

TURKEY: New E-Commerce Regulation Leads to a New Era to Tackle IP Rights Infringements on the E-Commerce Platforms and Introduces Other Developments Concerning IP Rights

New Development on Turkish E-Commerce Law

The Law no. 7416 on Regulation of Electronic Commerce (the “**Amendment**”) was published in the Official Gazette on **July 7, 2022**. The Amendment introduced various developments to the Law no. 6563 on Electronic Commerce (the “**ECC**”).

While the Amendment draws a framework of the new system, a secondary regulation had been long waited by the industry actors to delve into the details on how to implement the recently introduced amendments. The awaited Electronic Commerce Intermediary Service Provider and Electronic Commerce Service Providers Regulation (the “**Regulation**”) was published on **December 29, 2022**, the rules for the implementation of the ECC were determined.

Both the Amendment and the Regulation (“**the Law**”) entered into effect as of **January 1, 2023** which involves significant developments in terms intellectual property rights.

What are the Amendments to the ECC Concerning IP Rights

➤ **New Notice and Takedown System for IPR Infringements:**

In accordance with Article 9 of the ECC, Electronic Commerce Intermediary Service Provider (“**ECISP**”) will be liable for removing an allegedly infringing product of Electronic Commerce Service Provider (“**ECSP**”) if an IP right (“**IPR**”) holder files a complaint based on IPR infringement. Thereupon, ECSP has the right to submit an objection based on documents contrary to complaint.

Article 12 of the Regulation, clarifies the rules of the notice and takedown proceedings and regulates that the complaint shall be directed to the ECISP.

Article 12 clearly provides a list of required documents that will be submitted along with the complaint, which are:

- ✓ Registration certificate issued by the Turkish Patent and Trademark Office or copyright banderol issued by the Ministry of Culture or the activity certificate obtained from the copyright collecting societies
- ✓ The grounds and evidence regarding the alleged infringement
- ✓ Internet address of the product and the statement of responsibility for the damages that may arise if the complaint is false.
- ✓ Information of the IPR holder/complainant such as address, business name, email address etc.

¹ Elektronik ticaret aracı hizmet sağlayıcı (ETAHS)

² Elektronik ticaret hizmet sağlayıcı (ETHS)

ECISP is required to take down the infringing product within 48 hours after becoming aware of the infringing product.

Article 13 of the Regulation enables ECSP to object the take down decision. According to the Regulation, ECSP is entitled to object take down decision if certain counter arguments and evidence is submitted. Such evidence are:

- ✓ Documents and evidence demonstrating that the product does not lead to infringement
- ✓ Invoice or invoice substitute documents proving that the product is genuine,
- ✓ Documents that the product has been placed on the market with the authorisation of the right holder
- ✓ A statement regarding the responsibility for the damages that may arise.
- ✓ Information of the ECSP such as business name etc.

According to Article 14 of the Regulation, in case ECSP clearly justifies its objection, ECISP must re-publish the relevant product within 24 hours and notify the parties. Furthermore, complaint applications regarding the same product and claim will not be taken into consideration unless new documents proving the infringement are submitted.

Finally, Article 15 of the Regulation foresees that the intermediation agreement between ECISP and ECSP must contain information on the proof of ownership of the IP Rights and the measures taken regarding the exercise of this right and infringement.

➤ **Prohibition of Private Label Sales for the ECISP**

Pursuant to Additional Article 2/1(a) of the Amendment and Article 19 of the Regulation, ECISP shall not sell or intermediate the sale of products bearing their own trademarks or any related parties with whom the ECISP has an economic integrity with and the trademarks ECISP have the right to use. If such products are sold in different electronic commerce platforms, they should not either provide access to such platforms or promote the same.

➤ **Restriction on Using the Registered Trademarks With Promotional Purposes**

Pursuant to the Additional Article 2/1(c) of the Amendment, ECISP or ECSP should not engage in marketing and promotional activities via online search engines by using third party's registered trademarks (which constitute the main element of the domain names registered in Electronic Commerce Information System ("ETBIS") without obtaining the trademark owner's consent.

Article 20 of the Regulation provides the means of the complaint proceedings and required documents in case of a violation of this obligation.

Conclusion

Both the Amendment and Regulation aim to secure a fair competition and prevent unfair practices in the relevant industry and introduce a new regime to Turkish e-commerce environment effective from **January 1, 2023**. The changes are affecting the entire e-commerce regime and the IPR related practices get it share. All the IPR related provisions are fresh and were not in place before the Amendment and Regulation, thus ECSIP and ESCP's should carefully review and comply with such brand new provisions that are introduces by the Amendment and Regulation.



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