Exploitation of Copyright and Related Rights

- Observance of Rights [1]
  Any exploitation of the objects of copyright, related rights or other rights protected under this law shall be unlawful if it is in breach of those rights.

  Any copy of objects of copyright, related rights or other rights protected under this law, whose reproduction, importation, distribution, rental or lending entails infringement of those rights shall be considered counterfeit.

  The storage for commercial purposes of the copies of objects of copyright, related rights or other rights protected under this law shall be deemed unlawful if it is in breach of those rights.

  The person who infringes copyright or related rights shall bear:

  Civil Liability:

  - recognition of its rights;
  - restoration of the situation existing prior to the violation of the right;
  - recoupment of losses, including loss of earnings;
  - collection of the revenue obtained;
  - payment of compensation in the amount from 500 to 500.000 lei.

  Contravention Liability:

  - production, dissemination or other illegal exploitation of works;
  - sale, lease, exportation, exchange, storage or other use of copies in any way or form, without control markings and without holding, at the time of inspection, copyright agreements concluded with the holders of rights over them;
  - misapplication of control markings.

  Administrative liability arises where the value of violated rights does not exceed 50.000 lei.

  - a fine in the amount of 10 to 30 conventional units (200-600lei) imposed on natural persons;
  - a fine in the amount of 30 to 70 conventional units (600-1400lei) imposed on the responsible person.

  Criminal Liability:

  - acquisition of the right to paternity (plagiarism);
  - illegal reproduction in whole or in part;
  - sale, lease, importation, exportation, transportation, storage or publication of illegal copies of works;
  - allowing public access to computer databases that contain or constitute works protected by copyright;
  - sale, lease or exchange of copies of works by electronic methods of communication;
  - knowingly making available by economic operators of their own premises, goods or services with a view to illegal exploitation of works by another natural or legal person;
  - sale, lease, exchange, free of charge transfer, exportation, storage of copies of works without control markings and without holding, at the time of inspection, the copyright agreements concluded with the holders of rights over them;
  - circumvention of technical means of protection of copyright and related rights as well as removal or modification of the information on the administration of copyright and related rights, regardless of whether those rights were violated.

  Criminal liability arises in cases where the value of the rights violated exceeds 50.000 lei:

- a fine in the amount of 800 to 5.000 conventional units (16.000-100.000 lei) imposed on the natural person;
- a fine in the amount of 2.000 to 10.000 conventional units (40.000-200.000 lei) imposed on the responsible person;
- unpaid community work for a period of between 180 to 240 hours;
- imprisonment for 3-5 years;
- deprivation of the right to practise certain activities for a period between 1 to 5 years or its liquidation;

Cross-border protection of rights – shall be ensured by the Customs Service of the Republic of Moldova.

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- Transfer of Rights [1]
  The authors or other copyright holders may transfer by an *assignment contract*, the exclusive economic rights as well as the right to royalties. Following such assignment, the holder of rights shall be the assignee.

  Unless this law provides otherwise, the exclusive economic rights may also be transferred by granting *exclusive or non-exclusive licenses*. If the contract does not expressly stipulate that the license is exclusive, it shall be deemed non-exclusive.

  The exclusive license provides for the transfer of right to use the work within the limitations stated in the license only to the licensee. The licensee shall also be entitled, within the limits stated in the license, to permit or prohibit exploitation of his work by other persons.

  In the case of a non-exclusive license, the licensee may, within the limitations of this license, exploit the work similarly to the persons who have obtained the right to exploit it. The licensee shall not be entitled to permit or prohibit the exploitation of the work by other persons.

  Transfer of economic rights by copyright agreements

  - assignment contract
  - license contract:
    - exclusive license
    - non-exclusive license

  Conditions and forms of the contract:

  - written form
  - modes of exploitation (specific rights that are transferred)
  - term of validity
  - territory
  - amount of remuneration
  - conditions and time limits for payment of the remuneration
  - other clauses

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- Copyright Valuation [1]
  In a market economy the valuation is an imminent condition of involving intellectual property in the economic circuit. The opportunity of IP valuation derives from the fact that in recent decades it has turned into a sector of crucial economic growth and an extremely important segment of the national and world markets.

  The need to value intellectual property manifests itself in an impressive variety of purposes for which, typically, its results are used. They arise from the current economic activity for efficient use of intellectual resources and are divided into two categories: *caused by the need for financial reporting and aimed to facilitate integration of intellectual property in the economic circuit*. We will mention the most important objectives of intellectual property valuation:

- IPO marketing through assignment and licensing procedures, and also in the *in corpore* alienation of business;
- IPO integration in the economic circuit within the holder enterprise and the management thereof under conditions and through instruments of market economy;
- determination of efficiency of investment projects in which IPO are embedded;
- IPO inclusion in the registered capital of companies by setting patrimonial quotas equivalent to the value of the objects concerned;
- IPO accounting by integrating their value in the balance sheets of the companies;
- tax rate determination of the income derived from intellectual property as patrimonial elements or as income sources subject to taxation;
- estimation of the amount of damage due to unlawful use of IPO;
- use of intellectual property as collateral for pledging in order to obtain bank loans;
- insurance of intellectual property objects and the patrimony which includes such objects;
- merger, division, separation, liquidation, bankruptcy, reorganization of the enterprises that have IPO portfolios;
- privatization of the enterprises holding patents, trademarks and other IPOs.

Intellectual property valuation operates with several types of value, of which the most commonly used are: the balance sheet value; the initial value; the market value; the investment value; the liquidation value; the insurance value; the tax value; the replacement value; the reproductive value of the object under evaluation; the contract value. The multiplicity of valuation purposes and types of intellectual property objects, largely determines the value diversity. Among the most commonly used are the balance sheet value and the market value.

Intellectual property valuation methods represent an extremely wide variety of specific expressions of calculation methods and techniques applicable to the valuation practice. The most common methods of IP valuation used in the valuation practice and reflected in the literature are:

- *Creation cost method* consists in summing all the historical expenditures on the creation, protection, promotion, implementation, dispute settlement related to the object under valuation for the previous period by updating them to the valuation date. It includes wage costs, depreciation, consumption of raw materials, of prototype construction, of testing, of certification, protection fees, launch fees and advertising fees, general and administrative expenses etc. The method shall be applied in the absence of information on comparative costs and effects of subsequent application of the object.
- *Restoration cost method* involves summing the actual costs necessary for the establishment of a similar asset (a copy) to the assessed one. As a general rule, it is applied in the absence of adequate records of the creation costs.
- *Replacement cost method* considers the creation costs of an asset with a similar or close utility to the asset under valuation. It shall be applied in the acquisition of intangible assets, the price of which must not exceed the value of the analogue object.
- *Sales comparison method* is based on the selection of similar object transactions carried out in transparent conditions, which have the same utility by comparing the properties thereof with those of the object to be valued. It is very important in this case the choice of truthful comparison parameters and accurate weight of each in the value of objects.
- *Royalty relief method* assumes that the company which buys an asset would be exempt from payment for the licensing of a similar object.
- *Additional profit method* includes the profits generated by the application of the object under valuation.

The preferences in selecting the methods proposed to be applied in the valuation of a concrete intellectual property object differ, depending on the valuation purposes and technological and economic information available concerning the elaboration and exploitation of the object concerned.

The specificity of valuing the works of art consists in the impossibility of applying the creation costs and the limited character, in the case of some objects (e.g. plastic art works), the use of any profits / revenues that can be generated by the objects concerned.

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