

# Protection of Intellectual Property Rights in the Republic of Macedonia Conformity with European Standards

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## **Abstract**

Protection of human intellect is of great importance to any economy. The development of a market economy is conditioned with the legal protection of intellectual property rights. There is no turnover of goods without legal protection to intellectual property rights. Protecting intellectual property rights is important not only for the owner of the idea, but also for the society as a whole. Today, it is impossible the economic cooperation between states, and in particular the economic cooperation between developed and developing states themselves, if there is no legal protection of intellectual property rights. The protection of intellectual property rights can be considered as a prerequisite for development of economic cooperation between states. Legal protection of intellectual property rights means the legal regulation of these rights. In Macedonia have been approved national Acts on the basis of which are regulated many issues in relation to these rights. In addition to the national acts, Macedonia has ratified many international conventions and bilateral agreements in the field of intellectual property rights. On the basis of national acts, conventions and bilateral Agreements, it has been prepared the strategy for the development of intellectual property rights in Macedonia.

**Key words** - industrial design, copyright, moral rights, patent, property rights, related rights, trade mark

## **1. Intellectual property (meaning)**

Intellectual property refers to creations of mind: inventions, literary and artistic works, symbols, names, images, designs used in business.<sup>1</sup> Holders of these rights may forbid others to use their creations without prior authorization, or may allow the use and use them in exchange for compensation for their efforts and investments over all creation. Intellectual property is divided into two branches, "industrial property" and "copyrights" and related rights. Industrial property includes the right related to patents, industrial designs, trademarks and service marks, trade names, indications, geographic (indications), new plant varieties, typography of integrated circuits, and protection from unfair competition. Copyrights are rights accorded to certain persons for their creation in the field of literature, science and art, and include, among others: novels, poems,

musical compositions, sculptures, paintings, drawings, cinematographic creations, architecture, choreography, photography and other similar creations. Copyrights are regarded as a right that protect the author during the creation of his intellectual work. With this right are protected material rights as well as the author's personal rights in connection with his personal work. Personal copyright interests of the author are protected according to his personal legal authorizations under which the author is authorized to protect the integrity of his work and its creation, and material interests are protected by the legal property authorization under which the author is authorized exclusively to use in an economic way his work. Even those personal powers are property of copyright content. The copyright contains; moral rights and property rights.

Moral rights protect intellectual and individual connections of the author with his creation. The moral rights are relating to; the

right to decide when and how for the first time will be announced his works; to decide how the in declaration of his work his name will be assigned or any other sign; to object any distortion or modification of his work that might hurt his personality; alter work if it violates the rights acquired by other persons etc. The materials rights protect the property interests of the author. The use of the work of the author is allowed when the author has transferred copyright material rights under the conditions that he/she has determined. The author has the exclusive right to use his work and to allow or restrict the use of his work for reproduction, distribution, etc. The author of the original work has the exclusive right to use his work in the processed form if the contract does not foresee something else. Intellectual property includes the so-called other rights related to copyright; rights of performers (singers, musicians, dancers, actors and others who interpret the works); producers of phonograms, film producers, etc. Respect for intellectual property rights is closely linked to free and fair trade, and consumer protection. Trade of counterfeit or pirated products, which violates the rights of intellectual property, means the illegal economic activities, which produces unfair income and threatens consumer benefits. The large number of counterfeit or pirated products seized at EU borders, underline the need for vigorous efforts by countries towards membership in the field of intellectual property law enforcement. The EU continues to support countries (including Macedonia) in the accession process in this field through financial and technical assistance. This support is the result of the fact that intellectual property is an integral part of international trade, and its importance is increasing day by day as the effective use of knowledge is affecting more and more people's economic prosperity. The globalization of trade has brought with it serious implications concerning the protection and enforcement of arising intellectual property rights. Given that these implications have come as a result of differences in national legislations of different countries of the world, there have been made great efforts in recent years toward harmonizing national legislations through various international treaties and regional agreements. These international agreements define the main

principles and minimum requirements relating to the protection and enforcement of intellectual property rights which must be guaranteed in national legislation of the signatory countries. Macedonia as a country with access need to new technologies, has shown high interest to accede to international and European standards for the protection and exploitation of intellectual property rights through the adoption of laws on intellectual property in conformity with the requirements deriving from them.

## **2. Basis for legal protection of intellectual property rights in Macedonia**

Considering the fact that in modern economic conditions, intellectual property is considered as a basis for economic development of a country, Macedonia has paid special attention to the institutional and legal basis for the protection of intellectual property rights. Since 1991, with the adoption of the Constitution of 1991, the rights derived from scientific artistic or other intellectual products were guaranteed. In particular constitutional provision also guarantee the freedom of the market, turnover and determine Macedonia's obligation to provide equal conditions for all parties in the market. These constitutional provisions are considered as a good basis to start work on bringing laws and other legal acts. So in 1993 passed the law on industrial property, which was fully harmonized with international conventions and other agreements in the field of intellectual property, and the law guaranteed the rights of legal persons and physical persons, as well as foreign and domestic persons in the country. With this law in a unified way are regulated patents, as well as trademarks, industrial design and marks of the origin of the products (Trademark was named as "trade bruise", while industrial design as "model and sample". These terminology changes were the result of terminological influence of the former system terminologjike të ish sistemit). In 1996 in Macedonia was brought the first law of copyrights and related rights. This law for the first time in the Macedonian legal system in a

unified manner regulates both copyright and related rights (among the many conditions, the adoption of this law was the conditions for Macedonia's membership in the WTO, which administers with TRIPS agreement). In 2002 a new law on industrial property rights was adopted. The purpose of the enactment of this law was to implement international standards on protection of industrial property rights. On the other hand, due to the need for harmonization of legislation with the EU directives and the membership in WTO, it was necessary to change certain laws; wine law, law on relationship obligations law on Customs measures to protect intellectual property rights, consumer protection law, Civil Procedure Law, etc.

In 2009, as a result of the ratification of the European Patent Convention and in order to harmonize national legislation with European Directives, it was adopted a new law on industrial property rights. This law is intended standards for the protection of industrial property rights to unify with the standards of the European Union member states, and to facilitate efficient and effective protection. This law regulates in detail the procedure for issuing a violent license (which was not adjusted with previous laws). After that it followed the adoption of the Law on copyright and related rights (2010), which also were fully harmonized with the directives of the European Union. On the international level Macedonia ratified several international agreements; European Patent Convention, the Lisbon Agreement for the Protection of Marks of origin and their international registration, Singapore Agreement for trademark rights, Vienna Convention on the International Classification of figurative trademark elements, etc..

### **3. Institutional framework for the protection of intellectual property rights**

Institutional framework for the protection of intellectual property rights in Macedonia is very complex, since many institutions have the power to protect intellectual property rights. The Ministry of Culture, deals with monitoring, analyzing and proposing laws

and measures for the development of culture, cultural heritage protection, protection of the rights of the author and related rights, as well as many other duties prescribed by law. State Office for Industrial Property, is competent in respect of the work relating to the acquisition and protection of industrial property rights and development and pursuing the development of legal regulations to these rights. State inspection market, does inspection on the implementation of the legislation by companies and other entities that conduct certain activities. In this regard, this body makes indirect protection of industrial property rights on the basis of legal provisions on consumer protection and law of trade. Directorate of Customs, in the sphere of protection of industrial property rights has an obligation to take action in cases where there is a suspicion that certain goods is not declared on the customs and was in violation of intellectual property rights. Police in the framework of its powers has an obligation to follow and detect offenses which violate any intellectual property right. Public Prosecutor pursues criminal offenders in certain procedure with some legal provisions. The courts have an important role in protecting the rights intellectual property. In the first instance, but these rights are competent The courts have an important role in the protection of intellectual property rights in the first instance, but for these rights are competent basic courts with expanded power (In Macedonia from 26 Primary Courts, 11 are considered this type). Broadcasting Council as an independent regulatory body provides freedom and pluralism of the media and ensures the protection of copyrights and related rights, and is likely to make the exclusion of program services if it determines that it violates copyrights of the author.

### **4. Protection of intellectual property rights as an option for the development of the business entity in Macedonia**

Economic development of a country depends largely on the position of business entities. Business entities with a developed technology are considered more profitable. Technology transfer as a process of

transferring technological knowledge is the best option for the development of the business entity. This method of technological development business entities is particularly important for the group of less developed countries, because they do not have sufficient resources to develop independent technology. However, technology transfer, in the long run leads to the dependence of the business entities. Therefore, business entities, should create developing conditions to be independent, and on that basis to reach certain technological development.

Choosing a strategy for technological development of business subjects, depends on the innovative potential of that entity. Innovative potential means a subject's ability to develop innovative solutions from the first idea to its first commercial application. As the basis for the innovative potential of a businessman it is the considered scientific research activity subject to [what there is a need for human resources, material and financial resources. Such resources are not present in all business entities, nor are such a thing economically feasible. Just an economically big strong company, can have all these resources to develop research activities. For instance in the list of companies that have applied with more applications to WIPO for patents profit, up to 2012, highest ranked are the big economic companies that have human, material and financial resources. Such is the company PHILIPS ELECTRONICS with a total of 24,966 applications, PANASONIC CORPORATION with a total of 20,621 applications, SIEMENS with a total of 19,719 applications, etc.. In Macedonia, there are very few such companies. So the implementation of knowledge and innovations spreading among business entities is unsatisfactory. It is necessary to continue with innovative policy which will accept characteristics of innovation creation processes. Creation and application of innovation depends not only on business entities, but also on their connectivity with all actors and stakeholders directly or indirectly involved in this process. Innovations are more collective than individual acts.

Based on the innovative development of Macedonia, business subjects in Macedonia can gain insight into the development of the economy. An indication

of the development of innovative activity is the number of patents filed and recorded, as well as their structure.

*Patents in the period 2003-2011*

Year	Domestic applic.	Foreign applic. (KPC <sup>1</sup> )	Foreign applic. (EPO)	Foreign applic. (SOI)	Total	Data decisions
2003	48	23	363	368	434	105
2004	44	9	399	408	452	102
2005	53	15	368	383	436	373
2006	55	4	403	407	462	463
2007	150	13	365	378	528	524
2008	34	5	401	406	440	328
2009	39	11	372	383	422	334
2010	27	1	336	337	364	406
2011	37	3	365	368	405	392

Based on the analysis of data given in the table, it can be concluded that in this period the total number of patent applications submitted in the Republic. Macedonia in the period 2003-2011 is constant and varies between 364-528 patent applications. The number of patent applications from domestic applicants only increased in 2007, resulting in a decrease in patent applications by foreign applicants. Given the number of patent applications filed by foreign applicants under the Patent Cooperation Agreement and the European Organization for patents, it can be concluded that Macedonia is a country of interest to foreign investors. For the structure, the largest number of patents (International Patent Classification) is in section A (the actual needs of life) and section C (chemistry, metallurgy). This suggests that interest in patent protection in Macedonia, is related to the structure of production capacities in Macedonia.

If carefully analyzed the number of patent applications filed at WIPO, we can get an impression of technological development perspective in the world. In 2009, under the Agreement on cooperation in the field of patents, are delivered around 155,900

misdemeanor, which compared to 2008 is smaller for 164,000 applications(WIPO PCT, Statistics 20011).

### **5.Strategy of development of intellectual property rights in Macedonia**

Implementation of the law regarding the protection of intellectual property is an essential element for the development of orderly and fair competition in every aspect of social life and economy of a country. Piracy, which means producing, distribution, selling and illegal issuance of materials subject to international agreements on the protection of intellectual property - is a form of unfair competition. Piracy harms the interests of authors and other owners of rights, risks provoking international trade, put in an unfavorable economic position those who act in accordance with the law and prevents the normal development of the market economy. Macedonia is very much aware that the effective implementation of intellectual property rights is an essential element for further social and economic progress as well as increasing the level of competitiveness of the country in the international market and ensuring a fair competition environment in the national market. Effective protection of these rights, contributes to the creation of optimal conditions for attracting foreign investment

Evaluating the importance of intellectual property rights, the Government of Macedonia in 2009 has been prepared and approved the Intellectual Property Strategy for the period 2009-1012. In this strategy are defined strategic goals and obligations for the protection of intellectual property. Measures to achieve these goals are defined by an action plan containing concrete terms for action in defense of intellectual property rights. Effective realization of these measures should result in increasing the level of efficiency and effectiveness in the protection and implementation of intellectual property in line with European Union standards and regulations and obligations that come from Macedonia's membership in WIPO and Agreement of trading aspects of intellectual property rights (TRIPS) within the WTO. In this line there are a number of strategic goals; strengthening legal framework in the area of

intellectual property rights, strengthening the implementation of intellectual property rights protection, the progress of the carrying capacity of industrial property rights and the rights of author, the implementation of intellectual property rights and the strengthening of public awareness of gaining intellectual property.

As a result of this strategy in order to strengthen the implementation of industrial property rights, in 2010 it was adopted a new law on industrial property rights and the new law on copyrights and related rights. In order to strengthen the protection of intellectual property rights, the new law for inspection was brought, which correctly defines inspection role in the protection of industrial property rights. It was adopted the Law on Ratification of the Agreement on implementation of Article 65 of European Patent Convention, and many other laws. With the intention to combat piracy and counterfeiting, it was established the Coordinating Body for intellectual property, that will be obliged to inspect the market and the protection of intellectual property rights, identify problems in the field of intellectual property and propose concrete solution for arising problems. In accordance with the operating program, the Coordination Body in 2012 has taken twelve coordinated actions, which resulted with seizing 2,746 items which were infringing on copyrights and related rights and 2,056 items where industrial property rights had been violated. Filed were 31 misdemeanor charges for the initiation of criminal proceedings at the competent courts, 16 misdemeanor to initiate infringement proceedings. In 2012, the Coordinating Body in cooperation with the Agency for confiscated items after completion of judicial proceedings, has conducted two auctions for disappearance of confiscated objects. From these two auctions, 38,648 disappeared products were from infringing on copyrights and related rights(Annual information for the State Office Industrial Property for 2011)

### **6.Strategic priorities of Macedonia about development and protection of intellectual property rights**

Strategic priorities for the protection of intellectual property rights in Macedonia should aim reducing the level of piracy, counterfeiting and informality in the field of intellectual property rights.

Intellectual property protection through strengthening and consolidation of the Institute for the protection of industrial property rights, the establishment of separate Inspectorate for intellectual property; strengthening interagency cooperation and coordination, particularly at central level but also at regional level; increased level of awareness and transparency, information and training for intellectual property system in general, etc.. The realization of these priorities, above all is the duty of Macedonia, coming as a result of the obligations arising from: European Partnership Document (EPD); Stabilisation and Association Agreement (SAA); Progress Reports EC, Macedonia, for 2009 and 2010; TRIPS Agreement, etc.

The aim should be to create an effective and sustainable system for the protection of Intellectual Property in Macedonia, in the context of economic development, meeting one of the requirements of the process of European integration by strengthening the law enforcement institutions and raising the awareness of public on the importance of the protection and promotion of IP rights. Strategic objectives and measures for their implementation should be formulated on the basis of the review of the situation and the existing potential in this area, as well as the ambition to establish a system for the protection of intellectual property closer to the developed systems and international standards. Primary goal should be directed towards: Compliance with European standards; Attendance European policy in this area, and the pursuit of experiences and best practices of the countries in the region.

In this regard we should attempt to raise a system for the protection of Intellectual Property Rights that guarantees an effective mode of exercising the rights, as well as helping to create an environment conducive to creativity and competitive strength of the parties in the market, by stimulating the creation of innovative potential (creative) at the state level. This goal

will be achieved by putting into action all the elements necessary for the normal functioning of the system for the realization of the rights of intellectual property: contemporary legislation; institutions for the administration of the rights of IP objects, implementing mechanisms through: procedures judicial, border measures, actions or proceedings of market; service providers to protect the rights of IP objects - representatives of patents and trademarks, as well as the users of the system, collective rights management organizations, etc.

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