

INTELLECTUAL PROPERTY

1.20

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
<p>COVID-19:</p> <ul style="list-style-type: none"> - The Customs should enable full electronic communication; - The software operated by the IP office should be enhanced, so that it can enable full electronic communication, along with the changes of the Law on Trademarks, if it imposes hindrances for such digitalisation. - Use the opportunity this opportunity to amend the provisions of the Law on Trademarks that regulate exhaustion of rights. 	2020		√	
State authorities should enhance efforts to combat online copyright infringements, especially with respect to the software, music and film industries.	2010			√
The Government needs to provide more resources to the courts, prosecutors and police units dealing with cybercrime.	2020			√
Adoption of further amendments to the Law on Copyright and Related Rights in terms of TV broadcasting and re-transmission, in line with the changes of EU SatCab Directive passed in 2019.	2020			√
Amendments to the Criminal proceedings law and related legislation with regards to cybercrime.	2018			√

CURRENT SITUATION

The intellectual property legal framework mainly consists of the substantive laws enacted in 2009 and afterwards. In the past few years, changes occurred in the fields of copyright, patents, trademark and topographies of semiconductor products. At the beginning of 2021, a draft law on new amendments to the Law on Patents was published, and a new Law on the Protection of Confidential Information was passed. Changes in legislation reflect further approximation of the laws to the rules set in the relevant international conventions, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in the EU standards. The principal substantive provisions regulating intellectual property in Serbia are contained in the following pieces of legislation:

- The Law on Trademarks (2020);
- 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 the Legal Protection of Industrial Design (2009, amended in 2015 and 2018);
- The Law on the Protection of Topographies of Semiconductor Products (2013, amended in 2019);
- The Law on Patents (2011, amended in 2017, 2018 and 2019);
- The Law on the Protection of Confidential Information

- (new law from 2021, which replaced the law from 2011);
- The Law on Trade (2019).

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), following 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 concerning 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.

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.).

Finally, the Law on Trade regulates issues of unfair competition, including infringement of unregistered marks used in the course of trade.

The enforcement of the substantive laws listed herein depends upon several important laws setting forth the procedural and organisational 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, 2017, 2019 and 2020); 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).

The functioning of the Customs and the IP Office during the pandemic was enabled through their electronic portals. However, there are certain limitations. For example, the initial filing through the INES portal operated by the Customs is possible after a regular written contract with the Customs is signed. Besides that electronic portal operated by the IP Office does not enable full electronic communication between this body and the right holders. Among other options, it does not enable:

- Registration of changes for multiple trademarks at once, even though the Law on Administrative Fees envisages payment of lower administrative fees in case of multiple registrations;
- Requesting validity certificates for internationally registered trademarks; and
- Registration of the ownership change without submission of the original assignment deeds in physical form.

POSITIVE DEVELOPMENTS

As of September 2018, Serbia is obliged towards the EU to apply the same standards of protection of intellectual property rights as those imposed by the EU. This obligation is set within the Stabilisation and Association Agreement and the Serbian Constitutional Court confirmed that these provisions are directly applicable. In practice, bearing in mind that the laws are mostly harmonised, this means that the courts and other state bodies ought to follow the same interpretation of these rules as the EUIPO and CJEU. Events in the specific fields will be presented below.

The amendments of the Law on Patents introduced more precise rules in the field of innovations made in the course of employment.

The Law on Copyright introduced provisions that regulate software interoperability and it granted new rights to the creators of databases. Latest amendments seem to ensure more transparency in regard to the activities of collective management organisations, through more detailed and stringent procedures of fee determination, and transfer of management authorisations from the organisations' founders to their members in line with their natural position of stakeholders in this area.

The Law on Trademarks introduced the opposition system during the trademark examination procedure. This partially slowed down the registration procedure. However, the IP

Office will keep on examining both absolute and relative grounds for refusal itself, as well. In terms of the procedure before the IP Office, the online portal was improved, and e-filing services are made easier. The change that also occurred is that the principle of international exhaustion of rights is introduced. This disabled prevention of parallel imports using trademarks. It is worth noting that introduction of this principle got Serbia further away from the EU standards. The EU adopted the regional principle of exhaustion, which means that it recognises the outer borders of its market to be relevant. Therefore, this chapter of the law will have to be changed once again before Serbia accedes to the EU. 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.

The court specialisation will also facilitate the standardisation of judicial practice in the field of intellectual property rights.

Despite the pandemic, the number of inspection controls on the basis of intellectual property protection has increased (by 20%) and the number of seized goods suspected of violating these rights increased (by 10%). In addition,

there was an increase in domestic trademark applications, compared to 2019.¹

REMAINING ISSUES

The most significant pieces of legislation in this filed were amended in the past few years. However, the procedure was not transparent, meaning that the professional community was not substantially involved in the drafting of the texts that reached the parliament.

Despite the fact that the relevant intellectual property legislation has already been in place in Serbia for several years, the efficiency of its enforcement is still not satisfactory. The authorities are still reluctant to apply the reasoning in IP matters that was EU bodies. There are positive initiatives on combating counterfeits online. The Ministry of Trade has a lead role, and it coordinates all relevant bodies like high-tech crime units and postal service providers. However, prosecutors and police units dealing with a high-tech crime need more human and technical resources to be as productive as necessary.

¹ InSTITUTE Annual Report for 2020

FIC RECOMMENDATIONS

- The Customs should enable full electronic communication.
- The Law on Trademarks should be changed in such a way that it enables full electronic communication with the IP Office (e.g. removal of the necessity to submit original priority documents in paper). Use this opportunity to amend the provisions of the Law on Trademarks that regulate exhaustion of rights.
- Cybercrime:
 - State authorities should enhance their efforts to combat online copyright infringement, concerning the software, music, and film industries.
 - The Government needs to provide more resources to the courts, prosecutors and police units dealing with cybercrime.
 - Adoption of further amendments to the Law on Copyright and Related Rights in terms of TV broadcasting and re-transmission, in line with the changes of EU SatCab Directive passed in 2019.
 - Amendments to the Criminal Proceedings Law and related legislation with regards to cybercrime.