On the other hand, the implementation of applicable English Laws under the Turkish Cypriot Laws may “at least” bring legal benefit *-excluding the unacceptable situation for damaging the sovereignty*. However, as applicable for many of our laws, there is reference with the Copyrights Law to an “old” English Law enacted in 1911. Yet, the related law is no longer in force in England and another copyrights law was adopted in 1965 and then the existing applicable other copyrights law was adopted in 1988. The related law, as indicated that may become a subject for a significant criticism for “*shadowing*” the sovereignty and independence of state, and referring to an out-dated law, does not *for sure* meet the need of protecting the copyrights.

Law of Establishment and Broadcasting of Public and Private Radio and Televisions (Law No. 39/1997)

In the Turkish Cypriot Law, another law regulating the issue of copyrights is the “Law of Establishment and Publications of Public and Private Radio and Televisions” (Law No. 39/1997). In consideration with this law, Article 38 with the sub-title “*Copyrights*” is comprised of: “*Radio and television corporations shall pay copyright for the works included in the broadcasting.*”

Within this scope, pursuant to the Article 38 of Law No. 39/1997, the public and private radio and television corporations in the TRNC shall make a payment to the owner of copyrights when there is a use of works. Under the same law, the Article 45 with the sub-title of “*Power of Regulation*” states as: “*The Board, without prejudice to the other rules giving the power of regulation, may adopt the following regulations: (C) Determination of principles and procedures regarding the protection of copyrights and producers.*”

Therefore, it is possible to adopt a regulation to regulate the procedures and principles on the protection of owners of right in terms of copyrights under the Article 38 of Law No. 39/1997.

Regulation of Supreme Broadcasting Board on the Principles and Procedures for the Protection of Copyrights and Producer Rights (Regulation No. 118/2001)

The above mentioned “*Regulation of Supreme Broadcasting Board on the Principles and Procedures for the Protection of*

Copyrights and Producer Rights” (Regulation No. 118/2001) drafted pursuant to the “power of regulation” given under Article 38 of Law No. 39/1997 comprises the definition of copyrights, procedures for the protection of copyrights in a detailed way *as following the law method*. The Article 2 of Regulation under the sub-title of “definitions” includes the explanations for the main terms used in the regulation such as work, author, copyright etc.

Hereunder, the regulation gives the definitions of the following;

“Work”: *shall mean the intellectual and artistic work,*

“Intellectual and Artistic Work”: *shall mean all kinds of intellectual and artistic product bearing the peculiarity of its owner,*

“Author”: *shall mean the natural person producing the intellectual and artistic work,*

“Copyright Owner”: *shall mean natural and legal persons creating all kinds of intellectual and artistic work,*

“Economic Rights”: *shall mean the rights of works owners to exclusively enjoy a non-public work regardless the type and style, and to exclusively enjoy a public work in accordance with the economic rights, personally use the rights of processing, copy, disseminate, representation, radio and television broadcasting or transfer and/or make them be use through contract and dispositions,*

“Immaterial Rights”: *shall mean the rights of owners of the works to present the work to public, publish, determine the time and style, protect the honour and reputation of the work and prevent making changes in the work.*

The Article 3 of Regulation with the sub-title “*Aim*” is noted as “*The aim of this Regulation is to determine the principles of copyright payments to be made by the radio and television corporations to the copyright owners for using the works in their broadcasting, and to regulate the principles and procedures regarding the protection of economic rights of copyrights owners and producer;* while Article 4 with the sub-title of “*Scope*” covers the provision indicating that “*This Regulation shall cover the principle and procedures concerning the payments made by the Radio and Television Corporations for all kinds of intellectual and artistic arts like literature, music, fine arts, cinema that are utilized in their broadcasting, and the protection of rights belong to the copyright owners and producers.*”

Additionally, the certification of copyrights (Article 7), rights of copyright owners (Article 8), sanctions in case of any violation (Article 10) and payment principles regarding the copyrights (Article 15) are also covered under the relevant regulation. Within this scope, as mentioned earlier, the issue of copyrights expected to be guaranteed under the “Copyrights Law” was aimed to be guaranteed under the Regulation No. 118/2001.

Registration Methods

To to reiterate once more, the issue of copyright on the works was not regulated under the related law in Turkish Cypriot

⁵ Dolunay, Ayhan, Türk Hukukunda ve Kıbrıs Türk Hukukunda Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi, İstanbul 2015, p. 172-176.

Law. In this framework, from the aspect of registration methods, the Regulation on Copyrights No.118/2001 as a general regulation provides the provision under Article 7 on the registration methods. As follows:

“The Copyright Owners shall have the right on the basis of their works registered in the Ministry responsible for culture affairs or their works registered upon the applicable situation”.

Within the framework of regulation, the ownership of a copyright on the works shall be subject to the registration of such work in the TRNC Ministry of Culture or registration of an certifying officer.

Registration in the Ministry of Culture

As mentioned above, the Article 7 of Regulation on the Copyrights No. 118/2001 notes *“Copyright Owners shall bear their rights on the basis of their works...registered in the Ministry responsible of culture affairs.”*

Within this framework, in order to have a ownership of right on a work in the Turkish Republic of Northern Cyprus, one of first method is the registration of the work in the Ministry of Culture. Through this method, the authors originate the right to claim a right on the work, in this scope of copyrights, prevent the use of their works without any rights and/or in case of any such circumstance, demand of sanctions.

Certifying Officer Registration

The Article 7 of Copyrights Regulation No. 118/2001 under the sub-paragraph “Registration of Copyrights” also covers the provision, as *“Copyright Owners shall bear their rights on the basis of their works registered upon the applicable situation”.*

Within this framework, in the Turkish Republic of Northern Cyprus, another method to get an ownership on a work is the registration of the work by the certifying officer.

Although this method as an “alternative” is also possible to choose for the protection of works, in our opinion, the registration in the Ministry of Culture would be more appropriate.

Review of Turkish Law and Common Law as an Example Model for the Turkish Cypriot Law

Turkish Law

In terms of Turkish Law, the issue of copyrights are regulated under the Law of Intellectual and Artistic Works No. 5846.

The first article of related Law No. 5846 as “aim” is regulated as follows: *“The purpose of this Law is to establish and protect the moral and economic rights, on their products, of authors who create intellectual and artistic works, performers who perform or interpret such works, phonogram producers that make the first fixation of sounds, producers that make the first fixation of films, and radio-television organizations; to regulate the conditions of exploitation of such products and to determine the sanctions for exploitation in breach of such rules and procedures”.*

On the other hand, the Article 1/A of the Law No. 5846 named as “scope” notes “This Law covers the moral and economic rights, on their products, of authors who create intellectual and artistic works and performers who perform or interpret such works, phonogram producers that make the first fixation of sounds, producers that make the first fixation of films and radio-television organizations, the rules and procedures regarding transactions on such rights, ways of legal recourse and sanctions, together with the duties, authorities and responsibilities of the Ministry of Culture”. Pursuant to the Law on the Intellectual and Artistic Works No. 5846, the types of intellectual and artistic works are classified as literary and scientific works, musical works, works of fine arts, cinematographic works, adaptations and collections. The economic and moral rights of authors on the intellectual and artistic works are under the protection of this Law. The rights and powers given to the authors shall extend over the entire work and its parts. Film producers that make the first fixation of films and phonogram producers that make the first fixation of sounds shall have their productions containing cinematographic and musical works recorded and registered for the purpose of preventing violation of their rights, facilitating proof of right-holdership and tracking the authority to exercise economic rights, and without the aim of creating any rights. The recording and registration of all the works protected under this Law may be made for the same purpose upon demand of the authors; the authority to exercise economic rights may also be recorded (Law No. 5846 Article 13). The works protected under the scope of Law on the Intellectual and Artistic Works enjoy a natural protection starting from the moment of their creation. There is no need for any registration at any institution or verification. However there are some exceptions accordingly. The registration of domestic and foreign productions containing musical work, domestic and foreign productions containing cinematographic work and domestic and foreign computer games shall be “mandatory”.

Moreover, there is no obligation for registration apart from the works given; yet it is possible to register “voluntarily” in order protect the rights on the work and particularly facilitate the identification of authors; and also to get ownership documents issued or approved by the certifying officer. Under the Turkish Law, the term of protection for works shall be for the lifetime of author and for 70 years after his death. Additionally, apart from the economic rights on the work (right of adaptation, right of reproduction, right of distribution, right of performance, right to communication a work to public), the moral rights may also be obtained (authority to disclose the work to the public, authority to designate the name and prohibition of modification).

Common Law

Types of work to which copyright applies; literary (song lyrics, manuscripts, manuals, computer programs, commercial documents, leaflets, newsletters and articles etc., computer programs regulations in 1992 also extended the copyright of literary works to include computer programs), dramatic (plays, dance, etc.), musical (Recordings and score), artistic (Photography, painting, sculptures, architecture, technical drawings/diagrams, maps, logos, etc.), typographical arrangement of published editions (Magazines, periodicals, etc.), sound recording (May be recordings of other copyright works, e.g. musical and literary), films and broadcasts and

cable programs⁶. Copyright arises whenever an individual or company creates a work: A work is subject to copyright if it is regarded as original, and must exhibit a degree of labour, skill or judgement. Interpretation is related to the independent creation rather than the idea behind the creation.

The 1988 Copyright, Designs and Patents Act states the duration of copyright as;

- Literary, dramatic, musical or artistic works 70 years from the end of the calendar year in which the last remaining author of the work dies,
- Sound recordings and broadcasts 50 years from the end of the calendar year in which the work was created
- Films, 70 years from the end of the calendar year in which the last principal director, author or composer dies.
- Typographical arrangement of published editions, 25 years from the end of the calendar year in which the work was first published.
- Broadcasts and cable programmes 50 years from the end of the calendar year in which the broadcast was made.
- Crown copyright will last for a period of 125 years from the end of the calendar year in which the work was made. If the work was commercially published within 75 years of the end of the calendar year in which it was made, Crown copyright will last for 50 years from the end of the calendar year in which it was published.
- Parliamentary copyright will apply to work that is made by or under the direction or control of the House of Commons or the House of Lords and will last until 50 years from the end of the calendar year in which the work was made.

On the other hand, with the 1988 Copyright Act, the moral rights⁷ for the first time were covered under the British Copyrights legislation. Under this framework, the authors obtained the right of paternity and right of integrity to demand that the works would not be modified in the way to damage the honour and prestige of work and not be subject to derogatory treatment⁸.

Identification of Copyright Problems In Terms of Turkish Cypriot Law and Concrete Solution Proposals

Elimination of “Loopholes”

Since the existing copyrights law in the Turkish Cypriot Law is only comprised of 4 articles and its sole aim is to implement the copyrights Law adopted in England in 1911, that is no longer in force, in Cyprus, yet is rather insufficient, and the copyright regulation is used to eliminate this loophole, the most appropriate approach would be drafting a copyrights law regulating the issue of copyrights in detail or adapting the relevant Turkish or British law.

⁶ “UK Copyright Law”, <<<https://www.copyrightservice.co.uk/ukcs/docs/edupack.pdf>>>, (30.05.2016).

⁷ Aybay, Rona, “Sanat, Toplum ve İnsan Hakları”, Cumhuriyet Newspaper, 22 August 2002, p. 2.

⁸ Moral rights had become a part of the copyrights legislation of many countries in the Continental Europe a long time ago. <<<http://teftis.kulturturizm.gov.tr/Eklenti/1256,necopdf.pdf?0>>> (31.05.2016)

Elimination of Impacts of “Non-recognition of State” on the Issue of Copyrights

From the consideration that the registration performed by the TRNC government institutions (TRNC Ministry of Culture) will not have any international validity as an impact from the non-recognition of TRNC; the works registered in the TRNC would have international validity through the registration in Turkey upon an agreement concluded between TRNC and TR. In other words, for the protection of works registered in the TRNC in wider geographies, an agreement concluded between TRNC-Turkey which would serve as a “bridge” in the relevant issue, has a vital role from our perspective.

Covering under the State Policy and Provision of Public Awareness

Since the violation of copyrights is a frequently experienced issue, it is possible to prevent the violations through making the prevention of violations regarding the copyrights as a state policy, and raising awareness. Together with including the protection of copyrights under the state policy, the awareness of public would be possible and accordingly the minimization of violations raising from the unconscious wrongful uses would be possible.

Conclusion

Our study based on the issue of copyright problems within the framework of communication ethics in the Turkish Cypriot Law; firstly defines the concepts of “communication ethics”, “visual communication design” and “product-work” as the main points of issue, mentions the origin of copyrights and legislations regulating the copyrights issue under the Turkish Cypriot Law and the related registration methods pursuant to such legislation. Then, due to the close relation with the Turkish Cypriot Law, the Turkish Law and Common Law were briefly analysed in terms of copyrights. In the last part of study, the problems related with the copyrights were identified from the perspective of Turkish Cypriot Law and concrete solution proposals were delivered. As mentioned above, the reiteration of our proposals related with the problems, which are significant in terms of copyrights under the Turkish Cypriot Law will be beneficial: Due to the insufficiency of copyrights law under the Turkish Cypriot Law, regardless the regulation of copyrights; a new copyrights law should be adopted from the perspective of importance. In order to eliminate the circumstance that the works registered in TRNC are not protected in other countries rising from the non-recognition of TRNC, concluding of an agreement with Turkey on the related issue would be beneficial. And finally, with covering the copyrights issue under the state policy and raising the awareness among the public, the elimination of cases based on the wrongful uses would be possible.

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