

# INTELLECTUAL PROPERTY

1.67

## WHITE BOOK BALANCE SCORE CARD

| Recommendations:   | Introduced in the WB: | Significant progress | Certain progress | No progress |
|--|-----------------------|----------------------|------------------|-------------|
| State authorities should enhance efforts to combat online copyright infringements, especially with respect to the software, music and film industries. | 2010                  |                      | √                |             |
| Adoption of a new Copyright Law introducing a more effective enforcement of collective rights.   | 2018                  |                      | √                |             |
| Amendments to the Criminal proceedings law and related legislation with regards to cybercrime.   | 2018                  |                      |                  | √           |

## CURRENT SITUATION

The intellectual property legal framework is generally the same as it was a year ago. This framework mainly consists of the substantive laws enacted in 2009 and afterwards, which regulate legal relations pertaining to inventions, topographies of semiconductor products, literary, scientific, and artistic works, computer programmes, symbols, and names and images used in commerce. Hence, the following laws, which are to a large extent harmonized with the relevant international conventions, with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and with EU standards, contain the principal substantive provisions regulating intellectual property in Serbia:

- The Law on Trademarks (2009, amended in 2013 and 2018);
- The Law on Geographical Indications (2010, amended in 2018);
- The Law on Copyright and Related Rights (2009, amended in 2011, 2012, 2016 and 2019);
- The Law on Legal Protection of Industrial Design (2009, amended in 2015 and 2018);
- The Law on the Protection of Topographies of Semiconductor Products (2013);
- The Law on Patents (2011, amended in 2017 and 2018);
- The Law on the Protection of Confidential Information (2011).

The Law on Trademarks governs the acquisition and protection of rights with respect to marks used in the trade of goods and/or services. A trademark is defined as a right that protects a mark used in the course of trade to distinguish goods and/or services of one individual or legal entity from identical or similar goods and/or services of another individual or legal entity. The text of the current law is in accordance with the Madrid Agreement Concerning the International Registration of Marks, as well as with the Protocol to the Madrid Agreement.

The Law on Geographical Indications regulates the acquisition and legal protection of geographical indications (appellations of origin and geographical indications), in accordance with the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The Law on Copyright and Related Rights regulates the rights of authors of literary, scientific, and artistic works, computer programmes, as well as rights related to copyright: the rights of performers, producers of phonograms, videograms, broadcasts and databases, and publishers' rights (rights of the first publisher of a free work and rights of the publisher of printed editions).

The Law on the Legal Protection of Industrial Design governs the acquisition of the rights to the external appearance of an industrial or handicrafts product (defined as the overall visual impression that the product makes on an informed consumer or user) and the protection of those rights.

The Law on the Protection of Topographies of Semiconductor Products regulates the subject matter and requirements for the protection of topographies of semiconductor products; the rights of creators and the ways to exercise those rights; the rights of companies and other legal entities in which the topography was created; and the limitations in relation to the protection of such rights.

The Law on Patents regulates the legal protection of inventions in the field of technology which are new, which involve an inventive step, and which are capable of industrial application.

Finally, the Law on the Protection of Confidential Information regulates the legal protection of information constituting a business secret (especially financial, economic, business, scientific, technical, technological and production data, studies, tests, research results, etc.) from all acts of unfair competition.

The enforcement of the substantive laws listed herein depends upon several important laws setting forth the procedural and organizational provisions for the protection of intellectual property rights and the prosecution of infringers, the most important being the following:

- The Law on the Organization and Competences of State Authorities in Combating High-Tech Crime (2005, amended in 2009);
- The Law on Special Powers for the Efficient Protection of Intellectual Property Rights (2006, amended in 2009);
- The Criminal Code (2005, amended in 2009, 2012, 2013, 2014, 2016 and 2019);
- The Customs Law (2010, amended in 2012, 2015, 2016 and 2017); and
- The Law on Optical Discs (2011).

The institutions that protect intellectual property rights are the Intellectual Property Office (hereafter referred to as the “IP Office”), as well as the relevant ministries and other state bodies (the courts being the most important).

## POSITIVE DEVELOPMENTS

The most recent positive development is the opening of Chapter 7 of the EU membership negotiations, pertaining to Intellectual Property. The closing of the aforementioned chapter will mark the end of aligning of the local legislation with the EU *acquis communautaire*. An important step in that direction is made through the latest amendments of the Law on Patents, which harmonize the respective law with the Directive 98/44/EC on the legal protection of biotechnological inventions and Directive 2004/48/EC on the enforcement of intellectual property rights and also eliminate the hindrances identified in practice during the implementation of the respective law, improving the efficiency of

the legal protection of holders of relevant rights. Improvements regarding the length and quality of court proceedings through the creation of special court panels for intellectual property within the Commercial Court and the Higher Court in Belgrade are now clearly visible, with first-instance proceedings lasting up to a year on average. Newest amendments to the Law on Copyright and Related Rights in more detailed manner regulate the protection of the rights on the computer programs, i.e. databases, with the aim to keep up the pace with the development of IT sector in Serbia.

The court specialization will also facilitate the standardization of judicial practice in the field of intellectual property rights. It is also expected that the newest amendments to the Law on Copyright and Related Rights envisaging the possibility of securing the evidence on infringement of the relevant rights, without waiting for the reply of the sued party, will improve the efficiency of protection of the intellectual property rights.

## REMAINING ISSUES

Despite the fact that the relevant intellectual property legislation has already been in place in Serbia for several years, and that the newest amendments additionally improve the existing legislative framework, it remains to be seen whether the efficiency of its enforcement will reach a satisfactory level, which has not been the case so far. The latter is also a matter of effective co-operation between the relevant state authorities and the owners of intellectual property rights which ought to be established in a more formal manner, based on the example of an almost decade-long co-operation between the Tax Administration and the Market Inspectorate with the Business Software Alliance. This type of co-operation would help raise consumer awareness regarding the rights holders’ efforts to protect their rights, as well as result in a noticeable decrease in various forms of piracy.

## FIC RECOMMENDATIONS

- State authorities should enhance their efforts to combat online copyright infringement, with respect to the software, music, and film industries.
- Amendments to the Criminal Proceedings Law and related legislation with regards to cybercrime.