

Question Q235

National Group: Turkish Group

Title: **Term of copyright protection**

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Questions

The purpose of Q235 is to explore the issues raised in relation to Term of protection. The Groups are invited to answer the following questions under their national laws:

I. Analysis of current law

- 1) Have the Berne Convention amended in 1979 (BC), TRIPS 1994 and the WIPO Copyright Treaty (WCT) been ratified by your countries? Please provide your answer in relation to each individual international instrument, and provide dates and details of ratification.

The Revised Berne Convention (RBC), TRIPS and the WIPO Copyright Treaty (WCT) have been ratified by Turkey.

As regard to RBC; Turkey

- has accepted to become a party of RBC with the articles 14 and 15 of Trade Agreement, which is an attachment of the Treaty of Lozanne.
- joined to RBC with the Bruxelles contract dated 1948.
- has accepted Paris Contract dated 1979 on 1995 with the Law No. 4117.

As regard to TRIPS 1994; Turkey

- accepted TRIPS on 1995. (Published on official gazette on 25.02.1995 number 22213)

As regard to WCT; Turkey

- accepted the WCT on 1975.
- Treaty was opened for signature on 1996.
- WCT came into force on 2002.

2) Have the minimal obligations in respect of Term of protection of copyright imposed by these international instruments been implemented in your countries' laws? By means of which legislation? Please respond in relation to each of RBC, TRIPS and WCT.

a) If the answer is no please specify (i) which obligations have not been implemented (ii) give any reasons why this has not proved possible and (iii) whether there are any current proposals for their implementation.

The minimal obligations in respect of Term of protection of copyright imposed by the above-mentioned international instruments have been implemented in Turkey through Law No. 5846 of December 5, 1951 on Intellectual and Artistic Works (as last amended by Law No. 5728 of January 23, 2008). According to the Law No. 5846, without any discrimination between the categories of work, the term of protection shall last for the lifetime of the author and for 70 years after his death; and regarding the legal entities the term of protection shall last for 70 years after the work is made available to the public.

3) Do your laws provide for TRIPS + obligations with respect to the Term of protection? Please provide details of any legislation that imposes this, and specify whether it is Domestic or Regional legislation?

The Law No. 4110 which entered into force in 1995 amended the Law No. 5846, adding TRIPS + obligations into the Turkish legislation. The Law No. 4110 is a domestic legislation and is in accordance with the 1/95 Decision of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC) which imposes TRIPS + obligations with respect to the Term of Protection via a reference to the European Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.

4) Have the Terms moved in an upward direction with ensuing revisions of your domestic laws, or as a result of any obligations derived from regional laws? Please provide details. Are there any current proposals for continued increases in Term of protection generally, or in relation to any specified categories of work? Please specify.

Yes. The term of protection of 50 years introduced by Article 27 of the Law No. 5846 of December 05, 1951 has been increased to 70 years through Article 10 of the Law No 4110 of June 07, 1995.

Ministry of Culture and Tourism has started a work in relation to comprehensive amendment of the Law No. 5846 and accordingly published a Draft Bill on the

Amendment of the Law No. 5846 on July 20, 2012. Although no changes have been made regarding the 70 year term of protection in the related Draft Bill, some additions have been made to Article 27, which involves regulations regarding the calculation of the protection term, with the intent of harmonising with the Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights. It has been clarified with the above amendment that the term of protection is irrespective of the date when the work is lawfully made available to the public as well as the calculation of the term of protection in accordance with the specified categories of work.

Lastly, a protection equivalent to the economic rights of the author and a separate 25 years of protection term have been granted to any person who, after the expiry of copyright protection, lawfully publishes or communicates a previously unpublished work to the public for the first time. Moreover, the protection of the effort of the person who reveals a work, which is previously unpublished during the protection term, has also been considered to be equitable.

- 5) What is the existing rationale/justification under your laws for the existing Terms of copyright protection? In particular, is the rationale/justification a merely economical one or are other reasons given? Have there been/is there currently, any academic/judicial or general criticism of this rationale? Are you aware of any economical, sociological or other studies justifying or criticizing the current Term?

The current term of protection is lifetime of the author plus 70 years after his/her death which was increased from 50 years with the amendment in 1995. The main motive for the amendment is harmonization with the EU legislation and the compliance with the liabilities of Customs Union. There is no supportive or unsupportive source in the doctrine or as a precedent.

II. Proposals for harmonisation

Groups are invited to put forward proposals for the adoption of harmonised rules in relation to Term of copyright protection. More specifically, the Groups are invited to answer the following questions:

- 6) In your opinion do the current Terms of copyright protection provide "adequate" standards of protection? Is this protection adequate for all interested parties i.e. authors/commercial providers/consumers? Please give reasons for your answer.

We think that the term of 70 years is appropriate and an adequate period of time. This is because it would be fair for the first and the second generation inheritors, who are in relation and interaction with the author, to benefit from the financial rights of the work.

Moreover, we believe that the additional 25 years of protection period stipulated in the draft law which is in compliance with the EC Directive will be compensating for a current deficiency.

If we are to approach the issue from 3 different perspectives;

The protection term is adequate for the author and his/her inheritors. It is not necessary to prolong it. On the other hand, considering the effect and benefits for the following generations it should not be shortened.

From the perspective of the consumer, as long as the exclusivity continues, the cost of the access to the work will be more expensive compared to the public free work. But according to the market conditions, when we evaluate the difference between the two costs, it is believed that there will not be any significant negative effect that will affect the consumer.

When we are to make an evaluation from the perspective of the commercial provider, which is parallel to the consumer evaluation, the reduction of the period directly provides an economical benefit for the commercial provider. But this is not a sufficient justification to reduce the prolongation of the benefit as a trade off to the author / its inheritors' economic benefits and cultural benefit of the public, even if the derived income will decrease against him.

Lastly,, decreasing the term period of the author/inherit or against him/her is in benefit of the public when the work is not/cannot making available to the public. Even though it might appear as the protection term for the work has been prolonged, the term to financially benefit from the work for the author/inherit or has decreased. This fits for the purpose of public interest and proportionality. Therefore, the period of 25 years introduced in compliance with the EC Directive is necessary and fair. On the other hand, for some cases where the difference between the date of making available and the 70 years protection period of the work is less than 25 years create a clause against the author/inheritors; it would be fair to for see a special regulation in regards to the situation.

- 7) Do you think that there is a need for an upper limit on Term in international treaties? Please provide your reasons.

We do not think that there is a need for an upper limit on Term of copyright protection as the current term is to the benefit of both the author and the publisher and on the other hand satisfies the customer. Looking from an economical perspective, in the most basic sense, the author (as the right owner) would be able to provide himself and for his children. However, taking into account the increase in the life time of the author and the closer relationships being built accordingly between the author and the grandchildren, the term might be longer in the future for the grandchildren to benefit from the copyrighted work same as any other form of property rights.

- 8) Would you like to see the Terms of copyright protection changed? If yes should the changes take place within the confines of the existing international treaties? Please give your reasons.

Yes. As there is currently a fixed term for protection regardless of categories of works, we do not think that the current system meets the necessities of all categories. We believe that the changes should take place within the confines of the existing treaties or through a legal instrument such as a European Directive in order to promote a common market and harmonization.

- 9) If your answer to 8 is yes and you would like to see the current Term of protection changed, please indicate whether changes should take place in relation to all categories of work, or only in relation to specific categories of work. If only in relation to specific categories of work, please specify which categories of work, and give your reasons for this choice.

Yes, we would like to see the current term of protection changed. We do not think that there is a need for change with respect to all categories of works but rather for new works, especially for digital works. Considering that the digital sector is open for development and in fact needs such development, there should be a shorter term of

protection for these kinds of works in order to prevent monopoly in the relevant sector and for the incentive of creation to help development thereof.

- 10) Please list the factors or criteria that should in your view be used to arrive upon the optimum Term of copyright protection for any specific work, or in general. What in your opinions would this optimum Term(s) be?

The factors that should in our opinion be used to arrive up on the optimum term of copyright protection in general should be as follows;

- Life term of the author
- Economical reasons (common market)
- Public Domain (Monopoly)
- Incentive for creation
- capability of unique reproducibility

Considering the above-mentioned factors, in our opinion, the optimum term of protection should be 70 years; however the term of 70 years might be considered to be shorter with respect to the new works such as digital works.

Regarding the computer soft wares we think that they have an industrial applicability and therefore should be evaluated apart from the copyright protection. In this respect, the term of protection might be considered shorter for the computer soft wares.

NOTE

It will be helpful and appreciated if the following points could be taken into consideration when editing the Group Report:

- kindly follow the order of the questions and use the questions and numbers for each answer
- if possible type your answers in a different colour
- please send in a word document
- in case images need to be included high resolution is required for good quality printing.

SUMMARY

The Revised Berne Convention (RBC), TRIPS and the WIPO Copyright Treaty (WCT) have all been ratified by Turkey and the minimal obligations in respect of Term of protection of copyright imposed by the above-mentioned international instruments have been implemented. The term of protection of 50 years has been increased to 70 years by more recent legislation. In addition, the Ministry of Culture and Tourism is currently undertaking a comprehensive amendment of the current legislation and drafted a bill. Although the draft does not envisage any changes to term of protection of 70 years, there are some proposed amendments with the intent of harmonization with EU legislation. A separate 25 years of protection term has been granted to any person who, after the expiry of copyright protection, lawfully publishes or communicates a previously unpublished work to the public for the first time. In conclusion, the Turkish Group believes that 70 years is an appropriate and adequate period of time of protection, because it is fair for the first and the second generation inheritors, who are in relation and interaction with the author, to benefit from the financial rights of the work. The Turkish Group also believes that the additional 25 years of protection period inserted to the draft law will be compensating for a current deficiency. The Turkish Group does not think that there is a need for an upper limit on Term of copyright protection, however thinks that the current term of protection may be shorter for new works, especially for digital works, considering that the digital sector is open for development and in fact needs such development. The Turkish Group believes that a shorter term of protection for such works would prevent monopoly and provide incentive of creativity.

RESUME

Convention de Berne, ADPIC et L'OMPI ont tous été ratifié par la Turquie et les obligations minimales en ce qui concerne la Durée de protection de droit d'auteur imposées par les instruments internationaux susmentionnés ont été mises en oeuvre. La Durée de protection de 50 ans a été augmentée a 70 ans par une législation plus recentes. En outre, Le Ministère de la Culture et du Tourisme procède actuellement à une modification complète de la législation actuelle et a publié un projet de loi. Bien que le projet ne prévoit pas de changements à la Durée de protection de 70 ans, il ya des modifications proposées dans le but d'harmonisation avec la Législation Européenne. 25 ans séparés de protection de durée, a été accordée à toute personne qui, après l'expiration de la protection des droits d'auteur, publie licitement ou communique une œuvre inédite au public pour la première fois. En conclusion, le groupe Turc estime que 70 ans est une période appropriée et adéquate période pour la Durée de protection, parce qu'il est juste pour la première et deuxième génération d'héritiers, qui sont en relation et en interaction avec l'auteur, de bénéficier des droits financiers de l'ouvrage. Le groupe Turc estime également que 25 ans qui est supplémentaire de la période de protection insérée dans le projet de loi sera compenser une carence en cours. Le groupe Turc ne pense pas qu'il ya un besoin pour une limite supérieure sur la durée de protection du droit d'auteur, mais pense que la Durée de protection peut être plus courte pour de nouveaux travaux, en particulier pour les œuvres numériques, étant donné que le secteur numérique est ouverte pour le développement et en fait besoin de ce développement. Le groupe Turc estime qu'une courte durée de protection des œuvres destinées va empêcher le monopole et assurer l'encouragement de la créativité.

ZUSAMMENFASSUNG

Das Berner Übereinkommen (RBC), die TRIPS und das WIPO Copyright Abkommen (WCT) wurden alle von der Türkei ratifiziert und die minimalen Bedingungen in Bezug auf die Schutzdauer des Copyrights, der oben erwähnten internationalen Regelungen wurden übernommen. Die Schutzdauer von 50 Jahren wurde durch eine neuere Gesetzgebung auf 70 Jahre erhöht. Darüber hinaus ist das Ministerium für Kultur und Tourismus derzeit dabei,

eine umfassende Gesetzesänderung der geltenden Rechtsvorschriften einzuleiten und ein Gesetzentwurf liegt bereits vor. Obwohl der Entwurf keine Änderungen bezüglich der Schutzdauer von 70 Jahren beinhaltet, gibt es einige Änderungsvorschläge mit der Intention die Harmonisierung mit der EU-Gesetzgebung anzustreben. Eine separate 25-jährige Schutzfrist steht jeder Person zu, die nach Ablauf des urheberrechtlichen Schutzes, rechtmässig veröffentlicht beziehungsweise ein bisher unveröffentlichtes Werk der Öffentlichkeit erstmals bekannt gibt. Abschließend ist die türkische Gruppe der Ansicht, dass 70 Jahre eine geeignete und angemessene Zeitspanne für den Schutz ist, weil es für die erste und die zweite Generation der Erben angemessen ist, die in Beziehung und Mitwirkung mit dem Urheber sind, um von den finanziellen Rechten des Werkes zu profitieren. Die türkische Gruppe ist ausserdem der Auffassung, dass die zusätzlichen 25 Jahre Schutzfrist die dem Gesetzentwurf eingeführt wurde einen Ausgleich für den aktuellen Mangel schafft. Die türkische Gruppe ist der Meinung, dass es eine Notwendigkeit für eine Obergrenze für die Schutzdauer des Copyrights nicht nötig ist, jedoch die derzeitige Schutzdauer für neue Werke kürzer sein kann, insbesondere für digitale Werke, erst Recht, wenn man bedenkt, dass der digitale Sektor offen für die Entwicklung ist und in der Tat solch eine Entwicklung braucht. Die türkische Gruppe ist der Meinung, dass eine kürzere Schutzdauer für solche Werke Monopolstellungen verhindern würde und Anreize für Kreativität schaffen würde.