American Chamber of Commerce in Kosovo

Intellectual Property in Kosovo and European Union

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Introduction

Intellectual property represents one of the most important areas towards economic development and innovation growth in global economies. In general, this area is relatively new to Kosovo enterprises and institutions. The Stabilization and Association Agreement and the need to harmonize the existing legislation with the EU acquis have increased the importance placed on this sector in Kosovo, thereby serving as important pillars against counterfeiting and other dimensions of intellectual property violations. The general aim of the improvement of the legislation with regards to intellectual property is to create the framework for a well-functioning IP protection framework which stimulates investments and innovation.

One of the key provisions of SAA is the harmonization of the Kosovar legislation with that of the EU for the purpose of ensuring the protection of intellectual property rights. This document identifies different areas of intellectual property along with their legislative frameworks in Kosovo, partly harmonized with the Acquis. The document’s purpose is to inform on the intellectual property framework and its legislation within the EU, as well as the legislative and institutional framework in Kosovo along with the progress of the implementation of goals related to these areas.

The document aims to provide an in-depth analysis on the notion of intellectual property rights (IPR); why it is important and why it needs to be protected; the most popular types of IPR, legislation in Kosovo and implementing practices; as well IPR mechanisms at the European Union and on a global level.
1. **What is intellectual property and why is it important?**

According to Oxford Dictionary, 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 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. By promoting the importance of intellectual property and continuously putting an effort to create mechanisms for its legal empowerment, intellectual property can serve to attract foreign investors as well. Trademarks are a frequent example of intellectual property, which have huge importance to businesses given that with the further growth of the business; the value of trademarks and the positive image of the business are increased with the same rhythm.

Intellectual property holds big importance with regards to factors such as:

- **Business protection and fighting the informal economy** - because of intellectual property violations in different forms, businesses lose a big chunk of their total potential profit. Based on various statistics supplied by the European Union, businesses in textile industry lose around $43.3 billion of potential sales because of counterfeiting. Because of this, also the potential for the creation of around 518,281 jobs is lost, while the negative impact on the GDP is 8.1 billion given that pirated goods avoid legal procedures and no or fewer taxes are paid on them. Moreover, the activities of pirated goods contributes to organized crime, where criminal networks are highly concentrated.¹

- **Open innovation** - the improvement of the R&D fields is attributed to the protection of intellectual property, namely the protection of patents and new ideas with regards to technological tools. ‘Open innovation’ refers to the cooperation of companies and enterprises in the development of innovative ideas and solutions. Some of the advantages of open innovation includes risk-sharing, cost reduction, favorable access to markets, etc. The importance of property rights in this regard is highlighted in the fact that it gives companies the opportunity to place their ideas on the market, without the risk that the idea is stolen by another party. Thus, intellectual property in the context of open innovation is considered as a cooperation opportunity, contrary to the perception that it serves as a barrier towards competition from other companies in the sector.²

- **Consumer protection** - companies and businesses producing different kinds of products should always have consumer health and wellbeing among their priorities. Institutional authorities responsible for the legal implementation of intellectual property rights have, among others, a priority to monitor the quality of goods for the purpose of protecting consumer health and wellbeing. The quality of counterfeited products is difficult to control, and they usually do not adhere to applicable standards, thus imposing a threat to consumer health and safety, particularly having in consideration the fact that a big part of pirated goods are toys or medicinal products.³

- **Employment protection** - As a result of innovation and creativity, business activities constantly increase the prospect of new job creation. Moreover, the need to build and enhance the labor force is stimulated. On the other hand, the inadequate management of intellectual property rights discourages businesses from investing in new & innovative ideas and as a result, the potential for the creation of new jobs is limited. The loss of new jobs is one of the most fundamental damages of IPR violations, with estimations that more than 786,000 different jobs in 9 different sectors within the EU are lost due to copyright infringements and piracy.⁴

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³ Id.
⁴ Id.
1.1. Types of Intellectual Property

Trademarks

Considering the fact that different companies can produce similar products, or products of the same nature, trademarks enable the public to distinguish between products of different suppliers. Trademarks can include words, logos, symbols, package designs, or any other identification item that serves to convey to consumers certain value, item, or service.5

The main purpose of a trademark is to enable the public to distinguish items or services of a particular company. 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, whereby based on the legislation, the owner’s income generated from offering a service or selling a product cannot be threatened through illicit means.6

Patents

Patents protect 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, namely based on the regulations of the country. 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 respective authorities also enables security when expressing the idea to potential investors.7

Trade secrets

Trade secrets are considered all confidential information that in a way or another is a source of competitive advantage to an enterprise. The know-how that the staff in a given business possesses can also be considered confidential information. A special trait of trade secrets is that it is not necessary to protect them through administrative procedures, which are usual for other IP elements. An important element in the area of trade secrets are the Non-disclosure Agreements—legal agreements between parties who exchange information to keep the information confidential according to specific provisions. Therefore, trade secrets are protected by incorporating the non-disclosure agreements with different partners, and by including them in license agreements, partnership agreements, contracts, etc.8

Industrial designs

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 protected through copyrights.9

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/she does not infringe

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6 Id.
8 Id.
the geographic indicators right (as long as there is no claim of false origin). Geographic indicators are relevant especially in the food and agricultural product sectors.  

Copyrights and related rights

Copyright is the legal term which refers to all the works or artistic and literary creations that belong to an author. Copyright ensures the original authors of creations or works control the further use of their work. Thus, based on copyrights, creators are protected from piracy or the use of their work without authorization from other parties. To use copyrights for the optimal development of one’s business, it is important that authors are informed about what this right covers, and about what works are not part of the legal scope of copyrights.

Utility models

Utility models right is guaranteed to all innovations and other inventions, whereby because of similar traits to patents, they are considered as a ‘mini patents’. This arises the question as to what is the actual difference between patents and utility models. First, the registration requirements for patents are stricter than those of utility models because in order for an invention to be qualified for a patent, it needs to have the element of a creation and not be easily conceptualized or imagined from the wider public. Moreover, the period of protection for utility models is relatively shorter than that of patents (7-10 years with no renewal) and the price for the registration of utility models is relatively lower than that of patents. Regulations for utility models differ depending on the country.

Domain names

The World Organization for Intellectual Property qualifies domain names as ways to find internet addresses. The registration of domain names could be done only in registers that are accredited from the Internet Corporation for Assigned Names and Numbers. They can by primary, secondary, or tertiary. Unlike other typical types of IP, the domain name registration automatically ensures international-level protection.

Databases

According to the European IPR Helpdesk, databases are an electronic collection of information. Databases are protected in two ways: under copyrights and under sui generis protection. They are protected under copyrights if they are ‘original intellectual creations’, on national level. Under copyright protection, the structure of the database is protected rather than its content (although parts of the content on the database might have their own copyright protection i.e. pictures). Sui generis protection applies to those databases which are not qualified as original intellectual creations. Thus, the database needs to have security and verification of the content. Examples of such databases are legislation compilations.

2. Intellectual Property Rights in Kosovo

Property right protection in Kosovo is regulated through primary and secondary legislation. It is important to note that aside from the legislation, Kosovo has also approved the Strategy for Intellectual Property 2010-2014. The Kosovar legislation includes different types of intellectual property including: copyrights and related rights, patents, trademarks, industrial designs, and geographic indicators which in principle are the main types of the intellectual properties in a traditional definition. During latest developments, great focus has been given to

12 Ibid.
14 Ibid.
15 Ibid.
customs measures on the protection against counterfeited products as well as the development of the information society towards a more advanced technology.\(^{16}\)

On the other hand, Kosovo is still not a member of any global organization for intellectual property such as the World Trade Organization, World Intellectual Property Organization, etc. With regards to Kosovo’s membership and accession in such organizations, it has been evaluated that Kosovo needs more progress when it comes to the implementation of intellectual property legislation, and updating its laws in accordance with European structures. Kosovo key objectives in this area includes the fulfillment of criteria for becoming a member of World Organization for Intellectual Property.\(^{17}\)

2.1. Legislation and current situation

a) Trademarks

The legal basis for trademarks in Kosovo is the Law no. 04/L – 026 on Trademarks. This law regulated the registration of trademarks and how they are used and protected in practice. The law identifies required documents required for trademark registration and regulates the procedures that need to be undertaken according to secondary legislation. The law also includes measures that can be undertaken in cases of trademark infringements. The law is in accordance Directive No.2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version), (OJ L 299, 8.11.2008 p. 25-33), Directive 2004/48/EC of the European Parliament and of the Council of April 2004 on the enforcement of intellectual property rights (O.J. L 157, p.45, 30.4.2004; O.J. L 195, p.16, 2.6.2004).\(^{18}\)

b) Copyright

The legislation for copyrights in Kosovo is comprised of the Law No. 04/L-065 on Copyright and Related Rights, later amended through Law No. 05/L-047. The law specifies all the works that can be qualified as copyrights or related rights, including computer works, orphan works, informative documents, transitional recordings, etc. The law is fully harmonized with EU directives listed below:

- Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art (OJ L 272, 13/10/2001),
- Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27/12/2006),
- Directive 2009/24/EU of 23 April 2009 on the legal protection of computer programs (OJ L 111, 05/05/2009),


\(^{17}\) Shkreli, B. *Policy document: Measures on the improvement of IPR structure in Kosovo*, 2011.

\(^{18}\) Assembly of the Republic of Kosovo. (2015, August). *Law No. 05/L -040 Amending and Supplementing the Law No. 04/L-026 on Trademarks*
c) Industrial designs
The legal basis for industrial designs in Kosovo is the Law no.04/L – 028 on Industrial Design. The law regulates issues ranging from the limitations of the rights of the designer in terms of packaging, his/her moral responsibilities, as well as the norms for licensing and registration. In addition to provisions regulating the registration of such rights, the law also provides for remedies and actions authors can follow if their rights are infringed in one way or the other. The law is harmonized with Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (O.J. L 157, p.45, 30.4.2004; O.J. L 195, p.16, 2.6.2004).

d) Patents
The legal basis for patents in Kosovo is provided by the Law No. 04/L-029 on Patents, later amended through Law No. 05/L-039 on Amending and Supplementing the Law No. 04/L-029 on Patents. The law identifies the Kosovo Agency for Industrial Property as the competent body for patent registration and lists its responsibilities on this field. The dispositions related to patent protection are generally stated according to the nature of the idea or the patented product. The law also includes punitive measures for the infringement of patents. The law is in accordance with:


e) Geographic indicators and names of origin
The Law No. 05/L -051 on Geographical Indications and Designations of Origin provides the legal basis for geographic indicators in Kosovo. This law sets the provisions related to the origin of the product and the respective name based on the origin. The law designates the Ministry of Trade and Industry as the competent institution for provisions related to the names of origin and geographical indicators, and the Kosovo Agency for Industrial Property as the body for the registration of geographic indicators. The law also provides for decision reviews made by the Agency, issues for the protection of indicators and naming, as well as the provisions for the procedure in place for issuing the protection. The law is in accordance with Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs OJ...
2.2. Institutional framework for intellectual property in Kosovo

Key institutions with competencies and responsibilities to implement the legislation on intellectual property in Kosovo are:

- **Kosovo Agency for Industrial Property** - 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 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, this 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.

- **Task force against Piracy** - as an initiative of the Strategy for Intellectual Property, the Task Force was created as part of the Office for Copyright and Related Rights. The main activity of the task force is the implementation of the strategy against intellectual piracy and advocacy coordination among responsible institutions.

- **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 (ISEC) and the Sector for Cyber Crimes.

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22 Kuvendi i Republikës së Kosovës. **Ligji nr. 05/L-051 për Treguesit Gjegrafik dhe për Emërtimet e Originës**, Janar 2016: Gazeta Zyrtare e Republikës së Kosovës.
2.3. IPR in Kosovo in the context of SAA and the country report

The Stabilisation Association Agreement, namely Articles 77 and 78, provides for the harmonization of legislative and implementation measures with regards to the intellectual property protection in Kosovo. Some of the general provisions within the SAA framework that Kosovo has to undertake on intellectual property are to create a system that protects intellectual property in accordance with EU standards, and to implement policies that pave the way for Kosovo to cooperate with countries that have signed agreements related to intellectual property. Also, another commitment is related to have a legislation in accordance with the National Treaty Principle.  

**European Commission Report for Kosovo on intellectual property**

The 2018 European Commission Report for Kosovo states that “the capacity of the customs department dealing with intellectual property rights is insufficient”. [The Commission] evaluates that Kosovo has had partial progress in the area of intellectual property, however, the competent institutions have yet to overcome some challenges—namely with regards to qualified staff, trainings and needed funds. As it is suggested in the report, these institutions need to have especially mutual coordination in mechanisms and developments towards the protection of intellectual property. Aspects such as copyright and related rights have had, in general, more progress in digital piracy and private schemes, however, there need to be more specifications when it comes to the norms of the payments for the use of such rights among involved parties.

The National Program for the Implementation of SAA, as an umbrella document for the progress of the implementation measures, also addresses IPR according to Chapter 7 of the EU Acquis. For the period of 2018-2022 the medium-term objectives included from NPISAA are as follows:

- Increases in staff capacity in institutions with different roles in the IPR environment;
- The education and awareness on the importance of Intellectual Property (digital education starting with the young—school students and businesses);
- The compiling of a new Strategy against Counterfeited products and Piracy 2018-2021;
- The approval of a Law on Innovation Activities;
- Amending the legislation in the cybersecurity area;
- Membership in International and Regional Organizations in the area of Intellectual Property (i.e. WIPO);
- Decreased number of unresolved applications in the Agency for Industrial Property.
- Updating the legislation in accordance with EU Aquis.

The Program includes the narrative part of the objectives towards the implementation of the SAA measures regarding intellectual property, as well as the part of medium-term measures which are separated from legislative measure, and implementation measures based on specific indicators for each respective institution.

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25 Id.
The progress of the approval of laws and sub-legal acts that make up the legislative part of NPISAA up until now is as follows:

### 3.8. Chapter 7 of acquis: Intellectual Property Right

<table>
<thead>
<tr>
<th>No.</th>
<th>SAA Dispositions</th>
<th>National acts to be harmonized</th>
<th>Deadline</th>
<th>Harmonization level</th>
<th>Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.8.1</td>
<td>Approval of Articles 77 and 78 of SAA</td>
<td>Regulation on Special Compensations (regulation of private schemes of compensation) (new bylaw)</td>
<td>Q2 2018</td>
<td>P</td>
<td>Not approved</td>
</tr>
<tr>
<td>3.8.2</td>
<td>Approval of Articles 77 and 78 of SAA</td>
<td>Regulation No. 05/2013 for mediation in the field of copyright, approved (amended-changed).</td>
<td>Q2 2018</td>
<td>P</td>
<td>Not approved</td>
</tr>
<tr>
<td>3.8.3</td>
<td>Approval of Articles 77 and 78 of SAA</td>
<td>Approval of the State Council for Intellectual Property</td>
<td>Q2 2018</td>
<td>N/A</td>
<td>Approved</td>
</tr>
</tbody>
</table>

Table 2.3.1 Medium-term measures on intellectual property in NPISAA 2018-2022

With regards to implementation measures, ‘institutional reforms and institutional capacity increase’ are envisioned, based on indicators for respective institutions of intellectual property. Two key institutions for the implementation of such measures are the Ministry of Trade and Industry and the Ministry of Culture, Youth and Sports. Mainly, the deadline for the implementation of such measures is the third quarter of 2018. Based on the measures listed in the Program, the current progress is as follows:

- With regards to the objective on the treatment of unresolved applications in the Agency for Industrial Property, the process is almost concluded.
- With regards to the objective on the training of judges on copyrights and intellectual property rights, there have not been any trainings held in the reporting period. Trainings are expected to take place throughout 2019.
- With regards to the objective on the increase of administrative capacities in the Agency of Industrial Property, according to which is the recruitment of 6 officials in the Agency, the officers have been recruited with special services contracts.

### 3. Intellectual property in European Union and on an international level

Intellectual property rights in the European Union include the traditional forms and the newer types of IP. The registration for intellectual property can be done on a national, European, or International level depending on the scale of protection the owner of the work wants to have. Based on this, we distinguish between three approaches:

- National route—which includes National Intellectual Property Offices in all member states.
- European route—which includes European Office for Patents and the Office for the Harmonization of Internal Market.
- International route—which includes the World Organization for Intellectual Property.  

The following table which is based on the European Guide for Intellectual Property lists shortly the purpose of the type, the guaranteed protection in international and EU levels, and the period of the registration depending on the route selected by IP holders:

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3.0. Comparative table of the application of respective intellectual property rights

<table>
<thead>
<tr>
<th>Intellectual Property Right</th>
<th>Purpose</th>
<th>Guaraunted protection in the EU and globally</th>
<th>Duration of the registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademarks</td>
<td>Distinguishing sign for products</td>
<td>National, EU, and international (WIPO) level</td>
<td>Renewed every 10 years without a limit</td>
</tr>
<tr>
<td>Industrial designs</td>
<td>Esthetical part of products</td>
<td>National, EU, and international level</td>
<td>Renewed for 25 years every 5 years (or 3 years non-renewed when the design isn’t registered)</td>
</tr>
<tr>
<td>Patents</td>
<td>Inventions/ Innovations</td>
<td>National, EU, and international level</td>
<td>20 years</td>
</tr>
<tr>
<td>Service models</td>
<td>Inventions/ Innovations</td>
<td>Only on national level in some EU states.</td>
<td>7-10 years</td>
</tr>
<tr>
<td>Trade secrets</td>
<td>Private information of businesses</td>
<td>Protection is subject to some conditions, but there is no procedure to be followed for registration</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Copyright</td>
<td>a) Artistic and literary works</td>
<td>Protection is subject to some conditions, but there is no procedure to be followed for registration</td>
<td>Throughout the life of the author and 50 years after. (or 70 in EU). Related rights: at least 20 years from the end of the year in which the work was executed i.e. if it’s a performance</td>
</tr>
<tr>
<td></td>
<td>b) Neighboring rights: media</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domain names</td>
<td>Internet addresses</td>
<td>International (with the condition of accreditation from respective registers)</td>
<td>Renewed in a non-specified manner for a maximum of 10 years</td>
</tr>
<tr>
<td>Geographic Indicators</td>
<td>Products of respective geographical origins</td>
<td>International level</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Databases</td>
<td>Independent works, data and information stored in a systematic manner</td>
<td>Automatic or (in case of sui generis) European</td>
<td>(Databases with copyright in the EU): throughout the life of the author and 70 years after</td>
</tr>
</tbody>
</table>

3.0.1 Comparative table of the application of respective intellectual property rights

Within the European Union, a great focus is given to the protection of innovation and ideas that potentially help the business or organization. This is done to encourage continuous development and innovation. The more the authors/investors believe that their intellectual properties are protected, the more incentives they have to engage in R&D and to seek new inventions. Thus, the protection of intellectual property is considered as a precondition to innovation—which is considered as an intangible asset for development. Great importance within the EU is given to IP also because of factors such as employment generation and the growth of competition.

The European Commission generally seeks to protect intellectual property through:

- Fighting criminal groups or networks that benefit from the infringement of intellectual property through illegal routes;

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Effective monitoring of legislation in respective areas of intellectual property in EU level;
Information on the advantages that SMEs have from intellectual property;
Campaigns and advocacy campaigns with trade partners on the importance of intellectual property in relation to economic development.\textsuperscript{30}

In the context of intellectual property for entrepreneurship and business ideas, the European Union has also identified the process that needs to be followed for an idea to be safe and to ensure the success of an undertaking. By starting from the idea itself, the process of ensuring intellectual property follows as:

![Diagram of intellectual property protection process](image)

**Figure 3.0.2. The process of intellectual property protection by IPR Helpdesk\textsuperscript{31}**

\textsuperscript{30} Id.

\textsuperscript{31} Bashkimi Evropian. Fakt-fletë: Mbrojtja dhe zbatimi i Pë, Shtator 2014: IPR Helpdesk.
3.1. Measures against IP infringement in the EU

Intellectual property infringements in the European Union could be addressed through a number of mechanisms that have been created with regards to IPR protection. Initially, it is important to know the rights and to know what actually constitutes an infringement. It is important to note that there are some uses of the intellectual property for which no legal remedies can be requested, such as the use for educational, private, informative purposes, etc. 32

The resulting mechanisms can be of legal nature, for example, court cases or alternative mechanisms for dispute resolution—arbitration or mediation, which are used in non-criminal offenses/cases. 33 The non-legal mechanisms against IP infringement are request letters, which are sent to the person who is supposed to have committed an infringement of an intellectual property right, and to inform them on the possibility of legal actions that could be undertaken in case the infringement is not stopped. Other non-legal mechanisms are also requests for custom measures on imports which could be sent to stop infringed goods in EU borders. 34

3.1.1 Case studies: Lawsuits on Intellectual Property in the European Union Court of Justice

1) Case C-310/17 “Levola Hengelo BV v Smilde Foods BV”, EU:C:2018:899

A Dutch company on a national level filed a case against a competitor who was allegedly infringing their property right by copying the taste of a food product. The company then addressed the issue of whether taste could be considered as ‘work’ or property of the owner in the EU Court of Justice. The Court of Justice had decided that the taste of a food cannot be subject to copyright under the qualification of ‘work’. Although ‘work’ is considered to be every intellectual creation of the author, work needs to be expressed in an objective manner. In the case of product taste, this condition cannot be met because taste is evaluated in a subjective manner and respective sensations of individuals (which are highly dependable on different factors such as preferences, habits, the environment in which the product in question is consumed, etc). As a result, taste is not subject to Article 2(1) of the Bern Convention and Directive on Information Society (D 2001/29/EC). 35

2) Case C-161/17 “Land Nordrhein-Westfalen v Dirk Renckhoff”, EU:C:2018:634

A case of a photographer that has sued a primary school has been raised in the Court of Justice, after the primary school has exposed her authentic photos. A school student has downloaded and cited the photographs in questions from a travelling website, which had the author’s authorization to use the photographs. Student’s project has since been exposed in a school website, where the author’s picture were shown. Thus, the author (the photographer) sued the school because this act has been considered as ‘sharing with an audience’. The European Union Court of Justice has assessed that the re-use of photographs in another platform aside from the authorized one can be considered as copyright infringement because it makes it harder to control the further use of the intellectual property. Therefore, because the photographs have been downloaded and used for another website, they have been shared to another audience; this constituted an infringement of Article 3(1) on Directive on Information Society (D 2001/29/EC). 36

32 Id.
33 Id.
34 Id.
35 Bashkimi Evropian. Çështje-ligji Evropian i kohëve të fundit mbi shkeljet dhe zbatimin e të drejtave të pronësisë intelektuale, Dhjetor 2018: Zyra e Bashkimit Evropian për Pronësi Intelektuale.
36 Id.
Further steps and recommendations

The Stabilization and Association Agreement offers a new platform to benchmark developments in the field of intellectual and industrial property. The fact that there is a clear institutional framework to address IPR is encouraging. However, there’s room for further improvements with the regards to the following issues:

- The importance of seeing intellectual property as an intangible asset to an organization needs to be increased in the public sector, as well as among private companies. Public institutions needs to cooperate with companies for the purpose of educating and informing them on global developments in the IPR area. Taking into consideration the fact that intellectual property in Kosovo constitutes a rather new field which has grown in importance over the last decade, it is easy to note that there is a lack of knowledge on IPR. Increasing awareness on IPR issues can encourage individuals and businesses to engage in research and development, knowing that their rights are fully protected.
- Businesses and companies need to invest in staff trainings on intellectual property. Companies should understand that intellectual property is among key assets they have at their disposal, given that it is a measure to protect the creativity of their labor force from the competition. Therefore, the promotion of intellectual property and ways to protect innovation stimulates companies to engage in activities that result in new products and services.
- In terms of overall developments in terms of intellectual property measures, an emphasis should be placed on the need to draft a new IPR strategy. This strategy is also foreseen as one of the legislative measures that need to be undertaken in the National Program for the Implementation of SAA (NPISAA). The existing strategy has done a great job in defining the role of IPR in Kosovo, however, the ever-changing the types and trends of the notion of intellectual property pose the necessity for updated legislation and state mechanisms.
- The respective institutions in the area of intellectual property need to handle IPR-related infringements professionally and efficiently. Moreover, there is a need to set clear provisions for the proper compensation in infringement cases. Addressing infringements attentively means that in one hand individuals in the society will be more aware that IP infringements are serious offenses, while on the other hand, property owners will be encouraged to invest in innovative ideas. Addressing the backlog of cases in the Agency for Industrial Property also is among measures listed in the National Program for the Implementation of the SAA, and full progress needs to be achieved in this area.
- The training of customs officers is undoubtedly one of the most important preconditions for the protection of benefits that IPR brings. Counterfeited goods pose significant damages to the economy; therefore, the efficient monitoring under the capacities of the customs is key. European Commission Progress Report for Kosovo has stated that Kosovo lacks the needed capacities for intellectual property, and that it needs better mechanisms for coordination among IP institutions.
- Implementation capacities in the area of cybersecurity need to be further increased. Cybersecurity presents a more complex field in an international aspect, whereas in Kosovo, it is a newer area in the context of intellectual property.
- More efforts should be placed on training of judges for handling contests within the scope of IPR. Such a step is already an objective within the National Program of the Implementation of SAA, and consequently, this needs to be a priority for respective institutions. In many cases, IPR-related disputes are highly complex, thus increasing the need of expertise on these topics.
- Implementation measures on IPR legislation in the National Program of the Implementation of SAA need to be further fulfilled. While the Program foresees steps for updating the legislation on intellectual property, there is also room for further implementation of measures within the Program.
Annex A: Summary of results of Private Sector Pulse

The American Chamber of Commerce in Kosovo has published Private Sector Pulse on SAA in order to analyze the state of doing business after the signing of the agreement from the perspective of businesses in Kosovo. The study was based on a survey with 500 businesses in 7 regions of Kosovo: Prishtina, Gjilan, Ferizaj, Prizren, Mitrovica, Peja, and Gjakova. The analysis of the current situation in terms of intellectual property has also been part of the survey, namely with regards to the effectiveness of the legislation and its implementation. Some of the findings are as follows:

According to the study, around 23% of surveyed businesses believe that Kosovo has a good legislation in the area of intellectual property. However, a considerable amount of businesses do not believe that the legislation in the area of intellectual property is on the needed level, where around 42% of them has selected a negative answer. Similar answers have been selected also on the implementation of the legislation of intellectual property:

The evaluation of the legislation on intellectual property has also been categorized in the sectors of manufacturing, trade, and services. In general, the sectors have expressed a similar opinion with regards to the legislation, which could be seen on the findings of the above figure.
References


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