

On the basis of article 45, paragraph 1 of the Law on Government (“Official Gazette RS”, no 55/05, 71/05, amendment 101/07, 65/08 and 16/11

The Government passes

## STRATEGY OF THE INTELLECTUAL PROPERTY DEVELOPMENT for the period of 2011 to 2015

### INTRODUCTION

#### 1. Reason for passing the Strategy

Globalization and information technology revolution imposed upon all the countries, including the Republic of Serbia, the need to define its developing position and perspectives, both on the regional and on the global level. In all the scientific, expert and political discussions on the topic of facing the challenges of the new age, the INNOVATION has been recognized as a unique answer. It is a very complex idea, having in its basis **novelty** in the domain of:

- various forms and levels of knowledge (primarily technology, but also all other forms of intellectual creations),
- its implementation in the form of new products, industrial processes, services, organization and management,
- functioning of the market and society in the broadest sense (new business models, new education models, etc.)

Therefore, in some countries, the central program and development document is **Innovation Strategy**, which contains all-encompassing program of the policy of legal protection, transfer and implementation of all kinds of innovations. Serbia has opted for the second choice: Strategy of Sustainable Development has been passed as the all encompassing and basic program document, acting as a source for all the outcoming individual strategies which cover more narrow thematic fields ( for example: Strategy of Scientific and Technological Development, Strategy of Development of Competitive and Innovative Small and Medium Size Enterprises). Having in mind that the problem of intellectual property represents only one segment of issues connected to the creation and implementation of innovations, the Strategy of Intellectual Property Development is only one of the several program documents which contain partial visions of innovative Serbia of the future.

In that sense, the Strategy indicates the directions, measures and aims of short term, middle term and long term development of the system of intellectual property in Serbia, in order to make it compatible with the development interests of the country which are projected in the Strategy of Sustainable Development. From the short term and medium-term view, the realization of the strategic goals must result in the fulfilment of all

obligations which Serbia undertook on the basis of Stabilization and Association Agreement with the European Union, regarding the intellectual property protection.

By passing this Strategy, Serbia gets legality as the country which recognizes the development role and importance of intellectual property, in a way it has been done in the European Strategy for Intelligent, Sustainable and Inclusive Growth – EUROPA 2020 (adopted by the European Council on June 17, 2010).

## 2. Intellectual Property in the contents of sustainable economic growth

### Knowledge based economy

Stress on the current importance of the phenomenon of intellectual property in the last few decades is caused by the transition of the civilization from the industrial to the post-industrial age, which is often called the information era. This change of social and economic epochs, as all the previous ones, is based on the technological revolution. This time, technological revolution took place in the field of transfer, recording and processing of information. Just like the steam engine and railway transport were triggers for the deepest changes in the sphere of social and economic organization of society at the beginning of the industrial era, the computer and internet initiated the transformation of social relations in the direction of information era.

It is a question of a universal process which takes place faster beyond comparison in relation to any other transformation of epochs. Fast and cheap electronic communication worldwide not only enables the greatest number of people to have access to information and transform them into active knowledge, but also enables the efficient performance of business transactions, such as the providing of various services regardless the geographic distance of the participants. Observed from the view of the problem of economic development and total social development, the information society, understood as a form of capitalistic economic organization, imposes new and specific “rules of the game”. Those rules of the game are described in a short metaphor as the “knowledge based economy”.

According to the neo-classical economic theory, knowledge, as the constituent part of the so called human capital, or, simply speaking work, was always a crucial factor of the economic relations. Its value was expressed through the price of the work. In the conditions of the acting of laws of declining income, economic growth was theoretically explained by the extensive utilization of natural resources and work force on one side and changes in technology and organization of production, on the other side. These changes, which really mean the implementation of the new knowledge, are considered exogenous (external) factor of economic development. The expense of the creation of new technologies and the benefit from its utilization were not integrated into the model of growth, because it was considered that they were the result of acting of non-economic factors, i.e. that they were simply given. Evident and rapid changes in the economic sphere and the whole life of the people, which are the result of the exponential increase of scientific and technical knowledge in the course of the last half of the century, led to the

revision of model of the economic growth. In the new (so called “endogenous”) model of economic growth there are two new and essential concepts. The first one being that the technological changes are observed as the result of the economic activities, and are therefore integrated in the mechanism of the functioning of the market. Thus, technological development can be managed only by means of a suitable economic policy. The second is that technology, i.e. knowledge in general, as the economic asset, is not subjected to the acting of the law of the declining income, as is the case with the other economic assets. The basis of this essential difference between the material and non-material factors in economy constitutes the physic nature of these assets. Material goods are poor and limited, while in the world of non material goods there are no limitations because everyone can use the same goods without imposing upon others restrictions and diminishing the value of that good. Therefore, the knowledge can be accumulated and used with no limitations, which means that it has the potential to secure the increase of income in proportion to the investment in its creation.

The mentioned model of endogenous growth represents a theoretical explanation of the evident process of moving the focus of the modern economic activity from the one based on the natural resources to the one based on knowledge. At the same time, it contains the vision of survival and advance of human society in spite of the current problems connected to the exhaustion of unrenewable natural resources, energy, pollution of natural environment, climatic changes, growth of population etc. To put it more specific, the human capacity to produce, exchange and apply knowledge has been recognized as the main support for the sustainable economic growth in the future.

In the knowledge based economy, creation, transfer and implementation of knowledge become economic processes which get special place in the social division of labour and become one of the aspects of the total economic process. Knowledge is an economic good in itself, and its value is quantified and expressed separately.

However, when we speak of knowledge in this context, it is necessary to have in mind that we do not refer to technology alone, or knowledge in the narrow sense of the term. The word “Knowledge” in the metaphor “knowledge based economy” has a connotation of the information in the broadest sense, the service activities consisting in the processing and exchange of information are also characteristic for the knowledge based economy. The same holds true for economic activities in the field of so called real economy, relying on the exploitation of symbols recognized by the market and specifically valued. As a matter of fact, goods and services today have value not only based on the quality, but also on the basis of conceptual context where it is consumed. The same object satisfying a specific practical human need shall have different value depending on the fact whether its consumer believes that along with that object he obtains additional non material good that the producer “delivers” along with it (for e.g. reputation, social prestige). Finally, various results of human creativity, in particular in the field of art and entertainment, enjoy in the knowledge based economy unimagined possibilities of economic exploitation. Therefore, the popular and broadly accepted term “knowledge based economy” should be understood as the economy based on the use of non material (intellectual) goods.

Certain indicators that the world is in the era of transition towards the new economy are: the strengthening and growth of service sector, proportional decrease of factory work force, increase in the participation of intellectual assets in the value of products and services, increase of the share of intellectual property assets in the value of companies and, finally, the increase of share of economic activities based on the exploitation of intellectual property assets in the gross social product.

## 2.2 Why is intellectual property important in the “production of knowledge”

In the economy based on the use of intellectual property assets, it is understood that those goods must first be created, that is “produced”, and must then be made economically functional to make profit.

In the market model of economy, which is based on the private property and private initiative, the production of intellectual property assets faces a problem consisting in the following: IP asset is, by its nature, non rival and non exclusive, which means that it can be used without limits by the large number of people with the impossibility (or difficulty) to restrict the circle of users only to those which economically contributed to its creation. Speaking in the economic terms, marginal expense of utilization of already created IP asset in the conditions of free market almost equals zero. From the point of view of statistic efficiency of the market, it is an optimal situation on which the potential of intellectual property to increase marginal profit is based. On the other side, for that very reason, the market has the tendency to underachieve in the motivation of homo economicus to invest in the “production” of IP assets, which results in the suboptimal offer of new IP assets. In one word, the problem is reduced to the appropriation of profit from the new intellectual property assets. One of the tools of the economic policy are intellectual property rights, which secure to the subject who invested work and capital in the creation of new IP asset, the exclusive right of its economic exploitation, under certain legal conditions and with certain legal limitations. Concretely, those forms of intellectual property are the patent, copyright, plant varieties protection and topographies of integrated circuits protection. Thus, these intellectual property rights are, as a matter of fact, a form of state intervention in the market, which has the aim, by means of limiting competition, to motivate homo economicus to invest in the creation of new IP assets. However, having in mind that they limit the competition, the mentioned intellectual property rights reduce the static efficiency of the market, which represents a social expense for the existence of these rights. Therefore, the economic mission of the intellectual property rights is ambivalent: on one hand, their incentive effect upon the creation of new intellectual property assets removes the mentioned weakness of the market unable to do it itself, on the other hand, the limitation of the competition, which is immanent to these rights, must not annihilate the social value of the new intellectual property assets.

Naturally, the production of intellectual property assets in a society does not depend only upon the efficiency of intellectual property rights as the incentive directed to the private sector. The state applies also other stimulating methods for the creation of intellectual property assets, in particular scientific and technical knowledge. The common feature of

all of these methods is to engage and distribute the funds of tax payers for the realization of certain research and development programs. That can be grants given to public institutions, subventions given to private subjects, public procurements ordering certain research and development, awards, and finally tax stimulations. Similar models are applied for the creations in the field of art and culture.

Finally, market which has been arranged well, strong institutions, good education system and healthy enterprising spirit make a good foundation for the plentiful and spontaneous production of various intellectual property assets even without direct state intervention.

### 2.3 Concepts and function of intellectual property

Intellectual property is a concept which has its narrow (legal) and broader (economic) significance.

Legal significance of intellectual property can be reduced to the set of exclusive, predominantly economic rights which protect certain IP assets, under the conditions prescribed by the law and with certain legal limitations. Those rights include copyright, related rights and intellectual property rights. Related rights include rights of performers, rights of the producer of phonograms, right of the producer of videograms, right of the broadcasters and right of the producer of data bases. The industrial property rights include patent, right of the protection of plant variety, right of the protection of topographies of integrated circuits (those are the rights protecting creations), trademark, design protection right, right of protection of indication of geographical origin (those are rights protecting distinctive signs). Apart from the significant differences in the subject matter, terms of protection and contents of these rights, it can be said that the common denominator to all of them is that the subject matter of protection is a certain kind of intellectual property and that the holder of title has the exclusive right to forbid or allow the utilization of that property.

Economic meaning of intellectual property widens the presented concept to all kinds of intellectual property (thus including more than is envisaged as a possible subject matter of protection by the intellectual property laws), under the condition that some legal or material mechanism is secured for appropriation of profit for the economic utilization of that property. The most striking form of that extended (metaphorical) concept of intellectual property is the know-how. Exclusivity with regard to the economic utilization of the know-how is obtained by the actual inaccessibility of the know-how to others, and not on the grounds of exclusive rights. Furthermore, information and knowledge which has practical use in economic life can be the subject matter of intellectual property even when they are not the subject matter of the legal protection, or the subject matter of know-how. This is the case when on the basis of temporary advantage with regard to the time of the beginning of use of that intellectual property the subject matter gains the advantageous market position which enables it to recover the costs of creating that asset in the reasonable time period, and to maintain the advantage over the competition in the longer period of time thanks to good organization, offering of complementary goods or services, etc. In one word, economic approach to intellectual property focuses on the

economic value lying in the intellectual property which can be materialized and appropriated only if that property is used economically, regardless whether it is legally protected or not.

In this strategy, the focus lies on legally protected intellectual property because that concept is specific and supported by the particular legal and institutional arrangements. However, the economic concept of intellectual property is important for the Strategy, because it draws attention to the fact that intellectual property in its narrow legal sense is not a tool of economic development if it is not utilized in economy. In other words, no intellectual property right has legal value in itself, on the basis of the fact that it is legitimate, or granted by a decision of a government body. The thing that transforms intellectual property right into economic value is its productive utilization. In the same way, the circumstances that a certain intellectual property asset is not protected by any form of intellectual property rights is not an obstacle in its economic use and what is more it is not necessarily an obstacle to the realization and appropriation of profit. What is more, in certain situations it can be a strategic advantage for the business subject to resort to the actual protection of the certain intellectual property asset in the form of a trade secret, then resort to legal protection in the form of patent or some other industrial property right.

Having this in mind, it can be stated that the intellectual property right has several basic functions: the first function is to stimulate the “production” of creations by giving possibility for a legal monopoly on economic exploitation of new intellectual creations such as inventions, plant varieties, topographies of integrated circuits and copyright and in such a way contribution is given to the technical and cultural progress of a society. The second function is to reduce the information gap between the subjects which provide and the subjects which demand certain goods and services on the market by securing the exclusive right for the utilization of distinctive signs (trademarks, geographical indications of origin and industrial designs), which reduces the transaction costs, stimulate investment into the quality of goods and services and contributes to the efficiency of the market. The third function consists in the facilitation of the transaction of rights for the use of intellectual property assets because there is a legal ground for the succession of rights *inter vivo* (by means of a contract and *ex lege*), as well as *mortis causae*. The fourth function is the logical outcome of this one: it is the facilitation of the economic implementation of the protected intellectual property assets. However, in the cases when the holder of right has no capacity or interest to utilize directly a certain intellectual property asset which is a subject matter of an appropriate right of intellectual property, he can cede or transfer that right to the subject which has the capacity and the interest in that. In such a way, more intellectual property assets find their way to practical implementation than would have been the case if they had not been the object of protection by a certain intellectual property law.

In the countries in transition, such as the Republic of Serbia, the intellectual property right has one additional characteristic function, which, from the point of view of current economic policy, sometimes gets before everything else. It is a question of a function of attracting foreign direct investments. In the conditions of global economy, the capital

searches for the favourable conditions for doing business, such as the near sources of raw material, cheap labour force of decent quality, good communication infrastructure, stimulating tax system. Efficient legal protection of intellectual property, beyond any doubt, encourages foreign companies to import in the country products and services based on new technologies, renowned trademarks and service marks, and so called creative industry.

On the other hand, the efficient system of intellectual property protection represents a constituent part of the business environment which influences favourably the development of home knowledge based economy, acts as stimulation for research and development projects and the development of the sector of new economy. In such a way, Serbian economy can transform from the predominantly net user of intellectual property into net provider, and observed in the middle term and in a long term it can influence favourably results in foreign trade.

### 3. Contents and systematization of the Strategy

Strategy is a program planned document referring to the period 2011-2015. It consists of a vision of the national system of intellectual property till 2015 and of the list of concrete measures that the Republic of Serbia must enforce in the direction of the realization of the mentioned vision.

The Strategy silently begins with the premise that the innovation system implies complex packages of stimulating legal and institutional conditions for the creation of the new intellectual property assets, transfer of intellectual property and implementation of intellectual property. Also, the Strategy acknowledges the issue of the utmost importance is the establishment of the partner cooperation network between the state as the financier of the largest part of the research and development work, the public R&D organizations, or the university as the subject of the R&D process and economy which, at the same time, must be a co-financier and order and user of those results. In that partnership cooperation process, where the creation, transfer and implementation of the new intellectual property takes place, the questions concerning intellectual property are being asked, from the beginning till the end of the cooperation, so they can play the role of the catalyst, but they can also be the factor of failure.

However, the systematization of the Strategy does not rely on the functional but on the structural approach to the issues of intellectual property. In other words, both the vision of the national system of intellectual property and the measures that have to be undertaken in the forthcoming period are turned to the characteristics of the system itself and not to the speculation with the desired effects. The presumption, upon which the Strategy leans, implies that the scientifically established functions of the intellectual property (which have been stated above) will make the proposed measures produce certain positive effects in the national economy and development by improving the system quality.

For the needs of the Strategy, the intellectual property matter has been divided into four units: a) legal and institutional basis for the protection of intellectual property, b) suppression and sanctioning infringements of intellectual property rights, c) economic implementation of intellectual property, d) raising public awareness and education. In the framework of each of the mentioned units, we shall first give the concise survey of the actual situation in the concrete field, and then mention and explain the measures which must be undertaken with the aim to realize the vision of the national system of intellectual property till 2015. The constituent part of the Strategy is the action plan where the tables are presented with the measures to be undertaken, bodies competent for their implementation and the indicators of success of those measures.

#### Vision

- Legal and institutional basis of the intellectual property protection
- Suppression and sanctioning infringements of intellectual property rights
- Economic implementation of intellectual property
- Raising public awareness and education

Action plan: measure/competent body/deadline/indicator of success

#### VISION OF THE NATIONAL SYSTEM OF INTELLECTUAL PROPERTY

In the year 2015, the Republic of Serbia is a country where the reality comprises the following:

- The level of protection of intellectual, industrial and commercial property is established at the level similar to the one existing in the European Union, including the efficient means for the enforcement of those rights,
- Mechanism of permanent harmonization of domestic regulations with the new regulations of the European Union has been well established,
- The Intellectual Property Office is a government agency which is predominantly financed from its own income and it executes its administrative competences in a swift and efficient way due to the good internal organization and the use of modern information and communication technology,
- At least one third of the capacity of the Intellectual Property Office is engaged in the non-administrative tasks of providing information services to the users, their education in the field of protection and implementation of intellectual property, mediation between the holders of rights and economy and the coordination of actions with other government bodies concerning intellectual property,
- Thanks to the increased capacity and better competences of the police, inspectorates, Customs, public prosecutors and courts, the level of piracy and counterfeiting of goods is reduced to the average level existing in the European Union, while all the other infringements of intellectual property rights are being processed in the shortest time possible,
- At the greatest state universities, the offices for the transfer of technology have been established,

- Public-private partnership between scientific and R&D organizations, or universities, on one side, and economy, on the other, gets facilitated by precise regulation of the issues of intellectual property rights in the law, regulations and internal acts,
- Programs have been established for the affirmation of the innovative activities, including various forms of competition conducted under strict and highly expert criteria,
- System of the collective management of copyright and related rights is completely established and functions in continuity without system difficulties.
- Authors and performers, on one side, and creative industry, on the other side, recognize that the main lever of their economic functioning is intellectual property right, so they advance the expert level of their mutual legal transactions,
- Associations of authors and performers begin to act as the expert organizations which make standard contracts and provide minimum tariffs for their members,
- At all the state faculties devoted to studies of law, technology, economy, agriculture or management, there are curriculums on intellectual property rights.
- There are programs for the stimulation of pupils in the elementary schools, to make intellectual property and creativity popular through the school network.

## 1. LEGAL AND INSTITUTIONAL BASIS FOR INTELLECTUAL PROPERTY PROTECTION

### 1.1. Situation

Republic of Serbia is a country with a long tradition in the legal protection of intellectual property (it was one of the 11 founder states of the Paris Union for the protection of intellectual property in 1883). Always open for the introduction of the high standards of protection, the Republic of Serbia, in its legislation, followed and implemented a large number of the international conventions from this field, that it has adhered to. In particular, since the year 2000, in the context of the process of the European integrations of Serbia, the harmonization of the domestic regulations with the *acquis communautaire* of the European Union has been intensified. That process has its culmination, at the moment, in the Stabilization and Association Agreement, which Serbia has concluded with the European Union.

At the moment, the following laws regulating legal protection of intellectual property are enforced:

- Law on Copyright and Related Rights (OG RS 104/2009)
- Patent Law (OG SMN 32/2004, 35/2004 – corr. and. OG RS 115/2006 – corr.)
- Trademark Law (OG RS 104/2009)
- Law on the Legal Protection of Design (OG RS 104/2009)
- Law on the Protection of Topographies of Integrated Circuits (OG RS 104/2009)
- Law on the Protection of Rights of Plant Varieties Breeders (OG RS 41/2009)
- Law on the Indications of Geographical Origin (OG RS 18/2010)
- Law on Wine (OG RS 41/2009)

- Law on Brandy and Other Alcoholic Drinks (OG RS 41/2009)
- Law on Special Powers for Efficient Protection of Intellectual Property Rights (OG RS 46/2006, 104/2009)
- Law on Customs (OG RS 73/2003, 61/2005, 85/2005, 62/2006, 63/2006 corr, 9/2010 – decision of the CA and 18/2010).

On the basis of the mentioned laws, the following by-laws have been passed:

- Regulations on the conditions to be fulfilled by the copies of copyright and related rights protected works to be deposited, entry into records and depositing of copyright and related rights works and contents of the records of the deposited copyright and related rights works at the competent body (OG RS 45/2000)
- Regulations on the establishment of the list of technical devices and objects where there is obligation to pay special remuneration to the holders of copyright and related rights (OG RS 45/2010)
- Regulations on the procedure for the legal protection of inventions (OG SMN 62/2004)
- Regulations on the contents of register of applications and register of trademarks, contents of the request and proposals which are filed in the procedure for the grant and protection of trademarks, contents of claims and proposals filed in the procedure for the grant and protection of trademark and data published in the official gazette of the competent body (OG RS 43/2010)
- Regulations on the contents of register of applications and register of industrial designs, contents of the request filed in the procedure for grant and protection of right to industrial design and data published in the official gazette of the competent body (OG RS 43/2010)
- Regulations on the contents of the register of applications and register of topographies and contents of request for the grant of right on the topography and the procedure for the legal protection of topographies of integrated circuits (OF RS 45/2010),
- Regulations on the entry in the Register of Representatives kept by the Federal Intellectual Property Office (OG FRY 39/95),
- Regulations on the passing of special expert exam for the persons engaged in the representation in the procedure of protection of inventions, trademarks, models, patterns and geographical indications (OG RS 48/95)
- Regulations on the list of agricultural plant sorts referring to the exceptions from the right of plant varieties breeders and elements for determination of small agricultural producers (OG RS 38/2010)
- Rules on content and manner of keeping the register of applications for granting plant breeders' rights, register of granted breeders' rights, register of transferred rights and register of license agreement (OG RS 70/2009)
- Rules on form and content of the application for granting plant breeder's right, the required documentation, the amount and manner of delivery of reproductive material samples (OG RS 82/2009)

In the administrative procedure for the acquisition of subjective intellectual property rights, the Law on the General Administrative Procedure (OG FRY 33/1997, 31/2001, OG RS 30/2010) is applied subsidiary. The subject matter of administrative fees and

special remuneration paid in the procedure for the acquisition of intellectual property rights is arranged by the following regulations:

- Law on the Republic Administrative Fees (OG RS 43/2003, 51/2003 corr, 61/2005, 101/2005, 5/2009 and 54/2009)
- Decision on the amount of special remuneration of the expenses of procedure conducted before the Intellectual Property Office and remuneration of expenses for providing information services in the Office (OG SMN 3/2006).
- Decision on the amount of the expenses for performing tasks connected to the geographical indications, control of the grapes intended for the production of wine with geographical origin, control of the production of wine with the geographical origin as well as the examination of the quality and sensory evaluation of wine with geographical origin (“Official Gazette RS”, No 30/10).

By means of the mentioned valid legislation, the Republic of Serbia fulfils its obligations from the universal international conventions of which it is a party. Those are:

1. Convention Establishing the World Intellectual Property Organization (OG SFRY International agreements 31/1972 and 4/1986)
2. Paris Convention for the Protection of Industrial Property (OG SFRY International agreements 5/74 and 7/86)
3. Bern Convention for the Protection of Literary and Artistic Works (OG SFRY International agreements 14/1975 and 4/1986)
4. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (OG FRY, International agreements 1/1999)
5. Madrid Agreement concerning the International Registration of Marks (OG SFRY International agreements 2/1974)
6. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (OG FRY, International agreements 2/1997)
7. Hague Agreement Concerning the International Deposit of Industrial Designs (OG FRY, International agreements 3/1993)
8. Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (OG RS, International Agreements 19/2010)
9. Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (OG FRY, International agreements 6/1998)
10. International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (OG FRY, International agreements 13/2002)
11. Locarno Agreement Establishing an International Classification for Industrial Designs (OG SFRY International agreements 51/1974)
12. Patent Cooperation Treaty ((OG FRY, International agreements 3/1996 and OG SMN 32/2004)
13. Strasbourg Agreement Concerning the International Patent Classification (OG RS, International Agreements 42/2009)
14. Convention on the Protection of the Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (OG FRY, International agreements 13/2002)

15. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (OG RS, International Agreements 42/2009)
16. Brussels Convention - Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (OG SFRY International agreements 13/1977)
17. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (OG FRY, International agreements 3/1993)
18. Nairobi Treaty on the Protection of the Olympic Symbol (OG FRY, International agreements 1/1999)
19. Trademark Law Treaty (OG FRY, International agreements 4/1998)
20. WIPO Copyright Treaty (OG FRY, International agreements 13/2002)
21. WIPO Performances and Phonograms Treaty (OG FRY, International agreements 13/2002)
22. Patent Law Treaty (OG RS, International Agreements 19/2010)
23. Singapore Treaty on the Law of Trademarks (OG RS, International Agreements 5/2010)
24. World (Universal) Convention on Copyright (OG FRY, International agreements 54/73)

The Republic of Serbia passed in 2010 the Law on the Ratification of the International Convention for the Protection of New Plant Varieties (UPOV)(Official Gazette RS – International Treaties, No 18/10), implying that the Republic of Serbia opted for the acceptance of the system established in this Convention. However, in order that the Republic of Serbia should become the member of the Union for the Protection of New Plant Varieties, it is necessary to amend the Law on the Protection of Rights of the Plant Breeders (“Official Gazette RS”, No 41/2009).

After seven years of validity of the Cooperation and Extension Agreement, concluded with the European Patent Organization, the Republic of Serbia in 2010 became member of the European Patent Convention, and thus the full member of the European Patent Organization.

On the basis of network of the mentioned national and international regulations, with no dilemma one can state that in the Republic of Serbia there is a high quality legal ground for the approach of resident and foreign subjects to the protection of intellectual property, which complies with high international standards. However, there is a need for further work on the advance and construction of a unified legal basis for the protection of intellectual property, in particular in the context of accession of the Republic of Serbia to the World Trade Organization and further course of European integrations. Concretely, according to the Stabilization and Association Agreement (article 75 and 139) and Interim Agreement (article 40, paragraph 3), the Republic of Serbia has an obligation, in the period of 5 years since entry into force of the Interim Agreement, to secure the level of protection of the intellectual property similar to the level existing in the Community,

including the efficient means for the enforcement of those rights<sup>1</sup>. This period expires on December 31<sup>st</sup>, 2013, bearing in mind that the Council for the enforcement of the Interim Agreement established that the beginning for the implementation of all obligations and the counting of all the transition periods is calculated from January 1<sup>st</sup>, 2009.

With regard to the institutional basis for the protection of intellectual property, one should have in mind that the subject's copyright and related rights are acquired on the basis of the fact of creation of intellectual property work which is the subject matter of protection, implying that there is no administrative procedure involved for the acquisition of rights. Contrary to that, all the subjective rights of industrial property are acquired in the administrative procedure.

The central administrative body for intellectual property protection is the Intellectual Property Office (henceforward: Office), which conducts the administrative procedure for the acquisition of all industrial property rights, except the right of the plant varieties breeder, which is acquired in the procedure before the Ministry of Agriculture Forestry and Water Management - the Plant Protection Directorate and within it, the Group for the Plant Variety Protection and Bio – safety employs three government experts with the appropriate qualifications.

Also, in the current legislation, the Ministry of Agriculture has competences, along with the Intellectual Property Office, in the conducting of the administrative procedure for the protection of geographical indications for wine, brandy and other alcoholic products.

The Intellectual Property Office is the government body that has been working continually since the 1920, when King Alexander passed a decree for the foundation of the Administration for Intellectual Property. The competences of the Office are prescribed by the Law on Ministries (OG RS 65/2008, 36/2009 and 73/2010). On the basis of Article 40 of this Law, the Office performs expert tasks and tasks of government administration referring to patent, petty patent, trademark, design, geographical indication, topography of integrated circuits, copyright and related rights, implementation of international treaties from the field of intellectual property protection and the presentation and representation of interests of the Republic of Serbia in the specialized international organizations for the protection of intellectual property; supervision over the work of organizations for collective management of copyright and related rights; development in the field of intellectual property protection; information and education tasks in the field of protection of intellectual property, as well as other tasks determined by the law.

At present, the Office employs 101 persons, including 70 with university education, 4 with high school education and 26 with secondary education.

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<sup>1</sup> According to the Joint Declaration with the article 40 (article 75 SAA) of the Interim Agreement, the contracting parties agreed that the level of protection, determined in article 40, paragraph 3, (article 75, paragraph 3 of the SAA) implies “the accessibility of measures, procedures and tools envisaged by the Directive of the European Parliament and Council 2004/48/EC from the April 29, 2004 on the enforcement of intellectual property rights”.

In the last few years, the Office is in the process of intensive human resources transformation and modernization with the aim to increase capacities of this institution for the sake of more efficient execution of its competencies. Largely due to the foreign aid (EU funds, funds of the European Patent Office and World Intellectual Property Organization), a considerable improvement has been achieved in the field of communication-information infrastructure, which not only made the work in the Office faster and of higher quality, but it also enabled the interested parties outside the Office to use the web site of the Office and gain insight into particular data bases. That process continues in the context of extension and general shift of focus of the Office from the administrative tasks (conducting the administrative procedure) to those client-oriented like giving information services, education, mediation and coordination between the representatives of certain relevant interest groups. Along with that, a significant HR strengthening has been implemented in the Department for Copyright and Related Rights, which will give more potential not only to the supervisory function but also to the role of coordination in the field of collective management of copyright and related rights.

Keeping the focus, for the moment, only on the administrative tasks of the Office, it can be stated that a trend is under way which is characteristic not only for the small countries and countries in transition, but also for all states which have been integrated, just like the Republic of Serbia, in the international systems of acquiring intellectual property rights. As a matter of fact, these systems facilitate and make less expensive, the protection of the same intellectual property (for example, the invention) in a larger number of states in such a way as to enable valid performance of certain acts in the administrative procedure in foreign or international institutions, leading to less burden being placed on the country where the protection is sought. That process advances the farthest in the filed of patent grant, where the conditions for the grant of right are universal: the foreigner who wishes a patent in the Republic of Serbia, combining the possibilities given by the Patent Cooperation Treaty and the European Patent Convention, gains a patent, while the Office, in the entire procedure, has, so to speak, no other task save to entry the patent in the register<sup>2</sup>. By accession to the European Union (which represents the perspective of the Republic of Serbia) every country enters in the system of so called Community protection of trademark, design, rights of protection of plant varieties breeder, and in the near future, patents. That means that every person has the liberty to choose to ask protection for the territory of certain member state of the EU or for the entire territory of the EU. In this other case, the competence for the conducting of the administrative procedure is entirely on the appropriate regional administration, which additionally reduce the scope of activities of the national administrations for intellectual property.

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<sup>2</sup> The data from 2009 convincingly confirm that trend lasting for several years: from the total of 4,618 applications requesting patent in Serbia, only 320 have been filed to the Office directly, and 4,258 are so called European applications filed in the European Patent Office or represent an international patent application (according to the Patent Cooperation Treaty) which has been transformed into the European application. The Office does not conduct the administrative procedure with regard to these other applications till the European Patent Office grants European patent on this basis, which is valid also on the territory of Serbia. The Office then just enters such a patent in its Register

Having all this in mind, it is evident that the traditional profile of the Office as the administrative body competent for the procedure of industrial property grant for the territory of the Republic of Serbia is changing. In the filed of protection of inventions by patent or petty patent, the Office with its administrative procedure services almost only the resident persons, or conducts the substantive examination in one relatively small number of files (about 5%). Thus, the responsibility for the time for the grant of rights for patents and for its quality (legality) relies almost entirely on the international administrative bodies outside the Republic of Serbia. At the same time, those bodies outside the Republic of Serbia have a problem of coping with the enormous flow of patent applications and their processing, so that they entrust one part of these activities, in a very controlled and cautious way, to the national administrations for industrial property which are left out of work, and which have the capacity to execute those tasks in accordance to the basic standards.

Contrary to that, the organization of the Patent Sector within the Office and the legislation regulating the procedure of patent grant are traditionally adjusted to the practice of the Office in the conditions existing before the more intensive international cooperation in this field. The circumstances demand that this situation should become the subject of the serious analysis for the sake of looking for an answer to the question what profile of Patent Sector is required in the Office in the future. Some of the options are the following: the abolishing of substantive examination of patents or its implementation; covering all the fields of technology or the specialization in just specific fields; opening possibilities of cooperation with the administrations for industrial property in the region, on the basis of division or specialization of work or acting just in the national framework; broadening the Patent Sector or its reduction.

Without limitations exclusively to the Patent Sector, and in spite of the evident increase of productivity in the Office, it can be stated that there is still some need for the improvement of efficiency of the administrative procedures for the acquisition, recording and maintenance of the industrial property rights. The basic goals are: the reduction of backlog in the patent application examination and shortening the period of examination by means of automation of the patent application administration, as well as by the introduction of the electronic registers of rights and by enabling insight to the clients through the Internet.

The essential parameter of the system quality for the grant of subjective industrial property rights is the legality of the decisions of the Office which decides in the first degree. It depends primarily on the expert capacity of the employees of the Office, but it also depends on the existence of internal procedures of the control of the quality of work. In that sense, a system of the permanent education of the employees of the Office is necessary, as well as the mastering of the institutional form of the control of quality, which is being introduced.

Until recently, the decisions of the Office and other institutions in the filed of grant of industrial property rights were final in the administrative sense, so it was possible to initiate administrative suit against them. Quite in the sense of the modern administrative

rights, with the aim to emphasize the protection of legality, the decision making process in the second degree was introduced in the administrative procedure. However, the two degree decision making process is selectively introduced: the appeal is allowed for the decisions of the Office in all the procedures except the procedure for grant, termination and maintenance of patent or petty patent. Also, the appeal is not allowed against the decisions of the Ministry of Agriculture which decides in the procedure regarding the right of the plant varieties breeders. Finally, the Government is the instance of the second degree, which has no special expert body that would be competent to decide in the second degree. Such circumstances give grounds for the discussion about the equality of the holders of the different kinds of intellectual property rights, as well as the competence and the independence of the second degree instance.

The problem of the expert competence in the subject matter of the intellectual property rights essentially limits the space for actual protection of legality in this subject matter and in the administrative suit. As it is not realistic to secure some other kind of a specialized panel of the Administrative Court in the foreseeable future, other ways must be considered to increase the capacity of court in the administrative suits to pass decisions based on the merit on the thing, and not only with regard to the procedural issues.

Finally, let us take a step back to consider the total institutional capacity of the Office, the issue of its future financing should be resolved. That question is present for almost one decade, in particular, since the global trend has been recognized to shift the focus of the functions of national administration for intellectual property from purely administrative one to service oriented, based on information-coordination-mediation. Those non administrative functions, which become dominant, request more flexibility of the institution with regard to the possibility to answer the requests facing it. Bearing in mind that such flexibility (with regard to experts, working programs, etc.) can not be achieved in the conditions of purely budget financing, there are more states in Europe, where the intellectual property administrations are self-financed or use the combination of budget funds and own income (Romania, Slovenia, Hungary, Switzerland, France, Great Britain, Denmark, Finland, Moldavia, etc ).

The financing of all the development functions of the Office in the last 10 years came from the development funds of the European Union, from the income that the Office realized on the basis of the Cooperation and Extension Agreement with the European Patent Organization (from the designation fees of the Republic of Serbia in the European patent applications) and from the technical assistance of the World Intellectual Property Organization. In October 2010, the Republic of Serbia became the member of the European Patent Organization, which significantly increased the obligations of the Office (the participation in the work of the Administrative Council as the executive body of the EPO, participation in the working bodies of the EPO, obligations from the implementation of the Action Plan intended for the states members, etc.), and all the income has been abolished on the basis of fees for the designation of the European patent applications, because the mentioned Cooperation and Extension Agreement is no longer implemented. Also, on the basis of the three year long IPA National Project of the

European Union, in January 2010, the Education and Information Centre has been opened aiming at giving support to the research and development institutions and the economy of the Republic of Serbia in the development of competitiveness, raising awareness on the social importance of intellectual property, raising the level of knowledge in the bodies for the enforcement of IP rights, etc. After the finalization of the IPA Project, in December 2011, the financing of the Education and Information Centre will be completely transferred to the Office, which puts in danger the survival of the Centre and all the activities it has started in the conditions of budget restrictions.

Thanks to the EU CARDS Project in 2004, the Office significantly improved its informatics infrastructure. However, the transfer to electronic filing and electronic communication with the users, demands further investments, as well as equipment and software and also educated personnel. Also, the use of new information technologies available to the Office thanks to the foreign technical aid will be made more difficult when the income form the foreign funds is cut down previously originating from the European patent applications, and the Office takes over obligation to pay for the expensive software packages and reinvest in the new informatics hardware.

The tasks of patent applications examination and the examination of other industrial property rights demand highly educated experts with the knowledge of several world languages, more education in informatics and specific knowledge in the field of chemistry, physics, machine engineering, electronics, law, etc. Restrictive policy of budget financing neither allows the Office to employ the experts of the mentioned profile, nor enables that they might be engaged in sufficient number. Therefore, some of the key highly expert tasks, that must be performed in continuity and with high quality are executed by just one employee. Also, the number of the employees that can have the highest ranks in the system of government administration is limited beforehand without taking into consideration the needs of the service, which limits stimulation for the employees, and even the most qualified experts tend to leave the Office, and the renewal of such a profile of employees is difficult.

The specific feature of the Office is that the high quality profile of experts can be educated to work in the Office only after long years of special training which partly takes place in the foreign offices and international institutions. The nature of the tasks is such that the Office has no elasticity in the recruitment, and thus no possibility to replace, at the work force market, the appropriate experts quickly which means that it must conduct the human resources policy with the utmost care and plan at least on the medium term level, in order to achieve stability and build solidly on the long term organizational and financial preconditions.

In the existing economic situation, marked by the pressure upon the Government to reduce the expenditure for public administration, it is not realistic to expect from the Office to come into the position to obtain resources from the budget funds that would be sufficient for the financing of its current and development functions. Therefore, the transfer to self financing is a rational way to reduce the pressure on the public budget, and yet to enable the Office to perform its competences with high quality and to develop.

Possible complaint that the transfer of Office to self financing deprives the budget of the part of the public income that the Office realizes at the moment, carries no real weight since it concerns the investment into the strategic government project of intellectual property strengthening, implying the manifold return of the invested funds in many ways (including the income for the budget from the increase of the economic activities and the increase of the number of applications).

With regard to the manner of financing of the Office operations, it is realistic that the Office should be financed from the income which are sufficient to secure its self-sustainability:

- from the income realized by the administration of the international conventions ( Madrid Agreement concerning the International Registration of Marks, Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, Hague Agreement Concerning the International Deposits of Industrial Designs), from this sources, in 2010 , an income of 1,434,093 CHF has been realized.
- from the income realized from the registration and maintenance of validity of patents, trademarks, industrial designs and indications of geographical origin and the recording of the copyright and the subject matter of related rights, entry of the licence agreements and the transfer of rights in the Registry of the Office,
- income from services on the performance of reports on the state of the art in the world , reports on the protection of a certain sign by a trademark, certain shape by an industrial design, or the technical solution by a patent,
- income from services of industrial property pre-diagnosis,
- income from the publication of data on the granted patents, trademarks and industrial designs and the printing of the patent documents,
- income from the passing of expert exam for the representation in the process of protection of patents, trademarks and other industrial property rights before the Office,
- donations and development funds of the international organizations and other sources of financing in compliance with the Law. The prices of services offered by the Office to the users would be determined by a tariff, that the Government would agree with in compliance with the Law on Public Agencies.

The price of the services which the Office would provide to the users would be determined by a tariff, that the Government would agree with, in compliance with the Law on Public Agencies. The change of the status of the Office would not demand the increase of the tariff of the services, because the tariffs charged at the moment would be sufficient for the financial independence of the Office. In other words, the transformation of the Office would not cause damage to the users of services of the Office.

The European Commission gave opinion in favour of the securing of financial independence of the Office in their reports on the progress of the Republic of Serbia on the road to European integrations in 2009 and 2010, where the need for further activities on securing the financial independence of the Office has been particularly emphasized.

The Office already has two studies of foreign experts, on the basis of which it has been evaluated that there are economic presumptions to innovate the manner of financing of the Office. One study was done by the expert from Romania which has good experience with self financing of the national administration for intellectual property, and other was accomplished by a team of American experts from the Nathan Associates Inc. It is necessary to make operational the conclusions from those studies in the near future through the appropriate legislation which would enable the Office to function as a government agency.

## 2. Planned Activities

### I Pass the law on the protection of trade secret

The purpose of this law is to consequently regulate the concept of confidentiality, its unauthorized disclosure, as well as the civil law sanctions for such an act. On its way to membership in the World Trade Organization, the Republic of Serbia has an obligation to become a member of The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) from 1994. Although the protection of trade secret does not represent intellectual property rights in the narrow legal sense, this subject matter is treated as one of the forms of the intellectual property in the mentioned Agreement, which must have special legal grounds for protection.

### II Make the necessary amendments of the Law on Copyright and Related Rights (OG RS 104/2009)

It concerns the minimal interventions regarding the valid Law on Copyright and Related Rights for the sake of its complete harmonization with the provisions of the EU.

### III Make necessary amendments in the Patent Law (OG RS 32/2004)

It concerns the need for very limited interventions in the valid Patent Law, which will regulate the certain consequences coming out of the full membership of, the Republic of Serbia in the European Patent Organization, and make more precise harmonization with the regulations of the EU.

### IV Pass the law on Amendments of the Law on the Protection of Rights of the Plant Varieties Breeders (Official Gazette RS, No 41/2009)

This concerns the need for certain modifications of the Law in order to harmonize the Law completely with the International Convention for the Protection of New Plant varieties (UPOV Convention)

V Establish the degree of harmonization of domestic legislation with the Directive EP and Council 2004/48/EC from April 29, 2004 and the enforcement of intellectual property rights

Bearing in mind that the transfer of the Directive in the domestic legal system represents an essential precondition of efficient protection of intellectual property rights, it is necessary to make a careful analysis of the domestic regulations from the point of view of the harmonization with this Directive and define the appropriate method for its complete adoption and enforcement within the domestic legal system.

VI Establish the degree of harmonization of the Law on Indications of Geographical Origin (Official Gazette RS, No 18/2010) with the Regulations of the Council Of Ministers of the EU No 510/2006 dated March 20<sup>th</sup>, 2006 on the protection of geographical indications and indications of origin for agricultural and food products and perform the necessary changes and amendments of the Law on Indications of Geographical Origin.

Law on Indications of Geographical Origin (Official Gazette RS, No 18/2010) is considerably harmonized with the Directive of the Council of Ministers EU No 510/2006, with regard to the indications of geographical origin for agricultural and food products. However, having in mind that only the system of protection of the indications of geographical origin which is completely compatible with the system of protection of indications of geographical origin in the European Union secures the competitiveness of the domestic products on the European market, it is necessary to perform further analysis of the degree of harmonization of the valid law with the Regulations of the Council of Ministers of the EU No 510/2006 and perform the necessary changes and amendments of the Law on Indications of Geographical Origin for the sake of its full harmonization with the Regulations of the Council of Ministers of the EU No 510/2006.

VII Complete the digitalization of the existing documentation

In the Office, the largest part of the work concerning the digitalization of the existing fund of the published applications and granted rights has been completed, and the appropriate electronic data bases are already used not only in the administrative procedure, but they are also made available to the public through the official Internet site of the Office. However, in those data bases, from technical reasons connected to the material or contextual mistakes of the paper version, there are still certain missing parts and mistakes which will be corrected on the way. That task must be continued systematically and in continuity.

VIII Create technical and organizational conditions for the electronic administration of filed applications

The final goal of the current modernization of the information and communication infrastructure of the Office for the sake of increasing the efficiency of work, is the

electronic administration of the applications for the acquisition of industrial property rights. The presumption for that are the installation and implementation of software enabling the reception of electronic applications for the grant of industrial property rights or the conversion of paper applications into the electronic format, its processing directly on the desk top.

IX Improvement of the system of internal control of the quality of operations in the Office

The Office has the obligation to continue and advance the activities which have already been initiated regarding the introduction of the internal quality control in the administrative procedure, with the perspective to acquire appropriate international recognition of their excellence.

X Consider the problem of two degree decision taking process in the administrative procedure for the acquisition, termination and maintenance of industrial property rights.

For the sake of eliminating discrimination between the requester, or the holder of certain kinds of industrial property rights, as well as for the securing of expert competence and independence of the second degree administrative body, it is necessary to reconsider the existing legal solutions and, possibly, improve them in harmony with the results of the discussion.

XI Consider the problems of court protection of the legality of decisions in the administrative procedure acquisition, termination and maintenance of industrial property rights

For the sake of improvement of the quality of decision in the merit in the administrative files from the field of industrial property right, it is necessary to consider the possibility to innovate the administrative suit in this subject matter by legal institutes which would enable the more prominent role of the profession in the decision making process.

XII Change the status of the Office from the administrative body to the state agency, which implies also the transfer to the regime of complete or partial self financing.

The justification of the change of the status of the Office into Intellectual Property Agency and the changes of its manner of financing comes out of the fact that the development and expert tasks are performed in the Office which do not request constant and direct political supervision, as well as that those tasks can be performed in a better and more efficient way if the rights and obligations of the employees in the IPO are subject to the general regulations on employment and the financing is connected to the prices paid by the users of services and other income realized by the IPO.

The change of the status of the IPO would create preconditions for the expert strengthening of the IPO and its being equipped with the most modern technical means, which is necessary for the IPO to adequately perform its social role consisting primarily

from the providing of high quality services and the securing of updated and easily accessible data bases on the protected intellectual property rights.

The Agency would be financed from the remuneration for services performed from its field of competence, administrative fees realized from the tasks within its jurisdiction and the remuneration based on the administration of international agreements and the funds for development.

Although serious studies have already been completed indicating the foundation and the justification of the transfer of the Office into the status of government agency with the certain financial autonomy, it is necessary that the Government should pass the political decision which would open way in this direction. Then, it is necessary to prepare and pass the law on the foundation of the State Agency for intellectual property, with the appropriate by-laws.

### XIII. Finish the transformation of the system of the geographical indications for wines

New Law on Wines (“Official Gazette RS” No 41/09) which is harmonized with the EU regulations, and first of all with the reformed system of the indications of geographical origin for the wines in EU (“PDO/PGI” system), the Ministry of Agriculture, Trade, Forestry and Waterworks started a transformation of the system of indications of origin in the Republic of Serbia with the aim to adjust it to the current characteristics of home production. In compliance with the provisions of the Board of Ministers of the EU, No 479/2008 and 607/2009, the passing of by-laws and the transformation of system of geographical indications for wines shall be continued with the tendency to increase the number of the producers of wines with the geographical origin, and then the increasing of the capacity of the producers in the framework of the sign (the authorized users of the protected geographical indications for wines) and the capacity in the Ministry and the Control Organization for Wines with Geographical Origin.

## 2. SUPPRESSION AND SANCTIONING OF THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

### 2.1 Condition in this field

Every use of legally protected intellectual property on the part of the unauthorized person represents an infringement of intellectual property right. Most often, those infringements take the form of unauthorized production or unauthorized commerce of goods which materialize the protected intellectual property. However, in particular when it concerns copyright and related rights, the infringement of right often has a form of the unauthorized communication to the public of the protected intellectual property (performance, broadcasting, making available on the Internet, etc.). What is more, communication through the Internet, which is in permanent expansion, resulted in the fact that with regard to copyright and related rights, the unauthorized communication of the subject matter of protection became the broadest way of the violation of right.

Terms which have been internationally recognized and are used most often to denote the infringement of intellectual property right are: piracy and counterfeiting. Piracy denotes the unauthorized use of copyright works and subject matter of related rights, in particular in the form of multiplication and commerce of the mentioned on CD or DVD or some other carrier of electronic recording. Lately, that concept has been broadened to include the unauthorized communication of copyright works and related rights subject matter on the internet. The specific quality of piracy is that, in the conditions of digital information and communication technology, the expenses of multiplication or public communication of copyright works or the subject matter of related rights are minimum or almost equalling zero, on the basis of which, the profit that is realized by the pirate is significant, and the damage suffered by the holder of right significant. Counterfeiting is a term used to denote the unauthorized production of goods and commerce when the goods possess the image and trademark which is identical or similar to the other persons protected design or trademark. Counterfeited goods have the deceptive image of the goods produced by the rightful owner and holder of right, but it is appealing for the consumers because it has a lower price, as a rule. The phenomenon of the counterfeited goods is not only important for the intellectual property rights, but also for consumer protection, in particular when there are significant differences in the quality of counterfeited and original goods, in particular when it concerns goods important for the health and security (for example: medicaments, spare parts for vehicles and aircraft, etc.)

Piracy and counterfeiting of goods are today two most wide spread forms of intellectual property right infringement, and thus they are the subject of special interest of governments and special international organizations. However, one should not neglect other forms of intellectual property right infringement, such as the violation of patent, right of the plant varieties breeders and so called moral rights of the authors and performers, where the holders of right legitimately expect efficient protection.

Bearing in mind that administrative and criminal protection concerning plant breeder's rights is not currently incorporated in the legislation in the Republic of Serbia, it is necessary to amend the Law on Special Powers for the Efficient Protection of IP, Law on Customs, Law on Organizations of Courts and the Criminal Code. In that way, regarding the protection of rights, the right holders of plant varieties would have the same rights as the other holders of IP rights.

For the high degree of respect of intellectual property rights, the prevention is of great importance in the form of raising public awareness what intellectual property is and why it is necessary to protect it. That will particularly be the case in the item 4 of this Strategy. Along with that, the strong preventive influence lies in the existence of the efficient system of sanctioning the infringements of right. However, it is necessary to understand that such a system, with regard to its efficiency, can never and nowhere be compared with the system of sanctions against the violation of property on the material rights. It is especially prominent in the case of piracy on the copyright protected works and subject matter of related rights on the Internet. It is a question of the global expert topic which demands to be discussed not only in the context of suppression of the infringement of right, but also in the context of the creation of concept for the protection of intellectual

property on the Internet. This fact must be born in mind when the country with small resources and limited administrative and judicial capacities, such as the Republic of Serbia, accepts tasks in the field of suppression of violation of intellectual property rights. Along with that, it is necessary to contemplate these problems from the broader sociological angle, i.e. recognize the fact that the weak economic position of the large number of people in the country stimulates illegal behaviour which is directed to obtain certain values illegally, by avoiding to pay the full price. That temptation is particularly expressed in the domain of intellectual property, and has culminated by the expansion of Internet. Accordingly, repressive measures can not be the only answer of the state to the fight against the infringement of intellectual property rights, regardless the resources invested in it by the government.

In the last 6-7 years in the Republic of Serbia, advance has been obvious in the suppression and sanctioning of intellectual property rights infringement. It is difficult to document in statistical data because they, for now, are not accumulated and processed in an official and credible way, except on the part of the Customs Administration, which enforces measures of preventing import of pirated and counterfeited goods. In that sense, one should start from the establishment of a system for the statistical survey of suppression and sanctioning of intellectual property rights infringement on the part of all bodies having competence in this field. This harmonizes with the approach of the European Commission which established in 2010 the EU Observatory for Counterfeiting and Piracy, which has the aim, among other things, to follow the suppression and sanctioning of the intellectual property right infringement on the basis of harmonized and trustworthy data.

But, even in the absence of statistics, it can be concluded indirectly about a certain advance that the Republic of Serbia has accomplished in this field. For years, it has not been on the list that the government of the USA composes by including the countries where the condition of the respect for the intellectual property rights is disturbing from the point of view of the respect for the trade interests of that country. On the basis of other sources evaluating the condition of protection, Serbia is ranked somewhere among the average, as characteristic for the transition country of the West Balkans. It, by no means, indicates that the condition is satisfactory, but the positive trend must be stated. In that framework, it is worth mentioning that the Republic of Serbia in 2005 ratified the Convention of the Council of Europe on the High Technology Crime, on the basis of which the Law on the Organization and Competences of the Government Bodies for Fighting High Technology Crime has been passed (“Official Gazette RS” 61/2005 and 104/2009). The fighting against high technology crime affects the protection of intellectual property right in the segment which refers to the modus of the execution of the criminal act. It must be the criminal act executed with the aid of computer and computer communication network.

System of sanctioning the intellectual property right infringements consists of two major segments: administrative (Police, inspectorates, Customs, and Republic Broadcasting Agency) and the legislative. Apart from the taking care of the enforcement of its own competences, the efficiency of both these segments depends not only on the inner

coordination and cooperation, but also on the connections with the Office with the aim to exchange information and expert knowledge.

Police is the organization unit (Direction) of the Ministry of Internal Affairs, and it is territorially divided into 28 regional police administrations. The problems of the protection of intellectual property rights belongs to the specialized competence of two organization units of the Administration of the Criminal Police: Division for the Suppression of Frauds and Protection of Intellectual Property (as part of the Service for the Suppression of Crime) and the Division for the Suppression of Crime in the field of intellectual property (as part of the Department for Fighting High Technology Crime). The Division for the Suppression of Frauds and Protection of Intellectual Property is competent for the cases where the infringement of intellectual property rights is conducted by the production and commerce of so called pirated or counterfeited goods. The Division for the Suppression of Crime in the Field of Intellectual Property is competent for the high technology forms of the intellectual property right infringement, especially with the assistance of computer and computer network.

The results of the Police, although visible, are proportionate to modest human and material resources that are engaged in the work of suppressing crime in the field of intellectual property rights. Starting with the fact that in the existing economic situation it is not realistic for the resources to increase more significantly in the several years to come, it is rational that the efficiency of the work of the Police should be increased, first of all, by better coordination with the other government bodies which are engaged in the sanctioning and suppression of infringements of the intellectual property rights.

Inspections are, according to the international experience, the most efficient bodies in fighting against piracy and counterfeiting. Having in mind that, as a rule, they are concerned by the obvious infringements of intellectual property rights, they have the possibility to react relatively fast by introducing measures withdrawing the mentioned goods and services from the channels of commerce, which is the primary interest of the holder of the infringed intellectual property right.

In the Republic of Serbia, the competence of the inspection bodies for the acting in all subject matters has been established in the Law on Special Powers for Efficient Protection of Intellectual Property Rights ("Official Gazette RS" 46/2006 and 104/2009). This concerns modern legislation which empowers the inspection body to act ex officio or at the request of the holder of right, taking and examining the samples of goods, realizing the insight into the official premises and documentation, temporarily seizing the goods found, passing the measure of temporary prohibition to perform activities, permanently confiscating and destroying the goods violating the intellectual property rights, initiating punishment for transgressions and filing criminal suits. The implementation of this Law has already given very good results. However, the impression is that we are not fully using the possibilities offered by this Law.

The scope of activities of the competent administrative bodies has been arranged in the following way:

- Ministry competent for the tasks of trade and services, through the market inspection, is authorized to perform inspection supervision over the production and commerce of goods infringing intellectual property rights (trademark, design, patent, petty patent, geographical indication of origin, topography of integrated circuits, copyright and related rights) as well as supervision over the production and commerce of goods protected by copyright and related rights;

- Ministry competent for the tasks of economy and regional development, through the tourist inspection, is authorized to perform inspection supervision over the providing of services where the intellectual property rights are being infringed in the field of tourism and catering, in particular by the misuse of the service marks, as well as the use of copyright and related rights without the regulation of the obligation to pay compensation for the utilization of those rights in compliance with the law regulating collective management of copyright and related rights;

- Ministry competent for tasks of health, through health inspection and sanitary inspection, competent to perform inspection supervision over the production and marketing of goods infringing intellectual property rights (trademark, patent, copyright) in the domain of medications and sanitary regulations;

- Ministry competent for the environment and urban planning, through the urban inspection and civil engineering inspection, is competent to perform inspection supervision over the changes on the building representing the materialization of the work of architecture, which have been made without the authority of the author;

- Ministry competent for the tasks of financing, through the tax inspectors and the tax police, is authorized to establish, in the scope of performing its activities, whether there is infringement of intellectual property rights, in particular rights referring to computer programs (software) and data bases;

- Ministry competent for tasks of education, through the education inspection, is authorized to perform inspection supervision over the use of expert publications infringing copyright;

- Ministry competent for science and technological development, through the inspection, is competent to perform inspection supervision over the use of expert publications infringing copyright;

- Republic Broadcasting Agency performs the supervision over the work of broadcasters if the unauthorized broadcasting, or rebroadcasting of protected work infringes copyright or related right.

Also, on the basis of Article 81 of the Law on the Establishment of Competences of the Autonomous Province of Vojvodina (Official Gazette RS No 99/2009), AP Vojvodina, through its bodies, as entrusted tasks, in compliance with the law regulating the field of

intellectual property protection and copyright and related rights, performs inspection supervision in the field of protection of copyright and related rights on the territory of AP Vojvodina and takes all measures against piracy, in compliance with the law.

The most intensive activity, on the basis of this Law, is demonstrated by the market and tax inspection, or tax police. The other bodies, bearing in mind the nature of their work and the insufficient human resources at their disposal, are not sufficiently engaged in the suppression of criminal activities in the field of intellectual property. The way to intensify the work of the inspections is twofold: on one hand, one should reexamine the list of the bodies and their competences for the sake of the realistic distribution of work, which would suit the nature and the capacity of the individual bodies; on the other hand, it is necessary to strengthen the human resources of the inspections, additional specialist training of the inspectors is necessary and the making of the instruction manuals how to proceed in the fighting against piracy and counterfeiting.

Customs Administration has a key role in the enforcement of so called measures at the border which are envisaged by The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (1994) as well as the Regulations of EU No 1383/2003 and 1891/2004. It is a question of measures having the aim to prevent import, export and transit of goods infringing intellectual property rights. The competence for the enforcement of these measures is established by the Customs Law (“Official Gazette RS” no 18/2010) and the method of procedure by the Regulations on the allowed Customs procedure with the Customs goods, release of Customs goods and charge of Customs debt (“Official Gazette RS”, No 127/03, 20/04, 24/04, 63/04, 104/04, 44/05, 71/05, 76/05, 106/05, 5/06, 47/06, 86/06, 10/07, 25/07, 80/07, 9/09, 16/09, 28/09, 57/09, 96/09 and 48/2010 – state regulations)).

The Customs Administration has had, since 2003, a Department for the protection of intellectual property, as a separate organization unit of the Sector for the control of the enforcement of Customs regulations. Apart from that Department (which is the holder of all activities), in the enforcement of measures of intellectual property protection at the Customs, all the authorized Customs employees have been included in the Customs stations of the Customs administration (at the moment, there are 14 Customs stations).

The Customs administration is engaged in the performance of this specific authority and has achieved significant success. However, there is room to improve this aspect of fighting against piracy and counterfeiting in the Republic of Serbia by means of opening a working post in the systematization – an intellectual property coordinator.

The Republic Broadcasting Agency (RRA), as an independent organization which, on the basis of the Law on Broadcasting, (Official Gazette RS No 42/02, 97/04, 76/05, 79/05 – the other law 62/06, 85/06, 86/06 – correction and 41/09) has been charged with the performance of public authority, performs the supervision over the work of broadcasters, prescribes the binding rules for broadcasters and takes the measures from the field of broadcasting aiming at the implementation of regulations on copyright and related rights. For the sake of efficient implementation of the broadcasting policy, RRA passes

recommendations, instructions, binding instructions and general binding instructions for the broadcasters. In the case of the violation of the regulations on copyright and related rights, RRA can pronounce a warning or admonition, and it can temporarily or permanently terminate its broadcasting license, and against that broadcaster or the responsible person, it can start the court procedure or initiate procedure before some other competent government body, if its act, or omission to act, has the characteristics of a criminal action. The pronouncement of the measures is independent from other legal remedies which remain available to the holders of copyright or related rights.

In the framework of its activities, the RRA is competent for the supervision over the work of broadcasters, or natural and legal persons issued license for the broadcasting of radio and television programs. With regard to the subjects that are not broadcasters, or which do not have the license for the broadcasting of the program, the RRA in cooperation with the Republic Agency for Electronic Communications (RATEL) tries to prevent their work, but can not pronounce measures prescribed by the Law on Broadcasting.

RRA supervises the work of broadcasters only in the part which refers to the production and broadcasting of radio and television programs and in particular only the contents, form and function of those programs made available to the public. In doing so, the RRA establishes and passes punishment only against those violations of regulations which the broadcaster did by the broadcasting of the program, such as the unauthorized broadcasting of the copyright protected work or the subject matter of related rights or violation of integrity of the copyright protected work or the subject matter of related rights.

Court system in the Republic of Serbia was for years an obstacle in the realization of the rights of citizens to court protection, not only with regard to the intellectual property subject matter. Apart from the general reasons of inefficiency of court protection of rights, in the subject matter of intellectual property rights, a specific problem was the lack of training for judges in this field. With the aim to improve the condition, since January 1<sup>st</sup>, 2010, a deep reform of the system has been conducted, and, in its framework, the reorganization of the network of courts and the new organization of competences. On the basis of the Law on the Organization of Courts (“Official Gazette RS” No 116/2008 and 104/2009) and the Law on the Seats and Circuits of Courts and Public Prosecutors Offices (“Official Gazette RS” 116/2008) the situation with the civil court protection of intellectual property rights is the following:

The competence to judge in the first degree in the legal suits against the infringement of intellectual property rights belongs to all higher courts, or commercial courts, when the business companies are the conflicting parties. In the second degree, the competence belongs to the appellation courts and the Commercial Appellation Court. The territorial division of competences is such that there are 26 higher courts and 16 commercial courts. That means that judges in the total of 42 courts in the Republic of Serbia may be faced with a challenge to decide in the first degree with regard to the legal suit in the field of intellectual property rights. Having in mind, on one side, that according to the approximate evaluation, the subject matter of intellectual property rights represents less

than 5% of court cases in Serbia, and, on the other side, that this is a very complex and specific expert subject matter, it is clear that the problem which existed in the previous system of court organization is not resolved. As a matter of fact, the high training of judges, as a presumption for the efficient judging of high quality, can not be secured in the conditions of such broad dispersion of territorial competence of the first degree courts. In other countries, this problem is resolved by the introduction of special courts or the concentration of territorial competence of first degree courts. This other solution is the realistic outcome resolving the described problem in the Republic of Serbia. The reduction in the number of competent first degree courts would indirectly achieve the effect similar to the one of the specialization of judges that could hear more cases in the field of intellectual property, so their training should be more direct, efficient and purposeful.

The competence for the first degree protection against criminal violation is divided between magistrate and higher courts, depending on the height of the pronounced sentence for the actual criminal act. Analogously, the division of competences of the public prosecutors offices has been made. Generally speaking, according to the experience of other countries, the criminal protection stays in the background in comparison to the civil law protection. However, apart from the immediate effect of the general prevention, it has its special value in the case of piracy and counterfeiting which contain elements of organized crime. For the same reasons, the territorial dispersion of courts and public prosecutors offices of general jurisdiction is not so much a problem as it is the case with civil law courts, especially bearing in mind that there exist:

- public prosecutors office with special competences- Public Prosecutor's Office for Organized Crime and
- Department for Fighting High Technology Crime of the Higher Court in Belgrade and the Department of the Higher Public Prosecutors Office in Belgrade for fighting high technology crime, whose competences are established by the Law on Organization and Competence of Government Bodies for Fight against High Technology crime.

## 2.2 Planned Activities

I. Establish compulsory system of standardized keeping records and statistical processing of data with regard to the sanctioning of infringements of intellectual property rights

For the sake of correct evaluation of the efficiency of protection of intellectual property in the Republic of Serbia, it is necessary to develop and establish, in compliance with the international standards, the standard compulsory system for the Police, the inspectorates, the Customs Administration the Republic Broadcasting Agency, the courts and the public prosecutors offices to keep records regarding the execution of their competences in the field of protection of intellectual property rights, and to forward those data directly to the Office.

It concerns the data on the kind and amount of goods infringing intellectual property rights, as well as the sanctions pronounced for the established violation. Concretely, it is

necessary to introduce the standard recording of goods withdrawn from the channels of commerce (temporarily or permanently), the destroyed goods and the kinds of sanctions pronounced and the duration of court or administrative procedure.

## II. Pass the Law on Optical Discs

The purpose of this law is to enable the control of production and commerce of “empty” CDs in order to facilitate the tracking of pirates who use that media for illegal recording of copyright works, interpretations, phonograms and video grams, as well as their sale.

## III. Pass Amendments of the Customs Law

The purpose of the Amendments of the Customs Law is to secure the measures at the boarder for the sake of illegal import of the plant varieties protected on the basis of the law on the Protection of the Rights of Plant Breeders.

## IV. Legally define the obligation of Internet providers to guard the data on Internet commerce

In the Republic of Serbia, one of the problems to suppress crime on the Internet, in general, including the one referring to the infringement of intellectual property rights, is connected to the circumstances that the police and the investigatory bodies do not always have access to the information of the commerce taking place on the Internet. However, the storage of those data for a longer period of time (for example, a year) demands the use of servers of great capacity, which represents an expense for many Internet providers that they can not accept. Such circumstances make difficult, and even impossible, the providing of indications or proof on the infringement of intellectual property rights on the Internet. Thus it is necessary to establish by means of law or by-law, that the storage of data on the commerce on Internet for a certain period of time, is an obligation without which the Internet provider can not obtain a working permit.

## V. Activities of the Police Department in fighting high technology crime should be broadened by constant supervision of Internet traffic

In many other countries there is a Police service which permanently and directly supervises Internet traffic, following the activities of the persons offering goods or services on the Internet, participating in discussion sites on the blogs, etc. Thanks to that activity, Police gets information about the suspicious behaviour and undertakes special measures of detection and investigation. Such a service does not exist in the Republic of Serbia. Thus, it is necessary to extend the competence of the Department for Fighting High Technology Crime to these kinds of activities, regardless the modest resources that could be invested in that in the beginning.

## VI. Reconsider the division of competences of the inspections according to the Law on Special Powers for the Efficient Protection of Intellectual Property Rights (“Official

Gazette RS” No 46/2006 and 104/2009), and change the Law in that part, with the aim to concentrate competences to the smaller number of bodies that have the capacity for inspection tasks. Secure also the inspection control and supervision in the field of protection of the rights of plant breeders

One of the reasons of the insufficient implementation of the Law in certain cases of the infringement of intellectual property rights lies in the fact that the competence for inspection control and supervision has been given to specific administrative organizations that have no capacity for such a task. Therefore, it is necessary to revise the division of competences according to that Law.

VII. Give instruction to all the bodies engaged in the inspection control and supervision in the domain of intellectual property rights how to approach that task

With the aim of strengthening of the intensity and quality of the activities of the inspection bodies in the domain of sanctioning infringements of intellectual property rights, it is necessary to amend the Law on Special Powers for the Efficient Enforcement of IPR with the provision which binds each body to draft a document (instruction) in order to secure the standard approach in those activities.

VIII. In the Customs Administration, it is necessary to introduce in the systematization the working post of the coordinator for intellectual property

Coordinators should be placed in the customs stations and customs posts for the sake of facilitating and making faster the exchange of information and the control of the stored goods.

Their tasks would comprises: coordination activities between the Department for the protection of IP within the Customs Administration and custom officers at borders, providing custom officers at borders with the information on any change or amendment in regulations, as well as submitted right holders requests for the protection of IP, assisting custom officer at borders in identifying goods while checking shipments, keeping records on seized goods, as well as supporting the right holders during checking and sampling procedures.

IX. Establish the permanent coordination body for the cooperation between the Police, inspections, Customs Administration and Tax Administration

For the systematic suppression of intellectual property right infringement, permanent cooperation and coordination is necessary between all the government bodies that are engaged in such tasks and in particular those that operatively detect and explore this phenomenon. At the moment, there is no institutionalized form of such cooperation which would enable the mentioned bodies to keep track of the activities of others, and to act jointly, if necessary. Therefore, it is necessary to establish one permanent body that would secure frequent meetings of the representatives of the mentioned bodies in the

longer period of time and enable mutual exchange of information for the sake of undertaking joint or coordinated actions.

X. Concentrate territorial competence of civilian and commercial courts passing judgment in the first degree in the legal suits against the infringement of intellectual property rights

In order to achieve higher degree of expertise (specialization) of courts in the subject matter of intellectual property rights, it is necessary to undertake the measure that has already been implemented in a series of European states- the reduction of the number of the competent first degree courts. It would be ideal if, in our country, three courts of general competences would suffice along with the three commercial courts in the first degree to decide in the legal suits against the violation of intellectual property rights. With the purpose to make this measure operational, it is necessary to revise the Law on the Organization of Courts. By the amendments of this law, the rights of the plant breeders would be made equal to the other intellectual property rights in order to secure that the same courts have the jurisdiction for the protection of all kinds of intellectual property rights.

XI. Make cooperation program between the Police, the Customs, the inspections, the Republic Broadcasting Agency, the courts and the public prosecutors offices, on one hand, and the Office, on the other

All the mentioned bodies share responsibility for the condition of the system of intellectual property protection in the Republic of Serbia. Unlike others, the Office has no competence in the field of sanctioning infringements of intellectual property rights, but it possesses information of the existing rights of industrial property in the Republic of Serbia and its holders, as well as expert knowledge which is precious as support to other bodies engaged in the sanctioning of the violation of these rights. Therefore, it is necessary to establish certain permanent form of institutional cooperation among them, which would secure standardized procedures of obtaining relevant information, as well as permanent innovation of knowledge in the field of intellectual property rights.

### 3. IMPLEMENTATION OF INTELLECTUAL PROPERTY RIGHTS IN ECONOMY

#### 3.1 Condition in this field

When it is spoken about economic implementation of intellectual property, it refers to the economic valorisation of intellectual property in the form of production and marketing of goods or services on the market. Simultaneously, the consideration of these problems must be differentiated, depending on the kind of intellectual property in question. What is common to all intellectual property is that, in the Republic of Serbia, it enjoys the same legal treatment regardless whether intellectual property belongs to foreign or domestic holder of right. Therefore, although the national interest demands to promote economic implementation of domestic intellectual

property, no legal discrimination is possible according to the criteria of citizenship or residence (seat) of the holder of title of intellectual property right. The only thing possible is to introduce stimulating measures to encourage production of Serbian intellectual property and to secure for the home economy necessary information of high quality on what intellectual property in the Republic of Serbia offers and adequate manner of its exploitation in the country and abroad.

When it concerns intellectual property that the theory classifies as intellectual creations, such as inventions, copyright works, interpretations and design, the economic implementation implies that such works are already existing. In other words, the question of their creation is not the immediate subject matter of this Strategy. The policy of stimulating creation of technical inventions in the Republic of Serbia is included in the Strategy of Scientific and Technological Development, and the policy of incentive for copyright works and creation of performances is included in the domain of the cultural policy of the state. With regard to the intellectual property classified as distinctive signs, such as trademarks and indications of geographical origin, the accent is on the legal protection as a precondition of the efficient economic utilization.

The economic implementation of the domestic inventions faces a problem in the Republic of Serbia, which is present in the entire world, and that is lack of adequate financing of the development of a concrete product on the basis of a specific invention. As a rule, the invention (which is possibly also patented) requires considerable effort and funds in order to be transformed from the technical solution of a specific problem to a prototype of a product, and then into the product itself ready for serial production. It is logical that the interest for the financing of that phase of development belongs to the subjects who observe their economic interest in the latter exploitation of the product. Therefore, it is considered important to establish a connection between the subject which has the invention and the subject owing investment capital and/or technological and production capacities of key importance for the advance of economic exploitation of an invention. Starting from the assumption that the universities and the scientific and development organizations are the natural centres of scientific exploration and technological development, the establishment of various institutional forms of their cooperation with the economy is considered, in the entire world, as a key of efficient economic utilization of an invention. Such forms of cooperation, at the same time, have stimulating effect on the domestic technological development, because the economy becomes a “client” of the domestic universities and scientific and development organizations, which work on projects ordered directly by the economy. At the same time, when we speak about economy, it refers both to the domestic and to the foreign business companies.

According to the experience of other countries, as the useful link for connecting demand and offer of the technical inventions appear the technology transfer centres at the universities or scientific and development organizations. Their role is to inform the economy on the possibilities of cooperation, on the basis of inside information about R&D capacities and results of scientific work of their institutions, to participate

in the selection of the business partners and to detect the sources of financing, to contribute actively to the business and legal shaping of that cooperation, and supervise its realization. At the same time, such centres are the address where the interested economy can get reliable information about the possibilities of cooperation. In that sense, the Government shall support the activities of universities and the scientific and development organizations in the establishment of technology transfer centres and the improvement of their work.

Clearly defined rights and obligations of all participants in the cooperation (university, scientific and development organization, economy, state) is one of the important preconditions for the advance of economic use of inventions. It is also a precondition for the participation in the international scientific and development projects, or for the use of financial resources from the EU funds. Part of that precondition has already been fulfilled by passing the Law on Scientific and Development Activities (“Official Gazette RS” no 110/2005, 50/2006 – correction and 18/2010) which, among others regulates “economic rights on the results of R&D” which are financed by funds from the budget of the Republic of Serbia. However, when it considers the results of R&D (inventions) which are the result of the cooperation with economy, the contracts regulating the rights and obligations between the universities (faculties), or R&D organization and the economic subject, as well as acts regulating the relationships between the individual inventors and the institution where they work are of the highest importance. The Government shall support the creation of models of such contracts.

Trademarks and indications of geographical origin are the forms of intellectual property which have great importance in the marketing of products, so the state can support, through local units of self-government, the realization of the legal protection of the indications of geographical origin for the products which are traditionally known and specific. That assistance would consist in the animation of local producers to accept certain obligations with regard to the maintenance of the quality of products as well as in the financing of creation of appropriate expert study which is necessary for the acquisition of the legal protection.

The Intellectual Property Office has lately introduced in its offer of services the so-called Pre-diagnosis of intellectual property in the business companies. The issue is that, at the request of the interested business company, the experts of the Office get acquainted on the spot with the existing and potential intellectual property, and compose a written report with the evaluations and recommendations with regard to the legal protection of that intellectual property and the possibilities of its economic utilization. Bearing in mind that the first experiences with offering of this kind of service are very good, it is certain that it will continue to be provided and perfected. However, it is not realistic to offer this kind of service in the future free of charge, as was the case so far (in the pilot phase).

Business established on intellectual property does not entail only its direct exploitation, but also other forms of its utilization as a specific kind of economic

asset. The ceding to others of the right to utilize the intellectual property by means of contract, the use of intellectual property as a security in the joint business endeavour, placing intellectual property as a security for the covering of debts, etc, are also important for the economic valorisation of intellectual property. In that context, the expert evaluation of the value of intellectual property is the precondition for the mentioned transactions. The Government shall support the activities for the improvement of method for the evaluation of intellectual property assets, and it will strive to establish reputation of the business transactions involving intellectual property.

In the field of the copyright, right of performer and right of the producer of phonograms, are the essential levers for the economic utilization of protected intellectual property assets is the system of collective management of copyright and related rights. In the Republic of Serbia, such a system exists, but its functioning is burdened with problems, not only in the relation to collective management organizations – users of copyright protected works, performances and phonograms, but also in relation to the organization of its members, i.e. consignees. Those problems surpass the framework of the sanctioning of infringements of intellectual property rights and refer to the negotiation between the organizations and users for the sake of forming the remuneration for the use of copyright and related rights. In the future, the Office will perform more intensive supervision over the work of organizations with the aim to raise the level of democracy and transparency of their work, and thus improve their credibility. Also, the Government will support the processes of healing of relationships between the organizations and users by means of introducing the independent Commission for Copyright.

Healthy cultural industry can be based only on the relations between the authors or performers, on one side, and users (publishers, musical and film producers, broadcasting business societies), on the other side, which secures the just balance of their interests and has no elements of misuse of the stronger negotiating position of one side. The need to build such culture of negotiation in this kind of doing business overcomes the framework of education and impinges upon the domain of organized assistance of the state to the associations of authors and performers to elaborate the models of contracts on the cession of copyright and performers' rights to the users.

### 3.2 Measures

#### I. Establish Technology Transfer Centres at least on two state universities

By combining resources from the foreign projects and the resources from the budget of the Republic of Serbia, it is necessary to establish the technology transfer centres in at least two universities in the Republic of Serbia. The caution and progressiveness in the establishment of such centres is necessary because the state can not take on itself the long term obligation of financing their work. The aim is that such centres should be financially self sustaining due to the provision obtained from the economic effects of successful projects where they mediated. Therefore, it is rational to establish them only in the

situations where there is much chance for the successful beginning of their work. On the basis of the agreement between more universities, or universities and scientific and development organizations, those centres would initially service also the needs of other universities and scientific and development organizations.

- II. Elaborate models of contracts regulating relationships in the projects of cooperation between universities or scientific and development organizations and economy

On the basis of the good practice in the Republic of Serbia and abroad, in the framework of the positive regulations of the Republic of Serbia, the Government shall support the elaboration of the model of contract regulating the relationships of participants in the cooperation projects between Universities or scientific and development organizations and economy. That model of contracts will define the rights and obligations of the institution, the employed inventors and the business partners inside the project. Their implementation shall not be mandatory, but their purpose is to help the participants to form their relationships in a high quality manner and thus secure the unhindered development of cooperation.

- III. Assist financing protection of indications of geographical origin of traditional and specific products

The Ministry of Agriculture, Forestry and Water Management will invite, by means of a tender, agricultural and food producers, and their associations in Serbia to apply with their projects for protection of indications of geographical origin, and, on the basis of criteria selected beforehand, they will choose several applications which will get financing for the elaboration of an expert study and all other necessary activities.

- IV. Offer to the economic subjects, on a commercial basis, the service of pre diagnosis of the intellectual property status

This service, which is now in the pilot phase, will be standardized by the Office, improved and offered to all the economic subjects on a commercial basis.

- V. Improve methods of evaluation of economic value of intellectual property of economic subjects and secure recognition for business transactions with intellectual property

Intellectual property, as a specific economic asset, has its value which depends on a serial of factors. The evaluation of that value is highly expert task which must become part of the routine in the definition of value of the business subjects or individual intellectual property assets owned by those subjects. That is a precondition for the conducting of various business transactions with intellectual property. The government shall secure the guide for the evaluation of value of intellectual property and elaborate a manual of good practice for the conducting of business transactions with intellectual property.

- VI. The Office will continually conduct reinforced supervision over the work of the organizations for collective management of copyright and related rights and publish the results of such supervision

#### 4. RAISING PUBLIC AWARENESS AND EDUCATION

##### 4.1 Situation in this field

Creation, protection and implementation of intellectual property are not possible without people trained to work on that successfully. In the building of such human potential, essential role belongs to the raising of public awareness and education.

By raising public awareness we understand the measures and actions directed towards a broader range of people, who, as a rule, have no immediate professional goals and ambitions in this field. The understanding of the concept and importance of intellectual property, or its legal protection and the consequences of violation of legislation in this field, are important for everybody, bearing in mind that in modern times it is almost impossible to avoid contact with this problems in practical life. One of the features of legal protection of intellectual property is that IP, unlike property on material things, is not obvious and the rules of its protection often evade the laic intuitive feeling concerning what is allowed or forbidden. Therefore, a high level of public awareness about this problem, as kind of a preventive action, is one of the most important levers for the improvement of suppression of violation of intellectual property rights.

Also, economy based on intellectual property, implies that people from their childhood and youth, should be in contact with the information on the economic potential of intellectual property and the challenges of its creation. The creation of the cult of creativity in all fields of activities, is a condition for the establishment of an enterprising climate in the society, which is appropriate for that type of modern economy.

Work in this field of activity is insufficient in the Republic of Serbia. Occasionally there are propaganda campaigns which are implemented either by subjects having their business interests placed in danger by massive infringement of intellectual property rights (example: AmCham , SOKOJ) or by the Intellectual Property Office on the occasion of the World Intellectual Property Day (the 26<sup>th</sup> of April each year). From the systematically organized conceptual activities it is worth mentioning the Competition for the Best Technological Innovation in the Republic of Serbia, which has been organized for six years under the auspices of the Ministry for Science and Technological Development with the assistance of the Faculty for Technical Sciences of the University in Novi Sad, RTS and the Chamber of Commerce of Serbia. However, for the most efficient promotion of the intellectual property in the Republic of Serbia, it is necessary to do more. At the same time, special attention must be devoted to the children in primary schools, who are not only future users of intellectual property, but also the future kernel of creative population in the Republic of Serbia. The quality propaganda campaign, which is made appropriate for their age, would give better results in long term, than any campaign directed towards the adult population, who have far less trust in the state

organized propaganda campaigns, and weaker motivation to change the acquired habits. That, of course, does not mean that the adult population should be neglected in this task. But raising awareness of that population must be founded on the connection of intellectual property and promotion of certain practical interests of those people (for example, in the form of the protection of consumers and the similar).

In the promotion of technical culture and innovations, the important role is played by the exhibitions of inventions. There are such exhibitions in the Republic of Serbia. However, due to the lack of unified criteria and the lack of cooperation among the associations of inventors, there is no competition in the form of an exhibition for inventions of the highest rank – on the state level. The existence of the arranged system of competition, as well as such exhibitions, would attract attention of the media and represent a considerable contribution to the raising of public awareness on intellectual property.

Education, unlike raising public awareness, is a systematic and institutionalized activity of the transfer of knowledge to those who have specific (actual or potential) professional interests with regard to intellectual property. Depending on the target group, kind and level of knowledge which is being passed, the education in the field of intellectual property can be performed in the framework of the accredited curriculums at the faculties (as a separate subject or as a part of a specific subject) or at the universities (interdisciplinary groups), but also in other institutions which have expert and organizational capacities for the task.

With regard to the training at the faculties, the situation in the Republic of Serbia is varied. While at the majority of legal faculties, the intellectual property right is studied as a compulsory or optional subject at the certain level of studies, at the technical and art faculties, that is not the case. The particular problem lies in the fact that the future technical intelligence in the Republic of Serbia, as a rule, has no opportunity to get any kind of knowledge in the field of intellectual property while attending university.

The important step in the direction of improvement of education was made by the recent opening of the Education and Information Centre in the Office. Its opening, and the first two years of work are the subject matter of a project financed by the European Union. The aim is to offer shorter educational programs to the interested audience in the excellent premises and with outstanding technical conditions- programs which are primarily being directed to the expert qualification of people to practically apply knowledge from the field of intellectual property. It has been planned that the curriculum and the manuals should be adapted to the needs of the specific groups of users (representatives of economy, scientific and development institutions, judges, inspectors, public prosecutors, representatives of the media, artistic associations, etc.) Foreign experts will be included in the elaboration of the education manuals and curriculum for training.

The described situation leads to the conclusion that it is necessary to undertake a serial of measures with the aim to raise the public awareness and improve education in the field of intellectual property. This is particularly the case because the high quality of information

and training of human resources are the precondition for the efficient functioning of all segments of the system: from the creation of intellectual property, through its legal protection, to its economic implementation and utilization.

#### 4.2 Planned Activities

- I. Secure that the entire public sector, through the policy of public procurements in their current work, respect the intellectual property rights

Important propaganda effect on the level of raising public awareness of intellectual property can be achieved by adequate behaviour of the government and public sector. It is essential that in all the current activities of all the ministries, agencies, funds, schools and faculties, health institutions and public media service and others, they should have prescribed procedures aiming at the prevention of intellectual property right infringement. For example, it is necessary to eliminate the use of unlicensed software, prevent the purchase and use of any goods produced or marketed through the violation of intellectual property rights, suppress the unauthorized use of copyright protected works by their broadcasting, multiplication, etc. This measure could be achieved by amending the Law on public procurement (OG RS 116/2008).

- II. Translate and publish all the propaganda brochures prepared by the World Intellectual Property Organization for various target groups

The World Intellectual Property Organization has prepared more than twenty publications on different topics from the field of intellectual property rights, which are attractively designed and intended for various target groups (civil servants, small and medium enterprises, authors, inventors, the young, etc.) They are offered to national administrations for intellectual property to be translated into the local language and published without the obligation to pay remuneration. The Office has already published four publications intended for young people. It is necessary to increase this number, and create in such a way a solid background for the campaigns of raising public awareness on intellectual property. Brochures are published on the official site of the Office, and, when needed, in the paper form.

- III. Give more publicity to the World Intellectual Property Day

The Organization of the United Nations determined the April 26<sup>th</sup> as the World Intellectual Property Day. The World Intellectual Property Organization declares on that day the slogan for the celebration, produces several propaganda posters and appropriate video clips, and the Director of that Organization sends the message to the world. So far, the Office has found ways to commemorate that day, but always with insufficient media coverage. The government will support the celebration of the World Intellectual Property Day by the official address to the public, and contribute that the messages sent on that day get more publicity.

- IV. Support propaganda campaigns connected to the promotion of intellectual property

The other governmental institutions, apart from the Intellectual property Office, should be included in the public awareness campaigns in the field of intellectual property through (co)patronage and/or (co)financing of appropriate propaganda actions, not related to the commemoration of the World Intellectual Property Day.

- V. Place contents on the official site of the Office which popularizes intellectual property and which is intended for the young population

Many national administrations for intellectual property in the world have very attractive propaganda material on their sites, and the one particularly important is intended for children. That material can be used not only when approached at random or accidentally, but it is also used in the planned conceptual approach for school actions and in other institutions.

- VI. In the framework of the Education and Information Centre of the Office, make plan for the activities of raising public awareness on intellectual property

Its already existing activity of raising public awareness on intellectual property, the Office should improve in a way that will not only respond to the ad hoc invitations of the interested party, but will also offer different target groups programs that are specially formatted.

- VII. Continue and support the existing competition for the best technological innovation of the year

The competition for the Best Annual Technological Innovation has been organized for six years under the auspices of the Ministry for Science and Technological Development. That program has great educational and propaganda importance in the domain of intellectual property. It is necessary to continue and improve it with the participation of the Education and Information Centre of the Office.

- VIII. Improve the system of competition at the exhibitions of inventions

The existing associations of inventors in the Republic of Serbia conduct every year a serial of exhibitions of inventions, some of which have competitive character. Because of the lack of cooperation and coordination among them, a system of the selection of inventions has not been established, so that on the basis of such concept it would be possible to organize the exhibition with the competition of the highest rank, that could turn into important media event with the assistance of the government. It is necessary to change that situation, and with the help of the standard criteria, establish the ranking system at the exhibition of inventions, as well as to establish the state competition at the exhibitions of inventions.

- IX. Introduce the checking of the level of knowledge of intellectual property rights at the Judicial Exam

Lawyers who choose to work in courts or as advocates, in legal representation, have the obligation to pass the Judicial Exam before the Ministry of Justice. At the moment, the intellectual property law does not exist as a subject at that exam, and the subject matter has not been adequately represented on other subjects such as Civil Law and Commercial Law. In order to make judges and advocates more aware of the importance of intellectual property in their work, it is necessary to check their knowledge at the Judicial Exam with regard to this field of knowledge. As it is not realistic to introduce the Intellectual Property Right as a special subject, it is reasonable to pay more attention to this subject matter in the framework of the Civil Law or Commercial Law.

- X. Introduce the studies of the Law on Intellectual Property at the Judicial Academy

The Judicial Academy has recently been established in Serbia with the aim, among other things, to innovate permanently knowledge of judges and public prosecutors with the aim to increase efficiency and expert level of their work. In the framework of program of work of the Judicial Academy, the Intellectual Property Law must find its special place.

- XI. Support the introduction of subject matter on the basis of intellectual property at the technical, economic, agricultural and management faculties and art colleges

The students at the faculties of technology and art have a special need for certain level of knowledge in the field of intellectual property. Future engineers must, from the very beginning of their professional career, be aware of the legal and economic problems of creativity in the field of technology. As an analogy, this holds true for the future creators in the field of culture and art to whom copyright and related rights represent one of the basis of economic existence. Therefore, curriculums of technical and art faculties must contain certain forms of tuition of intellectual property, which would be adapted to the specific features of their future profession.

- XII. Connect Education and Information Centre of the Office with the universities, other educational institutions, scientific and development organizations and chambers of commerce for the sake of coordinating educational activities in the field of intellectual property

The Office, through its Education and Information Centre must get the coordination role for all sorts of educational activities in the field of intellectual property, which are not included in the curriculum at the accredited educational institutions of the Republic of Serbia. That role implies the connection with the universities, other educational institutions, scientific and development organizations and chambers of commerce for the

sake of establishing educational needs for specific target groups, as well as for the sake of performing suitable forms of training.

#### VI. ACTION PLAN

The Action plan describes in more details the aims, measures and activities, the indications for their follow up, the responsible institutions and the time limits for their realization.

The Action Plan for the enforcement of the strategy of development of the intellectual property in the Republic of Serbia is printed with this Strategy and represents its constituent part.

#### VII. FINAL PROVISION

This Strategy is to be published in the “Official Gazette of the Republic of Serbia”.

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The correctness of transcription is certified by the  
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