

## The defense of intellectual property in the Republic of Albania

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### Abstract

In a society based on values and democratic principles, the defense of intellectual property constitutes one of the primary directions of its integrity and the permanence of cultural, scientific and technological heritage in generations. The integration of Albania in European Union requires the accomplishment of some accepted standards, in order to ensure the appropriate respect of intellectual property rights.

The effective implementation of intellectual property rights is an essential element for continued social and economic progress and increasing the level of competitiveness of the Republic of Albania in the international market and ensuring a fair competition environment in the Albanian national market.

Violation of law on copyright is not less problematic in Albania, despite the initiatives taken to protect intellectual property. Implementation of the European Union legislation is a complex process, which aims at integrating the Albanian economy to the EU internal market. It will take time to strengthen the institutions responsible for the implementation of legislation in the field of industrial property.

**Keywords:** Intellectual property; Copyright; Industrial property; Criminal protection.

### Introduction

In a society based on values and democratic principles, the defense of intellectual property constitutes one of the primary directions of its integrity and the permanence of cultural, scientific and technological heritage in generations.

The integration of Albania in European Union requires the accomplishment of some accepted standards, where the approach of Albanian legislation with the one of European Union, will be the first important and necessary precondition, that the big European family would open the gates even for Albania (Latifi, 2005:28), too.

The importance of intellectual property was known for the first time in Paris Convention "For Protection of Intellectual Property", 1883, and in Convention of Berna, "For protection of Literary and Artistic Works", 1886 (Zenelaj). All the countries, in general, have their own laws for their intellectual property protection and that is for two reasons. The first one, is to give an institutional expression to moral and economic rights to the creator for their creations and the right of access for the public in these creations. The other one, is the promotion of the creation, its distribution and its execution, also to encourage honest commerce, that helps in economic development (Zenelaj).

## What is Intellectual Property ?

World Intellectual Property Organization defines intellectual property like intellectual property refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. Intellectual property is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the Intellectual Property system aims to foster an environment in which creativity and innovation can flourish (Wipo).

“Intellectual Property” may be defined as those creations of the legal mind in relation to which the state confers upon individuals a statutory monopoly for a prescribed term to prevent their unauthorised exploitation. Intellectual property is usually divided into two branches, namely: industrial property and copyright and the rights which neighbour upon copyright (Blakeney, 2005).

Intellectual Property is defined as any “original creative work manifested in a tangible form that can be legally protected”. When we speak of Intellectual Property, we refer to controlling the way IP is used, accessed or distributed. The World Intellectual Property Organization, an organ of the United Nations, suggests laws to enforce Intellectual Property rights worldwide.

The convention establishing the World Intellectual Property Organization concluded on July 14, 1967 that: “Intellectual property shall include rights relating to: literary, artistic and scientific works; performances of performing artists, phonograms and broadcasts, inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks and commercial names and designation; protection against unfair competition, and all other rights relating to intellectual activity in the industrial, scientific, literary or artistic fields”(Raman, 2004):

Industrial property rights are defined below: A *patent* is an exclusive right awarded to an inventor of a product or process, which prevents others from making, selling, distributing, importing or using the invention, without license or authorization, for a fixed period of time (the TRIPS Agreement provides for a minimum period of protection of 20 years). In some countries protection is provided for Utility models, which are incremental innovations of lesser inventiveness, which secure protection for shorter duration (Blakeney, 2005).

Industrial designs protect the aesthetic aspects of an object (shape, texture, pattern, color), rather than its functional aspects. The TRIPS Agreement requires that an original design be eligible for protection from unauthorized use by others for a minimum of 10 years (Blakeney, 2005).

Trademarks provide exclusive rights to use distinctive, visible signs, such as brands, symbols, colors, letters, shapes or names to identify the producer of a product. In order to be eligible for protection, a mark must be distinctive of the proprietor so as to identify the origin of proprietor’s goods or services. The period of protection varies, but most countries provide for the renewal of registrations, so that protection can be indefinite. Protection against trade mark counterfeiting and the consequent deception of consumers may also be provided through consumer protection or unfair competition

legislation (Blakeney, 2005).

Geographical Indications identify the specific geographical origin of a product, and the associated qualities, reputation or other characteristics. They usually consist of the name of the place of origin. The TRIPS Agreement requires protection for geographical indications to prevent unauthorized parties from using it to mislead the public as to the true origin of the product (Blakeney, 2005).

Plant breeders' rights are granted to breeders of new, distinct, uniform and stable plant varieties. They normally offer protection for at least fifteen years (Blakeney, 2005).

Layout designs of integrated computer circuits are required to be protected under the TRIPS Agreement for a minimum period of 10 years (Blakeney, 2005).

### **Why IP Rights should be protected ?**

One reason for IP laws is to allow IP creators to benefit from their work. If artists create paintings after months of labor, then they deserve credit for painting them and the income from selling or exhibiting them. If a business comes up with an attractive marketing logo, then no other businesses should be allowed to use that logo to promote their own products without permission. Protecting IP is also seen as a method of promoting creativity. If no one is allowed to copy another person's work without permission then creativity is encouraged for everybody. A flyer on IP rights protection published by Los Alamos National Laboratories, one of the premier research facilities in the nation, notes the financial value of intellectual property accrued from licenses and patents as a reason to protect IP rights (Raman, 2004).

### **The meaning of violation of intellectual property**

#### *The violation of copyright*

The violation of the copyright happens in those cases when someone pursues the exclusively reserved rights of the owner of the copyright, without authorization, representing them as his own (Tutulani, 2005:6). This violation, in terms of the relations of authorship, is also called "plagiarism" (Tutulani, 2009:278).

The violation of copyright doesn't need conscious realization and the accomplishment on purpose of the violence as criteria, to be considered consumed. Even the violation caused not in purpose, without fault or in a spontaneous way brings criminal liability for the person, who has caused the violation.

Whereof, we can group them in primary and secondary. Copying may appear in some forms, as unconscious copying, transverse copying and essential copying (Tutulani, 2005:16).

It is essential to judge if there is or there is not a violation of the copyright the fact of proving some elements, such as the work is the object of protection by law due to copyright, it must be identified the right that is violated and that the plaintiff is its keeper, and it must be proved that the use of the accused is illegal (Koçi, 2003:55).

#### *The violation of industrial property*

We would be on terms of the violation of industrial property in case that the violation

of the rights that are provided by a license or as a result of a licensing agreement (Law No. 9947, 2008:121). Thus, when a license is related to a specific product, the owner of the license has the exclusive right to stop the third parties to execute, without his authorization, the making, the usage, the offering for sale, the sale or the importation of the product in order to violate the industrial property. Whereas, in case when a license is related with a process, the owner of the license has the exclusive right to stop the third parties to execute, without his authorization, the usage of process, constituting the object of the license and also to use, to offer for sale, to sale or to import the product, for these intentions, at least the product that is obtained directly, through this process (Law No. 9947, 2008:121). The owner of the license has the right to stop third parties, to give or to offer to a person, the means that are connected to an essential element of the invention, for implementing the license, when the third parties are aware, or when, from the circumstances, it is clear that these means are appropriate and aim the implementation of the invention that is mentioned (Law No. 9947, 2008:121).

### **The organs charged to protect the industrial property**

The implementation of the right relating to intellectual property is an essential element for the progress of honest and right competition in every aspect of social and economic life of every country (Council of Ministers, 2010). But, could the state be invested mainly in order to protect the right of intellectual property administratively? Actually, Albanian state can be mainly invested in the protection of the intellectual property (Koçi, 2003:56). Thus, in this aspect, the main law enforcements organs are:

#### *The Council of Ministers*

In support of the business and consummators community that are directly or indirectly affected by the violation of the intellectual property in Albania, it is necessary a commitment and collaboration between public institution and the business community.

We say this because intellectual property cannot be protected only if it would be considered responsibility of one institution (General Directory of Customs, 2013:5).

Within the situation of the protection of intellectual property in national level, The Council of Ministers as the main organ which determines the main directions of a state's policy, has approved "The strategy for the appliance of intellectual property 2010-2015".

#### *Other Institutions*

Among the main institutions for being responsible for administration and monitoring of intellectual property rights are: The General Directory of Marks and Licenses, Albanian Office of Copyright, The General Directory of The State Policy, The General Directory of Customs, other institutions that play a major role relating to the protection of the rights of intellectual property are the Ministry of Justice, Magistracy School and National Council of Radio and Television that is the responsible institution that observes the implementation of law provisions related to the rights of transmission of radio and television programs, that in an indirect way are involved in the protection of intellectual property (The strategy for the appliance of intellectual property 2010-2015).

### *Albanian Office for Copyrights*

Albanian Office for Copyrights is a central institution, a legal public person, depending on the Ministry of Culture, created to pursue an activity, in support and execution of Albanian legislation regarding to copyright and other rights that are connected to it, into Albanian territory. It is an institution created to fulfill the obligations of Albania in the area of copyrights and their execution (The strategy for the appliance of intellectual property 2010-2015). This office plays an important role in avoidance of conflicts that may appear during the application of copyright in Albanian practice (Malltezi, 2008:57).

### *Customs administration*

Albanian customs administration is one of the main institutions that has the duty to protect intellectual property. In this aspect, we can say that in addition to enforcement of international and customs laws, customs administration has drafted a “*Manual for depositing applications for customs action*”, in accordance with the requirements of the Manual of European Union. This practical document in the form of questions and answers, explains how to fill in applications for customs action and presenting additional and required information, intended to serve as a key instrument in the hands of holders of intellectual property rights to protect these rights by the customs administration.

Another document, approved by the Albanian customs administration within the protection of intellectual property is “*Instruction for receiving and processing applications for customs action*”, in which there is transparently described for the rights holders, the procedure how Customs administration proceeds with the requests for customs actions. In this sense it is also approved “*The Manual on Statistics of counterfeit goods as well as the standard Form for reporting of statistical data*”. These instruments guarantee a similar statistical reporting as European Union countries, in the cases of infringement of intellectual property rights and customs procedures followed by the time of the suspension of the release of the goods to the end.

Also, to unify the way of communication with the rights holders and/or owners of counterfeit goods, there are approved standard forms and procedures based on the requirement for customs action.

## **National and international legal framework**

### *International legal mechanisms*

Universal Declaration of Human Rights, Article 27 stipulates that: “Everyone has the right to protect the moral and material interests resulting from any scientific, literary or artistic production of which is the author himself”. Consolidate jurisprudence confirms that intellectual property rights is guaranteed by Article 1 of Protocol 1 of the European Convention on Human Rights (Dollani, 2009:7). Albania has adhered to all international conventions and agreements related to intellectual and industrial property rights (Strategy for the implementation of intellectual property rights 2010-2015). Two of the key documents that define the strategic priorities in the field of intellectual property protection are: European Partnership Document and the

Stabilization and Association Agreement (Law, No. 9590: 2006). As well as the Berne Convention (Decree, No. 487: 1993), WIPO Treaty "On copyright" (Law, No.8838: 2001), International Convention "For the Protection of Performers, Producers of Phonograms and Broadcasting Organizations" (Law, No. 8579:2000), and WIPO Treaty "On interpretations, executions and phonograms" (Law, No.8740:2001). Besides the above mentioned resources, Albania is a member of a number of international conventions in the field of industrial property, dating back to 1992 with membership in the World Organization of Industrial Property and continuing with the Paris Convention for the Protection of Industrial Property, Madrid Agreement for the International Registration of Marks, and the relevant Protocol. Since September 2000, when Albania joined the World Trade Organization (Koçi, 2003:59), basic principles of industrial property in Albania are based on the Agreement on Aspects of Industrial Property Rights relating to Trade (Laknori, 2007:156). This agreement has set new standards for the development of industrial property in the Republic of Albania in the framework of state members of the WTO (Çibuku, 2005:18-19).

#### *Intellectual property law*

In a comparative context with legislation that belonged to the communist regime, the current law (Law, No. 9380:2005), considers intellectual property in a new light, away from any political and ideological influence (Latifi, 2005:29).

Law no. 9380, dated 28.04.2005, "On copyright and other rights related to", as amended, is the law that aims to protect the copyrights and other rights associated with it. This law defines the rights and obligations of the entity participating in creative, productive, trading activities, or in any other assessment activity, exploitation, use or dispose of literary, artistic or scientific work. Industrial property in Albania is regulated by the amended law no. 7819, dated 27.04.1994, "On Industrial Property" and by Law no. 8488, dated 05.13.1999 "On protection of topographies of integrated circuits". Apart from internal resources, Albania is a member of a number of international conventions in the field of industrial property, dating back to 1992 with membership in the World Industrial Property and continuing with the Paris Convention for the Protection of Industrial Property (1995), the Madrid Agreement on International Registration of Marks (1995) and the relevant Protocol (2003). Since September 2000, when Albania joined the World Trade Organization, the basic principles of industrial property in Albania are based on the Agreement on Aspects of Industrial Property Rights relating to Trade. This agreement has set new standards for industrial property development in member states of the WTO (Çibuku, 2005:18-19).

Protection of industrial property should allow creators and inventors issuing a legal benefit from their intellectual activity. Construction of a detailed and comprehensive system for the protection of industrial property rights would not have any meaning if the holders of these rights will not be given the opportunity to use them effectively. He should be able to take action against offenders and be compensated for the damages that may be caused to him. Rights holders' should be given the opportunity to ask the authorities to take measures against counterfeiting. Enforcement of Industrial Property Rights means of restraint includes criminal and civil. Depending on the circumstances,

may have restrictive means, which are aimed at preventing further infringements of industrial property rights; and remedial - as can be liability for withdrawal of counterfeit goods from the channels of commerce or to destroy them (Law, No. 9947: 2008)

The main forms of protection of geographical indications at the national level are (Qoku, 2008:78):

- Protection options not included in the decision taken by the competent authority determines protection in relation to a particular geographical indication, but that result from direct application of legal provisions or principles established by case law.
- The protection of geographical indications through registration of collective marks or certification marks.
- Special protection designations of geographical indications resulting from a decision taken by the competent government authority determines protection.

### **Remedies for protecting intellectual property in Albania**

Protection of Intellectual Property in Albania is important towards promoting productive activity, scientific creativity, educational, literary, cultural and entertainment (Malltezi, 2008:57).

#### *The constitutional protection - Constitution*

The Constitution of the Republic of Albania marks a very progressive moment, in protection and realization of individual rights. It is guided by the principle: The rights and freedoms enshrined in it are not declarative; they are not merely aspirations for the future. This means that any provision contains in itself the expressed obligation of the state and the effective possibility of individual or social group concerned, to protect their rights. In Article 58, the Constitution of the Republic of Albania is sanctioned "freedom of artistic creation and scientific research, their application, and benefit from their achievements are guaranteed for all. Copyright is protected by law" (Latifi, 2005:33).

#### *Civil Protection - Civil Code*

Among the main ways to protect intellectual property are those with civil character (Civil Code). Within the protection of intellectual property, copyrights as that involving pecuniary nature as well as non-pecuniary nature can be protected through civil lawsuits with the object of pecuniary remuneration or pecuniary; fulfillment of obligations arising from contracts and compensation, and finally to terminate the contract and awarding damages (Tutulani, 2005:19).

#### *Criminal Protection - Criminal Code*

The intellectual property rights are also protected by the criminal process (Koçi, 2003:58). Within the protection of intellectual property, copyrights as that involving pecuniary nature, as well as non-pecuniary nature can be protected through the

Criminal Code of the Republic of Albania. Thus, in the third chapter of this Code, second section "Frauds", Criminal Code qualifies also offenses against intellectual property, which essentially are five provisions (Criminal Code), as follows: fraud with pieces of art and culture; publication of a someone`s work in its own name; the reproduction of others work without permission; violation of industrial property rights; and violation of the rights of the topography of semiconductor circuit.

In the provision of fraud with pieces of art and culture, Albanian legislator intended to protect copyright. More specifically, Law no. 9380, dated 28.04.2005, "On authors copyright and other rights related to", as amended, explains which pieces/objects and activities are protected by this law.

First, to consider a piece as a work of art, the work must be creation of a physical person, must be original, intellectual and materialized, otherwise does not qualify as such and is not entitled to have the protection given by law no. 9380 , dated 28.04.2005 "On author copyright and other rights related to", as amended. In Section 148 of the Criminal Code, Albanian lawmaker cares to protect also moral rights (Law, No. 9380: 2005). In criminal law, violation or infringement of moral rights constitutes a criminal offense and is punishable by fine or imprisonment up to two years (Criminal Code). In view of the objective side of the offense, it is considered committed through publication or complete use or partial use of another person`s work. In any case, the work, which is protected from Article 148 of the Criminal Code, should be a literary, artistic, musical or scientific work otherwise does not get legal protection under the Code.

Reproduction of others works without permission is another criminal offense prescribed by the criminal law in order to protect economic rights of the author, as part of copyright. To be charged under this Article of the Code, it is enough even partial consumption of literary, musical, artistic or scientific works that belongs to another person, or use them without the author`s consent

The subject of this criminal offense can be any person who has reached the age of criminal responsibility and is responsible of his actions. The offense is committed intentionally and motives and goals may be different (Elezi, 2009:252).

The Criminal Code, through its provisions, provides for the protection of industrial property rights. Violation of industrial property rights, can be accomplished in various ways and forms as may be production, distribution, possession for the purpose of trading, selling, offering for sale, supply, distribution, exportation or importation of the product or process protected by a patent without the consent of the patent owner; Product protected by an industrial design without the consent of the owner of Designs; the goods or services protected by a trademark, without the consent of the owner of the trademark; The product is derived from a geographical indication, without the consent of the owner of the geographical indication. In view of the subjective side, this criminal offense is committed intentionally and is punishable by fine or imprisonment up to one year (Criminal Code). The second paragraph of Article 149/ a, specifies as aggravating circumstances the performance of the offence more than once, or in collaboration. The action in this case is punishable by fine or imprisonment up to two years (Criminal Code).

One last point dedicated to intellectual property protection and the protection of human rights is the protection of the rights of the topography of semiconductor circuit from violations. In view of the objective side, this criminal offense is committed through production, use, retention for the purpose of marketing, selling, offering for sale, supply, distribution, exporting or importing for these purposes the product that infringes the rights of the registered topography of semiconductor circuit or integrated circuit, without the consent of the owner of the topography. This criminal offense is committed intentionally and is punishable by fine or imprisonment up to one year (Criminal Code). In the second paragraph of Article 149/a, the performance of the offence more than once, or in collaboration, is considered an aggravating circumstance. In this case, this offense is punishable by fine or imprisonment up to two years (Criminal Code).

In a final analysis, we can easily notice that the Albanian legislator was careful to include in the Criminal Code all the components of intellectual property rights, as moral and economic, industrial property rights and the rights of the topography of semiconductor circuit. But in any case, the choice of Albanian legislator, is to sanction these activities as criminal offenses and not as crimes (Criminal Code). This means that for the Albanian legislator, the infringement of intellectual property is not a major concern, although I think that because of the importance of the object protected by the articles of the Criminal Code, these five offences should be punished more, considering them crimes by the Criminal Code. In the recent years, the Albanian government has responded to increased criminality for certain offenses with severity of punishment, while has not done such a thing to protect intellectual property rights from offences, even though it appears to have an increase in their numbers.

### Conclusions

- The effective implementation of intellectual property rights is an essential element for continued social and economic progress and increasing the level of competitiveness of the Republic of Albania in the international market and ensuring a fair competition environment in the Albanian national market. It contributes to the creation of optimal conditions for attracting foreign investment in the country and is a cornerstone in the process of Albania's integration in the European Union (Koçi, 2003:58).
- Violation of law for copyright is not less problematic in Albania, despite the initiatives taken to protect intellectual property. In Albania dominates piracy of music, movies, books and all sorts of intellectual products (Koçi, 2003:58).
- Implementation of the European Union legislation is a complex process, which aims integrating the Albanian economy to the EU internal market. It will take time to strengthen the institutions responsible for the implementation of legislation in the field of industrial property. Part of this process are also envisaged reforms to strengthen the judiciary. Without institutional changes, the process of approximation of legislation would result in a formal implementation of EU normative acts, unable to produce economic effects and benefits expected from Albania (Koçi, 2003:58).

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