

INTEKTUALNA SVOJINA: ZAKON O POSEBNIM OVLAŠĆENJIMA RADI EFIKASNE ZAŠTITE PRAVA INTEKTUALNE SVOJINE

Dana 10. juna 2006. stupio je na snagu Zakon o posebnim ovlašćenjima radi efikasne zaštite prava intelektualne svojine ("Službeni glasnik RS", br. 46 od 2. juna 2006). Ovim zakonom predviđaju se konkretne mere koje su državni organi (tržišna i druge inspekcije, poreski inspektori, poreska policija i Republička radiodifuzna agencija, u daljem tekstu: nadležni organ) ovlašćeni da preduzmu u cilju zaštite prava intelektualne svojine priznatih zakonima i međunarodnim ugovorima. Za razliku od ostalih zakona u ovoj oblasti, koji obezbeđuju zaštitu isključivo u sudskim postupcima, što podrazumeva složenu i često sporu proceduru, ovaj zakon omogućava neposredno angažovanje administrativnih organa u hitnom postupku.

Zakon zabranjuje proizvodnju, promet, upotrebu i držanje robe i pružanje usluga kojima se povređuju prava intelektualne svojine, kao i emitovanje i reemitovanje radio ili televizijskog programa koji sadrži autorska dela ili predmete srodnog prava (pravo interpretatora, pravo prvog izdavača slobodnog dela, prava proizvođača fonograma, videograma, emisija i baza podataka), za čije korišćenje nije plaćena naknada nosioca prava.

Glavnu novinu koju Zakon donosi predstavlja krug mera koje nadležni organ preduzima u slučaju povrede prava intelektualne svojine. Naime, ako neposrednim uvidom utvrdi da je povređeno pravo intelektualne svojine, nadležni organ:

- 1) privremeno oduzima svu zatečenu robu i sredstva kojima je povređeno pravo intelektualne svojine;
- 2) privremeno zabranjuje povrediocu da obavlja svoju poslovnu delatnost, kojom se povređuje pravo intelektualne svojine;
- 3) uzima uzorke predmetne robe radi ispitivanja postojanja povrede prava intelektualne svojine i radi obezbeđivanja dokaza o tome;
- 4) podnosi prijavu nadležnom javnom tužiocu, odnosno prekršajnom organu.

Nadležni organ je u obavezi je da o povredi prava intelektualne svojine i preduzetim merama bez odlaganja obavesti nosioca prava, a nosilac prava je dužan da u propisanom roku pokrene postupak za

zaštitu svog prava pred nadležnim sudom. Preduzete mere traju do dostavljanja odluke suda u postupku koji je nosilac prava pokrenuo.

Postupak pred nadležnim organom može da bude iniciran i zahtevom nosioca prava, o kome je nadležni organ dužan da odluči u roku od 15, a u hitnim slučajevima u roku od tri dana od dana podnošenja zahteva.

Zakonom je predviđen niz novčanih kazni u visini do 3.000.000,00 dinara (više od 35.000,00 evra) za nepoštovanje pojedinih odredaba ovog zakona, ali i Zakona o autorskom i srodnim pravima, Zakona o žigovima, Zakona o pravnoj zaštiti dizajna, kao i oduzimanje predmeta koji su bili upotrebljeni ili namenjeni za izvršenje prestupa.

INTELLECTUAL PROPERTY: LAW ON SPECIAL COMPETENCIES FOR EFFICIENT PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Law on Special Competencies for Efficient Protection of Intellectual Property Rights ("Official Herald of RS" No. 46 dated 2 June 2006) entered into force on 10 June 2006. The Law provides specific measures the state bodies (market and other inspections, tax inspectors, tax police and Republic Broadcasting Agency, hereinafter referred to as: body) are authorised to take in order to protect the IP rights recognised by the domestic law and international agreements. While the other laws in this field provide the protection only in court proceedings inferring sophisticated and often slow procedure, the Law allows direct involvement of administrative bodies in urgent procedure.

The Law forbids production, marketing, use and possession of the goods as well as services provision thereby the IP rights are infringed. The same refers to the broadcasting and re-broadcasting of the radio or TV programme containing works of authorship or subject of the related rights (performer's right, right of phonogram, videogram, broadcast and database producer) without paying compensation to the right holder.



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The main novelty the Law introduces is the set of measures the body takes in case of infringement of the IP rights. Should the body finds out in the direct inspection that an IP right is infringed, the body:

- 1) temporarily captures all the goods found as well as the means thereby the IP right is infringed;
- 2) temporarily forbids to the infringer to conduct its business activity which infringes the IP right;
- 3) takes the specimens of the goods for the purpose of examination and evidence;
- 4) files a complaint to the public prosecutor or the administrative offence bodies.

The body is to notify the holder on the IP right infringement immediately, while the holder is obliged to initiate the court procedure within prescribed term. The measures last until the delivery of the court decision in the procedure initiated by the holder of the infringed IP right.

The procedure before the body may be initiated by the request of the IP right holder. The body is obliged to pass the decision on the request within 15 days or, in urgent cases, within 3 days from the day the request has been filed

The range of fines amounting up to CSD 3,000,000.00 (more than EUR 35,000.00) is prescribed by the Law for violation of its provisions, but also for the violation of Copyright and Related Rights Law, Trademarks Law and Law on Legal Protection of Design. In addition, the seizure of the object which has been used in or designated for committing the offence is also prescribed.