

Intellectual Property Rights as Economic Development Engine

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ABSTRACT: Intellectual property rights in Kosovo are almost non-existent. This paper investigates the state of these rights in three areas: music, film and software. It reports on first-hand research and makes specific recommendations for implementing an effective intellectual property rights protection program.

KEYWORDS: intellectual property rights, Kosovo, bootleg, Rule of Law

Contemporary minimum standards for international Intellectual Property rights enforcement date to the TRIPS (Trade Related Intellectual Property Rights) agreement. That document recognizes “the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base⁸⁹.”

The word “members” in this document refers to those countries which are part of the World Trade Organization (WTO), an organization Kosovo does not belong to. However, in December, 2007, Kosovo did join the Central European Free Trade Association (CEFTA). CEFTA is a sort of minor league training ground for countries aspiring to European Union membership. Poland, Hungary, Czech Republic, Slovakia, Slovenia, Romania and Bulgaria

⁸⁹ <http://www.tripsagreement.net/Annex1C>

have all graduated to the EU from CEFTA. Current members, in addition to Kosovo, include Croatia, Macedonia, Bosnia and Herzegovina, Moldova, Serbia, Montenegro and Albania. One can, then, make some assumption that CEFTA members also aspire to the WTO and the EU.

While it is the intention of the TRIPS agreement to provide maximum flexibility, there is some dispute as to how this should be implemented. In the face of a lack of hard evidence, the debate has essentially arrived at two points of view. Many feel that, by observing the minimum standards defined in TRIPS, developing countries provide necessary incentives for intellectual property development. Further, they argue that these standards encourage both outside and domestic investment.

The counter to this argument is a concern about price. Is the protection of patent and copyright holders in highly developed countries a sustainable strategy for long-term development? If protection is given priority, does this price intellectual property protection out of the market for a developing country like Kosovo?

In this paper we look at music, movies and software as areas where this debate plays out. Specifically we ask whether it is realistic to expect United States and Western European pricing standards to be rigidly enforced in a country with an average personal income of about 200 Euros per month.

In addition, we consider this in the light of the following questions: what is the role of the new Kosovo government; what is the daily experience of those selling bootleg intellectual property; what would it take to implement in Kosovo a working policy for intellectual property protection.

1 BULDOZING CORONA

Those promoting economic development in Kosovo frequently cite Rule of Law as being a key driver. Usually this is code for difficulties in determining who owns what and how property rights and zoning regulations will be

enforced. Late last summer a popular and recently opened restaurant in Pristina's Germia section was bulldozed. The restaurant, Corona, was opened by a successful local restaurateur who had for many years operated at a nearby location. He was well respected and drew steadily growing crowds to his new eatery.

Yet local residents were far from being upset at seeing this popular restaurant bulldozed. Many of these residents openly applauded the government's action. They pointed out that, after all, the owners had proceeded without proper zoning and building permit permissions. They should be punished. If Kosovo is to demonstrate its viability as a new country, then it must recognize the rule of law in all aspects of daily life. Although this is not specifically an intellectual property question, the public reaction to this rule of law issue is interesting: Kosovar Albanians recognize that the outside world is watching. They want this world to see a new country that demonstrates concern for both domestic and international law.

If the young country is going to attract economic development, then the outside world needs to see rule of law established. In the past Kosovo existed in a loosely regulated economic environment. This has had more than one negative effect. Property ownership and compensation disputes occupy large chunks of legal time. While consuming substantial resources in litigation, these disputes also have the effect of discouraging investment.

Foreign countries reason that they do not want to put money into a place where property ownership rights are unclear. This puts an extra burden on Kosovo and other developing Western Balkan countries. If they want to become part of the establishment, then they need to demonstrate a willingness to play by establishment rules.

Knock off software, CDs, DVDs, and other intellectual property items are available for a small fraction of their commercial cost in other western countries. The issue is once again rule of law. Kosovo wants to change its

lawless image. Part of this involves respecting intellectual property. There are encouraging signs.

2. STOPPING BOOTLEG CABLE CONTENT

In August, 2008 Kosovo established an Independent Media Commission. One of its first actions was to implement fines against five cable operators broadcasting unlicensed material, much of which was American content. Those found guilty of violating international copyrights were: IPKO Telecommunications LLC; Kujtesa; Eagle; Elektra, and Tele-Net.

Because of new commission's initiatives, cable operators are now actively engaged in securing proper copyrights for all of the channels they broadcast in Kosovo. They have also gained stronger incentives to become self-regulators. Prior to the establishment of the Independent Media Commission, there was no penalty for showing illegal content. Cable operators did not report each other because they were all benefiting from pirated content. Now, if one provider shows unlicensed content, the others will have incentive to complain. They realize that unlicensed content means a potential loss of their own viewership and revenue.

All five of these cable operators immediately agreed to take unlicensed content off the air. For this reason the IMC agreed to suspend the fines.

While taking this action, the IMC identified six other cable providers who were operating illegally. Action has been initiated to shut down these unlicensed operators all of whom were deemed to be in copyright violation. In taking this action the IMC noted that it was promoting economic growth through protecting those outlets that operated within the country's licensing provisions. It also was protecting international copyrights by fining any operators who violated international intellectual property provisions.⁹⁰

In the cable industry competition is strong. Operators willingly accept copyright restrictions because they see it as being in their best economic

⁹⁰ <http://www.imcko.org/index.php?id=507&l=e&p=7>

interest. For the government it is also relatively easy to police this industry. There is a defined set of players, all of whom are present daily on the airwaves.

Industries like music, software, film and publishing present a different problem. Outlets are abundant. As pointed out by shop owners, the cost of entry into this market is marginal. All a new seller needs is to find a spot on a well-travelled sidewalk. To learn more about the operations of this fractured marketplace, we went directly to those involved in the bootleg music, film and software industry.

3. BOOTLEG PRODUCTS DOMINATE IN PRISTINA

To obtain first-hand knowledge about the bootleg music/film/software business in Kosovo two university students, both juniors, were sent out to conduct unannounced interviews. Their instructions were to go into a store, introduce themselves, and say they were doing research about the bootleg industry and about whether merchants felt that a program to help promote copyrighted material would be beneficial to them.

The students were both female, well-dressed in a non-threatening manner. Both were native Albanian speakers. They have translated their interview notes into English. Although minor changes have been made in the interest of clarity, what follows is faithful to both the content and the tone of their original notes. The interviewers reported that most shop owners and employees were very willing to talk openly. But they also noted that some merchants felt the visitors were really government inspectors in disguise. In many ways both the frankness and the tone of the merchant replies is revealing.

Ragib Rysinovci of Pristina's *Production Sound*, sells a mixture of copyright and bootleg product. His shop included Albanian CD's and DVD's, which were copyrighted and foreign movies, games and software, which were all bootleg. In Mr. Rysinovci's estimate, between 40 and 50% of Albanian music is copyrighted material. He feels that there all foreign movies, games, software and music are bootleg.

Most bootleg product comes from the Internet. Self-styled entrepreneurs, called DJ's in the trade, download movies and music. Then they sell their product to the commercial outlets. A typical price for a pirated movie is ten Euros. Mr. Rysinovci pointed out that he could easily do the downloading by himself. However, this would require him investing a large amount of his own time (he estimated between three and four hours for a movie download). Plastic cases are imported from Dubai for 10 cents each. Photos and information materials to insert in these cases are simply printed out directly from the Internet.

Bootleg movies could become even easier to obtain. The Seattle based digital media firm RealNetworks has announced a \$30 software program that enables people to make digital copies of their DVDs. (New York Times, Oct 01, 2008). Although legal disputes over the new software have so far been confined to United States courts, it is almost certain that this software will find its way to the Balkans in the near future. When it does, then the creation of bootleg DVDs will see a quality upgrade. At present one incentive for using original, copyrighted material is the superior quality it provides.

Regardless of the quality issue, Mr. Rysinovci said that he would be willing to participate in a voluntary program to sell only copyrighted materials. However, he feels threatened by other illegal sellers who come out on Saturdays and Sundays. While they stand in the street and earn money, he has to pay 700 Euros rent for the shop. He would also like some protection from this form of street corner competition.

The Albanian community sometimes has different standards for itself than for the rest of the world. At *Dea Productions* the company has contracts with Albanian singers. They produce their own CDs which are sold under copyright. In turn, they trade CDs with "four or five" other production/retail outlets. Thus each store sells with permission of the original music producer. Like its counterparts, *Dea* complained about the street vendors, who often copy their original product and sell them on the streets for two euros. *Dea* also would welcome a stricter copyright law.

Chill-out Productions currently sells only bootleg CDs and movies. They obtain these from DJs. When asked about a program for copyright music, the

sales personnel said it would be welcome. Such a program, they opined, would make them feel “calmer”.

At *Beni CD Shop*, the personnel were candid: they say it is better to work with “not licensed” materials because they have more profit. According to them, if they would sell copyrighted products, the price for CD/DVD/software would be much higher, and not too many people would buy. They already have a decrease in revenue, and they say that the reason is the Internet. People are able to get almost anything through Internet. Moreover, they use the Internet to get supplies for their shop. Mostly they use the KAZA program to download movies and music. They buy software and games from somebody else.

The lady working in *Dabi CD Shop* said that, it is better for her to have copyrighted CD's in her shop, but then the price would be a threat to them. The reason why she agrees on copyrighting is that singers would be more protected at the same time respected. By copying their singles and selling without permission, DJs earn profit with giving no contribution. Still, she was on the DJs side, at the same time her own side, because singers get to earn more money by singing in bars and discos or by giving concerts to Albanians living in foreign countries.

The stores inventory mostly come from Albania. The lady estimated that “about 10%.” Of *Dabi CD Shop*'s material is copyrighted.

The owner of *The CD Shop* was frank. He stated, “Considering the living standard in Kosovo I think it's better not to have copyrights law in function. The price would be higher and people will not buy CDs anymore. As for the quality, it is pretty good right now. If people would not like it they would not buy.”

At the moment we went in, we happened to meet the owner of the *403 CD Shop*. Regarding the copyrights system he said that it depends on from which perspective you look at it. “From the author's point of view, logically, it is better to have copyrights law because their work is respected and paid. From customer's point of view is the same because they will get a long lasting product with higher quality. But then, not all of the CD shops will continue to work because competition will play a major role and profits will be lower.”

He said that not even 10% are licensed; about 95% of CDs in Kosovo are copied.

On Sunday, we were lucky to meet one *DJ*, who did not want us to know his name. He was selling CDs in front of the Grand Hotel. Most of the time he works in his “studio” burning CDs and DVDs, the rest of the time he comes out illegally, with one small table, exposing his material and selling it with a very low price.

He said that his major supply is the Internet, a place where he downloads all the music, movies and games. He also cares about CD covers and pictures. CD covers come from Serbia, with a very cheap price. As for the pictures, there is a special story. He prints all the pictures taken from Internet. At times when the printer ink is over, he found a cheaper way how to refill them. He uses a syringe (needle) to fill the cartridge with artist ink.

He has started this business since the end of the war of 1999. He is happy with his job and the amount of money he earns.

The owner of *Kema CD Shop* was blunt. “I don’t want to tell about our supplier, it is our own business. I am against the copyrighting law.”

At *Meoldia Shop* the owner’s estimates were consistent with his colleagues, “I think 90% of the CDs and DVDs in Kosovo are not copyrighted. Since people are interested about these kind of materials, I continue to work, although, I am aware that my job is not legal. Yet, we all realize the bad situation Kosovo Albanians are living in. That’s why every one of us is trying to survive in every possible way. I take care of my whole family expenses. This shop is keeping us alive”.

In *Music/Movies/Games Shop* “I am not sure what to say about copyrighting! For some it may be positive and for some others not. However, this issue has to be resolved one day. If we want to be a country where the laws function and go toward improvements, than we have no choice. Just like every other developed country, we will have to respect the author’s rights. But right now, I don’t think its going to happen.

Labia is a well known production house. Just like in “Dea” production they have contracts with some singers. Therefore, they have the complete right to sell these singers’ albums. Also they record some other CD/DVD usually, inviting different artists and creating a collage.

They absolutely agree that it is better to have copyrights law in function. "Then, everyone would be protected".

"In our store 100% of the CDs are copyrighted but regarding to other stores in Prishtina, I would say not even 10% is copyrighted".

4. ILLEGAL SOFTWARE PREVALENT IN CREATIVE FIELDS

Advertising agencies constitute a large market for software. Programs such as Photoshop, Flash, Fireworks, Quark, InDesign and PowerPoint are international standards. Given the substantial creativity of the young Albanian/Kosovo population, it is not surprising that so many have gravitated to the agency business. Their growth is fueled by Non Governmental Agencies (NGOs) spending foreign development funds, by the new Kosovo government, and by the many multi-national corporations setting up shop in Kosovo.

Because of the country's inherent entrepreneurial nature and also because of its recent history of doing whatever is necessary to survive, the agencies tend to open their doors with software acquired at low prices from bootleg vendors. The author has yet to meet any agency personnel who use licensed software.

This represents a real opportunity for intellectual property protection. USAID, for example, could make it part of an NGO's contract that it deal only with agencies which can produce licenses for creative software. The Kosovo government could make a similar requirement. And it could enlist banks and corporations to do the same.

There is a certain justification in this that is not present in the CD and DVD situation. Since an agency uses software to make money off its product, it can amortize the cost over a large number of projects.

5. IS A LOW-PRICE STRATEGY THE ANSWER?

The question of implementing a low-price strategy for developing countries has been debated for at least three decades. In his article, "Multinational Pricing Strategy in the Developing Countries"⁹¹ Nathaniel Leff made a strong

⁹¹ Nathaniel H. Leff. "Multinational Corporate Pricing Strategy in the Developing Countries." *Journal of International Business Studies*, Fall 1975. pp. 55-64.

case for the viability of a corporate low-price strategies in developing economies

In this seminal work he argued that the increase in demand generated by such a strategy would generate sufficient sales to actually increase a company's overall profit. But he also noted a problem with this strategy: distribution channels in developing countries are often very poor. Setting up and maintaining such channels would involve additional expense.

In the case of intellectual property, movies, music, and software, the distribution problem is obviated. Because of the Internet's pervasiveness, these are downloadable from almost anywhere in the world. If the bootleggers are already adept at producing packaging locally, this should also be a doable task for legitimate sales. Or packaging could be shipped in tax free, with the cooperation of national customs regulation. Such shipping could also easily include the CDs themselves. Again, however, there would have to be agreement from the customs authorities. This illustrates an important point: protecting and nurturing intellectual property requires cooperation of several entities: distributors, resellers, creator, and both developing and developed country governments. It is not enough for the developed world to take an aloof and holy attitude toward bootleggers: the wealthy countries must be willing to creatively help with solutions.

Intellectual property provides an excellent test case for this special pricing strategy: its incremental cost to the producers is marginal. Thus the increased income would be profitable almost from the beginning. Further, because it is so easy to steal intellectual property, any encouragement toward legitimacy helps all players: more profits for the producer, higher margins for the merchant, protection for the creator, and greater quality for the consumer.

6. RESEARCH LESSONS

The individuals involved in the business are consistent in their estimation that 90% of non-Albanian product is not copyrighted. There is no doubt that illegal production and distribution of intellectual property is prevalent throughout Kosovo. The fact that one of Pristina's largest illegal distributors exists across the street from the Police Department is testimony to the fact that this is an accepted part of daily commercial life.

People feel they are in the bootleg business to earn a living and survive. To them the copyright question is not a moral issue. Rather it is a fact of life. Their first job is to take care of their families. If this trumps any ethical question, then that is too bad. Although they might not like the current rules of the game, merchants feel they do not have the luxury of dropping out. Current circumstances are what they are. If everyone else is subscribing to the bootleg methodology, then they will also do it to survive.

Many would be interested in copyright protection, but wonder how it would work.

It is not enough for developed countries to establish intellectual property rights by fiat. There has to be a cooperative system in place to publicize and implement a fair transition. This requires the cooperation of major intellectual property rights players like the United States.

Kosovar Albanians cannot afford to pay Western developed country prices. If an industrialized western pricing model is enforced, then the drive for intellectual property rights enforcement will fail. New prices need to be established. They should recognize the advantages to legitimacy and quality while also understanding that these goods are being sold in a poor country.

Find and develop champions. In a telephone interview⁹² Marc Tejtzel pointed out that, by lowering software prices to an affordable level and promoting their product, companies can nurture champions. They will become expert users who will carry the message into the general community. Cisco Systems and Microsoft both have this type of program already operating in Kosovo.

7. PROPOSALS FOR INTELLECTUAL PROPERTY RIGHTS IN KOSOVO

In her review of the international copyright system Ruth Okediji writes

Access to knowledge goods both to enrich human resources and facilitate economic growth is an indispensable requirement for the international system. Developing countries have a role to play by actively implementing limitations and exceptions in a manner that best suits their

⁹² Telephone interview with Marc Tejtzel, Deputy Chief Counsel, Commercial Law Development Program, Office of the General Counsel, U.S. Department of Commerce. October 07, 2008.

domestic needs, especially the need to stimulate local creativity. In addition, the international system must more explicitly recognize, emphasize, and promote the critical role of limitations and exceptions in ensuring follow-on creativity and promoting diverse forms of creative engagement.⁹³

There is recognition that the international intellectual property copyright system cannot be totally rigid. Limitations and exceptions are an accepted part of copyright law. The question, then, becomes how to implement such a system for intellectual property in Kosovo. Based on research in the three areas of music, film and software, the following recommendations are proposed:

A multi-faceted approach is only way it would work. There is not an easy solution. For intellectual property rights to work in these three areas careful plans should be drawn and implemented. These should include a buy-in from copyright holders, manufacturers, the Kosovo government, tax legislation, enforcement agencies and merchants. This is not a simple solution. Any plan that works has to take into account the Kosovo economic situation. At the same time this solution will benefit from Kosovo's strong desire to be recognized as a lawful, innovative member of the international commercial community.

Creative participation of international companies must be present. Following the lead of Cisco and Microsoft, holders of intellectual copyright holders should work to come up with pricing, marketing and distribution systems that work. They should also focus on ways to develop product champions. Recognizing that they are starting from almost zero revenue at the current time, the companies can increase income dramatically with a small incremental cost.

Low or no import duties. Intellectual property downloaded from the Internet should not be subjected to taxation. It would also be ideal if actual goods, such as CD and DVD packages, coming into the country were not subject to duties. If the Kosovo government is asking private corporations to help with

⁹³ Ruth L. Okediji, *The International Copyright System: limitations, Exceptions and Public Interest Considerations for Developing Countries*. International Centre for Trade and Sustainable Development Issue Paper No. 15, March 2006.

intellectual property rights development, then it should be willing to chip in with its own contributions. This would demonstrate to the international community that Kosovo is serious about participating in the world economy.

Mount a vigorous advertising campaign. Everyone needs to know about Kosovo's commitment to intellectual property rights. This will both reinforce the commitment and also make it more unacceptable to steal intellectual property. Without a very public commitment, there will be much less incentive to participate. Such a campaign could also highlight the international business community's cooperation and help for Kosovo.

Develop strict enforcement mechanism. Merchants made the point that they feel unfair competition from street corner vendors. For the intellectual property rights effort to succeed, it needs to be applied equally to all. Much like the bulldozing of Corona, highly publicized enforcement activities will show that the government is sincere in its commitment.