

PROTECTION OF INTELLECTUAL PROPERTY AND INTERNET

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Abstract: *Capital is not only money, but it consists of organized people who use it and combine their knowledge, to produce a profit for themselves and good for the people. Intellectual property has become the key economic resource and the factor that dominates and determines competitive advantage of subjects in the market, thus creating the state of development of national economies and living standards of the population. Due to new technologies and the Internet the very definition of business and access to market segmentation have both changed, which has resulted in changes in the market share of companies in the domestic and international markets. Intellectual property consists of various elements that can be combined in order to ensure effective protection.*

Keywords: *intellectual property, internet.*

1. INTRODUCTION

Protection of intellectual property is based on a number of principles aimed at ensuring a desirable balance between private and public interests, exclusive rights and free competition. The basic principle of the market economy is freedom of competition, which implies that public domain is free as a rule, and intellectual property is an exception. Intellectual property as a private right is available only under certain conditions, for new, original, non-obvious and distinctive works of intellectual creation, which go beyond the public domain and intellectual property rights of others. The essence of intellectual property rights does not lie in the fact that they give positive ownership rights to creations of the mind. Enforcement of intellectual property involves the use of effective and proportionate administrative, civil measures and penalties by the competent authorities against those involved in counterfeiting and piracy in order to create equal business conditions for rights holders. The revolution of information technology and faster growth in the number of inventions, the influence and importance of invention in conjunction with the accelerated globalization – all these have put intellectual property in the spotlight. Once secondary and of no interest, intel-

lectual property today is a key factor in the design of national policy, as well as in strategic planning of corporations.

2. INTELLECTUAL PROPERTY

The broadest form of intellectual and scientific work is intellectual property and it consists of intangible assets including: book writing, scientific papers, newspapers, patent creating, design of various products, services, production of films, etc. [Stakic B., Unković M., 2011: 374]. According to the International Federation of Accountants (IFAC), intellectual capital is classified in several forms, as follows:

- Patents
- Copyright,
- The rights to the design,
- Trade secrets (know-how)
- Product Tags (trade mark)
- Labels of services (service mark) [International Federation of Accountants, taxonomy of intellectual capital, 1998].

Herewith we clarify the two most common forms: patents and copyrights. Patent is the invention that represents a new technical solution to a specific problem, which involves an inventive step and which is applicable. Apart from patent there is a small patent, too. It represents a new technical solution to a specific problem, which is applicable and which has a lower inventive step. Patent is valid, usually, 20 years from the date of filing the application, a small patent for 10 years. Technological innovation, structure, procedures, etc. are usually protected by patent rights. The patent is valid only in the country where registered, however, with the publishing of the notification in the official Gazette of the invention patent enters known areas, so a possible plagiarist cannot register it under his name in the countries where the beneficial owner has not asked for protection, i.e. he cannot exercise monopoly [Tomić D., 2008: 168]. Copyright is an original intellectual creation, expressed in a certain form, regardless of its artistic or other value, purpose, content, as well as the permissibility of public communication of its contents. This relates to written work, voice work, musical work, film, theater director and others. [The Law on Copyright and Related Rights, Article 2].

The Law on Copyright and Related Rights regulates the property rights of authors and related rights, and regulates the mandatory collective exercise of these rights, judicial protection of copyright and related rights and raised the amounts of penalties for those actions. One of the novelties is that this law allows people with special needs, without permission and payment of compensation, to multiplied and put on sale the copyright work, if it is not for economic gain and if they need it [[http:// www.kombeg.org.rs](http://www.kombeg.org.rs)]. In the industrial era companies have created value by transforming raw materials and manual labor into new products. The economy was, primarily, based on tangible assets - land, factories, equipment... In the information age intangible assets prevail, for example, customer relations, employee skills, creativity and innovation. The value and wealth is made up of the whole set of assets and strategies that connect them. In the information era Kaplan and Norton have created a system of balanced criteria, which reflects the performance of companies across four criteria: finance, customers, manufacturing processes, and learning and growth [Kaplan, Northon, 2000, p. 169]. For the upcoming period in which creativity will be the most important driving force behind a successful business, you need to find and hire the best people. The economic value of a genius exceeds a billion dollars. As new developments are

constantly changing the quality and range of products and services, thus making them more competitive in the domestic and international markets, it is necessary to exchange achievements of modern technology and science, either separately or in the context of the sale of tangible goods and services

Acquisition and transfer of intellectual property rights in practice is referred to as the international transfer of technology [Unković M., 2010: 145]. The works of intellectual property, as well as the products and services the principles of exchange are transferred from one country to another, transfer of books, films, plays theatre plays, exchange of sculptures and art works and other works, all under the authority of the National Ministry of Culture, which gives permission for exchange of these goods. Transfer of technology between countries can be an integral part of a contract (purchase of equipment leasing contracts, franchise, contract on investment capital, etc.), or it can be an independent contract. Its function is to precisely define the obligations of the parties. The contract defines the subject, method of payment, the period to which the contract relates, the competent court in the event of a dispute concerning the implementation of the contract [Basarović, V., 2000: 283].

3. PROTECTION OF INTELLECTUAL PROPERTY

Intellectual property is protected by a number of international conventions and the most important are: the Convention in the field of industrial property and the conventions in the field of copyright and related rights [Miladinović Z., 2003: 118]. The group of unprotected intellectual property rights includes:

- knowledge and experience,
- technical assistance,
- consulting,
- other inventions that are not patented [Miladinović Z., 2003: 121].

The system of legal protection of intellectual property has been designed so that everyone can benefit from it, both its creator and society as a whole; it represents a delicate balance which ensures meeting the needs of both sides. The society has multiple benefits from such rights, such as the maintenance of fair competition and encouraging the production of diverse goods and services, improvement of technological and cultural development and enriches the amount of general knowledge. Intellectual property is protected in the way that the inventor, creator or author, depending on the type of law under which he enjoys his rights, is given the exclusive right to commercially use his creation for a limited period. The right holder may dispose of it in various ways, depending on the type of law.

4. INTERNET AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Illegal copying of programs, counterfeiting and distributing of software - even sharing the program with friends - represents the so-called "software piracy". Most users today realize that this is wrong, and many ignore this, because they do not realize the importance of the fact that this same software is a valuable intellectual property. Usually this is done to achieve some of the benefits (particularly commercial), and the reselling, built into the products they sell, or even changing, adapting them to their own or other people's needs. The modalities of execution are becoming ever more diverse and more numerous. Piracy is done by both individuals and organizations, and sometimes even by the government for

many states cannot resist the challenge of free use of software, and especially find it hard to resist the challenge of “refilling hard drives’ with software [Zdravković S., 2010: 72].

Software piracy is divided into the following categories:

- End user piracy occurs when an individual or a company use or reproduce software in unauthorized way;
- Client-server overuse is when the number of users with access to the server exceeds the number in the contract concluded with the purchase of a license.
- Internet piracy is the biggest threat. Internet sites also enable upload and download of pirated software.
- Hard-disc loading piracy in which sellers of computers or hardware also sale and install illegal copies of the software.
- Software counterfeiting is the situation when duplicating of software so as to directly imitate a product that is protected by copyright law [Šarboh S., p.15].

In the 70s and 80s of the last century it was discussed whether copyright or software system should ensure the protection of computer software. WIPO (World Intellectual Property Organization) was established with the aim of improving the protection of intellectual property rights in the world through cooperation among states and with any other international organization, and to ensure administrative cooperation between the Union [Stakic B., Unković M., 2011: 379]. In terms of intellectual property protection, all the prerogatives, benefits, privileges or immunities of any state granted to nationals of any other country unconditionally extend to nationals of other Member States. In the framework of the World Intellectual Property Organization (WIPO) this debate have resulted in a generally accepted principle that computer programs should be protected by copyright, while the methods used in computer software or software related inventions should be protected by a patent. WIPO is the administrator and depositary of around thirty international agreements in the field of intellectual property, which form several Unions, namely: the Berne Union, the Paris Union, the Madrid Union, the Hague Union, the Locarno Union (Agreement Establishing an International Classification for industrial designs), Lisbon Union, the Nice Union, the Budapest Union, Vienna Union, PCT Union (Patent Cooperation Treaty), IPC Union (based on the Strasbourg Agreement concerning the international Patent classification from 24.03.1971) and Film Treaty - includes the international registration of audiovisual works from 18.04.1989) [Dašić, D., 2007: 240].

The Berne Convention, which was passed as early as 1886 and repeatedly revised, protects literary and artistic works, provided that they are genuine. Although the list of acts that can be protected by copyright law contains no explicit computer programs, it was the general view that computer programs are products of intellectual creativity and as such are considered works of art under this Convention. In addition and according to TRIPS (Agreement on Trade-Related Aspects of Intellectual Property) provides that computer programs, whether in source or object code, are protected as literary works under the Berne Convention mentioned. According to the Berne Convention works are protected by the very act of their creation, i.e. it is not necessary to carry out their registration with a competent authority, which also applies to software. According to the TRIPS Agreement, the protection of software copyright lasts for the life of the author and 70 years after his death [Damnjanović K., V. Matić, 2008: 119].

5. AGREEMENTS BETWEEN THE WORLD TRADE ORGANIZATION FOR INTELLECTUAL PROPERTY

In order to establish mutually beneficial relations and define them precisely, the World Intellectual Property Organization-WIPO and the World Trade Organization-WTO formally signed a cooperation agreement on 22 December 1995 in Geneva. Cooperation relates to the following:

- facilitating access to the laws of the World Intellectual Property Organization by the WTO members, and vice versa,
- providing mutual access to databases of both organizations,
- facilitating access to the laws of the World Intellectual Property Organization, the Secretariat of the WTO and the TRIPS Agreement Council,
- translating laws and other legal acts,
- WTO Secretariat shall forward copies of regulations and contracts which it obtains from its member states [Besen, S & Raskind, L., 1991, pp.3].

Implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights, among other things, establishes the need legal and technical assistance to developing countries. Secretariat of the WTO allows developing countries, WIPO member states which are not members of the WTO, the same technical cooperation related to TRIPS Agreement as provided to developing countries members of the WTO. The International Bureau and the WTO Secretariat will enhance cooperation and joint efforts to assist developing countries and least developed countries on the implementation and enforcement of the TRIPS Agreement. For these reasons the two bodies will be in constant touch and exchange information [Besen, S & Raskind, L., 1991, pp.4].

6. INTELLECTUAL PROPERTY OFFICE IN SERBIA

“One of the biggest problems that the world faces is finding a ways to protect intellectual property. The more we develop, the stronger this need. There should be the ultimate goal to reach the regulations that would be at least as accurate as far as the case for ownership of the tangible things “[Tesla, N., 18 May 1904]. Serbia has a long history of intellectual property protection that began in the 19th century. As early as 1884 Serbia adopted the first national regulations in the field of distinctive signs [Maric V., 2010: 17]. Serbia has quality laws in the field of intellectual property, and is the signatory to the main international agreements in the field of industrial property and copyright and related rights, and has a permanent and good cooperation with the most important international institutions of this kind, especially with the World Intellectual Property Organization WIPO and the European Patent Office EPO. The Intellectual Property Office is the only and official institution for protection of industrial property rights, copyright and related rights in the territory of the Republic of Serbia. The Intellectual Property Office is an independent organization within the state administration of the Republic of Serbia, which operates independently, and its work is controlled directly by the Ministry of Science of the Republic of Serbia [Stakic B., UnkovićM., 2011: 395]. The official gazette, which is published bimonthly, publishes data on applications on inventions and recognized industrial property rights. Publication of the official gazette is prescribed by the convention as official obligation [www.zis.gov.rs]. The Intellectual Property Office in Serbia performs professional affairs and public administration tasks related to patent, petty patent, trademark, design, geographical indications,

topographies of integrated circuits, copyright and related rights. In addition to all this, it is engaged in the implementation of international treaties relating to intellectual property and the representation of the interests of the Republic of Serbia in specialized international organizations for the protection of intellectual property rights. The Office supervises the work of organizations for collective management of copyright and related rights and other activities that are determined by the Law Ministry. The supervision of this institution is conducted by the Ministry of Science. Intellectual Property Office of Serbia is administrative institution of primary national importance for the technological development of the country. The conclusions derived after the so-called "Feasibility Study" of the European Commission, which preceded the commencement of negotiations on a Stabilization and Association Agreement, stipulate that protection of intellectual property and administrative capacity of institutions dealing with its implementation must be at the level of EU standards at the time of the signing of the Stabilization and Association Agreement. From the moment when the "Feasibility Study" was published, the Office and other agencies, particularly the Customs Administration and Market Inspection, the High Commercial Court and the Ministry of the Interior have all raised their activities, although this still proves insufficient. There is still no national strategy for the protection of intellectual property, specialized courts for this area are nowhere in sight, human resource capacity of the prosecution, customs and even police departments that specialize in violation of an Intellectual property is still not sufficient [Marković M., 2013: 20] .

7. CONCLUSION

Evaluation of intellectual property is a complex process. Innovation and creativity have touched and changed millions of lives; perhaps they would not even exist today if it were not for incentives provided by intellectual property rights. Intellectual property represents a strategic resource of companies and has an impact on market strength and competitive position. Intellectual property fosters human creativity, pushing the boundaries of science and technology and enriching the world of literature and the arts. Insufficient knowledge of the importance of the role of intellectual property is understandable because in the past this area was considered quite esoteric and as such left to technical experts and lawyers in corporations.

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