

INTELLECTUAL PROPERTY IN SOCIETY DEVELOPMENT

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ABSTRACT

Intellectual property is one of the most valuable assets that can measure the feasibility and the future performance of an organisation, irrespective of the nature of capital ownership, be it private or public. The stimulation of a nation`s creative capacity is a systematic, homogeneous process supported by a highly dynamic national system related to intellectual property rights.

Far from aiming to cover the diversity of information and theoretical-practical issues related to „intellectual property in organisations”, „value of intellectual property”, this paper is an invitation to analyse the importance and need to use intangible assets as a value in central or local public institutions and to make public sector more efficient.

The contributions of the paper are its findings, which allow us to draw interesting and useful conclusions about the intellectual property as an intangible asset in increasing value of an organization.

KEYWORDS: *copyright, economic welfare, intellectual property, industrial property, intangible assets, national and international legal framework*

JEL CLASSIFICATION: *D23, O15, O34, P14*

1. INTRODUCTION

Intellectual property is one of the most valuable asset as a measure of viability and future of organizations performance, regardless of capital structure ownership, be it private or public.

The stimulation of a nation`s creative capacity is a systematic, homogeneous process supported by a highly dynamic national system related to intellectual property rights.

Intellectual property, regarded from the point of view of its two components, on one hand industrial property, copyright and related rights on the other hand, is a powerful tool for the development and economic welfare, social and cultural development of a country.

In this context, we can say that the protection of intellectual property rights is of great importance, essence, its scope and purpose being to protect the product of human intelligence and at the same time, to guarantee consumers the possibility to use the product.

At the same time, innovation and technology transfer are solutions to economic problems and the permanent renewal of the necessary technology, by connecting Romanian research to the demands and pressures of a free market and expanding globalization.

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Thus, a national strategy on intellectual property should be implemented to become the promoter of creativity, the link between entities in the field: innovators, creative industries, public, users and institutions involved in the field.

In carrying out this task, we propose a national approach, focusing mainly on:

- ❖ analysis of the current legal framework and institutions in the field,
- ❖ the record of intangible assets in the financial statements of the institutions,
- ❖ impact of intangible assets in business organizations,
- ❖ influencing factors and mechanisms for valorization and capitalization of intangible assets of an organization,
- ❖ exploitation of intellectual property in public organizations.

1.1. The national legal framework

Romania has a complex intellectual property legislation covering all fields of intellectual property, compatible with EU regulations, treaties and conventions in the field. It should be noted that Romania pays special attention to the enforcement of intellectual property law and strives constantly to improve its legislation and infrastructure used in the protection and enforcement of intellectual property rights.

Protection of industrial property rights is governed mainly by the following special laws: the Law no.64 / 1991 on patents as amended by Law no.203 / 2002 and Law No.28 / 2007, Law no.84 / 1998 on trademarks and geographical indications as amended by Law no.66 / 2010, Law no.129 / 1992 on the protection of designs, as amended by Law no.585 / 2002 and Law no.280 / 2007, Law No. 16 / 1995 on the protection of topographies of semiconductor products, as amended by Law nr.337 / 2005 Government Ordinance no.41 / 1998 on industrial property fees and the use thereof as amended by Law no.383 / 2002 and 381 / 2005, Law No. 255/1998 on the protection of new varieties of plants as amended by Law no.119 / 2006, republished, Law nr.350 / 2007 on utility models.

Protection of copyright and neighboring rights is regulated by Law No.8 / 1996 on copyright and related rights as amended and supplemented, which is the framework law in the field and by the following complementary laws: Government Ordinance no.25 / 2006 on strengthening the administrative capacity of the Romanian Office for Copyright, republished, as amended by Law no.364 / 2006, Government Decision No. 401/2006 regarding the organization, functioning, personnel structure and equipment necessary to fulfil the responsibilities of the Romanian Office for Copyright, as amended, Government Decision no.1086 / 2008 on establishing of tariffs for chargeable operations of the Romanian Office for Copyright and for the approval of methodological norms on the level of establishment, conditions of allocation and use of the stimulation fund dedicated to the ORDER staff and the Minister of Culture and National Heritage Act No. 2029/2009 approving the Methodological Norms regarding the method of calculation of tariffs and the procedure for payment of amounts following operations carried out against payment, by the Romanian Office for Copyright and Emergency Government Ordinance no.43 / 2010 amending certain laws to reduce or simplify administrative authorizations/approvals/procedures as a result of measures taken by the Government of Romania in the framework of the Plan to simplify of the Memorandum of Understanding between the European Community and Romania, signed in Bucharest and Brussels, June 23, 2009.

The insurance of the observation of intellectual property rights is regulated by: Government Emergency Ordinance no.100 / 2005 on the enforcement of industrial property approved with amendments by Law no.280 / 2005, and completed by Law nr.214 / 2008 Law .11 / 1991 on unfair competition as amended by Law nr.298 / 2001 Government Ordinance no.21 / 1992 on consumer protection, republished under Law no. 476/2006, as amended by Law 363/2007 on countering unfair trade practices in the relationship with consumers and on bringing regulations in line with

European legislation on consumer protection, Emergency Ordinance no.174 / 2008 amending and supplementing certain acts on consumer protection Law 344/2005 on measures to enforce intellectual property rights in customs operations, Law no.161 / 2003 on measures to ensure transparency in pursuing public dignities, civil service and business environment, preventing and sanctioning corruption.

At the same time, Romania has the obligation to enforce and implement EU laws and directives: Regulation (EC) no.1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods to have infringed such right; Directive 2000/31 / EC on e-commerce; Directive 2001/29/ EC of the European Parliament and Council Directive on the harmonization of certain aspects of copyright and related rights in the information society; Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights; Directive 2009/24 / EC of the European Parliament and Council Directive on the legal protection of computer programs; Competitiveness Council Resolution on a comprehensive European anti-counterfeiting and piracy; Regulation (EC) no.207 / 2009 on the Community trademark, Council Regulation (EC) No. 6/2002 of 12.12.2001 on Community designs and Council Regulation (EEC) No.1768 / 92 of the Council on the creation of a supplementary protection certificate for medicinal products and Regulation (EC) no.1610 / 96 the European Parliament and of the Council establishing a supplementary protection certificate for plant protection products.

Specialised assistance in the field of industrial property and representation of Romanian or foreign natural and legal persons against the State Office for Inventions and Trademarks, is provided by intellectual property attorneys, organised within the **National Chamber of the Industrial Property Counsellors in Romania**, as stipulated by the Government Ordinance no. 66/2000 on the organisation and practising of the industrial property counsellor profession.

Below is a short a list of the regulations in the field of intellectual property:

- Law 8 of 1996 amended – on copyright and neighboring rights;
- Law 126 of 1923 on literary and artistic property;
- Decree no. 321/1956 – on copyrights;
- GO 25 of 2006 amended, on strengthening the administrative capacity of the Romanian Copyrights Office – updated versions 27/06/2011;
- GEO 43 of 2010 amending certain laws to reduce or simplify administrative authorizations/approvals/procedures as a result of measures taken by the Government of Romania in the framework of the Plan to simplify of the Memorandum of Understanding between the European Community and Romania, signed in Bucharest and Brussels, June 23, 2009;
- Law no.99/2011 approving the Emergency Government Ordinance no. 43/2010 amending certain laws to reduce or simplify administrative authorizations/approvals/procedures as a result of measures taken by the Government of Romania in the framework of the Plan to simplify of the Memorandum of Understanding between the European Community and Romania, signed in Bucharest and Brussels, June 23, 2009;
- GD 1095/2000 approving the methodological norms regarding the way of depositing and destroying the illegal pirated supports, materials, phonograms, holographic marks or covers confiscated under the law;
- Governmental Decision no. 974/2001 regarding the approval of the cooperation Program between the Romanian Government and the World Intellectual Property Organization (WIPE);
- Convention of 14/07/1967 establishing the World Intellectual Property Organization;
- Government Decision no. 401/2006 regarding the organization, functioning, assets and the organization chart of the Romanian Office for Copyright;

- GD 1086/2008 on establishing of tariffs for chargeable operations of the Romanian Office for Copyright and for the approval of methodological norms on the level of establishment, conditions of allocation and use of the stimulation fund dedicated to the ORDER staff.

1.2. Institutional framework in Romania

The main institutions identified with duties and responsibilities under the law on intellectual property are:

- ❖ State Office for Inventions and Trademarks (OSIM)
- ❖ Romanian Copyright Office (ORDA)
- ❖ Ministry of Economy, Trade and Business Environment
- ❖ National Authority for Scientific Research
- ❖ Public Ministry - Prosecutor's Office High Court of Cassation and Justice
- ❖ The General Inspectorate of Romanian Police
- ❖ General Inspectorate of the Border Police
- ❖ Ministry of Justice
- ❖ Superior Council of Magistracy
- ❖ National Institute of Magistracy
- ❖ National Trade Register Office
- ❖ National Customs Authority
- ❖ National Authority for Consumer Protection
- ❖ National Chamber of Industrial Property Attorneys in Romania
- ❖ Department for European Affairs

In Romania, intellectual property protection is done according to the law, by two specialized institutions: **State Office for Inventions and Trademarks (OSIM)** - industrial property and the Romanian Copyright Office (ORDA) - for copyright and related rights.

State Office for Inventions and Trademarks under Government Decision 573/1998, as amended by Government Decision # 1396/2009, is a specialized body of central public administration in the Ministry of Economy, Trade and Business Environment with sole authority to ensure protection of industrial property, which prepares and submits to the Government strategy of development of industrial property protection in Romania and apply government policy in this area.

Romanian Copyright Office is organized and operates under Law No.8 / 1996 on copyright and related rights, as amended by Law no. 146/1997 on judicial stamp, Law no.285 / 2004, Emergency Ordinance no. 123/2005 approved by Law No. 329/2006, Emergency Ordinance no. 190/2005 for achieving the necessary measures in the European integration process and Law. 202/2010 on measures to accelerate the settlement process, the Law no.71 / 2011 for the implementation of Law no.287 / 2009 on the Civil Code and according to Government Decision no. 401/2006 on the organization, functioning, personnel structure and equipment necessary to fulfil the responsibilities of the Romanian Office for Copyright, as amended by Decision no.698 / 2009, Decision no.1410 / 2009 and Decision no.1135 / 2010, as a specialized body subordinated to the Government, with unique authority in Romania in terms of regulation, evidence through national registries, supervision, licensing, arbitration and technical-scientific cooperation in the field of copyright and neighboring rights.

The enforcement of intellectual property rights responsibilities following public institutions with specific responsibilities: Public Ministry, Ministry of Justice, National Customs Authority, National Authority for Consumer Protection, General Inspectorate of Romanian Police General Inspectorate of the Romanian Gendarmerie, General Inspectorate of Police Border and Courts.

1.3. International legal framework

From the international point of view, Romania is a founder of the **World Intellectual Property Organisation (WIPO)**, established by the Convention establishing the WIPO, signed in 1967. Additionally, Romania is signatory of the Paris Union for the protection of industrial property protection established in 1920 by the Paris Convention for the protection of industrial property of 1883, and since 1927 has been a member of the Berne Union for for the protection of literary and artistic works established by the Berne Convention in 1886.

According to the requirements of the EU accession, Romania became member of the European Patent Organization starting with March 1st, 2003, which confirms the modern character and up to European standards of the Romanian system of trademark inventions.

In 2001, Romania ratified the newest international regulations in the field of digital copyright and neighbouring rights, namely the WIPE Copyright Treaty and WIPE Performance and Phonograms Treaty signed in Geneva, in 1996.

In the context of this active international cooperation, the most important element is the Cooperation Programme between the Government of Romania and WIPO, signed in Bucharest, June 7, 2001, and approved by Government Decision no. 974/2001. The document lays the foundation of the cooperation between Romania and WIPO and provides the framework for tight relations between the responsible Romanian institutions, by formulating sectoral agreements and action plans and ensuring conditions for an effective enforcement of the programmes promoted by the organisations in the field of intellectual property.

Romania is also a founder of the World Trade Organisation and signatory party in the Agreement establishing of the World Trade Organisation including the Agreement on trade related aspects of intellectual property rights (TRIPS).

According to the Law no. 304/2004 on judicial organisation, further amended and supplemented, art. 63 letter h), i), k), the **Public Ministry** takes action to prevent and counter crime, under the coordination of the minister of justice, in order to achieve a unitary penal policy of the state; it analyses the causes or factors of crime, formulates legal acts to reduce crime and submits them to the minister of justice, and it works towards the improvement of the law in the field; it has additional obligations as provided by the law.

The **National Institute of Magistracy** is the public body coordinated by the Superior Council of Magistracy charged with the initial professional training of judges and prosecutors, the continuous training of active judges and prosecutors and of trainers, according to the law. The institute is organised and active under the Law no. 304/2004 on judicial organisation, further amended and supplemented, Law no. 303/2004 on the statute of judges and prosecutors, further amended and supplemented, and the Law no. 247/2005, the Emergency ordinance no. 59/2009, Law no. 118/2009 as well under the Regulation of the National Institute of Magistracy, approved by the Decision of the Superior Council of Magistracy no. 127/2007, further amended and supplemented.

The **Romanian Police**, through its central and regional units, carries out activities to prevent, detect, record and counter offences against intellectual property right law. From the point of view of the enforcement of intellectual property rights, the **Inspectorate General of Border Police** is charged with prevention measures against the access of counterfeit goods to the Romanian territory.

The National Customs Authority prevents counterfeit or pirated goods from entering the European Union customs territory, by conducting controls on goods leaving or entering the customs EU territory, imported goods, exported, re-exported, duly-suspended or in a custom-free area. When a suspicion exists related to the breach of intellectual property rights, the customs authority is responsible for compounding these goods, and may also act ex officio. Intervention conditions of the customs authority as well as the measures to be taken on such goods are regulated specifically under the EU law.

The **State Office for Inventions and Trademarks** acts as an integrator in the process of monitoring and evaluation together with the Prosecution Office with the High Court of Cassation and Justice in legal aspects related to ensuring intellectual property rights.

CONCLUSIONS

Romania's EU entry assumed the harmonization of legislation of intellectual property and copyright as well as improving institutions regulating the activity. Their activities have become more complex due to new challenges with the opening of the European Union. Interinstitutional collaboration has become a challenge for actors in the field, both for the regulators and users. This paper aims to examine these issues and to propose measures to improve their work.

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