

## Intellectual Property Law – Age of Internet

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Doi:10.5901/ajis.2016.v5n3s1p363

### Abstract

Creating of intellectual property product takes time, effort and great commitment. It requires a lot of effort to protect it as well. In a democratic society the protection of copyright is one of its core values, and guarantees cultural heritage, scientific and technological achievement. This article trying to give clear understanding of intellectual property importance in Internet Age, while interpreting and analyzing the copyright and its related rights, as: Objects of law regulated by legal norms, which are relatively new. Moreover during applying the historical data trying to describe and give outlook to the world where the intellectual product has been very low known, comparing with the recognition and regulation of other institutes of civil law. To achieve the aforementioned purpose would be used the interpretation and analysis method of data collection as: Norms from International Conventions and Domestic Law, practical cases and other relative material to the article focus. My research findings are that the copyright provides the economic basis for the creation and distribution of musical works, literary, artistic, movies, computer programs and other forms of creative expression. Moreover it protects its holder and determines whether and how to copy, distribute, and transmit their works as well as it stimulates talents to create creative ideas and prompts businesses to invest in them.

**Keywords:** Intellectual Property, Copyright, Protection of Intellectual Property

### 1. Introduction

The copyright it is regulated by international law for more than two centuries. It establish the economic basis for the creation and delivering the musical works, literary, artistic, movies, computer programs and other forms of expression. In this article will be discussed below the understanding of Intellectual Property as an essential part of the material. Should be aware that in modern age the necessity had been grown rapidly to protect the IP by regulating and being enforced by rule of law. This primarily it includes the Regulation of Intellectual Property by Law where the efforts and its role in businesses are very worldwide today as well as protecting the rights belonging to the Intellectual Property.

### 2. Understanding of Intellectual Property

During analyzing the intellectual property, must be consider carefully what intellectual property really means. Or, more particularly, what it can mean to a business. The important question can be arisen for example, why is a name, a style, a sound or a thought captured on paper or audiotape so important that an ever-expanding area of law could develop around it?! In legal terms can be defined, as personal subjective right which represents the legal power with absolute character related to intellectual creativity having the quality of copyright work.<sup>1</sup>

Exact definition and clear understanding of the IP must turn us back to the rote of the definition. Should be bear in mind that the genesis of the term "industrial property", derived from French law, who covers (as indicated in *the Paris Convention for the Protection of Industrial Property (1883)*) "patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition."<sup>2</sup> Consequently, the term excludes copyright and related rights (i.e. Rights relating to performances of performing artists, phonograms, and broadcasts). Must emphasize that the distinction is the theory that copyright concerns artistic creations and is not dependent on formalities (such as registration) for its subsistence, whereas industrial property

<sup>1</sup> Aliu, Abdulla, *E Drejta Civile, Prishtinë, 2013, p. 287.*

<sup>2</sup> *The Enforment of Intellectual property right, Acase book, WIPO, 2012, p.16.*

concerns creations that are essentially for industrial purposes, and the rights are dependent on compliance with prescribed formalities.<sup>3</sup>

In many commercially driven societies around the world, billions of dollars are lost and gained on the basis of protecting these great ideas, catchy names, innovative designs and inspiring words. For example, the main industries concerned with copyright, which include the entertainment such as movies, music, and other media that can be known also as creative economy, represents 6.1 per cent of the global economy.<sup>4</sup>

From historical perspective we anticipated that this filed it is regulated by the first international treaties protecting intellectual property rights - the Paris Convention for the Protection of Industrial Property<sup>5</sup> and the Berne Convention for the Protection of Literary and Artistic Works<sup>6</sup> were reached in the 1880s, but still coordination across countries for intellectual property protection remained inadequate until recently.

Furthermore the importance of IP law in internet age is that it offers "protection" somehow for creation or creative work and also regulates the use of it<sup>7</sup> and all of these are expressed as patents, copyrights, trademarks, trade secrets etc. Because intellectual property shares many of the characteristics of real and personal property, associated rights permit intellectual property to be treated as an asset that can be bought, sold, licensed, or even given away at no cost.<sup>8</sup> Intellectual property laws enable owners, inventors, and creators to protect their property from unauthorized uses. Taken in consideration all data mentioned above the Intellectual property rights were first included in the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT), 1986-1993, with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).<sup>9</sup>

Based on this data can be concluded that TRIPS require signatories to make it easier for their citizens and others to obtain and enforce intellectual property rights, although it does not deal with domain names as such.

### 3. Regulation of Intellectual Property by Law and Its Role in Businesses Worldwide

Intellectual property has become a disturbing, dangerous and insidious force in many areas of our daily routine. It is very keen in our lives, yet we often do not even consider its existence. In another part of medallion the business concepts such as intellectual capital and knowledge management are much more recent developments than intellectual property; however, they have brought the significance of valuing, organizing, using and profiting from the collective genius in an organization to the top of the business management checklist. Though aspects of knowledge management and intellectual capital fall outside the realm of intellectual property and it is unlikely that the World Intellectual Property Organization (WIPO) will establish a treaty for the protection of individual brains. The World Intellectual Property Organization, which began operations in 1970, promotes the worldwide protection of both industrial property (inventions, trademarks, and designs) and copyrighted material (literary, musical, photographic, and other artistic works).<sup>10</sup>

Furthermore this field had fulfilled the gap in it by The World Trade Organization (WTO) which it also includes the protection of undisclosed information and the control of anti-competitive practices in contractual licensing under its Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).<sup>11</sup>

Recently the companies who recognize the value of intellectual assets have revolutionized the way of businesses that are operating. This approach has also revolutionized the way investor's view the firms in which they invest. The company with the best team of convincers is often the leader in its particular business realm. This team strives to create a

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<sup>3</sup> *The Enforcement of Intellectual property right, a case book, WIPO, 2012, p.16.*

<sup>4</sup> *Howkins, John, The Creative Economy, 2007, p. 86.*

<sup>5</sup> *Paris Convention for the Protection of Industrial Property of March 20, 1883.*

<sup>6</sup> *Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886.*

<sup>7</sup> *According to Art. 2, par., vii, WIPO Convection (1967) "Intellectual Property" includes the rights relating to: -literary, artistic and scientific works – performances and performing artists, photographs and broadcasts – inventions in all fields of human endeavor – scientific discoveries – industrial designs – trademarks, service marks, and commercial names and designations – protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.*

<sup>8</sup> *Fieleke, Norman S., The Uruguay Round of Trade Negotiations: An Overview, New England Economic Review, 1995.*

<sup>9</sup> *Fieleke, Norman S., the Uruguay Round of Trade Negotiations: An Overview, New England Economic Review, 1995.*

<sup>10</sup> *Britannica Concise Encyclopedia, 2006, p. 946.*

<sup>11</sup> *Trips: Agreement on Trade-Related Aspects of Intellectual Property Rights, Part II-Standards Concerning the Availability, Scope and Use of Intellectual Property Rights, accessed at [https://www.Wto.Org/English/Tratop\\_E/Trips\\_E/T\\_Agm3\\_E.Htm](https://www.Wto.Org/English/Tratop_E/Trips_E/T_Agm3_E.Htm), visited on 11.12.2016.19:50.*

competitive advantage for its employees.<sup>12</sup> Over the past decade, we have witnessed the success of some companies, which has relied almost exclusively on advertising, mail orders, internet orders, customizing personal computers, strategy, reasonable prices and incomparable customer service guarantees. Intellectual property is becoming an increasingly valuable asset for establishing competitive advantage in virtually all business models.<sup>13</sup> As an example can be mentioned the IBM which is a most powerhouse in the world of computer technology goods and services and a long-time survivor in this volatile realm. It was granted an estimated 2,800 patents in 2000, more than any other company in the world. That figure comprises more patents than some national intellectual property offices examine in a year. For eight consecutive years, IBM has registered more patents than any other company in the world, and since it was founded, it has accumulated more than 34,000 patents worldwide.<sup>14</sup> Almost 20,000 of these patents are held in the United States alone. Considering that a patent in the United States can cost up to US \$20,000 to obtain, this is a considerable investment in intellectual property.<sup>15</sup> Many other companies become technology-sharing partners with IBM either willingly or unwillingly. The willing partners often enter into cross-licensing agreements that benefit both companies through the sharing of otherwise proprietary technologies and related innovations. The unwilling participants may have been confronted by IBM and asked to explain why they are infringing on an IBM patent.<sup>16</sup>

Considerably the Intellectual property and intellectual property rights will be among the many things that venture capitalists or other investors will examine to determine the potential of the start-up. The globalization of trade and commerce has hardly been dented by the prospects of patent or trademark abuses, copyright infringements or other alleged misuses of intellectual property.<sup>17</sup> The damaged reputation is quite likely worse than the original loss. And that is usually with a small local firm. Considering a corporate giant like Nike or Coca-Cola we come to a question that, how much money does Nike lose each year because unauthorized reproductions of its clothing are sold at prices that most people can afford?! What would happen if Coca-Cola could no longer protect its secret formula and it was made available for commercial use by others?! Businesses, both small and large, have a vested interest in protecting their intellectual assets.<sup>18</sup>

#### 4. Intellectual Property Rights and Their Protection

According to the ITU World Telecommunication Indicators Database, it took a mere four years for the Web to reach 50 million users. In contrast, the telephone took 74 years; radio took 38 years while personal computers and television took 16 and 13 years respectively.<sup>19</sup>

In the 1970s, for example, copyright law was extended to provide protection to computer software. Later, during the 1980s and '90s, courts in many countries ruled that software also could be protected through patent law. The result was that the developers of software programs could rely upon either or both fields of law to prevent consumers from copying, and rivals from selling, identical or closely similar programs. In the late 1990s, Internet use in the United States was growing at an annual rate of 30 per cent.<sup>20</sup> The situation completely changed with the introduction of various analogue reproduction technologies, such as photocopying machines, tape recorders and VCRs, in the second part of the 20th century. The Second Wave of copyright law's development can therefore be characterized by massive use of analogue reproduction technologies by individuals for non-commercial purposes.<sup>21</sup>

Where there is commerce, there is intellectual property. And where there is intellectual property, there is the potential for theft and a need for protection. The protection of intellectual property in a global level serves a valuable and

<sup>12</sup> Soloway, Hayes, *Intellectual Property Considerations For Your Company*, *Intellectual Property worldwide*, accessed at <http://www.hayes-soloway.com/intellectual-property-considerations-for-your-company>, visited on 11.12.2016, 20:13.

<sup>13</sup> Soloway, Hayes, *Intellectual Property Considerations For Your Company*, *Intellectual Property worldwide*, accessed at <http://www.hayes-soloway.com/intellectual-property-considerations-for-your-company>, visited on 11.12.2016, 20:13.

<sup>14</sup> Curtis W. Cook, *Patents, Profits & Power: How Intellectual Property Rules the Global Economy*, 2002, p.20.

<sup>15</sup> Justin, Antopillai, *Intellectual Property and the U.S. Economy: 2016 Update, Economics and and statistics, administration*, 2016.

<sup>16</sup> Curtis W. Cook, *Patents, Profits & Power: How Intellectual Property Rules the Global Economy*, 2002, p.20.

<sup>17</sup> *Ibid*, p.4.

<sup>18</sup> *Ibid*, p.4.

<sup>19</sup> *World Telecommunication/ICT Indicators database 2016, 20th Edition/June 2016*. Accessed at <http://www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>, visited at 13.12.2016.14:06.

<sup>20</sup> Yoshiyuki Tamura: *Rethinking Copyright Institution*, *The WIPO Journal*, 2009, p.67.

<sup>21</sup> *Ibid*. p..67.

essential role in the socio-economic environment that we have created in much of this world; namely a consumer-oriented, market-driven, complex environment. The developers and distributors of computer software, for example, insist that their ability to remain in business is dependent on their power to prevent the unauthorized reproduction of their creations.<sup>22</sup>

Unscrupulous foreign business partners, distributors, or complete strangers operating in places where intellectual property laws are non-existent or poorly enforced may simply take your great idea and run with it. That is not to say that we and our innovations are always safe within our own borders. It is just that much more difficult to take action outside our own jurisdiction.<sup>23</sup>

There are countless internet issues relating to intellectual property since the internet has revolutionized business and the result has been new models and methods for improving customer management, information management, supply chain management, inventory control, and numerous other aspects of running a business. Communication has been revolutionized by the Internet, providing vast stores of information to huge populations of people at a rate that is difficult to comprehend.<sup>24</sup>

Law, in contrast, is never swept up in the irresistible potential of anything. And, by always doing what it has always done like attempting to control and regulate the Internet using traditional legal means, it is not getting what it always got in the past. To combat the threat and to provide themselves with effective protection, many developers have turned to technological shields or to alternative sources of revenue. Encryption systems for music, movies, and software, "terminator genes" that prevent the natural reproduction of genetically engineered plants, and government prizes and subsidies for artistic or technical advances may partially replace intellectual-property law in some areas.<sup>25</sup>

Protecting intellectual property is a variant of computing and communications security, an area of study that has long been pursued both in research laboratories and for real-world application. Security is currently enjoying renewed emphasis because of its relevance to conducting business online. While security technology encompasses a very large area, this discussion is limited to describing generally applicable principles and those tech general purpose computers are described.<sup>26</sup> Whatever the mechanism used, it is important to keep in mind that no protection mechanism is perfect. In fact, with the advent of the internet, there are many who think that copyright unjustifiably stifles our ability to make the most of the new environment.<sup>27</sup> As with any security system, defeating it is a matter of time, effort, and ingenuity. Adding a protection mechanism involves costs to the vendor (software development and maintenance) and to the consumer (e. g., time and inconvenience). Hence, as with any security mechanism, technical protection must be carefully matched to the need.

## 5. Conclusion

It is very obvious that now days that the professional approach to intellectual property protection and enforcement in many modernized nations is stalling them of what they most important for them: economic rapid development and technological knowhow to help with an almost unlimited supply of social, financial, medical, political and cultural crises. Economic institution that wishes to enter in into new economic competition will need to analyze the very important factors before entering in it. This is as a result not to be assumed as damaged companies. The most vital interest to the no matter of type of bossiness companies is (health business, a computer business, musicians selling a recently recorded CD or growers in a specific geographic region) that their activities need to be done in a secure and a stable business environment in which they are taking efforts.

Now days the IT networks have drastically shifted the delivery goods in economic area. Must bear in mind that transmission speeds approaching a billion characters per second, networks enable sending information products worldwide, cheaply and almost instantaneously. As a consequence, it is easier and less expensive both for a rights holder to distribute a work and for individuals or pirates to make and distribute unauthorized copies.

The importance on this filed as a serious concern to all humankind it is that all variety of data such as: Documents, opinions, articles, journal and works of all sorts on the Web, it demonstrate majority of scholars in the globe are using the

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<sup>22</sup> Bently, Lionel & Sherman, Brad, *Intellectual Property Law*, Oxford University Press, New York, 2001, pg. 31

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> Cook Curtis, *Patents, Profits & Power: How Intellectual Property Rules the Global Economy*, Kogan p, 2002, p.4.

<sup>26</sup> Bently, Lionel & Sherman, Brad, *Intellectual Property Law*, Oxford University Press, New York, 2001, p. 31.

<sup>27</sup> *Ibid.*, p. 31.

data which making use of that capability.

Taken in account all data aforementioned, the policy makers and stakeholders in this particularly modern field must work together to ensure that the important public purposes embodied in copyright law continued to be fulfilled in the digital context. The information infrastructure must be regulated in that manner in order to improve access to information for all of society. In future challenges which might be appear the intellectual property considerably would survive the drastic changes in digital age, although substantial time and effort may be required to achieve a workable balance between private rights and the public interest in information.

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