

Intellectual Property for Creative and Cultural industries

Support Research

Case of Slovenia and Ljubljana Urban Region

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1. INTRODUCTION

Slovenia's formal intellectual property history begins on 25th of June 1991 when Office for Intellectual Property was established by Constitutional Law Implementing the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia. At that time that was the Office for the Protection of Industrial Property of the Ministry of Science and Technology.

The name Slovenia intellectual property office (SIPO) was given in December 1994, when the Act on the organization of Ministries came in force, which grants to the SIPO the powers in the field of copyright and related rights. In December 2000 with the introduction of amendments to the government, SIPO becomes a body within the Ministry of Economy. Since then Slovenia became a member of many international systems in the intellectual property field and also became a contracting party of many international treaties, which enables owners of intellectual property rights easier protection and enforcement around the world.

The local study is a part of project CCAIps, aimed to create real and virtual Alpine node with creativity and innovation in centre. The other aim is to enhance the involvement of creative industries in social environment, by encouraging services and products of SMEs and enhancing the awareness of SMEs about importance of protecting their intellectual property rights.

Slovenia has a lot of creative companies and individuals, but still very few of them exploit their IP due to lack of knowledge and awareness.

In order to get a bigger picture about the creative environment in Alpine area and governmental and business involvement in this area, this local study wishes to enlighten the legislative part, but also the practical part and experiences of SMEs in their intellectual property issues, concerns, good and bad life stories.

According to World Economic Forum's Competitiveness report, which assesses the competitiveness landscape of 144 economies, providing insight into the drivers of their productivity and prosperity, Slovenia is losing its rank each year on competition scale and needs to improve, that is why the IP awareness needs to raise in order to protect and economically use the IP rights, which through different means enhance profit and reduce losses due to infringement and stealing.

2. OVERVIEW OF NATIONAL POLITICS ON IP PROTECTION

Slovenia as a member of EU adapts and harmonizes legislature with politics valid for all member states. An effective system to manage and protect intellectual property rights (IPR) is essential for fostering innovation, growth and competitiveness in the Single Market. On May 2011 the European Commission adopted a wide-ranging strategy on IPR. This strategy sets out a blueprint for a number of initiatives the Commission intends to take between now and 2012 in various areas, including patents, trade marks, geographical indications, copyright licensing and digital libraries.

The copyright industries are critically important to the European Union because they involve media, cultural, and knowledge industries. Development in these industries is indicative of performance in post-industrial society especially where related to the information society. The European Commission is also responsible for conducting negotiations on industrial and intellectual property within World Intellectual Property Organization (WIPO) (e.g. audiovisual, broadcasting, resale right, databases, etc.), for participating in the relevant WIPO General Assemblies, and for contributing to the work of other international forum on IPR related matters with a view to ensuring adequate protection of intellectual property rights (IPR) internationally. Over the last decade, the counterfeiting and piracy phenomenon has risen to very dangerous dimensions and has become one of the most devastating problems facing world business. Within the EU there are already a number of legal instruments in place, such as the Enforcement Directive, but in order to make them more effective the EU is seeking stronger administrative cooperation between authorities at all levels in the fight against piracy and counterfeiting. On September 2008 the Council adopted a Resolution on a comprehensive EU anti-counterfeiting and anti-piracy plan. This Resolution endorsed the need to step up the fight against fake goods and called for the creation of a European Observatory on Counterfeiting and Piracy.

According to that Slovenia is in intense preparation of national strategy for 2014-2020, in strong cooperation with WIPO.

2.1. EMPIRICAL DATA

According to OECD¹ (2009), Slovenia's gross expenditure on research and development was 1.45% of the gross domestic product in 2007. While this was below the OECD average of 2.26%, it was higher than in eleven OECD members and close to levels in countries such as Norway and the Netherlands. In Slovenia, the bulk of financing for research comes from the public sector with business and enterprise spending amounting to only 0.85% of GDP in 2007. Although considerably below the OECD average of 1.56%, the figure nonetheless places Slovenia ahead of eleven OECD members. International rankings place Slovenia similarly. For example, the Global Competitiveness Report 2008-09 ranks Slovenia at 27 out of 134 countries in terms of private sector spending on research and development, and the World Economic Forum (WEF) (2001) ranks Slovenia at 25 out of 75 countries. In both reports, Slovenia scored well above the average for included countries. Additionally, according to the Slovenian Intellectual Property Office (2009), companies in Slovenia have reached a stage where investments are made in the development of new or improved products rather than in process innovation.

¹ <http://www.oecd.org/slovenia/48263001.pdf>

One important factor for research and development intensity is the level of highly skilled human resources. In Slovenia, 21.4% of the population aged 25-64 held tertiary degrees in 2006. This was lower than for most OECD members which recorded levels closer to 30%. The figure for Slovenia nonetheless qualifies Slovenia's human resources as highly educated, and its research output is in line with other OECD countries. Slovenia's level of scientific publications was 518.1 per million of the population in 2005 which was only half that for Switzerland and Sweden, but higher than fourteen OECD members and was slightly above the OECD average. The number of Slovenian triadic patent families, i.e. innovations protected by patents in the United States, EU and Japan, was 10.24 per million of the population in 2005, which was substantially lower than the OECD average. One plausible explanation is that Slovenian companies still play the role of technology adopters rather than innovators, and therefore usually opt to rely on trade secrets and know-how rather than patents for protection. However, while the number of triadic patents per population was lower than one tenth that of Japan and Switzerland, it was also more than ten-fold higher than the OECD countries with the lowest levels. The Slovenian figure was higher than those for nine OECD members, and close to the levels in Italy and Ireland. One interesting statistic is that only 13.4% of Slovenian patent applications at the European Patent Office involve foreign co-inventors. This was considerably lower than in most OECD members, suggesting that innovations were driven by domestic demand rather than international collaboration. In contrast, countries in Central and Eastern Europe appear much more dependent on foreign collaboration with equivalent figures of 38.9% in the Czech Republic, 36.4% in Hungary, 36.0% in Poland and 56.0% in the Slovak Republic. Only five OECD countries, i.e. Japan, Korea, Italy, United States and Germany, had lower shares of foreign co-investors than Slovenia. In these countries, however, large populations are a likely factor explaining low shares of foreign co-inventors. When it comes to patent applications in Slovenia, WIPO (2008a) reports 228 patents granted in Slovenia during 2006, of which 215 applications (94%) had a first-named applicant resident in Slovenia. WIPO (2008b) reports that out of 400 industrial design registrations during 2006, 72 registrants (18%) had residence in Slovenia while 325 had registered through the Hague system and three were direct registrations by non-residents. Of the 5 573 trademarks registered during 2006, 1190 (21%) were registered to residents of Slovenia. Of the remaining trademarks, 3 967 were registered via the Madrid system and 416 directly by non-residents, according to WIPO (2008c).

According to UMAR ² after the progress in 2010, Community trade marks and designs recorded less favourable movements in 2011. In 2011 Slovenia filed 73.2 applications for Community trade marks per million population with the OHIM,⁴ which is nearly a third less than in 2010 and the largest setback among all EU Member States. Besides Slovenia, only Hungary, Latvia, Ireland and Belgium registered a lower number of Community trade mark applications than in the preceding year. Slovenia reached just 49.1% (in 2010: 76.0%) of the EU average, which totaled 149.1 trade marks per million population. Despite the lower number of Slovenian applications for Community trade mark protection, the average annual 2005–2011 growth remains among the highest in the EU (Slovenia: 28.8%; Slovakia: 38.4%; Estonia: 28.9%; the Czech Republic: 21.9%; EU-27: 8.8%). Slovenian applicants registered 64.4 Community designs per million population with the OHIM. The decline relative to the preceding year was much smaller than in Community trade mark applications. Most of the other Member States' results deteriorated in 2011, as just seven countries registered more Community designs than a year before. The EU average was 101.4 Community designs per million population; Slovenia reached 63.5% of the average, which is otherwise the best result in 2004–2011. Close to two fifths of Slovenian enterprises that registered Community designs with the OHIM in 2011 deal with the manufacture of household goods and paper and paper stationery.

²http://www.umar.gov.si/fileadmin/user_upload/publikacije/pr/2012/A_POR/02/10_IPIND.pdf

SIPO's³ annual report for 2011 shows that in 2011 there were 1,743 national applications and 210 requests for international registration of Slovenian trademarks filed with SIPO. In the registration procedure, the Trademark and Design Department dealt with a total of 1,689 applications, of which 1,353 were issued decisions on trademark registrations and 336 were withdrawn, refused or dismissed. With respect to new applications, publications and registrations of trademarks, a negative trend was observed in the period between 2007 and 2011, which was accompanied by large fluctuations: the largest drop, in 2009 (16.6%), was followed by the largest increase, in 2010 (13.67%), and then by a new drop in 2011 (7.63%), down to 1743 new applications for registrations of Slovenian trademarks. The number of applications is largely influenced by the current economic situation in Slovenia, the increasing popularity of the protection of the Community Trademark, and the knowledge and awareness of economic operators about intellectual property. The latter may not always be positively correlated with the extent of protection in terms of the number of applications and registrations of trademarks, since the lack of knowledge may result in an unnecessary and unreasonable registration of trademarks by economic operators. On the other hand, an analysis of the 500 largest Slovenian enterprises has shown that only 9% of them obtained Community trademark protection, which implies that the scope of current trademark protection for Slovenian economic operators is not at an appropriate level and that the number of new applications is dependent not only on the number of new products or establishments of new enterprises but also on the appropriate level of the protection provided to existing enterprises.

2.2. OVERVIEW OF LEGISLATION

2.2.1. General (Acts comprising provisions on intellectual property rights)

1. Penal Code of the Republic of Slovenia (Official Gazette RS, No 55/2008, No 55/2009)
2. Liability of Legal Persons for Criminal Offences Act (Official Gazette RS, No 98/2004, No 65/2008, No 57/2012)
3. Act Implementing the Customs Regulations of the European Community (Official Gazette RS, No 25/2004, No 111/2007) (*this regulation falls within the competence of the Customs Administration*)
4. Rules on insuring payment of expenses and determining the level of costs of safe-keeping and maintenance of goods during temporary detention and seizure of goods in case of application of customs measures in cases of intellectual property violations (Official Gazette RS, No 33/2004) (*this regulation falls within the competence of the Customs Administration*)
5. Obligations Code (Official Gazette RS, No 83/2001, No 40/2007)
6. Civil Procedure Act (Official Gazette RS, No 36/2004 - officially consolidated text, No 52/2007, No 45/2008)

2.2.2. Copyright

1. Copyright and Related Rights Act (Official Gazette No 16/2007, No 68/2008)
2. Decree on amounts of remuneration for private and other internal reproduction (Official Gazette RS, No 103/2006)
3. Decree on mediation in disputes concerning copyright and related rights (Official Gazette RS, No 35/2005)
4. Decision determining the list of mediators (Official Gazette RS, No 82/2005)
5. Decision on the completion of the list of mediators (Official Gazette RS, No 36/2007)
6. Decree on arbitration in disputes concerning copyright and related rights (Official Gazette RS, No 65/2006)

³ http://www.uil-sipo.si/uploads/media/URSIL-SIPO_LP-AR_2011.pdf

2.2.3. Industrial property laws

1. Industrial Property Act (Official Gazette RS, No 51/2006)
2. Decree on the fees of the Slovenian Intellectual Property Office (Official Gazette RS, No 128/2006)
3. Rules on the registers of applications and industrial property rights and on the certificate of the priority right (Official Gazette RS, No 102/2001)
4. Rules on passing the qualifying examination and entry into the register of agents kept by the Slovenian Intellectual Property Office (Official Gazette RS, No 111/2001)
5. Order on the tariff of information services (Official Gazette RS, No 71/2006)

Patents & Supplementary patent certificates

1. Decree on the legal protection of biotechnological inventions (Official Gazette RS, No 81/2003)
2. Decree implementing Council Regulations (EC) concerning the creation of a supplementary protection certificate for medicinal products and for plant protection products (Official Gazette RS, No 56/2005, No 65/2006) (*reference to Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the supplementary protection certificate for medicinal products is to be taken as a reference to Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 (Codified version), and should be read in accordance with the correlation table in Annex II hereto – 2. paragraph of Article 22*)
3. Decree on the extension of European Patents to Slovenia (Official Gazette RS, No 15/2002) (*applicable for requests for extension of European patents filed before 1 December 2002*)
4. Rules on the contents of patent applications and divisional patent procedure (Official Gazette RS, No 102/2001)

Industrial designs

1. Decree implementing Council Regulation (EC) on Community designs and Council Regulation (EC) on Community trademarks (Official Gazette RS, No 4/2007)
2. Rules on the contents of industrial design applications (Official Gazette RS, No 102/2001, No 112/2004)

Trademarks

1. Decree implementing Council Regulation (EC) on Community designs and Council Regulation (EC) on Community trademarks (Official Gazette RS, No 4/2007)
2. Rules on the contents of trademark applications (Official Gazette RS, No 102/2001)
3. Rules on the procedure concerning requests for the international registration of trademarks (Official Gazette RS, No 124/2006)

Geographical indications

1. Decree on the geographical indication of the Lipicanec (Lipizzaner) horse (Official Gazette RS, No 4/1999)

Job Related Inventions

1. Job Related Inventions Act (Official Gazette RS, No 15/2007)
2. Rules on compensation for job-related inventions (Official Gazette RS,

2.2.4. Overview

The Industrial Property Act covers patents, trademarks, industrial designs and geographical indications for handicraft products. An amendment adopted in 2001 relating to trademarks and designs in accordance with the Trademark Law Treaty, brought this legislation almost fully in alignment with the acquires, i.e. current EU legislation. The only exception at the time was protection of biotechnical inventions. It was however agreed during accession negotiations that specific transitional rules would apply in relation to pharmaceutical products and regarding the granting of supplementary protection certificates. Regulations in these areas were adopted in 2003. The Copyright and Related Rights Act was amended in 2001 to protect services based on conditional access and to protect databases. This legislation was further amended in accordance with European Commission (2003) to better account for copyright and related rights, and information society rules. Adopted in 2001, the Customs Measures Relating to Infringement of Intellectual and Industrial Property Rights Act brought border enforcement legislation into alignment with the EU acquires. In 2001, the European Commission (2001) reported that all necessary institutions for administrative capacity were in place and thus Slovenia was in full compliance with its obligations as an EU member.

Industrial property and copyright are administered by the Slovenian Intellectual Property Office (SIPO) which, under the jurisdiction of the Ministry of Economy, is responsible for the preparation of legal regulations in the IP field. In 2007, a Copyright Board was established at SIPO. Issues relating to plant varieties are handled by the Phytosanitary Administration of the Republic of Slovenia under the jurisdiction of the Ministry of Agriculture, Forestry and Food since 2002. The Ministry of Agriculture, Forestry and Food Issues is also directly responsible for issues relating to geographical indications (for products other than handicraft products). Enforcement of IP rights is handled by the District Court of Ljubljana, which holds competence over disputes concerning IPR. The District Court of Ljubljana is not a specialized court, but is de facto specialized due to its role as the exclusive court of first instance in all IPR related disputes. This brief summary of intellectual property rights in Slovenia provides evidence that the framework of intellectual property rights is extensive and is being implemented with reference to international and particularly European standards. It is also clear that Slovenia has taken important steps to strengthen its system of intellectual property rights and to comply with its international obligations. Slovenia has even taken on leadership roles in this area including during the first half of 2008 when it stressed progress on the European patent system as a key issue under its EU Presidency.

2.3. Creative Commons

Creative Commons (CC) is a non-profit organization headquartered in Mountain View, California, United States devoted to expanding the range of creative works available for others to build upon legally and to share. The organization has released several copyright-licenses known as Creative Commons licenses free of charge to the public. These licenses allow creators to communicate which rights they reserve, and which rights they waive for the benefit of recipients or other creators. An easy-to-understand one-page explanation of rights, with associated visual symbols, explains the specifics of each Creative Commons license. Creative Commons licenses do not replace copyright, but are based upon it. They replace individual negotiations for specific rights between copyright owner (licensor) and licensee, which are necessary under an "all rights reserved" copyright management with a "some rights reserved" management employing standardized licenses for re-use cases where no commercial compensation is



sought by the copyright owner. The result is an agile, low-overhead and low-cost copyright-management regime, profiting both copyright owners and licensees. Wikipedia uses one of these licenses.⁴

3. EXPERT EXPERIENCES

In order to see what Slovenian experts think about legislative, if it serves creative industry or how it should be improved, I interviewed two Slovenian experts, working in a field of IPR and protection. The one works on the “governmental” side and the other one is working with intellectual property rights users

3.1. Interview with Mrs. Irena Hreljac, PhD.



Mrs. Hreljac is a national expert in IP, working at Slovenian intellectual property office in Sector that supports and educates business, industry and universities. After finishing her degree in Biology in 2004 (University of Ljubljana, Biotechnical Faculty) and her PhD in Biomedicine – Biochemistry and Molecular biology in 2009 (University of Ljubljana, Medical Faculty), Irena Hreljac has continued her professional route in Cambridge, UK, where she did research in applicative science - experimental cancer therapies, and also started to be active in the fields of IP and knowledge transfer. After coming back to Slovenia in 2001 she has been employed at the Slovenian Intellectual Property Office as a member of the Promotion, Education and Consulting Department. During that time, she has designed and delivered several workshops and lectures on various IP topics (IP for startups, patent information, patents for engineers...). She has advised several SMEs on IP issues connected to their business strategy. She has also performed patent searches and IP mapping for different sized companies. She attended several expert seminars organized by international IP organizations (EPO, WIPO, OHIM). She has served as a committee member of the Ljubljana University Rector ship Innovation Award as well as a committee member of the Central Slovenia Chamber of Commerce's Innovation Award. She is a certified Slovenian patent and trademark agent.

1. What do you think about general IP environment in Slovenia, regarding legislation, especially regarding application of legislative provisions in reality?

⁴ http://en.wikipedia.org/wiki/Creative_Commons

IP legislation in Slovenia regarding IP is largely harmonized with EU legislation, especially in the field of industrial property. The Industrial Property Act however has a few issues which have been proven problematic, mainly concerning patent law. There is ongoing debate whether Slovenia should include substantive examination of patents immediately after filing or should retain the present system – examination is required until 10 years have passed after filing. There are valid arguments for both options. The present system could remain in place, but the most important issue is lack of knowledge and awareness among the users of the IP system, which are too often not aware that their Slovenian patent has not been examined and that for successful court prosecution the examination has to be performed first.

There are many more problematic issues in the field of copyright law, which are hopefully going to be resolved by the new Copyright Actb which is expected to be take force in the next year.

2. What is your professional opinion on relationship between IPR and innovations? Are they symbiotic or IP system does not serve innovations as it should?

In theory, the IP system should support innovation by providing commercial monopoly on the innovative product/service features. This is true for many companies and fields of industry. SMEs and startups, as well as many larger companies in Slovenia, however, often lack funds and/or knowledge to protect and use their IP, which then becomes free to use by third parties. Larger companies in Slovenia, even those with well known brands and/or technical innovations often don't have a strategic view on their IP assets. Comprehensive, top-down supported approach on all levels (government, support environment, company, department) to raise awareness and include IP strategy in the overall governmental developments strategies and companies individual business strategies is needed.

3. Have you got any experiences with controversial practice in this field?

Some controversial practices in Slovenia take advantage of the lacking IP awareness and protection culture. They include e.g. protection of known brands by third parties (with the means to sell them to their owners), trying to enforce patents (out of court) which have not been examined etc. Because of a non-developed IP support system, IP owners are often lost and lack the professional support in resolving their issues.

4. Can you describe in short one good European case, where IPR system was well used by a company/innovator/research institution...?

Slovenian company Outfit7 very smartly used the IP system to support their innovative application »Talking Tom« which gathered millions of fans users worldwide. Firstly, they bought the copyrights for the main character. Then they used trademark protection to prevent their brands and characters to be used by third parties. Then they launched a series of accompanying products under the brand names, which further strengthened their company and the brand.

5. How good is in your opinion the knowledge about IPR in creative and cultural industries in Slovenia?

As in other fields, there is also lack of awareness on the importance of IP management and protection. IP protection in the cultural industry is often disregarded as a negative issue. There is a need of building awareness of the importance of IP protection not only as an enforceable tool, but as a means to have control over the use of one's work, even if they decide to put it into the public domain (e.g. Creative Commons licenses).

6. Can you tell me something about Creative Commons and what do you think about it? Is it suitable for strong protection of IP rights?

Creative Commons is a good tool for creative workers who want to prevent misuse of their work but still want to keep it in the public domain. There are a few different licenses with different degrees of freedom given to the user. It is suitable for everyone who wants to regain control over the use of their work but still support the open publishing environment.

7. How should government help more in order to establish a safe and efficient IP system, any concrete ideas?

Education, education, education. Support on all levels. Support to develop a working and healthy IP business support industry. Inclusion of IP strategy in the country's development strategy. Working with Chambers of Commerce and directly with companies to engage top company executives to include IP strategies in their business strategy. Inclusion of IP and innovation education at all educational levels. Incentives for IP rights protection and more importantly, their use to gain commercial advantage...

3.2. Interview with mrs. Maja Bogataj Jančič, PhD.



Maja Jančič Bogataj, MA, LL.M., LL.M., PhD, Intellectual Property Institute, director is a graduate of the Faculty of Law (1996). She got her Master's degree at the Faculty of Law (1999, Economics), Harvard Law School (2000 law) and Facoltà Giurisprudenza di Torino (2005, intellectual property). She received her PhD at the Faculty of Law in Ljubljana (2006 copyright). While studying abroad, she received scholarships from the Bank of Slovenia and the Ron Brown scholarship from the U.S. government. In 2000 she received the Young Lawyer of the Year Award of the Association of Slovenia. She is the author of numerous articles on intellectual property and co-author of several books on the Internet and intellectual property law. Her research and academic work focuses on intellectual property, in particular copyright law. She is also involved in many international projects, Judge in proceedings for an alternative domain name dispute resolution for domain space, at the Faculty of Law in the school year 2001/2002 and 2002/2003 she led seminars about internet and law. She has led the project Creative Commons Slovenia and is now advisor to the Head of the legal issues. She is the founder and head of the Institute for Intellectual Property.

1. What do you think about general IP environment in Slovenia, regarding legislation, especially regarding application of legislative provisions in reality?

I work primarily in the area of copyright and trademark law. In the area of copyright, the majority of cases and problems in Slovenia focus on collective management of rights. In addition, every amendment of the copyright act focuses primarily on the provisions of collective management.

The legislation itself, harmonized with international conventions and EU directives, reflects the same problems as regulation in the international arena: problematic imbalances between exclusive rights on one side and narrow exemptions and limitations, poorly adjusted to the digital technologies and global communications networks on the other. Particular Slovenian problem in legislation is regulation of collecting societies, which still does not achieve enough transparency and efficiency in the business of collecting societies. In the initial phase, users were using copyrighted works without proper clearance, so it was logical that collecting societies got strong support from the

government and legislative body. Today, when practices are well developed, a more balanced system should be put in place and especially a strong mechanism to increase efficiency and transparency in collecting societies. Today collecting societies are un-transparent and inefficient. It seems that, at least some of them, work primarily for themselves, which harms authors that they represent, and users which need to pay high remuneration for uses.

It would be extremely useful for the legal practice and the development of our legal system if all courts cases including expert opinions used in the court proceedings would be publicly available. It is absolutely necessary that special legislation on collecting societies should be separated from the Copyright Act. This would enable to focus on more important problem that are pressing in digital society.

2. What is your professional opinion on relationship between IPR and innovations? Are they symbiotic or IP system does not serve innovations as it should?

Through my practice I have come to the conclusion, that IPR's work well for larger companies, this is especially true for patents.

Trademark registration, on the other hand is something, which could benefit all players on the market, the smaller companies as well as the larger ones.

3. Have you got any experiences with controversial practice in this field?

Many small companies cannot afford to patent their inventions.

4. Can you describe in short one good European case, where IPR system was well used by a company/innovator/research institution...?

No given answer.

5. How good is in your opinion the knowledge about IPR in creative and cultural industries in Slovenia?

Although intellectual property rights are an essential tool for marketing creations and innovations, the creators and inventors rarely put as much weight in them as in the creative and innovation process' themselves. This could be due to the lack of knowledge about IPR's in their fields. If the innovators knew what rights the IP legislation affords them, they would probably be more open to apply for trademarks or patents. As of now, they are more inclined to simply create. Costs for IPR are not managed as fixed and necessary cost.

6. Can you tell me something about Creative Commons and what do you think about it? Is it suitable for strong protection of IP rights?

Copyright is the same for different kinds of authors and copyright holders. Regardless if they are corporations or educational institutions, independent artists or big producers. In addition, this, all rights reserved system, does not work well for everyone anymore. CC licenses are a legal, contractual solution for these anomalies in the law. It seems that they work well for the vast majority of authors, as well as institutions that would like to enable their content to flow more freely among users. Hopefully, legislation will reflect this need in near future. Two tiers system may turn out as a good solution, meaning that only creators that would register their works would get material copyright, but every author would get moral rights. It would be advisable that the term of copyright is much shorter than the current 70 plus life. CC are suitable for the protection of creators, who want to use channels of distribution which are freer than the standard all rights reserved model. It is crucial that legislators do not view CC licenses as a solution good enough to resolve the imbalances in the copyright system. In copyright, the system of exceptions and limitations must be adjusted to the modern times. Contractual solutions are not enough.

7. How should government help more in order to establish a safe and efficient IP system, any concrete ideas?

More efficiency and transparency in the operation of collecting societies. Special court or at least a special department at the general court for copyright cases and other IP cases. Publication of all court cases including expert opinions used in court proceedings. Adjustment of the copyright legislation according to the needs of Slovenian authors and users, and not only international interests groups.

4. REAL LIFE EXPERIENCES

Nevertheless, business is what drives economy, so to get a clearer view on IP protection methods, knowledge and added value, I also interviewed Slovenian creative companies, to see, whether they are aware, they use and if they enforce.

4.1. Interview with GIGODESIGN ltd

The Interview was made with Mr. Luka Stepan, creative director, age

Company, established in 2000, helps partners making a global impact by designing great products and inspiring brands. They are a one-stop idea to market shop: turn concepts, ideas and innovations into desirable products, services and brands. They are advocates of user-centered design and lean startup methods. By testing early in the development stage and applying the acquired knowledge to every new iteration, they aim at minimizing partners' risk and maximizing their possibilities for market success.

They've built a strong project-oriented culture, based on the highest level of responsibility towards the project. Their interdisciplinary teams cooperate on a daily basis, delivering numerous answers to the same question. With a proven track record of awarded projects, they always go the extra mile to support partners achieve their business goals.

Company has 11 regularly employees + 10 permanent



1. How many of your products have you got protected with formal IP procedures (e.g. registration of a Trademark, design, copy right...)

About 30 (in-house or through clients) products, trademarks are almost all protected; overall we have about 80-90% protected IP.

2. Why did you use these means of protection?

To protect our work and expand possibilities of monetizing on our projects: self-production, fees, royalties, ...

3. How big is your budget per year that you plan for protection of IPR?

We do not have special budget /plan for IPR.

4. Have you heard of »Creative Commons« and do you use them?

Yes, self initiated and more experimental work that fits the public realm (or can be developed further outside the studio) is licensed under creative commons

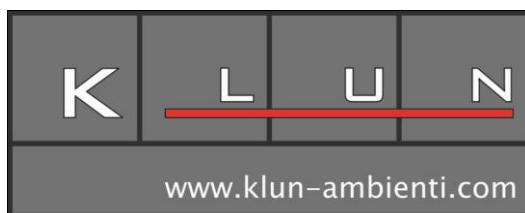
5. Which of your products brought you the most of ROI due to right protection method, licensing, selling.....? Describe in short, please.

Usually royalty based projects: where our input is relatively high - from lighting, furniture, etc

4.2. Interview with Robert Klun Ambienti Ltd

The interview was made with Mr. Robert Klun

Company, established in 1980, which from tapestry workshop it overgrew into atelier for architecture, which rests on creative thinking and quality of being. We engaged new professional co-workers, young strengths, new knowledge, but preserve our original activity - manufacture of padded furniture. Mr. Robert Klun, director, born in 1972, took over the family business and now it is a company with 12 employees.



1. How many of your products have you got protected with formal IP procedures (e.g. registration of a Trademark, design, copy right...)

20 designs (from year 2000) and some of copyrights with AAS, which represents 30% of his portfolio of products.

2. Why did you use these means of protection?

Just to avoid problems which you could have with »copy-paste«, since our products are mainly literally designs and copyrighted work, we only use these means, nevertheless we have also a trademark registered. Our protection varies according to potential market.

3. How big is your budget per year that you plan for protection of IPR?

1.000 eur

4. Have you heard of »Creative Commons« and do you use them?

No.

5. Which of your products brought you the most of ROI due to right protection method, licensing, selling.....? Describe in short, please.

I cant measure, because our products are selling still on »unit« base. When and if here will be mass production I will inform you. For sure »protection method« should be also selling focused. And if someone will combine »selling and protection« under one roof, I will be the first in line.

6. Have you ever licensed any of your IP rights, do you monitor them?

We monitor it very rarely, but we found one company which stole our design and we asked them to remove these items-so far, unsuccessfully.

4.3. Interview with D-LABS ltd

The interview was made with Mr. Tilen Travnik, Head of Project Management at D-Labs, he is a 15 year veteran in managing Internet project, at age 32.

D-Labs is a Slovenia based team of internet veterans, product experts and devoted agile developers. Over the years they have helped their clients grow their business by building them successful internet products.

They are heavily focused on users, passionately engaged within the development process, but also cold and analytical when it's time to check the ROI, it was established in 2010 and now it is a company with 30 employees



1. How may of your products have you got protected with formal IP procedures (e.g. registration of Trademark, design, copy right...)



0 (but some clients have a registered trademark),

2. Why did you use these means of protection?

No given answer

3. How big is your budget per year that you plan for protection of IPR?

0

4. Have you heard of »Creative Commons« and do you use them?

Yes. We often use imagery or icons filed.

5. Which of your products brought you the most of ROI due to right protection method, licensing, selling.....? Describe in short, please.

No given answer.

5. CONCLUSION

According to everything above alleged, Intellectual property in Slovenia is relatively well legislatively and formally supported, but the awareness of the targeted public and special knowledge of judicial system is still very low. Creative companies such as designers and copywriters still don't know what to do, how to do it and where to turn for help. One of very useful means of protection, especially for creative industries are Creative Commons licenses, that help creators share their work easily and they help everyone find work that can be used without permission. As long as people follow the terms of the license attached to the work, they can use Creative Commons licensed material without fear of accidentally infringing copyright. These licenses so help authors and creators manage their copyrights and share their creative work without losing control of their rights.

But Creative Commons licenses are regardless of their international use, in Slovenia still used rarely, depending on the industry, but also the trademark and design applications fell. The main reason is that owners of a product or service still don't quite understand the importance of protecting their IP rights, nor do they know that their rights should be constantly monitored and enforced if infringed. It is when their rights are infringed, they realize the importance of protection-but for small business sometimes it is too late.

The other important view is that not only the formal protecting methods are not used, also the informal (e.g. technical) and semi-formal means (such as contracts) are used poorly (usually samples downloaded from internet, since it is

the cheapest and gives parties a fake feeling of safety) and not appropriate for the business. Especially in the field of copyrights clauses are often too general, copy pasted from internet, with no regards to potential disputes, ambiguity or further complications.

As we can see from interviews above, both experts agree that the lack of knowledge is the main issue in poor protection of IP rights. They suggest closer and more intense collaboration between national bodies and industry in order to help businesses identify and accurately protect their core knowledge, asset and development—otherwise it is useless to invest in development and people. Government should establish more transparent and modern legislature, but also the courts should specialize in this field, since disputes occur often, usually with high numbers at stake, so the judicial knowledge should increase as well. As experts said, economic environment finds its own way to solve certain anomalies. Slovenia has some very good and profitable companies, which rose on profit from their intellectual property rights protection, through licensing, patenting (Outfit7, Studio Moderna...) and as it appears, Intellectual property rights are very valuable asset. Nevertheless tax legislature is still not keen on acknowledging these assets differently and more favorably to companies or at least acknowledging investments in protection as a cost to the firm. That is why many of start-ups and SME-s do not protect and by doing so, they lose at the very beginning. Of course the use of means of protection varies from industry and products—in IT field, Creative Commons are used more often, since it is easier to protect that way, because patenting of software and other IT solutions is usually not patentable in continental legislature. But on the other hand, the more tangible designs such as furniture are protected through design protection, but still in low percentage according to whole portfolio. I believe the main reason for decreasing number of application is also the economic situation in Slovenia, where every cent is crucial for survival, so the reason for not protecting IP rights is a belief of extreme costs related to protection, but in reality the prevention is still the best cure. Remedies for infringements are very much higher than costs for protecting or prior art checking. The good side of that is that companies are thinking more strategically now and are trying to identify their core competitive advantage in products, so only the protection for them is sought. It is up to the firms and their strategy, what to protect, how to protect and why protecting. Some companies, for example consciously just create trademarks and designs for their clients, leaving it up to them to protect or not protect, but that is a matter of mutual agreements. Creative Commons are one very fine way to contractually regulate some issues regarding intellectual property rights of both parties, but that is not enough. Contract often do not regulate everything for every circumstance, so the judicial support and knowledge is needed to fulfill the gap and through case law to ease the management of intellectual property rights, by establishing safe environment for operating on the market.

Creative companies also have issues with third parties, working for them (designers), because they often copy from somewhere and agreements very rarely say something about that—damages can get sky high for these kind of mistakes. But still the main problem is the lack of awareness, lack of knowledge where to turn, how to protect, how to monitor and manage IP rights. As we can see, legislature offers a lot of options, but execution of them and supportive environment is not suitable for instant needs of business, due to too abstract or long administrative procedures.

Nevertheless in Slovenia Creative Commons are not well known and not often used by creative companies, but the CC community is very active in field of changing the existing legislature, their effort is aimed to increase the copyrighters' rights and reduce the influence of collective organizations. They are part of European collaborative effort to found a new and ground-breaking European collecting society for musical creators being built with them selves participating. C3S is intended to become a non-exclusive collective society to register musicians' works outside of traditional schemes, released under Creative Commons non-commercial licenses, but monetized in commercial use. More than that, C3S will offer registering works for commercial purpose released under other free licenses as well, including those works released under no explicitly defined licenses.

Slovenia has very good, exquisite creative companies, but lack of knowledge and awareness about value of that creativity and innovations. Due to that fact, many foreign companies sell Slovenian creations and Slovenian innovations, which is why IP strategy should be on national level, performed through every incubator, development



agency, tax office, educational system and business network, but also administratively supported with lower taxes for SME (e.g. USA) and accounting and taxation incentives in order to stimulate companies to invest in protection in same way as they do in development-because those two business components are crucial to go hand in hand-one without another is useless and not profitable. And on the other hand efficient judicial system is needed to establish a legal certainty and case law, and that gives market a strong signal and direction how to operate and conduct in interrelations. Very important information is that Creative Commons licenses are drafted to be enforceable around the world, and have been enforced in court in various jurisdictions and the licenses have never been held unenforceable or invalid.

Intellectual property is one of most valuable assets and should be treated as such. By increasing especially awareness amongst young researches, start-ups and SMEs, a great added value and profit can be achieved, simply by identifying and then properly managing, protecting and enforcing intellectual property rights.



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