[TR] Protection of Films Made Before 1995

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In a recent judgement, the Istanbul 4th Industrial Property Rights Court (dated 9 July 2007, E. 2006/113, K. 2007/152, unpublished) has decided that producers of films should benefit from the longer protection period as extended by amendment of the Turkish Law on Intellectual and Artistic Works (LIA) of 1995, regardless of whether or not the protection period set in the old law had already expired.

The LIA has already been amended several times. An important change was effected in 1995, when the authorship of cinematographic works was altered in an attempt to harmonise Turkish law with EC law. While, before the amendment, only film producers were recognised as authors of films, in 1995, authorship was granted jointly to directors, script writers and composers of original film music for films whose production was begun *after* 1995. In an amendment of 2001 (see IRIS 2001-3: 16), dialogue writers and animators were also included among joint authors. Furthermore, in 2001, film producers were named as holders of neighbouring rights.

Another important change in the law was related to the protection period: for films, the protection period used to be 20 years starting from the public launch of the film. In 1995, the protection period for all works was extended to the lifetime of the author plus 70 years following the author's death. For legal entity authors and holders of neighbouring rights, this period was set at 70 years.

The extension of the protection periods, at the same time as the amendment of film authorship, resulted in several problems including the question as to which films and which persons should benefit from the extension. The issue is of considerable importance as the majority of Turkish feature films were produced in the 1990s.

Many disputes have come before the courts, where the fundamental problem raised was whether the producers should continue to enjoy the status of author in the extended period. Another problem was, in cases where the producers had already transferred their rights in the film to third parties, whether such transfer would cover the rights gained for the extension period.

In recent years, both IPR Courts and the Turkish Court of Appeals have handed down judgements in favour of producers. The Istanbul 4th IPR Court decided that producers should benefit from the extension of the protection period, regardless

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of whether the 20 year protection period set in the old law had expired. An interesting point in this judgement is that the film producer is granted the rights of the author and other neighbouring rights at the same time. Similar decisions have been rendered previously by IPR courts, which are being approved by the Court of Appeals, and in this way creating an established line of judgements.

With regard to the second question, the law provides that the assignment of rights by contract cannot cover any rights that may be afforded to authors in the future by a change in the law. The courts have rightly adopted this solution and decided that assignees could not have acquired any rights for the extension period granted by the law.

The position of directors and other joint authors or performers with regard to films produced before 1995 has not yet been discussed in disputes before the courts.

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Judgement of the Istanbul 4th Industrial Property Rights Court of 9 July 2007, E. 2006/113, K. 2007/152 (unpublished)

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