



Intellectual Property Law, Protection of the Rights, Its Importance in Our Country

Ma Drita Bejtullahi¹

Prof. Dr. Alba Robert Dumi²

¹Assistant, University of Tetova, Faculty of Law, Macedonia

²Director of Graduate School, University of Vlora "Ismail Qemali"
Management Department, Albania

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Abstract

Protecting intellectual property is very important in several fields of everyday life, because it has a direct effect on many rights that individuals enjoy in a society. It encourages the development of sciences, arts, computer and cultural inventions, etc. Protecting intellectual property rights means greater productivity, improvement in quality of goods and services, thus making the actors more competitive in the global market. Intellectual property today has become a new discipline with research value, because issues and problems covered by this discipline are increasingly getting a greater theoretical and practical importance. Though there is a serious attempt to treat intellectual property related issues, I find that we are dealing with a great effort to analyze and judge the scientific concepts and notions of intellectual property, its role and importance achieved in today's stadium of socio-economic development. The point here is to emphasize the overwhelming achievements in the field of intellectual creativity, expressed through great scientific inventions and industrial products. On the other hand, the ever increasing grounds for informality and manipulation, leading to numerous complications and hardships in its legal protection, even possible legislative duplications and vulnerabilities in processing different cases and finding solutions when being faced with real contests.

Keywords: Intellectual Property, Copyright, IP Rights, Protection

1. Introduction

Various analyses and treatments, explaining the laws of intellectual property, rights and obligations derived from them, are based on different subjects. Many analyses' values rely on the market economy. They help to make the community more sensitive towards the protection of intellectual property. Protecting, guarding it against piracy and placing the intellectual property in the role of a scientific discipline, is of outmost importance at the phase when it is treated by many researchers and professors of this discipline. Today, it touches issues such as the law, human rights, trade, public administration, etc.

Protecting IP rights is not an issue concerning just the one named country, it is an issue stretching beyond this and becoming an integral part of regional and international developments.¹ These are rights of an international and worldwide nature, especially today. The international trade thus, has reached a great development, and the role of intellectual property is essential. In a market where intellectual property is unprotected, or where there is insufficient protection, this market is jeopardized by piracy and even greater harm.

2. The Importance of This Scientific Article

The focus lies on the overall status of the intellectual property law, the legal aspect for its development and protection, especially the industrial property and copyright. Positive elements found within respective parts of the legislation,

¹ The Albanian National Strategy on Intellectual Property 2016–2020.

documents and specialized institutions are emphasized, selecting the best model which promotes, advances and protects these types of works and their ownership.

The real improvements come from highlighting and comparing our models of the rules with the relevant equivalents of particular legislations, institutions and respective international organizations. Of particular importance is the model (considering here greater effort and seriousness to put in place better mechanisms and law enforcement, where lacking it and necessary) which stimulates invention, creates favorable conditions to transfer authority and over all, sustainability through a provision of proper legal protection.

2.1 Research Hypotheses

1. Does the notion of intellectual property law find its expression as “the law of intellectual property in the objective sense” and “the law of intellectual property in the subjective sense” in our country?
2. Are the relationships between intellectual property law, copyright and other rights related to industrial property law aspects of a law applicable in our country?
3. Why are there organizational and legal shortcomings?

3. Literature Review and Hypotheses

Intellectual property deals with legal rights stemming from human creative activity in the industrial, scientific, literary and artistic fields. Intellectual property is traditionally divided into two parts: Copyright and Industrial property. Intellectual property itself is a broad category including some other subcategories, varying from one country to another. Subcategories of industrial property are: inventions and the models of use, trademarks, industrial designs and indications of origin.

Intellectual property is an asset that can be bought, sold or exchanged, like any other type of property. What makes it different from other types of property, like the real or personal ones, is that intellectual property is intangible.

Even though much effort is given to protect and preserve the intellectual property in our country, there is still much to be done. Possible improvements to be made to the IP system need to be taken into consideration, in order to encourage and support innovation by promoting research work, especially through Albanian companies (in this case), local universities and individuals.² It is all about the generation of incentives to lead to creations in the world of free competition. But, free competition (in US, for example) could mean that IP rights are granted only to “authors and inventors who meet certain minimum requirements” and when necessary to encourage invention.³

In general, if we take a glance at our world of business which is progressing rapidly, we see products, goods and services which have occupied the markets everywhere; we see lots of authentic and counterfeit goods surrounding us, services, domestic and foreign products, authentic and counterfeit clothing, etc. Greater awareness has to be raised about intellectual property rights and obligations through the ‘system of registration and the management’ of intellectual property protection.

4. Methodology and Research Goal

This topic uses the theoretical method to a considerable degree, applying the analytical thinking and professional literature interpretation. The literature and other methods used are also closely related to the validity of this work as a means which corroborates the origin of the source material. We'll try to not only explain the descriptive aspect of the subjects concerned, but also the inner validity of this study by comparing the variables and establishing their relation with one another. By comparing the results with other similar subjects or from a different place and time, it is possible that we just get generalized results and a validity known as external.

Besides the use of the historical-descriptive method and the historical-judicial one, which analyze research materials and compile theoretical conclusions, there is a considerable use of the basic respective legislation and additional regulations on intellectual property law, against the models from other countries and international organizations, to establish analogies and differences and their positive application.

The stimulation of innovations and worthy creations is of good intentions and common good. This is how creators and scientists are encouraged to share and exchange their exclusive rights over inventions and open them for the overall good of the society. There is a judicial protection in place and always necessary to keep things orderly and at the same

² The Albanian National Strategy on Intellectual Property 2016–2020, pg 5.

³ Property, Intellectual Property, and Free Riding by Mark A. Lemley, William H. Neukom (Discovery).

time encourage concerned parties to come up with inventions and on the other hand, create the terms and conditions acceptable to all and of practical and general use of the values of those inventions.

5. Protection of Intellectual Property and Its Benefits

The better fulfilled notion of intellectual property is closely related to not only making and having the rules, laws and intergovernmental agreements, but rather the “tools” to respect and put them into application. Or, by creating more favorable and stimulating conditions for IP work, strong implementation mechanisms, the responsibilities and obligations associated with the protection of intellectual property will meet the necessary requirements. (John R. Graham) Intellectual property as an immaterial asset can easily be disregarded. So, protecting a company's IP is very essential for the development and work progress, even though authors in general enjoy a copyright protection, only for the mere fact that they created that work.

Some of today IP protection forms can be:

- “Brand Recognition;
- *Competitive Advantage: (Know-how, confidential information and trade secrets fall into a category of intellectual property called trade secrets);*
- *Creative Works;*
- *Internet Presence: Establishing and protecting a distinctive Internet presence can be extremely valuable;*
- *Social Media.” (Darin Klemchuk)*

Another form of IP protection, referred to quite a lot is the trade secret. But, this approach might not be very smart; hence not very useful, having in mind that without any publicity, there could be a limited or no outcome and results. Making the achievements public, in most of the cases would be the right thing to do, even profitable, but this should in no way lead to stealing the intellectual assets. (Dega, Fatos 2012) In any case, the owner's rights should be taken into consideration and guaranteed, by using the legal channels of protection in case of violations and contests.

The institution in charge of IP protection is the State Department for Industrial Ownership of the Republic of Macedonia (Article 9), where it is stated that the person whose right acquired by this Law has been violated, has the right to protection before a given court.⁴

5.1 How is Intellectual Property Protected?

Intellectual property consists of items created by someone, which are different from others. But, how should these items be protected from being illegally used or misused? In order to ask for and use a provided legal protection for an intellectual property work, it is necessary for this work to have followed the right paths of its existence and distribution, by acquiring the necessary licensing or patent. (Chris Hinson) Also, in order to make use and profits out of an ownership over some intellectual asset, it needs to be made public, besides gaining the mandatory legal rights. *“For a large number of intellectual property rights, (patents) are issued or, (designs, trademarks, geographical indications, copyrights, etc.) registered, based on the laws of intellectual property of a country. (Dega, Fatos, pg24)”* These could also be counted for exclusive rights which give one the right to use, possess, and get compensated and the right to stop third parties from using it illegally. (IP Law MK, Article 8) Of course, in order for an invention to be able to ask for and get the protection, it needs to be a new one, be of inventive contribution and find application in some industry. Fields of IP protection can cover the patents, copyright and related rights, trademarks, industrial designs and integrated circuits, geographical indications, protection against unfair competition. (WIPO)

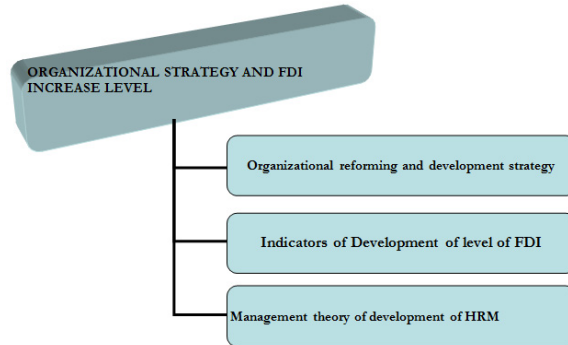
The Albanian legislation covering the IP issues consists mainly of: Law No. 35/2016 “On Copyright and Other Rights Related to It” with the Albanian Copyright Office and, Law No. 9947/2008 “On Industrial Property” with the Directorate General of Patents and Trademarks.

6. Data and Research Methodology in This Research Paper

Round tables generally adhere to a more effective application and possible improvements of the system of intellectual property regarding the protection of traditional knowledge. Following the investigation on present needs and expectations of indigenous people and other safeguards of traditional knowledge, WIPO amongst other things, looks to provide trainings on intellectual property and keepers of traditional knowledge and to conduct case studies and pilot projects about the relation between intellectual property and traditional knowledge. In 2000, at WIPO's 26th General Assembly

⁴ *Industrial Property Law of R. Macedonia, 2009, Article 291.*

meeting, WIPO member states decided to establish a special body to discuss the issue of intellectual property about genetic sources, traditional knowledge and folklore. The body was appointed by sources of intergovernmental committees about intellectual property of genetic sources and traditional knowledge and folklore which met four times until the end of 2002.



Source: Higgins, J. M. 1983 *Organizational and Strategy "Management Strategy"* 2nd Dryden New York,

6.1 Analyzing Data

The implementation of the strategy involves all the working groups in planning, designing, conducting product or service, development, evaluation and marketing in the accomplishment of its mission. If during the process of implementing the strategy, the strategy chosen is not able to overcome the difficulties arising from the external or internal shortcomings in the company, then the company can change the strategy, choosing one of the alternative scenarios defined in a strategic SWOT analysis carried out above to overcome difficulties and facilitate the work of all groups to achieve their goals in fulfilling the mission. Glueck, W.F. Jauch, L.R. 1984

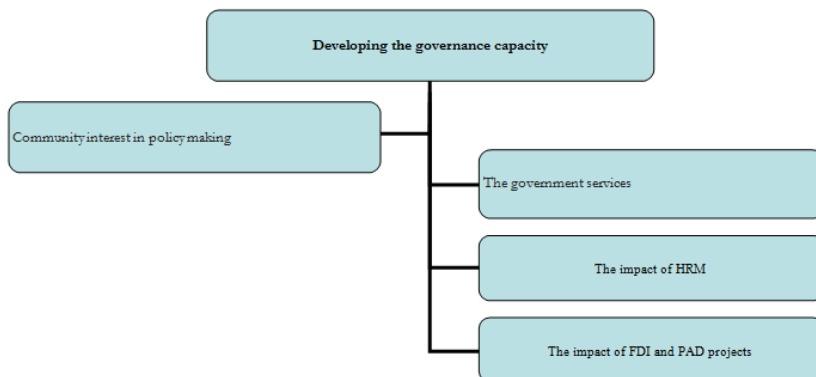


Figure 3: Bradler & Sediss, Individualism and organizational behavior, USA Company: Kingston, Ontario, 1989.⁵

7. Finding and Results of This Research Paper

It appears that the goal of our constitutional provisions is to guarantee everyone the freedom of artistic creation, that each and everyone has the freedom to make an artistic creation, make use of it and make a profit out of it. (Koci, Elina) So, the

⁵Tilles, S. "How to Evaluate Corporate Strategy," *Harvard Business Review*, 41, 4, 111-21.

Organizational Management "Department of the Environment, London 1990. De Soto, Herminie; Overseas Private Investment Corporation, 1100 New York Ave., NW Washington, The assessment of the effects of certain public and private projects on the environment," pgs. 123-129 *Official Journal of the USA*

individual who made the invention is given the exclusive right to stop others from using it illegally, the legal protection. Meaning, if one person's right acquired by law was violated, they have the right to seek protection before the respective court handling industrial property issues, to include unauthorized use, possession, imitation, etc. (IP Law MK)

The respective American constitutional provision has the development of arts at the center of protection. So, here we see a completely different approach of protection provided for the copyright. While, in the US it is required to protect the arts and the economy, in general, through the copyright, here, like in many other European countries, it is set to protect the author, their individuality expressed through their works of creation, (Koci, Elina) even though there are constant efforts to make positive changes, firstly through legislative changes that encourage inventions which can be applied and increase economic growth. And also, with the differentiation offered between products, the IP can hold the key to a fast market growth.

The TRIPS Agreement, Article 27 states that: "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of procedures and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

8. Conclusions and Recommendations

It is universally accepted that the primary owner of the copyright of a given original work is its author, who can be one or more persons. It can be a creation as a whole or maybe, combined independent pieces to create one single piece (coauthors). Who is the copyright owner of an audiovisual piece, such as a creation of cinematography? The creator of the audiovisual work, according to the Copyright Law, is the natural or legal person that created it (the production house). (Copyright Law, Article 3) Based on this Article and also the Automatic protection of copyright rights, it results that the ownership of rights on audiovisual works is that of the author who created the audiovisual work.

Rights of other participants in such a work, being those of writers, players, etc. are most likely to be transferred to the producer and be duly compensated for their work and contribution. There might be copyrights reserved and kept by the individual contributors, for their own individual creative work and related rights for others.

Another generally accepted principle is that the author of a given work is the one, whose name appears on that work, or at least that is presumed to be the author. If, the work was published under an alias or it is anonymous, then the owner of that work's copyright would be the publishing company. (Copyright Law, Article 16) If, someone were to prove that they were the author of such a work, surely they would be transferred the copyright to. Concerning audiovisual works, the producer, as the holder of the copyright, is the one, whose name normally appears on the audiovisual work.

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