Legal Protection of Copyright Works that Appear in Web Based Applications

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Abstract:
Simultaneously with the increase of intellectual property available via Internet, possibilities for unauthorized use of such works are also multiplying. Finding more efficient methods to prevent such infringements becomes priority of each state, as well of international community, but also to protect already infringed rights of IP authors. Different authors are dealing with this contemporary topic in their work, analysing primarily causes and forms of intellectual properties' infringements in Web environment. The second part of this paper presents forms of protection available to authors in legal system of Serbia (with the stress on damage compensation), as well gives the assessment of its harmonization with international standards. Cyber criminals that targets intellectual property over the Internet also see this opportunity as a way to expand their illegal activities. It is a great opportunity for them to relocate criminal resources and to hide evidence in order to evade detection during process of stilling objects of another’s intellectual efforts.

Key-Words: copyright protection, compensation of damages to the injured parties, Informational technology

1. Introduction

In each individual country, as well as in international community as a whole, a great deal of attention has been paid to acknowledgement of author’s copyright for many decades, or even the whole century. There are obvious reasons for this. We can openly say that human society would not survive it there were not numerous creative artistic works. The time has shown, however, that mere acknowledgement of author’s property rights is not sufficiently protected from unauthorized violations. At the same time, this is the biggest problem in this area of modern society that has been faced with, and the solution to this problem could be found in combination of different sciences—from technical to social. The protection problem seems worse with progress of science and technology, as not only the number and kinds of author’s work have increased, but also the ways they have been presented and distributed. This particularly refers to the author’s works presented and distributed in electronic forms, through Internet, both educational and entertaining. People can reach desired contents from the Internet easily, but on the other hand, Internet increases opportunities for unauthorized use of works, without any possibility to discover or prove this. Therefore, all countries take drastic measures to protect copyrights in this domain as well. Having in mind that Serbia has belonged to those countries with low level of copyrights protection, an objective of our paper is to identify the causes, ways of discovering and other types of copyright violation that appear in electronic form, specially in WEB surrounding. It is often the case that third parties, without any awareness or agreement by the author, use other people’s work in various forms, regardless of the form it exists in. Due to these illegal activities the copyright owners sometimes suffer a great deal of damage, not only in terms of finances, but also of morals, especially if the creation and production of certain works involved entire teams of experts in long-term periods. That is how their several-year effort becomes utterly meaningless, because it takes only a part of their creative ideas to be “stolen” in order to jeopardize the entire project. Criminals are hard to detect and police do not have adequate preparation for the detection of fraud. In the central part of the paper, we would discuss different forms of protection of stated works in Serbian law and the estimate of their correlation with international standards in this area.

2. Copyright violation

The traditional systems of protection and copyright use had worked entirely fine until the global digital
technologies and the internet appeared. The fast development of the internet communication worldwide keeps causing a variety of new forms of manifestation of violation of intellectual property and a constant expansion of this negative activity in different fields of social life. Due to that, the traditional systems of protection and exploitation of copyright have become almost unsustainable, legal frames have become hardly applicable, and the damage caused by the copyright violation has been getting enormous. Besides this fast development of information technology, copyright violation has been widely affected by the insufficient amounts of copyright awareness, inadequate competence of copyright owners in terms of dealing with these new trends, as well as unsatisfactory interest of the authors themselves in taking the initiative after having learned that their copyright had been violated. The basic reason for copyright violation is primarily the insufficient amount of public awareness that the works of an author cannot be exploited without his/her authorization, for that is a right which belongs to the author exclusively. An example for this is a research that was conducted in several German universities which showed that one third of the complete number of final graduation papers was downloaded from the internet, from various American universities, and then just translated without any alterations in order to be turned in as students’ own works. Concerning this, a significant number of students stated that they didn’t see anything wrong with that, adding that they did not violate any person’s intellectual property, but that they only “downloaded” available papers from available websites. Opposite to that, the majority of professors claimed that these cases, instead of using the English word “download”, should be called “intellectual theft”. In accordance with the latest University Law in the USA, an active participation of all universities is expected in order to fight piracy and other forms of violation of intellectual property rights, and should they fail to participate they risk losing the funds form the State budget. The role of the universities is not only to provide education, but also to actively exercise the measurements that lead to suppression of copyright violation as well as other similar laws.

2. Forms of manifestation of copyright violation

With the ambition of making new knowledge available, many works of science and expertise have found their place in electronic libraries of prominent world universities. It is necessary to make a difference between online libraries and digital/electronic libraries. Online libraries have a simple web page which provides basic information about the programs, activities, editions and publications of books. Besides that, there can be an option to rent or order “real” books from a catalogue via the internet. Universities and other educational institutions often offer such services, although they are offered by the public libraries as well. On the other hand, digital libraries offer an access to the books through the internet, where one can see them as a regular web page, in the html format, as a book in the PDF or MS Word file format, or as plain text, in the ASCI format. Besides the great danger of having someone “crack” into the protected information system of those libraries, by bypassing the protection measurements or introducing a “virus” into the system, there is a great problem of unauthorized distribution of the downloaded content, which can be performed by legal users of those libraries. For example, they often download the necessary content into their own personal portable memories, but instead of using it for their personal needs only, they often exchange it for a different material they might need or even sell it. This is a serious problem for authors who have signed contracts with the electronic libraries, because in this way a great number of persons who do not own a library membership come into possession of their work, and those persons do not pay copyright fees, which brings great damage to the authors, and instead of increasing the number of library members, as well as the income resulting form that increase, the income decreases, and the authors lose faith and cease to be motivated to make their work digitally available. Protection measurements in these cases by all means include the use of adequate software and antivirus protection, as well as providing information to all library members as to how to use the downloaded content, meaning that they must be informed that it is forbidden to distribute, exchange or sell the content to any third party. A major problem is also the protection of educational content which can be
found on various educational portals and are there for potential users who might need them for education or class preparation, in case they are teaching professionals. The problems concerning unauthorized copyright use are similar to those concerning the electronic libraries, except that this is educational material which is already processed and completely adjusted for certain fields of science, therefore as such it can primarily be used by individuals who work or are hired in education, and less likely by a wider circle of users, which is the case with the electronic libraries. The problem is augmented by the fact that certain member of the portals can establish a so called peer to peer network with other individuals who do not have the access to the portal’s database and thus make the entire downloaded content available. Such networks are almost impossible to control, therefore this is a way for the portal’s content to leak form a member to an individual who receives the content charge-free or through a fee paid to the portal member (i.e. not officially to the portal owner), and thus the portal’s content is distributed without authorization or the portal owner’s knowledge, that is, their availability is made possible without an adequate fee paid. There is a similar situation with certain professional journals (magazines) which are sold at a relatively high price, so there have been cases of individuals scanning such publications and publishing a web link through which it is possible to see the journal’s content after paying a fee which is considerably smaller than the subscription price on the journal for a certain time period. It is understood that the access to the web link would be available only to those who would pay the demanded access fee beforehand, after which they would be provided with an access code and be free to get hold on the available content. Protection measurements by all means include the use of adequate software and antivirus protection, as well as providing information to all library members as to how to use the downloaded content, meaning that they must be informed that it is forbidden to distribute, exchange or sell the content to any third party.

3. Forms of violated copyright protection of electronic works

In accordance with the Serbian law, the author’s work in any form, including the electronic, has been protected from the moment it has been created. Protection of property component of authors’ rights has been limited to 70 years from the author’s death and it can be exercised on the limited number of persons excepted by the Law\textsuperscript{1}. Protection of non-property component of copyright has been timely and personally unlimited. If any segment of copyright has been violated in Serbia, like in many other countries, the author can count on several forms of responsibility of persons who caused that violation. These forms of responsibility are: 1) criminal, if the action of the committer has been labeled as a criminal act stipulated by the Criminal law; 2) administrative, if the action of the committer has been labeled as an infringement stipulated by the Law on copyright and related rights and other relevant documents\textsuperscript{2}; 3) responsibility for some of commercial offences, stipulated by the same Laws; 4) civil-legal or propriety, if the author suffers from some damages or the committer has been groundlessly made rich for his account and in other cases\textsuperscript{3}. We will briefly discuss characteristics and conditions for each of the abovementioned responsibilities, with the emphasis on responsibilities of the violator in the form of compensation of damages, what is most important for the author. All forms of responsibility of the copyright violator could be observed independently, but also simultaneously-if legal conditions for each of them have been fulfilled, regardless the fact that is one and the same entity.

4. Criminal liability

If the action that violated the copyrights of educational and likewise contents distributed electronically has been labeled as a criminal act stipulated by the Criminal law of Serbia\textsuperscript{4} - criminal action can be brought against the offender. Serbian law envisages protection from the three

\textsuperscript{1}Some entities are entitled to quote and copy parts for non-commercial use without prior permission of the author and compensation, for use in scientific research or judicial proceedings, as well as for use of the part adjusted to the persons with invalidity.

\textsuperscript{2}Customs Law ("Official Journal RS" no.61/05) and the Law on special authorizations for the efficient protection of intellectual property rights ("Official Journals RS" no. 46/06 and 104/09) give special authorization to customs and inspection officers to ensure copyright protection.

\textsuperscript{3}See more about the types of civil law claims filed by injured parties (authors) in: S. M. Markovic – Z. Miladinovic, Law on copyright and related rights, Kragujevac, 2008, p. 261 – 285.

criminal acts regarding the authors’ and related rights. One of them refers to violation of moral rights of authors and interpreters (Art. 198 of Criminal Law), has been prosecuted upon accusation proposal or lawsuit by the author, and depending on the form and seriousness of the offence results in the penalty of the violator either in the form of fine or imprisonment from six months to three years (for hardest offence). The second criminal act refers to unauthorized use of copyright or the related rights (Art. 199 of Criminal law) and has been prosecuted by the state, resulting in punishment of the offender, depending on the form and the amount of penalty or six months to five years of imprisonment (for the hardest offence). The hardest offence and the higher penalty is – unauthorized copying and distribution of the authors’ work with the intention of having property benefit, which is the most often of copyright violation. The third criminal act refers to the unauthorized removal or alteration of electronic information on the authors’ or related rights (Art. 200 of the Criminal law), has been prosecuted ex officio and can result in fine and up to three years of imprisonment for the offender. Criminal protection of the author has been amended with a set of eight criminal acts against safety of computer programmes, where we would like to emphasize unauthorized approach to password protected computer, computer network and electronic data processing (Art. 302 of the Criminal law), as this is a criminal act often related to the previous category of criminal acts against the authors’ and related rights and their implementation. In this field very important is the Law on the organization of jurisdiction of state organs for the fight against high-tech crimes\(^5\). On the basis of the stated, we would like to conclude that the protection of violated copyrights, in number and type of envisaged criminal acts, as well as in kind and amount of penalty in Serbia has been almost identical to protection of copyrights in other countries. Such protection in Serbia has been in accordance with obligations taken over with ratification of conventions of the Council of Europe on high technology crime from 2001 (Art. 10). There is one question that concerns penalties, and whether they adequately influence future offenders; or criminal sanctions should be more rigorous - this can be corrected in desired direction on the basis of statistical reports on number of criminal offences of this kind. Criminal responsibility is certainly the hardest for the copyright violator, since it directly affects his personality in the form of imprisonment, and his property as well, it he is pronounced the fine. In this way this responsibility is repressive, but it also has a preventive role in the sense of discouraging him from future violations. Nevertheless, from the aspect of the author whose right has been violated this type of responsibility is not sufficient-even when the offender was pronounced a fine , as this fine in criminal procedure goes in favour of the state, not the damaged author. The only possible sentence of measures of deprivation of proprietal benefit from the violator, acquired through some of the abovementioned criminal acts–which is also stipulated by the Criminal law (Art. 91 - 93) can be significant for the author. Namely, he can make collect some payment for the damages he suffered, which is going to be discussed in the following part of our paper

### Liability for commercial infringement

As for the responsibility of the offender for commercial offences or infringements stipulated by the Law on authors’ and related rights (Art. 215 - 217), it also comes down to payment, to our conditions of high penalties in different proceedings (from 100.000 to 3.000.000 RSD). Decision of the legislator for the stated penalties in relation to commercial offences and infringements have to be evaluated positively, as this would discourage the prospective violators in domestic conditions. However, we have to conclude that this kind of responsibility of the violator has almost no effect to the author, since these amounts, just like in criminal procedure, have been collected by the state, not by the author whose rights were violated.

#### Compensation for damage as a form of protection against copyright infringement

The educational, and other creative works under protection against copyright infringement

sanctions imposed on the infringer are significant for its fight against this type of crime, but for the authors they only represent a moral satisfaction. Regardless the moral satisfaction, the author continues to feel legally unprotected, since these sanctions do not repair the damage done to his personal and property rights and interests. Copyright infringement causes various types of damages to injured parties and the question remains under what conditions and to what extent is an author in a legal system entitled to compensation for damages resulting from infringement? In other words, the author is more interested in the civil liability of the infringer and the possibility to recover the actual damages resulting from the unauthorized use of the copyrighted work.

**Forms of copyright infringement, types of damages and the scope of compensation**

The Republic of Serbia legal system belongs to a group of European legal systems which offer to their citizens large possibilities for claiming the compensation for the injury suffered as a result of copyright infringement caused by unauthorized online use. These possibilities are in line with current global trends referring to the protection of the author’s property rights, maybe even exceed the solutions offered in most other legal systems. In Serbian law, the authors are protected against unauthorized use of their copyrighted works by the combination of several laws. They are the Law on copyright and related rights, the Law on obligation relations, the Law on special authorizations for the efficient protection of intellectual property rights, and some regulations from other laws. The basic characteristics of this protection will be briefly explained in the following text. The scope of protection actually depends on the type and the extent of the incurred damage. Since the copyright includes two legal components: personal and property components, it is necessary to determine which of these two elements was infringed. The infringement of the copyright personal component results in, so called, moral damage expressed in the form of psychological and emotional pain and stress. This type of damage, although non-monetary in its nature, is compensated by awarding a sum which is quantified according to specifically prescribed parameters, but also by publishing the court decision or notice with corrected information in public and in some other ways. The situation is similar in other legal. The infringement of the copyright material (property) component (which assumes the author’s exclusive right to profit from his copyrighted work) is more frequent and can result in a considerable material and profit loss. Therefore it is no wonder that most damage compensation clauses in Serbia and other legal systems refer to the infringement of this copyright component and its compensation. Since the author can personally exploit his work (directly distributing it to the users), or, more frequently through the network of licensed distributors, there are several ways in which his copyright may be infringed and material loss incurred: breaking the distributors’ protection system and illegal downloading of electronic material, the licensed distributors’ failing to pay the agreed compensation to the authors, or, which is legally the most complex case, the licensed distributors’ continuing, without obtaining prior consent from the author, with uncontrolled and illegal distribution of the copyrighted material to third parties. In all these cases the author’s interests and property rights are infringed. The material damaged that he suffered can have two forms: the actual damages reflecting specific amount of money and property that the author loses as a result of the infringer’s illegal act; and the speculative damages which refer to the damages that have not yet occurred but they are expected to occur under regular (or even irregular circumstances) and cause the material loss as a result of the infringer’s illegal act. In this situation, the author mostly suffers from speculative damages, since the continuing unauthorized use of his educational and creative work by the third parties and its illegal sale would definitely cause the

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6 “Official Journal RS” no.104/09
8 “Official Journals RS” no.46/06, 104/09
9 In Serbia they include the author’s authorization rights: to ensure the recognition of his work’s paternity, to mark it under his name, to preserve its integrity and to defend it from an unauthorized use.

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10 See more in: S. Pavic, The assessment of the extent of non-monetary damages for the moral copyright infringement, "Pravni zivot" no. 11 – 12, Belgrade, 1992, p.432
11 The data on the situation in German and French legislation can be found in: V. Besarovic, Intellectual property (Industrial property and copyright law), Belgrade, 2005, p.351.
loss to his profit. Serbian law in this field guarantees the full compensation of actual damages to the author, as well as the compensation of possible moral damages he suffered, separately and independently from the actual damages. This means that the court will, according to Art. 190 of the Law on obligation relations, award the amount that would restore the injured person to the economic position he expected to be in if the infringement had not taken place, which is the highest possible compensation that the injured party may receive. However, Serbian legislators have foreseen even larger scope of protection of the author’s copyright, leading us to state at the beginning of this text that Serbian law is above the average European standards. Namely, since the practice has shown that the author typically has problems to prove that speculative damages will likely to occur and the court has difficulties to determine the amount of the incurred damage, the new Law on copyright and other related rights (Art. 206) foresees a new possibility for compensation. If the plaintiff estimates that he will not be able to prove before court the amount of the damage he suffered (or that the court procedure will last too long, that the engagement of court experts will be too expensive, etc.), he can choose to be awarded the amount which is three times bigger than the amount he would normally receive as a legal compensation for the authorized use of a certain type of work, in this case the online use of his academic work. The only precondition for the damage claim is that the damage was inflicted intentionally or, more frequently, by a reckless negligence. This, for property law an unusual clause, which is often called punitive damages, is borrowed from Anglo-Saxon law and many states have not recognized it, including EU which does not mention this possibility in its Directive on the Enforcement of intellectual property rights from 2004 ensuring the protection of intellectual property. The question remains whether this amount can cover the actual damage that the plaintiff suffered, that is, whether this amount is bigger or smaller than the sum the plaintiff would get for speculative damages in a regular court proceeding. Since the law which foresees this possibility is new and has just started to be implemented in Serbia, we do not have the feedback from court practice that might give answer to this question. However, the experts’ opinion is that the said amount will not only be enough to compensate the injured party, but in some case it may exceed the amount of actual damages, and therefore it is termed “punitive damages”. Namely, its goal is to punish the infringer by paying a certain amount which will not go to the state, as it is the case with the criminal liability, but to the author for the damage he suffered. In addition, it will have a preventive character since it will deter future offenders from resorting to similar actions (it is assumed that this sanction will be more effective in a preventive sense than a prison sentence in a criminal procedure). Although many legal writers have negative opinion about the introduction of this sanction into Serbian law, considering it as an exaggeration, our stand is that this sanction can finally eradicate the practice of copyright infringement in poor societies, such as Serbia.

5. Conclusion

Based on this short analysis of the situation in Serbian law related to the protection of intellectual property and copyright of the authors against illegal online distribution of their educational and academic works, we can conclude that the current laws provide comprehensive and modern solutions for ensuring a full protection of these rights, which does not mean that they can not be further developed and upgraded. We can say that the new Republic of Serbia Law on copyright and related rights and other mentioned laws embodies the most significant principles of the protection of property rights that can be found in international laws and acts regulating this field such as the TRIPS agreement iz 1994. (trade-related aspects of intellectual property rights) and related

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12 It is difficult to quantify the amount of the speculative damages in the case when the infringer has obtained the author’s work in an illegal way and is further distributing it online for lower price than the price of the licensed distributor. Legal theory proposes a number of methods, each having its advantages and disadvantages. See more in: S. Markovic, Law on copyright and related rights, Belgrade, 1999, p. 372; R. Sack, Die Erschopfung von gewerblichen Schutzrechten und Urheberrechten nach europaischem recht, GRUR, 3/199, str. 197.  
14 About the situations when this compensation assumes the form of private punishment: S. M. Markovic, Intellectual property Law, Sarajevo, 2007, p. 260.  
EU documents\textsuperscript{16}. The same could be said for the provisions from Serbian criminal law which ensure the protection of intellectual property rights that are in accordance with the Council of Europe Convention on Cybercrime. These forms of protection against the infringement of copyright and intellectual property rights at the national and international level are designed to suit copyright protection against unauthorized online use and distribution. Still there are notable difficulties how to prove that the infringement has occurred and how to assess the extent of the material damage the author suffered. The solutions to these problems have to be found by developing new technical means and measures for discovering and tracing the unauthorized online use of copyrighted works. Legal professionals have greatly contributed to developing and shaping the intellectual property legislation, while the legislators have shown the readiness to quickly respond to technological innovations and implement new regulations with international standards in the field of copyright protection. Legal professionals should follow the practical implementation of these regulations and wait for signals that will make them further seek the efficient means for improving the protection of the authors’ property rights, since the extent of this protection has direct impact on the nation’s creative work. But definitely, the current legislation in Serbia, especially after the introduction of these modern standards into its regulations, has gone far in comparison to the situation just a few years ago. Moreover, submitting its candidacy for EU accession, Serbia has shown its determination to harmonize its policies with EU standards and the adequate protection of the intellectual property rights is one of the important preconditions it has to fulfill pursuant to the Agreement on Stabilization and Association.

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