

THE LAW ON SPECIAL POWERS FOR THE PURPOSE OF EFFICIENT PROTECTION OF INTELLECTUAL PROPERTY RIGHTS*

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(correction in the articles: 34 , 35 , 36 , 37 , 38 , 41 , 42 , 43 , 44 .)

I. BASIC PROVISIONS

Subject-matter of the Law

Article 1

This Law shall regulate special powers of the state administrative authorities and the organizations that have public prerogatives (hereinafter referred as: responsible authorities) for the purpose of efficient protection of intellectual property rights in compliance with the legislation that regulates intellectual property rights.

Application of the Law

Article 2

- (1) This Law shall be applicable to manufacturing, circulation, use and possession of goods and supply of services instrumental in infringement of intellectual property rights.
- (2) This Law shall not apply neither to the goods that are not intended for commercial activity, i.e. for placing into circulation, nor to personal belongings, i.e., to items intended strictly for personal use, provided that multiple identical copies of the same product are not being involved.

Definitions

Article 3

- (1) For the purposes of this Law:
 - 1) 'Intellectual property rights' shall mean copyright and related rights, trademarks, indications of geographical origin, designs, patents, petty patents and layout-design (topographies) of integrated circuits, in accordance with the applicable law;

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- 2) 'Right holder' shall mean the initial holder of an intellectual property right, or any successor in title to such initial holder, including professional associations or organizations and organizations for collective management of rights, in accordance with the applicable law;
- 3) 'Infringing goods' shall include but are not limited to: (1) pirated copies of copyrighted work or any subject-matter protected by any related right, including computer software; (2) counterfeit trademark goods; (3) goods containing counterfeit design; (4) goods infringing patent or petty patent; (5) goods infringing topography of integrated circuits; (6) any goods primarily designed, made or modified for the purpose of which is to avoid, bypass or remove technological measure, device or the component thereof that is designed to prevent or restrict acts with respect to protected subject matter, that are not authorized by the right holder.
- 4) 'Pirated copy of copyrighted work or any subject-matter protected by any related right including computer software' shall mean a copy of protected author's work or subject-matter of related rights or any goods that embody protected author's work or subject-matter of related rights that are made without the consent of the right holder;
- 5) 'Counterfeit trademark goods' shall mean: (1) any goods bearing without authorization a trademark that is identical to, or substantially indistinguishable from a trademark registered in respect of identical or similar goods, including goods that may not bear a counterfeit trademark but are directly contained within packaging that bears a counterfeit trademark; (2) any packaging, label, sticker, instructions for use, guarantee document, or other item, whether presented separately or not, that includes a mark that is identical to, or substantially indistinguishable from a trademark registered in respect of the same or similar product;
- 6) 'Goods containing counterfeit design' shall mean any goods, produced without authorization of the right holder, embodying a design identical to the design registered in respect of such goods, or the one that cannot be distinguished in its essential aspects from the design registered in respect of identical or similar goods;
- 7) 'Goods infringing patents' shall mean any goods that are identical to patented goods or obtained directly by a patented process, made without authorization of the right holder;
- 8) 'Protection defeating devices' shall mean any device, product or components or parts thereof, primarily designed or modified to bypass any effective technological measure;
- 9) 'Effective technological measure' shall mean any technology, device or component that in the normal course of its operation either controls access to a protected work or to a subject-matter or the related right or facilitates the detection of counterfeit trademark or pirated copy of a work protected by copyright or related right;

- 10) 'Broadcasting' shall mean public communication of the author's work or any work protected by related right, by wire or wireless transmission of electromagnetic, electric and other signals (terrestrial radio transmission, satellite radio transmission or cable transmission).
- 11) 'Broadcaster' shall mean any natural or legal person registered for production and broadcasting of radio or television programs, licensed for program broadcasting in accordance with the applicable law.
- (2) For the purposes of this Law, any mould or matrix specifically designed or modified for the manufacture of a counterfeit trade mark or of goods bearing such a trade mark or of pirated copies of copyrighted work or any subject-matter protected by any related right shall be treated as counterfeit trademark goods or pirated copies of copyrighted work or any subject-matter protected by any related right.

Prohibition of production and circulation

Article 4

Production, possession and placing into circulation of goods and supply of services that infringe upon the intellectual property rights established by the applicable law or an international agreement shall not be permitted.

Prohibition of Broadcasting and Re-broadcasting

Article 5

- (1) Broadcasting and re-broadcasting of radio or television program that contains authors' works or any subject-matter of related rights shall be prohibited, if the obligation to pay a remuneration for the use of such rights is not regulated in conformity with the law that regulates collective protection of copyright and related rights.
- (2) Evidence of the fulfillment of obligations referred to in paragraph 1 of this Article shall be attached to the application for the broadcast license submitted in a bidding procedure, in accordance with the legislation that regulates broadcasting.
- (3) Any act of the broadcaster in contravention of paragraphs 1 and 2 of this Article shall constitute grounds for the Broadcast Agency of the Republic to take measures in accordance with the applicable law, regardless of any other legal means at the disposal of the holder of a copyright or related right.

Responsible authorities

Article 6

For the purposes of this Law, responsible authorities shall be:

- 1) Ministry responsible for trade, tourism and services, through market inspectorate and tourist inspectorate;

- 2) Ministry responsible for health, through health inspectorate and sanitary inspectorate;
- 3) Ministry responsible for urban planning and building through zoning inspectorate and building inspectorate;
- 4) Ministry responsible for finance, through tax inspectors and tax police;
- 5) Ministry responsible for education and sports, through education inspectorate;
- 6) Ministry responsible for science and technological development through its inspectorate;
- 7) The Broadcast Agency of the Republic.

II. POWERS OF RESPONSIBLE AUTHORITIES

Scope of the Power

Article 7

- (1) Ministry responsible for trade, tourism and services, through market inspectorate shall supervise production and circulation of goods that infringe industrial property rights (in particular: trademark, design, patent, petty patent, indications of geographical origin, topographies of integrated circuits and copyrights and related rights).
- (2) Ministry responsible for trade, tourism and services, through tourist inspectorate shall supervise supply of services that infringe intellectual property rights with respect to tourism and catering, and in particular by unauthorized use of service marks and unauthorized use of authors' rights and related rights where the obligation of payment for the use of such rights was not regulated in accordance with the law that regulates collective protection of copyright and related rights.

Article 8

Ministry responsible for health, through health inspectorate and sanitary inspectorate shall supervise production and circulation of goods infringing intellectual property rights (in particular: trademark, patent, copyright) with respect to medicines and sanitary regulations.

Article 9

Ministry responsible for education and sports, through education inspectorate shall supervise the use of scientific publications that may infringe intellectual property rights.

Article 10

Ministry responsible for urban planning and building, through zoning inspectorate and building inspectorate shall supervise any changes on a building that represents

materialized architectural work that were made without the authorization of the author.

Article 11

Ministry responsible for finance, through tax inspectors and tax police shall be responsible, within their regular activities, to determine whether the infringement of intellectual property rights exists, particularly of rights with respect to computer software and databases.

Article 12

Ministry responsible for science and technological development shall supervise the use of scientific publications that may infringe intellectual property rights.

Article 13

The Broadcast Agency of the Republic shall supervise the broadcasters with respect to unauthorized broadcasting or re-broadcasting of protected work, and thus infringement of copyright or related right.

The Manner of Exercising the Powers

Article 14

- (1) The responsible authority shall be empowered, *ex officio* or upon the application of the right holder, to take actions or issues legal acts in accordance with this Law and the law that regulates responsibilities of such authority with respect to performing of inspectorial supervision in the areas for which such authority was established, or the law that regulates broadcasting, as the case may be.
- (2) Unless otherwise prescribed by this Law, the law that regulates general administrative procedure and any laws that regulate the conduct of a particular administrative authority shall be applicable to any action or an act under this Law.

1. EX OFFICIO PROCEEDINGS

Measures

Article 15

- (1) Where the responsible authority, based on *prima facie* evidence establishes that an intellectual property right has been infringed, it shall:
 - 1) Temporarily seize all the goods found to be infringing and/or all items that are either object or means of the infringement of the intellectual property right;
 - 2) Temporarily ban the infringing activity.
- (2) Act of the responsible authority referred to in paragraph 1, subparagraph 1 of this Article shall contain the warning to the person the goods were temporarily seized from, that the goods will be confiscated and subsequently destroyed, if such

person, within the period not exceeding 15 days as of the day the goods were temporarily seized, does not oppose the reasons for the seizure of goods.

- (3) In the event referred to in paragraph 1 of this Article, the responsible authority shall *ex officio*:
 - 1) Take samples of the concerned goods or products for the purpose of establishing the infringement of the intellectual property right and/or to secure evidence of such an infringement;
 - 2) File a complaint to the competent public prosecutor or to the authority in charge of misdemeanors;
 - 3) Collect any other evidence necessary to establish the infringement of the intellectual property right.

Information on the Measures Taken

Article 16

- (1) In the event referred to in Article 15, paragraph 1 of this Law, the responsible authority shall, without delay, notify of the infringement of the intellectual property right and of the measures taken:
 - 1) The right holder, if the address is available;
 - 2) The authority responsible for protection of the intellectual property rights, where such notification is necessary in order to collect relevant details;
 - 3) Any other interested person known to the responsible authority.
- (2) By notification referred to in paragraph 1 of this Article, responsible authority shall invite the right holder to initiate proceedings necessary for the protection of his rights before the court and inform the responsible authority of the proceedings and/or any temporary injunction granted by the court, within a period not exceeding 15 days after the notification has been served.
- (3) Upon the request of the right holder, the responsible authority may extend the time limit referred to in paragraph 2 of this Article by another 15 days.

Duration of Measures

Article 17

- (1) Measures referred to in Article 15, paragraph 1 of this Law shall be in effect for as long as the decision of the competent court, ordering the temporary injunction in the proceedings initiated pursuant Article 16 of this Law, has been served.
- (2) Where the right holder does not submit the decision of the competent court ordering the temporary injunction within the time limits referred to in Article 16, paragraphs 2 and 3 of this Law, temporarily seized goods shall be returned to the person they were sized from or the act temporarily banning the activity shall be abolished.

Obligation of the Right Holder

Article 18

Upon the request of the responsible authority that has temporarily seized the goods, the right holder shall provide, promptly and without payment, any information or assistance, including technical expertise, equipment and facilities.

2. PROCEEDINGS UPON AN APPLICATION

Measures

Article 19

Where the responsible authority, upon the application of the right holder, based on *prima facie* evidence establishes that an intellectual property right has been infringed, it shall on the spot temporarily seize the goods and/or products that are subject of the infringement or are instrumental in such an infringement.

Application

Article 20

- (1) An application of the right holder shall be made in writing and filed with the headquarters of the authority responsible for inspectorial supervision of intellectual property rights, depending on the concerned right and/or a kind of goods.
- (2) Application referred to in paragraph 1 of this Article may be:
 - 1) individual, where it is related to a particular consignment or quantity of goods, or
 - 2) general, where it is related to any quantity of certain goods within the suggested period of time.

Content of the Application

Article 21

- (1) The application shall include in particular:
 - 1) Description of goods;
 - 2) Information that will enable the responsible authority to identify the infringing goods;
 - 3) The proof that the applicant is a right holder with respect to the goods in question;
 - 4) Period of time during which the responsible authority is requested to take measures.

- (2) Besides the information referred to in paragraph 1 of this Article, the application may also include:
 - 1) Information that may assist in identifying the consignment or packages;
 - 2) Information about the place where the goods are situated or their intended destination;
 - 3) Identity of the manufacturer, importer, owner or holder of the goods;
 - 4) Assumed delivery or dispatch date;
 - 5) Information about the means of transport used;
 - 6) Sample or photography of the goods;
 - 7) Copy of the work protected by copyright or related right.

Decision of the Responsible Authority

Article 22

- (1) The responsible authority shall make a decision and notify the applicant in writing not later than fifteen days as of the filing date of the application.
- (2) Where the responsible authority, based on information included in the application, finds that the circumstances of the case warrant immediate action, the decision shall be made and the applicant notified not later than three days as of the filing date of the application.
- (3) Where the general application is granted, the decision shall include the period during which the measures necessary to prevent infringement of intellectual property rights are to be taken, which may be extended upon an application by the right holder.
- (4) An appeal may be lodged against the decision referred to in paragraph 1 of this Article to the competent second instance authority.

Information on Termination of the Intellectual Property Right

Article 23

Where the intellectual property right terminates during the proceedings initiated upon the application, the right holder shall notify the responsible authority without delay.

Costs

Article 24

- (1) The applicant referred to in Article 19 of this Law shall bear the costs incurred in dealing with the application, if it is established that infringement of intellectual property right does not exist.

- (2) The costs referred to in paragraph 1 of this Article shall be established by the responsible authority in the amount necessary to cover expenses related to the application (transport, storage, safekeeping of goods and the like).

Security
Article 25

- (1) Where an application is granted, the responsible authority may require the applicant to provide a security in an amount equal to any costs that may incur should the procedure be discontinued owing to an act or omission by the right holder or if it has been subsequently determined that there was no infringement of intellectual property right.
- (2) The security referred to in paragraph 1 of this Article may take a form of the bank guarantee or a deposit paid to a designated account of the responsible authority.

Application of the Measure
Article 23

- (1) The decision granting an application shall be forwarded promptly to all departments of the responsible authority for the purpose of the application of the measure.
- (2) Where the responsible authority determines that the goods correspond to the description of goods in an application that has been granted, it shall temporarily seize such goods and, if necessary examine them and take samples.
- (3) An act issued based on a decision referred to in Article 22, paragraph 1 of this Law ordering temporary seizure of goods, shall include the warning to the person from whom the goods have been seized that such goods could be confiscated and subsequently destroyed, if such person does not oppose reasons for the confiscation of goods within fifteen days from date of temporary seizure of goods.
- (4) In the case referred to in paragraph 2 of this Article, responsible authority may:
 - 1) Take samples of the concerned goods or a product for the purpose of establishing intellectual property rights infringement;
 - 2) Obtain any other evidence necessary to establish intellectual property rights infringement.
- (5) The right holder, the owner of the goods and the person from whom the goods were seized shall have the right to identify and inspect the seized goods under the supervision of the responsible authority.

Information of the Measure Taken
Article 27

- (1) In the case referred to in Article 26, paragraph 2 of this Law, responsible authority shall, without delay, inform an applicant about the name and the address of the person from whom the goods have been seized and about the names and addresses of the owner, importer and manufacturer of concerned goods, if they are known to the responsible authority, as well as of any other relevant facts.
- (2) In the notification referred to in paragraph 1 of this Article the responsible authority shall invite the right holder to initiate the proceedings for the protection of his/her right before the competent court within 15 days from the date the notification has been served, and to inform the responsible authority, within the same time limit, about the proceedings initiated or the temporary injunction issued by the court.

Duration of a Measure

Article 28

- (1) Temporary seizure of goods upon the application of the right holder shall be in effect until the submission of a decision of the competent court ordering temporary injunction in the proceedings referred to in Article 27, paragraph 2 of this Law.
- (2) If the right holder does not submit the decision of the court ordering temporary injunction within the time limits referred to in Article 27, paragraph 2 of this Law, temporarily seized goods shall be returned to the person they were sized from.

Obligation of the Right Holder

Article 29

Upon the request of the responsible authority that has temporarily seized the goods pursuant to Article 26, paragraph 2 of this Law, the right holder shall provide, promptly and without payment, any information or assistance, including technical expertise, equipment and facilities necessary to determine existence of the infringement of intellectual property right.

Compensation of Damages

Article 30

- (1) The responsible authority shall not be liable to compensate for any injury resulting from seizure of goods in accordance with this Law, except in the cases of culpable inappropriate actions of the responsible authority with respect to such goods.
- (2) An applicant shall be liable to pay compensation to the person the goods were seized from for any injury caused through the wrongful seizure of goods based upon the application.

III. CONFISCATION AND DESTRUCTION OF GOODS

**Confiscation and Destruction of Goods
Based on the Court Decision
Article 31**

- (1) Where it was determined, in the course of proceedings before the competent court, that infringing goods are subject to confiscation and destruction or disposal outside usual channels of commerce, the goods shall be destroyed or disposed outside usual channels of commerce in the manner determined by the court, including donation for humanitarian purposes and sale for the purpose of recycling, provided that:
 - 1) The risk of further infringements is minimized;
 - 2) Such disposal shall be without detriment to the right holder;
 - 3) The right holder is allowed to suggest the manner of destruction or disposal of the goods outside usual channels of commerce.
- (2) Simple removal of trade marks from the counterfeit goods shall not be regarded as destruction or disposal outside usual channels of commerce.

***Ex Officio* Confiscation and Destruction of Goods
Article 32**

- (1) The responsible authority shall be authorized to confiscate and subsequently destroy the seized goods in the prescribed manner *ex officio*, which includes donation for humanitarian purposes and sale for the purpose of recycling, where:
 - 1) There is reasonable doubt that the such goods are infringing goods;
 - 2) The right holder does not initiate the proceedings for the protection of his/her rights before the competent court within the time limit referred to in Article 27, paragraph 2 of this Law; and
 - 3) The person from whom the goods were temporarily seized pursuant Article 15, paragraph 1 or Article 26, paragraph 3 of this Law, did not oppose the reasons for confiscation of such goods.
- (2) In the case referred to in paragraph 1 of this Article, the responsible authority shall ensure that:
 - 1) The risk of further infringements is minimized;
 - 2) Such disposal shall be without detriment to the right holder;
 - 3) The right holder is allowed to suggest the manner of destruction or disposal of the goods outside usual channels of commerce.
- (3) The responsible authority shall be authorized to act in accordance with paragraph 1 of this Article if the owner of the goods has not been accessible.

Article 33

Where destruction of the goods has been authorized by the court or the responsible authority, the right holder shall have the right prior to such destruction to take samples

insofar as and to the extent that such samples are needed as evidence in legal actions against persons allegedly involved in infringements of intellectual property rights.

IV. PENAL PROVISIONS

1. ECONOMIC OFFENCES

Article 34 - 38

Deleted "Official gazette RS" no. 104/09

Article 39

- (1) Any legal person that without authorization manufactures, imports, exports, offers to place into circulation, places into circulation, stores or uses for commercial purposes a product or a procedure protected by a patent or a petty patent shall be fined 100,000 – 3.000,000 dinars for the economic offence.
- (2) Any responsible person in the legal person shall be fined 10,000 – 200,000 dinars for the acts referred to in paragraph 1 of this Article.
- (3) The objects of the economic offenses and the objects used to commit the offences referred to in paragraph 1 of this Article shall be confiscated, and the objects of the economic offences shall be destroyed.

Article 40

A verdict imposing a fine upon an offender for any economic offence referred to in Articles 34-39 of this Law shall be publicized.

2. MISDEMEANORS

Article 41 – 43

Deleted "Official gazette RS" no. 104/09

Article 44

Any natural person shall be fined 5,000 – 50,000 dinars for the misdemeanor for the any of following:

- 1) Deleted “Official gazette RS” no. 104/09
- 2) Deleted “Official gazette RS” no. 104/09
- 3) Deleted “Official gazette RS” no. 104/09

V. FINAL PROVISION

Article 45

This Law shall come into force on the eight day after its publication in the Official Gazette of the Republic of Serbia.