



Legality

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An Overview of International
Intellectual Property Law and
Salvador Dali Case

A Different Perspective on
Women's Employment

The Rise of Digital Games and Its
Implications for Turkish Laws

Events and News



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6

Editor Note

8

Articles

A Fundamental Right in the Digital Age: To Be Forgotten by

Bengisu Çakır Özkaya, Attorney at Law

17

Protecting Domain Names under Turkish Law by

Ayşe Gültekin Tibet, Attorney at Law

29

An Overview of International Intellectual Property Law and Salvador Dali Case by

Deniz Uçar, Attorney at Law

Industry in Focus: DIGITAL GAME INDUSTRY

44

The Rise of Digital Games and Its Implications for Turkish Laws by

İclal Demirtaş, Head of Technology and Business Development Department

50

Special Day

A Different Perspective on Women's Employment by

Güzin Şengün, Managing Partner

52

World Intellectual Property Day 2022: Innovation for a Better Future by

İclal Demirtaş, Head of Technology and Business Development Department

56

Global News

Sanctions on Russia – Review of the New UK and EU Sanctions

56

Digitalization in French Law Firms

58

In Germany Falling While Walking from Bed to Workbench is Considered as a Business Accident!

59

Biden Signs the Executive Order of Digital Dollar and Cryptocurrency!

60

Insider Became Turkey's First Software Unicorn!

62

Australia Climate Change: Court Overturns Teenagers' Case Against the Minister

Events and News

66

OMÜD's Ordinary General Assembly Meeting on 03.03.2022

66

Ordinary General Assembly Meeting of Swedish Chamber of Commerce on 15.03.2022

67

Event on FinTech and Current Regulations

68

Şengün ALSP - Haber Dönüşüm

68

Digital Newsletter - March 2022 Issue of Şengün Legality

68

Internal Training on Investment Incentives

68

Internal Training on White-Collar Crimes

70

Sources





Dear Reader,

Şengün Academy is pleased to present you the second issue of *Şengün Legality*. We continue to offer in-depth insights on the latest legal trends in Turkey and across the world in this issue.

Our leading services offer client-oriented strategic solutions to local and foreign companies and leverage corporations' needs and expectations with interdisciplinary offerings that innovate the provision of legal services.

This month, we focus on some offerings of our new centers and services with articles discussing the protection of domain names, a common issue in the digital age, and the right to be forgotten, which refers to the right to delisting.

This month's sector analysis covers the gaming industry, which is growing daily with digitalization and widespread use of the Internet with remarkable success in Turkey. We explain to our readers how Turkish legislation addresses issues relevant to the video game industry.

Moreover, we discuss gender equality and women's status at work, focusing on the shift in women's attitudes towards work and how they can achieve work-life balance.

For this month's special day, we celebrate April 26, World Intellectual Property Day, of people working to protect intellectual property, along with all other stakeholders who innovate ideas, products, and functions. WIPO's 2022 theme "IP and Youth: Innovating for a Better Future" inspired

us to discuss how the youth could foster a dynamic innovation environment and how we could promote legal knowledge about intellectual property.

This month's newsletter also features global news and our entities' recent announcements and activities.

In *Şengün Legality's* April 2022 edition, we wish to provide insights on emerging legal and sectoral trends with a thorough and pleasant selection for you, dear reader.

Enjoy reading!
İstanbul, 01 April 2022
Şengün Academy



A FUNDAMENTAL RIGHT IN THE DIGITAL AGE: TO BE FORGOTTEN

“...The past is full of life, eager to irritate us, provoke and insult us, tempt us to destroy or repaint it. The only reason people want to be masters of the future is to change the past....”¹

INTRODUCTION

Our access to information has dramatically expanded with the fast advancement of information technology since the twentieth century. Today, we can post any image or text on the Internet, which stores them instantly in its digital memory. We cannot help being enticed by the digital age and easier access to information; however, the current debate on the right to be forgotten in the digital world has led us to wonder whether this enticement is harming our future freedom.

We can summarize the right to be forgotten as the right to request the erasure of a person’s data such as news articles, photos, videos, information, and documents from the Internet search results. This right is grounded on the premise that individuals should be able to choose whether their previous mistakes should continue to be displayed in search engine results without any time and access restrictions, thus creating a constant negative perception about them. People can change for the better. The existence of data that presents a fixed outlook clashes with this dynamic change obstructing both human

liberty and privacy.

Background on The Right To Be Forgotten

The concept of the right to be forgotten originates in French and Italian legislation, which aimed to secure the right to the erasure of criminal reports and relevant state records after a while since these records were treated as personal data and protected as such.² However, the current term of the “right to be forgotten” gained popularity for the first time in May 2014, following a judgment by the European Union’s Court of Justice in the case between “Google Spain and Gonzales.”

In 2010, a Spanish lawyer named Mario Costeja González filed a lawsuit against Google Spain and Google Inc. with the Spanish Data Protection Authority to request the erasure of a news article about him published in La Vanguardia, which reported that he sold his real estate to pay his debts sixteen years ago; the piece was displayed among the search results when his name was searched on the Internet. In his claim, Gonzalez requested the Spanish newspaper to delete the news article or obscure his identity, thus eliminating the article’s connection with him, and from Google Spain and Google Inc. to remove the link to the relevant newspaper page from their search results. The Spanish Data Protection Authority dismissed the claim regarding the Spanish newspaper because the content was published for a legal requirement. On the other hand, the Authority ordered Google Spain and Google Inc. to erase the search results relevant to the complainant and restrict their future access.

¹ Kuntera, M. (2020) *Gülüşün ve Unutuşun Kitabı*, Can Yayınları

² Salihpaşaoğlu ve Değirmencioğlu, Unutulma Hakkının Bir “İnsan Hakkı”na Dönüşme Yolculuğu, <https://dergipark.org.tr/tr/download/article-file/1090659>

Google filed a lawsuit with the Supreme Court of Spain for the annulment of this judgment, and the Spanish court requested a preliminary ruling from the European Court of Justice (“ECJ”). As a result of its examination of the case, the ECJ referred to the right to demand a restriction on Internet search results containing personal names, thus ruling that the reputation of a person was superior to the commercial interests of search engines, notably Google since there was no overriding public interest in the case.

The ECJ’s 2014 ruling on the Google Spain case drew attention to regulating the right to be forgotten. Thus, the European Parliament and Council of the European Union repealed the Data Protection Directive 95/46/EC of 25.5.2018 with the enactment of the General Data Protection Regulation (“GDPR”), whose article 17 contains a provision on “the right to erasure.”

Right To Be Forgotten Under Turkish Law

Turkish Law does not contain specific provisions on the right to be forgotten. However, some clauses in force offer phrases relevant to the right.

For instance, Article 17 in the Turkish Constitution regulates personal inviolability and human and spiritual existence of the individual with the following clause that can be associated with the right to be forgotten: *“Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence.”* Moreover, clause 3 in article 20 in the Constitution, which regulates the privacy of private life, states, *“Everyone has the right to request the protection of their data. This right includes being informed of, having access to, requesting the correction and deletion of their data, and being informed whether these are used inconsistently with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. The principles and procedures regarding personal data protection shall be laid down in law.”* The clause indicates that everyone has the right to request their data protection, access the

data, request its correction or deletion, and learn whether it is used as intended. Similar to articles 17 and 20, article 5 in the Constitution, titled “Fundamental aims and duties of the State,” also obliges the state *“to provide the conditions required for developing the individual’s material and spiritual existence.”*

Other provisions relevant to the right to be forgotten are found in the Turkish Civil Code and the Turkish Code of Obligations. Concerning personal rights, the Turkish Civil Code refers to lawsuits filed in violations of individual rights. As for claims for damages, article 58 in the Code of Obligations regulates the right to demand compensation when personal rights are violated.

Although the Law on Protection of Personal Data does not explicitly regulate the right to be forgotten, most of its provisions, interpretation, and principles are relevant to the right. For example, holding the erasure, destruction, or anonymization of personal data, Article 7 in the Law grants the right to demand the erasure of personal data, which is almost a Turkish version of the right to be forgotten.

The right to be forgotten does not equal the right to demand content removal from the Internet but to the right to delisting.³ However, article 9 titled “Removal of content from publication, and blocking of access” in Law on the Regulation of Publications on the Internet and Suppression of Crimes Committed using Such Publications, also known as the “Social Media Law,” states the following: *“Real persons, legal entities and institutions and organizations may, if they assert that their rights have been violated as a consequence of content published in the internet environment, apply for removal of the publication of that content using a warning to the content provider or, if the content provider cannot be contacted, to the hosting provider, or they may also apply directly to a magistrate to request denial of access to the content.”*

³ Kaya, B. Unutulma Hakkı

Thus, this Law, published in the Official Gazette of 31 July 2020, indirectly refers to the right to be forgotten.

We might say that although there is no specific regulation on the right to be forgotten, natural persons can demand the blocking of access to news coverage about them to break with the past and liberate their future.

Response By Turkish Courts

Turkish Law does not define the right to be forgotten; however, the Court of Cassation and the Constitutional Court referred to it in some of their decisions.



The Constitutional Court recognized the right to be forgotten in its decision to block access to prior web coverage about past crimes based on articles 17 and 20 in the Constitution. Meanwhile, in one of its decisions, the Court of Cassation ruled that a victim's name in a criminal case would not be published in a scientific book, thus recognizing the right to be forgotten as a personal right based on the privacy of private life.⁴

⁴ <https://www.kureselhukuk.com/en/unutulma-hakki/>

Response by the Court of Cassation:

Turkey referred to the ruling **on Google Spain for the first time in the decision by the Court of Cassation's Assembly of Civil Chambers, no. E. 2014/56 K. 2015/1679 T. 17.6.2015**, which defined the right to be forgotten as *“the right to request that prior negative stored in the digital memory be removed after a while, unless there is an overriding public interest, and that a person's data that they wish to be kept private is deleted and not disseminated.* The decision was relevant to a case involving a non-pecuniary damages claim by a sexual harassment victim who claimed that their identity was revealed in the book “Interpreted-Applied Turkish Penal Code,” which purportedly infringed their private event rights. The District Court decided to accept the case partly because revealing the identity was not necessary for the book's narration of the events. Such revelation harmed the plaintiff's rights. Then, the defendant appealed the decision, which brought the case to the Court of Cassation's Civil Chamber. In the following proceeding, the Civil Chamber dismissed the conclusion of the District Court and sent back the case, stating that the work had a scientific nature, gained publicity for freedom of scientific research, and did not violate personal rights. Since the District Court insisted on its decision, the case was brought to the Assembly of Civil Chambers.

Suggesting that the critical consideration for the dispute resolution was to establish a fair balance between fundamental human rights and artistic freedom, the Assembly of Civil Chambers decided that placing the plaintiff's name in the book with no pseudonym violated the right to be forgotten and the privacy of private life; as a result, the conditions for non-pecuniary damages were met.

Decision no. 2016/15510 E. 2017/5325 K. of 05.06.2017 by the Court of Cassation's 19th Criminal Chamber

The claimant was arrested in 2007 and acquitted from the case that led to the deten-

tion. The news reported the arrest in 2007, which was still accessible on the date of the claim. The Court of Cassation evaluated whether such news report violated the claimant's rights within the framework of the freedom of the press, the protection of personal data, and the right to be forgotten. After the evaluation, the Court of Cassation accepted the case on the following grounds: *"...Since the claimant acquitted, the news report lost its "up-to-date" feature with the lapse of nine years; therefore, it no longer mattered whether the news report was "true and accurate" at the time. Moreover, the trial process mentioned in the news report went through all the trial stages and came to an end. Thus, if the public learns about this situation, which was an unfair accusation for the claimant, it will mean that the problem is disclosed as if there was truth in it in the past. Consequently, accessing this news report could lead to a misperception for society. Moreover, archiving the news report about the arrest and detention of the claimant that resulted in acquittal will not carry any future public interest by remembering the news report or evaluating it for statistical purposes. Therefore, keeping the news report will not contribute to the progress and development of society and will not help anyone by being imprinted in the public's memory. In addition, the person subject to the news report is not a politician elected or appointed to represent or serve society or an artist or intellectual who creates works to express themselves to and enlighten humanity. As a result, information about the claimant's criminal history is not of public interest, and certain government agencies can only record this information. Thus, when the claimant's name continues to be identified with words such as "drug gang, secret safe, and organization" due to being specified clearly, their rights will be violated. Consequently, archiving the information about their detention will mean unauthorized processing and publication of their data..."*

Response by the Constitutional Court:

"... The state has a clear responsibility to give any person the chance to 'break with the



*past by preventing others from learning about their past..."*⁵

In the case that the Constitutional Court examined with file number 2013/5653 and ruled on 03.03.2016, the claimant asserted that their dignity and reputation were violated since the defendant rejected their request for the removal of the news report on the criminal prosecution regarding the claimant's drug use, archived in the newspaper's web articles. They, therefore, filed a case with the Constitutional Court and requested the removal of the content in question.

As a result, the Constitutional Court ruled the following: *"...As of the date of the claim, the news report concerns an event that occurred nearly fourteen years ago, thus being no longer relevant. There is also no need to easily access this information on the Internet for the reasons stated above since it serves no statistical and scientific purposes.*

⁵ N.B.B decision no. 2013/5653 of 3 March 2016 by the Constitutional Court

Therefore, the online accessibility of the news report about the claimant, who is not a politician or a celebrity, violates the claimant's reputation with no public interest whatsoever." Thus, the Court decided that the news report needed to be evaluated according to the right to be forgotten and that the claimant was correct in requesting the restriction of access. Consequently, the defendant was deemed to have violated the claimant's right to protect dignity and reputation, which is secured under article 17 in the Constitution.

Response by the Personal Data Protection Board:

In its decision of 23 June 2020, the Personal Data Protection Board stated that search engines were regarded as "data controllers" defined in article 3 in Law on Protection of Personal Data. Their activities were considered "personal data processing." Accordingly, the Board requires that when a person wishes any legally disseminated news report to be erased under the Law on Protection of Personal Data provisions, they must first apply to the relevant search engine. If the search engine rejects the requestor refuses to answer, the person can complain to the Board or file a lawsuit with the court.

CONCLUSION

The digital age makes our lives easier in many ways, but it also presents new challenges. We should view the right to be forgotten as a fundamental human right in this framework. People should have the chance to break with their past and free their future. Therefore, the "right to be forgotten" should restrict the permanent digital storage, which keeps storing what the human brain forgets over time. States must recognize and enforce the right to be forgotten through their legislation, which is the only way that they can help citizens start with a clean slate.

Bengisu Çakır Özkaya, Attorney
ŞENGÜN&PARTNERS

PROTECTING DOMAIN NAMES UNDER TURKISH LAWS



An entity or a person is queried on the Internet via their domain name which corresponds to their trademark or name that identifies them directly or indirectly.

Today's technologies have resulted in various types of domain name trademark infringement, mainly using the Internet. In fact, most common trademark infringements on the Internet arise from domain name abuses. Therefore, domain name owners should know their respective rights under Turkish laws. This article will provide an overview of domain name infringements and the relevant remedies.

1. Domain Name Infringements

Domain names identify legal entities and/or natural persons independently of their legal names and trademarks. A person that has no connection whatsoever with a domain name owner can register a domain name under a fake URL by using the name and/or trademark of the latter. In this case, the domain name owner can contact the domain name registrant to demand the end of the latter's domain name abuse.

When the domain name owner requests the registrant, namely the cyber-squatter, to stop

using the domain name under a false name, they might be coerced into paying for the resale of the domain. Thus, the cyber-squatter aims to make a profit by reselling a domain name to its original owner, which constitutes the basis of cybersquatting.

It is illegal to register a domain name by hijacking another person's name and/or trademark. Therefore, the cyber-squatter who registers a domain name by using another entity's or person's name or trademark to resell it to make a profit for themselves is deemed to have malicious intentions, thereby being considered as a possessor in bad faith pursuant to article 995 in Turkish Civil Code no. 4721.

Article 995 in Turkish Civil Code states, *“The possessor in bad faith shall pay compensation for the damages incurred by the lawful owner and for the profit that they have obtained or neglected to obtain for culpably keeping what belongs to another person.”* As such, the possessor in bad faith must first return the domain name to its original owner. Then, they must compensate for the damages incurred by the original owner due to their malicious use of the domain name.



In addition to the classical case of cybersquatting, there are three types of domain abuses via the Internet, namely domain hijacking, typosquatting, and email spoofing. Domain hijacking refers to the creation of a domain name similar to an existing domain name to make a profit while typosquatting involves registering another person's domain name with minor changes and tricking Internet users into landing on this forged domain name. Email spoofing is mostly known as “spam” which refers to spoof emails sent by a forged sender address to make a profit or to obtain sensitive information from unsuspecting recipients. People often use this method to compromise sensitive data pertaining to the customers of legal entities for tricking purposes.

A domain name may also be infringed through means other than the Internet. It can be used illegally by businesses that adopt domain names similar to those of other businesses or damage the reputation of a domain name owner. Businesses in good faith should pay attention to avoid a similarity between their domain names and those of other businesses and to refrain from having an impact on financial markets due to such similarity. Otherwise, as stipulated in the doctrine, they can be deemed to have exploited a trademark.

Domain name infringers can also damage the reputation of the trademark or the business of a domain name owner. This form of infringement generally occurs when a domain name is described inappropriately, caricatured, or used to name other things. Thus, a domain name suffers both material and immaterial losses.

2. Protecting Domain Names

A domain name distinguishes and publicizes the legal entity and/or natural person that owns the domain name. Therefore, domain names must be protected against infringements. A domain name owner functions like a property owner; as a result, they can be

protected pursuant to article 955 in Turkish Civil Code.

Likewise, a domain name that publicizes and distinguishes a natural person must benefit from the same type of protection as the actual name of a natural person. Article 26 in Turkish Civil Code stipulates, *“A person subject to an identity fraud may request declaratory judgment to affirm their rights. The alleged victim may request the end of identity fraud, along with compensation for their pecuniary and non-pecuniary damages, if relevant, provided that the defendant is found liable.”* As such, a natural person can seek protection against exploitation of their domain name. However, the claimant must prove that their interests are at stake to request for protection.

As for businesses, domain names are capable of distinguishing them from other businesses. Therefore, businesses can use their trade names as domain names. However, businesses sometimes create domain names with distinctive phrases. The illegal use of such domain names

constitutes an infringement. Clause 1 in article 52 in Turkish Commercial Code no. 6102 states, *“If a trade name is used by another entity in violation of fair trade, the trade name owner may seek the following remedies: the declaration and removal of violation; if the violated trade name is registered, its modification or removal; the elimination of the material consequences of the violation; and if there is any destruction of or damage to means and properties, compensation for pecuniary and non-pecuniary damages based on the nature of infringement. The court may determine the pecuniary compensation amount based on the possible gains of the violating party as a result of the violation.”* Thus, domain names that generate income like a trade name can be protected pursuant to this article.

A domain name can also be protected against anti-competitive practices under sub-clause (a) in clause 4 in article 55 in Turkish Commercial Code, which states, *“Trying to create confusion with another person’s goods, products, activities, or operations...”* For a domain name to be

defended against other registered or un-registered domain names, it must have prior usage. Therefore, if a domain name having prior usage is exploited by other entities under a registered or unregistered name, anti-trust clauses will be applicable, and the domain name owner will be able to demand the cessation of infringement. However, for anti-trust clauses to be relevant in such a case, the following anti-competitive practices must be present: abuse of dominance, non-compliance with standard good faith principles, and the threat of a potential damage.

We sometimes encounter a trademark that is comprised of a domain name. For a domain name to be recognized as a trademark on the web, the relevant services must be provided via its website, and it must be registered with a trademark authority. Violation of a domain name registered as a trademark constitutes an infringement, entitling the domain name owner to protection pursuant to article 29 in Industrial Property Law no. 6769 which states, *“The following actions shall constitute a trademark infringement: (a) Using*

the trademark as described in article 7 without any permission of the trademark owner”. As a result, a domain name owner that has a trademark comprised of a domain name can seek remedy in the following situations if their permission is not obtained:



- Using any mark that is the same as a registered trademark to provide the relevant registered goods or services;
- Using any mark that is identical or similar to a registered trademark or that covers goods or services that are identical or similar to the goods or services of a registered trademark, thus posing the risk of confusion with the registered trademark, including the creation of any association with it;
- Using any mark that is identical or similar to a registered trademark to make a profit off the registered trademark's reputation by benefiting from its recognition in Turkey, regardless of whether the mark concerns the same or different goods or services, or to damage the registered trademark's reputation or distinctive qualities, without any justification.

3. Remedies in Domain Name Disputes

3.1. Claim For Interim Injunction

Domain name owners can sometimes prefer alternative remedies due to the length of proceedings. They can request interim injunction since a threat might turn into actual damage, or an existing damage might escalate during a lawsuit.

The domain name owner may request interim injunction from the competent jurisdiction during or before filing one of the lawsuits below. Here, the court will evaluate the actual or possible damage arising from a domain name infringement before deciding on interim injunction. In fact, the court will order interim injunction only if the determination of entitlement to a right is difficult, completely impossible or subject to a delay, which would, therefore, result in actual damages. The court can order the following interim injunction measures (note that the case's special circumstances are decisive in this regard):

- Ban on the use of the disputed domain name on social media or in advertisements,
- Ban on taking any judicial actions with the disputed domain name,
- Prevention of the disputed domain name's registration abroad,
- Ban on using the disputed domain name in any document.

3.2. Declaratory Judgment Actions in Infringement Litigation

If a domain name owner becomes aware that their domain name is used by another person in the same manner or with minor changes, they can take a declaratory judgment action against the alleged infringement pursuant to article 106 in Code of Civil Procedure no. 6100, which states *"A declaratory judgment action is brought to affirm the existence or non-existence of a right, legal relationship, or fraud."* With this action, a domain name owner can request declaratory judgment by claiming that their domain name is used fraudulently by another person.

Turkish Commercial Code stipulates that a declaratory judgment action can be commenced to determine the existence of an anti-competitive practice, which is stated in article 56 of the Code as follows: *"(1) A person whose customers, credit rate, professional reputation, commercial activities, or other financial interests are damaged or may suffer damage due to an anti-competitive practice may: (a) request declaratory judgment on whether the practice is illegal."* However, while the declaratory judgment action regulated in the Turkish Commercial Code can be commenced as a separate case before claiming any compensation, the same is not applicable in declaratory judgment actions regulated in the Code of Civil Procedure. When the characteristics of a case allow for the filing of a compensation claim, the Code of Civil Procedure impedes any court hearing for declaratory judgement.

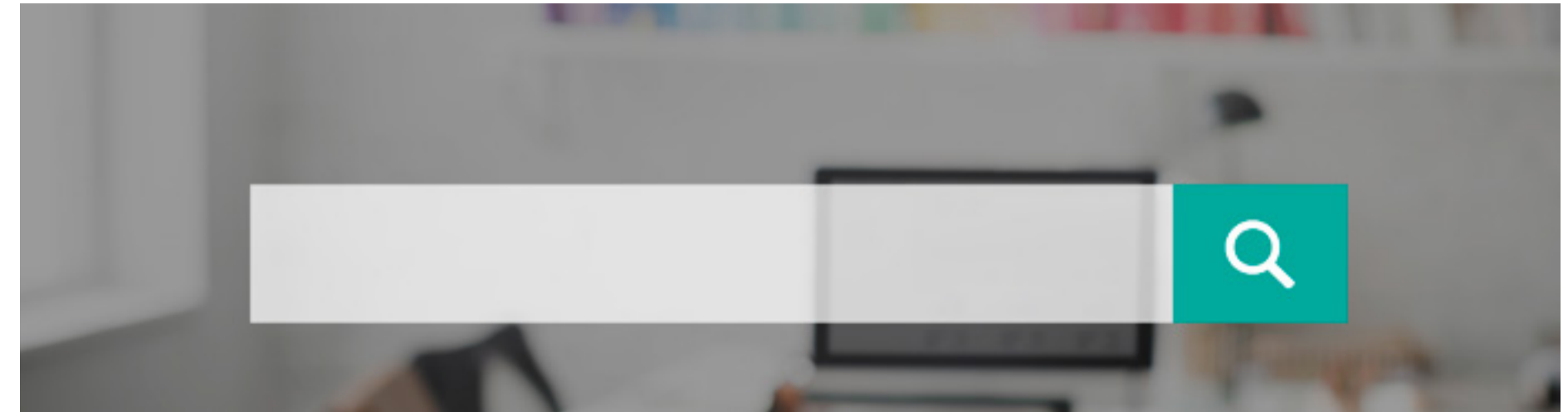
We have already mentioned that the Industrial Property Law is relevant in domain names registered as trademarks. Likewise, for domain names having the quality of a trademark, article 149 in Industrial Property Law states, “(1) *The rightful owner, whose industrial property right has been infringed, may claim the following from the court: (a) determination of whether the relevant action is illegal.*”

3.3. Action for Prevention of Infringement

If a domain name owner becomes aware that their domain name is used by another person in the same manner or with minor changes, they can commence a proceeding for the prevention of infringement to stop and/or prevent the infringement. However, this action requires a real threat that the infringement will take place or be repeated.

When a domain name owner brings an action for the prevention of infringement, they can request the cessation of the infringement or the prevention of access by the infringer, as well as a ban on the domain name’s use in legal proceedings or documents. Moreover, pursuant to the Turkish Commercial Code, a domain name owner can file a lawsuit regarding their domain name’s infringement in an anti-competitive manner based on the following article (article 56) in the Code: “(1) *A person whose customers, credit rate, professional reputation, commercial activities, or other financial interests are damaged or may suffer damage due to an anti-competitive practice may: (b) commence an action for the prevention of anti-competitive practice.*”

For preventing the infringement of domain names having the qualities of a trademark, Industrial Property Law stipulates the following in article 149: “(1) *The rightful owner, whose industrial property right has been infringed, may claim the following from the court: ... (b) Prevention of possible infringement. (c) Cessation of infringement. (ç) Re-*



moval of infringement and compensation for pecuniary and non-pecuniary damages.”

Thus, the domain name owner can eliminate a threat of infringement by commencing an action for the prevention of infringement.

3.4. Claim for Damages in Case of Infringement

Infringement of a domain name might decrease or affect the assets of the original domain name owner. Therefore, we can speak of the infringer’s anti-competitive practice in general and infringement in particular, both of which might cause pecuniary and non-pecuniary damages.

The domain name owner can claim for pecuniary and non-pecuniary damages arising from the infringement of their domain name based on article 49 in Turkish Code of Obligations no. 6098, which states, “*A person that has caused injury to another person with their fault or unlawful act shall compensate for the damages of the latter.*” The domain name owner should meet the following criteria to have the right to compensation:

- a) An infringement occurs when a perpetrator uses a domain name illegally and without permission. If a person uses a domain name to redirect web surfers from the intended domain to another website, we can speak of an infringement.
- b) A fault can occur in the form of an intentional or negligent act, and it needs to be evaluated based on the actual event. If the infringer knows that they are using the do-

main name without any rights thereto, there is intent. Sometimes, the infringer might be unaware of their illegal use of a domain name at first and learn about their infringement with a notification. In this case, if the person continues to use the domain name, we can speak of a case of negligence.

c) As for damages, the affirmation of an infringement requires a decrease in the assets of the domain name owner.

d) Causal relation: The decrease in the assets of the domain name owner must result from the actions of the infringer.

If the distinctive function of the real owner is damaged due to the infringement of the domain name, there may be a violation of personality rights. In this case, the real owner of the domain name may also claim for non-pecuniary damages by stating that their personal rights have been damaged due to the infringement.

3.5. Alternative Dispute Resolution

Article 23 in Domain Names Regulation states, “(1) Domain name disputes may be resolved by dispute resolution service providers (‘UÇHS’) via alternative dispute resolution mechanisms”, which authorizes UÇHSs to resolve domain name disputes regarding the “tr” TLD. The Regulation authorizes the Information Technologies and Communication Authority, which published the Communiqué on Domain Name Dispute Resolution Mechanisms in the Official Gazette of 21 August 2013.

A domain name owner, i.e. the claimant in the Regulation, can apply for the transfer or removal of a domain name and for dispute resolution via the webpage of UÇHS in the following cases:

- The disputed domain name is similar or identical to a trademark, trade name, busi-

ness name or other distinctive marks owned or traded,

- The party using the domain name does not have a legal right to or connection with the domain name,
- The domain name is assigned or used in bad faith.

To be able to say that a domain name is assigned or used in bad faith, the following conditions must be met pursuant to article 19 in the Regulation:

- The disputed domain name has been assigned to the claimant who is the owner of the relevant trade or service mark, trade name, business name or person name or other identifier, or to a competitor of the complainant for the purpose of sale or transfer in exchange for an amount exceeding the documented registration and investment costs of this domain name;
- The disputed domain name has been assigned to prevent the owner of the relevant trademark, trade name, business name or other identifier from using the trademark, trade name, business name or other identifier in the domain name;
- The disputed domain name has been assigned to damage the business or the activities of competitors;
- The disputed domain name is used to confuse web surfers by establishing a similarity to the trademark, trade name, business name or other identifier of the claimant to make a profit by redirecting the web surfers from their intended webpage to the webpage of the infringer or to any other webpage.

The claimant’s application must specify whether the dispute will be resolved by an arbitrator or a committee consisting of three arbitrators. The claimant must also specify the following in their application to UÇHS: the contact information of the claimant or their authorized representative, the disputed domain name, any information and documents supporting the request for removal or transfer of the domain name, the reasons for the

application, not exceeding five thousand words, and whether there is any court file related to the disputed domain name. Following the application, UÇHS will return to the claimant within one business day regarding the confirmation or rejection of the application. The claimant cannot make another application for the same domain name.

If UÇHS accepts the application, the disputed domain name is immediately notified to the “tr” network information system and the relevant Registration Authority, and UÇHS announces the matter on its webpage and freezes the disputed domain name.



CONCLUSION

Technology affects every aspect of our lives, including disputes over domain names. The first remedy that comes to our minds for dispute resolution might be filing a lawsuit; however, we must consider the length and cost of legal proceedings. Therefore, the Domain Names Regulation offers the alternative dispute resolution mechanism as a more convenient remedy. However, a person can only request the transfer or removal of a domain name in this alternative dispute resolution mechanism, without claiming for damages. As a result, a domain name owner may still wish to file a lawsuit to bring an action for damages.

Sincerely,

AN OVERVIEW OF INTERNATIONAL INTELLECTUAL PROPERTY LAW AND SALVADOR DALI CASE

Human beings are the only creatures with the ability to think and appeal. We first produced cave paintings, which testified to our mental and intellectual capacity. As of today, our creative works continue to shape every aspect of our lives. Our need to have legal protection for our creations led to the emergence of a new field of law: intellectual law. A conflict is unlikely to arise when a person creates an academic work and keeps it to themselves since, in this case, the result is under the control of its author. Here, the intellectual effort will be found in the place of creation. However, if third parties discover this work, which can also become known worldwide, a conflict may arise soon in substantive law and international private law.

The fundamental principle in intellectual property law is territoriality (also known as *Principe de la territoriality and Territorialitätsprinzip*). This principle suggests a close relationship between intellectual property and its country of origin, establishing boundaries for the validity and the impact of intangible assets. In this framework, the law of the country of origin, i.e., where protection is claimed for intellectual property, has exclusive authority over the existence, emergence, content, and termination of intellectual property rights. That country is called “*lex loci protection*,” which signifies the country’s law of protection. As a result, all the matters relevant to intellectual property are subject to the direction of the country where the security is claimed, including the following: when and how intellectual property arises and is protected; when intellectual property is deemed to have been infringed; how intellectual property is registered and exploited; and how intellectual property terminates.

Since each nation has its intellectual property regulations, we encounter variations worldwide, which damages both the economy and competition. For instance, the European

Union members differ in their intellectual property legislation about the subject, scope, protection period, protection conditions, and the manner of exercising rights, which may harm the goals of the European single market. The results might also be detrimental to internal competition and the free movement of goods and services.¹ Therefore, many conventions have been drafted worldwide to eliminate such differences and ensure harmony in intellectual property law. We can say that technological advances have made it impossible to find intellectual property in one place at a time since such creative works are concurrently available in various areas, or even everywhere, around the world,

which is referred to as **ubiquitousness** of intellectual property. As such, intellectual property law differs from other fields of law. Due to its comprehensive coverage, intellectual property is highly likely to be infringed. International law aims to prevent having different outcomes in intellectual property infringements as much as possible. The parties to these international conventions mainly provide similar or even identical types of protection due to their international obligations.

The repealed International Private and Procedural Law no. 2675 (“MÖHUK”) contained no special provision regarding intellectual property rights.

Disputes were settled according to article 24 in **MÖHUK**, with requirements applicable to contracts. However, MÖHUK no. 5718 introduced special conditions on intellectual property.

The territoriality principle requires, almost as an extension in private international law, that all regulations and international conventions regarding intellectual property protection adhere to “*lex loci protectionism*.” Therefore, the principle of *lex loci protectionis* ruled in disputes involving foreign elements concerning intellectual rights.

When a dispute involves a foreign element, we should first inquire whether an international convention or treaty is relevant to the subject in question. There are conventions and treaties on various types of intellectual property. However, the rule seen in all traditions concerning intellectual property protection is “*lex loci protectionism*.” The conventions suggest that states’ conflict of laws will be applied without establishing different binding rules. The traditions obligate countries only to regulate their own “*lex loci protectionism*.”

For instance, let us assume that a patent in England protects an invention of a British inventor. Suppose this inventor later discovers that their story is used in Sweden without permission. In that case, whether an infringement has occurred in Sweden will be resolved based on the presence of a Swedish patent under Swedish law. If Sweden has not granted any patent for the same invention, the English inventor cannot request protection. The reason is that intellectual property is protected under the law of a country only if that intellectual property is recognized in the direction of that country, meaning that intellectual property is covered only within the borders of the country that recognizes it under its law.²

¹ Ayşe Saadet, ARIKAN, Avrupa Topluluğu’nda Fikri-Sınai Mülkiyet Hakları ve Son Gelişmeler, Ankara Avrupa Çalışmaları Dergisi, C.7, No:1, 2007, s.151.

² Cemal, ŞANLI, Milletlerarası Özel Hukuku, Vedat Kitapçılık, 5th edition, İstanbul 2016, pp.247.



I. International Conventions & Treaties

We may argue that intellectual property law is a law of conventions. The development level is typically regarded as being directly related to the country's intellectual property legislation and protection. The developments in the world order, economy, competition, and technology have always attempted to move beyond what has been feasible up to that point, with conventions being amended over time to adapt to changing conditions. Intellectual property law concerns both industrial and intellectual rights. Industrial rights are protected under the Paris Convention of 1883, while copyright is protected under the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886. The Berne Convention is the first regulation in the field of copyright. Even though various conventions and treaties were drafted later with more specific intellectual property rights, the ways above constitute the basis of the area of intellectual property. The states that are party to these conventions have incorporated these fundamental principles into their respective laws.

A country must take whatever action is necessary to protect intellectual property. For instance, industrial rights need registration, whereas intellectual rights require “public disclosure” in the relevant country or in countries that are party to the international conventions to which that country is a party. Therefore, when someone publishes original



work in a country that is a party to the Berne Convention, they get protection in all the countries party to the convention under the law of the respective land.³ These countries arguably signed these conventions to prevent the territoriality principle from harming the economic goals and the integration of the European Union, thus prioritizing the focus of regionalism over the territoriality principle. Otherwise, the member states would not be able to ensure the existence of different types of protection and national regulations along with the uniformization and the free movement of goods and services, the harmonization of legislation, and the social, social, commercial, and economic integration across the European Union. The Treaty of Rome establishing the European Economic Community did not regulate intellectual property in detail. Therefore, the Court of Justice of the European Union had to resolve the relevant disputes, which resulted in the issuance of many principles, recommendations, and case laws on intellectual property.

³ See. ARIKAN, pp. 156.

No field of law has accumulated as many international conventions and doctrines as in the area of intellectual property. International conventions are nothing but a reflection of the principles adopted in the respective laws of the signatories that had interests in their enforcement.

As a result of the territoriality principle, the law of the country that provides protection also exclusively determines whether particular work is intellectual property to be protected and, if it is, how it can be categorized (e.g., whether software should be considered copyright or an invention). Still, there are international guidelines to decide whether a work can be regarded as intellectual property (i.e., whether it is intangible).

Under article 5/1 of the Berne Convention, the member states grant each other's citizens the same type of protection provided under their respective laws (i.e., the principle of reciprocity). The focus of exchange requires foreigners and

citizens to be treated equally and benefit from the same types of protection (i.e., the code of equal treatment).

The Berne Convention also establishes minimum standards (certain conventions), which concern the author's moral rights and right to authorize and prohibit their work's translation, reproduction, broadcast, representation, broadcast, and representation in radio and adaptation. We may illustrate the benefits of minimum standards established by the Convention as follows: If a British person wishes to reproduce and protect their work in Germany but thinks that the German law does not provide sufficient protection for these purposes, they may benefit from the minimum standards in the Berne Convention and claim that their level of protection should be at least equal to the one established in the Convention. These minimum standards are available in international conventions such as the Paris Convention, the Berne Convention, and the Madrid System, which only allow foreigners to benefit from the relevant provisions. The purpose is to oblige the parties to these conventions not to lower the extent of rights in their national regulations below those in international conventions, thus protecting their citizens' rights.

Similar to article 5/1 in Berne Convention, article 2/1 in Paris Convention regulates the principle of reciprocity for industrial rights.

The Paris Convention and the Berne Convention differ from other international conventions in that they establish a contractual relationship between the signatory states and create a legal entity called the "Union" consisting of committees, the assembly, and an international court to settle disputes. The parties to these conventions signed the Convention Establishing the World Intellectual Property Organization ("WIPO") in Stockholm in 1967. The organization aims to ensure cooperation among associations established for intellectual property law, work on new conventions, support developing countries in relevant issues, and lead other countries to harmonize and modernize their legislation.

However, these conventions do not establish different standards than the ones in national laws.

Another essential standard in this field is the TRIPS Agreement included in the World Trade Organization's establishment agreement. This agreement concerns commercial matters with more comprehensive clauses than the Paris Convention and the Berne Convention, making it the most comprehensive international understanding of intellectual property. Referring to the Paris and Berne Conventions, TRIPS Agreement also provides guidelines and establishes minimum standards that countries must comply with when drafting their legislation. The TRIPS Agreement abolishes the distinction between intellectual property (copyright) and industrial property, extending the scope of intellec-

tual property to cover both concepts.

Shortly, various international conventions on intellectual property have been and continue to be amended based on the latest developments. Due to its "ubiquitousness," intellectual property is quite likely to be infringed by third parties due to its "ubiquitousness." The international conventions adopt the rule of "*lex loci protectionis*" to ensure unity and harmonization regarding intellectual property protection and fair competition through free trade of goods and services across the contracting parties. They impose relevant obligations on the signatory states that established international organizations such as WIPO to help developing countries in this regard and to ensure their compatibility and modernization in terms of legislation.



II. Laws Governing Intellectual Property Agreements

Article 28 in MÖHUK regulates the rules applicable to intellectual property agreements. These agreements concern the transfer of intellectual property rights or the authority to use them or impose such a transfer obligation. Article 28 in MÖHUK empowers the parties to choose their governing law according to the party autonomy doctrine, which resembles the freedom of contract in the direction of obligations. The parties to intellectual property agreements can freely choose their governing law since there is usually no protection of the weaker party. If the parties do not select a governing law for their intellectual property agreements, they are obliged by specific binding rules. Since intellectual property is subject to the relevant protection principles for a wide range of issues, the choice of law only determines those acts that create obligations. According to the dominant doctrine, constitutive transactions are governed as per the relevant agreement,

while dispositive transactions are subject to the country's law providing protection. We should note that know-how license agreements do not specify any rule of a particular jurisdiction that gives protection; therefore, they are governed by the relevant agreement only.

Suppose parties to an agreement do not choose their governing law. In that case, their contractual relationship is construed by the direction of the current work of the party transferring the intellectual property or its license, or if such a place does not exist, by the party's habitual residence. However, in any case, there is an exception, i.e., the avoidance doctrine, which stipulates that if there is a law that is more applicable to the agreement in question, the contract will be governed by that law. Article 28 in MÖHUK reminds article 24 in MÖHUK in that the governance of specific acts is not left to the judge but the applicable law.

III. Opinions on Choosing Law Applicable to Copyright: Salvador Dali Case

Copyright agreements imply a close relationship between constitutive and dispositive transactions (right to transfer) included in the respective copyright agreement. In these agreements, constitutive and dispositive transactions are united, or the agreement is combined with dispositive marketing, leading to difficulties in determining the applicable law. There is a doctrine that constitute actions, and dispositive transactions should be regarded separately for the law to be applied to cover transaction right, and that when the relevant contract governs the contractual relationship, the dispositive transaction should be performed as per *lex rei site* (law of the place where the goods are located) under article 21 in MÖHUK or as per *lex loci protectionis* pursuant to article 23 in MÖHUK, similar to the property law. The doctrine debates whether the liability arising from intellectual property infringement should be construed by the direction of the place where protection is claimed (*lex loci protectionis*), of the country of origin (*lex loci origins*), of the area of tort (*lex loci delicti*), of the extent of damage, and the land of the habitual residence of the author or the perpetrator. Another debate is whether article 23 in MÖHUK implies that the provision is only applicable in the case of intellectual property infringement. In contrast, other issues (such as the creation, content, transfer, and termination of the right) will be subject to *lex rei sitae* (article 21 in MÖHUK), which is the law of the place where



the request is created, transferred, or terminated. However, especially the last debate is no longer valid since article 23 in MÖHUK (*i.e. lex loci protectionis*) governs intellectual property infringements and all other matters relevant to intellectual property. International conventions establish only minimum standards and obligations in this regard and allow countries to apply their respective laws.

To illustrate how foreign laws tackle the choice of law applicable to agreements on the transfer of copyright, we can give an example from the case of the painter named Salvador Dali. Especially in copyright agreements, constitutive and dispositive transactions are sometimes difficult to be differentiated, which might cause problems in determining the applicable law.

Following Salvador Dali's death, some disputes arose regarding the copyright of his works, which were heard first in the Supreme Court of Japan and later in the Court of Justice of the European Union.

IV. Decisions of The Tokyo District Court And The Supreme Court of Japan

The plaintiff agreed with Salvador Dali on the transfer of copyright in 1986, whereas the defendant exhibited Dali's works in the exhibition in October 1988 and 1999. Salvador Dali passed away in 1989.⁴ Catalogs containing the results displayed in the show were put on sale, featuring Dali's works. Consequently, the plaintiff filed a lawsuit for compensation and action negatory based on their rights to the exhibition, reproduction, and publication of Dali's works. The plaintiff claimed that they had vested interest in Dali's works under their agreement concluded with Dali in 1989. In its decision of 29.08.2000,

⁴ Hatice, Selin, PÜRSELİM, Milletlerarası Özel Hukukta Eser Sahibinin Ölümünden Sonra Telif Hakları, Sanatçı Salvador Dali ile İlgili Tokyo Yüksek Mahkemesi'nin ve Fransız Mahkemesi'nin Kararları, pp. 250.

Tokyo District Court regarded the agreement as a transfer agreement concerning all of Dali's copyright, applied the Japanese law (*i.e., lex rei site*), and found the plaintiff's claims justified.

On the other hand, in its decision of 28.05.2003, the Supreme Court of Japan first categorized the agreement between the parties. It regarded the parties' transfer agreement as a contractual obligation and determined the law applied to the agreement under Japanese law. While agreeing, the parties chose Spanish law as their governing law. Japanese law prioritizes the party autonomy doctrine in contractual relations; therefore, the Supreme Court ruled that the agreement should be governed by the parties' chosen law, i.e., Spanish law. Under the Civil Code of Spain, the agreement between the parties terminated with the death of Salvador Dali. As a result, acknowledging the provisions of Spanish law, the Supreme Court of Japan dismissed all the plaintiff's claims on the grounds of the termination of the contractual relationship.

Even if the court regarded the case as a contractual relationship, the defendant still needed authorization from the Gala-Salvador Dalí Foundation in Spain to hold exhibitions and other activities because of Salvador Dali's will 20.09.1982, which donated all his assets to the Spanish state after his death. Every work exhibited and sold is owned by the Spanish state. The plaintiff claimed that the copyright was transferred to them following their transfer agreement with Dali. However, Dali also agreed to share all his copyright with the Gala-Salvador Dalí Foundation after his death. This matter was brought before the French court.

Dali chose the governing law of his will as the French law. One year after writing his will, Dali established a foundation called Gala-Salvador Dalí Foundation, founded in Spain under Spanish law. This foundation controlled the rights transferred by Dali. The foundation had difficulty collecting copyright royalties; therefore, it established a chain and started collecting the royalties through different institutions. It authorized an institution called

VEGAP (*Visual Entidad de Gestion de Artistas Plasticos*) to be the competent authority in matters related to Dali's copyright. VEGAP was obliged to provide the collected royalties to the Foundation. This institution was also founded under Spanish law. However, VEGAP was insufficient to contain all royalties by itself; therefore, the Foundation established another chain called ADAGP (*Societe des auteurs Dans Les arts graphiques et plastiques*) in France, which would transfer the royalties collected in France to the Foundation through VEGAP. ADAGP was exclusively responsible for the copyright royalties collected in France. The Foundation also established other centers to collect royalties in other countries, which would also transfer their income to the Foundation, as in the case of ADAGP in France. When Dali died, he had five legal heirs. However, he did not mention them in his will and left all his assets to the Spanish State.

The arising dispute was as follows: ADAGP had the task of transferring the copyright royalties collected in France to the Gala-Salvador Dalí Foundation via VEGAP. At a certain point, Dali's works were resold in France. However, ADAGP sent the ensuing income not to VEGAP but the five heirs, allegedly on French Intellectual Property Code grounds. ADAGP stated that they acted based on the provision that copyright should be under the author's control and, after their death, of the heirs for 70 years. French property law stipulates that the right to resell the deceased's works passes to the heirs and cannot be transferred to other persons and institutions by will, meaning that the right of resale cannot be granted to persons other than legal heirs through a choice.

V. Decisions of The Court of Paris and The Court of Justice of the European Union

The Gala-Salvador Dalí Foundation and VEGAP filed a lawsuit against the five legal heirs at the Court of Paris on 28.12.2005. The plaintiffs claimed that the case should be construed by Spanish law. The Court of Paris considered a directive issued in copyright law,

namely the “*Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art*”. It transferred the case to the Court of Justice of the European Union to rule whether the French regulation was in violation of the directive and whether the five heirs of Dali could be granted with the resale right. The Court of Justice handed down its decision as a preliminary ruling because it had no power to determine the governing law. Shortly, the Court of Justice found that the ADAGP acted by the articles of the Directive. Since the French Intellectual Property Code and the European Union directive were compatible, the Court of Paris referred to the French law. It ruled that ADAGP was right in transferring the income collected in France to Dali's five legal heirs and not to VEGAP and the Gala-Salvador Dalí Foundation. The Court stated that the resale income would be sent to the heirs. In contrast, other payments would be sent to the persons and institutions authorized by the will, dismissing the plaintiffs' claims and not specifying the conflict of law provisions it applied in its decision.

The Court of Paris enforced the French law without offering any grounds concerning the conflict of laws. Under French inheritance law, disputes are governed by the direction of the deceased's last place of residence, meaning Spanish rule in the case in question. Meanwhile, the Spanish law stipulates that the dead's national law will be taken into account in an inheritance dispute, which makes the Spanish law the governing law in this case. **However, in the case in question, the Court of Paris did not enforce the French inheritance law and evaluated this dispute as a copyright claim. Therefore, under intellectual property law. As a result, the Court referred to the country's direction that provided protection, i.e., the French law, based on the territoriality principle. The court regarded the case as an intellectual property dispute from beginning to end and did not refer to the contractual relationship between the two institutions (VEGAP-ADAGP and Gala-Salvador Dalí Foundation).**

VI. Conclusion



In conclusion, we can say that the field of intellectual property law has been subject to various conventions across the world, turning it into a direction of ways. The fundamental conventions are the Berne Convention for the Protection of Literary and Artistic Works (copyright) of 1883, the Paris Convention for the Protection of Industrial Property, the World Trade Organization's TRIPS Agreement, which eliminates the dual distinction of intellectual and industrial property and adopts a unified intellectual property law terminology as the most comprehensive international convention in this field. The Universal Copyright Convention, which led to the establishment of WIPO, currently has 193 members. These conventions

do not propose different rules, agreeing that disputes must be governed by the law of the country where protection is claimed (*lex loci protectionis*), after evaluating other points that will ensure unity and harmony, free movement of goods and services, and fair competition. They establish minimum standards for intellectual property protection and impose obligations on countries to regulate their legislation accordingly. Today, we can say that both national and international doctrine acknowledge and enforce the rule of *lex loci protectionis*.

Our legislation in force prioritizes the party autonomy doctrine for choosing the law to be applied in intellectual property agreements, stipulating that this law will be applicable if the parties have selected a rule. Otherwise, the provisions specified in the second paragraph will govern any disputes.

Sincerely,



THE RISE OF DIGITAL GAMES AND ITS IMPLICATIONS FOR TURKISH LAWS



Video games have been around almost half a century; however, their maturation dates to the 2000s when the widespread use of the Internet replaced console gaming with PC gaming. The growing popularity of mobile devices made it possible to play video games at home or in arcades and even ride the subway, which boosted the number of gamers. As the worldwide pandemic continues to transform all social dynamics, the number of people and age range in the digital game industry increases daily.

The video games industry is dynamic and transformative with innovative business models. Technologies and consumer tendencies gradually changed, resulting in a global market with various segments, including console games, PC games, online games, and mobile games. According to Newzoo Global Games Market Report 2021, the global gaming market reached \$180.3 billion in revenue with an increase of 1.4% compared to the previous year. In 2020, the pandemic skyrocketed the mobile gaming market to reach \$77.2 billion while the audience demographics changed from a particular group of people to a much more diverse population. The number of players continued to increase

through 2021, reaching 3 billion players with an increase of 5.33%.¹

Turkey has been making a name for itself as a hub for mobile gaming startups, with Zynga acquiring Turkey's Peak Games for \$1.8 billion last year, the first Turkish unicorn, and then following it up with the acquisition of Rollic Games for \$168 million. There are nearly 600 active video game companies in Turkey, with ongoing local and global investments. In contrast, the industry is supported by private programs and public funds, universities, and incubation centers. As 59 video game companies received venture capital investments in 2021, the total volume reaching 355 million dollars can be considered a sign that the industry will develop further.²

All these changes resulted in broader stakeholder engagement. Online gaming sites and Internet service providers joined game developers and end-users in the video games industry. Advertising revenue expanded the range and the market share of video games.

The evolution of stakeholders and technologies causes the industry to affect different fields of law. Video games are computer software protected under the Law on Intellectual and Artistic Works ("the Law"). Only some game components are considered copyrightable, and the game's presentation can be copyrighted as a literary work or dramatic work. In contrast, elements like character design, art, sound, and music can also be copyrighted that create value. Considering the international jurisdictions, digital games in different countries are considered computer programs because they are software, but when evaluated with the flow of the scenario within the scope of the game, they can be accepted as cinematographic work. If the visual and auditory elements have artistic work quality, they can be protected under the Law on Intellectual and Artistic Works.

¹ Newzoo, Global Games Market Report, 2021

² KPMG, KPMG Perspektifinden Oyun Sektörü ve Sektörde Öne Çıkan Birleşme ve Satın Alma İşlemleri, January 2022

We need to consider that all the participants, such as game developers, licensors, and players, can have intellectual property rights if they have interactive contributions.³

Video game developers have business relations with different parties, including video game designers (an individual or a company), distributors, and online payment systems that are subject to advertising agreements; the Turkish Commercial Law should consider sponsorship agreements. It is forecasted that mutual growth momentum will be gained in the cashless payment sector, especially with companies that offer payment interfaces for games such as Apple and Google Pay in the recent period. The game industry, which is seen as the fastest implementer of technological developments, continues to grow by including the fields of metaverse, cryptocurrencies, and NFT. While collectors are interested in video game NFTs, which is quite notable from digital property aspects, it is known that in blockchain-based play-to-earn games, players can earn real income according to the amount of time and effort they spend. We witness the creation of a billion-dollar business where gamers sell the items that they create or purchase in exchange for cryptocurrencies, thus making real money. South Korean regulators have banned NFT-applied games in the country on concerns these new services could fuel gambling addiction among teens and demanding the removal of existing ones from the Apple and Google app stores, showing that the gaming market will cause new legislation to be enforced in the future.⁴

Video game developers and gaming startups must consider their rights in video games and the applicable compliance procedures during their incorporation, product development, launch, and investment processes. They must fulfill their obligations concerning data security and personal data protection in platforms involving gamers' individual or

³ Türk Hukukunda Dijital Oyunların Korunması, Gör. Abdullah Harun Ataşlar, İlkin Ülgen

⁴ <https://tr.sputniknews.com/20211231/guney-kore-nft-tabanlı-oyunlari-yasakliyor-1052293289.html>

collective participation and other obligations arising from interpersonal relationships in interactive games under the Turkish Criminal Code. They must abide by the consumer law, the labor law, and the antitrust law while drafting license agreements, distribution agreements, purchase agreements, labor agreements, etc., during the whole process from incorporation to investing.

Turkey will indeed regulate its video games industry as a global industry player. Therefore, the sector's entrepreneurs, SMEs, and investors must pay attention to protecting intellectual property, in-game items, and gamers' rights while following the relevant legislation and amendments.

İclal Arguç Demirtaş

Head of Technology Department





A DIFFERENT PERSPECTIVE ON WOMEN'S EMPLOYMENT



It has been more than two centuries since the Industrial Revolution in the 18th century which marked the beginning of female labor force participation. However, women still face challenges at work.

Surely, there have been various improvements in women's physical working conditions and legal rights, as well as public opinion on women's employment. Nevertheless, women still lag behind men in terms of wages and career progression.

Working women tend to experience work-family conflict, having trouble in balancing the demands of both domains of life.

This conflict often arises from women's

traditional gender roles regarding home, family, and children.

Moreover, "positive discrimination" in favor of women at many workplaces may not suffice to solve these problems. In fact, as ruthless competition at work forces people to overwork, women working long hours also stress over their duties at home. To be fair to men, they also suffer the consequences of today's overwork culture. However, women bear a heavier burden since they are also expected to devote time to housework and childcare.

Today, women encounter many challenges at work, which might be solved in due time with effective implementation of cur-

rent and new regulations, along with the help of trade unions and NGOs. Nevertheless, women are exposed to problems that are more difficult to solve, such as traditional gender roles that they undertake voluntarily or desperately.

It seems that women's work-related issues will not disappear soon. Despite being enforced with good intentions, positive discrimination is not the answer to these challenges. The only solution is gender equality, which can be achieved if women learn to think differently about traditional gender norms. In this framework, women need to "share" family demands with men, rather than undertaking all of them "voluntarily". Surely, gender equity requires the mutual efforts of women and men. Women should not sacrifice or be forced to sacrifice their career for family life. They must be able to balance their family and work life, make their own decisions regarding career progression, focus on their goals, and force their limits without surrendering. Women should not be the only party to make compromises in case of an unexpected family situation. Family decisions must not be taken based on the assumption that the woman will be the one to experience career interruption. For this, women should not perceive their work only as a means of supporting the family, but respect their work and profession.

In fact, most industries look for female employees who have adopted this perspective and shaped their family life accordingly. Therefore, being a woman does not have to be a barrier to work life. The real barrier is using femininity as an excuse, or suffering from a misperception of incompetence.

Thus, women must first stop settling for the social norms of security and happiness in family life, and instead view their work as a self-expression of an independent and free being.

Güzin Şengün, Attorney

WORLD INTELLECTUAL PROPERTY DAY 2022: INNOVATION FOR A BETTER FUTURE



The World Intellectual Property Organization (“WIPO”) established the World Intellectual Property Day on 26 April 2000 for the day to be observed annually to raise awareness about intellectual property rights and encourage creativity and innovation. WIPO celebrates the day with a different theme each year, and this year’s theme is “IP and Youth Innovating for a Better Future.”

We can stimulate innovation only in a secure atmosphere where legal rights are safeguarded against infringements. Therefore, we need an ecosystem that protects intellectual and industrial property rights to drive innovation and entrepreneurship, develop value-added products, and protect and commercialize scientific research and its outputs. We should underline that intellectual and industrial property rights are not limited to patent and trademark applications since industrial design and copyright are critical elements of technological progress.

To distinguish between intellectual property rights, copyright, and industrial property

rights, we can offer the following distinctions: Intellectual property is an intangible asset arising from an innovative idea. Copyright concerns scientific (including software), literary, artistic, musical, and cinematographic works, whereas industrial property rights refer to patents, utility models, designs, trademarks, and geographical indications.

An intellectual property right allows an inventor or author to commercialize their work for a limited period and prevent others from utilizing it without their permission. Intellectual property protection encourages innovation and economic growth in liberal markets with fierce competition.

In Turkey, patent and trademark applications have increased over the last fifteen years, establishing the essential legal structure and the government’s awareness-raising activities and incentives. As a result, we can rejoice at launching various value-added products that have stimulated the national economy.

Other improvements are likely to follow with the everchanging technologies of the digital age, which encourage new generations to transform their ingenuity and creativity into innovative products. Suppose young innovators, designers, and entrepreneurs wish to transform their ideas into reality and contribute to building a better future. In that case, they must protect their rights and manage the relevant processes properly. Being committed to raising the awareness of both institutions and individuals about intellectual property, WIPO aims to engage a wider audience by celebrating World Intellectual Property Day. Turkey’s WIPO membership since 1976 helps it have an active role in the international system and raise awareness about intellectual property rights, thus stimulating future innovation.

We celebrate the World Intellectual Property Day of all people working in the related areas with WIPO’s 2022 theme that praises the youth’s ingenuity and creativity. We are happy to support innovation and productivity to drive action for a better future.



SANCTIONS ON RUSSIA – REVIEW OF THE NEW UK AND EU SANCTIONS



Companies must understand sanctions imposed by the UK and the EU on Russia and Belarus, especially following the crisis between Russia and Ukraine. Financial sanctions usually target foreign governments, companies, groups, organizations, industries, and individuals in compliance with the Safety and Security Services at the United Nations.

Earlier in February, Britain drafted The Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (“the Russia Regula-

tions”), thus taking measures for the current situation in Ukraine. The Russia Regulations implied sanctions against persons and organizations associated with the Russian government, thus empowering the British government to impose such sanctions directly. Some of the financial sanctions suggested by the Russia Regulations are as follows:

- Asset freezes; and restrictions on funds and/or financial assets to be used in favor of companies and persons associated with the Russian government;
- Restrictions on transferable securities or money-market instruments issued by the Russian government, persons associated with the Russian government, or Russian institutions;
- Restrictions on granting or entering into arrangements to grant loans or credit to persons associated with Russia, the Russian government, and some other institutions.

The persons and companies designated in the Russia Regulations include transactions by British citizens and businesses incorporated under British laws, as well as transactions on the London Stock Exchange, and by local businesses associated with British

companies. Therefore, companies that may be subject to sanctions must be careful in this respect.

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DIGITALIZATION OF LAW FIRMS IN FRANCE IN 2022

“**COM’SG**”, an association constituted of Executives and Secretary Generals of law firms specialized in corporate law, and “**Day One**”, a management and organizational consultancy firm dedicated to the legal professions, carried out a study on the “digitalization of law offices”.

According to the research conducted by **COM’SG & Day One**, even if law firms specialized in corporate law in France have made crucial progress in terms of digitalization in the last 5 years, the progress remains insufficient.

The results of the research has enabled to identify the current digital trends in

law firms regardless of their area of expertise and their size which are as follows:

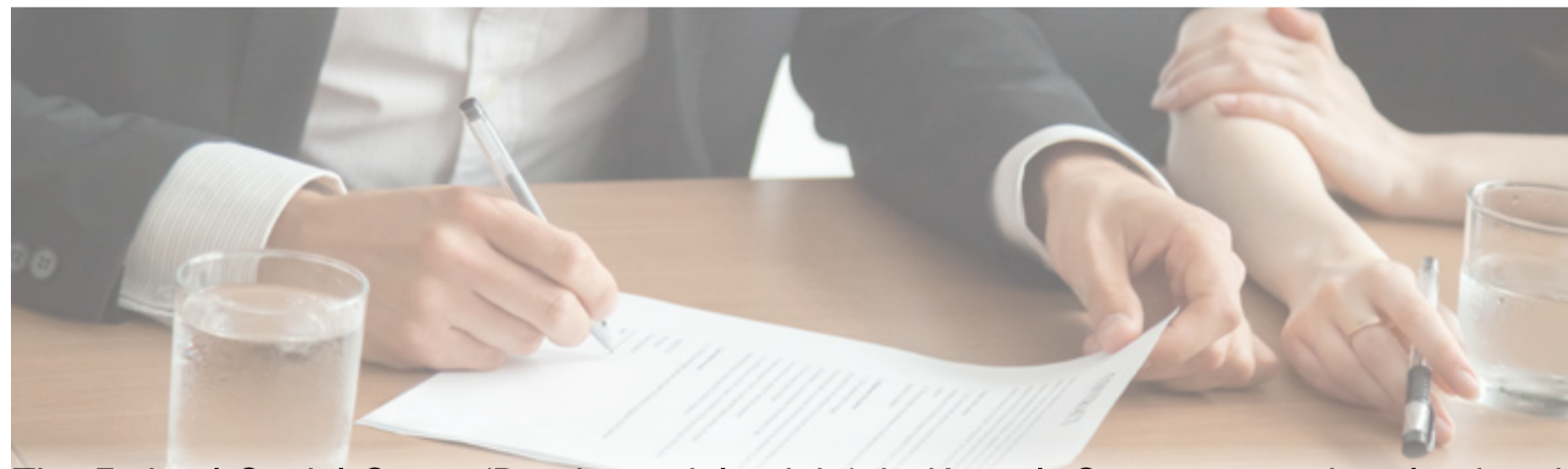
- Management processes are more digitalized than production processes
- The smallest firms are ahead in terms of the digitalization of production
- One firm out of 3 firms have their data in the cloud, however cybersecurity has to be strengthened
- Office 365 is used/ has become standard for 94% of firms
- Firms’ level of satisfaction with their business tool is very mixed. The bigger the firms are, the less the ERP tools meet their expectations. In this regard, publishers need to strengthen and to meet the two prerequisites which are the intuitiveness and reliability.
- 4 out of 5 firms outsource all or a part of the IS

- Firms are strengthening their digital resources: creation of Adhoc innovation structures, recruitment of dedicated functions (e.g. digital manager) or dedicated commissions, etc.
- On average, an IT resource manages just over 30 lawyers regardless of the size of the firm
- The % of turnover allocated to the IT budget is almost identical in law firms with less than 100 lawyers or more than 100 lawyers, (2% of the budget)

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IN GERMANY FALLING WHILE WALKING FROM BED TO WORK-BENCH IS CONSIDERED AS A BUSINESS ACCIDENT!



The Federal Social Court (Bundessozialgericht) in Kassel, Germany, made a landmark decision on occupational accidents.

Working from home, the plaintiff slipped down the stairs on her way from her bedroom to her desk in her home, resulting in a fracture of her back vertebrae. Body responsible for statutory accident insurance in Germany, The “Trade Union” (Berufsgenossenschaft Handel und Warenlogistik) refused to pay for the accident, arguing that it was not an oc-

cupational accident.

The court considered the plaintiff’s getting out of bed and walking towards the desk as going to work and evaluated the distance between them as the “work route covered by insurance”.

It was stated that if the accident occurred while the employee was going to the kitchen to have breakfast, then the incident would not be considered a work accident. It was pointed out that the decisive factor in making the decision was the “objective tendency to action” (objective Handlungstendenz).

BIDEN SIGNS THE EXECUTIVE ORDER OF DIGITAL DOLLAR AND CRYPTOCURRENCY!



There has been an important update that may cause a revolution the crypto markets, which is currently seen as the “wild west” of digital era. US President Joe Biden signed an order on March 9, 2022, which envisages the examination of cryptocurrencies and their emerging risks. While providing security for investors, the regulation includes fundamental issues such

as using innovation, ensuring financial stability, protecting the position of US in the competitive market, preventing illegal activities, and promoting responsible innovation. In particular, stable cryptocurrencies indexed to the US dollar constitute the main subject of the order.

The Biden administration plans to “provide adequate oversight and protection against systematic financial risks from digital assets,” urging the Treasury to follow and contribute to crypto-related developments. Whether the US will issue its digital currencies soon is not yet clear.

After Biden signed the order on digital assets, the cryptocurrency Bitcoin gained more than 9 percent in the last 24 hours, reaching the level of 42 thousand dollars.

INSIDER BECAME TURKEY'S FIRST SOFTWARE UNICORN!



Turkish software company Insider has become Turkey's first software unicorn by receiving an investment of 121 million dollars.

Unicorn company refers to companies with a market valuation of over \$1 billion, while Decacorn company refers to companies with a market valuation of more than \$10 billion. While Turkey is welcoming its 6th Unicorn with Insider, there is also a decacorn like Trendyol. According to the 2021 reports, investments in the Turkish entrepreneurship ecosystem broke its record by increasing 9 times in the last year and supported the emergence of projects that will feed unicorns with a value exceeding 1.5 billion dollars.

Turkey's first unicorn was Peak Games with a valuation of 1.8 billion dollars. So much so that Peak Games is also called the 24th most valuable unicorn in Europe today. The company that follows Peak Games is Getir with a valuation of \$2.6 billion, and Turkey's first decacorn is Trendyol with a valuation of \$10 billion. In addition to being Turkey's 6th Unicorn, Insider has made a difference in its field by being the first company to become a unicorn after gaining so much value in the software field.

Under the leadership of Hande Cilingir, Arda Koterin, Okan Yedibela, Serhat Soyuerel, Muharrem Derinkök, and Sinan Toktay, 6 young founding partners, Insider is a Singapore-based Turkish software company.

Hande Cilingir, one of the founding partners of Insider, was selected as the 'Successful Female Entrepreneur of the Year' by Microsoft in 2016 and one of the three best female CEOs in the world outside the USA by Crunchbase in 2018. Hande Cilingir said, "We will use the investment we have received to accelerate our global expansion and improve our technology. We aim to create more than 2,000 new jobs in the next four years. Employing female engineers will be one of our priorities" and shared the company's targets with the public.

An insider had strengthened its position in the software industry by being selected as Turkey's most successful start-up for 4 consecutive years due to its export of technology from Turkey to the whole world. In the past years, it has completed

the Series B and Series C rounds from Sequoia Capital and received an investment of 32 million dollars, and with its last investment, it has become a unicorn by exceeding a valuation of 1 billion dollars.

According to the news of Webrazzi, Insider's AI-powered Multi-Channel Growth Management Platform allows marketers to integrate their digital channels with a single platform, consolidate user data, predict users' future behavior with a machine-learning-powered recommendation engine, and deliver personalized experiences.

The platform, which has more than 15 artificial intelligence algorithms, makes predictions about the possibility of conversion, purchase, and loss of customer segments thanks to these algorithms; enables digital marketers to improve their customer experience.

AUSTRALIA CLIMATE CHANGE: COURT OVERTURNS TEENAGERS' CASE AGAINST THE MINISTER

Australian Federal Court appeals court overturned a groundbreaking ruling that Australia's environment minister had a duty to protect younger people against climate change. Three Federal Court judges ruled for a variety of reasons that the court should not impose on Environment Minister Sussan Ley a duty of care. Eight Australian teenagers took Ley to court in 2020 in a bid to prevent her from approving the expansion of a coal mine.

They lost their attempt to stop the Vickery mine's expansion in the state of New South Wales, but their lawyers claimed victory from the judge's ruling last year that Ley had a duty to prevent future climate harm.

Chief Justice James Allsop and Justices Jonathan Beach and Michael Wheelahan, in siding with Ley's appeal, ruled for a variety of reasons that the court should not impose on Ley a duty of care in consider-

ing the mine's extension.

One of the activists, Anjali Sharma, said floods described as a one-in-500-year event that have devastated communities in northern New South Wales in recent weeks were proof that the government needed to act on climate change.

"The Federal Court today may have accepted the minister's legal arguments over ours, but that does not change the minister's moral obligation to take action on climate change and to protect young people from the harms that will bring," Sharma said outside the Sydney court.

"It does not change the science. It does not put out the fires or drain the floodwaters," Sharma added. The lawyers for the plaintiffs could appeal to the High Court.

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VISITS

Omud's Ordinary General Assembly Meeting on 03.03.2022



The executives of Şengün & Partners Attorney Partnership attended the 18th Ordinary General Assembly Meeting of OMÜD, Corrugated Fiberboard Manufacturers' Association, on 3 March 2022. OMÜD is an association for the leading players in the corrugated fiberboard industry. In the meeting that unified the industry players for the first time, Buğra Sükan, the Board Chair of OMÜD, described the Association's activities in 2020 and 2021. The meeting proceeded with valuable inputs of the participants, and Buğra Sükan was selected unanimously as the Board Chair for the second time.

Ordinary General Assembly Meeting of Swedish Chamber of Commerce on 15.03.2022

The Swedish Chamber of Commerce held its 13th Ordinary General Assembly Meeting on 15 March 2022; an associate of Şengün & Partners Attorney Partnership, Ceren Teselli, was also present. The meeting united more than 30 members and



sparked a productive discussion on the Chamber's scheduled events.

WEBINARS IN MARCH

FinTech and Current Regulations

Şengün & Partners Attorney Partnership and the German-Turkish Chamber of Commerce and Industry co-hosted the webinar "FinTech and Current Regulations" on 24 March 2022. Gazali Soysal, Senior Associate, and İclal Demirtaş, Head of Technology Department, made presentations in the webinar that attracted a large audience. The webinar covered opportunities and risks relevant to activities and some legal issues of FinTech startups and offered critical insights to entrepreneurs.



LATEST DEVELOPMENTS

- Şengün ALSP has scaled its services locally and globally since it embarked on its journey as the first Turkish Alternative Legal Service Provider in January 2022. Please click on <https://Inkd.in/eC8bmW9v> to read the article on Şengün ALSP published on Haber Dönüşüm.
- Şengün Group released the first issue of Şengün Legality in March in collaboration with Şengün & Partners Attorney Partnership and Şengün ALSP. Please click on <https://Inkd.in/eJTjCVet> to read the first issue of Şengün Legality to get the latest updates from the technology and law industries.

INTERNAL TRAINING

- As part of the Inner Dialogue Series of Şengün Academy, our senior associate Begüm İçten offered training titled Investment Incentives on 25 March 2022. The training provided an overview of Turkey's investment incentives and the relevant regulations.
- As part of the Inner Dialogue Series of Şengün Academy, our associate Batuhan Birtane offered White-Collar Crimes training on 30 March 2022. The training covered key aspects of fraud, bribery, professional misconduct, money laundering, suspicious activities of executives, penalties for the relevant crimes, and the situation in foreign companies within the framework of preventive law.



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