

REGULATION ON THE PRINCIPLES AND PROCEDURES REGARDING THE PRACTICE OF AFFIXING BANDEROLES

SECTION ONE

Purpose, Scope, Legal Grounds, Definitions

Purpose

ARTICLE 1 – (Amended by: OG-1/11/2010-27746)

The purpose of the foregoing Regulation is to lay down the principles and procedures regarding the provision and use of banderoles which, in an effort to ensure that the rights of authors of works and rightholders are pursued and intellectual rights violations are eliminated, shall be affixed compulsorily on the copies of musical and cinematographic works and on non-periodical publications, and upon request, on other groups of works that can be easily copied, as well as the principles and procedures regarding the inspections, and the use of banderole revenues.

Scope

ARTICLE 2 - The foregoing Regulation incorporates provisions on the principles and procedures regarding the provision and use of banderoles as part of the compulsory and optional practice of affixing banderoles, the establishment and operation of the Commission tasked with performing inspections, and the spending of the revenues generated from the sale of banderoles.

Legal Grounds

ARTICLE 3- (Amended by: OG-1/11/2004-25635)

This Regulation has been drawn up based on the Law on Intellectual and Artistic Works No. 5846, Amended Article 81 and Provisional Article 7.

Definitions

ARTICLE 4 - (Amended by: OG-1/11/2010-27746)

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) Banderole: A holographic security label or digitally produced security label affixed to the reproduced copies of intellectual and artistic works, and on non-periodical publications, which contains a security strip that gets torn apart upon removal, causing a loss of quality of the material to which it has been affixed, in an effort to prevent unauthorized reproduction and imitation of intellectual and artistic works,
- c) (Amended by: OG-13/3/2012-28232) Directorate General: Directorate General for Copyright,
- ç) The Law: Law on Intellectual and Artistic Works No. 5846 of 5/12/1951,
- d) Non-periodical publication: All kinds of publications, apart from newspapers, magazines, unit magazines, yearbooks, almanacs, etc., which contain intellectual and artistic works, and are published without being limited by certain periods.

SECTION TWO

Using and Providing the Banderoles and Use of Revenues

Using the Banderoles

ARTICLE 5 – (Amended by: OG-1/11/2010-27746)

It shall be compulsory to affix banderoles on non-periodical publications and reproduced copies of musical and cinematographic works which have been duly recorded and registered, subsequent to their reproduction and prior to shipping. (Additional clause: OG-14/1/2021-31364) Banderoles shall be affixed to the publications and copies imported to be marketed domestically within thirty days after the customs procedures have been finalized. Devices that are not principally designed to carry intellectual and artistic works and lack the quality of a recordable material shall not be given banderoles, although they contain one or more of the works that fall within the scope of the banderole affixing obligation.

In cases listed below, use of a banderole shall be optional depending on the request by the author of the work or the rightholders.

- a) Publications consisting of the texts of laws, bylaws, regulations, notifications, circulars and court decisions as well as speeches and addresses that have been officially published or announced, as referred to in the Law under Articles 31 and 32.
- b) Of the publications to be used for educational and training purposes in educational

institutions, any promotional copies containing the remarks “Promotional copy, not for sale” on the front and back covers as well as certain pages, written in a font size no smaller than fourteen points,

c) **(Amended by: OG-13/3/2012-28232)** Publications and copies of work which would only be reproduced within the country before they are released abroad, without being made available for commercial circulation domestically,

ç) Catalogues, brochures, user’s manuals and tariffs designed for promotional or informational purposes,

d) Materials which are of a complementary nature to the content, provided alongside the copies of cinematographic and musical works and non-periodical publications to which banderoles have been affixed,

e) **(Amended by: OG-13/3/2012-28232)** Non-periodical publications designed for pre-school as well as primary and secondary education, which are shorter than 48 pages in total, apart from the cover,

f) Sample publications or copies of works shipped from abroad for review, on condition that, during customs and postal procedures, the relevant units have been assured that the publications or copies in question are not meant for commercial circulation,

g) **(Amended by: OG-13/3/2012-28232)** Textbooks made available to students free of charge by the Ministry of National Education or Anadolu University for the purposes of the Central Open Education System, on condition that they are marked as "Not for sale",

ğ) Publications that are currently sold as “used copies”, which were printed before 7/6/1995, i.e., the effective date of the provision under the Law upon which the obligation to affix banderoles to non-periodical publications was introduced,

For the publications which may be marketed without a banderole in accordance with the provisions laid down under the second paragraph hereof, it is mandatory that they contain the remarks “As prescribed in paragraph two under Article 5 of the Regulation on the Principles and Procedures regarding the Practice of Affixing Banderoles, this product is not subject to the obligation to carry a banderole” on their first pages or back covers, written in a font size no smaller than fourteen points. In cases described in subparagraphs (c), (d), (f) and (ğ) under the second paragraph hereof, use these remarks shall not be mandatory.

Where the copies of works and non-periodical publications which are subject to the obligation to carry banderoles, are distributed free of charge in any manner, it is mandatory, when submitting an application to get banderoles, to indicate that they would be used for promotional purposes only.

In addition, upon the request of the rightholder, banderoles shall be affixed to the other copies of work that are protected under the Law and can be easily copied, provided that they have been duly recorded-registered. These banderoles shall be provided by the Directorate General or İstanbul Copyright and Cinema Directorate.

The banderoles to be obtained as described in Article 6 hereof, shall be affixed in a manner that would make it easier to spot during an inspection, depending on the outer shape of the recordable material where the work is contained.

Providing the Banderoles

ARTICLE 6 – (Amended by: OG-1/11/2010-27746)

(Amended first paragraph: OG-13/3/2012-28232) The banderoles to be affixed to the copies of cinematographic and musical works shall be provided by İstanbul Copyright and Cinema Directorate, whereas those to be affixed to non-periodical publications shall be provided by İstanbul Copyright and Cinema Directorate or the Provincial Directorates of Culture and Tourism.

(Amended second paragraph: OG-13/3/2012-28232) In addition, banderoles may be sold through the agency of collecting societies/federations, at a sale price to be established by the Ministry. The banderoles shall be sold at a fixed price while the sum to be charged for the banderoles to be supplied to the collecting societies/federations shall be established by the Ministry. The remaining sum after the banderole price established by the Ministry has been deducted from the price charged by the collecting societies/federations for the sale of banderoles shall be used for covering the management expenses and strengthening the intellectual property system by the collecting society where the banderoles are sold by the collecting society, and by

the federation and its member collecting societies, where the banderoles are sold by the federation. For the banderole applications submitted to the collecting societies/federations authorized by the Ministry, the liability and responsibility to verify the authenticity of the submitted documents and storing them shall rest with the relevant society/federation. The Ministry shall have the authority to introduce sub-regulations to lay down the principles and procedures regarding the sale of banderoles by the collecting societies/federations.

(Amended third paragraph: OG-14/1/2021-31364) The banderoles shall be printed by the Ministry. The types and properties of the banderoles shall be determined by the Ministry, and all kinds of banderoles may also be sold by the Directorate General. In a banderole application, the number of requested banderoles may not be smaller or larger than the number of reproduced items. When submitting a banderole application, the documents listed below shall be presented, in addition to the banderole request form and letter of guarantee where it is indicated that the applicant is the legitimate rightholder and the requested banderoles would be used for the relevant work:

a) For copies of cinematographic works: bank receipt and recording registration certificate statement; for the copies reproduced domestically, a letter from the place where the reproduction was carried out; for copies reproduced abroad, customs entry documents and invoice.

b) For copies of musical works: bank receipt and recording registration certificate statement; approval from the collecting society operating in the field of musical work authorship; for the copies reproduced domestically, a letter from the place where the reproduction was carried out; for copies reproduced abroad, customs entry documents and invoice.

c) For non-periodical publications: contract/warranty documents regarding the transfer of or authorities to exercise economic rights; bank receipt and certificate number statement; for the copies reproduced domestically, a letter from the place where the reproduction was carried out; for copies reproduced abroad, customs entry documents.

ç) For optional banderoles: the documents listed in sub-paragraph (c) and in addition, a statement incorporating the date and number of the recording registration certificate. Furthermore, with a view to addressing the problems that may arise in practice, the collecting societies/federations authorized by the Ministry shall be entitled to perform inspections on the copies listed in a banderole application has been submitted

(Amended fourth paragraph: OG-14/1/2021-31364) The banderole procedures for non-periodical publications shall apply for the works which are of an artistic, scientific, educational or technical nature, or those consisting of a series of motion images where daily events are fixed, which have been created without employing the styles and methods that are typical to the art of cinema.

(Amended fifth paragraph: OG-14/1/2021-31364) For the non-periodical publications imported from abroad through acquiring the right of distribution as referred to in the Law under Article 23, and for the copies reproduced upon the specific request of the user -on condition that the number of copies does not exceed 100 pieces, banderoles may be purchased in bulk. Those who have purchased banderoles in bulk shall be required to notify the Ministry as to which publications they used these banderoles for. Further banderole applications submitted by those who previously failed to notify the Ministry, shall not be processed.

(Amended sixth paragraph: OG-13/3/2012-28232) The banderoles to be affixed to non-periodical publications shall be provided from the province where the headquarters of the banderole applicants are located or where the copies for which banderoles have been requested would be reproduced, or from the collecting societies/federations authorized by the Ministry.

(Revoked seventh paragraph: OG-13/3/2012-28232)

(Revoked eighth paragraph: OG-14/1/2021-31364)

Using the Banderoles for Computer Games

ARTICLE 7 – (Title and text amended by: OG-1/11/2010-27746)

(Amended first paragraph: OG-14/1/2021-31364) For computer games that may be displayed on electronic or mechanic devices or through means of similar nature, which consist of a series of motion images with or without sound, regardless of the material in which they are fixed, the banderole procedures for cinematographic works shall apply.

(Revoked second paragraph: OG-14/1/2021-31364)

Article 8- (Amended by: OG-6/11/2004-25635)

Article 8 of the Regulation on the Principles and Procedures Regarding the Practice of Affixing Banderoles No. 24577 of 8/11/2001 has been revoked.

**SECTION THREE
Inspection**

Inspection

ARTICLE 9 – (Amended by: OG-1/11/2010-27746)

The Ministry and local representatives of central government may always inspect, whether the copies and non-periodical publications on which banderoles should be affixed, bear banderoles or not. In order to carry out such inspection the local representatives of central government may, *ex-officio* or upon the request of the Ministry, form an “inspection commission” in provinces when deemed necessary. In cases of violations referred to in the Law under Article 81, law enforcement agencies and the municipal police shall take action *ex officio* and/or in response to a report made by the rightholders, the Commission, collecting societies, the Ministry or parties who have been authorized and commissioned by other laws. For the copies and publications that were reproduced and distributed unlawfully and without permission as well as all kinds of equipment used in their reproduction and other evidence, the provisions of the Law under Article 81 shall apply. **(Additional clause: OG-14/1/2021-31364)** Where protection measures associated with the offense and the items of offense are required during the inspections, the law enforcement officials shall exercise their powers vested in them by the Code of Criminal Procedure No.5271 of 4/12/2004 and the Law on the Duties and Discretion of the Police.

Where it is established at the end of these inspections, that the rights protected by the Law have been infringed, the Public Prosecutor shall perform the necessary procedures for the enforcement of an injunction to confiscate the item of offense, in accordance with the Code of Criminal Procedure No.5271 of 4/12/2004. In addition, the Public Prosecutor may, if he/she deems necessary, order the cease of the activity associated with the reproduction of the works that have allegedly been reproduced unlawfully. However, within twenty-four hours, this decision shall be submitted to the judge for approval. Any decision that has not been approved by the judge within twenty-four hours shall be deemed null and void.

It is prohibited to sell even lawfully reproduced copies bearing banderoles which are under the protection of the Law, on roads, squares, open air markets, sidewalks, piers, bridges or similar places. Any person who acts against the prohibition shall be punished in accordance with the first paragraph under Article 38 of Law of Misdemeanors No.5326 of 30/3/2005.

Inspection Commission

ARTICLE 9/A- (Inserted by: OG-1/11/2004-25635)

The inspection commissions to be established *ex-officio* or upon the request of the Ministry, in the provisions by the local representatives of central government in accordance with Article 9 hereof, **(Revoked remark: OG-14/1/2021-31364)** (...) shall consist of the law enforcement officials and representatives of the municipal police. Where necessary, representatives from the Ministry and the Collecting Societies operating in the relevant fields as well as officials from other governmental organizations and agencies may also sit on these commissions.

(Amended second paragraph: OG-14/1/2021-31364) Inspection commissions shall perform inspections *ex-officio* or in response to a report, in connection with the obligation to affix banderoles. The principal duties of the inspection commission members consist of the procedures and operations associated with the commission. Where necessary, the Governors may form sub-commissions operating under the inspection commission, within the framework of the same principles.

(Amended third paragraph: OG-14/1/2021-31364) The members and the number of members shall be decided by the Governors. In an effort to regulate the management and operations of the inspection commission, the Governor shall assign a representative from the Provincial Directorate of Security as the president of the commission and a representative from the Provincial Directorate of Culture and Tourism as the vice president. The clerical work of the commissions shall be undertaken by the Provisional Directorates of Security. The president of the Commission shall chair the commission meetings, formulate the annual inspection and working schedule, and assign the persons who would be performing the inspections. The president shall

draw up monthly inspection and annual general activity reports and submit them to the Office of the Governor and the Ministry.

(Amended fourth paragraph: OG-14/1/2021-31364) Where the commission establishes, during the inspections, that the provisions regarding the practice of affixing banderoles as laid down by the Law and the foregoing Regulation have been violated, it shall carry out the relevant procedures and operations to ensure that the provisions under Article 9 are enforced.

The expenses associated with the working conditions of the commission and the inspection activities it performs shall be covered by the Ministry.

Keeping the Banderole Request Form and the Obligation Form

ARTICLE 9/B – (Amended by: OG-14/1/2021-31364)

Places which carry out the reproduction of copies and publications to which the affixing of banderoles is compulsory, shall have a liability to affix the banderoles with which they have been provided, to the work referred to in the banderole request form and obligation form by adhering to the serial range indicated thereof, and to obtain a copy of the obligation form, keep it, and submit it to the competent authorities when requested.

SECTION FOUR Other Provisions

Sanctions

ARTICLE 10 – (Title and text amended by: OG-1/11/2010-27746)

In cases where the liability to affix banderoles laid down hereof has been violated, the provisions in the Law under Article 81 shall be enforced.

Administrative Fine

ARTICLE 10/A- (Inserted: OG -06/11/2004-25635) (Revoked by: OG-1/11/2010-27746)

SECTION FIVE Final Provisions

Revoked Provisions

Article 11 — Sub-paragraph (1) under Article 5, Article 9 and amended Article 12 of the "Regulation on Marking the Intellectual and Artistic Works" published in the Official Gazette No. 23172 of 16/11/1997, and the "Communiqué on the Practice of Affixing Security Holograms to Non-Periodical Publications" published in the Official Gazette No. 23388 of 30/6/1998 are hereby revoked.

Disposal

ADDITIONAL ARTICLE 1 – (Inserted by: OG-1/11/2010-27746) (Amended by: OG-13/3/2012-28232)

Where the banderoles that had been lawfully obtained were not used or they were misused, the disposal of the banderoles in question shall be performed by a commission to be established by the Directorate General, or through a notary office, and an official report shall be drawn up, where the serial numbers of the disposed banderoles would be clearly indicated. At the end of the disposal procedure, the official disposal report that has been accordingly drawn up, shall be submitted to the Directorate General.

(Additional paragraph: OG-14/1/2021-31364) The materials seized within the scope of banderole offenses shall be disposed of in accordance with the Regulation the Items of Offense published in the Official Gazette No 29662 of 23/3/2016. On the other hand, the materials seized within the scope of banderole offenses where no perpetrators have been identified, shall be disposed of without need for applying the criteria listed in the Regulation of the Items of Offense, provided that the provision on getting samples is reserved.

Stock banderoles

PROVISIONAL ARTICLE 1 – (Title and text amended by: OG-25/04/2006-26149)

For books that were printed before 8/11/2001 and are currently in stock, those who are entitled to purchase banderoles in accordance with the foregoing Regulation, may purchase banderoles up until 31/8/2006.

Those who request banderoles shall be obliged to submit an obligation form (ANNEX-1) where they would indicate the number of copies they have in their stocks, and provide the relevant information and where they would declare that all kinds of legal and criminal responsibility shall rest with them in the event that the information in question turns out to be incomplete or inaccurate.

Banderoles shall be affixed by the rightholders before the non-periodical publications placed on the market.

Provisional Article 2 — By 1/1/2002, the revenues generated from the banderoles shall be deposited into a dedicated account to be opened in the name of the Ministry in a national bank.

The revenues that accumulate in this account shall be used for the purposes of printing and distributing banderoles, strengthening the system of intellectual property as well as safeguarding and maintaining the cultural assets in the country and abroad. The principles and procedures for spending these revenues shall be laid down upon the Minister's approval.

Provisional Article 3- (Inserted by: OG-06/11/2004-25635)

All kinds of vehicles, equipment and materials that belong to the inspection commissions that were established in the provinces prior to the date on which the Law on the Amendment of Certain Laws No. 5101 of 12/3/2004 was issued, and whose services are no longer needed, shall be transferred to the Provincial Directorates of Culture and Tourism.

Provisional Article 4 — (Inserted by: OG-09/09/2005-25931) (Revoked by: OG-1/11/2010-27746)

Entry into Force

Article 12 — Article 8 of the foregoing Regulation shall take effect on 1/1/2002 while all other provisions hereof shall enter into force upon publication.

Enforcement

Article 13 — The provisions hereof shall be enforced by the Minister of Culture Tourism.

(1) The first paragraph under this article shall enter into force on 1/1/2005 as prescribed by the Regulation published in the Official Gazette No. 25635 of 6/11/2004.

ANNEX-1

(Inserted by: OG-25/04/2006-26149)

BANDEROLE REQUEST FORM AND OBLIGATION FORM FOR NON-PERIODICAL PUBLICATIONS IN STOCKS

| | | |
|--|---|--|
| Information on the non-periodical publication | Title | |
| | Language | |
| | Published in (Year) | |
| | Rightholder / Translator | |
| | Edition | |
| | ISBN Number (where available) | |
| | Material (where available) | |
| | Total Number of Items in Stock | |
| Information on the Publishing House / Natural Person Requesting Banderoles | Title | |
| | First and Last Name and Title of the Official | |
| | Turkish ID No. (For Natural Persons/ Representatives) | |
| | Tax Office | |
| | Tax Number | |
| | Address of Headquarters | |
| | Phone and Fax Number | |
| Number of Banderoles Requested | | |

TO THE DIRECTORATE OF

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As the author / rightholder, I hereby declare that, in accordance with the amended Article 81 under the Law on Intellectual and Artistic Works No. 5846, and the “Regulation on the Principles and Procedures regarding the Practice of Affixing Banderoles, I will use the banderoles requested for the non-periodical publications to be placed on the market exclusively for the publication referred to hereof, which has been reproduced legally and for which I hold the sales authority; and I also declare that I will accept all kinds of legal and criminal responsibility in the event that this information turns out to be incomplete and inaccurate.

Date: / /

Signature, Name, Stamp (for companies)

This part shall be filled out by the relevant Directorate.

| | | | | | |
|--|--|-----------------|--|----------------|--|
| Number of Banderoles Provided | | | | | |
| Banderole Letter Serial | | First Serial No | | Last Serial No | |
| First & Last Name and Signature of the Official Providing the Banderoles | | | | | |

ANNEX-2

(Inserted by: OG-1/11/2010-27746)

(Revoked by: OG-14/1/2021-31364)