

Requirements for Companies Operating Online Game Platforms

by Dilara Yürekli

This article outlines the documents and procedures to be followed by companies wishing to provide online game services. First, the obligations with regard to the content of the systems that will be used to publish such online games are explained in depth; next, the required transactions for registration and submission of online games to commercial circulation are listed. Lastly, the required procedures for registration of trademarks for protection are explained.

General Information Regarding Webcasting

Article 11 of the Code Regarding Webcasting and Combating Crimes Committed via Webcasting ("**Code**"), no. 5651, states that the procedures for the application of this Code shall be set forth by regulations issued by the Prime Ministry. Pursuant to the Regulation Regarding Procedures for Organization of Webcasting ("**Regulation**") issued by the Prime Ministry and to the Regulation Regarding Procedures for the Grant of Operation Licenses to Access Providers and Hosting Providers ("**Operation Licenses Regulation**"), real persons and legal entities that provide services and/or content by webcasting or operate such providers are defined as **hosting providers**, while real persons and legal entities that produce, provide or alter the systems and all kinds of information and data that are webcasted to users are defined as **content providers**.

Within the scope of such definitions, if a real person or legal entity owns a website and receives server service from entities providing such service, such real person or legal entity will be defined as a content provider, whereas if a real person or legal entity maintains servers that provide email, web, ftp (file transfer protocol) and similar services online, such legal entity or real person will be defined as a hosting provider. Since within the framework of the Code, Regulation and Operation Licenses Regulation, hosting providers and content providers are subject to different procedures, it is important to determine how the server services will be received during the establishment of the website via which such online games will be submitted to commercial circulation.

Pursuant to the Operation Licenses Regulation, real persons or legal entities that wish to operate as hosting providers within the borders of the Republic of Turkey have to obtain an operation license before starting their operations as hosting providers. In order to apply for such an operation license, forms available on the website of the Telecommunication Institution have to be completed and submitted. Following the online submission, the applicant needs to send the application documents by certified mail. The hosting provider operation license is valid for five (5) years after its issuance.

Pursuant to the Code, a notification obligation is imposed on content providers. In the Code, it is stated that the procedures regarding the notification obligation are determined by the Regulation. Pursuant to Article 5 of the Regulation, legal entity content providers for commercial purposes have to state their trade names, managers responsible, tax registration numbers or trade registry numbers, registered offices or electronic contact numbers and phone numbers on the main page under the heading "contact." In addition, content providers for commercial purposes have to state updated and correct introductory information regarding the hosting provider on the main page without any omissions.

Within the scope of the notification obligation, if the service that is being provided by the content provider is subject to permission or supervision of an authority, information related to such designated supervision authority has to be provided on the main page as well. While content providers that operate online game platforms do not have to obtain permission

for such operations, in the event that such online games are submitted to commercial circulation, their registry with the Ministry of Culture and Tourism is required.

Required Registration Procedures for Online Games

Within the scope of the Code of Literary and Artistic Works ("**CLAW**"), online games may be included within the category of academic and literary works, motion pictures, or compilation works depending on their content. Financial and immaterial interests of the owners of such online games are protected within the framework of CLAW. Pursuant to CLAW, upon request of the owners of the works, works protected within the scope of CLAW and rights related to financial interests arising out of such works may be registered. Procedures, fees and other issues regarding registrations made within the scope of CLAW will be determined by the Ministry of Culture and Tourism.

Pursuant to Article 5 of the Regulation Regarding Registration of Literary and Artistic Works ("**RLAW Regulation**"), online games including productions consisting of images in motion with sound with a determined scene and scenario are listed within the group of works like motion picture productions the registration of which is mandatory and the registration of such works with the Ministry of Culture and Tourism is envisaged for the ease of determination of the owners of the rights to them and for their protection. Registration of motion pictures and online games that contain the qualifications listed above is mandatory if copies of such works are recorded on digital devices such as DVDs, VCDs or audio CDs and submitted to commercial circulation.

Required Documents for the Application to Register Online Games Produced Abroad

Pursuant to the RLAW Regulation, as a rule, the application to register has to be made by the owner of the work by submitting the documents listed below:

- a) Undertaking (RLAW Regulation Annex 2);
- b) Customs entry declaration, customs certified invoice and customs cashier receipt for productions recorded on digital devices (such as DVD, VCD, or audio CD). If the persons who conducted the first determination of motion pictures or musical works did not register such works in Turkey, the registration of such works shall be made according to the list stated in the import document based upon the numbers and time determined in the undertaking attached to RLAW Regulation as Annex 2;

- c) License agreement or other agreements concerning the transfer of financial rights;
- d) Document indicating the result of the evaluation and classification of the productions including motion pictures made by the Evaluation and Classification Board established within the organization of the Ministry of Culture and Tourism pursuant to the Regulation Regarding Procedures for Classification and Evaluation of Motion Picture Works;
- e) One (1) copy of the poster for productions including motion picture works and for productions including musical works, one (1) copy of the material on which the work was recorded or one (1) copy of other introductory materials;
- f) One (1) copy of the work to be registered recorded on a digital device such as DVD, VCD, or audio CD;
- g) Bank receipt indicating that the registration fee has been paid in full;
- h) Signature circular; and
- i) Power of attorney.

In addition to those listed above, for applications to register computer games, the documents stated below must be attached:

- a) Reference statement executed by the professional association established pursuant to the Code to pursue and protect the copyrights related to computer programs, within the area of academic and literary works, indicating that evaluation and classification have been done in accordance with the Regulation Regarding Procedures for Classification and Evaluation of Motion Picture Works and that signs and indications are placed upon the materials conveying such works; and
- b) Undertaking indicating that, pursuant to the Regulation Regarding Procedures for Classification and Evaluation of Motion Picture Works, the computer programs do not contain components violating public policy, morals, or the mental and physical health of children and teenagers and are compatible with human dignity and the other principles set forth in the Constitution and will be submitted to commercial circulation in accordance with the proper signs and indications, and if a situation to the contrary is proven all legal and penal responsibility is taken. In addition, a statement summarizing all information regarding the game has to be enclosed.

Upon submission of the abovementioned documents without any omissions, the registration will be made. As a result of such registration, the applicant will be granted a registration certificate. This certificate will contain the name of the work; language; origin; year of production; name and code of the producer;

the owners of the work; the owners of other related rights; registration number including the first letters of the work group, date of the registration and if there is any previous registration, the date and number; and, if necessary, other information regarding such registration.

Required Documents for Registration of Usage or Transfer Rights Related to Financial Rights

Pursuant to the RLAW Regulation, usage rights and transfer rights related to financial rights can be registered with the Ministry of Culture and Tourism upon request. For the registration of such rights, the application form containing information regarding the type, content, signing date and parties of the document including usage rights related to the financial rights and registration date and content of any previous registration, along with the documents listed below shall be submitted to apply for registration.

- a) The undertaking attached to the RLAW Regulation as Annex 4, indicating ownership of the usage rights related to financial rights and if otherwise is proven all legal and penal responsibility is taken;
- b) A supplementary document such as both parties' or one of the parties' identity card if the party is a real person, or registry record if the party is a legal entity;
- c) Signature circular of the owners of the signatures on the document;
- d) A copy of the work constituting the subject of the contract or for computer programs a summary of the program recorded on a digital device such as DVD, VCD, Audio CD, or CD Rom; and
- e) Bank receipt indicating the registration fee has been paid in full.

If a registered production or work is at issue, a copy of such work or production need not be submitted. If the required documents are submitted without any deficiencies, one (1) copy of the documents indicating the usage rights related to financial rights will be sealed and deemed to be the same as the original and will be registered.

Precautions to be Taken for Protection of the Trademark

In order to provide the trademark with the protection set forth in the Decree Regarding Protection of Trademarks, no. 536, the trademark that online games bear should be registered with the Trademark Registry situated within the organization of the Turkish Patent Institute. As a rule, a license agreement

transferring the usage rights of the trademark can also be registered with the Trademark Registry. The registration of the license agreement with the Trademark Registry is necessary for the assertion of rights arising from registration of the trademark with the Trademark Registry by the parties against a third party in good faith.

To apply for the registration of a trademark, the real person or legal entity applicant has to have a place of residence or perform industrial or commercial activity within the borders of the Republic of Turkey or have the right to apply for such registration pursuant to the terms of the Paris Convention or the World Trade Organization Establishment Convention. If the applicant does not qualify under one of those conditions, the application may be made via a representative residing within the borders of the Republic of Turkey.

The documents required to apply for the registration of a trademark are listed below:

- a) Application petition containing information regarding the identity of the applicant;
- b) Copy of the trademark available for publishing and duplication;
- c) List of the services or goods with which the trademark will be used;
- d) Original of the document indicating the application fee has been paid in full;
- e) Power of attorney, if a brand representative is appointed;
- f) If the applicant is a legal entity, signature circular; and
- g) Document indicating that the applicant is engaged in trade.

The registration of the trademark for which the application for registration is made without any omissions will be made following the completion of the other required procedures. The protection period for a registered trademark is ten (10) years. Following the registration of the trademark, a license agreement executed in written form will be registered.

Conclusion

The procedures which need to be followed by a company that wishes to perform online game services are explained above. In addition to those procedures, other procedures set forth in the Code and Regulation need to be borne in mind. As a rule, the content provider is not only responsible for the content provided by it, but the content provider is also re-

sponsible for content to which it provides linkage if it can be understood that the content provider also embraces such content or aims to give its users access to it. On the other hand, although hosting providers are not obligated to monitor the content they are hosting or to investigate whether the content they are hosting includes illegal acts, if hosting providers are aware of the illegal content they are hosting, such hosting providers are obligated to ban it if doing so is technically possible. Pursuant to the Regulation, content published online cannot contain violent and/or pornographic elements that are likely to have negative effects on the physical or psychological development of children and teenagers or encourage bad behavior, such as gambling or drug use.

Pursuant to the Code, if it is determined that content published online constitutes the crime of inducement to suicide, sexual abuse of children, encourage-

ment and/or facilitation of drug use, procurement of health-endangering materials, obscenity or prostitution or providing accommodation and opportunity for gambling pursuant to Turkish Penal Code no. 5237, access to such content will be banned.

As is outlined in this article, hosting providers are required to obtain an operation license by filling out an online form and providing documents, while content providers are only required to provide business identity and hosting provider information on their sites. The financial and intellectual property rights and trademarks related to online games, unlike those recorded on digital devices, do not have to be registered; however, if the owners of such rights opt to register their rights for protection purposes, various documents are required to be prepared and submitted.