

# Turkey

Promoting  
and Protecting  
Intellectual  
Property  
in Turkey



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ICC works to promote a balanced and sustainable system for the protection of intellectual property. It believes that IP protection encourages innovation and the development of knowledge-based industries, stimulates international trade, and creates a favorable climate for foreign direct investment and technology transfer.

#### **About BASCAP**

Counterfeiting and piracy have become a global epidemic, leading to a significant drain on businesses and the global economy, jeopardizing investments in creativity and innovation, undermining recognized brands and creating consumer health and safety risks. In response, the ICC launched BASCAP to connect and mobilize businesses across industries, sectors and national borders in the fight against counterfeiting and piracy; to amplify the voice and views of business to governments, public and media; and to increase both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm.

Visit BASCAP on the web at: [www.iccwbo.org/bascap](http://www.iccwbo.org/bascap)

#### **About ICC Turkey**

First founded in 1937, ICC Turkish National Committee (ICC Turkey) was re-organized under the roof of the Union of Chambers and Commodity Exchanges of Turkey (TOBB) in 1953. Having around 250 members including leading banks, law firms, multinational corporation, chambers as well as SMEs, ICC Turkey engages mainly on training and lobbying especially in the field of foreign trade, arbitration, intellectual property and competition.

Visit ICC Turkey on the web at: [www.icc.tobb.org.tr](http://www.icc.tobb.org.tr)

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## Executive Summary

We live in a fast-moving, technology- and information-based global society, where economic growth increasingly depends on innovation, invention and creativity.

To continue to grow, to compete and to deliver products and services to the marketplace, companies are increasingly investing in creativity, innovation and other forms of *intellectual assets*. These assets, generally called Intellectual Property or IP, become key drivers for creating brand value, jobs and overall business growth.

As economies evolve from traditional agricultural, mineral and low-value manufacturing activities, governments also have been investing in their national capabilities to innovate, create and build up intellectual property. They have increased their investment in university research and incubation centers and joint public-private R&D projects, and developed better services to help companies develop, register and commercialize trademarks, copyrights and patents.

The intangible nature of intellectual property – and its vulnerability to theft – has also driven many governments to upgrade efforts to protect it. Unfortunately, IP theft, as evidenced by the global proliferation of counterfeit and pirate products, drains economies of revenue and jobs and puts downward pressure on innovation, international trade and investment.

As a result, strong IP protection goes hand-in-hand with government policies to encourage investment in IP and the realization of the significant benefits of IP to a country's growth and development.

### The value of IP

This paper explains the value of intellectual property and why it is important to Turkey's integration into the global economy. Section one explores the benefits of IP protection in strengthening national economies, driving innovation and technology, fostering new ideas, and enhancing society and culture:

- IP protection benefits the economy in terms of GDP, employment, tax revenues, development and competitiveness. IP rights (IPR) also promotes foreign direct investment (FDI) and technology transfers in developed and developing countries.
- IP protection promotes innovation, increases funding for R&D and helps firms realize more value from innovations.
- IP helps firms monetize their innovations, secure investment, grow market value, and develop new markets. Companies that use IPR generally succeed better and have a higher market value than those that do not.
- IP protection helps small and medium enterprises. SMEs that rely on IP of all sorts reported higher growth, income and employment than those that do not – in some cases as much as 20% more.
- IP protection benefits consumers and society, providing consumers with innovative products and services in virtually every area of life, driving solutions to many of society's most important needs – from clean energy and reduced carbon emissions to health care – and helping protect consumers from inferior and dangerous counterfeits.

Just as adequate IP protection and enforcement mechanisms support the numerous societal, consumer and economic benefits described in this paper, inadequate IP protection and inadequate enforcement against IPR violations have the opposite effect.

### What is at risk?

Section two of this paper summarizes the findings of a new report describing the risks associated with IP theft and the impact on the Turkish economy. The analysis suggests that counterfeiting and piracy in Turkey is a US\$ 5.7 to 9.6 billion business; the Turkish government loses over US\$2.4 billion in lower tax revenues and higher welfare spending; and over 135,000 jobs have been destroyed by counterfeiting and piracy.

## Time is right for action

Recognizing the potential benefits of stronger IP protection, Turkey has over the last years made progress in improving its IP protection and enforcement regime. Furthermore, Turkey has taken steps internationally through its commitments undertaken in the context of various international fora. In this respect, this paper suggests that the time is right for Turkey to continue strengthening its IPR systems in cooperation with established international channels and trading partners who stand ready to assist Turkey in proceeding with necessary policy and legal reforms.

## A path forward

To reach the target of creating a robust IP protection and enforcement regime capable of generating and preserving the significant benefits that lie ahead in Turkey's future, this paper provides a comprehensive set of suggested recommendations intended to help Turkey to address certain remaining challenges. This set of recommendations includes a wide range of policies and actions ranging from legal reforms and policy actions to technical assistance and capacity building measures, channels for international cooperation and tools for strengthening enforcement practices. An indispensable requirement for meeting this target is the effective and immediate implementation of such concrete suggestions. The establishment of a new IP authority or the assignment of responsibility to an existing IP body with the task of putting the recommendations in place is of utmost importance in this regard.

## Summary of suggested recommendations

### Legislative Recommendations

- Extend and simplify *ex officio* actions.
- Improve action against internet infringements.
- Implement the WIPO Treaties fully.
- Improve and expedite civil enforcement procedures.
- Address deficiencies in criminal IP law and procedures.
- Improve border enforcement.

### Policy Recommendations

- Improve cooperation among enforcement authorities in addressing counterfeiting and piracy.
- Establish effective dialogue and cooperation between Turkish authorities, rights owner associations and other stakeholders.
- Expand IP-related administrative and technical capacity building.
- Increase public and political awareness of counterfeiting and piracy and the associated economic and social harm.

## Suggested Recommendations

Turkey's international trading partners have noted the progress that Turkey has made in recent years to improve the country's IPR regime – through enacting better legislation and increasing the number of raids, arrests and prosecutions for IP crime. In addition, Turkey has made progress by establishing specialized IPR courts in three major cities, increasing public awareness of IPR issues and by undertaking IPR training initiatives. However, there remain a number of challenges that need to be addressed.

To respond to these challenges, Turkey should take further action to improve its IPR protection and enforcement regime. This paper provides a set of specific legislative and policy recommendations, many of which are drawn from recommendations made elsewhere.

- The following legislative recommendations address issues requiring further legislative reforms related to IP enforcement.
- The policy recommendations include various measures, actions and initiatives aimed at supporting the implementation and enforcement of IP legislation.
- Establishing a new IP authority or assigning responsibility to an existing IP body such as the Turkish inter-ministerial Intellectual and Property Coordination Board could be extremely effective. This Board was referenced in 2008 National Program as one of the bodies to ensure strengthening of coordination between all agencies responsible for the enforcement of intellectual property rights. Assigning such a body the task of putting these recommendations in place would establish needed coordination among relevant agencies to develop joint strategic enforcement plans that have the support of all such agencies.

## Legislative Recommendations

### 1. Extend and simplify *ex officio* actions.

- A. Introduce an implementing regulation or issue a circular to accompany the law conforming *ex-officio* authority for street and public place piracy to specialized IP units under the Ministry of Internal Affairs, Security General Directorate of the Police (Special IP Police) against sales of copyrighted materials on streets and in public places as well as banderol violations.
- B. Speed up the legislative process for completing the adoption of the draft law amending certain articles of law No 5846 in order to secure legal certainty.
- C. Amend the relevant laws governing industrial property rights by explicitly introducing *ex-officio* action for enforcement authorities (Police officers).
- D. Amend the law by introducing clearer rules regarding the availability of technical tools to collect evidence.

### 2. Improve action against internet infringements

- A. Amend the copyright law to ensure that ISPs comply with notices to take down infringing materials and have in place effective and fair policies to address repeat copyright infringers.
- B. Make clear that rights owners can secure the identity of internet infringers expediently through court orders.
- C. Promote more active cooperation of ISPs with right holders to prevent the use of networks for acts of IP infringement.
- D. Coordinate with ISPs to include a clause in their subscriber agreements providing for account access restrictions or termination in appropriate circumstances as a sanction for repeat infringements. This can be implemented in coordination with Information and Communication Technologies Authority and Ministry of Culture and Tourism.
- E. Work with the Telecommunications Presidency to send a notification to ISPs that operate as hosting providers in accordance with Law no 5651 to inform them about piracy and the relevant sanctions against it.

### 3. Implement the WIPO Treaties fully

- A. Amend the copyright law further to fully implement the WCT and WPPT including strong and effective protection of technological protection measures against circumvention, circumvention services, and trafficking in circumvention devices.
- B. Amend Article 72 of Law No 5846 on preparatory acts to circumvent protection programs to widen its scope to include other types of works, rights, technical protections and circumvention activities, in line with the EU Directive 2001/29.

#### 4. Improve and expedite civil enforcement procedures

- A. Speed trial process and ensure courts issue preliminary court injunctions in a timely and effective manner.
- B. Introduce a preliminary injunction provision similar to the one referred to in Article 9 of EU Enforcement Directive 2004/48 EC.

#### 5. Address deficiencies in criminal IP law and procedures

- A. Speed up the process by adopting pending legislation of criminal sanctions covering patents, utility models, industrial designs and geographical indications.
- B. Introduce legislative or technical administrative measures that will prevent the restitution of counterfeit goods seized within the scope of actions conducted under Trademark Decree 556.
- C. Enhance the deterrent effect of penalties under the Trademark Law 5833 by introducing higher maximum fines.
- D. Carry out training, particularly among judicial authorities, to ensure accurate application of the criminal provisions contained in the new Trademark law.
- E. Increase criminal penalties for intellectual property offences.
- F. Recommend that courts rely less on Article 231 of the criminal procedural law and Article 51 of the Turkish criminal code in order to ensure that court rules permit the deterrence of IP crime; reduce the number of amnesties and suspended sentences (particularly against repeat offenders); and ensure the prompt issuance of search warrants on the basis of a reasonable showing from available evidence that a crime may have been committed.

#### 6. Improve border enforcement

- A. Amend the Customs regulation by stipulating that the 10-day deadline will be for filing the suit and not for obtaining a final decision from the court.
- B. Amend the Customs regulation by introducing a provision similar to the one referred to in Article 5 of European Regulation 1383/2003 EC as regards the “application for action”.
- C. Amend the Customs regulation by introducing a provision similar to the one referred to in Article 11 of European Regulation 1383/2003 EC as regards the “simplified procedure”.
- D. Provide clarity as to who bears the costs of storing seized goods.

## Policy Recommendations

The remaining recommendations are aimed at the need to take some broader measures, actions and initiatives to support the more specific implementation and enforcement of IP legislation as recommended above.

- As a starting point, Turkey needs a national IP action plan covering the full range of legal and policy reforms, technical assistance and capacity building measures, channels for international cooperation and tools for strengthening enforcement practices.
- In addition, the effective and immediate implementation of the legislative and policy recommendations could benefit considerably from the establishment of a new IP authority or the assignment of responsibility to an existing IP body (e.g. the Turkish inter-ministerial Intellectual and Property Coordination Board) with the task of implementing the recommendations. Such an authority/body would have a broad responsibility to oversee the coordination of relevant agencies, develop and implement joint strategic enforcement plans and report to the Turkish government on specific performance indicators. In fact, the Intellectual and Industrial Property Coordination Board which was established by a Prime Ministry Circular in 2008 with the aims of establishing strategies for intellectual and industrial property rights, enhancing coordination and cooperation between related institutions and providing efficiency in their application. The main goal was to establish a “National Strategy Document



for intellectual and industrial property” and an “action plan” according to this strategy. Workshops and similar works have been initiated but no clear result has been obtained yet regarding the strategy document. The same issue has also been highlighted in Turkey’s 2011 Industry Strategy for 2011-2014. The Industry Strategy states that the National Intellectual and Industrial Property Strategy will be issued in that period.

## 7. Improve cooperation among enforcement authorities in addressing counterfeiting and piracy, including among the police, Customs and the judiciary.

An important aspect of enforcement is the cooperation and coordination among and between the law enforcement authorities. In Turkey, this would include the Ministry of Justice, the Turkish police, the Ministry of Culture and Tourism, Under-secretariat for Customs and Turkish Patent Office. While there is already cooperation between these bodies, the level of cooperation needs to be improved. The establishment of sound cooperation and coordination structures is particularly important in the area of border measures, as customs authorities have to cooperate with other national agencies as well as foreign customs authorities and international agencies in order to effectively combat global counterfeiting and piracy.

### Recommendations:

- A. Foster administrative cooperation and coordination amongst domestic enforcement authorities through seminars, workshops and conferences.
- B. Improve cross-border cooperation between Turkish law enforcement authorities and international agencies or IP offices of foreign governments.
- C. Encourage customs and policy authorities to participate more fully in developing and using existing technical tools to collect and share information. Share information with the competent customs authorities including relevant information to better identify and target for inspection shipments suspected of containing infringing goods.
- D. Improve Customs’ risk assessment tools. For example, given the great differences in prices between authentic and counterfeit products, a system should be set up to flag up any imports of certain products that fall below a certain declared value.
- E. Promote internal coordination among, and facilitate joint actions by competent authorities responsible for the enforcement of IPR.
- F. Upgrade technical infrastructure and develop on-line network to allow competent authorities involved in the enforcement of IPR to rapidly exchange information on enforcement issues, including real time alerts information on suspect products, manufacturing sites, distribution routes and key sale points.
- G. Research and make information available on technical tools and systems for prevention and investigation purposes (including tracking and tracing systems which help to distinguish genuine from counterfeit products).
- H. Develop databases to collect, store and analyze data on the scope and impact of IPR infringements and national case law on such infringements and systems to enhance access of public authorities and private stakeholders to information.
- I. Issue documents for the implementation of IP rights such as handbooks and manuals and make them available to the law enforcement authorities.

## 8. Establish effective dialogue and cooperation between Turkish authorities, rights owner associations and other stakeholders

An important aspect of enforcement is the cooperation and coordination among and between the law enforcement authorities. In Turkey, this would include the Ministry of Justice, the Turkish police, the Ministry of Culture and Tourism, Under-secretariat for Customs and Turkish Patent Office. While there is already cooperation between these bodies, the level of cooperation needs to be improved. The establishment of sound cooperation and coordination structures is particularly important in the area of border measures, as customs authorities have to cooperate with other national agencies as well as foreign customs authorities and international agencies in order to effectively combat global counterfeiting and piracy.



## Recommendations:

- A. Promote the establishment and maintenance of formal or informal mechanisms such as advisory groups that would facilitate engagement between the Turkish authorities and rights holders and other relevant stakeholders including organizers of trade fairs, transport and logistics companies, retailers and payment service providers.
- B. Undertake cooperative actions together with private sector to build strategies and to promote and spread successful private sector strategies.
- C. Cooperate with private stakeholders to build an electronic information exchange and an early warning system on counterfeit and pirated products.
- D. Enhance pre-seizure information sharing with rights holders about samples of products and packaging to aid Customs in determining whether goods are infringing.
- E. Enhance information sharing with right holders about technological protection measures and circumvention devices seized, and provide samples to right holders of circumvention devices seized in order to allow right holders to alter the technological measures to render the circumvention devices ineffective. Encourage and facilitate dialogue between right holders and other stakeholders to exploit the potential of collaborative approaches and to place more emphasis on joining forces to combat IPR infringements. The focus on common interests should allow voluntary arrangements to be fostered that would supplement the legislative framework.
- F. Consider the creation of a Turkish Observatory on Counterfeiting and Piracy, with membership constituted of representatives from relevant government, industry and other stakeholders. Such an Observatory could serve as platform to join forces and build coalitions between representatives from national authorities and other stakeholders for mutual assistance. The tasks and activities of such an Observatory could include responsibility for helping to put effective policy recommendations in place and assisting the Turkish public authorities in their policy, legal and enforcement work.

## 9. Expand IP-related administrative and technical capacity building.

A country's effectiveness in protecting IP rights is in significant measure dependent upon its capacity to enforce them. Therefore, in addition to prescriptions for better legislation and stronger enforcement, methods for improving knowledge, enhancing training, and developing skill capacities and competences, should be put in place.

## Recommendations:

- A. Enhance the knowledge on best public and private sector practices to protect IPR.
- B. Enhance the expertise of persons involved in the enforcement of IPR by providing an on-line inventory of available, relevant training programs and initiatives offered and organized at international level.
- C. Expand cooperation with international organizations with a view to enforcement authorities such as police, prosecutors and customs participating in seminars organized by specialist IP enforcement representatives from the World Customs Organization, Interpol, Europol and UNICRI (United Nations Inter-regional Crime and Justice Institute). These enforcement seminars will secure a more sustainable flow of knowledge and learning throughout Turkish enforcement agencies.
- D. Organize more domestic programs and maximize the use of available funds offered at international level by participating in technical assistance projects with foreign governments (such as the EU Twinning projects and TAIEX) to support the implementation and enforcement of IPR.
- E. Increase the number of specialized IP courts and prosecution offices throughout Turkey in cities other than Istanbul, Ankara and Izmir. Increase the number of security units in the police organization particularly in highly populated provinces where industrial and commercial activities are also intensive, such as Bursa, Gaziantep, Antalya, and train the staff working in these units on investigation methods with respect to diverse types of counterfeiting and piracy.

## 10. Increase public and political awareness of counterfeiting and piracy and the associated economic and social harm.

There is a need to increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. It is important for consumers, rights holders and government officials to be aware of the counterfeiting problem, to understand the economic and social effects, and to know what concerned parties can do to combat counterfeiting and piracy activities.

### Recommendations:

- A. Promote the adoption of measures to create and strengthen public awareness of the importance of respecting IP and the detrimental effects of IPR infringements.
- B. Develop an overall communication strategy on enforcement-related activities including the use of new communication channels such as social networks and the design and development of an exclusive enforcement related website.
- C. Design nation-wide awareness campaigns which will educate the public and decision makers on the harms and costs of counterfeiting and piracy and raise awareness especially among young people to enable them understand what is at stake in IP.
- D. Work with international organizations, such as the ICC's BASCAP to adapt globally tested awareness models to Turkey's needs.

## Conclusion

Combating counterfeiting and piracy is an important but challenging task that cannot be accomplished in isolation. Protection of IPR should not solely remain as a priority of state authorities but needs to be considered as a goal shared broadly by all sectors of society. As a result, public officials, international governmental organizations, industry and even consumers need to work together more closely to develop more creative and effective methods to fight this economic and societal problem. The benefits which a more advanced intellectual property regime could generate for country's economy are undeniable. It is an established fact that there is a close correlation between the effectiveness of IPR protection and a country's economic performance. IPR systems significantly affect every country's growth, FDI, employment capacities, innovation and overall competitiveness, and enable productivity and efficiency gains. Putting in place a solid IPR protection and enforcement regime is thus critically important for a country to reach its prosperity potential. The ICC/BASCAP stands ready to do its part to help the Government of Turkey achieve these important goals.

## The International Chamber of Commerce

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rules-setting, dispute resolution and policy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC enjoys a close working relationship with the United Nations and other intergovernmental organizations, including the World Trade Organization, the G20 and the G8.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

For information on how to join ICC, visit the ICC website ([iccwbo.org](http://iccwbo.org)) or contact the ICC Membership Department in Paris.



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