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## Protection of Computer Programs and Software

### Highlights of this issue

Notice On Electronic Commerce Information System And  
Obligations Of Notification



## PROTECTION OF COMPUTER PROGRAMS AND SOFTWARE

It is inevitable that with the technological developments that emerged in technology are reflected on law. In this context, one of the most important problems that need to be solved regarding computer law is how to protect legal and financial aspects of computer programs and software which gain more economic value day by day.

It is important to be aware of the distinction before starting: When talking about the protection of computer programs, it is not just the hardware such as a CD or hard disk where the program is installed; it is also the program's codes and flow diagrams. So, the values to be protected should be evaluated with this point of view.

In accordance with the global trend, computer programs and software are under intellectual property protection in our country. In other words, there is no preventive protection for computer programs and software, such as the patenting system; only computer programs and software that meet the necessary criterias can be protected under intellectual property law.

What should be considered here is; just as every written text is not preserved, only computer programs that contain character and originality can be protected under the principles of intellectual property law. For example, the idea of "reducing the size of a program by compressing it with various algorithms" cannot be protected; but the code and algorithms of the Winrar program can be protected. Because "reducing the size of a program by compressing a program" is a business idea that most people can think of, the computer program that enables this process to be carried out and has unique codes is under intellectual property law protection, not in terms of ideas but in terms of the program algorithms and the software.

As mentioned above, there is no preventive protection (registration, patent, etc.) system for computer programs. Although this doesn't seem like a problem from an operational point of view at first sight, various problems are encountered in practice. For example; if rival companies that gained access to any form of the software of the computer programs have accessing to source codes by using various ways such as reverse engineering and make a new computer program which functions very similarly to the original computer program, the source code is reached unlawfully and the company whose codes have been accesed unlawfully must first prove its right of ownership of the codes and that the process of bringing it into line. Because there is no precautionary tool or way to prove such as registration or patent that can be obtained beforehand regarding the source codes or the computer program. Again, the thought -provoking situation worries most of the employers is when or if a former employee starts to working in a competitor company after leaving. In order to prevent such violations, the relations between the parties and their rights should be clearly defined by contracts. In addition, every transaction related to the computer programs should be recorded.





Another controversial issue is which parts of the computer program will be individually protected by intellectual property law. The relevant legislation here protects the software themselves and the “preparatory steps” that will create the software in the next stage, even if they are not complete yet. Therefore, while algorithms alone cannot benefit from any legal protection, the flow of the program, which is an important step in the preparation phase of a software, is individually protected to the extent that it contains the owner’s specificity/originality. In the same vein, there is no doubt that both source codes and object codes of a computer program will be protected.

What are the other consequences of being protected by intellectual property law? First of all, the proprietor of the computer program has many rights such as reproduction, dissemination and publication of the software on the internet. In order for this program to be used by third parties, it is necessary for the program owner to transfer the rights of the computer program or grant a license for these rights. Otherwise, sanctions such as compensation due to infringement of intellectual property rights can be discussed.

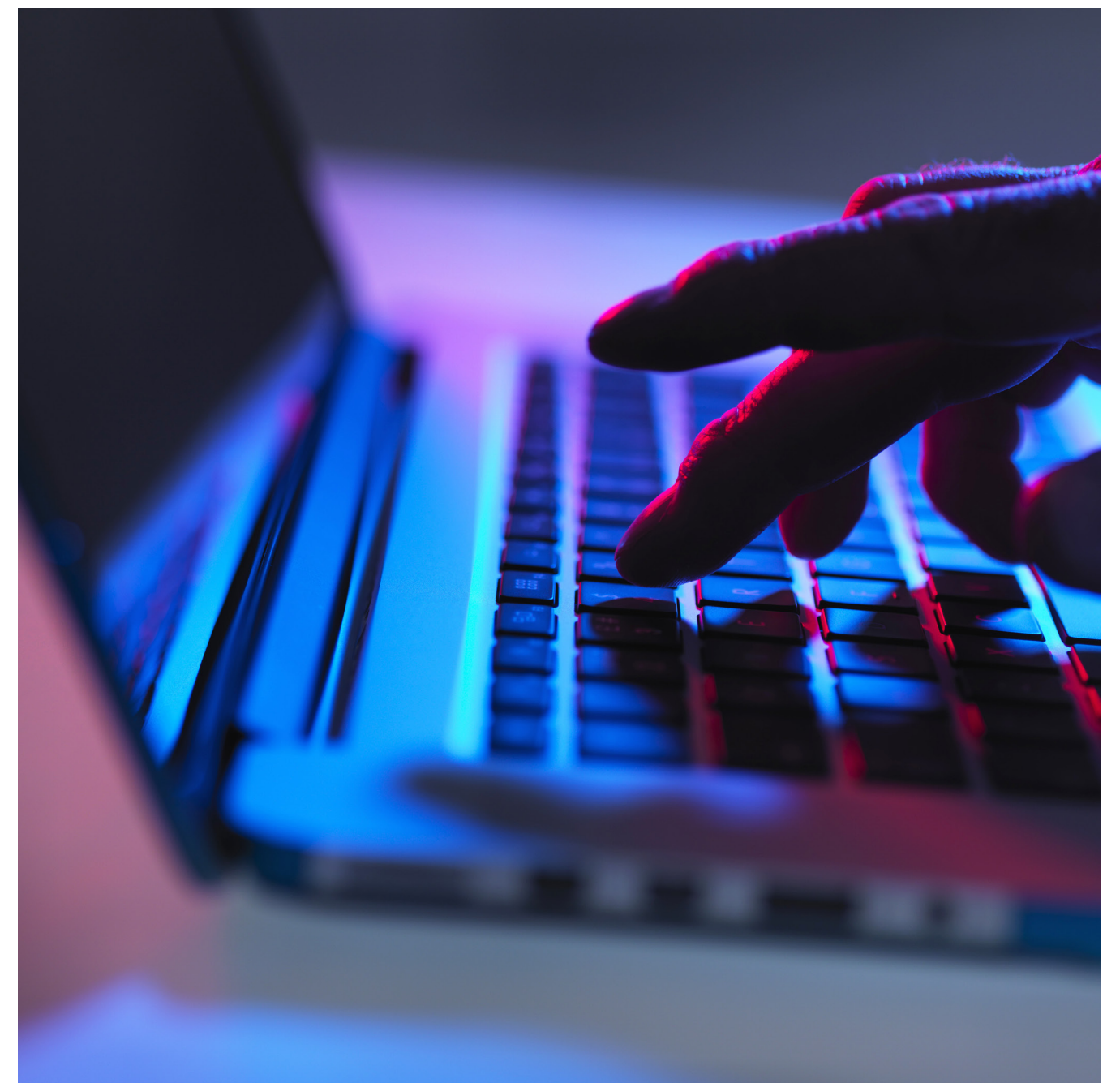
If the program is written by more than one person, and if it is possible to determine which part of the program is written by who each person can own the part which he/she has written. However, in general, it is impossible to precisely determine which part of the program is prepared by whom, and each person have different contributions in different parts of the program, the contributors to the computer program become author as a “unity”. In other words, if a decision about the rights on the computer program needs to be taken, this decision must be taken by all the owners. Again, concerning agreements made with third parties, programmers become partners of an “ordinary partnership” in the sense of rights and entitlements.

If companies are working with a software engineer in an employment relationship, the use of rights which originate from the software and computer programs produced within this relationship are directly by the employer. However, in order for this to happen, the parties must not have decided on the opposite and it is sought that the work done is in accordance with the logic of this application. Therefore, the employer can use the computer program and become a party to the transfers and license contracts.

Although the rights are theoretically definite; it is not always easy to prove who owns the rights of a computer program, in terms of who wrote it, when it was it written, and to what extent it was written. In order to overcome this difficulty, the parties initially guarantee their rights under a contract. However, there are additional measures can be taken. It can be easier to facilitate the true proprietorship of the computer program can be by registering the codes of the relevant program via a notary public or by optional registration procedures under the General Directorate of Copyright of the Ministry of Culture and Tourism or by means of timestamps such as electronic signatures. It should be noted, however, the registration procedures do not function as a trademark or patent registration.

In addition, a software program is not only protected by the intellectual property law. Even though is not possible to patent software as a rule, legal procedures allow the programs to be subjected to patent law when the program is integrated with hardware.

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Furthermore, computer programs which do not meet the requirements, in other words, programs that do not exceed the serious technical difficulties and/or do not include the originality, can still be protected legally, even if not by intellectual property law. Computer programs which may be regarded as a work product of an individual can be protected in accordance with the provisions of “unfair competition” when unfair use can be proved and other conditions relevant to the regulations are fully met.

## **NOTICE ON ELECTRONIC COMMERCE INFORMATION SYSTEM AND OBLIGATIONS OF NOTIFICATION**

Notice on Electronic Commerce Information System and Obligations of Notification (Notice) was published in the Official Gazette on August 11, 2017 and entered in force. Notice regulates the procedure and principles related to the registration and notifications of service providers in electronic commerce (e-commerce) activity and intermediary service providers that provide e-commerce environment for the economic and commercial activities of others through Electronic Trade Information System (ETBIS).

Within the scope of Notice, the service provider and intermediary service providers are obliged to register in ETBIS before starting e-commerce activities. Service providers and intermediary service providers shall provide information about the service, type of goods and services offered, payment methods, information of services received from payment and electronic money institutions, information on e-commerce infrastructure providers, the country and address information where personal data and databases are kept within 30 days from the date of registration to ETBIS. In addition, there is an obligation for service providers to notify the site and warehouse address information and the domain names and monthly statistical information of intermediary service providers engaged in cross-border e-commerce activities. The obligation for statistical information is also foreseen for payment and electronic money institutions, banks, Interbank Card Center Joint Stock Company, cargo and logistics operators and electronic commerce infrastructure providers.



Another important point is that it is obligatory to notify the details of the intermediary service providers who have made contracts and ordering over the internet on monthly basis and to inform the statistical information which is anonymized by the Ministry. Any changes in these matters must also be reported within 30 days.

Service providers and intermediary service providers registered to ETBIS and information related to them shall be announced on the official website of Ministry of Customs and Trade or on “[www.eticaret.gov.tr](http://www.eticaret.gov.tr)”.

According to Notice, service providers and intermediary service providers operating as of 01/12/2017 are obliged to fulfill within 30 days from the relevant date. Accordingly, the last day for service providers and intermediary service providers to act in accordance with their obligations is December 31, 2017.

The Turkish text of the Notice can be found in the following link:  
<http://www.resmigazete.gov.tr/eskiler/2017/08/20170811-7.htm>

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# Answers. Not theories.

## Gokce Attorney Partnership

### Editors:



**Assoc. Prof. Dr. Ali Paslı**  
ali.pasli@gokce.av.tr



**Yağmur Yollu**  
yagmur.yollu@gokce.av.tr

### About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, real property, and commercial litigation. Please visit our web site at [www.gokce.av.tr](http://www.gokce.av.tr) for further information on our legal staff and expertise.

**Please contact us at**  
**contact@gokce.av.tr**  
**0 212 352 88 33**

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