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INTELLECTUAL PROPERTY LAW IN THE EU MEMBER STATES

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ABSTRACT:

THE AIM OF THIS PAPER IS TO DISCUSS THE KEY ASPECTS OF INTELLECTUAL PROPERTY LAW IN THE MEMBER STATES OF THE EUROPEAN UNION. THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN THE MEMBER STATES OF THE EUROPEAN UNION WAS ALSO A NECESSITY ARISING FROM THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU). TAKING LEGAL ACTION IN ONE OR MORE EU COUNTRIES TO ENFORCE INTELLECTUAL PROPERTY RIGHTS IS A CHALLENGE. THE ADOPTION OF THE FRAMEWORK DIRECTIVE ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS WAS INTENDED TO STOP THE CONSIDERABLE DISCREPANCIES IN NATIONAL LAWS THAT CAUSED UNCERTAINTY AND A DIFFERENCE IN THE APPLICATION OF THIS INSTITUTION BETWEEN EU MEMBER STATES. THE PRESENT PAPER FITS SUCCINCTLY INTO PANEL VIII - PRIVATE LAW AND PUBLIC LAW REGULATIONS AS GUARANTEES OF THE PROTECTION OF THE INDIVIDUAL IN ROMANIA, PRECISELY BECAUSE THE INSTITUTION OF INTELLECTUAL PROPERTY IS IN ITSELF AN INSTRUMENT TO GUARANTEE THE PROTECTION OF HUMAN INTELLECTUAL CREATION.

KEYWORDS: INTELLECTUAL PROPERTY, EU, LEGISLATIVE HARMONISATION, COPYRIGHT, PATENTS.

INTRODUCTION

"Whoever we are, wherever we live and in whatever conditions, we all have the capacity to create. This human creativity and inventiveness is capable of improving the quality of our lives in all areas. The purpose of intellectual property is to promote the conditions that allow creativity and the capacity for innovation to flourish on a global scale" - Gurry Francis, lawyer, Director General of World Intellectual Property.

Intellectual property contributes enormously to our national and state economies. Dozens of industries in our economy rely on the proper enforcement of their patents, trademarks and copyrights, while consumers use intellectual property to ensure that they purchase safe and guaranteed products.

We believe that Intellectual Property rights are worth protecting, both at home and abroad, because²:

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² For details, see Global Innovation Policy Center, available online at <https://www.theglobalipcenter.com/why-are-intellectual-property-rights-important/>

- Intellectual property creates and sustains good-paying jobs;
- Intellectual property drives economic growth and competitiveness in EU Member States;
- Strong and properly enforced intellectual property rights protect consumers and families;
- Intellectual property helps generate innovative solutions to global challenges;
- Intellectual property rights encourage innovation and reward entrepreneurs;
- Providing guarantees of product quality and safety;
- Facilitating technology transfer: patents are often a convenient means not only to protect but also to describe in a very precise way the technologies that are the subject of technology transfer and similar arrangements (licensing, assignment, etc.). This 'technology packaging'/trade facilitation function justifies the fact that patents have sometimes been considered the 'currency' of the knowledge-based economy³.

According to WIPO Magazine, "Intellectual property is a subject of growing global importance. Policy makers have long recognised the need for intellectual property rights to protect inventions and creative works of individuals and firms. In an age when knowledge capital, the product of intellect, has become an increasingly important basis for social and economic progress, Intellectual Property has taken on unprecedented importance and the issues of generating, valuing, protecting and exploiting intellectual property systems have become crucial. In this context, the role of the World Intellectual Property Organization (WIPO) in supporting the creation of a balanced and robust international intellectual property rights regime that promotes innovation is essential"⁴.

Enforcement of intellectual property rights in the Member States of the European Union (EU) has also emerged as a necessity from the Treaty on the Functioning of the European Union (TFEU). Taking legal action in one or more EU countries to enforce intellectual property rights is a challenge. The adoption of the European Directive 2004/48/EC on the enforcement of intellectual property rights was intended to stop considerable discrepancies in national laws that caused uncertainty and a difference in enforcement between EU Member States. The Enforcement Directive aimed to create a level playing field and ensure a high, equivalent and homogeneous level of intellectual property protection across the EU.

THE IMPORTANCE OF INTELLECTUAL PROPERTY

At the earliest, the importance of intellectual property was recognised in the Paris Convention of 1883 and the Berne Convention⁵ of 1886. These treaties are still part of the World Intellectual Property Organisation (WIPO) today.

Today, the most important issues concerning the importance of intellectual property relate to⁶:

1. Human progress, often achieved with the help of technology;

³ Intellectual Property, Positive aspects of IP rights, document disponibil online la adresa https://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142108.pdf.

⁴ WIPO Magazine, Harnessing the benefits of IP for development, document disponibil online la adresa https://www.wipo.int/wipo_magazine/en/2019/03/article_0002.html.

⁵ For the protection of artistic and literary works.

⁶ Munteanu Svetlana, Strategic development of the national intellectual property system - an economic and social imperative, document available online at https://www.unecce.org/fileadmin/DAM/ceci/ppt_presentations/2011/SubRegCapBuild_Chisinau/Munteanu.pdf.

2. Legal protection of different types of creation encourages investment⁷, which can lead to innovation in different fields;
3. Protecting intellectual property stimulates economic growth, which means a substantial increase in jobs and a better quality of life⁸.

In view of the geopolitical and economic problems in south-eastern Europe as a result of the outbreak of war through Russia's attack on Ukraine, we should be expressly interested in the legal rights conferred on certain trademarks and how counterfeit goods affect the right holder and at the same time border security.

As a first question to be answered, there is the question of the origin of the good, whether it is counterfeit or not. It must also be considered what is the guarantee that the company that produced it is legally registered and has full rights to distribute it. Such a situation must be treated with the utmost seriousness, because the purchase of a non-original good contributes to the financing of organised crime groups that carry out illegal activities.

That is why the EU is obliged to monitor this issue carefully and pay greater attention to intellectual property rights in Ukraine and other south-eastern European countries.

The closer the economic relations between Ukraine and the European Union become, the more the necessary levers should be found to protect original products and their marketing by detecting the organised crime groups that are pirating them and thus ensuring that the copyright of those entitled is respected.

PROPERTY RIGHTS REGULATION AT EU LEVEL

Legislative harmonisation of intellectual property (IP) rights in the European Union has been a work in progress since the publication of the Preliminary Draft Convention on a European Patent Law in 1962⁹. Almost a century before, two international initiatives, the Paris Convention for the Protection of Industrial Property (Paris Convention)¹⁰ and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)¹¹, had already endeavoured to overcome the obstacles posed by different national laws to increased globalisation and economic and cultural transactions. Belgium has been at the forefront of all these initiatives.

While these two Conventions and subsequent international and European initiatives have introduced significant harmonisation of substantive intellectual property rights, they have provided only general standards of application. This results in disparities between national IP enforcement mechanisms. Directive 2004/48/EC (Enforcement Directive)¹², adopted on 29 April 2004, aimed to resolve these disparities by harmonising the legislative systems of the European Member States with a view to ensuring a high, equivalent and homogeneous level of IP protection in the internal market. The Implementing Directive

⁷ With reference to the B2B system, i.e. business to business.

⁸ A se vedea Developing Smart Cities: An Integrated Framework, document disponibil online la adresa <https://www.sciencedirect.com/science/article/pii/S1877050916315022>.

⁹ Avant-Projet de Convention Relatif à un Droit Européen des Brevets Élaboré par le Groupe de Travail "Brevets", Comité de Coordination en Matière de Propriété Industrielle Institué par les États Membres et la Commission de la Communauté Economique Européenne, 1962, Services des Publications des Communautés Européennes, 107.

¹⁰ Paris Convention for the Protection of Industrial Property, 20 March 1883, 828 UNTS 306, 1972 (hereinaft er – Paris Convention).

¹¹ Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, 828 UNTS 222, 1972 (hereinaft er – Berne Convention).

¹² Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights, 29 April 2004, OJ L 195, 16 (hereinaft er – Enforcement Directive).

proposed a legal framework for protection, based on Member States' best practices, which required the implementation of specific and proportionate enforcement measures.

Petillion Filip notes that "although the legislative adoption procedure of the Enforcement Directive was swift, it was not without controversy. The European Commission's initial proposal raised serious public concern, with several civil rights organisations opposing it. [...] Without delay and without requiring a further reading of the document, the European Parliament and the Council adopted the Enforcement Directive just over a year after the publication of the Commission's original proposal [...] National implementation efforts were only completed in 2009, almost five years after the Directive entered into force"¹³.

Since the entry into force of the Treaty on the Functioning of the European Union (TFEU) in 2009, the EU has an explicit competence in the field of intellectual property rights (Article 118). Article 118 TFEU states that "in the context of the establishment and functioning of the internal market, the Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down measures for the creation of EU intellectual property law to ensure uniform protection of IPR in the EU and for the establishment of centralised authorisation, coordination and enforcement systems at EU level"¹⁴.

Thus, at the international level there are a number of legal acts, to which Romania is a party, governing intellectual creation rights, among which we mention:

- International Convention for the Protection of Industrial Property, signed in Paris in 1883;
- Berne Convention for the Protection of Literary and Artistic Works, concluded on 9 September 1886 and supplemented in Paris on 4 May 1896;
- the Universal Copyright Convention, adopted in Geneva in 1952;
- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on 26 October 1961;
- The Trademark Law Treaty, adopted in Geneva on 27 October 1994;
- Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks;
- Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;
- Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market;
- Directive (EU) 2019/789 ("CabSat Directive") of 17 April 2019 aims to increase the number of TV and radio programmes available online to European consumers;
- Regulation (EU) 2017/1128 of 14 June 2017 on cross-border portability of online content services in the internal market, etc.

PROPERTY RIGHTS IN THE EUROPEAN UNION

The most important types of intellectual property rights are:

1. Patents;
2. Trademarks;
3. Copyright;

¹³ Petillion Filip, Heirwegh Alexander, Genesis, adoption and application of european Directive 2004/48/EC, document disponibil online la adresa <https://sci-hub.do/10.1017/9781780687827.003>.

¹⁴ See European Parliament, Intellectual, Industrial and Commercial Property, document available online at <https://www.europarl.europa.eu/factsheets/ro/sheet/36/proprietatea-intelectuala-industrialala-si-comerciala>.

4. Trade secrets.

According to the European Commission¹⁵, patents are a key tool for encouraging investment in innovation and encouraging its dissemination. At present, (technical) inventions can be protected in Europe either by national patents granted by the competent national IP authorities in EU countries or by European patents granted centrally by the European Patent Office.

A trademark is a distinctive sign that allows consumers to easily identify certain goods or services that a company provides. Unlike patents, a trademark can protect a set or class of goods or services, rather than a single product or process¹⁶.

EU copyright law is a set of eleven directives and two regulations, which harmonise the essential rights of authors and performers, producers and broadcasters. The overall aim of the EU's harmonisation efforts is to allow copyright-protected goods (e.g. books, music, films, software, etc.) and services (e.g. services providing access to these goods) to circulate freely in the internal market¹⁷.

A trade secret is information that is valuable to a business that is treated as confidential and gives that business a competitive advantage. Trade secrets are most commonly used to involve the theft or copying of a physical document or object. With the digitisation of information, this form of industrial espionage is increasingly done through illegal access to computer networks¹⁸.

CONCLUSIONS

Intellectual property is a legal instrument designed to protect any human intellectual creation. Infringements of intellectual property rights pose a serious threat not only to individual rights holders but also to international companies. Therefore, legal provisions setting a high level of protection are of little use if they are not complemented by rules that can ensure effective enforcement with a sufficient degree of legal certainty.

With EU Directive 2004/48/EC on the enforcement of intellectual property rights, the European Union has pursued precisely this major objective for Member States. The Directive aims to achieve a common standard of enforcement for all EU Member States by requiring effective procedures, measures and remedies to be available to all owners of intellectual property rights. Today, however, these enforcement rules remain subject to a patchwork of national laws, whereby each Member State's regulatory framework remains coloured by its own implementation, legal traditions, case law, etc.

¹⁵ European Commission, Patent protection in the EU, document disponibil online la adresa https://ec.europa.eu/growth/industry/policy/intellectual-property/patents_en.

¹⁶ See The Different Types of IP Protection and Why They Are Important, document disponibil online la adresa https://www.inquartik.com/inq-intellectual-property-rights/#headline_3.

¹⁷ See The EU copyright legislation, document disponibil online la adresa <https://ec.europa.eu/digital-single-market/en/eu-copyright-legislation>.

¹⁸ European Commission, Trade secrets, document disponibil online la adresa https://ec.europa.eu/growth/industry/policy/intellectual-property/trade-secrets_en.

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