Funded by
the European Union

HANDBOOK FOR USERS

IPRproject
Intellectual Property Rights Project

A Project Implemented By:

ibf INTERNATIONAL CONSULTING

RES PUBLICA

EPLO European Public Law Organization

INTRODUCTION

COPYRIGHT AND RELATED RIGHTS OFFICE IN KOSOVO (OCRR)

The Office of Copyright and Related Rights (OCRR) as an administrative body, with the Director as its head, established and functioning under the supervision of the Minister of Culture, shall have the following tasks:

a. developing and applying adequate strategy and policy for the protection, exercise and enforcement of copyright, related rights and other rights in accordance with the international obligations, national legislation and the corresponding national interests of the Republic of Kosovo;

b. collecting necessary information, carrying out studies, and consulting with governmental bodies, institutions, as well as with the representatives of the interested owners of rights and users;

c. submitting to the Government and/or other governmental bodies proposals where certain measures necessary for the appli-

cations of the strategy and policy mentioned above; (d) preparing draft laws and regulations concerning the protection, exercise and enforcement of copyright and related rights;

e. representing the Republic of Kosovo at international and regional organizations dealing with copyright, related rights and other rights protected by this Law;

f. establishing and maintaining mutually advantageous cooperation with governmental offices, agencies and research institutions and other organizations of other countries dealing with copyright and related rights, in accordance with the intergovernmental policy of the Republic of Kosovo;

g. in cooperation with the competent judicial, administrative and customs authorities – and where necessary initiating proceedings for the application enforcement measures – actively participating in the fight against infringements of rights and, in particular, piracy;

h. accrediting, and supervising the activities of, the collective management organizations;

i. promoting awareness of governmental bodies, judicial, administrative and other institutions, owners of rights and users as well as the general public, concerning the importance and the political, legal and practical aspects of the protection, exercise and enforcement of copyright and related rights through preparing and distributing information materials, organizing awareness campaigns, and maintaining active relationship with the press and media.

With in this context, one of the OCRR's most significant tasks is to encourage and support creativity in the fields of culture and science through the protection of copyright and related rights. To this end raising public awareness is of primary importance as people need to understand that a) copyright is a kind of property and as such it is necessary to be respected and protected and b) the importance of copyright is an essential tool that promotes culture and creativity benefiting society and the economy of the country.

Since June 2011, the OCRR has gone a long way contributing in the development of copyright and related rights regime to modern international standards and also provide guidance and education to the public.

More specifically the OCRR has taken actions on:

Increasing advance in the legislative framework, particularly drafted new legislation and regulations in order to implement the national legislation as well as in order to achieve full harmonization with the EU legislation;

Organizing trainings and education activities for the state officials that have competences in the field of Copyright;

Organizing various activities such as media conferences; seminars; awareness campaigns including those online, in order to raise awareness and encourage creativity and respect for copyright and related rights.

Licencing two collective management societies APIK in the field of music and VAPIK in the field of audiovisual works and working with licensed societies and the users

on setting the general tariffs for the use of the copyrighted subject matter in the area of broadcasting and rebroadcasting.

Coordinating the actions against physical and digital piracy, undertaken by the Task Force against Piracy, as a result Kosovo is no longer behind the countries of the region in fighting physical piracy.

Working closely with the national responsible institutions, namely members of the Task Force and the National Council on Intellectual Property in order to strengthen the cooperation;
Cooperating with sister offices in the region and beyond. It is good to mention the excellent cooperation with the Albanian Copyright Office.

Establishing excellent relations with representatives of the EU Office in Kosovo and the projects supported by the EU on strengthening the IPR system in Kosovo.

This Handbook has been prepared and published by OCRR. It presents an overview of the rights granted to the rightholders, their functionality and purpose, it analyses the subject matter of the protection, as well as issues related to collective management and exploitation, while it explains enforcement. The purpose of the Handbook is to answer to basic legal question related to the field and make notions and concepts related to Copyright and Related matters clear to users of copyrighted works.

Small and Medium enterprises (SMEs) are specifically aimed by the present manual as SMEs play a central role in the economy of Kosovo. A special chapter is dedicated to SMEs. They are a major source of entrepreneurial skills, innovation and employment. They are confronted with Copyright issues because they use copyright-protected works or because some of their activities or products are under copyright protection. For instance, the software they use, the content of their website, the manuals for the function of their products, the catalogue of their products, the promotional design of them, all fall under copyright protection. SMEs could be rightholders, or even authors in some cases, producers or distributors of copyright protected works.

DEFINING INTELLECTUAL PROPERTY LAW

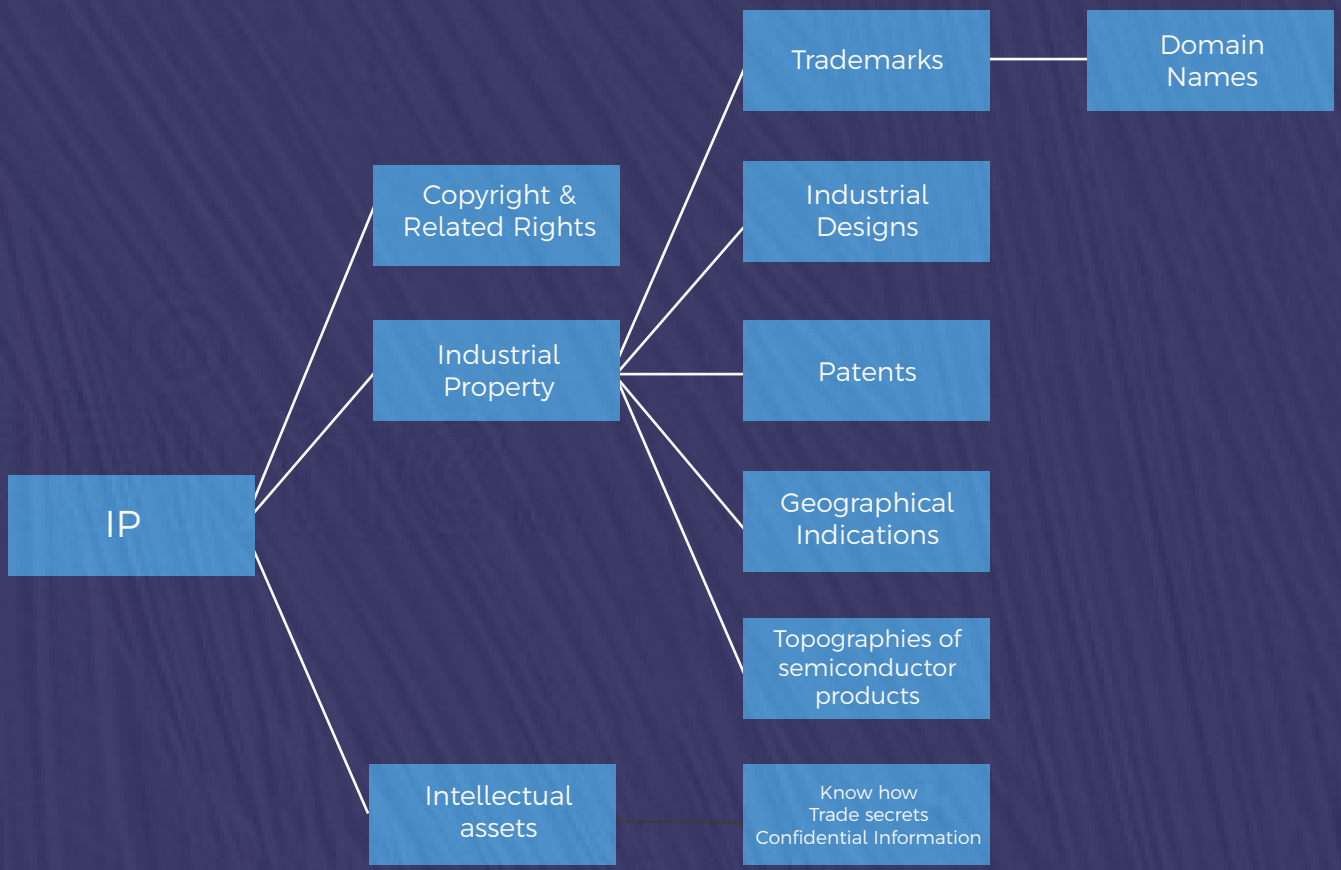
WHAT IS INTELLECTUAL PROPERTY?

Creations of the human mind are protected by Intellectual Property (IP) Law. The most important feature of IP Law is that it confers a monopolistic power to the rightholders; this means that the rightholders have the right to exclude any third party from using and exploiting the protected creation of mind and decide if and under which circumstances they will authorize the use and exploitation of the work.

Often people confuse the notion of IP Law with Copyright Law. In reality, IP is the general legal term used in the Law to describe Copyright Law and Industrial Property Law. Copyright refers to artistic and literary creations, while industrial property includes trademarks, patents which are granted for inventions, industrial designs (designs), domain names, geographical indications and Protected Designations of Origin (PDO), semiconductor product topographies and new plant varieties. Commercial and industrial secrets, know-how and unfair competition are also considered to be "satellite" right of Intellectual Property rights, in the sense that although they are not part of IP Law, their subject matter is protected for similar reasons.

IP rights (IPRs) are the rights granted by the legislator to the creators of works, inventions, trademarks, etc. to enable them to exploit their creations exclusively (i.e. excluding third parties who have not been authorized for such use). IPRs, due to their absolute and exclusive nature, are very similar to ownership. Their main feature and their main difference with property is that intellectual property rights (IPRs) are intangible and this is the reason they need to be treated differently than tangible property

Schematically intellectual property law may be presented as follows:



In the present Handbook we will focus and analyse only Copyright.

UNDERSTANDING COPYRIGHT AND RELATED RIGHTS

COPYRIGHT

WHAT IS COPYRIGHT?

Copyright is the protection granted to authors by the law giving them the right to control their creative work. A copyright law is based on the conviction that the authors of creative works deserve reasonable compensation and the right to control the use of their creations.

WHY DO WE NEED COPYRIGHT?

Copyright promotes the creation of works in the field of literature, art and science by attributing to authors absolute and exclusive rights on their works for limited time. But why is it so important to attribute economic and moral rights to the author? The answer is that the author must be rewarded for his/her work and people want the author to continue its creative activity. In the long term, it is the culture that is reinforced and-in the end- the citizens of the country. At the same time, Copyright encourages investment in artistic creations.

At the same time Copyright has boundaries that guarantee that the public will have access to works and will benefit from them.

Today, due to the fact that Copyright applies to works that affect innovation, it is considered that the exclusive and absolute nature of Copyright encourages natural and legal persons to invest to the creation of innovative works. At the same time, Copyright material, being a property right, it is an asset to the proprietor.

SOME INTERESTING HISTORICAL INFORMATION

Historically, Copyright Law is linked with the technological progress. Indeed, technology has contributed to the establishment of Copyright Law. In addition, in the theory of Copyright Law the invention of typography is considered to be a milestone of the field as it lead to the recognition of the so called “privileges” which were granted by the state authorities initially to printers and publishers-booksellers and later to authors. The privileges, however, were in addition to a mechanism of protection of the professional interests of the publishers, primarily a mechanism of censorship.

The whole cultural and philosophical stream of this period, along with the technological achievements, lead to the recognition of Copyright Law. Copyright Act of 1709 of the UK, was the first Act ever introducing Copyright Law in the legal system. This law gave authors the exclusive right to publish their books for 21 or 14 years depending on whether or not the books had already been published. The first complete legislation, however, comes in France just after the French Revolution. The Law of 1791 establishes the exclusive right of creators to perform their theatrical and musical works, while the Law of 1793, establishes the exclusive right of reproduction.

WORK

WHAT IS A WORK ?

Copyright protects works of science, in the field of literature, art or science created by an author, a physical person who is at the origin of the work. The protected works are listed in the law as follows:

(a) literary works (expressed in writing or orally, including computer programs);

(b) dramatic and dramatico-musical works,

(c) musical works, with or without words;

(d) choreographic works and entertainment in dumb show;

(e) cinematographic works and other audio-visual works;

(f) works of fine arts (paintings, drawings, sculptures, etc.) ;

(g) works of architecture;

(h) photographic works, including works expressed by any process analogous to photography;

(i) works of applied art;

(j)maps, plans, sketches and three-dimensional works relating to geography, topography, architecture and other science.

On the other hand, the following are not protected by copyright:

(a) ideas, procedures, methods of operation or mathematical concepts as such (but only to their original expressions);

(b) expressions of folklore;

(c) news of the day, mere facts and data as such (but only to their original presentation); different information that have the character of ordinary media reports can be reproduced only after at least twelve (12) hours have elapsed from their publication.

WHICH ARE THE CONDITIONS FOR THE PROTECTION OF A WORK?

In order for a work to be protected, it must be original, that is, it must present statistical uniqueness and must reflect the personality of its creator. Originality resides in the expression of the author's personality, the intimate link between the author and his work, the personal imprint; the work must present a certain level of creativity.

Simple ideas are not protected; are protected only works that have been formed and externalized (detached from the author's mind), under the condition that they are original. Originality should not be confused with novelty; a painter could paint the same landscape painted by another painter, but what matter is to express himself/herself, set on the work his/her personal imprint.
What is interesting to note is that a creation that fulfills the criteria above is protected independently of the form it has acquired or its duration in time. That means that a sculpture on ice can be protected by Copyright Law, as long as it fulfils the notion of originality. It is sufficient that the original creation has taken a specific form and has been externalized in the world; its persistence through time is not a condition for its protection.

HOW CAN COPYRIGHT BE OBTAINED? ARE THERE ANY FORMALITIES?

It is a universally accepted principle that the protection of author's rights flows automatically from the act of creation and does not depend on any formality. In that respect copyright differs considerably from other forms of intellectual property protection, such as patents and trademarks. The Berne Convention provides that copyright protection may not be conditioned on compliance with any formality, such as registration or deposit of copies.
Although mandatory registration has been abolished almost everywhere, many national laws provide for a system of voluntary registration of works by the national copyright administration or similar body. Such registration can serve as valuable prima facie evidence in legal disputes.

WHAT IS AN AUTHOR?

The Berne Convention which the fundamental international treaty for protection of copyright gives member countries flexibility in determining who is considered as an author (and therefore the original copyright holder) of a literary and artistic work. The majority of civil law countries provide that only natural persons can be authors. According to Kosovo's Copyright Law an author is the physical person who has created the work.
Copyright in a work which is the result of joint creative efforts of two or more authors shall belong jointly to such authors (co-authors) regardless of its structure. The right to use the work as a whole belongs to co-authors jointly. Relations between the co-authors are regulated by a contract between them. In the absence of such a contract, the co-authors shall enjoy jointly the copyright in the work, and the corresponding remuneration shall be divided between them, proportionately to their contributions, provided that they can be determined. Where the contributions of the co-authors cannot be determined, the remuneration shall be divided in equal shares.

In order to use a work created by a plurality of authors, authorisaztion is needed from all rightsholders.

Presumptions of authorship are provided for in the Copyright Law for persons whose name appear on the work or whose name is mentioned at the moment of disclosure of the work. These persons shall be deemed to be the authors unless proved otherwise.

WHAT DOES RIGHTSHOLDER MEANS?

'Rightsholder' is any person or entity that holds the rights established in Copyright and Related Rights Law or, under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue. This could be the author or the related rightholder or it could also be the person who acquired legally (contract or heritage) said rights, i.e. the successor.

When the author has transferred the rights on the work to another person or entity, this secondary holder of Copyright is not the author; this person only holder the rights. Therefore, this person is the rightsholder.
As it will be analysed below, only natural persons can be authors. Entities can only be transferred the rights or-in some cases-they can be presumed as being transferred the rights.

This is important for the user for the following reason:

Imagine that you want to use a musical work for the advertisement of your business. You might know the author of the lyrics, or the author of the music, or the singer but these persons are not necessarily the rightsholders who will authorize the use of the musical work. These persons will most probably have transferred their rights to the producer or may be members of a CMO (these issues will be analysed in detail below).

EMPLOYEES AND COPYRIGHT

Where a work is created by an employee in the execution of his employment duties following the instructions given by his employer, unless otherwise provided by contract, the employer shall be entitled to exercise the economic rights in the work so created, for a period of ten (10) years, from the completion of the work. This would be the case only where the work is used within the field of the employer's normal activities foreseen at the time of the agreement concerning the author's duties.

The rights will be returned to the employed author before the completion of such term, in case of employer's death, respectively in case of employer's liquidation as a legal person. If the employer does not use the property rights on that work, or uses them in a negligible manner, the employed author has the right to ask from the employer to assign those rights to him, against compensation of expenses.

The employed author shall maintain copyright in respect of any work not created in the execution of his employment duties as well as of any use of a work created under his employment duties that is not covered by the employer's normal activities mentioned in paragraph.

Based on the above, an employment contract is enough for the rules above to apply. However, it is advisable to include specific clauses in the employment contract, especially if the parties (employer or employee) wish to agree on different terms or specify the terms above.

WHICH ARE THE AUTHOR'S RIGHTS?

The author enjoys certain rights in relation to the work. These are **a) the personal rights** (also called moral rights) and **b) the property rights (also called economic rights).**

The personal/moral rights express the connection the author has with his work and they are meant to protect his personality and reputation. Personal rights stay with the author even if he has assigned the exploitation of his work to a third party. In particular, the author has the right to disclose the work or authorize its disclosure in any form (right of disclosure). He has the right to have his authorship of the work recognized (right of authorship), he has the right to the protection of his work against any distortion (right to the integrity of the work) and finally he has the right to revoke his property right assigned to others if there are serious moral reasons for that, on condition that the right holder is compensated for the damage caused by such revocation of right (right of withdrawal).

The property rights offer the author economic benefits as they have commercial value. Through the use of these rights the author is compensated for his work and he is provided with resources to carry on his creative efforts. Unlike the personal rights, the property rights can be transferred and in general can be treated like property. According to the Law on Copyright the author shall have in particular the following exclusive rights to authorize or prohibit the use of his work: (a) right of reproduction, (b) right of distribution, (c) right of rental, d) right of public performance, (e) right of broadcasting, (f) right of communication to the public, (g) right of rebroadcasting, (h) right of cable retransmission, right of public communication by loudspeaker or any other analogous instrument transmitting by signs, sounds or images, the broadcast of the work, (j) right of interactive making available to the public, (k) right of translation, (l) right of adaptation (right to make a derivative work). The authors, in certain cases, shall also have an exclusive right of authorization or prohibition of lending, while in other cases they shall only have a mere right to equitable remuneration for lending.

MORAL RIGHTS	ECONOMIC RIGHTS
right of disclosure	reproduction of his work in whole or in part
right of authorship	distribution of copies of his work by any means
right to the integrity of the work	right of public performance
right of withdrawal	right of broadcasting and rebroadcasting
	right of communication to the public
	right of interactive making available to the public
	right of cable retransmission, right of public communication by loudspeaker or any other analogous instrument transmitting by signs, sounds or images, the broadcast of the work
	translation of the work
	adaptation of the work
	public lending or rental of work

Let's give an example:

Supposing that someone has written a song, i.e. a musical work, with lyrics. The moment the author completes the work Copyright is born.

Authorship right (pertaining in the family of moral rights) gives the author the power to exclude anyone from saying that he/she is the author. The author is the one who is going to decide if and when the song will be published (right of disclosure, moral right); no one else has this power but the author. The moment the work is disclosed, the author's economic rights are activated; the economic rights are linked to the exploitation of the work.

To exploit the work the author may address to a producer (contracting with the producer) who will release the work (or you may do it the author himself, so you the author will be the producer). The exploitation may include exploitation through a physical carrier or through the Internet. Exploitation as a physical carrier, means that the producer will have to reproduce the work (in several physical carriers) and then distribute these physical carriers, i.e. sell them, to the public. It is possible that physical carriers are used to be rented or lent; these are different economic rights. Distribution, rental and lending presuppose that a reproduction has already taken place; in addition, these rights apply only in the off-line environment.

Having released the work, the author/rightsholder (rightsholder if the rights have been transferred) will certainly opt for its presentation or performance of the work in the public, and in general communication of the work to the public by broadcast. This means that the work will be played by radios, or maybe TV (broadcasting right) and probably will be performed in bars (public performance right). The broadcasting may happen not only through terrestrial signals (traditional TV), but also through satellite or cable, which are different rights.

Taking into consideration that we are living in the Internet era, the author will most probably opt for the exploitation of the work over the Internet through third parties' platforms or through the author's own website. There, the work will be available on demand, meaning that anyone from the public may receive the song whenever he/she wishes to (imagine for example YouTube); in this case the author will be making available your song in an interactive way (which is also an economic right). In some cases, the song will be available for downloading; such downloading falls under the reproduction right.

Now, let's suppose that the author's song is a big success, and an Italian artist wants to translate the lyrics in Italian and adapt the music in a more Italian rhythm. In this case, the artist will have to ask permission for translation and adaptation of the work (both economic rights). If the Italian proceeds without permission, he/she will be infringing your moral and economic rights. This means that if the song is translated and adapted without permission, apart for the economic right (adaptation, translation, reproduction and most probably communication to the public and making available right if the Italian artist publish it on the internet, or broadcasting right if it is played on the TV or radio), the right of integrity will have also be infringed (because the song will be distorted without your permission).

You should keep in mind that the author may have transferred his/her rights to a third person. In this case it is the third person that will be deciding on the economic rights (exploitation) of the work. If the rights have been transferred any exploitation of the work should be authorized by the rightsholder, and in some cases by the author (in relation to his/her moral rights if the use asked for affects the moral rights of the author, such as the integrity rights).

Now let's see what the above mean for a user.

Let's suppose that you want to use this song in the advertisement of your business. You will need authorization from the author/rightsholder; you cannot use it without authorization (if you do, you will be infringing Copyright and related rights law and you will be liable for civil and penal sanction).

Your advertisement will be released on radio, TV and Internet, because you want it to be environment friendly. You will sick authorization from the rightsholders (who are rightsholder will be explained below). For which rights will you ask permission?

- Since the advertisement will be an audiovisual work, you will need to synchronize the song to the image. This means that you will need to reproduce the song in the audiovisual work.
- If you need the lyrics of the song to be changed for your advertisement you will need authorisaton for adaptation from the rightsholder and permission from the author for his moral rights (moral rights always stay with the author, see analysis on moral rights).
- If you decide to make a CD to give it to your clients with your advertisement you will need authorization for distributing the work.
- For the broadcasting of the work on Radio or TV you will need authorization for broadcasting the work.
- If your advertisement is on the Internet you will need authorization for communicating to the public, including for making it available on demand, as the advertisement may be played on (ex. on YouTube or even your site).

What if you wish to use in your advertisement the Italian song and not the original one? Well in this case, you will need authorization not only from the author for the moral rights, but also from the rightsholder of the Italian song. But be extra careful: it is highly possible that the rightsholder of the Italian song may not be entitled to authorise all the above, because the rightsholder may still hold the economic rights. You must be very diligent and check who holds the rights. Always ask from the rightsholder of the adaptation (derivative work) to guarantee that he/she is entitled to authorize the use of the work.

WHICH ARE THE BOUNDARIES OF COPYRIGHT LAW?

Copyright is an absolute and exclusive right, which is characterized by its inherent boundaries: the originality of the work, the limited term of protection of the author's rights and the exceptions and limitations to the author's rights.

In addition, as explained above, Copyright does not protect ideas. This means that two persons may have the same idea to paint a ball full of fruits, but the result will be different. Or, two persons may have the same idea to write a story about five friends who meet regularly and are a bit goofy, but they cannot copy the story of "Friends" without permission of the rightholder.

We frequently refer to the expression / idea dichotomy. This means that the idea may be the same for two authors, but the expression of the idea (i.e. the result) will be different. Two painters sitting at the same moment in front of the same landscape: they see the same subject, but they express it differently.

ARE FOREIGNERS AUTHORS PROTECTED IN KOSOVO?

Copyright has a territorial nature. This means that authors are protected in their national territory. However, Kosovo's legislation, following the example of all related International Conventions and the EU legislation, contains a national treatment clause, which means that foreigners and nationals must be treated equally.

CAN ECONOMIC AND MORAL RIGHTS BE TRANSFERRED?

The author may transfer economic rights to a third party.

In our example above, if the rightsholder authorizes you to use the work in the advertisement you will be granted these rights.

The economic rights and other rights which run after the death of the author, shall be transferred in accordance with the provisions on inheritance.
Moral rights being personal to the author can never be transferred by assignment or license. However, the consent by an author for performing an act which otherwise may violate his right of integrity shall be regarded as a way of exercising that right, and it shall bind him.

In our example, this means that if you are authorized by the rightsholder to use the work to the advertisement you will be granted these rights by the rightsholder but if the rightsholder is not the author you will need authorization from the author to make sure that he does not consider his rights infringed.

The right to claim authorship and to be named and the right of integrity moral rights of authors shall be protected without any time limit. After the death of the author, the protection of these rights shall be assumed by the physical person or legal entity entrusted with this by the author in his will; in the absence of such person or legal entity, by the heirs of the authors, and also in the absence of heirs, by any organizations assuming the defense of authors' rights.

RELATED RIGHTS

WHAT DOES RELATED RIGHTS MEAN?

Apart from copyright, there some other rights which are related to copyright called related rights because they are associated or ancillary to the rights of an author, but they are not the result of a creation itself. They are connected to copyright in the sense that the contribution of related rightholders is necessary either to complete the work or to permit the public to reach the work. These right holders are the: performers (e.g. singers, actors), phonogram producers (e.g. record companies) film producers, broadcasting entities (e.g. TV channels) and press publishers. .

Let's get back to our example:
The song that you want to use (either unaltered or adapted), will be sung by a performer/singer. The music will be played by the musicians and the phonogram will be produced by the phonogram producer. The singer, the musician and the producer are related rightholders.
The radio will broadcast the song, as the broadcasting organization (again related rightholder).
Thus, the public accesses the work created by the author(s) of the music and the lyrics.
To use the song, you will need authorization not only from the rightsholder of the author's rights but also by the related rights holders.

WHY DO WE NEED RELATED RIGHTS? - JUSTIFICATION

Performers' contribution is considered to be of a creative nature while, at the same time the performance is very important for the mere existence of the work; however, they are not creations.

Producers and Broadcasting organizations are protected for their investment; it is important to remember today that producers and broadcasting organisations continue to invest to cultural creations (which is rare in the Internet times) and for this reason their contribution should be rewarded

WHICH ARE THE ECONOMIC RIGHTS OF RELATED RIGHTS' RITGHOLDERS?

The related rightholders do not enjoy the same economic rights, although some of them coincide.

Performers are granted the following rights:
(a) fixation of their unfixed performances, **(b)** reproduction of the fixations of their performances, **(c)** distribution of the fixations of their performances, **(d)** rental of the fixations of their performances, **(e)** lending of the fixations of their performances, (f) broadcasting of their performances, except for the cases where a performance has been previously fixed or broadcast, **(g)** communication to the public of their performances, except for the cases where a performance has been previously fixed or broadcast, **(h)** cable retransmission of their performances, **(i)** interactive making available of the fixations of their performances.
However, when performers participate in a phonogram published for commercial purposes, they cannot authorize or prohibit the communication of the phonogram to the public, or its rental. For these uses of the phonogram, performers may only claim equitable remuneration though a CMO.

Phonogram producers have the exclusive right to allow or prohibit:
(a) reproduction of its phonograms, **(b)** distribution of its phonograms, **(c)** rental and public lending of their phonograms, **(d)** cable retransmission of their phonograms, **(e)** interactive making available of their phonograms.

When a phonogram is published for commercial purposes, the producer cannot authorize or prohibit the communication of the phonogram to the public. For this use of the phonogram, producers may only claim equitable remuneration though a CMO.
Film producers have the exclusive right to allow or prohibit: (a) reproduction of their films, (b) distribution of their films, (c) rental and public lending of copies of their films, (d) interactive making available to the public of their films.

An audiovisual media service (or broadcasting organization) has the right of:
(a) fixation of their broadcasts, **(b)** reproduction of the fixations of their broadcasts, **(c)** distribution of the fixations of their broadcasts, **(d)** rebroadcasting of their broadcasts, **(e)** cable retransmission of their broadcasts, **(f)** communication of their broadcasts to the public in places to the admission to which a charge is made, **(g)** interactive making available to the public of the fixations of their broadcast.

DO RELATED RIGHTHOLDERS HAVE MORAL RIGHTS?

From the related rightholders, only performers have moral rights. More specifically, performers have the exclusive right a) to have their name, alias or mark shown when their performance is used and b) to oppose any disfiguration, deformity or use of the performance, which would, hurt their honor and fame.
The producers and the broadcasting organisations do not enjoy such moral rights; this is logical because what is protected in the case of producers and broadcasting organisations is their investment. They have no creative contribution. In addition, in most cases they are not physical persons but companies.

CAN A RELATED RIGHTHOLDER TRANSFER HIS/HER RIGHTS?

The related rightholder may transfer economic rights to a third party. Performers' rights can also be inherited, as in the authors' case.

In our example above, until the singer of your song, i.e. the performer will authorize the use of his performance in the advertisement.

In some cases, the law foresees that there has been a transfer even when this has not actually happened. This is what the law calls presumption of transfer and is foreseen when for example the performer enters into contract with a producer for a film production.

COMMON PROVISIONS FOR COPYRIGHT AND RELATED RIGHTS

FOR HOW LONG IS COPYRIGHT AND RELATED RIGHTS PROTECTION GRANTED?

The protection of a creative work through copyright does not last forever. Protection granted upon creation of the work, is lasting throughout the lifetime of the author and 70 years after his death. After this period the creative work falls into public domain and can be used by the public in new ways. However, the author's personal rights, those that protect his connection to the work, his personality and reputation are protected without limitation in time. The rights of disclosure and withdrawal run for the life of the author. This limited in time protection is one of the main characteristics of Copyright Law differentiating it from tangible Property which lasts for ever.

Related rights are protected as follows:

the performer's right last 50 years from the performance of the work and 70 years in the case of musical works

the producer of phonograms or audiovisual works expire 70 and 50 years respectively from the fixation of the work

the broadcasting organizations right expire 50 years from the communication of the program.

In our example, this means that if you want to use a musical work whose author(s) [plural because music and lyrics are most probably created by different persons) died in 1950, you do not need authorization by the author(s). Be careful though because the personal rights persist in time and are protected forever. Therefore, the use of the preexisting music must not be made in a way that may offend the author(s).

TYPE OF RIGHT	DURATION
Author's economic rights	From creation until 70 years from the author's death
Author's right of paternity and right of integrity	Without limitation in time
Author's rights of disclosure and withdrawal	For the life of the author
Performer of musical works	70 years from the interpretation
Performer of audiovisual works	50 years from the interpretation
Producer of phonograms	70 years from the fixation
Performer of Producer of films musical works	50 years from the fixation
Broadcasting organization	50 years from the communication of the program.

RESPECT OF PREEXISTING WORKS

Translators and the authors of other derivative works shall enjoy copyright in the translations, adaptations, arrangements or other transformations made by them.

A translation or other derivative work may only be created if the author of the original work authorizes it. The copyright of a translator or the author of other derivative work shall not prejudice the rights of the author of the original work that has been translated, adapted, arranged or otherwise transformed.

It is also important to respect the moral rights of the author's of preexisting works that you integrate in your own creations. If you find some interesting content at the office of your colleague, you are obliged to request his authorization, if you want to use it. You must indicate his name and the source when you use his work either by presenting to the public or reproducing it. The author of preexisting work could for example prohibit you to reproduce in your work an extract of his film without the sound. Or use his work in a work that denies the holocaust for example.

If, for example you want to create a new song, but using lines of a preexisting poem that you love, you need authorization. Now, in case of literary works, you always must keep in mind that it is highly possible that all or some rights have been transferred to an editor. This is why you need to ask the author of the preexisting work who holds the rights and ask either the author or the one who was transferred the rights (example the editor) to guarantee that he/she is indeed the rightholder. This goes for the economic rights.

As far as the moral rights are concerned, you need to ask authorization by the author himself/herself, because, as we explained, the moral rights always stay with the author. It is therefore advisable, if you want to use a preexisting work, to ask permission for the moral rights by the author, describing the way you will use the preexisting works. Otherwise, you risk being found to infringe the right of the integrity right of the author. Also make sure to give credit to the author of the preexisting work, i.e. mention his name.

USES BY USERS

USES BY USERS WITHOUT AUTHORISATION

EXCEPTIONS AND LIMITATIONS

If you are considering to use a preexisting work still under protection in order to create a new one, you should acquire permission from its rightholders. In some cases, however, the law permits the use without the need to have authorization. This is the case when the use falls under an exception or limitation foressen by the Law.

More specifically, in order to find a fair balance between the interests of the public in access to information and knowledge and the exclusive rights of the author, copyright protection is subject to limitations and exceptions.

The two basic forms of exceptions and limitations are:
- free use, i.e. use the work without authorization and compensation; and
- non-voluntary or compulsory licenses, which means that a compensation is paid to the rightholder for non-authorized exploitation.

Non voluntary or compulsory license is the case of the private use exception/limitation of copyrighted work, such as the home recording or reproduction for private use, for which no authorization is given. Where this principle applies, authors and other right holders receive usually a fair or equitable remuneration which is based on a levy on blank recording devices or equipment distributed to authors and right holders through collective management societies.

Exceptions and limitations are only applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder. This is the principle of the three-step test provided also by the Berne Convention the TRIPS Agreement and the WIPO Internet Treaties, as well as the Beijing and Marrakesh Treaties.

The Kosovo's Copyright Law provides in certain cases free use of a work which means the use of a work without the consent of the author and without remuneration but with obligatory mention of the author's name and the origin of the work, provided it does not prejudice the normal exploitation of the work and legitimate interests of the author. The permitted free uses concern: (a) short quotations in another work for purposes such as criticism or review, (b) use of works by way of illustration in publications, broadcast or sound or visual recordings for teaching or scientific research at all levels, (c) use of published works for public performance in school celebrations on condition that the performers are not compensated for such interpretation, (d) the digital use of works and other subject matter, on certain conditions, (e) reproduction and distribution by the press, broadcasting, communication to the public or interactive making available to the public of published articles on current economic, political or religious topics or of broadcast works or other subject matter of the same character, (f) use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose, (g) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose, (h) use for the purposes of public security or to ensure the proper performance and reporting of parliamentary, administrative or judiciary proceedings, (i) ephemeral recordings of works made by broadcasting organizations by means of their own facilities and for their own broadcasts on the understanding that such recordings shall be erased or destroyed after twelve (12) months, with the exception of those that have

exceptional documentary character, which may be preserved in official State archives, (j) use, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability, (k) use during religious celebrations or official celebrations organized by a public authority, (l) use of works, such as works of architecture or sculpture, made to be located permanently in public places, (m) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use, (n) use for the purpose of caricature or parody, (o) use in connection with the demonstration or repair of equipment, (p) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of recon¬structing the building, (q) use by communication or interactive making available to the public, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments which are accessible to the public, of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections, (r) to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation, for cultural heritage institutions.

It is also permitted without the consent of the author or other holder of copyright, but against the payment of equitable remuneration the reproduction of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons.

Temporary acts of reproduction shall be permitted without the consent of the author or other owner of copyright and without the payment of remuneration provided that they correspond to all of the following criteria: (a) they are transient or incidental, (b) they are integral and essential part of a technological process, (c) their sole purpose is to enable a transmission in a network between third parties by an intermediary; or a lawful use of a work, and (d) they have no independent economic significance.

The reproduction of a lawfully published work is permitted without the consent of the author, but against the payment of an equitable remuneration, if it is made by a natural person for his own exclusive personal and private use and for purposes that are neither directly nor indirectly commercial.

Reprographic reproduction by means of photocopying is also provided for in the law regarding specific cases, such as by libraries and archives, educational and cultural institutions for the purpose or restoring or substituting the lost or damaged copies, for a library or archive that is not for direct or indirect economic or commercial advantage, to meet the needs of physical persons who are to use the copy so obtained for the purpose of private study or non-commercial research; for teaching establishment, in a number copies needed for illustration in classrooms.

Text and data mining for the purposes of scientific research or on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online is another permissible exception.

Finally, the Copyright Law provides for certain permitted uses of orphan works for publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organizations, established in the

Republic of Kosovo, in order to achieve aims related to their public-interest missions as well as for use of out-of-commerce works and other subject matter by cultural heritage institutions.

Persons with a visual impairment or reading disability may reproduce, for their personal use, published literary works which are available in text or in audio format as well as graphic recordings of musical works, or may have them reproduced, in order that they may be converted into an accessible format. This authorisation also encompasses illustrations of all kinds which are contained within literary or musical works. Copies may only be produced of works to which persons with a visual impairment or reading disability have lawful access.

No acts shall require the authorization by the author or other owner of copyright where it is necessary for the use of a computer program or a database by the lawful acquirer thereof, in accordance with its intended purpose, including for error correction. DE compilation of computer programs is also allowed on certain conditions

WHEN THE SYMBOL © IS NOT USED DOES IT MEAN THAT THE USER CAN USE THE WORK WITHOUT AUTHORISATION?

No, the indication © is not necessary for your work to be protected. As mentioned above, a work is protected from the moment of its creation under the condition that is has taken some form and it is original. There are no formalities for the protection, no obligation to register the work in a registry.

The symbol was created by countries where protection depends on compliance with certain formalities, one of which was to include an indication that copyright had been claimed, such as by using the symbol ©. Today, the use of such symbols is no longer a legal requirement. However, this does not mean that you cannot use it. In some cases, rightholders include the symbol ©, aiming at emphasizing that that the work is protected by Copyright and that all rights are reserved.

USES (LAWFUL INTEGRATIONS) UNDER FREE LICENSE

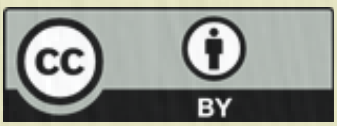
OPEN SOURCE CODE

Many developers are using open source software, meaning software that is offered for use for free to develop faster their systems.
Open source licenses were established by the free software world, but they are spreading nowadays in other areas. They are subject to the same conditions of validity as any lawful assignment of rights and create legal obligations between the parties. Unlike traditional copyright licenses that restrict the use of software, open licenses allow software to be distributed to, used and modified by as many people as possible so that everyone can adapt the software to their specific needs and make corrections himself.
The use of open source software is licensed under specific terms. Licenses are categorized into copyleft or permissive licenses. Both copyleft and permissive licenses allow users to freely copy, distribute, and change the software that use them; such open source programs are still under Copyright law; it is their contractual terms that make them different from traditional Copyright (no exclusivity etc.).

Source code licensed with Copyleft licenses (such as GLP etc.), obliges developers to use in their program (which incorporates the initial Copyleft source code) the same license; this means that the new program will be made available to third parties to copy, distribute, and modify it. Therefore, no property rights may be claimed on the newly created software which includes the preexisting open source code made available with Copyleft License.
The validity of open source licenses was initially confirmed by the Munich Court, which ruled in 2004 that the distribution of software in violation of the terms of the General Public License constituted an infringement of copyright. The decision of the Frankfurt Court of September 6, 2006 moved in the same direction. After all source code distributed with open source licenses still falls under Copyright. The clauses of the licenses under which the source code is made available, either Copyleft or permissive, should be respected. If the developer does not respect the license set for the use of the open source code there is infringement of Copyright law (contractual Copyright).

CREATIVE COMMONS – CC

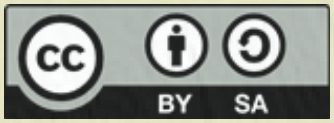
Licenses of this type move in the same direction as "open" licenses. They are model contracts that aim to permit the free use of the works on the Internet, bearing the symbol CC. These licenses allow the user proceed with specific uses of the work, following the terms set by the rightholders. Users do not have to request permission for the use of CC works. The validity of CC licenses has been confirmed by Spanish and Dutch courts.
The aim of CC is to create a new conventional public sector, the creation of common goods based on the licenses provided by the authors themselves. In this way the content of the pre-existing works can be accessed and used by everyone, end user or authors permitting the creation of derivative works within the remix culture. These licenses are considered more liberal and provide flexibility and aim at the mass dissemination and circulation of works.
CC licenses are the intermediate solution: copyrights are protected, the distribution of works and their re-use is allowed but only within the limits chosen by the creator himself. It is therefore another individual exercise of the right based on the logic of sharing and reusing works and not on the logic of absolute control of access to them.
CC are legally binding contracts; they are irrevocable and of world power. Each license consists of three functional levels: a) readable by everyone that contains a summary of the basic terms of the license (Commons Deed), b) legal text that includes the contractual terms of the license (Legal Code) and c) machine-form that contains metadata and enables the identification of works that are digitally available with CC licenses from search engines (Meta Data).
There are six different license types, listed from most to least permissive here:



CC BY: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use.

CC BY includes the following elements:

BY  Credit must be given to the creator



CC BY-SA: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.

CC BY includes the following elements:

BY Credit must be given to the creator

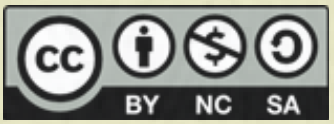
SA Adaptations must be shared under the same terms

CC BY-NC: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator.

CC BY It includes the following elements:

BY Credit must be given to the creator

NC Only noncommercial uses of the work are permitted



CC BY-NC-SA: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.

CC BY-NC-SA includes the following elements:

BY Credit must be given to the creator

NC Only noncommercial uses of the work are permitted

SA Adaptations must be shared under the same terms

CC BY-ND: This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, and only so long as attribution is given to the creator. The license allows for commercial use.

CC BY-ND includes the following elements:

BY Credit must be given to the creator

ND No derivatives or adaptations of the work are permitted

CC BY-NC-ND: This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, for non-commercial purposes only, and only so long as attribution is given to the creator.

CC BY-NC-ND includes the following elements:

BY Credit must be given to the creator

NC Only noncommercial uses of the work are permitted

ND No derivatives or adaptations of the work are permitted

WHAT IF I USE W WORK THAT I FIND ON THE INTERNET? ISN'T THIS FREE OF RIGHTS?

You should not consider that works found on the Internet (for example a photograph) can be used without authorization. If there is no indication in relation to the use of the work, you should not use it. Check the terms of use of the site to examine if there is such possibility. If you take the work and use it without authorization, the rightsholder may appear and claim damages for infringement. Only if there is an indication like CC or of any kind describing the possible use, should you use the work, respecting the specific conditions set by the right-sholders. You should always be cautious when using works from the Internet, because, even if there is an indication of permission, you cannot be sure that the one who has set the con-ditions for the use (contract) is the rightsholder.

It is however permitted to set a hyperlink to these works, if they have been published on the internet for free.

In our example, let's suppose that you want to disseminate your advertisment through your site. Does this mean that anyone can take it from your site and use it, for example in a commercial? Of course not. You need to authorize this use.

Or in reverse, let's suppose that you read on a platform a poem that you loved, and you want to make music for it. You cannot use the lyrics without authorization by the author, you need to reach him/her and ask permission.

USE OF WORKS COLLECTIVELY MANAGED BY THE RIGHTHJOLDERS

COLLECTIVE MANAGEMENT

Though individual management is a possibility, some economical rights cannot be managed individually; for some forms of exploitation, it is impossible, in practice, to organize a direct contractual relationship between the beneficiaries and the user, because of the large quantity and dispersion of rightsholders and users, and the very short interval between the decision to use a work and the actual use, is not allowing the user to identify the beneficiaries and to conclude an agreement with them. Among the forms of exploitation, corresponding to the economic rights of the authors and related rights owners, with the above-mentioned characteristics are:

- broadcasting and public performance of musical works,
- cable retransmission of works, performances and other related products,
- copying for private use of musical, audio-visual and sound works or related rights products, (phonograms, videograms etc.),
- reprography and
- public lending.

In these cases, collective management proves to be the best way and, in fact, the only possible way to safeguard rightsholders rights and permit the effective exploitation of the economic rights. In such a system, rights holders authorize or grant a mandate to CMOs in order to administer and manage their rights. Thus, collective management should include among other activities: negotiations with users for establishing tariffs, granting users authorizations for the use of the works and other related products, monitoring the use of the works and other related products or the use of the economic rights managed by the CMOs for their members and rightsholders, assuring the fulfilling of these rights, collect the royalties from the users, distribute and pay the royalties to rightsholders, members of CMOs.

Taking into consideration that the rightsholders have different needs and face different challenges depending on their field of activity (for example music or audio-visual), CMOs represent rightsholders of specific categories of works. Furthermore, usually CMOs represent one specific category of rightsholders (for example authors or performers or producers), while in some cases specific economical rights (for example only public performance or only reproduction right for specific category of works).
The establishment of CMOs is beneficial for users as well. Negotiating with each user would increase the costs for the use of a work. The CMO does not negotiate the royalty on an individual basis, but license according to a joint tariff for all right holders of the same category. The CMO authorizes the use by way of a license covering all right holders (a blanket license), and distributes the incoming royalty individually to the right holders.

In addition, CMOs make it easier for users to identify the rightholders, by publishing the list with their members; this way the user knows where to address to get authorization, or at least information on the licensing of a specific work.
On July 12th, 2012 a very significant step for the protection of copyright was undertaken in Kosovo. Two associations for collective administration of copyright, APIK - for the field of music and VAPIK-for the audiovisual field, have already obtained the license from the OCRR, in order to administrate these rights, by negotiating with the users.

BENEFITS OF COLLECTIVE MANAGEMENT

In order to establish a well-functioning copyright environment, the legislation must provide users easy access to obtain a license for copyright material. Collective management is justified where getting licenses due to the number and other circumstances of uses, is impossible or impracticable, such as public performance or broadcasting. In particular, it will be impossible for the radio station to negotiate directly with all involved composers all around the world. It benefits the radio stations because they can obtain worldwide license at one single point. For the composer it is impossible to monitor the airplay all over the world of his or hers hit-melody.

So in case of mass uses like broadcasting, individual rights management will be both costly and almost impossible. CMOs establish user-friendly licensing systems – easy access to world-wide repertoire, convenience – at a fair price. They inform of the value of music and films the customers and provide services to the customers in relation to usage of music and films, in bars, restaurants, hotels TV and radio stations.

Collective management is more often considered as a means for securing that the rights holders receive the economic benefit for their creative work intended by the legislation.

Let's see an example:

You are an owner of a bar. Music is essential for your business. The CMO will license the use and you will be able to play the songs in your bar legally, at least for the repertoire of the CMO, i.e. the rightholders who are members of the CMO.

Or, to get back to our principle example, synchonising the song with the advertisement means that you need to be licensed for the specific use. If the CMO has been granted this specific right then it is from the CMO that you will seek license.

.

HOW COLLECTIVE MANAGEMENT OF THE RIGHTS WORKS?

In case of collective management, the right holder still owns the copyright but the management is transferred to another legal entity, a non-profit or not for profit organization. The CMO does not negotiate the royalty on an individual basis, but license according to a joint tariff for all right holders of the same category. The CMO authorizes the use by way of a license covering all right holders (a blanket license) and distributes the incoming royalty individually to the right holders. The right holder no longer has a direct claim against the individual user, but the right holder has a claim against the CMO for a payment. The distribution rules shall reflect the specific individual rights being used and paid for in order for an individual payment to each right holder.

The seven steps of collective management:

- The right holders transfer their rights to or authorize the CMO to manage their rights under the national legislation
- The CMO register the right holders and their works and performances in databases in order to establish the basis for individual distribution
- The CMO negotiates the payment with the users and license the usage
- The CMO collects the payments on behalf of the right holders
- The CMO monitors the use of the works
- The CMO distributes individually the income on basis of the actual use of the works and pays out to the individual right holder in accordance with the distribution plan
- The CMO signs reciprocal agreements with similar CMOs abroad and transfer payments across the borders.

WHO ARE THE 'USERS' AND WHICH OBLIGATIONS DO THEY HAVE?

Users are physical or legal persons, businesses that use and exploit a work in any possible way. The users establish agreements with the Collective Management Organisations, in case of a public performance of the work. When a copyright protected creative work is used or copied without the permission of the rights holder we call this action copyright infringement.

GENERAL PRINCIPLES FOR DEFINING WHETHER A TARIFF IS REASONABLE

There are two basic forms of tariffs:

A percentage of the receipts from the use of the works or other subject matter. It mainly applies to uses related to the main activities of users, such as theatre performances, concerts, publications.

A lump sum payment is typical for uses not belonging to the users' principal activities.

For tariffs expressed in percentages, internationally accepted standards exist (usually 10% rule). Lump sums are fixed on the basis of specific factors which differ from country to country but there are generally accepted principles of calculation, except reprography and private copying levies.

WHAT IF THE USERS AND COLLECTIVE MANAGEMENT ORGANISATIONS DISAGREE ON THE TARIFFS?

Collective associations and representatives of users may propose on a basis of a mediation agreement, mediation in a dispute concerning the agreement for the definition of the general fees. The parties shall jointly choose the mediator from the list of mediators appointed by the Office of Copyright and Related Rights.

SUPERVISION OF COLLECTIVE MANAGEMENT ORGANISATIONS

The supervision of the collecting societies in Kosovo is one of the competencies of the Office of Copyright and Related Rights. The supervision of collecting societies implies the control of CMOs at the stage of constitution and at the stage of functioning. The administrative control of the operations of CMOs is justified by the protection of general interest.

For the purposes of such supervision, collective management organizations shall be submitted to the Office: their statues and regulations, as well as any amendments thereof; their bilateral and multilateral contracts concluded with foreign collective management organizations; information on the persons empowered to represent them; decisions of their highest governing bodies (such as their General Assembly); their annual report and balance; reports of both internal and external auditing of their activities; any other documents indispensable to verify the compliance of the activities of the organizations with this Law and other relevant laws of the Republic of Kosovo or their own statutes.

The Office shall review the activities of collective management organizations once a year. However, the Office may also carry out a specific review between two regular annual reviews if it obtains information – from the members of the organization, from other owners of rights, from users or from any other relevant sources – on the basis of which reasonable doubts may emerge whether the activities of the organization is in accordance with the provisions of this Law and other relevant laws of the Republic of Kosovo or its own statutes.

The Office shall prepare a report of the results of each review and the highest governing body of the collective management organization (such as its General Assembly) shall be obligated to include the report on the agenda of its next session, to discuss it, and to inform the Office about outcome of the discussion and any measures taken.

Where the Office finds that the activities of a collective management organization are not in accordance with the provisions of this Law and other relevant laws of the Republic of Kosovo, or of its own statutes, it may call upon the organization to bring its activities in accordance with those provisions determining a reasonable deadline for this. Where the organization does not fulfill this obligation, the Office, depending on the circumstances, may suspend or revoke the accreditation granted to the collective management organization.

In practice right holders do not have any other choice than entrusting the management of their rights to CMOs. If CMOs do not operate properly, rights are neglected and restricted in practice. It is justified to introduce legal provisions that ensure the proper operation of CMOs. The special provisions make the establishment of CMOs conditional upon the approval of the competent authority.

An organization may function as a collective management organization, if it is registered as an association and if it is accredited as a collective management organization by the Office. The Office shall grant accreditation to an organization to function as a collective management organization if it fulfills the following requirements:

(a) its membership, or the circle of those owners of rights who otherwise have entrusted it with management of rights, extends to a substantial part of owners of rights, and any owner of rights in the same category may join it in accordance with its statutes;

(b) it has entered into reciprocal representation agreements with organizations representing foreign owners of rights in the same category, or at least it makes all the necessary efforts to conclude such agreements;

(c) it has the capacity to manage the economic right concerned, including appropriate staff and technical equipment;

(d) it has at its disposal adequate mechanisms for the collection, distribution and payment of remuneration;

(e) it guarantees equal treatment both to owners of rights and to users where the objective conditions of the treatment are the same;

(f) its activities do not extend to any commercial or other profit-making purposes;

(g) its statute and other regulations are in accordance with the provisions of this Law and other relevant laws of the Republic of Kosovo.

HOW TO MAKE YOUR RIGHTS RESPECTED?

Digital technologies make it easy to transmit and make perfect copies of works and other protected content. In case of a dispute with a user of your work and if there is no possibility to resolve the dispute in an amical way, then you need to enforce your rights and with the assistance of a lawyer take some action by using enforcement procedures.

Enforcement procedures permit effective action against infringement, expeditious remedies to prevent infringement, deterrence to further infringement and they should not be unreasonably complicated and costly, or with time limits that do cause unwarranted delays.

Let's suppose in our example that you have used the song without authorization. You will have infringed the rightholder's rights. The latter may act expeditiously to stop the infringement, in order to avoid any further harm. If the Court decides in favor of the rightholder you will have to stop showing the advertisement, or at least stop displaying the song.

The following paragraphs summarize some of the enforcement provisions found in Kosovo's national legislation. They may be divided into the following categories: civil remedies; criminal sanctions; border measures; and measures, remedies and sanctions against abuses in respect of technical devices.

CIVIL REMEDIES INCLUDE:

- Evidence: production of evidence by the opposing party
- Injunctions for party to desist from infringement
- Damages must be adequate to compensate for injury
- Disposal of infringing goods from the channels of commerce
- Orders to infringers to inform about channels of distribution of infringing goods

In our example above, you (i.e. the rightsholder) may claim damages for the injury caused or even to stop the use of the work within the advertisement.

PROVISIONAL MEASURES MUST BE AVAILABLE:

- To prevent an infringement from occurring and in particular to prevent the entry into channels of commerce of infringing goods
- To preserve relevant evidence in regard to the alleged infringement
- Must be available inaudita altere parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

In our example above, you (i.e. the rightsholder) needs to move fast, without any delays so that the song stops being used in the advertisement, otherwise you may lose the agreement made with the other advertising company. For this reason, you will follow the inaudita altere parte procedure.

Beneficiaries of sanctions and remedies are the original holders of intellectual property rights, licensees and successors in title, collecting societies and professional defense bodies.

Criminal sanctions are intended to punish those who carry out infringements of particular gravity, such as willful acts of piracy committed on a commercial scale, and so to deter further infringement. The purpose of punishment is achieved through fines and prison sentences consistent with the level of penal- ties applied for crimes of corresponding seriousness, particularly for repeat of- fenses. Deterrence is also served, as in civil proceedings, by orders for the sei- zure and destruction of infringing goods and of materials and equipment used predominantly to commit the offense.

Border measures are different from the enforcement measures described so far in that they involve action by customs authorities. Border measures allow right owners to request that customs authorities suspend the release into circulation of goods suspected of infringing copyright. This is intended to give right owners a reasonable time to commence judicial proceedings against the suspected infringer, without the risk that the alleged infringing goods will disappear into circulation after customs clearance. Typically, right owners must meet certain requirements such as to: (a) satisfy the customs authorities that there is prima facie evidence of infringement; (b) provide a detailed description of the goods so that they can be recognized; and (c) provide security to indemnify the importer, the owner of the goods and the customs authorities in case the goods are found to be non-infringing. Following the detention of the goods by Customs, the right holder will typically apply to the court for provi- sional measures to prevent the release of the goods into the market, pending a final decision on the claim of infringement.

The final category of enforcement provisions includes **measures, remedies and sanctions against abuses in respect of technical means, also referred to as technological protection measures (TPMs),** which have achieved greater importance since the advent of digital technologies. In certain cases, the only practical means of preventing copying is through so-called copy-protection or copy-management systems. These use technical devices that either entirely prevent copying or make the quality of copies so poor as to be unusable. Technical means are also used to prevent the reception of encrypted commercial television programs except with the use of decoders. However, it is technically possible to manufacture devices that circumvent such copy-protection and encryption systems. These enforcement provisions are intended to prevent the manufacture, importation and distribution of such devices. The WCT includes provisions to this effect, as well as provisions to prevent the unauthorized removal or alteration of electronic rights management information and the dissemination of copies of works from which such information has been removed. **Rights management** information may identify the author or right owner, or contain data about the terms and conditions of use of the work. Removing the information could thus hinder the detection of infringements or result in the distortion of computerized rights management or fee-distribution systems. National laws may also include exemptions from the application of these measures in certain circumstances, such as to give effect to copyright limitations and exceptions provided in the national law.

TEST YOUR KNOWLEDGE ON COPYRIGHT AND RELATED RIGHTS LAW

1. Copyright is a Law that:
a) regulates the protection of inventions
b) regulates the protection of the author
c) regulates the rights of the Companies on their investment

2. Copyright Law protects:
a) ideas underlying a work
b) original works expressed in any form
c) what Art tells us that is worthy of protection

3.1 An ice sculpture:
a) cannot be protected even if it original because it melts
b) is protected on the condition that it is original

3.2 An oral work:
a) cannot be protected by Copyright even if it is original because it is not incorporated in a physical carrier
b) is protected by Copyright if it is original

4. According to the national Copyright Law, are protected the following types of works:
a) Literary and scientific works (literature, poetry, educational books, articles, lyrics, software, etc.)
b) works of fine arts (painting, sculpture, photography, drawings, maps, cartoons, architecture etc.)
c) Musical works (music sheets, soundtracks etc.)
d) dramatic works (scenarios, theatrical works etc.)
e) all the above

5. Is not considered as a work:
a) news and information of media of ordinary reporting
b) an opera
c) architectural works

6.1 According to the dominant opinion in the doctrine and jurisprudence in EU Member States, cooking recipes:
a) are copyrighted if they are original
b) cannot be protected by copyright because they are a know-how

6.2 Presentation of a dish:
a) is copyrighted, if it is original
b) cannot be protected by copyright because purpose it is to be consumed.

7. True story: A monkey steals the camera of a photographer and start shooting himself; he is actually taking a selfie. The picture is beautiful and is published on the Internet.

8. The rightholder of Copyright on the picture is:
a) the monkey
b) the photographer because it is his camera
c) No one. The picture is not protected even if it original because only natural persons (and not animals or robots) can be authors.

9. Authors rights last:
a) for the lifetime of the author; then they fall into the public domain
b) from the moment of the creation of the work and 50 years after the author's death
c) from the moment of the creation of the work and 50 years after the author's death

10. Right or wrong?

	Right	Wrong
The author is obliged to refer to his name		
The author may not use a pseudonym		
A work may be anonymous		
Private copying is permitted only if the copy is made for personal use.		

11. If you have published the work that you have created on your website:
a) anyone can use the work for any reason because when you uploaded the work on the Internet you resigned from your rights forever
b) no one can use the work. Uploading it on the Internet does not mean that you resigned from your rights
c) then it falls into the public domain, so it stops being protected

12. A Copyright Exception
a) withdraws any Copyright
b) permits the use of the work only if the rightholder authorizes you
c) permits the use of the work without authorization

13. A musical work is likely to be protected:
a) by copyright only
b) there are no rights on a musical works
c) by copyright and related rights of performers and producers of phonograms

14. You have created a musical work (lyrics and composition) which you have published on your site, just for people to listen (not for downloading). A few months after its release on your site, you hear your song in an advertisement for toilet paper. Your lyrics were changed.

14.1 This use affects:
a) your economic and moral rights on your musical work
b) only your economic rights on your musical work
c) only your moral rights on your musical work

14.2 The following economic rights are more specifically affected:
a) reproduction and adaptation rights
b) communication to the public right
c) all of the above under a, b, c.
d) none of the above. There is no insult because I have already published the work on my site.

14.3 The following moral rights are more specifically violated:
a) right to the integrity of the work
b) paternity of the work
c) both paternity in integrity of the above

NUMBER OF QUESTION	ANSWER
1.	B
2.	B
3.1	B
3.2	B
4.	E
5.	A
6.1	B
6.2	A
7	C
8.	C
9.	C
10.	Wrong Wrong Right
11.	B
12.	C
13.	C
14.1	A
14.2	C
14.3	C

SPECIAL EDITION
IP & SMES

WHY A SPECIAL ISSUE FOR SMES?

SMEs play a central role in the economy of Kosovo. They are a major source of entrepreneurial skills, innovation and employment. They are confronted with Copyright issues because they use copyright-protected works or because some of their activities or products are under copyright protection. For instance, the software they use, the content of their website, the manuals for the function of their products, the catalogue of their products, the promotional design of them, all fall under copyright protection. SMEs could be authors, producers or distributors of copyright protected works.

SMEs utilise the available IPR instruments (patents, trademarks, registered designs and copyrights) to a much lesser extent than do LSEs and rely on more informal protection methods instead.

To put SMEs in a more advantageous position they should be in poistion to understand the importance of IPRs. They should be able to identify their IPRs and learn how each of the IPR is protected. Furthermore, companies should understand that it is important not only to protect their own intellectual property right but also to make sure that they do not themselves infringe the IPRs of third persons.

IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS (IPRS) FOR SMES

Intellectual Property (IP) protects creative works and clearly establishes who owns what. SMEs may use Intellectual Property Rights (IPRs) as a key negotiating tool ("deal-maker") when looking for investment and funding. IP is an asset on the company accounts as well as a source of information and knowledge.

SMEs should protect their IPRs for several reasons:
(i) IP attributes exclusive rights to their owners for their creations. Monopoly will permit the exclusion of third parties giving an economic advantage to the Company. It reinforces the position of the SMEs in the market.

- IP permits SMEs to protect their creations from their competitors in the market;
- No one else can use their creations, unless authorized

(ii) IP permits investment returns by a) enhancing bargaining position and b) granting exploiting licenses on the IP protected material.

Keep in mind that IP rights are territorial. The principle of territoriality entails that (with the exception of copyright and trade secrets) IPRs are protected only in those countries where you have filed and successfully registered them.

An important consequence for you is: if you intend to export to any other country outside of Kosovo, please make sure to protect your IPRs there before starting commercialisation!

HOW TO DEFINE THE IPRS TO THE SMES

When discussing the importance of IPRs the first thing to do is to explain what is meant by Intellectual Property Rights. Frequently, Companies cannot tell the difference between the different IPRs: for example, they cannot distinguish between Copyright and Industrial Property.

For this reason, it is advisable to introduce them to the basic notions of IPRs and the way that these rights are protected.

First of SMEs must be able to understand the categorization of the rights (see scheme above).

A. COPYRIGHT

At first point, SMEs should be in position to understand which works are protected under Copyright:
Artistic works, meaning paintings, illustrations, sculptures, graphics, cartoons, photographs, drawings, maps, diagrams, designs, architectural designs

Literary works, such as computer software, databases, novels, technical manuals, instruction manuals, textbooks, articles, short stories, journals, poems & song lyrics

Musical works, for example melodies, sheet music, songs, advertising jingles, soundtracks

Dramatic works, like plays, screenplays, mime, choreography
For more details, we refer to the analysis above.

Specific types of works are of most interest for the SMEs: software, databases, advertisement, campaigns, website, multimedia.

COMPUTER PROGRAMS

Computer programs protect the expression of a program (the source code). Underlying "ideas" (which are often the functional aspects of the program) are not protected. Relate this point to patent protection. The author is the programmer; however, normally the rights will be transferred to the employer if there is one.

Computer programs and their preparatory design material shall be deemed to be literary works within the meaning of the provisions on copyright protection. The originality is the condition for protection: "a computer program shall be protected if it is original in the sense that it is the author`s personal intellectual creation". The level of originality required for the protection of computer programs is rather low, and the judges apprehend the individuality of computer programs in the light of statistical uniqueness.

According to the Copyright law of Kosovo the copyright on computer programs initially vests in the author, i.e. the person who created the work. The copyright can then be assigned to a legal person. According to the national Law: "if the author has created a computer program while fulfilling his duties or according to the instruction by his employer, respectively if the author has created a computer program based on the contract for request of work, it is considered that all authors' property rights and other authors rights on that computer program were assigned exclusively and without limitations to the employer, respectively to the one requesting the program, unless otherwise provided by this contract."

The use of computer programs is legal, only when the rightholder, has granted to the purchaser the authorisation for using the particular program. This authorisation is given via a convention, named "end user licence agreement", known also as EULA. In the case of standardised authorisations, this license is granted by each company with the purchase of legal package of the program. In this case, the package externally or internally, reads the following warning: "in case in which you do not agree with the content of the present convention of authorisation for the use we request you to return this product in the shop where you supplied it from and receive the total sum you paid." These conventions are known as Shrink Wrap Licenses.

There are also conventions of multiple authorisations, such as: Open/Volume Licenses, via which the user asks for a quantity of multiple authorisations and he acquires the certificate of authorisation, without receiving the corresponding natural documentation, i.e. boxes and handbooks for each copy of bought product and Select or Enterprise, which are addressed to big enterprises, with quantities calculated in the entire company (eg. Mother and subsidiary company).

Finally, there should be mentioned a) the Licence for OEM product (Original Equipment Manufacture). It can be granted to anybody, in case the product is pre-installed within the hardware; and b) Shareware, freeware and open source. Open source software is software developed using open source protocols, meaning it can be modified and re-used, even for commercial use, though modifications must generally be offered back into the public domain. Freeware is generally created by one entity and released to the market, either as an entry level enticement to upgrade to paid software, or as an altruistic offering to other users.

The unlicensed reproduction (infringement) of software programs is called software piracy and can take the following forms:
a. Softlifting, i.e. the creation of additional copies of a program that can be used by more users than permitted by the license. This category also includes the exchange of discs with illegal copies of software between friends and collaborators.
b. Trading of a pirate copy together with the PC (uploaded in the hard disk drive). This is the case where certain salesmen of computers install illegal copies of software in the hard disks of computers they sell.
c. Forgery (complete imitation of the original product): It is the illegal reproduction and sale of software in such a way that it appears legal. It can include the imitation of packing, logos and often the holograms.
d. Online: This form of piracy arises when the users "download" software from the internet without explicit authorisation of the beneficiary.

In Copyright terms, copyright infringements are summarized as follows:

- Making copies (permanent or temporary), e.g. for websites, multimedia (copying the HTML, JavaScript or other code of a page)
- Making any form of distribution
- Making modifications of the program (requiring copies)
- Allowed uses: adapting the program for its intended purpose, making back-up copies, the decompilation of the program (by a licensee) with the aim of achieving interoperability

Many companies in order to build their service online quickly, they are using open source software, meaning software that is offered for use for free. Such use of open source software is licensed under specific terms. These licenses are categorized into copyleft or permissive licenses. Both copyleft and permissive licenses allow users to freely copy, distribute, and change the software that use them; such open source programs are still under Copyright law; it is their contractual terms that make them different (no exclusivity etc). Permissive and are considered to be free licenses. However, under Copyleft licenses users must copy, distribute, and change the source code using the same license as the original software; this means that the computer software that will be created for be licensed under the same Copyleft license and there will be no property on the new software developed based on the preexisting. A Company, thus, cannot, for example, take a GPL-licensed piece of software and release it under a proprietary license. Permissive licenses do not restrict the licenses under which these acts can be done.

The clauses of the licenses, either Copyleft or permissive should be respected. If the developer/platform owner does not respect the license set by the open source foundation, there is a risk that the developer/owner of the e service will be found liable for infringement. Be aware with the use of the Copyleft licenses because they set rules that "contaminate" parts of the Company's computer programs and SMEs will have to open all the related source code, thus they will not have property on that.

DATABASES

Databases are also very important for SMEs which are acting online; most of the SMEs will have to develop some sort of database.

A 'database` is a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. On a database there is both protection by copyright and "a right to prevent unfair extraction from a database". The Sui generis right protects the investment. The protection of the sui generis right is restricted to acts in relation to an entire database or substantial parts thereof. Unsubstantial parts are not protected. The duration of protection of 15 years starts anew in respect of each substantial modification of the contents of the database, if the modification brought about an essential, new investment .

It is sufficient for copyright protection if the database constitutes the author's own intellectual creation by reason either of the selection or the arrangement. Consequently, potentially more databases can be protected by copyright than in the case of a cumulative application of both conditions. Selection relates to the independent

materials, such as the selection of particular photographs, films, musical compositions, or data to be included in the database. The selection does not relate to the overall subject matter of a database. Arrangement as well must relate to the «contents», namely, to the individually accessible, independent materials.

It is likely that most electronic databases that are on the market are not protected by copyright, because, first, they usually aim to be comprehensive (so there is no selection in relation to the contents) and, second, the intellectual creation expressed in the arrangement often may only be found in a computer program.

The maker of the database enjoys the right to “prevent” or to authorize certain uses. The right is granted in respect of the acts of extraction and/or re-utilization of the database contents. The database maker has the right to prevent these acts even if he has made the database accessible to the public and has thus consented to the consultation of the database by users. Protection under extends to the whole contents of the database or to a substantial part thereof, evaluated qualitatively and/or quantitatively. The criterion of quantity refers to the amount of the elements of the database that are used; their substantiality must be determined in comparison to the number of elements contained in the whole of the database from which materials have been extracted or re-utilized.

The sui generis right in a database applies irrespective of protection of a database or of its eligibility for protection by copyright or by other legal protection, such as by unfair competition law. Accumulation of protection of a database by copyright and by sui generis right is conceivable. Copyright protects the selection or arrangement of the material and, the sui generis right protects the substantial investment. It will be up to the right owner to assert his rights. For example, if the sui generis protection in a concrete case is broader than the protection by copyright or otherwise promises more success for his claim, the right owner will assert the sui generis right without having to consider the narrower limitations under copyright.

The sui generis protection applies irrespective of the eligibility of the contents of the database for protection by copyright and by other rights, such as related rights. Copyright protects each individual work, and related rights protect each individual recording, performance, or other achievement contained in the database; the sui generis right protects the investment in obtaining the entire contents or substantial parts of the database. No new right is created in the data themselves. The individual data-unless they are legally protected, for example, by laws on the protection of personal data-must be freely accessible. The sui generis right in no way constitutes an extension of copyright protection to mere facts or data.

The sui generis right leaves without prejudice the rights existing in the contents of the database, such as copyright, related rights, or rights in personal data. For example, the owner of copyright in a work stored in the database may prohibit the use of this work according to general copyright provisions, even if the maker of the database wants to authorize the use of a substantial part of the contents. Yet, in practice, such a case will hardly occur, because the maker of a database will usually acquire at least those rights that are necessary for the normal use of a database.

WEBSITE

A website, following some jurisdictions may be protected as a database, under certain conditions.

What is important for an SME to know is that the content it creates for the Website may be protected by Copyright. This content could be: photographs, music, texts, audiovisual content.

When the Company is using material protected by copyright such as material licensed by Libraries (music, pictures, maps etc) it should be very careful to respect the terms under which the permission to use the content is given.

Furthermore, several persons may be involved in the creation of the website such as the Graphic designer of the logo, the person writing the text, the photographer etc. All these persons who have cooperated with Company for the creation of the website should transfer all their rights to the Company. Contributors should guarantee that there is no infringement by using the material. The Company should be in position to modify or further transfer the website.

It is also advisable that the Company controls access and use of its website content by using technological protection measures (if such control is applicable).

CAMPAIGNS

Campaigns or any other advertising or operation aiming at promoting the service provided by Company that might have been commenced by the Company may contain elements protected by intellectual property legislation. This would include both the planning of the advertisement campaign, under the condition that this planning has been expressed in any form and that it is original and the actual realization of the advertisement that could include protected elements such as texts, music, audiovisual, graphics, drawings, logos, slogans etc.

Promotional and advertising operation, accomplished by the company's contractors or any external collaborator should be owned by the Company. All persons who have been involved in the accomplishment of the advertisement or the collaborating Company that has undertaken to make such advertising Campaign, should transfer to Company all underlying intellectual property rights and expressively include a clause stating that the Company is permitted to modify the work. The Company should proceed to the registration of any logos, slogans etc. used within the framework of advertising campaigns as trademarks (see the analysis hereunder).

MULTIMEDIA

The Copyright Law of Kosovo does not refer explicitly to Multimedia works. However, the extensive development and widespread use of multimedia works raise the issue of their protection by copyright. Multimedia works are works in digital form that integrate texts, images and sounds on a CD or DVD and characterized by the interactivity from the user. A typical example of a multimedia work is the video games. The various contributors to the multimedia works are easily identified and the relation among them is regulated by contract. Multimedia works can be protected by copyright either as databases or as audiovisual works.

USE OF NOTICE ©

It is advisable that Company lets people know that its creations/content is protected, by using a copyright notice ©, mention the rightholder to alert the public that the material is protected. It is a powerful message to potential infringers of your IPRs and a notice to your customers and/or future collaborators that your Company's creations are protected. The use of such symbol is not obligatory; it is only advisable.

B. INDUSTRIAL DESIGNS

The industry using designs are:

- Fashion, textiles, leather
- Footwear
- Furniture
- Consumer electronics
- Automotive industries and accessories
- Other consumer goods

Designs are protected for their "The outward appearance of a product or part of it which results from lines, contours, colour, shape, texture, materials and/or its ornamentation". A modular system (number of items that are designed to be connected in a number of ways such as building blocks or tiles for children, tables) may also be protected.

In any case a minimum aesthetic value is required.

What is not protected are:

- Non-visible parts or components
- Designs made to achieve a technical function
- Features allowing interconnections. (Interconnections are product features that enable it to be assembled or mechanically connected with another product, for example a plug connection or an exhaust pipe.)
- Spare parts used to restore the original aspect of a complex product
- Reasons of public morality or public policy

For the designs to be protected they need to have a minimum degree of novelty and individual character. In the EU it is considered that the overall impression on the informed user must differ from previous designs - degree of freedom of the designer: "established, inter alia, by the constraints of the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product. Those constraints result in a standardisation of certain features, which will thus be common to the designs applied to the product concerned".

The assessment of individual character is made in 4 stages, at least in the EU (national experts are invited to verify what is provided under the national legislation):

1. the sector to which the products belong;
2. the informed user of those products, the degree of awareness of the prior art and the level of attention in the comparison, direct if possible, of the designs;
3. the designer's degree of freedom in developing his design; and,
4. the outcome of the comparison of the designs at issue, considering the sector in question, the designer's degree of freedom and the overall impressions produced on the informed user by the contested design and by any earlier design which has been made available to the public.

Designs are protected for specific term of protection. While in EU the registered designs are protected for 5 years but renewable maximum 25 years, unregistered designs are protected for 3 years. However, in other national legislations the term of protection differs.

SMEs should also be informed on the process to be followed in order to protect the designs, as well as on the costs (administrative and legal in case a lawyer is necessary). International process should also be explained regarding international applications for the registration of the industrial designs through WIPO.

If an unregistered design may be protected, make that clear to the SMEs. They might be interested in such protection in case their designs do not have a value after certain period (fashion designs).

If protection through Copyright is also possible, let SMEs know. It is equally important as the designs protection.

SMEs should also be informed that the design should not be disclosed before its registration. Should be understood that in case of disclosure the condition of novelty is lost and the protection will not be full.

It is advisable that Company lets people know that the design is protected, by using a notice "ID or "Registered Design"" for industrial designs, to alert the public that the design is protected. It is a powerful message to potential infringers of your IPRs and a notice to your customers and/or future collaborators that your Company's creations are protected. If you have only filed an application for the protection of your design, but the design has not yet been registered, you may indicate this in your business transaction, by using the term "Design Pending". The use of such symbol is not obligatory; it is only advisable.

C. TRADEMARKS (TMS)

TMs are considered to be a basic asset of a Company. The TM the Company is using, should be in any case registered, in order to exclude others from using an identical word or logo.

A TM is a distinctive sign or indicator used to identify the source of products or services. It helps consumers to recognise and decide on goods and services based on their reputation and quality
Thus, TMs serve the following functions:
a) an origin function,
b) a quality guarantee function and
c) an advertisement function

TMs are registered in connection with goods and services offered by the Company - Registration of trademarks for specific classes, for specific products and services (Nice classification). 45 classes (34 for products and 11 for services)

The Term of protection of the TMs is up to 10 years, renewable for 10 years for life of trademark. This should be confirmed by the national expert.

SMEs should also be informed on the process to be followed in order to protect the TMs, as well as on the costs (administrative and legal in case a lawyer is necessary). International process should also be explained regarding international applications for the registration of the TMs through WIPO.

If an unregistered TM may be protected make that clear to the SMEs.

It would be interesting for the SMEs to know that the more distinctive is a TM (figurative & word elements) the better its protection will be.

The TM of a Company should be protected in all the countries where the Company operates.

It is important that the SME searches the availability of the TM BEFORE it starts using it in the market. The use of an unregistered mark will create value over a name which may not be apt to be protected and the Company is exposed.

Besides, the existence of an identical or similar TM owned by third person:
a) may not permit its registration
b) may impose the re-branding of the Company,
c) may create liability issues to the Company.

In addition, the Company should always seek to register as domain names (DN) all its TMs.

In order to find out if the mark you want to use is available, a trademark search could be conducted in the database of your national IP office or by using a data base such as:

TMView, available at https://www.tmdn.org/tmview/welcome. This database will allow you to verify if a mark is available in all EU countries and in numerous other partner offices.

WIPO Global Brands database, covering trademarks registered in a wide number of countries parties to WIPO, and available at: https://www.wipo.int/branddb/en/index.jsp.

It is advisable that Company lets people know that the trademark is protected, by using a notice "® or TM (or even "Registered Trademark")", to alert the public that the trademark is protected. It is a powerful message to potential infringers of your IPRs and a notice to your customers and/or future collaborators that your Company's creations are protected. If you have only filed an application for the protection of your trademark/sign, but the trademark has not yet been registered, you may indicate this in your business transaction, by using the term "TM". The use of such symbol is not obligatory; it is only advisable.

D. DOMAIN NAMES (DNS)

Domain names can be obtained through a registrar (e.g. godaddy.com, eNom.com, tucowsinc.com). To register a domain name, the specific domain name has to be available. Availability is checked through the registrar. SMEs should understand that registration of a domain name does not confer to its owner any trade mark rights. Furthermore, the fact that a domain name is available does not mean that the trademark of the Company will also be available. For a trademark to be registered it is not enough to be available as is. Similarities between the trademark that an SME wants to register and a registered trademark owned by another natural or legal person, may lead to rejection of the application.

The SMEs should consider registering domain names for the name of the company as well as the names of the trademarked products and/or brands.

E. PATENTS

Patents in business are very important as: they generate a price premium on products, add to marketing credibility, add revenue through licensing or sale of IP rights, attract or retain investors / partners, prevent others from using the Company's inventions without permission, potentially prevent competitors from entering the Company's market space.

For a patent to be protected three conditions should be fulfilled:

1. Novelty: does not form part of the state of the art – anything made available to the public

2. Inventive step: having in mind the state of the art, the invention is not obvious to a person skilled in the art

3. Industrial application: maybe produced or used in any sector of industrial activity

A patent confers to its owner the right to exclude others from using, making, selling, offering for sale, importing the patented invention.

The term of protection of a patent is 20 years. After this term of protection the patent may be used by anybody.

National patent systems differ depending on the national approach.

Under the "declaratory" system all declarations are presumed to be legal. For an application to be accepted, is monitored/controlled legalization of the applicant, fees, etc (no essential/thorough examination of the invention). Under this system there is no guarantee that the substantive conditions are met (meaning if the invention is new, involves inventive step and is

industrially applicable). This could lead to nullity of the patent.
Under the substantial examination system: if the prerequisites (novelty, inventive step, industrial applicability) are not met the patent is not granted.
SMEs must be informed on the routes of the protection of their invention: national, regional, international application. Passing from a national to an international application should be made into specific time limits! This is very important to be underlined as an invention should be protected in all the countries where the company wishes to exploit the invention. If the time limits are not protected the patent will not be granted. The respective administrative fees should be mentioned.

Patents are a great way to protect an invention. However, SMEs should understand that for patent to be registered is required quite important financial resources and it will take quite some time to be protected. Until it is protected the Company enjoy no rights. This is why most SMEs are trying to find funding before filing a patent application.

Furthermore, many SMEs are disclosing information on their invented technology (as is the case of Universities who need to publish articles) before filing for a patent. Such disclosure of the invention will lead to losing novelty and the criteria for protection will not be fulfilled.

It is advisable that Company lets people know that the patent is protected, by using a notice ""Registered Patent" for registered inventions", to alert the public that this is a protected patent. It is a powerful message to potential infringers of your IPRs and a notice to your customers and/or future collaborators that your Company's creations are protected. If you have only filed an application for the protection of your invention, but the patent has not yet been granted, you may indicate this in your business transaction, by using the term "Patent Pending". The use of such symbol is not obligatory; it is only advisable

PATEN
WORK

F. CONFIDENTIAL INFORMATION – TRADE SECRETS – KNOW-HOW

(i) Confidential Information is information that actually is confidential. Confidential information is not information generally known or easily discovered. It has a
business, commercial or economic value (actual or potential) because the information is not generally known. It is subject to reasonable efforts to maintain secrecy. It has an unlimited life, provided the information does not become public knowledge.

(ii) Know how is any secret or restricted information or knowledge that improves its owner's ability to produce a desired outcome. Know how may enable a business to:

- source materials more cheaply than a competitor
- manufacture more efficiently than a competitor even when both use the same equipment and processes

It can be tangible like blueprints, formulae, instructions, specifications or intangible like process management skills, market intelligence, quality control techniques.

It is a practical knowledge, a skill expertise, a special technical knowledge of an employee, it could be even the precise way to set-up a machine. Know how is often licensed with patents: it is actually the information that will permit the use of the patented technology; this information is not disclosed with the patent.

(iii) A trade secret is any information that is deliberately not disclosed and that:

- Economically benefits its owner for as long as it remains secret
- May economically harm its owner, or benefit competitors, if disclosed against its owner's wishes

Trade secrets are powerful and valuable forms of intellectual property (IP) with a potentially unlimited life. What could be a secret is for example:
- A secret ingredient / recipe
- Specific process conditions (the formula for Coca-cola and KFC fried chicken)
- Specific chemical process for optimal conditions
- Manufacturing technology
- Software
- Cost & price info

Trade secrets are an alternative to patents.

To disclose information confidentially, SMEs will need legally binding contracts which will contain restrictive covenants for employees, suppliers, subcontractors etc., non-disclosure agreements (NDAs – also known as confidential disclosure agreements or CDAs) for less 'tied' parties such as potential licensees, technical advisers, ad-hoc project contributors, disclosures should be kept to an absolute minimum

Non-disclosure agreements (NDA): NDAs are a balance need to protect IP with need to obtain a third party's co-operation, so are usually less onerous than restrictive covenants. In these contracts should be made clear that any IP disclosed belongs to disclosing party. Furthermore, NDAs should include:

- indication of confidential information being disclosed
- definition of exactly who is (and is not) allowed access to the confidential information
- duration of period of confidentiality
- each party's obligations and the circumstances in which they may be terminated
- applicable laws and legal jurisdictions

G. GEOGRAPHICAL INDICATIONS

Geographical indications identify a good as originating in the territory of a country or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

At EU level a distinction is made between Protected Geographical Indications (PGIs) and Protected Designations of Origin (PDOs) // Traditional Speciality guaranteed. Various EU Regulations allow the registration of geographical terms as PGIs and/or PDOs for wines, aromatized wines, spirits, non – agricultural and agricultural products and foodstuffs. There are differences between GIs and PDOs The conditions to be met by PDOs are much stricter than those for PGIs. In the case of PDOs, the qualities or characteristics of the product must be "essentially or exclusively due to a particular geographical environment with inherent natural and human factors". By contrast, a geographical term can be considered a PGI when the product's quality or reputation is attributable to its geographical origin. Protection as a designation of origin is only possible when all the stages from production of the raw materials to preparation of the final product take place in the defined geographical area. For PGIs it is sufficient if just one of those stages is situated in the relevant area

Why are GIs important? The protection of geographical indications matters economically and culturally. They can create value for local communities through products that are deeply rooted in tradition, culture and geography. They support rural development and promote new job opportunities in production, processing and other related services.

Over the years European countries have taken the lead in identifying and protecting their geographical indications. For example: Cognac, Roquefort cheese, Sherry, Parmigiano Reggiano, Teruel and Parma hams, Tuscany olives, Budějovické pivo, and Budapesti téliszalámi.

Geographical indications are becoming a useful intellectual property right for developing countries because of their potential to add value and promote rural socio-economic development. Most countries have a range of local products that correspond to the concept of geographical indications but only a few are already known or protected globally. For example: Basmati rice or Darjeeling tea.

However, geographical names with commercial value are exposed to misuse and counterfeiting. The abuse of geographical indications limits access to certain markets and undermines consumer loyalty. Fraudulent use of geographical indications hurts both producers and consumers.

STRATEGY

For an SME to ensure its IPRs it is necessary to conduct an IP Due Diligence (hereinafter IP DD), meaning an audit or investigation that will reveal which are the IP assets of the Company, how strong they are as well as if the Company may be itself infringing third partied rights. Knowing this information, the SME will be able to develop a strategy, aiming at to leveraging its IPRs.

Conducting an IP DD is very important for the following reasons:
It permits the Company to identify its intellectual property assets and manage them correctly. Such identification will lead the Company to register its IP assets, when such registration is permitted by law, reinforcing the IP ownership of the Company.

When the Company is examining the possibility to license its IPRs, a due diligent is necessary in order to identify potential gaps within the chain of rights that could lead the Company to violations or breach of contract. For example, the Company should make sure that it is the owner of the IP that has been created by its employees or that it has acquired all necessary permissions for the use of the protected material (for example images or music used in the websites).

Furthermore, a DD is necessary when the Company envisages the possibility to file an action to Court for infringement of its IPRs. Before filing such actions, the Company should make sure that it is indeed the rightholder of the rights otherwise it will not be entitled to file the action. Vice versa, an IP DD will guarantee that the Company is not itself infringing the IPRs of another natural or legal person.

In addition, a new Company or a start-up that will search for a funding will be asked to prove that it is the owner of the IPs. No one will accept to fund a Company that does not have clear ownership. The same stands in case the Company is being purchased or acquired by another Company (in which case IP assets and related liabilities are becoming a component of the overall value of the company) and in case of joint ventures.

The first thing that should be done when a Company effectuates an IP DD is to review the status of the IPs it holds. What should be looked for in this case is which of the IPRs of the Company are registered, which should have been registered, but never were, and examine the possibility to register them even at this point, which of its applications for registering a right are

pending. Furthermore, it should examine for which regions are these rights protected and how many year are left until their expiration.

The second step is to review the contracts and other agreements that the Company holds. When a Company has acquired the rights from another natural or legal person, it should make sure not only that the Company itself has indeed acquired the rights, but also if the person, natural or legal who transferred the right where the owners of these rights; if this person had also acquired the right from another person, then this first person should be entitled to transfer the rights. This is called the "chain of rights" and this "chain" should be clear.

The third step consists of the identification of the litigation and infringement risks of the Company. This step has to do with the examination of the possibility that the Company is violating the rights of someone else by for example using protected material without authorization.

The whole process should include revision of contracts - including employee contracts - and agreements relating to the leasing, licensing and ownership of IP.

In any case the Company should be identified as the exclusive owner of the IPRs. All the IPRs must be transferred by every employee/collaborator/contractor even founder of the Company to the Company. The transfer should be reflected in a written contract; the rights should be transferred to the Company in order to exploit them in all territories, for all the time limits of the protection of the IPs and for all types of exploitation.

The contract should describe accurately which rights are transferred and which means of exploitation are covered.

It should be also referred at this point that some jurisdictions recognize strong moral rights to the authors while in some other cases the law is less strict. Moral rights may also interfere with the exploitation of the IPRs. For this reason, if national legislation permits it, specific mention should be made to moral rights (for example in some jurisdictions is permitted waive of moral rights or to restrict its breadth).

Finally, the description of the employees/collaborators/contractors's duties should without doubt refer to his/her creative activity, so that the right the employee etc. holds are clear.

NTEGY

LEVERAGING IPRS THROUGH LICENSING

WHY LICENSING?

The commercialization of the IPRs will be made through licensing. A Company should proceed with the licensing for several reasons:

- This is a way for the Company to receive revenues by licensing the IPRs.
- Licensing contributes to the increase of the distribution of the product.
- Licensing may permit to the Company to gain access to complementary assets (cross licensing: Company A licences X technology to Company B and Company B licenses V technology to Company A).
- Develop efficient partnerships.
- When the Company has a shortage in its resources licensing could be a source of income.

TYPES OF CONTRACTS

The types of the contracts through which a Company is licensing its IPRs may be divided into several categories:

- Know-how and show-how agreements
- Research and Development (R & D) Agreements
- Material transfer agreements
- Patent and utility model agreements
- Industrial design
- Plant varieties
- Software agreements
- Technology joint ventures
- Contracts relating to copyrighted works (Book editor contracts, music publishing con tracts, performers contracts, broadcasting contracts, film production and distribution, etc).
- Contracts relating to trademarks and domain names

LEVERAGIN

THROUGH L

STEPS BEFORE ENTERING THE AGREEMENT

An agreement to be valid and clear it needs to contain at least the following information: The first thing to clarify in a contract is which are the parties involved, who or what (persons/firms) may be a "licensor" or "licensee".

Then, should be clarified the subject-matter, meaning for example that the licensed IPR is a trademark X. In this filed should be included all the relevant IP rights, properly indicating IPRs subject to license.

After this, the contract should define the scope of the license, what it covers (scope) and where it applies (territoriality). This scope concerns both the use of the IPRs (for example in case of patent licenses: limiting the grant to specific patent claims, patent families or applications. Or in case of trade mark licenses: for which products and classes is the license granted; or in case of copyright, for which uses is the license granted, which rights are licensed -right of reproduction or right of communication to the public), as well as the specific territory for which the license is given. Be careful, because if one is planning to use the rights on the Internet, he needs a license for the whole world, unless access is restricted in one country.

Another important issue is whether the license is going to be exclusive or non-exclusive. An exclusive license could be limited in one specific right (for example right of reproduction if it is copyright) or restricted in place (only Kosovo) or in time (only for 6 months). However, the Company should keep in mind that an exclusive license will not permit the Company to relicense the same IPR to someone else for the same region and the same time. This is why if the Company are opting for an exclusive license, the remuneration/consideration should be much higher.

Having clarified all this, it is very important to define when the agreement starts and when it ends (Commencement and expiry/termination). Here we are using terms such as effective date in order to refer to the start of the license must be stipulated. Regarding the Expiry/termination of the contract a Company should bear in mind that several factors might lead to termination of the license; these factors need to be mentioned in detail in the contract (upon a fixed date, upon an event - for example, on expiry of the licensed IP or on the IP becoming invalid - or termination by one party). – After the termination may the licensee sell the stock? For how long? Will the stock be sold to the licensor (at what price)?

And then, the agreement on the remuneration/consideration comes. Remuneration could be:
- Lump sum (one or several / ongoing) or
- Royalties In this case the calculation of royalties could be based on several factors such as the volume of production, net sales, net profits, number of authorised users etc/ Commercial objectives and royalty variables.

A third option is a combination of Lump sum with royalties.

In case of royalties the Company will have to agree on the financial administration. For example, since the royalties will depend on the revenue of the licensee, the later should have the obligation to keep accounts and records, report results while the Company should have access to this information to verify the accounts. This is what is called Reports and audit of accounts.

An equally important matter is whether the Company will grant the licensee the right to grant sublicense. The Company can always agree to accept such sublicenses after written authorization.
In most cases, the contract will also include a clause on the risks/warranties and representation/indemnification: ex. the non-existence of third-party rights to the licensed IPR, ownership and validity of the licensed IPR.
Improvement clauses applying to technology licensing (know-how, patents, software) -(allocation of ownership, obligation to provide upgrades), are also frequent.

Other important clauses are:

Liability limitations clause through which the Company will try to minimize the risks in case it proves that there is a deficiency regarding the rights.

Confidentiality - Non-competition clauses: the licensee should not be in competition with the Company.

Jurisdiction clauses. This is important because in case a dispute arises, the Company should be able to go to the Courts were the Company is seated otherwise the expenses will be very high.

Other aspects could be included, which are dealt on a case by case basis. For example, the right to inspection and obligation to provide technical assistance (know-how and patent licenses), the right to control the quality of the products in order to avoid damage to the goodwill of the licensed trade mark (trade mark licenses), maintenance and defense of the licensed IPR.

REIMBURSEMENT

Regarding the reimbursement of the Company for licensing its IPRs, there are several possible basis for the calculation of the consideration:

1. Cost based approach. In this case the key question to be answered is the amount spent for the creation of the IP protected material combined with the time that it took for the Company to create it. Two methods may be used:
a)Replacement cost method. This method estimates the time and resources needed to develop an asset that could replace the asset being valued.
b)Replication cost method. This method estimates the time and resources needed to replicate similar IP (including “failed” research)
The disadvantage of this method does not consider future revenues

2. Market based approach. In this case the value is calculated on the basis of the value of the IPR in the market. The method assumes the existence of a market for transactions of comparable assets. Factors which may serve to establish comparability include the nature of the asset, similarity of products, industry, market size, barriers to entry, etc. The disadvantage of this method is that the industry information should be available.

3. Income based approach. This is actually an estimation of the future benefits. It relies on the potential of the IP to generate future benefits. Most related methods are efforts to pin down the net present value of expected future income streams. In general, such methods take account of factors such as time value of money and risk. The disadvantage of this method is that the cash flows and the discount rate had to be estimated and this can be difficult when there is no base or experience to calculate market potential (as in early-stage IP developments).

This booklet has been produced with the assistance of the European Union. The contents of this booklet are the sole responsibility of IBF International Consulting and EPLO and can in no way be taken to reflect the views of the European Union.

February, 2021
Pristina, Kosovo

IPRproject
Intellectual Property Rights Project

Rr. ”Johan V. Hahn”,
10000 Pristina, Kosova
Tel: 038 726 688
IPRKosovo