

LEGAL PROTECTION OF INTELLECTUAL PROPERTY IN THE REPUBLIC OF SERBIA

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Abstract: *Intellectual property as a basic human right contains two components: copyright and other related rights and industrial property. The system of sanctions for violations of intellectual property rights in Serbia consists of prosecutorial and judicial-administrative segment (police, inspection, customs, tax administration, etc.). Specific protection of intellectual property can be civil, criminal and constitutional. In the field of criminal protection, the case law is the most common crime unauthorized use of copyright works or subject matter of related rights under Article 199 of the Criminal Code.*

Keywords: *crime, intellectual property, copyright and related rights, industrial property, high-tech crime*

1. INTRODUCTION

In domestic legal theory and practice is not yet fully accepted common name, as well as generic term for industrial property and copyright, but in international and comparative law as a common name most widely accepted term is "intellectual property" [1]. In any case, intellectual property law is a basic human right that is provided by Article 73 of the Constitution of the Republic of Serbia, has its two components: copyright and other related rights and industrial property.

Enforcement of intellectual property involves the use of effective and proportionate administrative, civil penalties and measures by the authorities against those involved in counterfeiting and piracy in order to create equal business conditions for right holders. Every unauthorized use of objects of intellectual property rights is a violation of intellectual property rights. The competent authorities for the enforcement of intellectual property rights in Serbia are divided into administrative and judicial-prosecutorial.

By adopting a set of laws on intellectual property, including: the Criminal Code, the Law on Organization and Jurisdiction of Government Authorities in the fight against cyber crime, the Customs Act (the Chapter VI regulates the measures to protect intellectual property rights at the border), and the Law on Special Powers for more efficient protection of intellectual property, protection of intellectual property rights in Serbia was built at a much higher level. The quality of the adopted laws is that they applicable standards of international and regional character are embedded in the laws of, in terms of evaluation and treatment of intellectual property [3].

2. COPYRIGHT AND INDUSTRIAL PROPERTY

Copyright is a set of legal rules governing relations in connection with the creation of literary, scientific and artistic works [5]. It protects literary works (novels, poems, etc.), theatrical works, handbooks, newspapers, computer programs, databases, films, musical works, choreographic works, works of art, prints, photographs and sculpture, architecture, applied arts, cartographic works, technical drawings, etc. Rights related to copyright have been developed in the use of works protected by copyright and contain similar, limited scope and short duration. According to the Law on Copyright and Related Rights the related rights include the right of artists performers, producers of phonograms, producers of videograms; producers of databases; of broadcast rights, rights of the first publisher of a free work.

Thus, copyright law includes artists from these areas of creativity that only they are considered as creators or creators has the exclusive right to copyright its work, publish, display or allow his performance, and to realize tangible benefits from this publication, displaying, running, or otherwise use. In this respect, this right includes its two components: the moral, that is considered the creator of copyrighted material, and material that earns income from authorship [2].

Industrial property rights is the right of manufacturer to exclusively use a patented invention, to designate themselves as producers of certain products, to use labeling marks, trademarks, geographical origin, the right pattern and model, that generates income from it and to enjoy other rights which fall within the domain of industrial property.

The industrial property rights include patents, plants variety protection right, right to the protection of topographies of integrated circuits, trademark, design right protection, right to the protection of geographical indications. The protection of these rights are regulated by the Law on Patents, Trademarks Act, Law on Legal Protection of Designs Act, Geographical Indications of origin, and other laws and regulations governing this matter legally.

The protection of industrial property rights has primarily economic importance for the holder of rights because it provides the use of this right and better placement of proprietary products in the market based on the established quality of a product, and therefore more successful in business operations and achieve economic benefits. This is especially the case in modern conditions, where the classic concept of the state economy is practically untenable [4].

3. CRIMINAL ACTS OF UNAUTHORIZED USE OF OTHERS INTELLECTUAL PROPERTY

In the field of criminal protection, the area of intellectual property is governed by the provisions of Chapter XX of the Criminal Code (all crime acts from article 198 up to article 202), and a provision of Chapter XXIII of the Criminal Code, which includes crimes against the economy (unauthorized use of another's business name and other special mark of goods or services from article 233 of the Criminal Code), and under certain conditions and provisions of Chapter XXVII of the Criminal Code includes offenses against the security of computer data (all crimes from article 298 up to 304).

Among the major offenses against intellectual property rights, in general we classify offenses of unauthorized use of someone else's intellectual property from Chapter XX of the Criminal Code, which includes: 1) Unauthorized use of copyright works or subject matter of related rights (Article 199 of Criminal Code), 2) Infringement of patent rights (Article 201

of Criminal Code) and 3) Unauthorized use of design (article 202 of Criminal Code). All criminal cases in the aforementioned groups consist of violations of regulations on intellectual property and thereby harming the rights and property interests of holders of intellectual property rights, and made only with premeditation.

From a practical point of view of protection and property interests of holders of intellectual property rights, the most important in this group is a criminal offense of unauthorized exploitation of copyright works or subject matter of related rights, although it is at least some understanding of a socially dangerous compared with other crimes against intellectual property. However, official statistics show that this is by far the most common offense, and therefore the most important in our judicial practice. The officials of the Ministry of Internal Affairs in 2010 discovered 218 crimes under Article 199 of Criminal Code , and only one offense under Article 201 and 202 Criminal Code . This is even more pronounced in the disproportion of adults reported in 2010 for offenses under Articles 199, 201 and 202 Criminal Code (Table 1).

Table 1: Reported adult perpetrators by offense, 2010

Offenses	Republic of Serbia					
	Total	Serbia - north		Serbia – south		
		Belgrade district	Vojvodina district	Sumadija and West Serbia district	South and West Serbia district	Kosovo & Metohija district
Unauthorized use of copyright works or subject matter of related rights	117	41	16	34	26	...
Infringement of patent rights	19	8	-	7	4	...
Unauthorized use of other people design	3	2	1	-	-	...

4. UNAUTHORIZED USE OF COPYRIGHTED WORK OR THE OBJECT OF RELATED RIGHTS

To the author and the performer belong not only moral but also a certain property rights. Holder of related rights (the producer of phonograms, videograms, programs or databases) belong only to property rights, given that it is economic activity, not on creativity. While the author and performer have the right to commercial exploitation of his work, the producer acquires the right to contract with the author and performer. In this connection special importance for this crime have the right to record or reproduce the work, the right of public communication of the right to distribute copies of the work [6].

According to this, it is envisaged that offense of unauthorized exploitation of copyright works or subject matter of related rights may be performed anyone, and in terms of culpability, the premeditation is necessary. The object of the operations is the work of authorship, interpretation, phonogram, videograms, broadcasts, computer program or database. In terms of the form of manifestation of the crime from Article 199 of Criminal

Code, four types of criminal offenses are provided, and two basic, one heavier and one particular form of expression.

The first basic form of unauthorized use of copyright works or subject matter of related rights (paragraph 1) shall perform the person who other people authorship or subject matter of related rights without authorization, in whole or in part, publish, record, reproduce or otherwise publicly disclose. This is about the work of authorship, interpretation, phonograms, videograms, broadcasts, computer programs or databases.

The other main form of manifestation of the crime (paragraph 2) consists in placing on the market, unauthorized possession of unauthorized copies or broadcasts, computer programs or databases.

A severe form of manifestation of unauthorized use of copyright works or subject matter of related rights (paragraph 3) is if some of the basic form of expression was made with the intent of obtaining for himself or another an unlawful gain. The existence of this form of crime is irrelevant whether is such intention in the meantime achieved or not.

A special form of manifestation of the crime (paragraph 4) is 1) production, 2) import, 3) the marketing, 4) the sale, 5) leasing, 6) advertising for the purpose of the sale or leasing device or devices whose primary or main purpose is removal, bypassing or circumvention of technological measures designed to prevent violation of copyright and related rights; 7) holding for commercial purposes of such devices or agents, and 8) their usage in order to violate copyright or related rights [2].

The penalty for both basic forms of expression of a given criminal act is imprisonment up to three years, and for severe form of expression for punishment is imprisonment from six months to five years, while the specific form of manifestation of unauthorized use of copyright works or subject matter of related rights punishable by fine or imprisonment of up to three years.

The explicit position of the legislator (paragraph 5), in all cases of this crime is that must be applied security measure of forfeiture within the meaning of Article 87 of Criminal Code. Seized items must be destroyed.

5. SPECIFICITY OF THE CRIMINAL ENFORCEMENT OF INTELLECTUAL PROPERTY

Courts regulate the system of judicial protection of intellectual property rights, while the Law on Public Prosecutor's Office prescribes the network of public prosecutors. Therefore, for offenses against intellectual property rights in principle public prosecutors and courts of general jurisdiction are competent, determined by the classical territorial principle, or the scene of the crime.

However, the provision of Article 3 of Law on Organization and Jurisdiction of Government Authorities in the fight against cyber crime, carries the concentrated matter and territorial jurisdiction of the High Public Prosecutor's Office in Belgrade for crimes against intellectual property in which such facility or means of enforcement, there are computers, computer systems, computer networks and computer data, and their products in the material or electronic form, if the number of copies of copyright works created is 2000 or exceed damage exceeds the amount of RSD 1,000,000.

In fact, in such cases the special prosecutors are in charge of cyber crime, i.e. specialized department of the Higher Public Prosecutor's Office. Special Prosecutor manage this department, who is, with his written consent, is appointed by the Republic Public Prosecutor from among the senior deputy public prosecutor with the necessary knowledge in the field

of IT. In the department of special prosecutor for the high-tech crime, hire two senior deputy public prosecutors specializing in this area, prosecutorial and two counselors with additional administrative staff.

According to the Institute for Intellectual Property, the Special court from its inception in early 2006, ending October 1, 2011, treated, or treats in over 1,700 cases under its jurisdiction.

On the other hand, for all first-instance trials of this type of crime the department for combating against high technology of High Court in Belgrade is responsible. President of the High Court in Belgrade, assign judges to the department mentioned among the judges of a particular court, with their consent. In doing so, priority is given to judges who have expertise in the field of information technology. Finally, for the decision in the second instance for the specified type of cyber crime offenses Appellate Court in Belgrade is competent.

In accordance with the necessary competencies and specialization needs, priority in the allocation of the aforementioned departments have specialized judges with experience in combating cyber crime. By nature, these should be the judges trained in the prevention of criminal misuse of information technologies within the PACO Serbia project, which since December 2005, implements the Council of Europe, funded by the European Union, and realized by the European Agency for Reconstruction.

6. RESUME

Intellectual property is a term that has its legal (narrow) and economic (general) meaning. The legal significance of intellectual property is reduced to a set of exclusive, mostly property rights that protect certain intellectual property, under prescribed conditions and subject to certain legal restrictions. These rights are divided on copyright, neighboring rights and industrial property rights.

The Criminal Code of the Republic of Serbia in the scope of intellectual property protection is governed by all provisions of Chapter XX and XXII a provision in the head, and under certain conditions and provisions of Chapter XXVII of the Criminal Code. Most significant among these crimes is the unauthorized use of copyright works or subject matter of related rights under Article 199 of Criminal Code, which has two basic, one heavier and one particular form of expression. The object of the offense is a work of authorship, interpretation, phonograms, videograms, broadcasts, computer program or database.

From the standpoint of the institutional framework of criminal law protection of intellectual property rights in Serbia, particular importance has the Criminal Police Department of the Ministry of Internal Affairs of the Republic of Serbia, in the operating department to combat crime in the area of intellectual property rights in the Service to combat cyber crime and the Department for Economic Crime in area of business operations and intellectual property with the Department for crime prevention.

To act in matters criminal offenses against intellectual property rights in Serbia are generally competent public prosecutors and courts of general jurisdiction, except that in cases prescribed by law and the possible jurisdiction of the Special Prosecutor for criminal cyber Senior Public Prosecutor in Belgrade and the Department for Combating against high technology crimes of the High Court in Belgrade.

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