

Intellectual property

Shpresa Ibrahim

Mr. Shpresa IBRAHIMI

Abstract

Montenue, a distinct French scholar of intellectual property, has suggested that IP is a “tool which surprisingly helps a lot”, and this definition on science, arts, culture, since the 16th century. Now, what would be the definition of intellectual property for the 21st century? Apparently not a “strange” tool, but a necessary tool, primary for enriching human knowledge, and for the new world order, especially in the global market sphere.

Intellectual property is an integral part of international trade, and its importance keeps increasing, since effective use of knowledge is increasingly influencing the economic prosperity of peoples.

One may say that there is little originality in the creative sphere. Naturally, this originality can only be reflected by individuality and human identity in intellectual creativity.

The author rights in the Kosovo legislation is a novelty, a necessity of developing a creative environment in the fields of science, arts and industrial property. First and foremost, the individual benefit, which is secured by the author as the creator of the work, is a moral and material right. Secondly, there is a need for harmonization, not only of values for the creator, but also for the development of science, culture, increased competitive advantage, and the public sphere, as a benefit for the public health and security, and the fiscal policy. The deficiency one must record is with the Office for Copy Rights, which is to play a strong role in implementing and protecting copy rights and other related rights by licensing collective management agencies, imposing administrative fines, awareness raising, provision of information, and other capacity building and educative measures. Naturally, the enactment of good legislation is a system without any meaning or sense if not associated with the court practice. Any establishment of a legal system not pursued with enforcement mechanisms remains only in legal frameworks.

Key words: *Copy rights, Office for Copy Rights, benefits, harmonization*

Introduction

If one views the retrospective progress and transformation of societies in the past and until today, one would record the huge contribution given by the creation of scientific works. Intellectual property is an integral part of international commerce, and its relevance is gaining ground, since the effective use of knowledge is increasingly influencing the economic prosperity of nations.

Intellectual property, as a product of mind and spirit, expressed as a distinct contribution to science, arts, culture, technology, must definitely enjoy effective legal protection.

The approach to this topic is initially the recognition of the notion of intellectual property, copyrights, authors, author works, only to continue with the essence of the topic, which is the protection of copyrights. Naturally, the aspect of legislation, both domestically (Kosovo), the European Union and Anglo-Saxon framework is rich in remedies, specifically with the self-defence, legal and technological. The reality is though a bit different in Kosovo.

It is important to note that the approach to the protection of copyrights has begun changing, specifically due to globalization as a new world reality, which has fluidized material and spiritual values, which is only one more aspect of copyrights. This is best seen in the influence of the American legislation, providing legal protection only to the economic rights of the author, which is contrary to the approach of the European legislation to the protection of moral rights of the author. But, as mentioned above, the European legal system has already turned its attention to the preservation of balance between the public interest, which in this case is reflected in enrichment of knowledge in terms of scientific, musical works, films, but also on the other side, the author (private interest) in enjoying moral and material rights.

Until we had good legislation on copyrights, the questions on real practice of this legislation have taken us some place else, reflected initially with enforcing mechanisms, such as the Copyrights Office.

The material I have chosen to elaborate on this topic I believe to contribute to the awareness raising on complexity and importance of copyrights and other related rights to cultural, social, economic and political developments of a country and society.

Intellectual property

The world civilization has been defined by many processes, but obviously the main important factors would be credited to a third colon of property, the so-called intellectual property. The immaterial property is a special property which in our era is the most important, and the most costly due to its characteristics. Intellectual property cannot be viewed in a narrow view, but as an instrument for achieving certain public policies, to stimulate and distribute creativity. Intellectual property protects the culture and educates the artistic integrity of humanity.¹

¹ Strategy for implementing intellectual property rights; 2010 – 2015; TIRANA, July 2010. The strategy for intellectual property of the Republic of Kosovo is a political document endorsed by the Government of Kosovo, providing on the objective and aims of Kosovo in the field of intellectual property, and strategic objectives and measures in achieving such objectives for the period 2010-2014.

Intellectual property represents the legal rights brought about the creative activity of the human, expressed in industry, science, literature and arts. Hence, this property is immaterial, because it cannot be defined by physical parameters.

Intellectual property may be divided into two headings, industrial property and copyrights.

Intellectual property includes:

- a) Literary works,
- b) Plays (theatre, cinematographic) of artists and scientific works
- c) Scientific discoveries
- d) Inventions in any field of activity
- e) Industrial design
- f) Trade marks and services, geographical markers
- g) Protection of informal competition.

Industrial property includes rights on patents, industrial design, trade marks and service marks, trade names, geographic indicators (markers), new plant varieties, integrated circuit typographies, and protection against unfair competition.²

These creations are called proper intellectual creations, mainly ideas presented in a certain form, suitable or very practical, essential forms. The object of intellectual property are marks which transmit to the consumer the information on products and services which are offered to the market by different enterprises.

Copyrights are expressed in a simple manner: people creating, producing or investing in creative works are the only ones to decide whether, how and when this work may be made available to the public, with all its forms of use. This is the definition used in the Article 5 of the LCPRR. Authors of works in the fields of literature, science and arts enjoy protection of their works and their use, in compliance with this law.

Copyrights are a separate right, which pertains to the author as a subject of intellectual property on his/her work. The content of the copy rights consists in³:

- a) Exclusive personal authorizations to protect the inviolability of author works and author personality (hereinafter: moral rights of the author);
- b) Exclusive economic authorizations to protect economic interests of the author (hereinafter: author economic rights);
- c) Other author authorizations (hereinafter: related author rights).

Copyrights provide an economic basis for creation and distribution of works in music, literature, arts, films, computer programs and other forms of creative expression.⁴ Copyrights are rights recognized to certain persons for their creations in the fields of literature, science and arts, and include, amongst others: novels, poetry, musical compositions, sculptures, paintings, drawings, cinematographic creations, architectural

² Aliu, Dr Abdulla: Civil law (‘ E drejta civile’), Prishtina, 2008), 2008

³ Law no. 2004/45 On Copyrights and other Related Rights, promulgated with the Regulation no. 2006/46 of 24 August 2006; Article 5

⁴ Erlinda Mr. Koçi, Intellectual Property – Copyrights and trade marks (‘ Pronësia intelektuale- E drejta e Autorit dhe Markat’), (Tirana, 2003), p. 9

works, photographs, and other similar creations, and the so-called rights related to copyrights; the rights of interpreting artists (singers, other musicians, dancers, actors and others interpreting works); producers of phonograms, producers of films and broadcasting organizations. The copyrights ensures that the copyright holders determine whether and how they will copy, distribute, broadcast or otherwise use their works. This gives talented people an incentive to create major works, and the entrepreneurs an economic reasons to invest in them. Commercial globalization has brought about serious implications in terms of protection and enforcement of intellectual property rights.⁵

Copyrights provides its holders with protection of material and moral values. Copyrights provides legal protection, both nationally and internationally, and also the role of copyrights is to balance between author rights, but also the needs of society to be richer in knowledge in literature, arts and science.⁶ The protection of authors is aimed at preventing, but also restoration to previous situation in case of violation, conviction of culprits, meaning the consequences of violation of author rights in many fields, including moral, economic, fiscal, public health, order and public safety and fiscal sphere.

Birth of copyrights

If one was to be reminded the theory of Adam Smith on production sources, represented as work, capital and natural resources, we would find the genesis of copyrights, in a fourth source, called intellectual capital. Initially, the main roles were kept by these sources, work, capital or material factor, and later, a larger and multi-dimensional relevance was gained by the immaterial value called the intellectual capital.

Cicero was the first to talk about a new type of items, called disembodied items.⁷ Unavoidably, whenever one analyses civil rights, there are always analytical skills of ancient Roman lawyers to attend to, but also the inputs of Ancient Greece.

Initially, authors had no legal protection for intellectual property, and therefore, the only requirement of authors was only to be recognized as the author of such work, namely holding only the moral values, and not the economic values thereof. The single authors enjoying legal protection were the priests or monastery persons, which depending on their social status, could enjoy the protection of rulers.⁸ Privileges were recognized by an open letter (*litterae patentes*), as from the privilege of Carl V given to Albert Durer in his trip to Holland – as the protector of copper bow. The only reward authors enjoyed was a privileged position in society.⁹

With societal development, pursued by the invention of the printing machines (Gutenberg), the author rights begun surfacing. If one compares the manner of copying the works in ancient times, manual copying, with the price of time, which is the most important human value of today, no work would be copied.

⁵ Fatos, Mr Dega, Intellectual Property (‘Pronësia intelektuale’), Tirana 2008, p. 19

⁶ Luljeta Mr Plakolli, Copyrights and other related rights (‘Të drejtat e autorit dhe të drejtat e përafërta’) - USAID, Prishtina, 2009) Module 1, p. 2

⁷ Abdulla, Dr Aliu, Copyrights (‘E drejta e Autorit’), Prishtina, p. 69

⁸ Fatos, Mr Dega, Intellectual Property (‘Pronësia intelektuale’), Tirana 2008, p. 18

⁹ Geistiges Eigentum, www.wikipedia.org.

Thus, the invention of printing machines facilitated the copying of works. This period represents the most important period of recognition of economic author rights.

The process of copying works was cheap, easy and fast. Nevertheless, the economic rights were entitled not to the author, but the publisher. With the compensation given to the author upon submission of work, the publisher gained all material rights to the work, even the right to place the publisher's name in a more visible print than the author. The Church called this 'imprimatur'. The publisher gained the monopoly position, but this was infringed later, because of many publishing houses being established. Therefore, they started demanding privileges from the rules, for them to be the sole exercisers of such publications. The first privilege was granted in Italy, in 1454, by Pope Benedict. This privilege lasted 14-28 years as a patent right. The publishing activity was considered to be an economic operation.

Authors began gaining ground, therefore organizing themselves to protect their own rights. The year of 1919 represents the crowning of their demand to be recognized and to be protected their privileges, for the authors as creators of their spiritual and mental products, as moral values, but also material values, with the so-called Anes Act. The philosophers of natural law, in the 18th century, such as John Lock, Immanuel Kant, Fichte etc., as protectors of natural rights, born and inalienable rights, represented the idea of copyrights being eternal, even after the death of author, post mortem autoris.¹⁰ An impact was borne also by the French Revolution. The years 1791-1793 recognized authors as the exclusive holders, by using and disposing the work in the freest of manners, both during life and 10 years after death. It is worth mentioning the impact of such privileges in the American legal system. The copyrights have developed into a modern economic and successful story, generating thus 100 million jobs all over the world.

Author works

An authored work is a spiritual product in the fields of literature, arts and science. An "Artistic work" is any original and intellectual creation of a natural person, materialized, independent of the form or manner of expression, with a view of affecting human senses. This is the definition in the Author Law of the Republic of Albania.

A similar, if not identical, definition is present in many other legal systems, including the Kosovo order.¹¹ Nevertheless, the legal options are open, and there is a necessity and a positive role of the judiciary to enforce the legal protection of author rights. The French legal system offers protection to the spiritual product, independently of the type or manner of expression of the work, or even its designation, while the German law determines almost the same.

The process of creating works is thought to be a lengthy one, but not any creation enjoys legal protection. Ideas as subconscious areas do not enjoy legal protection, until these ideas are expressed externally. Goethe: *"There is always talk about originality, but what does that mean! As soon as we are born, the world starts having an impact, and thus we go to the end. And that everywhere! What can we do, apart from the energy, power and will to be*

¹⁰ Privligewesen and fruhe Gesetze; www.wikipedia.org

¹¹ Article 8.1 of the LCRR.

called ours! – if I would be able to say what I owe my predecessors and larger contemporary people, there would be not much left.”

Farraday, who we have made a motto for our work: *To work, to finish, to publish.* According to the Author's law, this external form is not required to be tangible, for a difference with the American legal system, which defines that the external form should be appropriately fixed.¹² To enjoy protection of copyrights, there is no prior requirement of any administrative formality.¹³

When the copyrights are determined, immediately after the intellectual creation, it is required for the work to be original, according to the Albanian law – “Originality of the work” means the expression of the internal world of an author, without copying, in entirety or an important part, of another creation. But, how far does this originality go, when there is little to be invented or created originally.

The questions to be posed are what the quality of originality is, or how to determine such quality, or where are the boundaries to be set? Initially, it must be stated that originality is *sine qua non*. This condition does not have any thorough approach, it is only required that this originality be unique in literature, arts and science. Setting from these Latin premises, they reflect the personality of the author, only this aspect is considered to be originality. This originality depends on the moment in which the author decides to present his/her work; therefore the originality is created before publication of the work.

Originality, as novelty and an unsaid thing, is difficult to ascertain, because there is little left without being said, therefore originality must be viewed in a wider, but more stricter manner.

Leutad says: if I would be sincere, originality requires individuality, therefore the work must be self-sufficient. Originality must be viewed in two planes, due to the determination made by the Law on Copyrights, for the work to be individual in source and originality,¹⁴ so the work must be created individually, and a minimum creativity level.

Originality cannot be scaled, one work is either original or not. One question is valid: if the title of the work of an author is not original, while the content is, what is the fate of the work? This work should enjoy legal protection, because a title of a work may be approached in different views. Originality refers to the manner of expression of an idea, expression and discovery.¹⁶ Originality is nowadays only a theoretical review, because the judicial reality has the role in ascertaining it, because it consists of a spiritual product.

Legal systems regulating on author rights require various levels of originality. The US legal system is the first on a list to require from new creations an input to development of arts, and requiring that a work be created independently and contain a minimal quantity of creativity. Originality is not about financial expenditure, or the effort, or routine. Germany requires the work to express individuality, a personal creation. Therefore, higher standards are required, or above average standards.

¹² Midhat Dr. Shamiq- How to write a scientific work (‘Si të shkruhet një vepër shkenëcore’), p. 105

¹³ Midhat Dr. Shamiq - How to write a scientific work (‘Si të shkruhet një vepër shkenëcore’), p. 12

¹⁴ Erlinda Mr. Koçi, Intellectual property – Copyrights and trademarks (‘Pronësia intelektuale- E drejta e Autorit dhe Markat’), Tirana 2003, p. 20

United Kingdom also rewards the effort of creating originality, therefore this is counted as an ability, work and judgment on the work created. Creativity is a standard of originality. The facts, ideas, do not enjoy legal protection until materialized or expressed in an act called an authored work.¹⁵

Ultimately, it must be stated that originality is the cornerstone of copyrights.

Author

There would surely be no intellectual or spiritual products if there would not be persons who are creators, pioneers or developers.

A question one would pose is who is considered an author, and does an anonymous work enjoy legal protection?!!! An author is considered to be a natural person, who has created an original and individual work.¹⁶ An author of a work is any natural person or group of natural persons, the name of whom is written on the work displayed for the first time in public, except the cases in which it is certified that authorship pertains to one or several natural persons who are other than those appearing on the work. An author is considered to be a person, the name of whom appears in any part of the book, but an author may also desire that his/her work is published only initials, a pseudonym, but can also publish a work anonymously, and that possibility is allowed by modern legislation.

Author rights to published works, the author of which is unknown (anonymous work and work published by pseudonym or sign), are assumed to be borne by the publisher, until the identity of author is unveiled. If the publisher is also anonymous, the assumption is that the rights shall be enjoyed by the person publishing the work.¹⁷

The matter deserving some addressing is when does the author obtain author's privileges? The Anglo-Saxon system provides legal protection to works only when expressed in a tangible manner.¹⁸ The Continental system provides legal protection to author works independently of their expression. Setting from this circumstance, for the copyrights to be protected, the evidence on author rights are left to the Court to define upon objective circumstances, which is usually done by hearing witnesses. Therefore, the Anglo-Saxon system is defined by practicality and procedural facility of proving authorship rights.

Another matter to be discussed is about conditions for the author to have legal protection. Legal systems do not explicitly provide on eligibility of persons to be authors. The only condition is to be an individual and original creator. This law applies both for natural and legal persons, domestic or foreign, exercising creative activities, trading, production, or any activity in assessment, use, or alienation of works of literature, art or science in the territory of the Republic of Kosovo.

The definition of the copyright compels us to make another question: could there be an author in a natural person with mental illness, or with psychological or mental

¹⁵ Midhat Dr. Shamiq- How to write a scientific work (‘Si të shkruhet një vepër shkençore’), p. 13

¹⁶ The Author Rights Law in the Republic of Albania provides in its Article 5: An author is or are natural person(s) creating a literary, artistic or scientific work.

¹⁷ Law no. 2004/45 on Copyrights and other Related Rights, promulgated with Regulation no. 2006/46 of 24 August 2006; Article 14. 1

¹⁸ Erlinda Mr. Koçi, Intellectual property – Copyright and trademarks (‘Pronësia intelektuale- E drejta e Autorit dhe Markat’), Tiranë, 2003, p. 25

disability, thus a person incapable of understanding its own actions.¹⁹ It is widely known that persons are categorized by capability and eligibility. Since the work of an author is a work of spirit, it practically may happen that the work created in a period of *'lucida Intervala'* enjoys protection as well. Therefore, protection should be awarded to these persons as well, given the condition that their work is original and individual, but it may also be freely stated that the majority of major works are created in a period of inspiration or madness. Aristotle has built the theory that the most accomplished men in philosophy, poetry, public life, have created their best works during hardship times. It is important to underline that incapable persons enjoy legal protection in civil cases before the court, but not in criminal proceedings.

Another matter requiring discussion is the fate of works created by legal persons?! As artificial creatures, these persons cannot have any memory, therefore they do not enjoy legal protection. But, what happens with works created by persons in working relationship?!²⁰ Even at this point, there are contradictions between the continental and Anglo-Saxon systems. In the Anglo-Saxon system, the employers enjoy legal protection, as carriers of economic rights of the author of the work. Meanwhile the Continental system suggests that copyrights should be held by the author, and not the employer. Nevertheless, they both leave an open path for the employer and author to agree upon ownership of economic rights, since the moral rights are always enjoyed by the author. From the contract, they determine what is the relationship, the working position, the discretionary power of the author in the working place. Economic rights may be enjoyed by the employer up to 10 years after the creation of the work.²¹

Infringement of Copyrights

Why were copyrights created? When do copyrights need protection? Why is such protection needed? What is considered to be an infringement of copyrights? These questions are posed with a view of elaborating on the topic, and the essence of the term copyright. Plagiorius- the Roman poet Marckus Valerius Matialis, compared his "Epigrams" with his freed slave, a false reflection considering him his own. The term of piracy was used generally to describe the violations or infringements of copyrights, made intentionally to the extent of trade.

Copyrights were invented as a necessity, in two planes, preventive and repressive. The protection of copyrights comes at the moment of infringement of the same. Not any infringement of author rights may be considered a violation, and be claimed by law.

Exceptional cases of works which do not enjoy protection of the Albanian legislation²²:

a) ideas, theories, concepts, discoveries and inventions on a creative work, independently of their obtaining, explication or expression;

¹⁹ Law no. 2004/45 on Copyrights and other Related Rights, promulgated with Regulation no. 2006/46 of 24 August 2006; Article 6.1

²⁰ Luljeta Mr Plakolli, Copyrights and other Related Rights ('Të drejtat e autorit dhe të drejtat e përfaqësuesit') - USAID, Prishtinë, 2009, Module 3 p. 8

²¹ Law no. 2004/45 on Copyrights and other Related Rights, promulgated with Regulation no. 2006/46 of 24 August 2006;

²² Law no 9380, dated 28.4.2005, on Copyrights and other Related Rights, Republic of Albania, Article 9

- b) official texts of legal, administrative, legislative, political nature, and respective official translations thereof;
- c) official symbols of the state, public organizations and authorities, such as: coat of arms, seals, signs, medallions, distinctive signs, medals;
- ç) means of payment;
- d) news and press information;
- dh) data and simple facts;
- e) wisdom words.

Legal provisions define what is considered to be an infringement of copyrights, but this is an open regulation manner, therefore not an explicitly provided, but the list of copyrights is open, and such provision shows the role and relevance of the law and court practice for clarifying such an issue.²³

While the retrospective view on the copyrights was only for rare occasions, this due to the lack of technology called "photocopy", that was the only means to copy a book, and we all know how long it takes to copy manually. With the invention of the photocopying machine, the copying of books is already a routine, due to speed and almost originality.

Modern technologies, especially in the industry of music and movies, allow for the most flagrant violations of copyrights. Every one of us, almost every day, we download music from the internet, and there are practices of music producers stealing or adapting musical notes from foreign music. Differences between the Anglo-Saxon and Continental systems come at the surface here. According to the Anglo-Saxon system, the liability is scaled, there is primary liability, and the end user is secondary liable person, and according to this law, everyone should be held liable. Kosovo does not have such a doctrine, but in the Article 184, it provides on solidarity of parties: when there are more than one violators of a copyright holder as recognized by this law, each of them is liable for the total damage.

All these violations combined are cases which are more difficult to resolve in courts, and the role of courts must be much more active, in reviewing the elements of the work infringed, the originality and individuality of the work, and whether the form or the idea was infringed.

Similar protection may be required when there is a clear infringement of rights protected by this law.

Importance of Copyrights protection

"Between the eyes and the world", every person has a different view on the world, but should a person be careful in what he sees? Let us begin from this approach on the relevance of copyrights as an important balance between the right to information and intellectual property rights of the author. This balance is necessary to ensure the public the enjoyment and enrichment of knowledge, and on the other hand, for the author to enjoy his intellectual work effects. Viewed from this side, intellectual property is a very valuable property. Such property benefits both spheres, the private sphere (the author, the creator), and the public sphere (readers, the state).

²³ Luljeta Mr Plakolli, Copyrights and other related rights ('Të drejtat e autorit dhe të drejtat e përafërta') - USAID, Prishtina, 2009) Module 10 p. 3

What is then the policy of the state and its mechanisms to balance between the two spheres? Let us see with the following points.

What is the benefit of copyrights? Can there be personal benefits from copyrights? What are the benefits? What is the societal benefit from copyrights? These are questions to address for a better addressing of the author rights.

Author rights first and foremost serve as an incentive to creativity, for a creative society to bring about societal development. There are different professionals, such as lawyers, architects, doctors, politicians, and all these professions provide benefits, but it is important to underline that all such professions we can achieve with the help of intellectual knowledge expressed in author works. The author of the work then must obtain material benefits, and also should expand the human knowledge. Enforcement of rights on intellectual property is a basic element for developing fair competition in every aspect of social and economic life of a country. The Universal Declaration for Human Rights, Article 27, specifies: "Every person is entitled to protection of moral and material interests deriving from any scientific, literary and artistic creativity, the author of which is that person".

There are again different approaches between the American and the Continental legal order. According to the American Constitution, and applicable laws, the centrepiece of such protection is the copy-right, which contributes in development of arts, culture, and the economic system. The Continental approach, which includes the Republic of Albania and Kosovo, puts the foundations on the personality, integrity, individuality of the author (moral aspect).²⁴

Intellectual creativity is the major and most important contribution, vital for the development and progress of a nation. We mention the nation, because this is a necessary factor for the Albanian society, because the lack of this creativity takes a role in marking the achievements and development levels of developing countries, stimulation and enrichment of such creativity has a positive impact on many aspects in developing countries, but it is also a good measure of societal development. Piracy, which implies illegal production, distribution, sale and broadcasting of materials which are a subject of international treaties on protection of intellectual property – is unfair competition. Piracy damages the interests of authors and other holders of rights, risks provoking international countermeasures in trade, it places in unfavourable positions those who act in accordance with the law, and impedes the normal development of the market economy.

It is very important for the society to have easy access to literature, films, music, but if the limits to the use of literature are not set, this would imply a lower creativity and lack of incentive to create other works. Author rights reward creativity, expand the knowledge, they are the backbone of a globalizing world, trans-nationalization as the main factor of a knowledge economy.²⁵

Therefore, protection of copyrights provides security to the author, while limiting the access of others to the author's work. Therefore, the Law on copyrights aims to implement the following principles:

²⁴ Strategy for implementing intellectual property rights; 2010 – 2015; TIRANA, July 2010.

²⁵ Luljeta Mr Plakolli, Copyrights and other related rights ('Të drejtat e autorit dhe të drejtat e përfërta') - USAID, Prishtina, 2009) Module 4 p. 2

- a) Natural rights – to be protected because they secure the personality of the other,
- b) Protection of creativity
- c) Incentivising the creativity, and
- d) Social factors contributing into promotion of learning and knowledge dispersion.

Meanwhile, public interests cannot be left aside, but must pursue in every step. The public must also express its discontent, because copyrights may limit the knowledge, or create a so-called mechanism preventing knowledge, and especially for persons who are not able to pay for a film, book, or any music, and therefore, the state must develop mechanisms to ensure the balance between the private and public interests, thereby ensuring access to information with legal license and open use, for the advancement of society.

Inappropriate protection of copyrights bears consequences on the authors, but also on economic spheres, security, public health and the fiscal system. Lacking adequate protection, property vanishes, and therefore the judiciary must be very practical.

Judicial protection of Copyrights

Referring to similarities (differences are known) between immaterial and material property, for the property rights to be protected by law. Obviously, when copyrights protection is discussed, the action is somewhat analogical to protection of material property rights.

Initially, both properties have elements of absolute rights. As with any absolute feature, this makes possible for all other persons to observe author rights, apart from the title holder. Therefore, the action of all these persons is considered to be negative, therefore they cannot take any action in violating the copyrights.²⁶ Naturally, these persons are compelled to refrain from any action as mentioned above, and they must know who is the title holder or the author of intellectual work, but how can one establish such security? For the real estate, rights on such property are recorded with public books kept in municipal administrations. This principle is called the publicity principle (security, transparency to the favour of citizens).

While for copyrights, in most legal orders, there is also a requirement for a principle of formality, in terms of providing transparency on the title holder. Many legal systems require the copyrights to be registered with competent authorities to be able to enjoy protection of rights, while our legislation leaves an open door, or some freedom, or persons are advised to register their author rights, because the protection is provided to works from the moment of creation, and independently of the form of expression.²⁷ Although Kosovo legislation does not require such formality, the mandatory registration of copyrights offers security, especially in court proceedings in terms of proving authorship and the work authored, and therefore, according to Kosovo legislation, the

²⁶ Fatos, Mr Dega, Intellectual property (‘Pronësia intelektuale’), Tirana 2008), p. 25

²⁷ Luljeta Mr Plakolli, Copyrights and other related rights (‘Të drejtat e autorit dhe të drejtat e përafërta’) - USAID, Prishtina, 2009) Module 4; p. 4

only way of proving such authorship, in any proceeding, is witness testimonies. It is widely known that the American legal system protects first the economic interests or benefits, and the first means of protection is the marking with the sign © (copyright). Therefore, as one can see, there is a grading of protection of copyrights, initially with the sign ©, and further with self-protection of copyrights. Many companies take measures in stipulating in their contracts, but also their internal regulations, the provision of protecting business secrets. With time, the manners of infringing copyrights have developed as well, and therefore, modern legislation ensures protection with technological means as well. Before addressing the court, the author must demand from the violator to halt such violations, and make efforts to settle the case before addressing the court.

The application for judicial protection of copyrights must contain: name, surname, working address (residence), phone no, name of company (firm), date of publication, registration of such work, nature of violation, and the request (petition, or claim suit) for halting such violation, and the demand for reacting to such claim. If this demand is not met, than the judicial proceedings must begin.

Therefore, the judicial protection represents the last resort protection of author rights, in a series of procedures: civil, administrative, customs, criminal proceedings. As one can see, the copyright protection strategy is an active one, to the benefit of a better management of copyrights. The competent court for the copyrights seems to be the District Court.

The practice in judicial protection of copyrights, and the problems it faces, is shown in one of the objectives of the "Copyright Protection Strategy" of Kosovo.; the intellectual property protection system is of no value if there is no efficient judicial system addressing violations of intellectual property rights. The Article 41 of the TRIPS Agreement, in its general obligations, requires from its members to ensure enforcement procedures which allow for effective action against any infringement of intellectual property rights as provided by the legal framework. The Ministry of Justice has a decisive role in meeting such objectives, by initiating, drafting and/or amending laws providing for such measures within the judicial system in Kosovo. Another important requirement from the TRIPS agreement is that the procedures in enforcing intellectual property rights must be fair and impartial. In this sense, the Kosovo Prosecutorial Council must ensure that the prosecution system is independent, impartial and professional. Public prosecutors are authorized and bound to prosecute all violators or offenders, and to press charges on behalf of the state. The Kosovo Judicial Council ensures independence, professionalism and impartiality of Kosovo courts.

Summary

Intellectual property, and copyrights specifically, in a period of digitalization, globalization, are definitely important. This is called the fourth pillar of property, obviously with specific features, it being immaterial.

For market economies, and specifically for the Kosovo legislation, research on the amount, qualities and use of immaterial property is gaining importance. Protection of intellectual property is very important, it being spiritual and materially valuable.

This value is not only for the author as creator, but also in developing science and culture, enhancing competitive advantage, and in the public sphere, as a benefit for public health and security, and the fiscal policy.

Therefore, copyright legislation aims to balance copyrights on one hand, and the public interest on the other. Due to the dramatic growth of artistic and cultural industries, and other creative industries in recent times, the most recent figures available in Europe and the US, as estimated by industries, the figures are 360 Billion Euros, or respectively 340 Billion Dollars, thereby making more than 5% of the GDP.

Kosovo legislation on copyrights is almost complete with its provisions on copyrights. Nevertheless, what is the ratio between the legislative and regulatory framework and the practice?! The reply is definitely unsatisfactory.

Obviously, good legislation is a system without any sense or value, if not combined with the court practice, and if not associated with enforcement mechanisms, it will remain only within boundaries of a law, as is the situation in Kosovo.

The main deficiency in proper enforcement is the Copyright Office. The Copyright Office should have a strong role in enforcing and protecting copyrights and other related rights, by licensing collective management organizations, imposing administrative fines, awareness raising, provision of information and taking other development and educative measures.

Also, technical capacity building of administrators of intellectual property rights, especially in state borders as a center of exchange of goods between states. In many legal systems, and also defined by our own legal provisions, collective management organizations have an important role in managing copyrights.

A necessary item in Kosovo is awareness raising and public education on copyrights as a concept, how can an authored work be used, and what is an infringement of copyrights.

Harmonization of legislation is one of the most important assignments, especially in terms of processes Kosovo has undertaken in integration with regional mechanisms in Europe and internationally.

Ultimately, the enforcement of decisions taken in civil, administrative, customs, and criminal proceedings of violators of copyrights is a necessity for the legal and social order of Kosovo.

References:

- Aliu, Dr Abdulla, Copyrights (E drejta e autorit), Prishtina,
 Aliu, Dr Abdulla, Civil Law (E drejtë civile), Prishtina 2008
 Brestovci, Dr Faik, Civil Procedural Law I (E drejta procedurale civile I), Prishtina, 2004
 Dega, Mr Fatos, Intellectual Property (Pronësia intelektuale), Tirana, 2008
 Gams, Dr Andrea, Introduction to Civil Law ("Hyrje në të drejtën Civile"), Prishtina, 1988
 Hetemi, Dr Mehdi, Basic introduction on Commercial Law (" Njohurit themelore të të drejtës Afariste")
 Gologano dr Françesko Private Law ("E drejta private"), Tirana (2006)
 Koçi, Elinda, Intellectual property - Copyrights and trademarks ("Pronësia Intelektuale- E drejta e Autorit dhe Markat"), Tirana, 2003
 Mandro Arta, Roman Law ("E drejta romake"), Tirana (2006)
 Plakolli, Mr Luljeta Copyrights and related rights ("Të drejtat e Autorit dhe të drejtat e përafërta"), Prishtina, 2009
 Šamić Dr Mid' hat, How to write a scientific work - Introduction to methodology and technique of scientific work - a General approach ("Si shkruhet veora shkencore- hyrje në metodologjinë dhe teknikën e punës shkencore- qasje e përgjithëshme"), Sarajevo, 1980.

Laws:

- Law no. 2004/45 on Copyrights and other related rights, promulgated with Regulation no. 2006/46 of 24 August 2006;
 Law no. 02/L-98 on protection of plants varieties, promulgated with Regulation No. 2008/24 of 16 May 2008.
 Law no. 03/L-006. *Law on Contentious Procedure*, 29 July 2008
 Intellectual Property Strategy 2010- 2014; Prishtina, May 2010
 Law no. 2009/03-L-170 on Customs Measures in Protecting Intellectual Property Rights, promulgated by Presidential Decree DL - 004 - 2010, of 8 January 2010.
 Law no. 9380, dated 28.4.2005 on COPYRIGHTS AND OTHER RELATED RIGHTS, Republic of Albania (PËR TË DREJTËN E AUTORIT DHE TË DREJTAT E TJERA TË LIDHURA ME TË ` Rrepublika e Shqipërisë).