

# CHALLENGES AND NEEDS OF LEGAL - JUDICIAL PROTECTION OF COPYRIGHT AND RELATED RIGHTS IN KOSOVO

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## **Abstract**

*The paper examines the specifics of legal and judicial protection of copyright and related rights in case of their violation. Under the term of "copyright", the subjects of protection are material goods which through the economic function enable a subject of law an economic benefit precisely from their use. Judicial protection of copyright stems from the fact that these rights are created by engaging a more creative human potential with the investment of large financial resources. However, in our country the legislation adopted in the last two decades, although in formal term is in full compliance with regional and international standards in the field of defence, still the practical implementation has huge difficulty. Copyright is one of the least recognized and respected fields in Kosovo. The authors and theorists of this subjects to this legislation, judicial and prosecutorial institutions and the general public, have limited knowledge not only about the protection that the law gives to their work but have not identified what is the limit of a violation between criminal, civil or administrative areas of copyright and related rights.*

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**JEL Classification:** K11, K29

## **1. Introduction**

Copyright and related rights are considered any work or discovery by the creativity of the individual, which may be a manuscript or design, and for which the individual is entitled and may use a patent, copyright, or distinctive mark. In the context of businesses, intellectual property rights are closely linked to innovation, continuous business development and cooperation between businesses and other entities<sup>2</sup>. Copyright and related law as a separate discipline of law arises in the mid-nineteenth century, with the adoption of the first legal provisions in the field of copyright. Usually, intellectual property rights are associated with the possibility of great misuse. Therefore, for this very reason, they need to be provided with a certain degree of legal protection. One of the main obligations that must be met by countries that claim to be members of the World Trade Organization is to take measures to ensure that the right holders of intellectual property rights are adequately protected from litigation. This obligation is set out in the Intellectual Property Rights Trading Agreement<sup>3</sup>.

Our country has also adopted a series of modern legal provisions that provide adequate protection for intellectual property rights holders. According to the Parliamentary Research Copyright and related rights (2015) Kosovo is actively engaging in the adoption of new provisions and harmonization of existing legislation to ensure the most effective protection of intellectual property rights in accordance with European and world standards.

It should be noted that in domestic law, in practical terms, no special attention is being paid to the judicial protection of intellectual property rights, which includes three standardized forms by law: civil law, criminal law and administrative law. The above forms of protection are available to any entity, whether natural or legal person, if their legal interest is called into question. However, what in practice turns out to be problematic has to do with the fact that there are dividing lines of a certain violation of intellectual rights which then requires civil or criminal legal treatment.

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<sup>2</sup> Peter K. Yu (2014), *Challenges to the Development of a Human Rights Framework for Intellectual Property*, Texas A&M University School of Law Legal Studies Research Paper no. 19-52,, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2517854](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2517854).

<sup>3</sup> Correa, Carlos, (2007) *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement*, OUP Catalogue, Oxford University Press, number 9780199271283. <https://ideas.repec.org/b/oxp/obooks/9780199271283.html>.

## 2. Civil judicial protection of intellectual property rights

In Kosovo, intellectual property in the civil field is regulated and protected by specific legislation. This legislation is of primary and secondary nature. The primary part includes: Law no. 04/1-065 on copyright and related rights; Law no. 05/1-047 on amending and supplementing the law no. 04/1 - 065 on copyright and related rights. Meanwhile, in the secondary part are Regulations no. 05/2013 on mediation of disputes in the field of copyright and related rights in the Ministry of Culture, Youth and Sports; Regulation no. 01/2012 on the procedures for granting, respectively obtaining a permit, associations for collective administration of copyright and related rights; Regulation no. 20/2018 on the right to special and reprographic compensation; Regulation no. 21/2018 on amending and supplementing Regulation no. 05/2013 on the mediation of disputes in the field of copyright and related rights in the Ministry of Culture, Youth and Sports and Regulation no. 20/2018 on the right to special and reprographic compensation. Within the legislation on the regulation and protection of copyright and related rights are also two strategic documents which the Office of Copyright and Common Rights has issued by the Government of the country. These are documents such as the Strategy for Intellectual Property 2010 - 2014 and the Strategy against Counterfeiting and Piracy 2012 – 2016 of the Copyright and Common Rights Office.

This legislation is largely in line with relevant international conventions. When it comes to civil protection due to violations of intellectual property rights, the list of lawsuits that plaintiffs can file and initiate has been expanded. In almost all laws passed so far, due to the violation of intellectual property rights, the procedure of eventual request for the imposition of an interim measure pending the validity of the judgment confirming that the violation has occurred is precisely regulated.

The protection of copyright and common rights in civil procedures is achieved through a judicial process which consists of different requirements<sup>4</sup>. They can also be emphasized individually by filing a lawsuit with a specific request to the competent court. The basic division of lawsuits in procedural theory is based on the criterion of the content of the legal protection of the claims of the lawsuit so that the declarative, constitutive and conditional-confirmatory lawsuits change. In a lawsuit, the plaintiff may file multiple claims against the same defendant if all the claims are related to the same factual and legal basis<sup>5</sup>.

The claimant may initiate and defend his claims for possible violations of copyright and related rights through: a claim for proof of violation of rights; lawsuit for stopping the legal violation; claim for the destruction or modification of an infringement case and a claim for the destruction or alteration of the means and equipment with which the infringement was committed; request for publication of the Judgment and information on the costs of the defendant; claim for return of income without reason; claim for damages.

## 3. Legal - criminal protection of intellectual property rights

In addition to civil protection, in court proceedings, the protection of copyright and related rights is also exercised in criminal procedure, a dimension regulated by the Penal Code of the Republic of Kosovo. This Code in Chapter XXV, which refers to criminal offenses against the economy, treats actions such as violation of patent rights (Article 289) and Violation of copyright as illegal behaviour (Penal Code, Art. 290, 2019). Referring to the legal-criminal norms, it turns out that the criminal code, in the sense of providing protection of intellectual rights, turns out to be much narrower than what is offered in civil procedures on private initiative. The provision of Article 289 sanctioned a certain economic activity of unauthorized use of a patent registered or

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<sup>4</sup> Eleni S (2014), *Image Right and Copyright Law in Europe: Divergences and Convergences*,. Laws, 3, 181–207. Doi: 10.3390/laws3020181, [https://www.researchgate.net/publication/276039212\\_Image\\_Right\\_and\\_Copyright\\_Law\\_in\\_Europe\\_Divergences\\_and\\_Convergences](https://www.researchgate.net/publication/276039212_Image_Right_and_Copyright_Law_in_Europe_Divergences_and_Convergences).

<sup>5</sup> Frederick M Abbott, Thomas Cottier. Francis Gurry (2019); *International Intellectual Property in an Integrated World Economy*, Boock Publisher: New York: Wolters Kluwer.

protected by law or a registered topography of a closed circuit of a semiconductor (Penal Code, Art. 289, 2019). Meanwhile, with the provision of Article 290, in five certain forms it is sanctioned whoever, under his own name, or somebody else's name discloses or otherwise communicates to the public a copyrighted work or a performance of another, in whole or in part; whoever during use of copyrighted work or a performance of another intentionally fails to state the name, pseudonym or mark of the author or performer, when this is required by law; whoever distorts, mutilates or otherwise harms a copyrighted work or a performance of another, and discloses it in such form or otherwise communicates it in such form to the public; whoever performs or otherwise communicates to the public a copyrighted work or a performance of another in an indecent manner, which is prejudicial to the honour and reputation of the author or performer; whoever without authorization uses a copyrighted work or subject matter of related rights (Penal Code, Art. 290, 2019).

Usually, criminal proceedings are initiated and are sanctioned with a communal sentence of a fine and up to eight years in prison. The above-mentioned provisions also determine measures for the mandatory confiscation of items arising from the commission of a criminal offense, equipment and tools used for the commission of a criminal offense, etc. Kosovo urgently needs to focus on strengthening criminal policy. Regarding the regulation and provision of trade with copyright and related rights, based on the comparative criminal law, it turns out that in national legislation, it should be harmonized with the recommendations of the Office for Copyright of the Union European.

#### 4. Administrative protection of copyright

Administrative protection of copyright and related rights is regulated by the legislation we have outlined above. The administrative-legal aspect of copyright and related rights protection is newer. This activity consists of providing protection by inspection and customs authorities, as separate administrative bodies. In the procedure for copyright protection, an administrative dispute can be filed and presented before the competent court against the acts issued by the competent administrative bodies<sup>6</sup>.

**Protection of intellectual property rights by authorized inspectors.** The protection of copyright and related rights by inspection bodies, as a special form of administrative and legal protection, is regulated by special secondary legislation for the effective protection of copyright which was approved in accordance with the requirements of the Office for the protection of copyright and related rights<sup>7</sup>. With the approval of this legal basis, the special inspection bodies have been assigned special powers in case of possible violation of these rights. The provisions of the law on the competencies of state administration bodies related to the protection of copyright and related rights will apply to the processes of production, circulation, use and possession of goods and the provision of services that infringe the copyright.

The law stipulates that the production, maintenance, circulation and performance of services that infringe intellectual property rights are prohibited. It is important to note that the provisions of this law will not apply to goods for personal use, i.e., goods not intended for commercial use. Various ministers under the Government of Kosovo and other relevant Agencies are responsible for handling goods that infringe copyright and other related rights. Depending on the subject of the violation, the following ministries may be competent to exercise the powers provided by law: ministry responsible for trade, tourism and telecommunications, through market and tourism inspection; ministry responsible for health through health and sanitary inspection; ministry responsible for education, science and technological development through education inspection; ministry responsible for finance, through tax inspectors and the tax agency; ministry responsible for

<sup>6</sup> Nekt, K., Ulianova, H., Kolodin, D., (2019) *Website as an object of legal protection by Ukrainian legislation*, Amazonia Investiga, Vol. 8 Núm. 21: 222-230/ Julio-agosto 2019, <https://amazoniainvestiga.info/index.php/amazonia/article/view/97/72>.

<sup>7</sup> Pavel N, Karel Š, Michael K.,(2007), *Intellectual Property Rights Enforcement Teaching materials*,. Volume 1 Book 2, <http://www.du.se/vnivlastnictvi.cz/images/dokumenty/vol1book2.pdf>.

construction, transport and infrastructure through construction inspection. In the above-mentioned ministries, the implementation of the Law is performed by the appropriate inspection service, which is obliged to carry out inspection supervision in accordance with its legal competencies. Supervision can be performed by: market inspection, tourism, health, sanitation and education.

If someone suspects that someone's intellectual property rights have been violated, the inspection body will have the authority to temporarily seize all seized items in the country, i.e. any product found that is subject to or infringing on it. intellectual property rights. In addition to this authority, there is the possibility of imposing and temporarily banning activities that infringe copyright. The competent authority decides to inform the person against whom the measure for the temporary seizure of the goods has been taken to be confiscated.

This process ends if that person, within 15 days from the date of approval of the act by which the goods were temporarily confiscated, does not dispute the reasons for the temporary confiscation of the goods, i.e. if he does not prove that no copyright infringement has been committed. There is an obligation to file a complaint with the competent prosecutor's office, i.e. the misdemeanour body for initiating the appropriate action depending on whether a particular criminal economic action or misdemeanour has been undertaken.

The competent authority has the duty, without delay, to inform: 1) the right holder, whose legal interest is in doubt, provided that he is aware of it; 2) all interested persons (importer, authorized representative) a representative, a collective rights organization, etc.) provided that they exist and are known to him and 3) a competent authority for the protection of copyright (Copyright Office). The first holder of the right informed of the measures taken is obliged to: 1) before the competent body, i.e., the court initiates proceedings seeking to establish that the right has been violated and that the items temporarily seized are permanently confiscated; 2) inform the inspection body of a certain provisional measure taken by the court regarding the prohibition of the disposal of temporary seized specimens. However, if the right holder does not notify the competent authority of the initiated proceedings or the interim measure, the temporarily seized copies shall be returned to the person from whom they were previously seized, and the act prohibiting the activity shall be repealed. When it is ascertained during the procedure before the competent court that the violation of intellectual property rights has been committed, the temporarily confiscated goods are finally confiscated, i.e., are excluded from circulation.

The competent inspection bodies may also carry out inspection supervision at the request of the right holder. The request of the right holder requesting the taking of measures for the protection of copyright is submitted in writing to the inspection service of the competent ministry. The claim filed by the right holder can be individual or general. An individual request refers to a particular shipment, that is, a quantity of goods, while a general request relates to all quantities of a particular type of goods in the proposed time period. When the claim for copyright protection and related rights has been approved, the competent authority may require the claimant to deposit a guarantee in an amount equal to the costs that may occur if the proceedings are terminated due to actions or omissions. of the plaintiff or if during the procedure it is determined that there is no violation of the intellectual property rights of the property. A security deposit or a deposit made in a special account designated by the competent authority may serve as an insurance. An applicant may file an appeal against the first instance decision with the second instance authority.

**Protection of intellectual property rights by the customs authorities.** The customs authorities are the first to come into contact with the import of visible samples of protection that are being smuggled more and more into a certain national territory. There is a desire to provide in this way a more efficient system of copyright protection and common rights that will contribute to the prevention of the release of counterfeit goods and piracy in the territory of Kosovo, as well as the emergence of such goods from its market. Kosovo has established with the Customs Code a special procedure for goods that infringe copyright, the Law on Customs Measures for the Protection of Intellectual Property has been adopted, including a series of procedures for the conditions and manner of implementation of measures for the protection of copyright at the border.

Under the **Law on Customs Measures for the Protection of Intellectual Property** (Law

no. 06/L-015, 2018), Kosovo Customs within its mission has the duty to protect copyright in order to protect the legal economy from unfair competition. Kosovo Customs based on the Law on Customs Measures for the Protection of Intellectual Property The name of the Law 03 - L/170/2010, and the Administrative Instruction 07/2010, has the duty to protect the intellectual property rights of goods entering or leaving the territory of Kosovo, at the request of the right holders, and the administration of requests for action in the framework of the protection of intellectual property.

According to the Law on Customs Measures for the Protection of Intellectual Property, respectively Article 4, the holder of the right, when there is sufficient grounds to suspect that the goods violate his right, has the right to submit a request for action by customs. The way of submitting and processing the request is clearly defined where it is stated that the request for action is made in a form determined by the Customs. The request must contain all the data in order to enable the goods to be recognized more easily. Upon receipt of the request for action, Customs shall review the request submitted by the right holder and shall notify the applicant within 30 days. In case the request for action is rejected, the Customs must give the written reasons for it. It is important to note that, when the customs office considers that the goods are suspected of infringement, then the customs acts *ex officio*. According to the Office of Copyright and Related Rights (2018), the goods that violate the right to intellectual property will not: be allowed to enter the Customs territory of the Republic of Kosovo; to be released for free circulation; to leave the Customs territory of the Republic of Kosovo; to be exported; re-exported; be placed under a suspension procedure; or be placed in free zone or free warehouse.

## 5. Conclusion

Copyright legislation is part of a broader legislation, known as intellectual property. Today in the world, the legal regulation of copyright is not only an aspect of the national law of any state, but it has taken on international proportions, thus becoming the object of normative regulation by international agreements between the states participating in these treaties.

The protection of copyright and related rights in Kosovo for the most part is in line with international standards in the European Union. In the period from 2010 onwards, the Assembly of Kosovo has issued a series of legal acts regulating civil, criminal and administrative protection of copyright and related rights. With the adoption of the Law on State Administration, the Criminal Code, the Law on Copyright and Related Rights, the Customs Code, the Law on Customs Measures for the Protection of Intellectual Property Rights, it is considered that the regulation of legal protection of judicial activity in this regard is complete.

Depending on the type of copyright infringement, legal protection can be achieved by enforcing criminal, civil and administrative norms that may prevent or reduce it. This protection is regulated by several provisions of the Copyright and Related Rights Act and the Criminal Code. There are also norms that are of a general nature, such as the provisions of the Law on Criminal Procedure for the temporary seizure of facilities, the search, the proof of evidence or the provisions of the mandatory law regarding compensation.

Civil protection is essential for all forms of protection, as these are civil rights with absolute effect, for which, in the absence of special rules, the general rules of law apply to the relationship of obligations. Laws impose high fines for violating intellectual property rights, which are intended to deter future authors. Inspection bodies, using their expertise, legal and regulatory solutions, effectively contribute to ensuring adequate protection of intellectual property rights. In the first place, and above all, to protect oneself from the various forms of forgery and piracy that are currently expanding.

The performance results of the inspection bodies can be seen in the reports made by the various inspections, depending on who is responsible for handling the case, and are summarized in the statistics. The most effective way to prevent the import and export of counterfeit and pirated goods is to take special measures by the customs authorities. The purpose of adopting modern legal

regulations in the field of intellectual property rights, as well as taking measures by the competent authority, is to provide adequate protection for holders of intellectual property rights.

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