

TURKEY

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Turkey remain on the Watch List.

Executive Summary: In the past two years, the government of Turkey once again took some incremental positive steps in the fight against copyright piracy. Piracy levels in Turkey improved slightly for some industries, although they remain extremely high for some others, in large part due to recidivism. Recidivism persists in Turkey in part due to court cases that last for years, often on appeal, and that usually end in amnesties or non-deterrence. In recent years, several cases involving repeat copyright infringers resulted in unsuspended prison sentences, but these cases are the exception. One major raid conducted in June 2008 yielded not only significant amounts of piracy activity by an organized criminal gang, but also revealed the extent of corruption in the piracy business in Turkey, as several Police officers were held in custody with the pirate group. Internet piracy has worsened in Turkey due to high Internet and broadband penetration. Estimates indicate that 85% of all Internet traffic in Turkey consists of peer-to-peer file sharing. Book piracy involving illegal commercial photocopying and the organized printing of books, and end-user piracy of business software remain serious concerns. Unfortunately, the 2008 amendments to the Copyright Law call into question whether Police have the authority to conduct raids on an *ex officio* basis. A formal circular confirming that the amendment did not change the *status quo ante* would be important. Turkey joined the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, effective November 28, 2008, yet another sign of a maturing copyright system. The government continues along its path toward EU accession, considering legislation to fully adopt the EU Information Society Directive, and thus also, toward putting into place modern copyright protection.

Priority Actions Requested in 2009: IIPA requests that the government of Turkey take the following actions, which would result in the most significant near term commercial benefits to the copyright industries:

Enforcement

- Reconfirm that Police and Inspection Committee members have *ex officio* raiding authority under the amended law, if necessary, through issuance of a formal circular.
- Speed criminal trial process in copyright cases, and work to defeat recidivism by significantly reducing number of suspended sentences and speeding up the appeals process.
- Significantly reduce Internet piracy, including peer-to-peer file sharing, through strict application of the laws and continued cooperation by government and service providers to take down pirate materials, deep link sites, P2P services, bulletin boards, cyber lockers, and the like, and, e.g., encourage the termination of accounts of repeat infringers. Meetings of affected sectors to work more cooperatively will be helpful.
- Take significant raiding actions against illegal commercial photocopying and organized pirate printing of books.
- Take significant steps to legalize businesses engaged in end-user software piracy, including large and medium sized businesses, and to stop hard disk loading.
- Take urgent action to legalize all use of software in the public sector, by government agencies, employees, contractors and grantees.
- Run market sweeps to clear the shelves of product with fraudulent banderoles, and permit rights holder associations to administer the banderole or, if they choose, to forego the use of banderoles as appropriate.

Legislation

- Amend the Copyright Law to ensure that private copy levies are collected and fairly distributed to right holders; at present, right holders do not receive anything, as all amounts accrue to the Ministry of Culture and Tourism, which does not even use the money for useful anti-piracy purposes or in ways helpful to right holders.



TURKEY
Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars)
and Levels of Piracy: 2004-2008¹

INDUSTRIES	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software	239.0	65%	201.0	65%	184.0	64%	157.0	65%	107.0	66%
Books	NA	NA	23.0	NA	23.0	NA	23.0	NA	23.0	NA
Records & Music	NA	NA	22.0	80%	20.0	80%	18.0	80%	15.0	70%
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Motion Pictures	NA	NA	NA	NA	NA	NA	29.0	NA	50.0	45%
TOTALS	239.0		244.0		227.0		227.0		195.0	

PIRACY CHALLENGES IN TURKEY

Internet Piracy a Growing Phenomenon: Turkey now boasts 26.5 million Internet users as of March 2008, amounting to a 36.9% penetration rate, and an astonishingly high 3.2 million broadband connections as of September 2007 (according to the International Telecommunications Union). Internet usage of copyright materials has thus begun to displace physical product in Turkey, and unfortunately, as a result, Internet piracy has significantly worsened, with 85% of all estimated Internet traffic in Turkey consisting of peer-to-peer file sharing.² Internet piracy takes on many forms, including P2P file sharing, video hosting sites, forums providing direct download links, and torrent sites (employing swarm technology for faster downloads).³ All creative content owners – of music, movies, software, and books – are victims of Internet piracy. The trading of hard goods through websites, mostly auction sites, or through newsgroups also remains of concern. Hard good sale lists primarily offer copies of pirate versions of television series (*Lost*, *Prison Break*, *Nip/Tuck*, *House*, *Grey's Anatomy*, etc.) rather than movies.

Book Piracy Problem Remains Severe: While Turkey should be a good market for English language teaching (ELT) materials and a growing market for higher education textbooks, it is unfortunately plagued by continued illegal commercial photocopying and organized printing of books. Virtually all types of books are affected, including fiction, non fiction, school books, college textbooks, supplements, dictionaries, English language teaching (ELT) texts and scientific, technical and medical (STM) materials. Illegal photocopying is especially prevalent in and around most university campuses, and authorities are often reluctant to enforce against them. Turkey also suffers from pirate imports from Iran over the Eastern borders.

Mobile Device Piracy Increases in 2008: Mobile device piracy, in which content of all types – music, audiovisual works, software, and even published materials – are loaded onto MP3 players, mobile phones, PDAs, iPods, portable hard drives, and the like, now harms right holders in Turkey. Stores now engage in this service of recording illegal content, including that illegally downloaded from the Internet, directly onto customers' mobile devices.

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2009 Special 301 submission at www.iipa.com/pdf/2009spec301methodology.pdf. BSA's 2008 statistics are preliminary, representing U.S. software publishers' share of software piracy losses in Turkey. They follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2008), available at <http://global.bsa.org/idcglobalstudy2007/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. For more details on Turkey's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

² The following chart is instructive of the overall shift from physical to online in Turkey. It demonstrates that the number of banderole stickers (intended to be used to distinguish legitimate product from pirate product) has steadily decreased while broadband connections have increased.

	ADSL SUBSCRIPTION	BANDEROLE
2004	450,000	43,934,423
2005	1,520,000	31,413,374
2006	2,800,000	25,801,106
2007	4,500,000	20,272,489
2008	6,000,000	14,612,952

³ According to the data on consumption of daily content from TTNET, the ADSL service of Turkish Telecom, users generally access P2P websites and file sharing web sites, such as those employing BitTorrent technology and sites like Emule which reportedly has around 3 to 5 million users. See <http://en.wikipedia.org/wiki/EMule>.

Retail Piracy, Optical Disc “Burning,” Imports: Pirate physical media remain a major issue in Turkey, although the problem has been curtailed in part by the growth of Internet piracy. There are essentially three forms of pirate optical discs found in the Turkish market today: local burning of pirated works onto recordable media, imports of pirate optical discs produced elsewhere (IIPA understands that while borders are better patrolled now, it remains easy for pirates to bring goods to Turkey from Iran on the Eastern border, but with some discs also likely emanating from Asia), and (to a lesser extent) locally produced factory discs. The significant decrease in street sales of locally burnt discs has pushed piracy under-the-counter in retail shops where shop owners burn CD-Rs or DVD-Rs to order, especially in cities outside Istanbul and Ankara, such as Izmir and Antalya. Shops also capitalize on Internet connectivity to engage in CD-R burning of content downloaded from the Internet, burning compilations on-demand to CD-Rs.

Business Software Piracy, Both End-User Piracy and Hard Disk Loading, Harming Right Holders: Unauthorized use of business software by corporate end-users, as well as hard disk loading, by which computers sold at retail are either pre-loaded with illegal software, or are sold “stripped” and later loaded with pirate software, cause significant losses for copyright holders in Turkey. Unlike other industries, which have benefited from market sweeps, the unauthorized use of business software in corporate settings requires a different approach, including campaigns aimed at getting information about companies using illegal software, inspections against such companies, and hands-on programs to explain to the Turkish government and businesses the basics of software asset management. Hard disk loading is used to increase sales volumes of hardware. Sometimes, consumers apply pressure to lower the price by loading the hardware with pirate software, although awareness about piracy seems to have increased slightly in recent years.

Unauthorized Public Performances of Audiovisual Works: Unauthorized public performances of new and popular films using DVDs and VCDs on wide screen systems at schools, cafes and bars, cultural centers and unlicensed video theatres are still encountered in Turkey. The motion picture industry enforcement group in Turkey, AMPEC, has been very active sending cease and desist letters and organizing raids with the police. Broadcast and signal piracy of motion pictures also exists.

“Mix” Piracy Recordable Discs Remain a Concern, While Music Broadcast Piracy Wanes: On-the-spot music piracy remained a serious concern, especially in Turkey’s tourist hot spots: hotels (including well known international hotels), bars and clubs. In this form of piracy, illegal CD-R copies of the music played at such venues are sold “on the spot.” Moreover, most of the source music played in bars and discos derive from illegal copies or Internet downloads. Music broadcast piracy in Turkey has diminished over the past year. Collecting society MÜ-YAP signed a protocol with RATEM (the Radio TV Broadcasters’ Association). As a result, more than 700 radio and TV stations will be licensed by MÜ-YAP. Furthermore, most of the national radio and TV broadcasting has been licensed by MÜ-YAP (there are 32 national radio and 12 national TV stations in total).

Organized Crime and Corruption in Piracy Activities: IIPA learned that on June 23, 2008, the Istanbul Police Department Security General Directorate and the Organized Crime Branch Directorate ran raids against 86 locations in Istanbul in an operation named “Yarasa.” The target was an organized criminal group involved in the manufacture and distribution of pirate discs in various districts of Istanbul. The raids resulted in the seizure of more than 200,000 burned disks, 112 disc burners, and more than 4 million inlay cards. A number of law enforcement officials (a few police officers, a court usher and one officer from the Istanbul Inspection Committee) were among the 46 persons arrested and held in custody after the raids. The intelligence gained during the investigations showed that some of these law enforcement individuals were selling confidential information about planned raids to members of the gang, while others were re-selling seized pirate discs stored in the Inspection Committee’s warehouse to the pirates. The gang leader, who was also arrested, is well known to industry as his retail shop had already been raided seven times in the past. This example of organized crime and corruption is unfortunately not an isolated case in Turkey and IIPA recommends that the government take necessary measures to secure raids (for example, by keeping locations and dates secret from officers, removing mobile devices prior to raids) and to punish those found to be engaged in organized crime, e.g., through adding copyright infringement as a predicate offense to an anti-money laundering statute or to trigger asset freeze provisions.

ENFORCEMENT CHALLENGES IN TURKEY

Lack of Clear Authority to Run Raids on an *Ex Officio* Basis, Urgent Issuance of Circular Needed: In previous years, the specialized IP units established under the Ministry of Internal Affairs, Security General Directorate of the Police (a national and armed civil force) had no difficulty exercising their authority to conduct raids on an *ex officio* basis, and it has chiefly been through such raids that street and retail piracy has decreased. Unfortunately, under Law No. 5728 which went into effect in February 2008, the express *ex officio* language was changed, and while IIPA understands that it was not the intention of the legislature to remove previously held *ex officio* power from the Police, some officers refuse to run raids without a complaint, indicating that they are unsure the law still provides them with such authority. IIPA strongly urges the government to issue a formal circular stating that the amendment did not change the *status quo ante*, in other words, confirming that *ex officio* authority still exists as it had with the law prior to the amendment adopted in Law No. 5728. Authorities are taking raids *ex officio* but only under the banderole system, i.e., when pirate materials do not bear the obligatory banderoles. The motion picture industry group AMPEC conducted 693 investigations and 586 raids as of the end of December 2008. As a result, a total of 625,729 pirate DVD-Rs, 263,326 pirate CD-Rs, 10,418,434 covers, 253 CD-writers, 390 DVD writers, 59 duplicators and 41 computers were confiscated. A total of 576 cases have been initiated by AMPEC lawyers as of the end of December 2008. MÜ-YAP conducted 983 raids, netting 67,602 pirate optical discs, 1,673 MCs, 1,267,998 VCD/DVDs and 5,516,365 inlay cards.

Recent Criminal Convictions and Special IP Courts Notwithstanding, Courts in Turkey Fail to Defeat Recidivism, Need More Deterrent Sentencing: IIPA members report generally good relationships with the Police, Customs, and local authorities,⁴ but note some procedural and bureaucratic hurdles along the way. The problem begins and ends with the court system – the weak link in enforcement in Turkey against copyright piracy. At the outset, it should be noted that several positive verdicts have been achieved in recent years,⁵ and it is hoped that these will eventually lead to more verdicts like them and to a gradual reduction in piracy levels in Turkey. One positive development in the last several years has been the establishment of specialized IP courts, and five more IP courts were established in 2008, bringing the total number to 23. There are now IP courts in: Istanbul – 14 IP courts (seven criminal and seven civil); Ankara – six IP courts (two criminal and four civil); and Izmir – three IP courts (two criminal and one civil). Notwithstanding these positive developments, it is largely due to the very long litigation period and appeal stage that Turkey still suffers from a serious repeat offender problem. In almost all cases, criminal convictions result in suspended jail sentences or small fines, and even then, since almost all cases are also appealed, most pirates never pay the fine initially imposed. Due to continued court backlogs at the appeal level, many cases never get affirmed, are subject to amnesties, or are thrown back to the lower court since the law under which the defendant was convicted has been amended. Industry also reports that the specialized IP courts are seeing their cases overturned on appeal or negated through amnesty. Several other problems plague copyright cases headed for court:

⁴ For example, the municipalities and local police take actions to prevent the sale of pirate copyright material in public places such as streets, parks etc. Furthermore, there are administrative boards which are organized by the City Governorships, which take actions against sale of pirated material in public places.

⁵ For example, IIPA notes the following three cases, and also notes that according to the motion picture association group in Turkey, AMPEC, over 20 persons sentenced to fines for copyright violations were sent to prison since they were unable to pay the fines.

- **Uçar CD Plant:** Out of a series of raids in 2005, on January 17, 2006, the defendant owner of the Uçar CD Plant was sentenced to a term of imprisonment of 5 years, 7 months and 15 days, and was also fined approximately US\$120,000. Although the defendant appealed to the Supreme Court, his conviction and sentence sent a very important message to Turkey's pirate community.
- **Recidivist Video Shop Convictions:** On March 9 2005, two video shop owners in Istanbul were sentenced to unsuspended prison terms of two years by the Istanbul Specialized IP Court, with the severity of the sentences based on the fact that these pirates were recidivists.
- **Recidivist Street Vendor Case:** An AMPEC operation against a street vendor in 2005 resulted in the defendant being sentenced to 14 months imprisonment and a fine.
- **Recidivist Video Shop "The End":** On April 9, 2007, the owner of a video shop, "The End", located in Istanbul was sentenced to an unsuspended prison term of two years, four months by the Istanbul Specialized IP Court. The defendant had been raided 36 times by AMPEC and the police (yielding cumulatively more than 130,000 pirate discs). The defendant was also ordered to pay attorney's fees and costs. The defendant lodged an appeal.
- **Halilogullari Case:** From 2003 to date, AMPEC organized 25 raids on the pirate shop "Film Dunyasi/Gumus Dunyasi" operated by the Halilogullari family, seizing more than 43,704 pirate CD-Rs, 18,157 pirate DVD-Rs and 1,311,320 pirate covers. In a landmark court decision at the Istanbul IP Court in 2007, the defendant, with a long history of IP offenses, was given an unsuspended prison sentence of two years, one month upon conviction for repeat offenses. The court refused to suspend the sentence in view of the likelihood that the defendant would commit another offense, and its suspicions were justified when three business addresses belonging to the same family were raided on September 17, 2007, netting more pirate product. The latest raid against the same shop was on December 18, 2008, and although the owner was in prison, the shop was full of pirate CD-Rs and DVD-Rs as well as covers.

- **Burdensome Attorneyship Law Requirements:** The Attorneyship Law remains problematic for right holders, as it forbids private entities from protecting third parties without having a local lawyer act on behalf of them as an intermediary. Specifically, the Law requires a local lawyer to be hired to act on behalf of the right holder for five key phases of any case: (1) to file an initial complaint with the public prosecutor; (2) to obtain a special search warrant from the judge; (3) to obtain a search warrant from the public prosecutor; (4) to conduct a raid with the police; and (5) to have the public prosecutor press charges and to provide assistance in the courtroom to obtain a conviction. Following the raid and the public prosecutor pressing criminal charges, the industry association's lawyer must immediately submit a petition of intervention to become a party to the case, or else cases which are lost in court cannot be appealed. This requirement should be relaxed in copyright cases, since industry expertise is important to the success of these cases. Otherwise, prosecutors will have difficulties proving their cases because of a lack of access to right holders' documentation.
- **Difficulty Obtaining Search Warrants:** Search warrants for criminal raids are difficult to obtain due to procedural rules requiring them to be obtained not from the newly formed specialized IP courts but from an ordinary criminal judge (in practice, the criminal judge requires far greater evidence than would be required from the specialized judge). Some right holders are finding it easier to obtain search warrants and decisions in relatively shorter time periods due to the growth of specialized IP courts. For some industries, public prosecutors require search warrants from judges to approve any raid action in anticipation of a criminal case.
- **Evidence Left Behind:** Even when warrants are issued, prosecutors, especially outside the major cities, often will not accept large quantities of evidence, and in some cases for some industries, even by the order of the judge, pirate copies and evidence are left behind at raid sites with the accused.
- **No Presumption of Ownership in Some Cases:** The courts in small cities having untrained judges still do not, on many occasions, provide presumptions of ownership to rights holders, but instead impose burdensome documentary requirements on right holders to prove ownership. For example, in cases brought by publishers in the past, many judges demanded notarized translations of original contracts between the author and publisher in order to prove copyright ownership for each title. The notaries in Turkey charge inordinate fees. The audiovisual industry has experienced similar problems. These requirements at least violate the spirit of the presumption in Article 15 of the Berne Convention and Articles 11 and 80 of Turkish Copyright Law (which provide presumptions of ownership).
- **Evidence collection:** The process of collecting evidence should be eased, including, if necessary, legal provisions to grant private sector experts the competence to identify infringing materials, rather than leaving this to external experts appointed by the civil courts.⁶

Internet Enforcement Challenges Being Met; More Needs to be Done: IIPA members report largely solid cooperation among service providers in fighting Internet piracy, in no small part because of the government of Turkey's support in this effort, and because of a strong provision (Additional Article 4) of the Copyright Law which was added in 2004.⁷ In 2006, the Turkish government was one of the first in the world to facilitate blocking action against the "piratebay" website through Turkey's largest service providers, although wily users could still access the site through other means. The cooperation on Internet matters signaled a welcome level of support and led to more Internet enforcement against other websites involved in piracy in 2007 and 2008. In addition to working with Turkish Telecom to block certain access points to piratebay, in 2008, access to 287 websites was blocked upon the motion picture industry group AMPEC's applications based on the improved Copyright Law. An additional 1600+ websites have been blocked following injunction proceedings initiated by the recording industry group MÜ-YAP since August 2005. Nonetheless, some right holders sometimes face difficulties submitting evidence including Internet web pages for preparation for criminal prosecution, since some prosecutors still do not consider such pages as strong evidence. IIPA recommends that a cybercrime unit be developed and trained to handle cases specifically related to Internet-based piracy. IIPA urges the government to take steps to encourage the active cooperation of Internet service providers with right holders to prevent the use of networks for

⁶ In line with the Twinning Project's goals, such changes would bring Turkey's practice into line with similar practices adopted in the European Union.

⁷ Additional Article 4 of the Copyright Law No. 5846 specifically addresses the responsibilities of content and Internet service providers. Once an infringement is detected on a site, a cease and desist letter is sent to the site requesting the site to cease infringement within 3 days. If, after this period, infringement continues, a folder containing (a) the printouts of the site showing the infringements; (b) an investigative report about the site; (c) the "ownership license of work of art" related to the titles; (d) the WHOIS details of the site administrator. That folder is provided to a prosecutor together with a formal application to block the site in question. The prosecutor sends the "decision of closure" in no longer than one week (to Turkish Telecom), and access to the sites in question is blocked. Industry notes that Article 4 provides for "rules and procedures" to be issued by the Ministry, but these rules and regulations still have not been completed.

the commission of infringing acts, including but not limited to termination of accounts of repeat infringers. As an immediate first step to achieving this objective, the government should convene meetings of affected sectors to discuss ways to work cooperatively toward halting the transmission of illegal copyrighted materials on telecommunications networks.

Book Piracy Enforcement: In 2008, enforcement efforts remained consistent, with engagement between the book and journal publishing industry representatives and the Turkish government. In recent years, publishers have received significant, if occasionally inconsistent, cooperation, generally leading to good outcomes that send a deterrent message to potential and existing pirates. Efforts were reportedly made in 2008 to meet the needs of publishers, although independent enforcement action remains elusive.

Business Software Piracy Enforcement: The business software industry reported generally good cooperation from enforcement authorities in 2008 in seeking to improve the end-user software piracy problem. The business software sector seeks the assistance, as do others, of the specialized IP units established under the Ministry of Internal Affairs, Security General Directorate of the Police (a national and armed civil force) to combat end-user piracy infringements. Business software right holders appreciate their collaboration during raids, which are conducted on the basis of search warrants, against resellers of pirate software and end-user of pirate software. In 2008, Business Software Alliance members conducted a number of raids against corporate end-user piracy targets, which resulted in seizures of pirated material, and financial settlements paid by infringers.

Business Software Legalization Decree: IIPA welcomes the government of Turkey's issuance of a legalization decree for software in July 2008, and now calls upon the government to implement the Decree and set an example for businesses and consumers in Turkey. This follows a previous circular published by the Prime Minister calling upon all government agencies to legalize.

Banderole System Should be Administered by Rights Holders, and Right Holders Should Choose Whether to Forego Banderole Use As Appropriate: The banderole (sticker) system still does not function well as an anti-piracy tool for some industries in Turkey, although this is not universally the case (e.g., this is not the case for the motion picture industry). Indeed, it should be noted that, with the current uncertainty regarding *ex officio* authority, the banderole currently provides the only clear *ex officio* authority in the Police and Inspection Committee members, pursuant to Article 81 of the Copyright Law, and note that for products that do not carry Ministry banderoles, a complaint from the right holder is currently required to start an action. Some strengthened provisions were introduced in the 2001 copyright law (including the possibility of criminal penalties for unauthorized uses of banderoles or dealing in works without banderoles), but there have unfortunately been very few cases against the unauthorized use of banderoles. One reason the system is not operating as well as it could is that development of an online banderole database at the Ministry of Culture to track stickers to particular titles, and which was scheduled to be put into operation by 2008 (and shared with Police), was postponed until the end of 2009. As such, the Ministry is left with searching paper files. Some plants have in the past held unnecessarily large quantities of unused banderoles, which were not secured adequately. This does not seem to be a major issue anymore, but the government must always be vigilant to the existence of fraud with these stickers. IIPA continues to urge the government to allow right holder associations such as MÜ-YAP and AMPEC (and others) to administer banderoles in 2009, but IIPA understands that this too has been postponed until the end of 2009.

Publishers note that the banderole system does not work for books at all, in that it does not work to curtail piracy as intended, and creates additional burdens and costs associated with doing business in Turkey. The government has hinted at possibly removing the banderole requirement as to published materials only, and IIPA supports such a change. It should also be noted that as copyright moves into the digital age, there is a marked decrease in the number of banderoles issued simply due to the decrease in physical product.⁸

⁸ The following tracks banderole issuance in Turkey between 2005 and 2008:

Banderole Issuance in Turkey 2005-2008				
	2005	2006	2007	2008
Local CD	12,526,294	13,558,571	13,495,433	10,358,441
Local Music Cassette	15,806,517	9,010,990	4,557,232	1,917,200
International CD	1,780,370	1,788,003	1,452,421	1,951,869
International Music Cassette	637,707	300,510	41,200	6,600
TOTAL	30,750,888	24,658,074	19,546,286	14,414,110

Storage Shortage for Seized Goods: Unfortunately, perhaps as a symptom of the Police's success over the past couple of years, all the Police and Istanbul Inspection Committee warehouses are filled with pirate materials. This situation is unfortunately impeding the Police's willingness to take more actions. This problem has been discussed with representatives of the Ministry of Culture and they recently leased a bigger warehouse to be used to store pirate materials. In addition, the new Director of the Istanbul Inspection Committee has also promised to secure a larger warehouse for storage, so it appears the situation is headed in the right direction. The following chart highlights some anecdotal information from the Security General Directorate on seizures arising out of their raids run in 2007-2008.

SECURITY GENERAL DIRECTORATE ENFORCEMENT STATISTICS 2007 AND 2008		
	2007	2008
TOTAL OPERATIONS	3,741	2,847
ARRESTED PERSONS	4,132	3,226
SEIZED MATERIALS		
CD/VCDs WITHOUT BANDEROLES	2,143,635	1,466,835
DVDs WITHOUT BANDEROLES	490,195	1,297,777
BOOKS WITHOUT BANDEROLES	234,715	575,243
VIDEO CASSETTES WITHOUT BANDEROLES	388	242
MUSIC CASSETTES WITHOUT BANDEROLES	27,785	8,153
PORNOGRAPHIC ISSUES	84,598	78,791
CDs/VCDs WITH BANDEROLES	12,165	6,046
DVDs WITH BANDEROLES	1	705
BOOKS WITH BANDEROLES	10,681	22,042
MUSIC CASSETTES WITH BANDEROLES	54,900	15,024
CD/VCD/DVD INLAYS	8,218,632	24,166,033
TOTAL SEIZED	11,285,567	27,636,891

TRAINING AND PUBLIC AWARENESS

Trainings in 2008: Copyright owners continued organizing regular trainings (e.g., for Police, Customs, prosecutors and judges) and participated in other events in Turkey in 2008. One notable event was a Ministry of Culture & Tourism and Ministry of Justice two day seminar for judges and prosecutors in Cesme/Izmir on May 12-13, 2008, in which various aspects related to the implementation of 2008 amendments (discussed below) to the Copyright Law were discussed. Around 60 judges and prosecutors from different cities and regions as well as chief police officers from key provinces were in attendance. An AMPEC representative made a presentation about the problems in practice after the new amendments passed, and suggested solutions. AMPEC also discussed the lengthy pendency rates of copyright infringement cases on appeal (many since 2004). A second notable event was a two week training seminar on intellectual property enforcement for judges and prosecutors held by the Ministry of Culture and Tourism, Ministry of Justice and Bilgi University in Antalya. The seminar topics included the importance of intellectual property protection, Turkey's specialized IP courts, prosecution of intellectual property crimes, the problems and solutions surrounding crimes against intellectual property rights, and enforcement. Participants included Supreme Court judges and prosecutors, and 50 other judges and prosecutors from various Turkish cities. AMPEC was one of the participating private sector organizations.

COPYRIGHT LAW AND RELATED ISSUES

Copyright Law and Related Laws Provide Mostly Adequate Protection, Including ISP Provisions: Copyright protection in Turkey derives from Law No. 5846 (1951), which was last amended in 2008 by Law No. 5728. The 2001 amendments (Law No. 4630) brought Turkey's copyright regime considerably closer to international treaties standards and implemented many of the requirements of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. IIPA welcomes the news that Turkey joined the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, effective November 28, 2008, but hopes that the government will amend the law soon to protect technological protection measures against circumvention, circumvention services, and trafficking in circumvention devices. Also, as noted above, under Law No. 5728 (February 2008), it is now unclear whether Police have *ex officio* raiding authority, an issue which IIPA urges be resolved quickly by a formal circular confirming that the amendment did not alter the previous *ex officio* raiding authority. One noteworthy development has been the enactment of Additional Article 4 in

2004 which, along with Law No. 5651 Regarding Regulation of Publications on Internet and Struggle With the Crimes Committed Through Such Publications in 2007, provides very strong takedown provisions to which service providers must adhere. However, infringement of intellectual property rights is not explicitly included. Therefore, these provisions fail to provide an ultimate solution for service provider cooperation in fighting online piracy. Article 4 foresees the introduction of a new regulation in this field, but so far, nothing has been put forward.

EU Twinning Project – Still Awaiting Results: Turkey participated until late 2007 in a European Commission “twinning partnerships” in which funding is given to Member States to work on institution building (legislation, administration, and implementation), and in respect of intellectual property rights, Turkey entered into a twinning partnership with Greece. There were five key areas of work under the project: 1) computer programs and rental, lending and related rights, 2) satellite broadcasting and cable retransmissions, 3) terms of protection, resale rights, 4) Information Society Directive implementation, and 5) enforcement of copyright. Other matters concern developing a training package for judges, and developing a public awareness campaign strategy to inform the general public on the importance of the protection of copyright. Among the issues raised in the Information Society Directive implementation work area were 1) provisions on technological protection measures which would effectively implement the WCT and WPPT and ensure harmony with the Directive; 2) a reproduction right that is made expressly applicable to related rights; 3) provisions on exceptions, including an express provision stating the three-step test shall be applied to all exceptions and limitations, and narrowing other exceptions to meet international standards; and 4) ensuring provisions on private copy levies are in line with international standards, and in accordance with EC Directive 2001/29, to provide, *inter alia*, for the direct distribution of the relevant remuneration to right holders. IIPA looks forward to seeing the ultimate legislative results of this Project.

Private Copy Levy System: IIPA members do not generally believe private copying levies are the best way of addressing private, non-commercial copying, and it is critical that they address no more than such forms of copying in any event. However, Turkey has chosen to implement a private copy levy in the Ministry of Culture and Tourism “Regulation on Principles and Procedures of the Use of Deductions Made From the Prices of Carrying Materials Containing Intellectual and Artistic Works and of Technical Devices Used for Reproduction of Such Works” (April 13, 2006). As such, it is important that the levies are in fact collected and fairly distributed to right holders. Unfortunately, right holders do not receive any of the levies collected. Instead, the Ministry of Culture and Tourism collects and keeps the fees paid for recording equipment and blank media. This collected amount is not even used for useful anti-piracy purposes or in ways helpful to right holders. The system in Turkey should be changed as a matter of priority and in a way to make it compatible with international conventions and EU Directives.

Regulation on “Certification of Businesses” Includes Some Key Components of Good Optical Disc Regulation: The Ministry of Culture and Tourism (MOCT) issued the “Regulation on the Certification of Businesses Undertaking the Distribution or the Recording, Reproduction and Sale of Materials on which Intellectual Property and Works of Art Are Fixed” (April 18, 2005), requiring facilities involved in recording (including optical disks), exhibiting, and distributing copyright works to receive certificates from the MOCT. These regulations provide some essential elements of effective optical disc regulation, including the following:

- **Coverage of Any Business Engaged in Producing Discs Containing Content:** The Regulation does not seem to distinguish between businesses that produce large-scale factory-produced discs and those that “burn” content onto recordable discs. This means all those businesses (whether factory or commercial burning) must be certified, and failure to do so can lead to fines. Thus, it is expected that all the optical disc production facilities in Turkey (the 10 known plants and any more that come on line in the future) will have to apply for a certificate from the MOCT (including those that produce only blank recordable discs, *see* Article 5(a)). In addition, any premises engaging in “burning” of content onto recordable optical discs also must be certified.
- **SID Code Required for “Fixing Facilities”:** All facilities “where intellectual property and works of art are fixed and reproduced” must use SID Code (mastering LBR code and mold code are not specified, however, and should be).
- **“Fixing Facility” Information Requirement:** “Fixing facilities” must furnish reports indicating their “capacity and that they have the necessary technical equipment,” “[a]n itemised list of the technical equipment at the premises as well as copies of invoices or sale transfer documents of the same,” and “SID code document” and to “inform

the General Directorate of all changes in the type of activity, equipment and capacity within ten days and to place the SID code and the certificate numbers on the fixing materials.”

- **Inspection Authority:** MOCT appears to have broad authority to run surprise inspections.
- **Cancellation Remedy:** The sanction for a breach of the Regulations is cancellation of the certificate. There are several grounds for cancellation, for example, if “it is determined that the certified facilities no longer meet the requirements for obtaining certificates,” or if “there exists a finalised court conviction arising from having violated the law” which is notified to the authorities.
- **Administrative Fines:** The only remedy for operating one of the businesses specified without a certificate is an “administrative fine.”

Unfortunately, the Regulation suffers from two major weaknesses. First, the certification authority is overly broad, veering into areas like “[m]ovie theatres and similar places undertaking public display and transmission of cinematographic films,” “[p]remises ... importing, distributing or selling empty fixing materials,” and “[p]remises undertaking sale, distribution, importation and marketing of intellectual property and works of art and fixing materials concerning productions entailing intellectual property and works of art through any means and techniques including digital transmission and those that rent these out.” This broad certification authority unfortunately undercuts the purpose of the legislation, since it requires legitimate businesses (in sectors where the risk of piracy is low) to be certified and subject to the regime, while illegal businesses will never come forward to be certified. This has already proved to be the case, since back in 2005, MOCT could not get all plants to register. One category of operators having to be certified is those engaging in Internet distribution. We underscore that legitimate businesses with legitimate business models in the Internet environment will be burdened by this certification requirement; those engaged in online piracy will ignore it. Second, while the Regulation calls for “administrative fines” for operating without certification, in the case of optical disc factories, it is feared this remedy is not enough to deter them from simply going underground. The remedies for operating an optical disc plant without certification must include seizure and forfeiture of all equipment and goods found in such a plant, closure of the plant, and criminal liability including deterrent fines and imprisonment, and including individual liability to pierce the veil of the company engaging in production without a certificate.

RTÜK (Radio and Television Supreme Council of Turkey)⁹ Failure to Enforce Licensing As Pre-Condition to Broadcast: Radio and Television Supreme Council of Turkey has not taken necessary steps to fulfill its obligations under Law No. 3984 (which stipulates that conclusion of licenses with right holders is a pre-condition to engaging in broadcasting activities), since it has not enforced against broadcasters who do so without a license.¹⁰ Under that Law, the failure to sign licensing agreements with collecting societies should be subject to administrative fines from TL125,000 (US\$76,000) up to TL250,000 (US\$152,000) and closure of the radio-TV station.

Proposed Trademark Law Provision Would Have Exempted Infringing Goods Produced Outside Turkey: A draft amendment to the Turkish trademark law was recently proposed by a member of Parliament, providing that “in order that a penalty may be imposed for a trademark infringement, infringing goods or services should be produced in Turkey.” This provision, with the possible intent of avoiding application of Turkish law to extraterritorial acts, would actually result in a violation of TRIPS at least as soon as such goods enter the Turkish border and infringement ensues. Parliament passed a new Trademark Law on January 28, 2009, but IIPA has not had a chance to review the new law to see if this amendment made it into the bill as passed; if so, it could prove quite problematic for IP owners in Turkey.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

In addition to the Special 301 process, the copyright industries and the U.S. government have used the GSP program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries based on discretionary

⁹ The Radio and Television Supreme Council – RTÜK, was founded as an impartial public legal entity that has broad competencies and responsibilities compared to its former position pre-1994. It is a statutorily mandated Council responsible for the regulation of the radio and television broadcasts all across Turkey. The Supreme Council is composed of 9 members who are elected by the Grand National Assembly of Turkey. See http://www.rtuk.org.tr/sayfalar/icerikGoster.aspx?icerik_id=be70e800-a512-4dd8-803f-857b504fd1f9.

¹⁰ The amendment in Article 37 of the Law on Radio and Televisions No 3984 provides that broadcasting organizations shall sign agreements so as to get an authorization from right holders or their Collecting Societies of which they are members, within the framework of the Law on Intellectual and Artistic Works No. 5846, and to pay the royalties.

criteria, including that the country provide "adequate and effective" copyright protection. Turkey enjoys enormous benefits under this program. Specifically, during 2007, almost \$1.13 billion worth of Turkish goods, or 24.4% of Turkey's total imports into the U.S. enjoyed duty-free GSP treatment. In 2008, \$916.7 million worth of Turkish goods, or almost 19.8% of Turkey's total imports into the U.S. enjoyed duty-free GSP treatment. Turkey must meet the discretionary criteria for adequate and effective copyright protection under the GSP statute in order to continue to qualify for this duty-free benefit.