

## COVID-19: Recent Developments in Internet, Technology and Intellectual Property in Scope of the Outbreak

In order to decrease adverse effect of the Coronavirus (**Covid-19**) outbreak which is spreading increasingly around the world, all states impose certain measures. The measures are continuing to be taken to control the outbreak as well as to ensure the applicability of the measures and continuity of the technological developments. In our article dated 30.03.2020, we have analysed the reflection of the outbreak to the internet and technology world. As developments in this area continue, we have re-compiled the main issues related to the law sector from current developments below.

### Announcements regarding Personal Data Protection

#### i. Processing of location data

Along with the measures imposed in the Covid-19 outbreak period such as social distance, remote working and quarantine measures, the convenience and applications of technology continue to be used. In this context, Pandemic Isolation Tracking Project and the mobile application of Hayat Eve Sığar (**Mobile Application**) have been launched by the Ministry of Health. The location data of those who downloaded the mobile application will be processed. Through processing of location data, if the people who must be isolated at home due to the risk of Covid-19 leave their homes, a warning message will be sent to their phones. It has been also planned that the mobility of the quarantined people and regions is observed and the analyses aimed at preventing the spread of the pandemic are made.

The location data has been defined as “*the data processed in an electronic communications network or by an electronic communications service indicating the geographical position of the device of a user of a publicly available electronic communications service*” in the Regulation on the Processing of Personal Data in the Electronic Communications Sector. Having said that, the location data which makes identifiable the real person can also be considered as personal data under the Turkish Data Protection Law (**TDPL**).

On 09.04.2020, the Personal Data Protection Authority (**Authority**) has issued an announcement (**Announcement**) titled as the Processing of Location Data and Mobility Tracking during Covid-19 Outbreak. As per Article 28 of the TDPL, the provisions of TDPL do not apply to data processing activities of the public institutions and organizations within the exception of processing of personal data in scope of the “*preventive, protective and intelligence activities carried out by public institutions and organizations duly authorised and assigned to maintain national defence, national security, public security, public order or economic security*”. The Authority assessed that the location data can be processed by the public institutions and organizations in order to prevent the spread of the disease. The Authority also emphasized that the public institutions and organizations that process location data must take any technical and organizational measures to ensure personal data security, and delete or destroy the relevant data they collected when the processing purposes no longer exist.

Allowing the processing of the location data to protect the public health can be considered as reasonable. However, it is important to process location data, in accordance with the general principles and to consider the measures as explained. In this context, although such personal data processing activities are not within the scope of TDPL, it is important to carry out the processing of necessary personal data being relevant with, limited to and proportionate to the purposes for which they are processed, considering the interest to be protected by the Announcement.

## ii. Remote education process

Within the scope of Covid-19 measures, the remote education was initiated with the recommendations of Coronavirus Scientific Committee of the Ministry of Health. The remote education is provided through various platforms and personal data such as names and surnames of students and sensitive personal data that can be evaluated within the scope of biometric data such as voice and image can be processed. Within the scope of TDPL, the conditions under which such data can be processed and the processing conditions have been set forth, and the Authority has also issued an announcement titled with Remote Education Platforms (**Remote Education Announcement**) on 07.04.2020 regarding the data processed within this scope. It has been stated that the software used for remote education are serving through cloud service providers and the data centres of these software are usually based abroad. Therefore, the data transfer to a foreign country may be the issue and in such cases the process should be carried out in accordance with TDPL and secondary legislations. In the Remote Education Announcement, it has been advised to read the “Personal Data Security Guide” carefully and the Personal Data Protection Board (**Board**) decision on “The Measures to be Complied with when Processing Sensitive Personal Data”.

In this context, since it is expected that the remote education process will be on our agenda for a period of time, it is crucial to process personal data and sensitive personal data in line with TDPL, secondary legislation and Board recommendations.

## The regulation relating to TeknoPark companies and R&D and design centres

Companies operating in technology development zones and enterprises with R&D and design centres are required to perform R&D and design activities within these zones or centres in order to benefit from exemptions and incentives. In order to allow these activities to be carried out from outside the region temporarily, the press statement was made by the Ministry of Industry and Technology on 15.03.2020 and it was announced that employees working in these areas could work remotely due to the Covid-19 outbreak risk and within this, they can continue to benefit from exemptions and incentives until the end of April.

In scope of the Law Amending Certain Laws and Reducing the Effects of the Novel Coronavirus (Covid-19) Outbreak on Economic and Social Life numbered 7244 (**Omnibus Law**) published in the Official Gazette dated 17.04.2020, the above-mentioned press statement has been legalized. With the Omnibus Law, certain amendments have been made on the Law on Supporting Research and Development Activities and the Law on Technology Development Zones. With these amendments, the activities carried out in the R&D and design centres were enabled to be carried out outside the R&D and design centres. In addition, within the scope of the Law on Technology Development Zones, the activities carried out within the boundaries of the zone were also carried out outside the region. In this context, the permit process for activities to be carried out outside the centre and the zone has been introduced and the Minister of Industry and Technology has been authorized, limited to 4 months from 11.03.2020.

It has been set forth that the R&D and Design Centres and Technology Development Zones will continue to benefit from the exemptions and incentives granted after the permitting process.

## Support for the SMEs and Projects from the Ministry of Industry and Technology

In the statement made by the Ministry of Industry and Technology, within the scope of triple protection package for SMEs due to Covid-19 outbreak, it has been announced that SMES' loans with a maturity up to 30.05.2020 were postponed for three months until 30.05.2020. In this context, it is also announced that there will be no change in the maturities in the payments and no interest will be charged on the payments. It is aimed that the projects will not be suspended due to an extraordinary period, and it is stated that the companies that need to fulfil their project

obligations or entrepreneurship program obligations until 11.03.2020 or following dates will be given additional time up to four months and that the projects will not be deemed suspended.

## **An Evaluation of the Terms: Social Network Provider and Over-The-Top Services**

The Draft Law on the Amendment of Certain Laws (**Draft Bill of Law**) was brought to the agenda, which foresees amendments in several legal regulations in order to take novel precautions within the scope of Covid-19. Some of the remarkable arrangements in the Draft Bill of Law are the amendments foreseen with respect to social media and electronic communication regulations, apart from combating the epidemic.

Draft Bill of Law was submitted to the Turkish Grand National Assembly (**Assembly**) with changes in terms of the most discussed topics on the agenda. It was striking that the changes regarding the social media and electronic communication were not included in the Omnibus Law, which contains certain provisions of the Draft Bill of Law, and was published in the Official Gazette. Accordingly, although the changes given below are not on the agenda of the Assembly in a short term, it is necessary to assess the new concepts introduced with the amendments, since these amendments may come back to the agenda with any proposed law.

## **A Novel Concept: Social Network Provider**

One of the most significant amendments in the Draft Bill of Law is the concept of "social network provider", which was planned to be included in the Law on the Arrangement of Internet Publications and Combating Crimes Committed through These Publications (**Internet Law**). It had been thought that with this amendment; a special arrangement was intended to be brought in the Internet Law relating to social media platforms which are intensively used in Turkey. The term, social network provider, is defined in the Draft Bill of Law as "real or legal persons that enable users to create, view or share data such as text, images, voice, location, on the internet for social interaction purposes" and especially those with daily access of more than 1 million. It is aimed to burden various responsibilities to these providers, which are described below.

## **Obligation to Determine and Notify a Representative**

One of the most significant liabilities to be brought for social network providers is the determination of at least one person for fulfilling the requirements of the written notices, notifications or demands sent by judicial or administrative authorities, for the foreign-based social network providers having access from Turkey with more than 1 million. Thus, it has been planned to overcome the obstacle of not finding an addressee or finding an addressee lately, in terms of content or location providers with respect to removal of the illegal content in social media or preventing access to the content, which is frequently encountered in practice.

In case of non-fulfilment of obligation of determining a representative in Turkey, it has been stated that a notification will be made by the Information and Communication Technologies Authority (**ICTA**) to the social network provider. It has been regulated that the internet traffic bandwidth of the social network provider, which does not fulfil the obligation to determine and notify a representative within 30 days following this notification, can be reduced by 50%, and the internet traffic bandwidth of the social network provider, which does not fulfil its obligation within 30 days after the application of this sanction, can be reduced by 95%. With this arrangement, access to social media platforms will not be blocked; however, by reducing the internet traffic bandwidth, access to social media platforms may be thickened and indirect access barriers may result for users.

This also raises the issue of network neutrality which is being quietly discussed. Network neutrality is a principle that has been adopted especially in Europe regarding the internet service providers or the state to treat the data on the internet equally. Accordingly, no data, platform or user on the internet should be specifically controlled by a policy, law or rule. Although states are introducing regulations contrary to this principle in order to ensure public benefit and public security, regulations contrary to the purpose of internet use, which may harm the core of the principle of network neutrality, are criticized on the one hand.

## Data Localization Obligation

Another obligation for the social network providers which have daily access from Turkey more than 1 million is the necessity of the user data to be hosted in Turkey. Thus, social network providers, which are included in the scope of the Draft Bill of Law, will not be able to host the relevant data abroad. An administrative fine from TRY 1 million to TRY 5 million might be imposed to the social network providers who do not host the aforementioned data in Turkey. It is a key concern how this issue will affect social media platforms operationally.

## Obligation to Respond in Seventy-Two Hours

In accordance with the Draft Bill of Law, social network providers will be obliged to respond to content removal or access blocking applications made by individuals within the scope of Articles 9 and 9/A of the Internet Law, within 72 hours. This period is 24 hours for hosting service providers and 72 hours for the social network providers. An administrative fine from TRY 100 thousand to TRY 1 million is envisaged to be imposed for social network providers who do not fulfil this obligation. In addition, it is one of the regulations in the Draft Bill of Law that the social network provider notifies the ICTA quarterly, with reports of the statistical and categorical information regarding the implementation of the decisions of removal of the content and/or access blocking and content removal applications.

## Obligation to Indemnify Losses

The content determined contrary to the law by the judge or a court decision will be reported to the social network provider and the social network provider will remove this content within 24 hours from the notification, otherwise it is regulated that the social network provider will be responsible for any damages.

## The Term: Over-The-Top Services

Another essential regulation in the Draft Bill of Law is to introduce the definition of "Over-The-Top Services" to the Electronic Communication Law (**Communication Law**). Implementations named as over-the-top, OTT services are frequently used both in the world and in our country. However, there has been an inequality between the companies that offer these services from abroad without being bound to any legislation and the companies that are authorized by ICTA and that offer similar services. Accordingly, over-the-top service providers have become one of the subjects targeted to be regulated by the Draft Bill of Law and it is aimed to impose certain obligations on these providers.

Over-the-top service was defined in Draft Bill of Law as *public electronic communication services provided within the scope of audible, written and visual communication provided to subscribers and users who have internet access, through software, independent of the operators or the internet service provided or application services offered through software platform*. Based only on this definition, applications or services such as YouTube, Telegram, WhatsApp or Netflix can be shown as examples to above-network services.

According to the Draft Bill of Law, ICTA has been authorized to make restrictions and make necessary arrangements regarding the over-the-top services by taking into account the public interest. Thus, ICTA can take measures to prevent service delivery over unauthorized networks or as it is applied for authorized operators; might impose obligations on consumer rights, protection of personal data, service quality, reporting or financial obligations regarding these service providers.

## Conclusion

As explained above, with the regulations regarding the Internet Law and the Communication Law included in the Draft Bill of Law, although they have not been enacted in the current situation, signs are given that similar regulations may be included in Turkish law in the upcoming period and that this shows the point of view on this subject. Although the arrangements may change in the process of legislative studies, during the consultation of the public or in line with Assembly's work before coming to the fore again, it is essential to assess it with a proactive perspective within the logic and core of it.

## Effects of Covid-19 on Intellectual and Industrial Property Law Practice

As one of the most important precautions taken under Covid-19, some periods are suspended before the judicial authorities, with certain exceptions, in order to prevent loss of rights aroused or likely to arise due to the outbreak, pursuant to Provisional Article 1 of the Law Amending Certain Laws numbered 7226 (**Law No. 7226**) published in the Official Gazette dated 26.03.2020.

In accordance with Law No. 7226, in order to prevent loss of rights in the judiciary as a result of the Covid-19 outbreak in our country; all periods related to the origination, exercise and termination of any rights have suspended from 13.03.2020 until 30.04.2020 (including these dates). These periods will start operating from the day following the suspension period (01.05.2020). The time limits that expire in 15 days or less as of the suspension time (13.03.2020), will end in 15 days starting from the day after the suspension period ends (15.05.2020). The President is authorized to extend the suspension period once for not more than six months and narrow the scope for this period. In this context, on 30.04.2020, the President's Decision on the Extension of the Suspending Period for Prevention of Loss of Rights in the Jurisdiction (Presidential Decision) has been published and with this decision the suspending period stated in the Law No. 7226 and described above, with the exception of the periods stated in Public Procurement Law regarding mandatory administrative applications, was extended from 01.05.2020 to 15.06.2020 to be re-evaluated in the case of the risk of spreading the outbreak will disappear earlier. We would like to remind that with the Law No. 7226, gives the authority to extend the suspension period to President only for.

The provisions of the Law No. 7226 on the suspension of time periods are also valid for the proceedings before the Intellectual and Industrial Property Courts (**IIPC**) and Turkish Patent and Trademark Office (**TURKPATENT**).

## TURKPATENT's Practices

Through the official website of TURKPATENT, two announcements have been made on 26.03.2020<sup>1</sup> and 08.04.2020, 2020<sup>2</sup>, regarding the time periods. With the first announcement dated 26.03.2020, it is stated that the regulation of the Law No. 7226 on the suspension of time

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<sup>1</sup> Can be reached via:

<https://www.turkpatent.gov.tr/TURKPATENT/allAnouncement/anouncementDetail?newsId=1239>

<sup>2</sup> Can be reached via:

<https://www.turkpatent.gov.tr/TURKPATENT/allAnouncement/anouncementDetail?newsId=1240>

periods also covers the time periods specified in the Industrial Property Law, and accordingly all time periods of proceedings have suspended from 13.03.2020. Additionally, the right holders and their attorneys will have a right to perform the transactions retrospectively; those are on the suspension period and therefore have not been carried out.

Periodical proceedings before TURKPATENT related to the brand, patent / utility model, geographical indications and traditional product names, design and integrated circuit topographies are included within this scope. In the second announcement dated 08.04.2020; the application of executing the periodical proceedings in the industrial property legislation was explained and the last dates for the performance of the proceedings were specified. In any case, since there is no specific regulation in the President's Decision excluding Industrial Property Law and its secondary legislation's regulations, it can be stated that the time periods before TURKPATENT will be updated in accordance with the previous announcements and with the novel President's Decision. Having said that, it is likely that TURKPATENT will make a new announcement after the extension of suspension period with Presidential Decision, regarding the application of the time periods.

Wage payment proceedings, objections or renewal, lack of completion and priority right proceedings are included to proceedings which these periods will be applied. However, in any circumstances, TURKPATENT continues its activities. Especially for this reason, through TURKPATENT's Electronic Application System (**EPATS**) applications, documents and requests for proceedings may be submitted online, without waiting for the expiration of suspension period.

## **Proceedings Carried Out before IIPC**

According the Provisional Article 1 of Law No. 7226, the time periods regarding; litigation, execution for debt, application, complaint, appeal, warning, notification, periods of submission and limitation, period of prescription, mediation and reconciliation institutions and mandatory administrative applications, have suspended. However, exceptionally, the periods regarding protection precautions and interim injunctions and the period of limitations stated in laws for crime and punishment, misdemeanour and administrative sanctions are excluded.

## **Announcements of International Intellectual and Industrial Property Offices**

Various precautions are being taken by the governments, international organizations and private institutions for tackling with the Covid-19 outbreak. Within this scope national and international intellectual and industrial property offices also take precautions. According the resolution of European Union Intellectual Property Office (**EUIPO**) dated 16.03.2020<sup>3</sup>, all deadlines between 9.03.2020 and 30.04.2020 have been extended to 01.05.2020, and with a second decision<sup>4</sup> announced on 29.04.2020, all deadlines between 01.05.2020 and 17.05.2020 have been extended to 18.05.2020, for the proceedings carried out before EUIPO. On the other side, European Patent Office (**EPO**), with its announcement dated 15.03.2020<sup>5</sup>, has made detailed explanations on the application of time periods during Covid-19 outbreak in accordance with the European Patent Convention and stated the extension of all periods from the announcement date, 15.03.2020 to 17.04.2020. EPO has updated its decision with its announcement on 22.04.2020 and determined the extension period as 04.05.2020. However, it is expected that the aforementioned time extension announcement will be officially concluded by EPO soon.

<sup>3</sup> Can be reached via: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/contentPdfs/law\\_and\\_practice/decisions\\_president/EX-20-03\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/decisions_president/EX-20-03_en.pdf)

<sup>4</sup> Can be reached via: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/contentPdfs/law\\_and\\_practice/decisions\\_president/EX-20-03\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/decisions_president/EX-20-03_en.pdf)

<sup>5</sup> Can be reached via: <https://www.epo.org/law-practice/legal-texts/official-journal/2020/03/a29.html>

World Intellectual Property Organization (**WIPO**) has announced that; WIPO continues to perform its activities regarding the protection of intellectual property rights and related systems, the Patent Cooperation Protocol, the Madrid System for international registration of trademarks, the Hague System for international registration of industrial designs and the Lisbon System for the international registration of geographic signs. WIPO also announced that, the WIPO Arbitration and Mediation Centre, which acts on the dispute resolutions on domain names, will continue its activities and in case of additional precautions are taken the related information can be obtained from official website, in the relevant areas for each system<sup>6</sup>.

## **Conclusion**

There is a tackling with the Covid-19 outbreak, to reduce the effects of the outbreak and to overcome it with minimal damage. The essential part of the precautions taken in this regard has impacts on the legal arena. However, despite the extraordinary situations, legal regulations continue to exist and enforcement of rules and obligations has not been completely eliminated. Therefore, we are on the opinion that, it is important to follow the reviving period for suspended or postponed situations, to fulfil ongoing obligations and to ensure the continuity of the compliance with relevant legislation.

**Kind regards,  
Gokce Attorney Partnership**

*This note is prepared on the date of 01 May 2020 within the developments till this day, solely for the purpose of presenting general information and does not provide any case-related assessment. This note does not include any taxation advisory. The information given in this note may differ for each particular situation. Thus, Gokce Attorney Partnership would not be held liable for these situations.*

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<sup>6</sup> Can be reached via: [https://www.wipo.int/portal/en/news/2020/article\\_0015.html](https://www.wipo.int/portal/en/news/2020/article_0015.html)