

REGULATION ON THE PRINCIPLES AND PROCEDURES REGARDING THE CERTIFICATION OF BUSINESSES WHICH RECORD, REPRODUCE AND SELL OR DISTRIBUTE MATERIALS WHERE INTELLECTUAL AND ARTISTIC WORKS ARE FIXED

Purpose

Article 1 – (Amended by: OG-4/3/2011-27864)

The purpose of the foregoing Regulation is to lay down the principles and procedures regarding the certification by the Ministry, in exchange of a fee, of places which manufacture or import materials serving the fixation or reproduction of intellectual and artistic works and/or carry out the recording, reproduction and sale of such materials or distribute and supply to the public in any way, excluding places that only print periodicals, in an effort to promote the protection and effective pursuit of intellectual property rights.

Scope

Article 2 — The foregoing Regulation pertains to the principles and procedures regarding certification as well as the liabilities of places that would be certified.

Grounds

Article 3 — This Regulation has been drawn up based on the Law on Intellectual and Artistic Works No. 5846 of 5/12/1951, amended Article 44 and Provisional Article 10.

Definitions

Article 4 – (Amended by: OG-4/3/2011-27864)

For the purposes of the foregoing Regulation, the following terms shall refer to the definitions hereby assigned to them:

- a) Ministry: Ministry of Culture and Tourism,
- b) Recording facility: Places that have the technical equipment which enables digital fixation through mounting on a tape by recording on rolls of magnetic strips, or through injecting on recordable materials such as CDs, VCDs or DVDs which are copied from specially manufactured molds,
- c) The Law: Law on Intellectual and Artistic Works No. 5846 of 5/12/1951,
- d) Source Identification Code (SID Code): The source identification code granted by the International Federation of the Phonographic Industry (IFPI), which enables the identification of places that perform the manufacturing or recording of recordable materials such as CDs, VCDs and DVDs,
- d) Recordable material: Tapes, computer disks, CDs, VCDs, DVDs, flash memories and materials of similar nature.

Certification requirement

Article 5 – (Amended by: OG-6/7/2021-31533)⁽¹⁾

For the purpose of protection and effective pursuit of intellectual property rights, places listed below, which manufacture materials serving the fixation or reproduction of intellectual and artistic works and/or carry out the recording, reproduction and sale of such materials or distribute and supply to the public in any way, excluding places that only print periodicals, shall be required to obtain a certificate in exchange of a fee:

- a) Recording facilities, printing houses and places where intellectual and artistic works are reproduced.
- b) Places that manufacture blank recordable materials.
- c) Publishing houses.
- c) Film and phonogram producers.
- d) Commercial art galleries and places that retail works of fine arts as well as places where works of fine arts are sold via auctions, vendues or bidding.
- e) Places that sell, distribute or import or rent copies and materials that contain intellectual and artistic works.

Certification

Article 6 – (Amended by: OG-4/3/2011-27864)

(Amended first paragraph: OG-6/7/2021-31533)(1) The certification procedures of film and phonogram producers shall be carried out by the Directorate General for Copyright whereas the certification procedures of recording facilities shall be carried out by Istanbul Copyright and Cinema Directorate. All other certification procedures shall be carried out by Provincial Directorates of Culture and Tourism. The applications for the certification referred to hereof shall be submitted through the Electronic Application System established by the Ministry where the applications would present the required information and guarantee that they would respect the rights associated with intellectual and artistic works.

(Amended second paragraph: OG-6/7/2021-31533)⁽¹⁾ During their applications, recording facilities shall submit their Source Identification Codes (SID Code) and the capacity reports issued by the chamber of industry, of which they are a member, in accordance with the Law No. 5174 of 18/5/2004 on the Union of Chambers and Commodity Exchanges of Türkiye and Chambers and Commodity Exchanges.

(Amended third paragraph: OG-6/7/2021-31533)⁽¹⁾ During their applications, governmental organizations and agencies shall submit the document issued by the organization on whose behalf the application is being submitted, which indicates that the person submitting the application is duly authorized.

(Amended fourth paragraph: OG-6/7/2021-31533)⁽¹⁾ During the certification applications involving activities to be carried out via direct sales agents, the applicants shall submit the deed of assignment obtained in accordance with the Regulation on Contracts Concluded outside the Workplace published in Official Gazette No. 29236 of 14/1/2015.

Amended fifth paragraph: OG-6/7/2021-31533)⁽¹⁾ Businesses shall be entitled to submit collective applications for their branches. At the end of a collective application, certificates shall be issued for each branch, individually and in exchange for a fee.

Where an author who is a natural person, sells the lawfully reproduced copies of his/her own work, the certification obligation shall not apply.

Certified places and authors may not sell their products in places which are prohibited by the Law under Article 81.

In the event of a change in the field of activity or the business structure, within fifteen days as of the date on which the change has taken place, any existing certificates shall be returned and new certificates shall be obtained.

In the event of change of address, any existing certificates shall be returned within ten days, and a new certificate shall be issued for the remaining validity period of the returned certificate. No additional fees shall be charged for this procedure.

The certificates shall be issued in the person's name and they may not be transferred.

Properties of certificates and the information they must incorporate

Article 7 – (Amended by: OG-4/3/2011-27864)

The certificates to be issued by the Ministry shall incorporate details including the name and address of the business, its tax number, and the field of activity associated with certification as well as other information such as the issue date, validity period and certificate number. The certificates shall be renewed every four years. During the renewal procedures, the documents listed in Article 6 shall be submitted.

(Revoked clause: OG-6/7/2021-31533)(1)

Liabilities of certified places

Article 8 – (Amended by: OG-6/7/2021-31533)⁽¹⁾

Places, for which the certification obligation applies in accordance with the foregoing Regulation, shall be held liable to submit their certificates during inspections. In addition, printing houses, publishing houses, recording facilities shall have a liability to affix the certification number to the non-periodical publications and recordable materials which they manufacture and reproduce, and the recording facilities shall have a liability to also affix the Source Identification Code (SID Code) to the recordable materials.

Special Provisions for the Recording Facilities

Article 9 – (Revoked by: OG-6/7/2021-31533)⁽¹⁾

Provisional sales certificate

Article 10- (Text and Title amended by: OG-6/7/2021-31533)⁽¹⁾

Where they open a booth at a fair or festival or in an area where other kinds of cultural events are organized, with a view to selling books or recordable materials which carry intellectual and artistic works, places that have obtained a certificate in accordance with the foregoing Regulation shall be entitled to sell their products at these events after they have submitted the document issued by the company or agency that would be organizing the event in question to the Directorate of Culture and Tourism located in the province where the event would be held. To this end, a copy of the certificate, incorporating the name and date of the event, shall be issued. No additional fees shall be charged for this procedure.

Fields of activity associated with certification and applicable fees

Article 11 – (Title and text amended by: OG-4/3/2011-27864)

The fields of activity associated with certification shall be designated by the Ministry, in view of the documents submitted during the application.

Certification fees shall be determined by the Ministry between the sums to be calculated by multiplying the indicator number (1000) to (5000) with civil servants' monthly salary coefficient, depending on the field of activity associated with certification.

The fees in question shall be deposited in the account of the Central Accounting Directorate under the Ministry of Culture and Tourism, and they shall be registered as revenue to the budget. The funds needed for printing the certificates, performing the procedures and operations for issuing the certificates and battling pirate activities shall be included the Ministry's budget.

Inspection of certification and sanctions

Article 12 — (Amended by: OG-8/3/2008-26810) Inspections as to whether the places which are required to be certified in accordance with the foregoing Regulation have obtained certificates shall be performed through a commission to be established in the provinces by the local representatives of central government, and the inspections on the recording facilities shall be performed by the Ministry.

(Amended paragraph: OG-4/3/2011-27864) Where, at the end of the inspections, it has been established with an official report that a place was operating without obtaining the obligatory certificates, representatives of central government shall issue the fine referred to in the Law under sub-paragraph (1) of the first paragraph under Additional Article 10, in view of the second paragraph under Article 17 of the Law of Misdemeanors No. 5326 of 30/3/2005.

Having paid the fine shall not nullify the liability to obtain a certificate.

Cancellation of certification

Article 13- (Amended by: OG-4/3/2011-27864)

The Ministry shall cancel a certificate where administrative units or courts have confirmed that a place obtained the certificate by providing false information during the procedures carried out in accordance with the provisions hereof, or it no longer meets the eligibility criteria; where it has been proven, upon a court decision, that a counterfeit document was used; or where the judicial authorities have issued a decision to cancel the certificate or established that it is a duplicate.

In addition, the certificates granted to the places for which there is a final verdict of conviction on the grounds of violating the Law, shall be canceled upon a notification to be submitted to the Ministry by the rightholders, collecting societies operating in the relevant field or the representatives of central government.

The authority which issued the certificate shall notify applicant about the cancellation, by indicating the reason.

A certificate may also be canceled where a request to cancel the certificate submitted to the Ministry by an authorized representative of the certified place is endorsed by the Ministry. During such applications, the reason for requesting the cancellation shall be indicated and the certificate shall be returned.

Loss or misplacement

ARTICLE 13/A – (Inserted: OG-4/3/2011-27864) (Revoked: OG-6/7/2021-31533)⁽¹⁾

Provisional Article 1 — (Amended by: OG-8/3/2008-26810)

The businesses and facilities which are obliged to get certified in accordance with the foregoing Regulation, and those which previously obtained a certificate of competency for recording facilities, shall get certified before end of business on 1/6/2008.

PROVISIONAL ARTICLE 2- (Inserted by: OG-4/3/2011-27864)

The certificates issued before the effective date of the foregoing article shall remain valid for the period indicated thereof.

PROVISIONAL ARTICLE 3- (Inserted by: OG-6/7/2021-31533)⁽¹⁾

The provisional and permanent producers' certificates issued pursuant to Article 6 of the Regulation on the Recording and Registration of Intellectual and Artistic Works published in Official Gazette No. 26171 of 17/5/2006, shall not be renewed at the end of their validity period. When the validity periods of these certificates expire, the producers shall be obliged to get certified in accordance with the sub-paragraph (c) of the first paragraph of Article 5 hereof, to replace their certificates.

Entry into Force

Article 14- Drawn up by conferring with the Ministry of Finance and the Court of Accounts, the foregoing Regulation shall enter into force upon publication.

Enforcement

Article 15- The provisions hereof shall be enforced by the Minister of Culture and Tourism.

(1) This amendment shall take effect on 1/1/ 2022.

