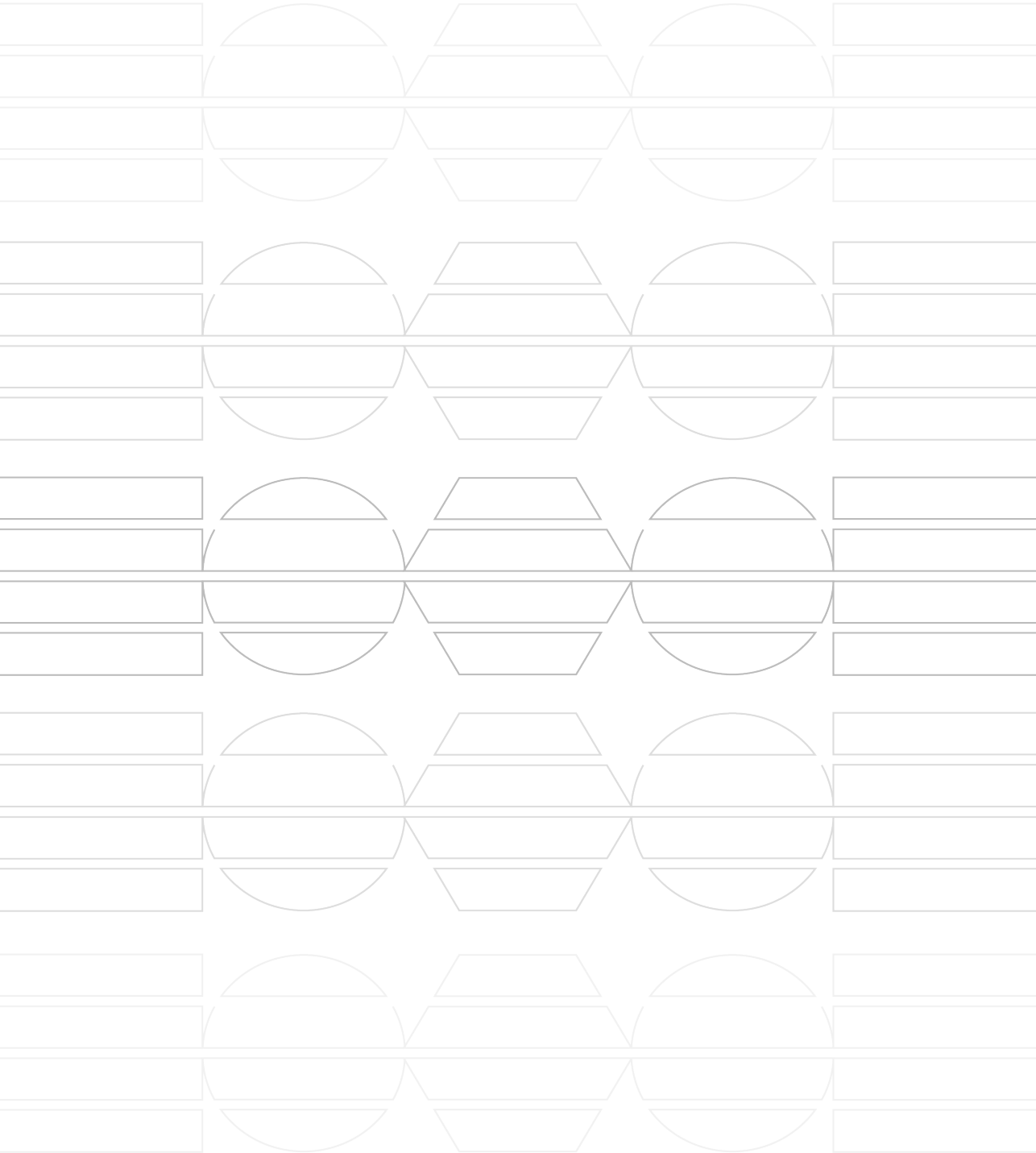




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GUIDELINES FOR MARKET INSPECTORS

HOW TO SUPERVISE INTELLECTUAL PROPERTY RIGHTS (IPR) IN KOSOVO



January, 2021

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1. INTRODUCTION

The marketing of counterfeit and pirated goods, and indeed all goods infringing intellectual property rights, does considerable damage to law-abiding manufacturers and traders and to right-holders, as well as deceiving and in some cases endangering the health and safety of consumers. Such goods should, in so far as is possible, be kept off the market and measures adopted to deal effectively with this unlawful activity without impeding the freedom of legitimate trade.

The overall purpose in the Project “EU Support for the Intellectual Property Rights in Kosovo” is to strengthen legal, administrative and structural capacities of Kosovo institutions in charge of the development and enforcement of intellectual property rights (IPRs).

One activity aims at supporting the relevant IPR institutions by strengthening their institutional and administrative capacities. Market Inspectorate is one of them. According to the regulations in force in Kosovo, Market Inspectorate is one of highly important IPR enforcement stakeholder, with the duty to protect IPR and to protect legal businesses from unfair competition.

Market Inspectorate is responsible for protecting Intellectual Property Rights by enforcing respective legislation, which is written in Art 9. Law 03/L-181 on Market Inspectorate on Inspective Supervision and Law 04/L-186 on amending and supplementing the Law 03/L-181 on Market Inspectorate and Inspective Supervision.

In Article 9 the Law states:

“1 The market inspectorate is competent to inspect the standards of trading of goods, the quality of the services that economical entities offer throughout the territory of Kosovo through oversight:

1.1 The fulfillment of standards by goods and services introduced in the market;

1.2. security of products in the market;

1.3. consumer’s protection;

1.4. circulation of goods of precious metals;

1.5. technical suitability of the products;

1.6. control of use of measure and weighing-machines in the market;

1.7. tourist and hotel activity;

1.8. artisan activity;

1.9. protection of industrial ownership rights in the market;

1.10. protection of the right of author and other similar rights in the market

1.11. other jobs, defined with this law, other special laws and sub-legal acts.

2. Inspectorate carries out jobs in compliance with the annual working program.

3. Inspectorate could undertake inspecting supervision even out of annual working program in case of danger towards human life and health as well as in the situations that require emergent intervention by the state organs.

4. Inspector that carries out inspection during inspecting supervision regarding confirmed violations undertakes designated measures with this law and other laws.”

In Law 03/L-181 on Market Inspectorate on Inspective Supervision and Law 04/L-186 in Art 5. are added some new duties, as follow:

1.6. Legal measurement instruments in public circulation;

1.12. marking of the energy efficiency of household appliances;

1.13. advertisement of products and services;

1.14. prices (setting and exposure of prices, payment and provision of invoices);

1.15. conditions for doing business in accordance with special sub-legal acts.”

The requirements of the Project “EU Support for the Intellectual Property Rights in Kosovo” and activity 2.1.4 to support the Market Inspectorate depict the most important responsibilities of market inspectors, as described below:

- consumer protection;
- protection of industrial ownership rights in the market;
- protection of the right of author and other similar rights in the market

No less important are also other areas within the competence of market inspectors, which are indirectly related to compliance with the provisions of the IPR. As an example, I can refer the control of compliant non-food products.

2. LEGAL BASIS

Directive 2004/48/EC of the European Parliament and of the Council of April 2004, on enforcement of intellectual property rights prescribes requirements for all EU countries to apply effective, dissuasive, and proportionate remedies and penalties against those engaged in counterfeiting and piracy, and aims to create a level playing field for right holders in the EU.

It means that all EU countries will have a similar set of measures available for right holders to defend their intellectual property rights. The enforcement Directive is a horizontal EU legal act, the scope of which encompasses civil enforcement of all intellectual property rights covered by Community provisions in this field and/or by the national law of the Member States.

In the Kosovo national legislation on certain types of intellectual property, the provisions of the above-mentioned Directive are all transposed. Responsible authorities in respect of national legislation on industrial property being harmonized with this Directive are Industrial Property Agency (IPA) and in respect of copyright – Office for Copyright and Related Rights in the Ministry of Culture Youth and Sports.

3. DEFINITIONS

Intellectual property is considered every work or innovation resulting from the creativity of the individual, which can be handwritten or design, and for which the individual has the right and could use a patent,

copyright, or a distinguishing mark. In the context of businesses, intellectual property rights are closely related to innovation, continuous business development and cooperation among businesses and other subjects.

IPRs are usually divided into two branches namely:

- Copyright and related rights which include property of works of art and literature.
- Industrial property rights which include inventions (patents), trademarks, industrial designs and designations of origin.

This document aims to give a definition of the most important and most frequently violated types of IPR, explaining why and how it needs to be protected, through the practice of market inspections of neighboring countries and the practice of Slovenia as an EU member state.

According to available information taking into account legal regulations as well as various studies in the field of IPR conducted by domestic and foreign experts, key institutions with competencies and responsibilities to implement the legislation on intellectual property in Kosovo are:

- Agency for Industrial Property - (AIP) as a body within the Ministry of Trade and Industry. The Agency is among key institutions for the protection of intellectual property. The agency is responsible for examining applications, compiling and maintaining registers, and compiling Official Bulletins with data for registration of applications in the field of intellectual property. The Agency, moreover, is also a representative body of Kosovo in global events in the field of intellectual property.
- Office for Copyright and Related Rights – serves as an administrative body within the Ministry of Culture, Youth and Sports. The Office is the main institution in the field of copyrights and related rights. The roles of this office include issuing licenses to unions for the collective protection of copyrights, receiving permission for data in case unions do not fulfill the legal criteria, surveillance of the activities for the administration of rights, promotion of activities related to the field etc.
- Kosovo Customs - has a fundamental role toward protecting

society and the economy against illegal activities. In the context of intellectual property, the Customs contribute through import and export inspections with the aim of trademark protection and protection against counterfeited goods.

- Market Inspectorate – serves as a body within the Ministry of Trade and Industry with a scope that includes the supervision of the law implementation for the purpose of consumer protection and product safety and quality.
- Kosovo Police - serves as a body that protects intellectual property rights through sectors such as the Sector for Investigation and Economic Crimes (ISEC) and the Sector for Cyber Crimes.
- Courts

In this guideline, I touch on the basic concepts necessary for a proper understanding of the law and the related work of market inspectors. In practice, inspectors will undoubtedly also encounter cases that are specific or, due to their very nature, cannot be immediately subsumed under a certain legal norm accordingly. It is therefore very important to establish a good link among all stakeholders involved not only in while drafting regulations, but also during supervision, in order to exchange good practices.

4. COPYRIGHT AND RELATED RIGHTS

The Copyright and Related Rights Act is based on the legal framework established within the European Union, the Council of Europe, WIPO, WTO etc.

Apart from the protection of classic works, this legislation provides protection of computer programs and databases. New economic rights (e.g., rental, lending, distribution and importation, satellite broadcasting and cable retransmission), related rights and their collective administration are also regulated by this legislation. In compliance with the WTO TRIPs Agreement, special attention has been paid to enforcement issues, such as, for example, punitive damages, provisional measures, securing of evidence and border (customs) measures.

The competent institution on the area of copyrights and related rights is the Office on Copyrights and related Rights in the Ministry of Cul-

ture, youth and sport of Kosovo. The office is also responsible for drafting the copyright legislation.

Office on Copyrights and related Rights is the body who prepares laws, transpose EU directives and regulations, so I think that is in the same time obliged to provide support in terms of explanations of regulations and if it necessary, require an authentic interpretation in Parliament some article.

Another obligation for the Office on Copyrights and related Rights is also to provide support to all stakeholders for example Court, Prosecutor, Police, Customs, Inspectorates, right owners, etc. Office on Copyrights and related Rights its obliged to organize education, where Office will present and share the best practice from different country and provide answers where some dilemmas exist.

Highly important tasks for Office for Copyrights and related Rights is the communication with public to inform what Copyrights and related rights mean and why is so important that everybody respect those rights.

Recommendation:

Better cooperation among all stakeholder, including Office for Copyrights and related Rights and public

The relevant national legislation in the field of copyrights in Kosovo is the Law No. 04/L-065 on Copyright and Related Rights, Official Gazette of Kosovo No. 27 / 2011, as amended and supplemented by Law No. 05/L-047 Official Gazette of Kosovo No. 37/2016 and amending and supplementing the Law No. 06/L-120 Official Gazette of Kosovo No. 13 /2019.

Recommendation:

Preparing consolidated text of the legislation, which will include any amendments to the original regulation. This would be highly useful for all stakeholders and the public.

Before we start discussing about enforcement in these areas is important to address some basic issues. This is the basis of understanding what copyright and related rights mean and only then, we shall discuss in what situation and how could market inspectors help by taking measures to protect owner rights.

First of all:

- What is the object of copyright protection?
- What kind of protection does copyright grant?
- How can copyright be obtained? Are there any formalities?
- Who owns copyright?
- How does a copyright owner benefit from his rights?
- When can a protected work be used without having to seek permission?
- How long is copyright protected for?
- How does copyright affect everyday life?
- What are related rights? Are they different from copyright?
- What can a right owner do when his rights are infringed?

4.1. COPYRIGHT

Copyright relates to literary and artistic creations, such as books, music, paintings and sculptures, films and technology-based works (such as computer programs and electronic databases).

In Article 5 is the definition on who has the right to protection under the law.

“The authors of works in the area of literature, science and art enjoy the protection regarding their works and its use in accordance with this Law.”

Copyrights reflect two sets of interests that are generally referred to as economic and moral rights.

The economic rights of the author enable him/her to earn a living from their work. Copyright therefore grants the author the exclusive right to authorize others to use his work under agreed terms and to take action against unauthorized uses. Economic rights are recognized by copyright laws worldwide and generally cover all relevant commercial activities, from the physical reproduction of books, the staging of plays and other forms of choreography to the release of these works on the Internet.

Author’s work can be exploited:

- In physical form (reproduction, distribution, rental),
- Non-physical form (public performance, public transmission, public broadcasting with phonograms and video grams,

- public broadcasting, broadcasting, broadcast retransmission, secondary broadcasting) and
- In a modified form (adaptation, audiovisual adaptation).

All three basic forms of exploitation are adequately covered by the individual author's exclusive rights.

In addition to absolute (exclusive) rights, the author also enjoys the so-called other related rights. These are: The right of access and extradition, the right of resale, the right of public lending and the right to compensation for audio or visual recording or photocopying of his work.

On the other hand, authors typically have also a non-pecuniary interest in their work, notably to decide whether their works should be made public at all, to object to claim authorship, object to any use that can be considered as prejudicial to the work's integrity. These prerogatives are referred to as the author's "moral rights". Moral rights allow authors and creators to take certain actions to preserve and protect their link with their work. The author or creator may be the owner of the economic rights or those rights may be transferred to one or more copyright owners. Moral rights constitute a characteristic of the civil law tradition.

In Article 6 is definition of the moral and material rights of the author.

"1. The copyright is an inseparable right of a work, which belongs to the author as a subject of an intellectual property for the protected work.

2. The copyright shall include:

2.1. personal exclusive authorizations to protect the invulnerability of a work of an author and his/her personality, hereinafter the moral rights of the author;

2.2. exclusive property authorizations to protect the property interests of the author hereinafter the property rights of the author;

2.3. other author's authorizations hereinafter: other author's rights."

In order to illustrate what forms of expression may be protected, most copyright legislations contain the list of rights. Similar is the situation in Kosovo:

In Article 8 the Law states the definition of what work would be protected:

“1. The works of the author shall mean the intellectual original properties of the literary, scientific, and artistic domain represented in any form, if not otherwise provided by this Law.

2. The works of the author, in particular, are considered:

2.1. verbal works, such as speeches, lectures, narratives, and other similar works represented verbally;

2.2. written works such as textbooks, brochures, daily newspapers, and other texts of the literary domain, scientific and professional literature as well as computer programs;

2.3. music works with or without text, despite of whether they are presented through musical notes or in any other form;

2.4. theatrical works, theatrical- musical and puppet theatre works including the radio-drama;

2.5. choreographic and pantomime works;

2.6. filmic and other audiovisual works;

2.7. photographic works and other works made through a similar process of the photography such as artistic photography, photo- montage, posters, photos of the reporters;

2.8. artworks in the area of painting, sculpture, graphics and drawing;

2.9. architectural works such as charts, plans, templates, and the buildings built based on architectural and engineering works, urbanism, panorama, and interior design;

2.10. stenography works;

2.11. applicative artworks as well as industrial and graphic design;

2.12. cartographic works in the area of geography and topography;

2.13. scientific, educational, or technical presentations such as technical drawings, graphics, charts, expertise, and three-dimensional presentations.”

Essential is the distinction between protected works and ideas.

To be protected, a work has to be more than a mere idea. Accordingly,

in order for copyrights in a work to be infringed, one has to copy the form in which the ideas are expressed. The mere use of ideas found in a work does not represent a copyright violation. For example, the author who has written an article on how to build a boat, will be protected against the making and selling of copies of the article without his or her consent. However, copyright protection cannot prevent anyone from using the instructions (i.e., the idea) contained within the article in order to build about, neither to write another article on the same subject, without copy - print the first one.

In Article 12 the Law states:

“1. Legal protection of the copyright shall not include:

1.1. ideas, principles, instructions, procedures, discoveries or mathematical concept as such;

1.2. laws, sub legal acts, and other regulations;

1.3. official materials and publication of parliamentary bodies, government and other organizations which carry out public functions;

1.4. official translations of regulations and other official materials as well as of international agreements and of other instruments;

1.5. submissions and other acts in administrative and judicial proceedings;

1.6. official materials published for public information;

1.7. folkloric expressions;

1.8. headlines and different information of media of ordinary reporting nature.”

The articles of the Law on Copyright and related rights of Kosovo, which listed on the following part, summarize the basic principles of the notion of who is the author and the moment of creation of the author’s work, which are the criteria that upon accomplishment result in adequate legal protection.

In Article 13 the Law states:

“An author is the natural person creating the work.”

The assumption of authorship in *Article 14* the Law explains:

“1. A person whose name or firm, pseudonym or mark appears in the customary manner on the copy of a certain work or is so indicated at the time of

disclosure of that work shall be presumed to be the author of the work, until proved otherwise.

and in Article 7 the Law states:

“1. The author’s right belongs to the author for the fact of the creation of that work.

2. In order to enjoy the right of the protection of the copyright, no administrative procedure is required to be fulfilled prior.”

It is an almost universally accepted principle that the protection of authors’ rights flows automatically from the act of creation and does not depend on any formality.

In that respect, copyright differs considerably from other forms of intellectual property protection, such as patents, models or trademarks.

Different international conventions foresee protection during the author’s lifetime and a minimum of 50 years after his/her death. Kosovo is among many countries that has introduced a term of 70 years post mortem auctoris.

In Article 61 the Law states:

»The Copyright shall run for the life of the author and for seventy (70) years after his death«

A work that is no longer protected by copyrights, is part of the public domain.

Copyrights grant the author the exclusive prerogative to reproduce and communicate his work to public. It would be a mistake to think that this concerns only professional entities such as publishing houses and record companies. Copyrights tackle diverse activities, for example, the copying of a page from a textbook, the duplication of a CD, or an internet download may all constitute relevant reproductions under copyright law.

Similarly, the music we hear in publicly accessible places, such as bars or shops, is normally communicated to the public under the terms of copyright. Where no exceptions or limitations apply, every use of protected works requires the consent of the copyright owner Copyrights and Related Rights.

This legal term describes rights given to creators for their literary and artistic works. Basic copyright rights are granted to creators of music, films, novels, and poems.

Related rights are granted to performing artists, producers of sound recordings, and broadcasting organizations for their radio and television programs.

The law foresees the possibility of using copyright work for private purposes. A natural person has the opportunity to freely reproduce a work into any type of carrier, if this is done for private use only and without any direct or indirect commercial interest and if such copies are not distributed or communicated to the public. It is done up to three copies. (Art. 38 and Art 44 Kosovo Law)

EU directives and also Kosovo Law, despite the aforementioned exception allowing the copying of a copyrighted work in triplicate, provided for the protection of material copyrights through the payment of the special remuneration provided for in Article 39.

“1. Persons liable to pay remuneration under the preceding Article 38 of this law are: manufacturers of appliances for sound or visual reproduction; manufacturers of appliances for photocopying; manufacturers of blank audio or video media as well as holders of appliances who are offering photocopying services against payment. Jointly liable with manufacturers are importers of appliances and blank audio or video media, unless such imports are intended for private and non-commercial use, as part of their personal baggage, de minimis imports.

2. Manufacturers referred to in the preceding paragraph 1. of this Article are not liable to pay remuneration with respect to such appliances or blank audio or video media which are made for exportation. The same applies to the importers of blank audio or visual appliances imported in Kosovo and are exported without offering for sale first in the territory of Kosovo.

3. Persons referred to in paragraph 1. of this Article shall, on request of a collective association administering those rights, submit data about the type and number of sold or imported appliances and blank audio or video media, as well as such information about the photocopies, sold, as is necessary for the calculation of the special remuneration due.”

Consistent enforcement of regulations is the task of collecting societies. The market inspector can provide support on enforcement of these regulations with their activities to prevent the work being infringed on

black market and by illegal trade with sound and image carriers, photocopiers, etc. as much as possible.

4.2. RELATED RIGHTS

Copyright protects the right to reproduce the work, to make copies, and to perform or display the work publicly.

Related rights protect the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter which, while not qualifying as works under the copyright systems, contain sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right. The law of related rights deems that the productions that result from the activities of such persons and entities merit legal protection as they are related to the protection of works of authorship under copyright. Related rights have been granted to these categories of beneficiaries:

- Performers;
- Producers of sound recordings (also referred to as phonograms); and
- Film producers,
- Publishers and database producers
- Broadcasting organizations

Protection under related rights is similar to copyright, although it is often more limited and of shorter duration. The labeling as 'related' indicates some degree of relationship between these rights and copyright, and at the same time distinguishes them from the latter.

What can the right owner do when his rights are infringed?

The right owner whose moral or economic rights has been infringed may take several steps:

- They can resort to civil remedies to order and make the unlawful activity stop and to receive compensation for the prejudice suffered,
- The court can make the infringer stop his illegal activities by means of an injunction,
- If the infringing activity has caused financial loss to the right owner, the court could also be asked to reward damages, including punitive or exemplary damages,

- Most countries provide also penal remedies in some qualified cases of infringements, particularly, for large-scale piracy of protected works with a profit purpose.

In Article 195 the Law states that the procedure for misdemeanors shall be initiated on the submission of a complaint by the inspection body, the police, and the injured party, association for collective administration of rights or by the Office.

At the same time in *Article 181*, the Law states Judicial protection, and claims as in following:

“1. When the exclusive rights granted by this Law were infringed, the right holder may claim:

1.1. finding of the existence of an infringement of rights;

1.2. issuing of an injunction, prohibiting the continuation of the infringement and future recurring infringements, as well certain preparatory acts for such periodical infringements; 1.3. the goods created as a result of infringement, materials, and implements principally used in the creation or manufacture of infringing goods, will be asked to be definitely removed from the market and destroyed at the expenses of the infringer;

1.4. recovery of material damages, meaning actual damages and lost profit, or special recovery.

1.5. recovery of non-material damages suffers as a result of an infringement of moral rights;

1.6. the judgment of the court be published in full or in part in mass media, at the expense of the infringer.”

4.3. EXPERIENCE AND GOOD PRACTICES OF MARKET INSPECTORATE OF SLOVENIA

4.3.1 Control of photocopied literary works

From the practice of the Market Inspectorate, I can say that there were not many applications for copyright protection in the field of literary works protection. There have been some initiatives by professors of individual faculties to have their textbooks copied.

Supervisions were unannounced and were carried out at the beginning of the academic year.

If the same practice is also present in Kosovo, I suggest that it be approached in the same way, checking the entire stock of photocopied works, as individual textbooks are copied in several parts.

In such a way they think in order to avoid a provision that allowed a partial copy of a copyrighted work and not the whole. When inspecting, inspectors must pay attention to the exception allowing the copying of textbooks in their entirety, which is set out in the Kosovo legislation in Article 44. This article, prohibits the reproduction of the written work in the complete book volume, except if printed copies were sold at least two years before.

4.3.2. Public broadcast control

Supervision over the organization of copyrights in the public broadcasting of music in catering and accommodation establishments has been performed by market inspectors, at the same time as supervision over the performance of catering activities. When supervising the catering industry, regulations governing such as, the proper registration of catering establishments, marking prices, issuing invoices, banning the dispensing of alcohol to minors, banning advertising and selling tobacco to minors, advertising alcohol, working hours, etc., as well as copyright control.

In public places, copyrighted works are usually broadcasted by phonograms or with the help of a radio or television receiver, for which the users of these facilities must have copyrights with the competent collecting societies. In addition, there is the RTV Act, which requires the payment of an RTV subscription for all television and radio users.

In addition to inspections in the hospitality industry, where the performance of musical works may also be part of the caterer's offer, compliance with copyright provisions is also verified in hairdressing, car repair shops, shops, etc., although music is not directly related to a particular activity of these economic entities.

In the case of supervision, economic operators are required to provide proof of copyright. In cases where caterers, traders, craftsmen and others did not have regulated rights, the inspectors ordered the elimination of irregularities by issuing an administrative decision. Inspectors used soft measures such as warnings to violators who immediately settled these rights.

It is interesting to note that in 2006 the Slovenian Market Inspectorate received over 400 reports from the collective organization SAZAS that catering and other users of musical works do not have regulated material copyrights for the public communication of these works. For users of musical works, it was found that over 50 applications were completely unjustified. Over the years, the situation has improved.

4.3.4. Control in the area of computer programs

The specially qualified group of market inspectors, carry out the controls given the special nature of inspection in respect of computer programs. In accordance with the provisions of the Inspection Act an inspector has the right to conduct inspections of the economic entity on the basis of the law (without special permission of the court) and without prior notice.

This means that inspections in this area are not carried out on natural persons who use computers for their own purposes in the private premises of Houses or apartments. Entry into an apartment is a constitutionally protected category.

Control of the use of illegal programs in private premises falls mainly in the domain of the police, or if there is a reasonable suspicion that there is a major violation which market inspectors should have previously obtained a court order. Such situations are not recorded by the market inspection in Slovenia.

In accordance with the provisions of the Copyright and Related Rights the following economic rights are applicable to computer programs:

- The right of reproduction (is the author's exclusive right to fix the work in a material medium or in another copy directly or indirectly, temporarily or permanently, by any means and in any form, in whole or in part),
- The right of distribution (is the author's exclusive right to put into circulation the original or copies of the work by sale or other forms of ownership transfer, or to offer the same to the public with such intent),
- Rental rights (is the author's exclusive right of making available for use the original or copies of a work, for a limited period of time, and for direct or indirect economic advantage) and
- Right of making available (is the author's exclusive right that a work, by wire or wireless means, is made available to the public

in such a way that members of the public may access it from a place and at a time individually chosen by them or that a work is transmitted to a member of the public based on an offer, intended for the public).

The control of compliance with copyrights in the computer field is performed on the basis of an annual plan. Subjects are chosen by the industries in which they operate. In previous years, selected subjects were chosen from lawyers, media organizations (radio and TV organizations, newspapers, magazines ...), architects, small businesses, vehicle breakdown diagnostics companies, notaries, and others.

Every year, inspections are carried out at entities against which the Market Inspectorate receives a complaint.

The Market Inspectorate finds that most violators are aware that they must obtain the author's permission (license) to use a certain program, but this is taken into account only in the most used programs (operating system, office programs), while in smaller programs (especially those obtained over the internet) do not respect these rights.

In 2015, a new method of conducting inspections was introduced, which is extremely successful. The inspection took place in two parts.

In the first part (carried out in the spring), a letter was sent to 439 economic operators informing them of the Market Inspectorate of the Republic of Slovenia about their obligations regarding respect for copyright in the field of computers. At the same time, he urged them to check for themselves how many computers they have and which programs they use on them, and to check for themselves whether they are using all the programs legally (or have all the necessary licenses). Economic operators only had to submit to the Market Inspectorate of the Republic of Slovenia, data on the number of computers and a list of programs they use. After receiving the replies to the letter, an analysis of the received documentation was performed. Based on the analysis, economic operators who did not reply to the letter were selected, as well as a few randomly selected economic operators who sent information correctly. All of these economic operators were inspected in the autumn months.

Every year, inspections are also carried out at entities against which the Market Inspectorate of the Republic of Slovenia receives a report.

Due to the specific nature of the inspection in relation to computer programs, this control is carried out by a specially trained group of market inspectors, who, among other tasks, also perform such controls. At the Market Inspectorate, there is no formal division of inspectors who would perform inspections exclusively in the field of IPR. The group was formed taking into account the expressed interest of inspectors, knowledge of computers, and the desire to acquire new knowledge. Before the annual supervision, if necessary, special training is prepared for this group. If necessary, global IT corporations also offer assistance in education for inspectors.

The results of the inspections are visible from the table below.

| Action | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2019 |
|-----------------------------|-------|------|------|--------|------|-------|------|------|------|
| Percent of illegal programs | 11,2% | 7,6% | 9,3% | 12,00% | 7,4% | 30,1% | 2,7% | 3,8% | 3,6% |

Individual deviations in the percentage of infringements are the result of controls in areas where controls have not yet been carried out, or inspector carried out inspections in company that uses a large number of unlicensed computer programs. Long-term monitoring results show that the average rate of illegally used programs is around 9%. The occasionally worse result is due to the fact that eight companies were detected in the surveillance, which together illegally used over 200 programs, as found in 2015.

Regarding the control of compliance with copyrights in the computer field, in 2019 they were performed at 59 economic entities. Two economic entities did not have computers, and in all others, 3328 computer programs used by users in their work were inspected and recorded on 658 computers using the random selection method. Of all recorded programs, individual entities did not prove (could not provide appropriate evidence) the legal application for 119 (3.6%) programs. Out of 59 inspected entities, illegal use of at least one computer program was found in 20 entities (36.4%)

In Slovenian Copyright law, it is a misdemeanor if it is established that someone has publicly played a musical work for commercial purposes. The fact that someone has copies of the CD and does not play them during the inspection cannot be considered an offense. Unlike computer programs, where the law explicitly states that the mere possession of an unlicensed program is a violation. This fact is essential when exercising copyright control.

4.3.5. Cable transmission

In 2006, market inspectors began to supervise the orderliness of material copyright relations in the field of cable retransmission.

Valid Slovenian regulations stipulates that material copyrights protect the property interests of the author, which means that the author has exclusive and absolute power or monopoly over the exploitation of his copyright work. Thus, the exploitation of a copyrighted work is permissible only if the author allows the use of his copyright work. The author usually most often realizes his material property interests in his own work through remunerated transfers. The current regulation of Slovenia also includes the right to broadcast retransmission. We speak of cable retransmission when the broadcast radio program signals are routed to the cable network via a group antenna and distributed over the cable to the holders of cable connections. Moreover, with regard to related rights, the law stipulates that a broadcasting organization has the exclusive right to broadcast its broadcasts, secondary broadcasting of its broadcasts, if it is carried out in places accessible to the public against payment of admission, recording of its broadcasts, reproduction of recordings of its broadcasts, distribution of recordings their broadcasts and making available to the public recordings of their broadcasts. In view of the above, every cable operator in Slovenia must obtain the consent of foreign and other TV organizations for cable retransmission of programs, that it provides to users in its cable network.

In 2006, the World Cup was held in Germany, where exclusive rights to broadcast football matches were granted on a territorial basis. Due to the above, Slovenian cable operators had to obscure foreign programs HRT2, ORF1, ZDF and ARD during football matches on the basis of notifications from representatives of foreign RTV organizations, because foreign broadcasters acquired the rights to broadcast matches on TV only on the territory of the World Cup organizer and their country. The same territorial principle of granting exclusive rights has also been applied in the transmission of European Champions League football matches.

Therefore, Slovenian cable operators had to dim the screens on foreign TV programs during the broadcast of football matches of the European Champions League. During the broadcast of football matches in Slovenia, market inspectors monitored these programs, which were

broadcasted in the cable distribution system. During the matches, 39 cable distribution systems were controlled. Thus, at 9, they found that despite the notification of the blackout of foreign TV programs, cable operators did not heed this notice and retransmitted the transmission of a football match on foreign TV programs into their system. Due to the identified violations, market inspectors issued 7 payment orders to the violators. In two cases, however, the cable operators themselves started the blackout before the inspector arrived, even though they were broadcasting the first matches, so they were issued a warning.

The situation in this area has improved over the years, so that the dimming of the screens (blackout) of individual programs during the broadcast of mainly sporting events has become a constant practice.

4.4. CONCLUSION

Legal protection assures creators that others can approach and use their works without fear of unauthorized copying or piracy. Copyright and related rights provide therefore incentives for creativity in the form of recognition and economic rewards. This helps establish reliable conditions for investment in the area of creation and innovation to the benefit of society. In contrast, exceptions and limitations to copyright protection can also encourage innovation by ensuring unprevented access to protected works in-specific cases for purposes such as education and news reporting. They thus facilitate the dissemination of knowledge and information, which, in turn, is a crucial prerequisite of any new creation. Exclusive rights, on the one hand, and fairly balanced exceptions/limitations, on the other, are therefore both designed to foster creativity. Their interplay is of vital importance for the creative development of any society.

5. INDUSTRIAL PROPERTY RIGHTS

Intellectual property rights are closely related to innovation, continuous business development, cooperation among businesses and other subjects. A characteristic of industrial property rights is that they arise on the basis of an application to the register, unlike copyrights arising from the moment of creation without the need for any registration.

Industrial property takes a range of forms, including:

- Patents,
- Topographies of integrated circuits
- Industrial designs,

- Trademarks,
- Geographical indicators
- Trade secret

5.1. RIGHTS AND PROTECTION OF PATENTS

Law No. 04/L-029 on Patents (Official gazette of Kosovo, No. 12/2011) on amending and supplementing the Law No. 05/L-039 on Patents (Official gazette of Kosovo, No. 26/2015) in Article 1 sets aim of the Law:

“This Law defines the provisions and procedures for registration of patent, the rights deriving from the registration and application of these rights.”

Unlike other terms in the field of IPR, the term patent can be said to be understood and used not only by the professional but also by the lay public.

A patent is an exclusive right granted for an invention that offers a new solution to a technical problem. A patent is granted for inventions relating to a product, process or application.

Patents protect the author’s innovation with regards to some product idea or process that has not been in the market before. Patents can be registered by giving technical information about the innovation to the respective authorities. In Kosovo, responsible for patents is the Agency for Industrial Property (AIP). Patent protection usually lasts up to 20 years after the registration of the idea, thus protecting the idea against the illegal use from unauthorized parties other than the author. This means that the patented idea or product cannot be used for commercial benefits by a third party without the author’s approval. Patent registration in the Kosovo Agency for Industrial Property (AIP) also enables security when expressing the idea to potential investors.

In Article 110 the law provides subjects who have the right to seek the protection for Patents as follow:

“Besides the owner’s right for the patent, the right for patent protection may require the owner of an exclusive license to the extent to use the patent under the contract for license.”

Administrative Instruction (MTI) No. 13/2016 on the procedure for registration of Patents, provides many answers and assists right holder on how to protect this right.

Patent databases contain information on applied patents, protected (valid) patents and patents whose validity has already expired. Searching patent databases is recommended for anyone who wants to check whether similar or identical patents have already been published in relation to their intellectual creation results, in order to facilitate the assessment of the possibility of acquiring their own protection, in order to avoid infringement and to find out the applicant sought or received protection.

Expired patents are particularly interesting because they offer a fairly accurate description of an individual technical solution that is freely available in a particular geographical area.

Patent registration data are used by courts as well as all other supervisory bodies in proceedings when the right holder claims that his rights have been violated and seeks protection.

Below are a few databases:

- Slovenian patents: Database managed by the Intellectual Property Office of the Republic of Slovenia and includes patents registered and are valid in Slovenia <http://www2.uil-sipo.si/Squ000.stm>
- PatentoScope is an international database available on the World Intellectual Property Organization (WIPO) website. The database includes millions of patent documents, mainly international patent applications (PCT) and regional and national patents from 25 countries. It also provides a tabular and graphical display of search results, which is very useful when searching and insight over potential partners and competitors in the market <http://patentscope.wipo.int/search/en/search.jsf>
- EspaceNet, is an international database that includes patents from around the world (70 million patent documents - patent applications, past patents as well as valid patents). The database enables a quick search (query by keywords or persons or organizations) as well as a complex search (query of any accessible field: patent holder, inventor, filing date, patent number, etc.) <http://www.espacenet.com>

- Instructions for using EspaceNet: [http://documents.epo.org/projects/babylon/eponet.nsf/0/4E8744EB66E8F944C-12577D600598EEF/\\$File/espacenet_brochure_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/4E8744EB66E8F944C-12577D600598EEF/$File/espacenet_brochure_en.pdf)
- Common Citation Document, it is a tool developed by EPO, JPO and USPTO and is intended as a single access point to understand the state of the art listed in various patent databases <http://www.epo.org/searching/free/citation.html> and <http://ccd.trilateral.net/20120503/>
- European patent bulletin, it contains bibliographic data and information on the legal status of European patent applications and patents. Access is free, data is updated weekly (every Wednesday) <http://www.epo.org/searching/free/bulletin.html> in

When we talk about patent infringements, it should be emphasized that in such cases, right holders usually file a lawsuit in the courts where they exercise their rights.

5.2. INDUSTRIAL DESIGN

The field of industrial design is regulated by Law No. 05/L-058 on Industrial Design (Official gazette of Kosovo, No. 40/2015).

Design is, according to the Law, the outer appearance of the whole or of a part of a product resulting from features of, shape, form, color, lines, contours, texture or materials of the product itself.

Design is the external appearance of a product or object. Design is what makes a product attractive, appealing or desirable, and thus significantly contributes to the sale of the product and increase its commercial value.

Industrial design is the legal term used to describe the esthetic part of products in markets, which includes packaging and the way industrial products are wrapped/presented to the public. Industrial designs are protected from the sale or import of falsified products making use of the same design, or from whatever manipulation of the design undertaken without author's consent. Industrial designs are protected from the moment of registration, and depending on the country, they can also be protected through copyrights.

Industrial design is within the scope of industrial property, at the same time, has many similarities with the rights held by the authors in the field of copyright law.

A designer is the natural person who created the industrial design. The right of industrial design belongs to the designer or his legal successor in title. If the design was created on the basis of a commission contract, the right to the design shall vest in the commissioner of the design, unless otherwise specified by the contract.

The designer has moral rights in his/her designs in all documents during the public exhibition of the design, notwithstanding whether he/she is the applicant or the right holder of a registered industrial design. The moral right of the designer cannot be transferred.

The industrial design is acquired by the decision of the registration. This is one of the differences between copyright law and industrial property law.

The holder of the industrial design has the exclusive right for use of the registered design and prevents third parties from using (especially the processing, offer, placement in the market, import, export or the use of the product the design) without his permission.

After registration the design is protected for five years, starting from the date of application submission. Protection of the industrial design may be extended for one or more additional periods of five years, on a total period of twenty-five years.

The holder of the protected industrial designs right, that has been infringed, in addition to the request for compensation of damages may claim measures to prevent further infringement of his/her exclusive rights. Article 64 of the Law stipulates that the Basic Court in Prishtina is competent for the application of industrial design rights.

Administrative Instruction MTI, No. 12/2016 on registration of the industrial design give many answers and help right holder how to protect his right.

5.3. RIGHTS AND PROTECTION OF TOPOGRAPHIES OF INTEGRATED CIRCUITS

Law No. 03/L-165 on determining the rights and protection of topographies of integrated circuits (Official gazette of Kosovo, No. 74/2010) in Article 1 sets aim of the Law:

“1. This law regulates the conditions and procedures for registration of rights and protection of topographies of integrated circuits and enforcement of those rights.”

In Article 2 are defined Integrated circuit and topography of integrated circuit as well as rights stemming therefrom, as follows:

1.2. Integrated circuit - a product, in its final form or an intermediate form, which realizes execution of an electronic function, where at least one of elements is active and one or all of interconnections are integrally formed in the part of material or from the part of material, which means in the internal or external part of the material;

1.3. Topography of integrated circuit - the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and it is interconnected in the integrated circuit, or three-dimensional disposition prepared for an integrated circuit intended for manufacturing;

1.4. Commercial use of topographies - production, sale, rental, leasing or any other method of commercial distribution linked directly with topography produced based on the respective topography;”

The procedure of registration and cancellation of the decision for the registration of topographies is within competence of the Industrial Property Agency (IPA). During the extension of rights of the protected topography, the bearer of registered topography has the right to mark the produced product of the registered topography with letter “T”.

The owner of protected topography has the right for commercial use, including the right on authorization or prohibition reproduction of the topography, both the meaning and shape; and the importing, sale or any other form of dissemination of topography or products that include the integrated circuit, which is related with respective topography.

The rights of the owner of protected topography are valid for ten years. Rights can be lost even before the deadline defined if the fees are not paid or the owner of the right on protected topography gives up in written form from the protection. If the topography is not used commer-

cially, rights are abolished fifteen years after the date of first fixing or coding if during this period no application is submitted for registration.

Article 19 provides that a holder of the protected topography right, that has been infringed, in addition to the request for compensation of damages may claim measures to prevent further infringement of his exclusive rights.

Other provisions are more or less the same as for other industrial property rights. They relate to registration, transferability, licensing, etc.

5.4. GEOGRAPHIC INDICATORS

Geographic indicators are signs that identify a product based on its geographical origin, whereby characteristics of the product are a result of its geographical origin. Geographic indicators protect against the possibility of producers not fulfilling the place of origin criteria from using the name or other characteristic of the product. However, for as long as the other party uses the product in line with applicable standards, he does not infringe.

Law No. 05/L -051 on Geographical Indications and Designations of Origin (Official gazette of Kosova, No. 3/2016). In Article 1 sets aim of the Law:

1. This Law defines the rules and procedures for the registration of geographical indications and designations of origin deriving by the registration.”

Geographical indication - name of a region, a specific place or in special cases the name of a state, which is used to describe a product originating from that region, specific place or state, possesses a quality, reputation or other specific characteristics which come as a result of geographical origin, production and / or processing and / or preparation of which takes place entirely in the defined geographical area.

Geographical indications denote natural products (mineral water, stone, etc.), agricultural products (potatoes, strawberries, etc.), food products (cheese, etc), industrial products (beer, etc.), home-made products (carpet, embroidery, etc.).

The largest number of products marked with geographical indications are agricultural and food products.

A geographical indication can be, and most often is, a significant marketing tool that guarantees the authorized user an advantage over the competition on the market, as it guarantees a controlled and special quality of the product and its origin.

Industrial Property Agency which is responsible for the procedure of registration of designations of origin and geographical indications and other proceedings under this Law and the legislation in force.

The protection of a geographical indication combines two different procedures: the procedure for establishing a geographical indication and the procedure for recognizing the status of an authorized user of a geographical indication.

If a geographical indication is established before the Agency for the first time, as a completely new right that has not been registered before, the interested person will initiate the procedure for establishing a geographical indication.

If the geographical indication has already been established, and if someone wants to acquire the rights to use that designation in trade, he/she will initiate a procedure for recognizing the status of an authorized user of the geographical indication.

Protection of the designation of origin or geographical indication registered starts from the date of entry in the Register of designations of origin or geographical indicators. The right of use of the designation of origin or geographical indication lasts for ten years from the date of entry of authorized user in the Register of Authorized Users and may be renewed by the party indefinitely for a period of ten years.

Article 12 sets out the scope of protection, namely:

“1. Registered designations of origin or geographical indication will be protected against:

1.1. any direct or indirect commercial use of products that are not registered as long as those products are comparable to the products registered under the designation of origin, or for as long as the use of the designation of origin or geographical indication exploits the reputation of the protected designation of origin or geographical indication;

1.2. any misuse, imitation or evocation, even if the true origin of the product is noted or if the name of the designation of origin or geographical indication is

translated or transliterated or accompanied with expression such as “style”, “type”, “method”, “as produced in”, “imitation” or others similar to these

1.3. each inaccurate or misleading indication in terms of background”

I have already stated in the introduction that this type of protection is primarily about the protection of food products, so I believe that it is necessary for inspections under this law to be carried out by inspections responsible for food control.

In addition to the law Administrative Instruction MTI No. 11/2016 on registration procedure of Geographical indicators and designations of Original and Administrative Instruction MTI No. 09/2018 on determining Symbols for Geographical indicators, designation of Origin and guaranteed traditional specialties could be also very helpful.

5.5. TRADEMARKS

Trademarks enable the public to distinguish between products of different suppliers because many companies can produce similar products or products of the same nature. Another benefit resulting from trademarks is that the owner of a trademark is protected from the exploitation of a subject or a competitor seeking to imitate those products. Trademarks can include words, logos, symbols, package designs, or any other identification item that serves to convey to consumers a certain value, item, or service.

Law No. 04/L-026 on Trademarks (Official gazette of Kosovo, No. 10/2011) on amending and supplementing the Law No. 05/L-40 on Trademarks (Official gazette of Kosovo, No. 26/2015) in Article 1 sets aim of the Law:

“This Law determines requirements and procedures for the registration of trademarks, the rights derived through the registration and implementation of such rights.”

This Law applies to trademarks in relation to goods and services wherein the entities are subject to the registration procedure with the Industrial Property Agency as well as community trademarks and international trademark registrations that apply to Kosovo.

Signs which may be protected as trademarks is definite in Article 5:

“A trademark may be every sign which could be represented graphically,

particularly words, including personal names, designs, letters, numbers, the shape of goods or their packaging, colors as well as combination of all above under a condition that goods or services of one enterprise can be distinguished from the other enterprises.”

The law provided that should not be registered the identical trademark or similar to the earlier trade mark.

The registered trademark is exclusive right of its holder. The holder of trademark is entitled to prevent third parties to use without his permission.

In the procedures of registration of patents, trademarks, geographical indicators, industrial design, etc., all participants must follow all the prescribed procedures and ensure that no infringements occur during the registration itself. If irregularities are found in this part, this does not fall within the competence of market inspectors. The task of market inspectors is in cases of infringements of registered patents, trademarks, geographical indicators, industrial design, etc.

According to the experience of countries in the Kosovo neighborhood, as well as Slovenia as an EU Member State, market inspectors could most often encounter infringements related to the unjustifiably use of trademarks.

Publicly available databases help to control whether a particular trademark is registered. Some of the most useful databases are below:

- Slovenia, database managed by the Intellectual Property Office of the Republic of Slovenia and includes trademarks registered in Slovenia and valid in Slovenia <http://www2.uilsipo.si/Squ020.stm>
- Community trade mark (EUTM - European Union Trademark), it provides quick access to Community trade mark information <https://oami.europa.eu/eSearch/>
- Romarin International Base, The international database of trademarks includes registered trademarks from 87 countries (list of countries: http://www.wipo.int/treaties/en/documents/pdf/madrid_marks.pdf) <http://www.wipo.int/romarin/>

- TMView international database, The international database of trademarks includes registered trademarks from EU Member States and WIPO. <http://www.tmview.europa.eu/tmview/welcome.html?language=sl>

5.5.1 Assistance in resolving a concrete case of Kosovo Market Inspectorate in December 2020

During the preparation of the Guidelines, I was asked by the Kosovo Market Inspectorate to advise them on how to proceed in the specific case of the sale of counterfeit shampoo. They sent me two pictures.

For this concrete case, I prepared some advice and recommendations, which are useful not only for this case. I recommend that inspectors also use them when dealing with other cases of alleged counterfeiting of products.

The example provided is a classic case of suspected trademark infringement. It is not possible to deduce from the pictures that are provided, which product is supposed to be the original and which is supposed to be a fake (perhaps the fault is the picture quality photo). The following is a general instruction on how to proceed in such and similar cases.

As can be seen, I have already used the terms 'suspected infringement' and 'allegedly counterfeit' in the introductory sentence.

This is extremely important as it would be premature to conclude that it is counterfeit and which product is counterfeit could have adverse consequences for the supervisory authority and possibly a claim for damages.

According to the applicable IPR standards, it is only the right holder who can judge whether a particular product is genuine or counterfeit and can prove this in court. Of course, there is another aspect here, namely that right holders often use supervisory authorities, where the law allows them to do so, and shift the entire burden to the supervisory authorities, instead of protecting their rights in court.

In this way, they do not bear the financial burden, nor is their reputation tarnished in the event that they have failed in the proceedings and that they have been hasty in claiming that it is a forgery.

The regulations of Kosovo provide for judicial protection in the event of unjustified use of the trademark. In addition, there is a possibility that the court may, for justified reasons (possibility of major damage), issue a temporary injunction prohibiting the sale, advertising of a product for which there is a reasonable suspicion that it is a counterfeit, which has already been established in court proceedings already initiated before the court.

Of course, there is often a financial moment present, court proceedings have to be paid (court fees, claim, etc.), while the inspection procedure is free.

In order to prevent inspectors from engaging in procedures that they will not be able to successfully complete, market inspectors must follow certain steps and ask initial questions:

- Did the Market inspectorate receive a complaint?
- From whom?
- Are the identical products with 100% identical labels or just similar products?

For example: Palmolive or Palmoleve

In the following we have two different situations and two different legal bases:

SITUATION No.1

- Is a concrete trademark registered?

Article 2 (Law No. 05/L -040 amending and supplementing the Law No. 04/L-026 on trademarks)

This Legislation applies to trademarks in relation to goods and services wherein the entities are subject to the registration procedure with the Industrial Property Agency of Kosovo established in the Ministry of Trade and Industry (hereinafter Agency) as well as community trademarks and international trademark registrations that apply to Kosovo.

- When checking the content of an individual right and the appropriate registration, all dilemmas are resolved by the Agency, which performs the tasks of registration and keeps registers, so contact them.
- Is the registration already completed or still in progress?
- Is the registration still valid?
- Determine who is the rights holder
- Determine whether the right holder has allowed the use of his trademark, or has sold the license
- Require information on whether court proceedings have been initiated
- Obtain information on whether the police or the prosecutor's office have been involved in the case if it is an act of unfair competition
- Require the active participation of the applicant, the right holder, and the infringer
- Check on the product who the manufacturer is and whether it matches the information where the trademark is registered
- Check who is the importer
- There may be more than one importer of certain goods. Check who the importers are. If it is more importers for Kosovo can be checked via delivery notes.
- Require data from Importer, ECL documents-import documents, time of import, quantity, data on distribution, data on paid duties, taxes, customs
- Require the active participation of the applicant, the right holder, and the infringer

Questions and dilemmas to which the inspector must answer before issuing a decision and prohibiting the sale and advertising of potential counterfeits.

- It may be an original product that came to the market of Kosovo through another distributor!
- It may happen that an original product intended for another market has entered the market of Kosovo.
- Whether the content of the product is original can only be checked in the laboratory. Who is responsible for the control of cosmetics in Kosovo? Health Inspectorate?

All these questions will be easily answered by the right holder trade mark HOBBY.

I am not familiar with brand name HOBBY. The products of this brand are not on the Slovenian market, so it is difficult for me to provide any contact or information about this right holder.

As I can see, the information on these products is in Turkish and Arabic language. (very poor photography). These products may be intended for the market of other countries and cannot be considered fake, so be careful.

The price of products is also not a measure of what is original and what is not. For markets outside the EU, products may be cheaper. Be very careful. Turn on the AIP

The practice in the EU, especially when it comes to recognized brands in the field of cosmetics, such as Palmolive, etc., that in each country they have a representative who can be contacted by a court or supervisory authority in case of trademark infringement. It is the task of the agents to monitor the market in each country and, if they detect that counterfeits appear on the market, initiate appropriate court proceedings. I suggest you check with AIP to see if this brand also has a representative.

SITUATION No.2

In case of similarity of the product - NOT THE SAME PRODUCT, then the inspectors conduct the procedure on the basis of the Unfair Commercial Practices Directive, which is transposed into the legislation of Kosovo by the Consumer Protection Act.

In this case, the market inspector conducts the procedure from start to finish.

5.6. EXPERIENCE AND GOOD PRACTICES OF MARKET INSPECTORATE OF SLOVENIA

In Slovenia, the area of intellectual property, in general, is governed by the Industrial Property Act (Official Gazette Republic of Slovenia, No. 51/06), which provides right holders legal protection only on the court.

In the period from 1993 to 2015, Slovenia had a two-tier system (dual system) of protection in individual areas of industrial property according to the Competition Protection Act (Official Gazette Republic of Slovenia 18/1993). Such a system has proved to be inadequate and legally controversial, so the provisions on the protection of unfair competition have been transposed into another law, which provides right holders legal protection only on the court.

The following is a more detailed explanation of the previously valid Competition Protection Act and the role played by the Market Inspectorate in infringement proceedings and the adoption of appropriate measures.

In accordance with the law in force at the time, specific issues in this area were identified as the public interest, therefore the administrative powers are activated and this also included surveillance, which is entrusted to the Market Inspectorate of the Republic of Slovenia.

According to the law, Art 13:

“(1) Acts of unfair competition shall be prohibited.

(2) Unfair competition shall mean an act of an undertaking in operating on a market in contradiction with honest commercial practices and by which harm is or may be caused to other undertakings.

(3) In accordance with the preceding paragraph, the following shall be deemed to be an act of unfair competition:

- providing information about other undertakings, if this harm or potentially harms the reputation and business of another undertaking;*
- selling goods with labels or information that cause or may cause confusion regarding the origin, method of production, quantity, quality, or other characteristics of goods;*
- acts focused on the termination of a business relation between other undertakings or that prevent or make such relations difficult;*

- *unjustified non-fulfillment or termination of contracts with an undertaking in order to conclude an identical or similar contract with another undertaking;*
- *unjustified use of the name, company name, brands, or any other label of another company, irrespective of whether the latter has given consent if thereby confusion is or may be created on the market;*
- *giving or promising presents, proceeds, or any other benefits to another undertaking or a worker thereof or to a person working for another undertaking that gives a benefit to the giver to the detriment of another undertaking unauthorized use of the services of a sales representative, commercial representative, or agent of another undertaking;*
- *unlawful acquisition of the trade secrets of another undertaking or unjustified exploitation of a confidential trade secret of another undertaking.*

Article 13 of the previously valid Competition Protection Act, provides an act of unfair competition when a firm operates in conflict with good business practices, which causes or may cause damage to other market participants.

The unfair competition also includes the unjustified use of the name, company name, brand or any other indication of another entity, irrespective of whether the other company gave its approval if it is created or may create confusion in the market, or sell goods with the terms or details that create or may create confusion as to the origin, production methods, quality and other characteristics of the goods.

Market Inspectorate was to establish an inspection procedure on the basis of the application (usually from general importers) that competitors allege unfair competition.

If the process determines fake goods and consequently an infringement of the Protection of Competition Act, the Market Inspectorate temporarily prohibits acts of unfair competition (prohibition on selling fake goods) with a decision. However, unfair competition also constitutes a minor offense, punishable by a fine.

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Market Inspectorate was to establish an inspection procedure on the basis of the application (usually from general importers) that competitors use unfair competition.

If the process determined fake goods and consequently an infringement of the Protection of Competition Act, the Market Inspectorate temporarily prohibits acts of unfair competition (prohibition on selling fake goods) with a decision. The unfair competition also constitutes a minor offense, punishable by a fine.

At the same time, the law enabled the right holder the opportunity to protect their right on the Court. There was a case when the decisions were taken by the Market inspectorate in its proceedings and at the same time in Court proceedings. Which is contrary to the rules of the rule of law and may result in compensation proceedings, which can be claimed by the right holder if he considers that he has suffered damage as a result of a wrong decision. It must be borne in mind that court proceedings can be lengthy and that the possibility of high damages is therefore high.

The law did not stipulate as a precondition for the decision of the market inspectorate the obligation that the right holder must file a lawsuit in court, or in any way ensure that he will bear the costs that may be incurred in the prerequisite procedure for initiating the procedure.

At the same time, the law gave the right holder the opportunity to go to the Court to protect their right. There were cases when the decisions were taken by the market inspectorate in its proceedings and the decisions of the court in court proceedings differed. Which is contrary to the rules of the rule of law and may result in compensation proceedings, which can be claimed by the right holder if he considers that he has suffered damage as a result of a wrong decision. It must be borne in mind that court proceedings can be lengthy and that the possibility of high damages is therefore elevated.

As I have already mentioned, since 2015 the field of protection of unfair competition has been included in the Prevention of Restriction of Com-

petition Act (Official Gazette of the Republic of Slovenia, No. 64/07 - official consolidated text and 36/08 - ZPOmK -1), where the definition of unfair competition is summarized (Art. 63), while at the same time Article 63b lists the Rights of affected participants, as follow:

“(1) If harm is caused to someone by acts that are inadmissible in accordance with the preceding Article of this Act, the latter may seek compensation in accordance with the rules regulating obligations.

(2) The affected participant in goods or services traded on the market may lodge an action in litigation proceedings for the prohibition of any further acts of unfair competition, the destruction of objects by which an act of unfair competition was committed, and restitution, if possible.

(3) If an act of unfair competition has been committed in public media or in a similar manner (eg leaflets, signs in public places) or the act has affected many participants, the affected participant may require that the judgment be published in such media. “

The reason why companies filed applications with the market inspectorate and did not decide for court proceedings was also in the fact that the proceedings before the market inspectorate are free and that the company that initiated the procedure does not have to pledge any funds in case of a false application even if they cause harm to a competitor (material and moral damage).

Recommendation

I suggest that the duality of the system, which allows the protection of industrial property rights through inspection and court, be well-considered and that a suitable solution be found to avoid claims for damages.

6 HOW TO MAKE INSPECTORATE IN KOSOVO MORE EFFECTIVE IN THE FIELD OF IPR

In Slovenian law, legal protection of rights arising from the industrial property is possible only on the Court. Inspections have no authority to take measures or penalize.

In so far as these are violations of industrial property and the goods are subject to customs procedures, then the procedures related to suspected violations in the field of IPR are also conducted by Customs. Legal basis for EU customs enforcement of intellectual property rights is Regulation (EU) No 608/2013.

In Kosovo legislation (new or adapted) that will be the basis for the effective inspection actions in cases of suspected marketing of counterfeit products, it is necessary to add provisions that already exist in Regulation 608/2013, where the active role of right holders is clearly defined.

The Law on Customs Measures for the Protection of Intellectual Property Rights (Official Gazette of Kosovo, No. 06 / L-015) transposes the Regulation into the legal order of Kosovo has already included.

In the Law on Customs Measures for the Protection of Intellectual Property Rights in Article 6 are listed information that the right holder must provide to the customs if he wants to protect his rights as follows:

- Details regarding the applicant;
- Documents providing evidence that the applicant is entitled to submit the application;
- Specific and technical data on the authentic goods, including signs such as barcoding and images, where appropriate;
- Information needed by the Kosovo Customs to readily identify these goods;
- Infringement of an intellectual property right or rights, such as information for the authorized distributors;
- Details of each representative appointed by the applicant to take charge of legal and technical matters;
- Declaration from the applicant to forward or update any relevant information

It is crucial to receive a statement from the applicant to assume liability. The holder of the decision is liable to any holder of the goods or declarant, who has suffered damages from the following situations:

- When court proceeding initiated under this legislation is discontinued or terminated due to any act or omission by the holder of the decision;
- Where samples are not returned or are damaged and are out of use due to an act or omission by the holder of the decision; or
- When it is established that goods do not infringe an intellectual property right. (stated in Article 28)

The next important statement from the application is to bear the costs. The holder of the decision shall reimburse the costs incurred by the Kosovo Customs or by third parties acting on behalf of the Kosovo

Customs, from the moment of suspending the release of the goods or their detention, including storage and handling of the goods referred (stated in Article. 29).

By adopting such a law, two goals would be realized. Inspections would be given clear powers and pre-determined procedures, and at the same time, the right holder and the infringer would be required to act actively in the proceedings.

So far, right holders expect that inspection will protect their rights (free of charge!) without doing anything to help. Unfortunately, it also happened that they abused their rights and reported their competitors who acted as parallel importers in the market, in order to destroy competition.

I propose that the new law be based on the provisions of Regulation 608/2013, including the deadlines set for individual activities used in Customs proceedings. That way, there would be no confusion, as right holders already know (or should know) the procedures at Customs.

The law should clearly define the competent inspection bodies according to their substantive jurisdiction.

7 UNFAIR BUSINESS TO CONSUMER COMMERCIAL PRACTICES

In connection with the fake goods, another rule and responsibility from the jurisdiction of the Market Inspectorate of Slovenia should be mentioned. The Directive 2005/29 / EC of the EU Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market has been transposed by Consumer Protection against Unfair Commercial Practices Act (Official Gazette Republic of Slovenia 53/2007).

According to Article 7 of the Directive, commercial practice is considered as misleading, when the trader hands company product, which is similar to a product of another manufacturer and deliberately misleads consumers into believing that the product is the manufacturer, although this is not true.

If the company uses unfair business practices or is about to use it, the Inspectorate can prohibit the use of such practices. These actions also constitute a minor offense, punishable by a fine.

It is necessary to stress that it is essential to make the difference between a product that is labeled with a registered brand name and a product that is labeled with a brand that is only similar to registered trademarks (not identical).

For example, wrist watch GUESS and wrist watch GUUES.

In the first case, only the rights-holder has adequate knowledge and could tell whether the product is fake and accordingly may be brought in court procedures to protect his rights.

In the second case it is possible that the market inspectors be involved actively in the control. In such cases, market inspectors can find a legal basis in the Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

According to the Directive, the commercial practice is considered misleading, when the trader hands company product, which is similar to a product of another manufacturer and deliberately misleads consumers into believing that the product is the manufacturer, although this is not true. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise, etc.

One of the commercial practices which in all circumstances are considered unfair, is promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

If the company uses unfair business practices or is about to use them, Inspectorate can prohibit the use of such practices. These actions also constitute a minor offense, punishable by a fine.

Proposal

I suggest conducting a seminar for all inspectors, representatives of the Chamber of Commerce, Consumer organizations, etc., to show through practical examples what powers the inspection has in specific cases.

8 FURTHER STEPS AND RECOMMENDATIONS

The organization and working areas of the Market Inspectorate of Kosovo are determined by Law 03 / L-181 on Market Inspectorate on Inspective Supervision and Law 04 / L-186 on amending and supplementing the Law 03 / L-181 on Market Inspectorate and Inspective Supervision.

In addition to the law, there is also Regulation No. 10/2013 on Internal organization and systematization of jobs in the Market Inspectorate, which was approved at the 121st meeting of the Government, with the decision no. 06/121 date 27.03.2013.

Market Inspectorate is responsible for protecting Intellectual Property Rights by enforcing respective legislation, which is written in Article 9. Law 03/L-181 on Market Inspectorate on Inspective Supervision.

Taking into account the fact that currently, the Inspectorates system in Kosovo is under reform, but the Market Inspectorate jurisdiction on IPR area will remain necessary with the aim of effective control and action, all with the aim of protecting intellectual property rights and thus increasing the competitiveness of companies, encouraging innovation, and protecting the material and moral rights of authors, it is essential to adopt certain changes.

I recommend following changes:

- Internal organization of the market inspectorate
- Inclusion of additional inspection bodies as supervisory bodies for individual segments of supervision
- Define and establish procedures for inspection bodies for supervision in the area IPR

- Improve communication and cooperation within all supervisory authorities and other stakeholders
- Provide training for inspectors and other bodies involved in the IPR protection process
- Amend and supplement the existing legislation
- Awareness of the public about the importance of IPR, inclusion in the school program, TV shows, try to change the mentality of the public

8.1 INTERNAL ORGANIZATION OF THE MARKET INSPECTORATE

In accordance with Article 3 of Regulation No. 10/2013 on Internal organization and systematization of jobs in the Market Inspectorate organizational structure of the Market

Inspectorate is:

- Chief Inspector Office; and
- Ten Sectors of which 7 sectors are regional units of the inspectorate, as follow:
 - Inspection Surveillance Sector in Prishtina and Surrounding;
 - Inspection Surveillance Sector in Mitrovica and Surrounding;
 - Inspection Surveillance Sector in Peja and Surrounding;
 - Inspection Surveillance Sector in Gjakova and Surrounding;
 - Inspection Surveillance Sector in Prizren and Surrounding;
 - Inspection Surveillance Sector in Gjilan and Surrounding;
 - Inspection Surveillance Sector in Ferizaj and Surrounding

Duties and responsibilities of the Inspection Surveillance Sector in any regional unit are the same, as follow:

Conducts supervision regarding the enforcement of legislation and other technical procedures in the field of trade in goods and services, supervises quality and prices of products and services, and customer protection. Also based on appropriate findings undertakes measures according to the legislation. Head of Inspection Surveillance Sector in regional unit reports to the Chief Inspector.

The number of employees is different depending on the unit, from 4 to 15 employees as much as in Prishtina.

In addition to the seven sectors organized on a territorial basis, in Prishtina there are three other sectors organized on a functional basis, namely:

Product Safety Sector

Duties and responsibilities of the Product Safety Sector are:

Supervises the implementation of legislation and technical procedures in the field of product safety and conformity assessment; Cooperates with other responsible domestic inspectorates on market surveillance and laboratories for testing and verification of products safety; Conducts risk assessment of products on a regular basis and drafts the plan for their inspection accordingly.

Head of Product Safety Sector reports to the Chief Inspector. A number of employees at the Product Safety are four employees.

Legal Affairs Sector

Duties and responsibilities of the Legal Affairs Sector are:

Provides legal assistance to all organizational structures of the inspectorate; Monitors the implementation of laws and other bylaws related to the control and market surveillance of goods and consumer protection; Provides legal support in handling the cases referred to the Market Inspectorate and drafts relevant draft-decisions; Provides legal assistance in drafting and development of procedures for market surveillance and receives consumer complaints and addresses them.

Head of the Legal Affairs Sector reports to the Chief Inspector. The number of employees is four.

General Affairs Sector

Duties and responsibilities of the General Affairs Sector are:

In cooperation with the Budget and Finance Division of the superior authority of state administration, plans and manages the market inspectorate budget, provides support in managing the human resources of the market inspectorate, conducts training needs analysis for the market inspectorate officials and prepares the annual training plan and organizes the professional exam for market inspectors, provides support in terms of procedures regarding the annual assessment of the performance of Market Inspectorate officials and prepares annual reports relating this process, ensures filing of documentation of the Market Inspectorate, provides logistical support for the Market Inspectorate, provides technical support for media communication, prepares the annual public procurement plan, and monitors the execution of this plan, ensures maintenance of the Market Inspectorate website and provides support in the maintenance of the IT system.

Head of the General Affairs Sector reports to the Chief Inspector. A number of employees in the General Affairs Sector are six.

According to the rules, it could be concluded that the Chief Inspector coordinates the work of all employees in all sectors. The general number of employees at the Market Inspectorate are eighty-two. Based on my experience from past projects, I doubt that such an organization has come to life in practice especially in the regional units.

As I mentioned in the introduction, the field of IPR and the activities of market inspectors are extensive and relate on not only special regulations regarding copyright and related rights, industrial property rights but also the field of consumer protection and compliance of technical products. This means that both sectors must include in their Annual Plans and consequently, both sectors must ensure that field controls are carried out at all regional units.

There is also another possibility to appoint an inspector in one sector who will coordinate all activities in the field of IPR for the whole country.

The decision is up to the Chief inspector or Minister.

Nevertheless, it is definitely necessary to take a step forward in the field of IPR control.

IPR is mainly a novelty for market inspectors and they do not have enough experience, so it is crucial that the Market inspectorate designates one person to whom inspectors can address questions if they are in doubt whether there is a violation and how to proceed. This is all the more important as all IPRs are already defined in law as expedited procedures, so inspectors will need help immediately. This person could be also the contact person and participate in the inter-ministerial group for IPR, in the preparation of new regulations, attend training at home and abroad, organize and lead trainings for market inspectors.

While drafting the Guidelines, the Law of inspections was being drafted. The preparation of individual provisions of the Law on Inspections and later its implementation in practice is the subject of another Project, so I will not comment on the content and my concerns regarding the bill.

Regarding the preparation of these Guidelines, however, I cannot ignore the fact that the draft Inspections Act retains inspections at two levels, namely the state and municipal levels. For example, in Slovenia since 1995 all inspections are at the state level, which means that the same rules apply, the same procedures, the same area of control throughout the country and that local authority, specifically the mayor, have no influence on this.

The Law on Inspections does not contain articles, which would refer to the area of IPR, since it is a procedural law, not a substantive law.

My advice to the Chief Market Inspector is that during the transitional period of 16 months from the adoption of the Law of inspection, when the internal organization of individual inspections will be created, adjust the organization of the market inspection to the actual needs of effective controls, taking into account the recommendations in the Guideline.

8.2 INCLUSION OF ADDITIONAL INSPECTION BODIES AS SUPERVISORY BODIES FOR INDIVIDUAL SEGMENT OF SUPERVISION

The proposal to include additional inspection bodies as supervisory bodies for individual segments of supervision is based on the special legislation (health, agriculture, etc.) and in the various reports available and the experience of neighboring countries.

Geographical indications and designations of Origin are one of the Laws where is necessary to include Inspections responsible for agriculture and food.

The same situation is also in the pharmaceutical area. It is widely known that online sales are on the rise, including various dietary supplements as well as medicines. Such products often do not contain the active ingredients listed on the product; they may even be life-threatening. Therefore, much attention needs to be paid to counterfeiting in the field of health and medicine. This, of course, means the appropriate knowledge of all supervisory authorities. Market inspectors certainly do not have this kind of knowledge.

8.3. DEFINE AND ESTABLISH PROCEDURES FOR INSPECTION BODIES FOR SUPERVISION IN THE AREA OF IPR

When inspecting IPR, market inspectors have to implement the following steps.

As an example:

- Are the IPR infringements falling within the scope of copyright infringement or falling within the scope of industrial property
- When checking the content of an individual right and the appropriate registration, all dilemmas are resolved by the Agency (AIP), which performs the tasks of registration and keeps registers or Office for Copyright and Related Rights.
- If it is an industrial property, is the concrete right registered, are the registrations already completed or still in progress, and if the registration is still valid
- In concrete cases is the sale of the same product or a similar

- product- two different procedure
- Determine who is the rights holder
 - Determine whether the right holder has allowed the use of his trademark, patent, ...or has sold the license
 - Require information on whether court proceedings have been initiated
 - Obtain information on whether the police or the prosecutor's office have been involved in the case
 - Obtain information on whether the Customs have been involved in the case
 - Require the active participation of the applicant, the right holder, and the infringer

8.4. IMPROVE COMMUNICATION AND COOPERATION WITHIN ALL SUPERVISORY AUTHORITIES AND OTHER STAKEHOLDERS

According to legal regulations key institutions with competencies and responsibilities to implement the legislation on intellectual property in Kosovo are:

- Agency for Industrial Property, (AIP) as a body within the Ministry of Trade and Industry. The Agency is among key institutions for the protection of Industrial property. The Agency is responsible for examining applications, compiling and maintaining registers, and compiling Official Bulletins with data for registration applications in the field of intellectual property. The Agency, moreover, is also a representative body of Kosovo in global events in the field of intellectual property.
- Office for Copyright and Related Rights - as an administrative body within the Ministry of Culture, Youth and Sports. The Office is the main institution in the field of copyrights and related rights. The roles of this office include issuing licenses to unions for the collective protection of copyrights, getting permission for data in case unions do not fulfill their legal criteria, surveillance of the activities for the administration of rights, promotion of activities related to the field etc.

- Kosovo Customs- has a fundamental role in terms of protecting society and the economy against illegal activities. In the context of intellectual property, the Custom contributes through import and export inspections with the aim of trademark protection and protection against counterfeited goods.

In the Annual Report for 2019, Kosovo Customs also mentions work in the field of IPR:

“The Intellectual Property Right – The undertaking of customs measures in the fight against counterfeiting and piracy are among the Kosovo Customs priorities. Year after year the number of requests for application of customs action has increased, where now customs count for 126 applications for 648 trademarks and 38 copyrights. 305 cases with counterfeited goods are discovered and seized in value of 1.94 million €. Also, the Risk Management had a crucial role in accomplishing the KC mission and strategic objectives in collection of revenues, preventing and fighting against informality by steering the capacities and controls onto the high-risk domains.

In the aspect of Intellectual Property Rights, Kosovo Customs has undertaken measures in raising awareness and capacities. In this respect, many activities and organizations are held with businesses and citizens, where they were closely informed about the importance of protecting the intellectual property right and the risk that can be caused by these counterfeited products by exposing samples of seized products, products which infringe the intellectual property rights. Also, training was organized for the business community, with the subject: “Enforcement of the new law on customs measures for the protection of Intellectual Property Rights.”

The work done by Customs in the field of IPR, as noted in the work report for 2019, is commendable. Well, I still miss more activities on joint action and cooperation of all stakeholders in the field of IPR.

- Market Inspectorate- as a body within the Ministry of Trade and Industry with a scope that includes the supervision of the implementation of laws for the purpose of consumer protection and product safety and quality.

- Kosovo Police- as a body that protects intellectual property rights through sectors such as the Sector for Investigation and Economic Crimes and the Sector for Cyber Crimes.
- Court

In the continuation of its work, it is necessary to determine the communication and cooperation between all competent authorities, as well as between authorities and right holders. If there is no cooperation or if it is insufficient, it is unacceptable for proper IPR control.

AIP & Office for Copyright & Customs & Market Inspectorate & Police & Court of justice & Right-holders! Partnership is necessary!!

8.5 PROVIDE TRAINING FOR INSPECTORS AND OTHERS BODIES INVOLVED IN THE IPR PROTECTION PROCESS

The inspectors do not have enough knowledge about IPR, so it is necessary to organize seminars where they would be presented with practical examples. The existence of the Guidelines is not enough.

Inspectors must be immediately involved in all forms of training organized for other participants (AIP officials, customs officers, judges, etc.)

8.6 AMEND OR SUPPLEMENT THE EXISTING LEGISLATION

Amend or supplement the existing legislation, which would enable the implementation of all tasks expected from market inspectors. It is mandatory to include inspections when drafting regulations.

8.7 AWARENESS OF THE PUBLIC ABOUT THE IMPORTANCE OF IPR, INCLUSION IN THE SCHOOL PROGRAM, TV SHOWS, TRY TO CHANGE THE MENTALITY OF THE PUBLIC

In Consumer Protection Act state that the Ministry of Education, Science and Technology must include consumer education in the curricula for primary, secondary and university education, including basic knowledge in the field of consumer protection.

Present to the public what means IPR, also using concrete cases.

Through public campaigns (leaflets, posters...), exhibitions, information to consumers, the publication of statistics, press releases, open days...)

9 REFERENCES

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- Regulation (EU) No 608/2013 of the EU Parliament and Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003
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