

" THE COPYRIGHT IN ALBANIA CHALLENGE FOR INSTITUTIONS"

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CHAPTER I
DEVELOPMENT OF INTELLECTUAL PROPERTY RIGHTS
IN EUROPE AND ALBANIA

1.1. Treatment of the intellectual property right

Impeccable ownership has different definitions the only title determines the nature of this right, which can be defined as those rights are exercised as ownership over the human intellect products. The use of the word "property" defines the property or moveable objects, so it is also usable to show the disposition, possession and enjoyment of the intellectual product, which, referring to the protection of the intellectual product, tends to defend the ideas as well as the product of ideas. [1]

The main difference between the right to property over property and immovable property and intellectual property lies in the fact that the property exists in a natural object for an indefinite period, and even ancient artifacts tend to be 'was owned by anyone who finds them, unless the government appropriates them'. The same thing happens with real estate where property rights are transferred from one owner to another.

Intellectual property is different in that it has a limited duration, a non lasts for a fixed number of years. In the case of patents, it is usually 20 years, in the copyright of the author, life span is 70 years or more, depending on jurisdiction, for this period the right goes to the public domain and can be used by anyone [2].

The other distinction between material property and intellectual property (non-material) is the existence of a moral element in intellectual property, especially in copyright, national laws of EU states protect copyright in the moral identification example as the owner of a job.

Essentially, intellectual property can be considered as "knowing and applying its creative" element of intellectual property rights include patents, copyrights, trademarks, geographical indications and design rights .

1.2 History of Intellectual Property Development

Although intellectual property as a juridical notion was born in 1967 with the establishment of the World Intellectual Property Organization, patents, copyrights and trademarks were born during the Middle Ages during this time the author had some moral rights in his work but this right was limited because it is known that in this age the Church had ownership of the works created by giving it a monopoly on these works, a reason why it can be concluded that the beginnings of intellectual property are found in the 13th-14th century [3]

With the coming of the Renaissance and Enlightenment and the liberation of the peoples of Europe from religious obscurantism, coupled with the industrial revolt, brought the assessment of these tissues and their products, based on the will of the author (their owner) who could even to benefit economically from the product of their ideas.

England is the state that for the first time passed acts that are considered as the beginnings of modern intellectual property these acts protected as patents and copyrights. The first act recognized the intellectual property is a Letter Patent, a document bearing the seal of King that gives the holder the right to practice the craft or her art in England, the first of the former given a weaver Flemish in 1311 .

While the first act which protected inventions dating back to the year 1449 should be emphasized that the existence of patent as a monopoly to inventors use was made during the reign of Elizabeth I st, and it came as a need of the protection of the rights of inventors copying or exploitation of these rights by other subjects who had not contributed to this invention, which also brought unjust gains from subjects who were not entitled to the invention .

But even though the inventor's monopoly was invented on his inventions, this was also determined by a legal act, it should be noted that the existence of patents as an exception to the general rule against monopoly was given in the sixth section of the Monopoly Statute of 1623 [4] .

But copyright was even more difficult to defend, even though it was widely accepted that the press invention and the number of colleges and universities created the necessary environment for development of copyright , but also in the case of sanctioning and protection of copyright again, the country that sanctioned for the first time was the protection of this right .

In the early sixteenth century, Henry VIII-th gave the company an oppressive monopoly "Stationer", which lasted even in the next century, then In 1709, the British Parliament passed the Statute of Anne, the first law to provide authors property ownership rights over their works, the rights to which they can be exercised against the books to the producers who had earlier claimed a monopoly over their works [5]. The act received the name of Queen Anne of England, who was the Queen at the time of his adoption, this act was passed after a number of failed attempts to regulate the licensing of literary works through a restricted property right held from printing presses.

The modern copyright version was very easily implemented in the United States, which was still a colony of England but despite this the act was also reflected in the colonial acts, even after the declaration of independence, the US maintained the act of protection of copyright, it should be noted that these two acts are the acts which establish the foundation of the intellectual property right, because on the basis of these acts takes precedence and identifies this right from other property rights.

Meanwhile, if we have to ask where the original moral point of copyright is concerned, it is easily evidenced by France, which devoted more importance to the moral rights of authors and inventors than to commercialism.

In the French Revolution, the French Parliament adopts a number of laws for the implementation of a copyright and patents system based on the moral aspect of these rights. For example, section 1 of the patent law of 1791 states that "*All new discoveries are copyright of the author; to ensure that inventors should be temporary enjoyment of his discovery, five, ten or fifteen years.*" [6] 1793.

Copyright legislation follows the same philosophical background by creating a *doubler* (literally, copyright rights), adding a novelty that we do not find in England that the French state would recognize copyright even outside France, even in the philosophy of EU acts, is basically the French idea of copyright.

1.3.Internationalization of intellectual property and copyright

The international protection of intellectual property was implemented for the first time by the Paris Convention on the Protection of Industrial Property in 1883, this Convention allowed nationals of a country to obtain protection of their works in other signatory countries, and covered inventions (patents), trademarks and industrial designs.

Afterwards there is the signing of the convention es Berne for the Protection of Literary and Artistic works in 1886 this international act is important to realize providing the

economic offenders and protection for moral rights, the act which was affected by the British legislation, one of the main features of the treaty is that it leaves *ipso jure* protection of the copyright to any original work without requiring registration [7].

While United States of America has not ratified convention of Berne which brought benefits for non-payment to foreign authors from non-payment of foreign authors, thus increasing their profits and ensuring free European books in the United States. This silence from the United States has continued throughout the 20th century, but for the Second World War, the United States was the initiator of the Universal Copyright Convention (UCC) of 1952, which, unlike the Bern Convention, was a tool to allow foreign citizens access to existing copyright legislation in foreign countries [8].

The Patent and Trademark Patents (Paris) and Berne (for copyright) created the opportunity to establish a joint international organization called the International Bureau of Intellectual Property Protection (BIRPI), these international acts sanctioned a *minimum* protection of intellectual property rights, allowing the right of States which were signatories to conventions to sanction by domestic acts a more in-depth protection of patents and brands and copyright, as well as it is required that country legislation neither guarantee the authors and foreign inventors the same rights granted to their nationals thereby eliminating discrimination between foreign and domestic authors.

Also other acts are the Madrid Agreement concerning the International Registration of Trademarks in 1891, The Hague Agreement concerning the International Industrial Design Provision of 1925 and the 1970 Patent Cooperation Treaty.

While in 1967 it created a World Organization of Intellectual Property (IPO), a descendant of Direct BIRPI. The aim of the IPO is to:

- *guarantee the implementation of existing and future international treaties relating to the protection of intellectual property;*
- *promote the harmonization of national legislation.*

IPO administers twenty-three different treaties regarding the subjects of intellectual property, of which the most important are the Treaty of the right IPO in 1996, the Treaty of Performance and Phonograms 1996 and 2000 Patent Law Treaty on.

In addition to IPO, there are several other organizations that are involved in the field of international aspects of intellectual property trade. The most important of these is the WTO, which manages the 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is the most important treaty dealing with developing countries. TRIPS administration is conducted through an administrative body known as

the Council for Trade Aspects of Intellectual Property Rights, which is composed of WTO member states.

Another organization involved in commercial aspects of intellectual property is the United Nations Educational, Scientific and Cultural Organization (UNESCO), the UNESCO was largely to support the wider utilization of intellectual works that strive to ensure wider dissemination of science and technology [9].

1.4. Types of intellectual property

There are several types of intellectual property rights, each distinct from the other in formalities, the term of existence, and levels of protection. These legal remedies are:

a) Copyright [10] is a restricted property right that exists in some types of works. There are two distinct sets of intellectual products that are subject to copyright protection. The first group is made up of original literary, dramatic, musical or artistic works. Sound recordings, movies, broadcasts, cable programs, and published editions of an existing work constitute the other category of works, often referred to as derived works. In general, the requirement for copyright exists is that creation must be an original work. Copyright does not defend ideas ; It protects the expressions of ideas , hence the ideas that are made accessible in an external form. In summary, the author is created automatically when an original work is reduced to the material form in a copyrighted jurisdiction.

b) Patent [11] are a kind of intellectual property in which the creator of an invention is rewarded with a monopoly property of the product for a certain period of time after which the invention goes to the public domain. The purpose of a patent is to provide a reward for the skills and work taken by the inventor. It is also widely known that patents are a way of encouraging the invention by providing exclusive ownership and exploitation rights of creation. According to the European Patent Convention, patentability must be new, should include a creative step and should be industrially applicable. Generally, patents can be categorized into three different types: product patents, patents and process patents.

c) industrial design [12] has been implemented by many treaties. In particular, the greatest protection comes from the Intellectual Property Rights Trading Agreement (TRIPS Agreement), which entered into force in 1995. Article. 25.1 Encourages Member States to ensure the protection of independently-generated industrial designs that are new or original. In many countries, this type of protection is secured through patents, but TRIPS allows it to get independent protection when needed.

d) Trademarks [13] protect the information to the customer who owns a brand. In most legislation, a trademark must be a sign that can be represented graphically and should be

able to distinguish the goods, services or technology behind it from competing products or services.

e) **Switch off** [14] is a common form of trademark, which originally comes from this type of intellectual property. Like a trademark, passing a good business name negotiation, but because it is a common law, it has lower demand than a trademark and can be more easily applied to commercial names that are not sufficiently distinctive for subject to a trademark.

e) **geographical indications** are another type of intellectual property that is specific to a country of origin. World Intellectual Property Organization (WIPO) describes them as "*a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to the country of origin. Most commonly, a geographical indication consists of the name of the country of origin of the goods.*"

CHAPTER II COPYRIGHT

2.1. Albanian copyright strings.

The author's slander, though creating the notion of a new right, can not be said to be such as the beginning of this right is found in the Civil Code of 1929 in Article 795 where the object defined you of the right of ownership, referring perpetrator is material things, bodily but besides this concept provision establishes a special protection for literary mastery, artistic and industrial, defining these rights and stating that intellectual products are owned by their authors . [15]

As it is defined in this Code, copyright is placed among the rights of ownership over the overburdened objects, by recognizing the owner's ownership of the work or inventions made.

Meanwhile, even in the communist era, despite the fact of the deep changes in the legal system restored to copyright, was sanctioned in the Civil Code

of 1955 [16] as well as in special laws [17] where copyright was sanctioned as one of the personal non-property rights where the procedure was also defined [18] to be followed by the author in defense of this right, it should be noted that although the state in this jurisdiction exercised significant restrictions on property rights, copyright restrictions were lighter.

Meanwhile, in the 1981 Code, articles 315-335 Chapter VIII, copyrights appear to be very limited, as it turns out that to create copyright, the production of intellectual creativity was required to materialize in a concrete form so that it could be perceived by others without being necessary its publication and distribution [19], creativity under this Code was defined as a legal fact from which the copyright itself arises.

The Civil Code of 1981 dealt with as well as derivative works, foreseeing that copyright holders will also be called those who create derivative works such as adaptations, translations, screenings, as well as any transformation of literary, musical and other works [20]. The subject of copyright was also translations the Code also recognized and sanctioned co-responsibility when a work was fought by the intellectual creativity of two or more personaven while excluded from co-existence, the persons who provided technical assistance in carrying out the work.

Also this Code guaranteed the protection of rights to creative entities that did not have Albanian citizenship, but this right was subject to the condition of signing the agreement with the state from which the foreign citizen came, if this agreement existed then the workpiece of the work his right was guaranteed

Meanwhile in 1992 the law no. 7564, dated 19.05.1992 "On Copyright", which has under gone continuous changes adapting to the changes of the time, the law which was annulled by law no. 9380, dated 28.04.2005, "On Copyright and Related Rights," as amended, which has been repealed by Law no. 35/2016 "On copyrights and other related rights", which also reflected the EU's international acts in copyright regulation.

After the collapse of the communist system with the above law [21] copyright has expanded in respect of the nature of this right and its purpose was considered the sole and sole owner of the work on his

work, and this was also considered a lucrative and lucrative right in the market as was considered part of the market and had an economic reward as well, and the judicial protection of this right was also sanctioned.

In addition to the entry into force of the 1998 Constitution in Article 58 of the Constitution, the right to create the authorship of an act is also determined, and the protection of this right was also sanctioned as a criminal offense specifically as a criminal offense [22] but also dealt with in the 1994 Civil Code [23] where copyright was found to be protected and sanctioned in the part of causing non-pecuniary damage, namely the rights guaranteed by this Code and still in force are the right to the name, personality and deed of a person, as well as misleading publications made by subjects that exercise their activity in the publishing sector.

But it should be noted that the current law that came into force in 2016 is a law that best reflects practice, the current copyright issue also reflects the whole of EU acts as directives that have dealt with different aspects of copyright protection in the EU, a practice which precedes any situation that did not provide for regulation in the previous law, and even the extension of the competencies of institutions that have a legal duty to guarantee and protect the copyright.

2.2.Object and copyrights under law no. 35/2016 "For copyright and the other rights associated with them"

The law does not make a clarification of the legal concept of copyright but merely defines the affiliation of these rights by expressing that these rights belong to the natural, natural person who created the work [24] but without giving a definition of the juridical sense of copyright, we derive this definition from the doctrine where it is determined that the intellectual property right is the entirety of those rules that regulate that juridical relationship with the object of the minds which of a kind may be works of physical subjects, inventions, designs and other forms that are not defined [25].

From the definition of the author's right as defined in the law, these right ones belong (the law says by *nature*) to a *natural person* who also created

them, so by law it is understood that these rights belong to the author because of nature of them.

The law also stipulates that the rights of the performers of these works are *inherent in nature* interpreters / performers , which means that the interpretation / execution belongs to these subjects, and for this they have the right to benefit for the widows who are created by other subjects.

As defined by the law the copyright rights are:

a) *word creations, expressed through literary and publicistic writings, lectures, religious sermons, speeches, any other oral or written creation and computer programs;*

b) *dramatic and dramatic musical creations;*

c) *musical compositions, with or without text;*

ç) *choreographic creations and pantomimes;*

d) *audiovisual creations, which include cinematographic creations and other audiovisual creations created in similar ways to cinematographic works, radio works;*

f) *Visual art creations in the field of painting, sculpture and graphics, decorative monumental arts, regardless of their composite material / media, and other visual art creations;*

e) *architectural creations, including drawings, plans, sketches in reduced scale and graphic creations in architectural projects;*

ë) *Photographic creations and any other creation expressed by any process similar to the photographic one;*

f) *works of applied arts, excluding those works, as industrial designs protected by the law "On Industrial Property";*

g) *three dimensional creations, illustrations, lists, maps and drawings in the field of topography, geography and science in general;*

gj) *Cartographic creations;*

h) *written or oral scientific creations, such as presentations, monographs, deductions, dissertations, studies, university lectures, textbooks, projects and scientific documentation [26].*

In addition to the original works, the law has also defined *offspring* which are defined as any intellectual creation that originates from an original work but fully fulfills the condition: without prejudice to it, such works are those which rely on a creation but carry on their own, have a selective nature and arrangement, which causes these works to have the same legal status as the original ones and their authors enjoy all the rights of an author of an original work [27]. In the offense the law has stipulated:

- *Translations* are written or verbal works in a language other than that of the original version; in a special place in the line of works derived from them, they will find not only translations but also dictionaries, theses, encyclopedias etc. [28];

- *Adaptation or adaptation*, adaptation is a creation of a new work by taking a different work of another gender, the most used adaptations are those of cinematographic, musical, choreographic or theatrical works [29];

- *Illustrations* are figures, scenes, graphics, materials, writings, which are part of another existing work, or are in themselves a work of their own and used in a new work in order to better explain an idea, event or condition. Illustrations can also be perceptions in the shape of a piece of prose, in order to make its meaning to the public easier and clearer [30];

- *Documentary creations* are audiovisual works that have a single theme and consist of recordings of images taken from previous recordings [31];

- *Musical arrangements* are the instrumentation of a musical work and the specification of musical sounds depending on each instrument and the performer's voices. Arrangement is a special kind of offspring because it relies on an existing musical work and helps to track it in public. There is no arrangement without a musical work, so is it not an original work [32];

- Any kind of *transformation of a* literary, artistic or scientific work, which is the product of creative work of the mind. Although the lawmaker has explicitly listed various types of offense, at this point there is room for any possible transformation that is not a pure translation, summary, arrangement, adaptation or adoption in one of these types, but may be a mixed version of them or a new version, but the essence is that it always remains in effect [33].

The law also stipulates that copyright-related rights will not have to infringe on copyright, which should prevail in relation to rights that are related to copyrights.

The law has made a definition of who will be considered the author by law [34] author is to be considered any physical person or group of physical persons, such persons may not be considered juristic who are outside the definition of the legal notion of the author, according to the law that a natural person or group of physical persons who creates a literary, artistic, scientific, original intellectual product, materialized, irrespective of the style and manner of expression of the author exercising the right to authorship on these intellectual product categories the law also recognizes the right of co-operation where the remuneration will have to be determined in an agreement based on the Civil Code or in the absence of the agreement the law stipulates the application of the provisions of the Civil Code, recognizing the coauthor's remuneration in respect of his or her contribution respect for the legal pre-emption.

Another right guaranteed by the law for the offense is also fair to enjoy the right of ownership even on the back of the work [35] guaranteeing the right of mentioning the name in each publication of the summary even by determining the right of remuneration for the use of the summary as well as the profitability of the revenue from its publication.

It is imperative that the author exercises the right of ownership over the work, but what are the characteristics that one has to enjoy an offense to be considered as such and can enjoy protection from the law?

Specifically, the work should be:

- the *original* must be a product that is authentic and belongs to its author only, it must enjoy in its entirety elements that must be different and distinct from any other creation, but with originality not necessarily to understand something innovative and creative in its entirety is enough for the work to prove the contribution of a certain physical subject even if the reproduction differs only slightly from the original the requirements of originality are met [36]
- The *intellectual* aspect of creation that means carries in itself a minimum creative value. This means that the act is not related only to subjects that

represent the category of intellectuals, but can be prepared by anyone with whatever level of education [37];

- The work should be in a *materialized* form , in order to cause effects to the visually visual and public hearing senses [38].

- The work should have a form not only material but also a *physical form* , regardless of the form of expression. A creation that is not affixed to a physical or material holder, regardless of form, appearance or function, is not an act and does not enjoy the protection as such [39].

- Not be *excluded* from creations that do not enjoy protection from copyright law [40].

The law requires that in the entirety of the contents of the work the presence of the cumulative element, the absence of which would also create the inescapability of the work

2.3 .The copyrights and their implementation in Albania

Although the law has well defined the category of rights which guarantee copyright again in practice the implementation of these rights is not complete concretely the law has categorized copyright into three groups:

- personal non-property rights;

-exclusive property rights of authors;

-other rights.

The law in the categorization of these rights has aimed precisely at the complete and comprehensive protection of the author against the abuse of this right by subjects who benefit unjustly and in violation of the law monetary filings.

In the category of non-property rights classified in law, the right that provides a real and tangible protection of copyright is in addition to the right of publication which is known only to the author of the work, but the right to recognize and mention authorship is another non-property right which guarantees the author recognition and mention as the author of the work even after the transfer of his rights to the user of the work in any case must mention the name of the author of the work, unless the author has given up of his right explicitly.

The importance of this right is basically moral and can be said to be one of the typical rights of a moral nature, and with an impact on the protection of copyright in Albania, as there are not a few cases when in various works or publications of literary or scientific works is not mention the name of the author of the work, it should be noted that in the early 90 'in most works of these times is evident the fact of not quoting the work author ,in any form, everything remains unexpressed and unrecorded, which also constituted a violation of the copyright to be mentioned in the works where the analyzes were published, (the published ideas of the author).

In addition to the non-property moral rights which lead to the recognition of the authorship of the publication of the work, the exclusive property rights are those which in most cases are violated in Albanian practice, although against these rights in 1992 there was a full sanction , the violation of these rights, which are guaranteed by law, continues, specifically the law has defined a series of exclusive rights of a property nature:

- a) the right to reproduce the work;
- b) the right to distribute the work;
- c) the right to public communication of the work;
- ç) the right to perform derived works

The law stipulates that any use of the original or copies of it will be considered a violation of the law will be accompanied by measures aimed at curbing the violation of the law.

Specifically, the right to reproduce the work is a right which belongs exclusively to the author by conditioning, prohibiting the reproduction of the work without the express approval of the author, due to the exclusivity of this right that the law has logically recognized the author of the work, The law has made the same provision for the right to distribute the work, public communication of the work and the right to commit derivative works, since the law itself has considered them as exclusive rights, these are necessarily rights that belong to the author and as such are his absolute tag.

But in practice in Albania these rights which the law has defined as exclusive, they are only an attribute of the author, this rights continue to be violated and the problem in this situation is that there is no control by the

relevant institution for the protection of these rights, who also had to oversee the implementation of these rights.

One of the factors that influence the violation of copyright is the fact that there is still an uncontrolled market of works, but also a lack of information of citizens and the exercisers of these rights where often the publications themselves are not accompanied, with the acronym of copyright.

In addition, the statistics in the judicial system do not reflect an increase in the number of cases in defense of copyright, unfortunately there are very few cases of protection of this right in court, as there are few cases that individuals decide to file in Court are cases of infringement of exclusive copyright.

Regarding copyright protection since 2010, the EC progress report on Albania reports limited progress in terms of copyright. European Commission progress reports highlight the low level of implementation of the current copyright law, the poor functioning of the Albanian Copyright Office (institution established by Law No. 9380, dated 28.4.2005, "On copyright and other related rights), lack of coordination and cooperation between state institutions, key copyright law enforcement actors and critical problems with collective management agencies, which oversee copyright in the market.

Since 2010, on the proposal of the former Albanian Copyright Office, the Ministry of Culture has licensed four collective administration agencies, referring to the revenues reported by the four collective administration agencies in the Albanian Copyright Office, it is noticed that they are negligible, if we compare them with other Eastern European countries.

The former Albanian Copyright Office has benefited from an IPA project worth 800,000 Euros, implemented in the period 2010-2012, where the main component was the approximation of legislation with that of EU member states, which resulted in a draft law new law on copyright, a draft law which was adopted in 2016 which did not bring much innovation in copyright only sanctioned in more detail the entire competencies of administrative institutions which have the task of implementing the law on copyright.

Precisely to supervise the implementation of the law on copyright protection also to provide an independent and evaluative information of

the functioning of copyright in our country, comparison with developed countries and the region, the work done by this Office for the awareness of the public and interest groups, the evaluation of the legal framework, the identification of violations and shortcomings in the implementation of legality, for this purpose an audit group of the Supreme State Audit for a period of 4 months during 2014 conducted a legality and performance indicators of the former Albanian Copyright Office ,for the years 2012-2013, extending to the period since the establishment of the institution.

From this audit it was concluded that the former Albanian Copyright Office has not played its role and has not fulfilled the obligations imposed by law in terms of protection of copyright, an area which has been almost completely out of control as from this Office and from the Ministry of Culture for this period

On the other hand, it should be noted that the authors themselves, the subject of this law and further the general public have limited knowledge on the protection that the law gives to their work in this context, is also informing the public about the law on copyright and the duties of this Office in relation to the law and the public.

The former Albanian Copyright Office has not been focused on monitoring and inspecting large users of these rights, there is no case of monitoring and imposing administrative measures on entities known for their activity at home and abroad despite the fact that these subjects constantly broadcast works that are protected by copyright.

Thus, during 2012, the former Albanian Copyright Office imposed only 21 administrative measures for cable TV and radio, while for 2013 no administrative measures were reported imposed on broadcasters, radio or television. For violations of the law found during inspections in the period 2010–2013, the former Albanian Copyright Office has imposed fines (as mentioned above, in most cases against entities with low activity).

Meanwhile, for the users of copyrights who present the main concern that the high tariffs set by the Agencies, the lack of transparency regarding the methodology for setting the tariffs and the contracts that the agencies have with the local authors as well as the representation contracts for the foreign authors. The Albanian Hoteliers Association has also officially complained to the former Albanian Copyright Office about these fees, explaining that

different agencies operate at different prices which are higher than all countries in the region.

One of the most problematic areas where copyright infringement is most easily identified Authors is the archive of musical creativity for which they make the Public Radio and Television that administers this archive responsible, accusing it that for the personal gain of its directors, has offered to private televisions works by Albanian authors, openly violating the law on copyright.

Also another area where copyright is violated is the area of websites which is used without authorization and free of charge works of various authors this has resulted from the audit which found that there was a lack of cooperation of - Former Albanian Copyright Office, with the Communications Authority Electronic and Postal for 2012-2013, for blocking Albanian websites that infringe copyright.

Also from the progress-report it was concluded that the process of monitoring the activity of collective administration agencies (CAA) by Albanian Copyright Office, has been weak in this case CAA have not fulfilled the legal obligations to provide information related to their financial activity, decision-making for the approval of revenues and expenditures and the distribution of these revenues to the holders of rights as well as the submission of tariffs approved by the main bodies of the agencies at the time provided by law.

Agencies have issued a general authorization for the repertoire they defend without specifying and without explaining to users which authors they paid to the agencies from contacts and interviews conducted with particular authors and stakeholders it was found that although the authors were members of Collective Administration Agencies did not have information on the activity of the respective agencies.

Collected revenue distributions revenue from users have been in minimal amounts and only for a predetermined group of authors. Decision-making on revenue distribution has not been transparent to authors. Despite the shortcomings observed over the years in the activities of collective administration agencies, only in September 2012, the former Albanian Copyright Office has proposed the suspension of the license of two agencies on the other hand in this period the Ministry of Culture has been

passive in guaranteeing legal rights this as it has never come up with a decision on these proposals.

Also, the non-observance of the law by the former Albanian Copyright Office is a reflection of the continuous lack of cooperation between public institutions and relevant entities for which agreements have been signed which have not been implemented, which makes it even more difficult to implement the law by this institution.

A case in which copyright fraud has been identified is also the case "Sig-Ship" which acted as a collective management agency in flagrant violation of the law which has exercised profitable activities in the market since 2008, has bring harm to the holders of the rights of the works that are used, as these incomes did not go on their own account, but as illegal profits of this subject.

But even though the former Albanian Copyright Office, has been applied a series of fines against this subject, the Prosecution has been an institution which has repeatedly dismissed the case by indirectly violating the implementation of the law on copyright protection, a reason for which other institutions are required, the enactment of their organic laws for protection against copyright abuse

But it should be noted that the Civil Court against this subject has responded to the lawsuit by imposing the sentence of the owner of this subject.

The lack of adequate cooperation with the former Albanian Copyright Office, by these institutions has not only resulted in non-implementation of the law, seriously violating the interests of lawful holders of rights that are collective administration agencies, but also damaging the material interests of the perpetrators.

This situation is a flagrant violation of the law in terms of protection of copyright in our country is a significant indicator of the lack of will to not implement the law, which has made the responsible structures in charge of implementing this law not coordinate their activity in the fight against copyright infringement, passively accepting the unfair benefits of various commercial entities to the detriment of the community of authors.

2.4. Legal institutions responsible for guaranteeing copyright

One of the reasons that it felt necessary to apply was the fact that the scope of works which was published in the on-line system in the previous law were unreflected and these publications were unprotected by law, because it was also deemed necessary for these innovations of publishing works in the on-line system (internet system) to be able to find protection ,in the respect and reflection of EU directives, acts which are also reflected and mentioned since the introductory part of the law.

The protection of copyright as an area of law which for a long period has not found *de facto* protection by law and administrative institutions and then the judiciary, has created conditions of flagrant abuse of copyright and this abuse in the online system is even more widespread.

The reason why the law in the reflection of reality and facts but also of the directives which best regulate copyright, has provided not only the rights but also the institutions responsible for the protection of these rights, as well as the application of sanctions in case of violation of these rights.

The law provides that the administrative institution responsible for the protection of copyright in a number of administrative institutions, has previously established the structure of copyright administration as provided by law that these rights can be administered individually or through collective administration agencies, which according to the law have the competence to protect in case of copyright infringement as well as the distribution of rewards to beneficiaries should be noted that the Agency administers copyright under a contract signed with the author based on which protects and rewards copyright.

The law stipulates that the main task of the Collective Administration Agencies is to collect revenues for the use of works and their distribution to the holders of copyright and other related rights, which has received a license from the ministry responsible for copyright after the proposal by the Directorate of Copyright, also the law has provided that these Agencies can exercise their activity based on licensing by the responsible Ministry based on the proposal of the Directorate of Copyright (DA) validity of which is for three years with the right of renewal also this structure is a superior structure in relation to the Collective Administration Agencies,in relation to the implementation of duties and legal responsibilities.

The law has defined two conditions on the basis of which a license can be issued by the responsible Ministry, in the absence of which this can not be concretely approved:

a) has obtained the consent for the administration of rights by the majority of rights holders of this category, who have given their powers of representation for the administration of their rights;

b) has the largest number of contracts concluded with reciprocal foreign agencies, in accordance with the professional criteria mentioned in the law;

Meanwhile, the law has determined that the reward fees are set between Collective Administration Agencies and the representatives of the users association or, if this is not possible, with the decision of National Copyright Council ,the fees which are set in agreement with the parties, against which if there are claims the law has determined first the administrative way and then the court one, the decision of National Copyright Council ,finally determines the fees which should be applied in relation to the copyright.

Another security link for the protection and guarantee of copyright is the National Council for Copyright, a structure set up by the Ministry responsible for copyright protection with competencies defined in law such as:

a) approves the methodology and the amount of remuneration tariffs;

b) decides on any claim of the parties for the termination of the agreement and checks whether the agreement is in accordance with the provisions of this law;

c) determines the criteria and procedures for the selection of creativity of national value, according to the provisions of this law;

ç) provides for arbitration proceedings

The law also provides for a mediation structure as well as Arbitration for resolving disputes or claims of the perpetrators, before the exhaustion of the judicial way of resolving the conflict, in compliance with the administrative procedural principle, where to resolve quickly and at lower cost,Kode of Administrative Procedures ,conflict provides for the first exhaustion of the administrative route and then the judicial one.

The law also provides for a series of administrative measures such as fines against entities that also commit violations of copyright law which are decided proportionally in relation to the violation committed by any civil entity.

The law has also provided the copyright for compensation / reward in case of violation of these rights sanctioned by law, guaranteeing the author against any form of abuse of his right and work, this for a term of protection for him economic rights is throughout the life of the author plus 70 years after death. This deadline was set in accordance with Council Directive 93/98 of 29 October 1993 harmonizing the deadline for the protection of copyright and other related rights in the European Union (EU).

The 70-year term was chosen as the longest term of protection in force in Germany at the time, in order not to deprive perpetrators of protection under German law of their rights which were enshrined in previous German law, which was also repealed.

But it should be noted that the de facto implementation of these rights shows that institutions have a lot of work to do in respecting the law and protecting these rights, against abuses in a market where informality and the tendency for unfair gain and in violation of the law constitute manner and habit of acting.

2.5 . Copyright in Albania and EU Legislation.

With the signing of the Stabilization and Association Agreement, Albania undertook the legal guarantee and real enforcement of the obligations arising from this agreement. This act addressed Albania's obligation to ensure that its existing laws and future legislation will be gradually made in accordance with the *acquis communautaire* ,as well as the obligation for existing and future legislation to be implemented and enforced.

So, as an initial obligation of Albania in the field of copyright protection, it had the task of approximation and to ensure that it has been implemented properly and is being implemented. Also at this stage it is really necessary and continuous monitoring for the implementation and enforcement of obligations derived from the SAA.

One of the tasks set by the EU is to take the necessary measures to guarantee a similar level of protection to the level offered by the EU no later than four years after the signing of the SAA, as well as the obligation to accede to a number of international acts and organizations such as the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Programs, the Copyright Treaty, and the International Convention for the Protection of New Varieties of Plants WIPO.

In this context, the existing legislation reflects the following European legal provisions:

-Directive 93/83 / EC dated 27 September 1993 “On the coordination of rules on copyright and related rights applicable to satellite broadcasting and cable rebroadcasting - Celex no. 31993L0083 / Official Journal 1993L248 / 15.

-Directive 2001/84 / EC of the European Parliament and of the Council of 27 September 2001 "On the right of resale for the benefit of the author of an original work of art" - Celex no. 32001L0084 / Official Journal 2001 L 272/32.

-Directive 2006/115 / EC of the European Parliament and of the Council of 12 December 2006 "On the right to lease and borrow as well as on certain copyright rights in the field of intellectual property" (codified version of 92 / 100 / EEC) - Celex no. 32006L0115 / Official Journal 2006 L 376/28.

- Directive 2006/116 / EC of the European Parliament and of the Council of 12 December 2006 on the protection of copyright and other related rights (codified version 93/98 / EC) - Celex no.32006L0116 Official Journal 2006 L372 / 12.

-Directive 96/9 / EC of the European Parliament and of the Council of 11 March 1996 "On the legal protection of databases" - Celex no. 31996L0009 / Official Journal 1996 L 77/20. Directive 2009/24 / EC of the European Parliament and of the Council of 23 April 2009 “On the legal protection of software” - Celex no.32009L0024 / Official Journal 2009 L 111/16.

The totality of these acts is reflected in the current copyright law which in terms of sanctioning and protection of this *de jure* right can be said to reflect the acts of the *acquis communautaire*.

CONCLUSIONS AND RECOMMENDATIONS

Intellectual property and copyright in particular, although relatively new rights but old in recognition, have gone through a series of ongoing difficulties, especially in the twentieth century, when the law was sanctioned in the first treaties of the European Communities, of the author as a right which should not remain only at the moral level but should be sanctioned with concrete acts and appropriate penalties that, can be applied for any form of violation of this right.

Albania, although it has existed for a century and a few years as a sovereign state, even in the legislation of the communist period this right was sanctioned and was subject to a series of constant controls and the application of a series of actions which were entirely lacking due to the system which was a limitation as well as a *de facto* violation of a number of rights, including copyright, a right which was sanctioned in such a way which violated this right by not anticipating the totality of cases in which this right could be violated.

Meanwhile, with the change of the political and legal system of the 1990s, there was a passive violation and abuse of this right in a number of aspects, as well as the continuous lack of control and punishment against the subjects who committed infringing acts of this right, necessarily created the conditions for the drafting of a series of ongoing laws, as well as the establishment of institutions as well as administrative structures which should guarantee the *de facto* implementation of this right.

But having more and more a market which was and continues to be partially informal, the favoring of the abuse of this right was at alarming levels, on the other hand also the non-functioning of the relevant legal instances which were presumed to guarantee the implementation of the law, but that in fact with their passivity and inefficiency they have continuously created the conditions for violation and even lack of reward of this right reason why in the Progress Report for Albania in 2015 the conclusion for the protection of intellectual property was that: “ In the area of intellectual property rights, progress has been limited, with little progress. Substantial shortcomings remain in terms of the effective implementation of intellectual and industrial property rights which undermine Albania's commitments under the SAA. ”[...]

Conclusion which, although it belongs to the time when the previous law was in force, which was abrogated by the law of 2016, still remain valid even after a year and a half, as the need to stop violating this right goes beyond the law and institutions , it requires a

constant awareness and information to thus create the force of habit not to violate and cease to violate this right.

Copyright in Albania, even though the new law has entered into force, which has replaced the existing law and institutions, still leaves much to be desired in the practical plan, as continuous inter-institutional cooperation is required to guarantee the protection and application of continuous sanctions, which aim to guarantee this right.

Also, the judicial system and the formation of judges who graduate with a Master's degree find it difficult to recognize and practice this right, as the trainings as well as university and postgraduate curricula have left this right in the elective sector, which determines the will of student to know and study this field of law, but for international structures, as well as EU institutions this is a right which should not only be legally defended but also the implementation of the law should be guaranteed by all levels and instances and protection of law in Albania, a duty which remains to be realized continuously by legislation and judicial practice.

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Footnote

[1] [World Intellectual Property Organization - What Is Intellectual Property? \(2016\)](#)

[2]

[3] [United Nations Intellectual Property Rights](#)

[4] [World Intellectual Property Organization - An Explanatory Note on the Origins of the United Kingdom intellectual property legal regime \(2013\)](#)

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[9] [Intellectual Property: Patents, Trademarks, and Copyrights in a Nutshell](#) , 3rd Edition, by Arthur R. Miller and Michael H. Davis (Eest Group, 2000).

[10] [Legal Aspects of Managing Technology](#) , 2nd edition, by Lee B. Burgunder (Wet Legal Studies in Business, 2001).

[11] *Protecting Your Company's Intellectual Property: A Practical Guide to Trademarks, Copyrights, Patents & Trade Secrets*, by Deborah E. Bouchoux (AMACOM, 2001).

[12] Yes

[13] US Patent and Trademark Office

[14] Avoiding Intellectual Property Problems, by Thomas G. Field, Jr. Franklin Pierce Center for IP, University of New Hampshire.

[15] Branch F, "Intellectual Property", Morava 2008, Tirana. .

[16] This article protects the copyright of non-property personal property rights in the event of a violation of the name or pseudonym.

[17] Decree No. 4389 of 7 May 1968 "On Copyright"

[18] **The** author had the right to request from the court the recognition of this right, the termination of the third party's violation, or the reinstatement of the copyright in his favor, in the case of causing the property damage he was entitled to claim the remuneration of damage. The protection of personal non-property rights was inherited to their heirs after the death of the author or their holder.

[19] Civil Code (1955)

[20] Koçi, Elina, 2003, "Intellectual Property, Copyright and Trademarks".

[21] Law no. 7564, dated 19.05.1992 "On Copyright "

[22] Articles 148 and 149 of the Criminal Code (1995)

[23] Articles 635 and 640 of the Civil Code

[24] Article 3/1 of Law no. 35/2016 "On copyrights and other related rights "

[25]

[26] Article 8 of Law no. 35/2016 "On copyrights and other related rights"

[27] Semin .M - Intellectual Property (2009)

[28] Semini .M-Intellectual Property (2009)

[29] Yes there;

[30] **Yes there;**

[31]

[32] there;

[33]

[34] Article 13 of Law no. 35/2016 "On Copyright and Other Related Rights"

[35] Article 15 ibid

[36] Semini, M-Intellectual Intelligence pg: 59-60 (2009)

[37]

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[39] Ibid

[40]

[41] Article 21-24 of Law no. 35/2016 "On copyrights and other related rights"

[42] Semini M, "Copyright in Albania", Skanderbeg Books, 2009, Tirana.

[43] Law no. 7564, dated 19.05.1992 "On Copyright"

[44] European Observer-Agaj, M (2015)

[45]

[46] Ibid

[47] Article 127 of the Law

[48] Article 128 / b, c, d of the law

[49] Article 132 of the Law

[50] Article 133 Ibid

[51] Ms. 134 is there

[52] Article 143/5 of the Law

[53] Article 145 of the Law

[54] Nine 179-182 is there.

[55] Article 172 of the law

[56] MSA 70 with Albania (1 April 2009).

[57] Article 73 of the SAA (1 April 2009).

[58] Once morally even in antiquity these rights have been recognized and considered as a humiliating phenomenon the use of others' ideas and their appropriation and reflection as a personality of the beneficial subject .