

CRIMINAL LAW PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN BOSNIA AND HERZEGOVINA

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Abstract

Among the key obligations that must be fulfilled by the world states that aspire to become members of the World Trade Organization is to provide the holders of subjective intellectual property rights with an adequate form of judicial protection. With criminal offenses in the field of protection of intellectual property rights, criminal law protects both moral and property rights of authors and performers, rights of producers of sound recordings and rights related to radio broadcasts, ie rights of authorized distributors of encrypted satellite signals. The incriminations are also in line with the provisions of domestic law, primarily with the law on copyright and related rights in Bosnia and Herzegovina. The object of protection in these criminal offenses are copyright and other related rights from the power of intellectual property. The aim of the paper is to consider the incriminations in the positive legal regulations in Bosnia and Herzegovina that protect these rights.

Keywords: law, judicial protection, intellectual property, legislation, criminal offense

Introduction

Intellectual property law as a special branch of law was formed in the middle of the 19th century, with the adoption of the first regulations in the field of industrial property and copyright. One of the basic characteristics of intellectual property rights is accelerated development. This feature of intellectual property rights is accompanied by the possibility of great abuse, and therefore it must be provided with an appropriate degree of legal protection (Simić, 2015). Among the key obligations, countries that aspire to become members of the World Trade Organization¹ must

¹ World Trade Organisation (WTO) was founded in 1994, with headquarters in Geneva. It inherited The General Agreement on Tariffs and Trade (GATT) which was signed in 1947. Today, WTO numbers 150 members.

provide holders of subjective intellectual property rights with an adequate form of judicial protection. This obligation is established in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).² The need to protect intellectual property rights stems from the fact that piracy and counterfeiting have reached epidemic proportions, with detrimental consequences for the health and safety of all people in the world, as well as for the national and world economy (Tanjević, 2011). Intellectual property can be called the “cinderella” of the new economy. Not so long ago, the protection and management of intellectual property rights was a quiet area that did not receive much attention. However, over a period of several years, intellectual property issues have begun to emerge as a key element of corporate strategy and a component that greatly affects a company’s reputation.

One of the basic characteristics of intellectual property rights as a branch of law is an unusual dynamic development. It can be said that almost every year, the number of legal sources that regulate this branch of law is increasing both internationally and nationally. There is also an extremely rich activity of international organizations in this area (Besarović, 2007).

BiH has taken the first steps towards the informational society by adopting the Strategy, Policy and Action Plan for the Development of the Information Society, documents that clearly emphasize the need for assistance and resources of the international community. In addition to the need for institutional support, the necessary capital investments cannot be avoided. The widespread use of computer networks and the global reach of the World Wide Web have significantly contributed to the placement of a wealth of information in digital form, as well as the possibility of incredibly easy access to information. Creating, publishing, distributing and using information has become much easier and faster in the last decade. This contributed to the explosive economic development, but also to the great earnings of those who reproduced, distributed or illegally used the information of other owners. In the countries of Southeast Europe, this phenomenon has spread to such an extent that such thefts are not considered illegal in all cases.

1. Meaning of the term intellectual property law

Intellectual property law can be defined in an objective and subjective sense. The law in the objective sense (objective law) is a set of legal rules (norms) in one country, and the legal norm is a mandatory rule of conduct governing a social relationship, which can be ensured by the use of state coercion (Stanković & Vodinelić, 1996). Subjective law (subjective sense) can be defined as an objectively

² Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) was made in the end of Uruguay round of the General agreement on Tariffs and Trade in 1994, which was result of intensive lobbying efforts made by the USA with the help of EU, Japan and other developed countries. TRIPS was adopted on the 1. January 1995.

recognized authority (authority, prerogative) of individuals (subjects) to take acts necessary to satisfy their material (property) or intangible interests.² Intellectual property law in the objective sense is a set of legal norms governing the subject and conditions of protection, the procedure for acquiring certain intellectual property rights, the content of rights, restrictions, turnover, duration and judicial protection of subjective intellectual property rights (Stanković & Vodinelić, 1996).

Based on the norms of objective intellectual property law, a concrete subjective intellectual property right is acquired. The subjective right of intellectual property is legal authority, authority, prerogative, which an individual (legal or natural person), ie. subject of law, draws from the norms of objective law (Stanković & Vodinelić, 1996). Thus, subjective law protects individual interests, the interests of the right holder, whether there is one or more.

The term “intellectual property” under the 1967 Convention establishing the World Intellectual Property Organization means rights relating to: literary, artistic and scientific works, interpretations by artists and performers and performances by performers, phonograms and radio broadcasts, inventions in all areas of human activity, scientific discoveries, industrial samples and models, factory, trade and service marks, as well as trade names and trade names, protection against unfair competition and all other rights related to intellectual activity in industrial, scientific, literary and artistic fields (Miladinović, 2012). Thus, according to the Convention, intellectual property rights refer to copyright, related rights, patent, industrial design, trademarks, geographical indications, trade names and protection against unfair competition. Since the Convention was concluded in 1967, the concept of intellectual property is much broader today, so it includes integrated circuit topographies, legal protection of plant varieties, and in a broader sense, business secrets.

Intellectual property law includes copyright, related rights and industrial property rights. Copyright and related rights, as well as most industrial property rights, are by their legal nature subjective rights, powers that have subjects, holders of rights that protect their individual interests. The right of industrial property includes patent law, trademark right, right of protection of geographical indications, right of industrial design protection, right of protection of integrated circuit topography, right of plant variety protection, as exclusive subjective rights. In addition to the above rights, industrial property law traditionally includes the right to suppress unfair competition and trade secrets, ie know-how, which is not a right but a factual relationship (Ivanović, 2016).

The protection of intellectual property is regulated by a number of international conventions, of which are most important:

- (1) conventions in the field of copyright and related rights
- (2) conventions in the field of industrial property (Jevđović, 2014).

The system of legal protection of intellectual property is so designed that both its creator and society as a whole benefit from it. Such a system represents a

delicate balance that ensures that the needs of both parties are met. In return for the protection provided, society benefits from such rights as maintaining fair competition and encouraging the production of a wide variety of goods and services, advancing technological and cultural development and enriching the amount of general knowledge. Intellectual property is protected by giving the inventor, creator or author, depending on the type of right he enjoys, the exclusive right to commercially use his property for a limited period of time. The right holder can dispose of it in various ways, depending on the type of right. In legal theory, it is common for these intellectual property rights to be systematized as follows:

1) copyright - literary, artistic and scientific works: interpretations of performers and performances by performers, phonograms and radio broadcasts,

2) industrial property rights - inventions in all fields of human activity: signs of modification (trademarks, designations of origin): industrial design (design: models, samples): protection from unfair competition (Jevđović, 2014).

Scientific discoveries are not the subject of any of the above branches of law, because national laws do not provide that scientific discoveries may be subject to ownership. In our legal practice, the common name intellectual property is not yet fully accepted as a unique, generic term for industrial property law and copyright. However, thanks to the media, lately this term has seen an increase in usage.

2. Criminally-lawful protection of intellectual property according to Criminal law in Bosnia and Herzegovina

Criminal law is one of the basic legal regulations in the entire system of protection of intellectual property rights. Criminal law, establishing mechanisms and protection measures in the field of economic and market relations, also contains descriptions of criminal offenses that protect institutes such as patents, trademarks, companies and the like. Intellectual property is a system of creating intangible goods derived from human creativity, based on international agreements, national legislation and good business practices, with the aim of achieving business success of entrepreneurs, and economic, technological and cultural progress of states and human society as a whole (Zlatović, 2015).

Many states envisage, among other modalities, the protection of intellectual property rights and criminal offenses in this area. Until the last harmonization activities at the international and European level in the field of intellectual property rights, a comparative analysis of the general could reveal three approaches to regulating this issue in national legislation:

- system of special criminal law - according to which incriminations related to infringement of intellectual property rights are fully prescribed only within special criminal law, ie in the regulations of intellectual property rights, which

is explained by the need for better understanding of relevant criminal offenses. It contains incriminations from this legal area, and it is necessary to know its specific concepts, and therefore it is more expedient that the prescribing of criminal offenses be in close connection with other norms that regulate this special legal area;

- system of general criminal law - as a legislative approach that regulates the criminal protection of intellectual property rights exclusively in the general part of criminal law, ie in the general criminal codes;
- mixed system - as a good compromise of the two extremely contradictory solutions, which regulates criminal law protection in both general criminal laws and special regulations in the field of intellectual property rights, in such a way that the same regulations are harmonized and complement each other in a way that prescribes more serious offenses of violation of these rights (criminal offenses in the narrower sense), while special regulations of intellectual property rights sanction minor forms of violations of these rights (criminal offenses in the broader sense - misdemeanors, economic offenses) (Zlatović, 2015).

Chapter XXI of the Criminal Code of BiH contains criminal offenses of copyright infringement and copyright related rights. These are five criminal offenses whose prescribing is, first of all, a consequence of the harmonization of domestic criminal legislation with numerous international conventions and acts which oblige the contracting states, ie signatories, to appropriate criminal and other copyright protection (Babić, Filipović & Marković, 2005).

These acts criminally protect both the moral and property rights of authors and performers, the rights of producers of sound recordings and rights related to broadcasting programs, or the rights of authorized distributors of encrypted satellite signals. The incriminations are also harmonized with the provisions of domestic legislation, primarily with the Law on Copyright and Related Rights in BiH. The object of protection in these criminal offenses are copyrights and other related rights in the field of intellectual property. The protection of intellectual property was realized in our law slowly. It had primarily a form of civil and moral protection. It was regulated by regulations in the field of civil, commercial and administrative law. Within this group, there are criminal acts of a blanket character, which means that the appropriate legislation that otherwise regulates certain forms of intellectual property must always be kept in mind. This group includes the following criminal offenses: 1) abuse of copyright; 2) unauthorized use of copyright; 3) unauthorized use of the rights of the producer of the sound recording; 4) unauthorized use of broadcasting rights, and 5) unauthorized distribution of satellite signal (Stanković, 2017).

What characterizes all criminal offenses in this chapter is the fact that they are criminal offenses with a blank disposition, so to explain the basic features of the offense requires reliance on the already mentioned international and domestic regulations in the field of copyright and related rights. In the current legislation,

criminal protection of copyright and related rights is provided within the framework of supplementary legislation (Babić, Filipović & Marković, 2005).

The act of execution in these acts consists in violation of laws and bylaws, by doing or not doing, contrary to these regulations, which determine the manner of creation, use and protection of copyright and other intellectual property rights. The consequence of criminal offenses from this group occurs in the form of violation of copyright or related rights, which manifests itself in property or non-property damage (Stanković, 2017).

The most important international conventions and acts related to the protection of copyright and related rights are:

- Berne Convention for the Protection of Literary and Artistic Works,
- Universal Copyright Convention,
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the so-called Rome Convention),
- Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonogram Convention),
- Convention on the distribution of signals for the transmission of programs via satellite, etc.

2.1 Copyright abuse

A person who, under his own name or under the name of another, publishes, displays, performs, transmits or otherwise communicates to the public another's work which in accordance with the law of Bosnia and Herzegovina is considered an author's work or allows to do so, shall be punished by a fine or penalty imprisonment for up to three years. The same penalty shall be imposed on anyone who, without stating the author's name or pseudonym, publishes, displays, performs, transmits or otherwise communicates to the public another's work bearing the author's name or pseudonym, or illegally inserts parts of another's work into his author's work or allows do it.

A person who destroys, distorts, desecrates or otherwise alters another's work without the author's approval shall be punished by a fine or by imprisonment for a term not exceeding three years.

Whoever, without stating the name or pseudonym of the performer, shall be punished by imprisonment for a term not exceeding three years or by a fine, unless the performer wishes to remain anonymous, publish, display, transmit or otherwise communicate his performance to the public.

The same punishment will be imposed on anyone who destroys, distorts, insults, mutilates or in any other way without the approval of the performer, changes the recorded performance of the performer.

If the commission of the crime has resulted in significant property gain or caused significant damage, and the perpetrator acted with the aim of obtaining such property

gain or causing such damage, the perpetrator shall be punished by imprisonment for a term between six months and five years.

This provision regulates the criminal protection of authors and performers for violations of their moral copyrights and personal rights arising from copyright, while the protection of their property rights is regulated by Article 243 of the Criminal Code of BiH.

Moral copyright, following the accepted monistic theory of copyright as a single right, is inalienable and non-transferable, and includes: the right to publish the work, the right to withdraw the work from circulation, the right to acknowledge authorship, the right to acknowledge the integrity of the work and the right to honor and the reputation of the author. The right to publish a work is the right of the author to make his work accessible to the public, at the time, in the form, to the extent and in the manner he determines. These are the procedures by which the work becomes available to the public, such as publishing, public showing, public performance, broadcasting and any other procedure of communicating it to the public. The right to withdraw a work from circulation, the right to repent (*ius poenitendi*) is the right of an author who has already given the authority to use his work, to deny further use of the work in any form if the use of the work may harm the author's scientific or artistic work. The right of paternity or the right to recognition of authorship is the right of the author to be recognized and designated as the creator of the work. The right to recognition of the integrity of the work is the right of the author of the work to oppose a significant change in his work (eg omission or addition of the content of the work) without his approval. The right to honor and reputation of the author is the right of the author to oppose the use of his work that would offend his honor and reputation, not only resolutely protecting the honor and reputation of the author only in violation of the integrity of the work but also in the use of the work (purpose of advertising, use of technically poor recording in a radio show, etc.) (Babić, Filipović & Marković, 2005).

The act of plagiarism of another's author's work (Latin: *plagium* - kidnapping) is envisaged as a criminal offense. The right to recognition of authorship is protected in part by criminalizing the appropriation of another person's authorship; the description of the work simultaneously protects the author's work from any unauthorized use and the actual author of the work from unauthorized appropriation of authorship.

One of the fundamental rights of an author is the right to be recognized as the author of his work. The provisions of the Law on Copyright and Related Rights in BiH explicitly stipulate that the author decides when and in what form his work will be published for the first time and when he will be recognized and marked as the creator of the work under his own name. According to the same provision, the author has the right to publish the work under a pseudonym or without the author's name at all, ie. to keep the work anonymous, he also has the right to oppose any deformation, mutilation or other alteration of the work, as well as any use of the work that would

offend his honor or reputation. The basis for such a solution is also contained in the Berne Convention for the Protection of Literary and Artistic Works.

A criminal offense is committed by a person who, under his own name or under the name of another, publishes, displays, performs, transmits or otherwise communicates to the public another's work which is considered an author's work under BiH law or which allows it to be done.

The act of committing a work consists of different ways of communicating someone else's copyright work to the public, as well as allowing someone else's copyright work to be communicated to the public.

As forms of communication to the public, making a work available to the public, the law states publishing (eg publishing someone else's literary work under one's own name) showing (eg, showing someone else's film under one's own name), performance and transmission, and these can be other ways of communicating works. It is necessary that someone else's work is communicated to the public in one of the above ways, under one's own or someone else's name. To commit an act, it is sufficient to commit one, any of the alternatively provided actions.

The act will also exist in the event that the perpetrator allows another to perform one of the alternatively envisaged actions of communicating to the public another's act. In this case, the perpetrator is in a situation where he does not allow or prevent someone else's work, but does not behave like that, but allows plagiarism (eg an authorized person in a record company allows unauthorized recording of records and CDs under the name of a fake author; reproduction of paintings and their sale under someone else's name).

The work can be committed only with the intention (*dolus*) that includes the awareness of the perpetrator that someone else's copyright work is used or made available to the public under his own or someone else's name.

The criminal offense referred to in paragraph 1 is of a blanket nature, which explicitly derives from a legal provision. Namely, among other things, it is necessary that it is a work that is considered an author's work according to the law of BiH. Interpretation of certain provisions requires reliance on regulations governing the manner of exercising and protecting copyright.

The first form is the so-called the criminal offense of not indicating authorship, and the second form is the appropriation of authorship of parts of another's authorial work. A criminal offense is anyone who, without stating the author's name or pseudonym, publishes, displays, performs, transmits or otherwise communicates to the public an author's work bearing the author's name or pseudonym, or who illegally inserts parts of another's work into his work, or allow it to be done.

The first form of a work is not about appropriating the authorship of someone else's work, but the author is not recognized as the author of his work. Non-marking of authorship is sanctioned by criminal law; the action consists of different forms of use, ie different forms of communicating someone else's work to the public without stating the actual authorship.

For this form of criminal offense, it is necessary that it is an author's work that is considered an author's work under the law of BiH, and that the author's name or pseudonym of the author is marked on the author's work.

The second form consists in appropriating the authorship of parts of someone else's work, ie the unauthorized manner of inserting parts of someone else's work into one's own work or in giving another person permission to do so.

The Copyright and Related Rights Act stipulates the conditions under which the entry of a copyright work or parts of a copyright work into another copyright work is permitted. It is known that without the permission of the author and without payment of the usage fee, public presentation and public performance of literary or artistic works for the purpose and in the form of direct teaching, publishing reports on published literary, artistic and scientific works in which the content of these works is reproduced in the original and, in abbreviated manner, the use of the act in proceedings before arbitration, before judicial, administrative and state bodies to the extent required for the purpose of presenting evidence, etc. (Babić, Filipović & Marković, 2005).

Precisely this legal provision sanctioned the entry of another's copyright work into one's own work in cases when the entry is made outside the conditions provided by the said law. As with the work referred to in paragraph 1, it is necessary that it is a work that is considered an author's work under the law of BiH.

Based on the Law on Copyright and Related Rights in BiH, performers are actors, singers, musicians, dancers and other persons who act, sing, recite, recite, move or otherwise perform literary or artistic works. Performing artists include theater directors, orchestra and choir directors, sound engineers, and variety and circus artists.

The rights of performers according to the said law belong to the so-called related rights to copyright. These rights, similarly to copyrights, have two components: property rights, which provide performers with the exclusive right to exploit the work, and moral rights. This provision protects moral rights. The moral rights of the performer include the right to state his name or pseudonym when communicating to the public and his performance, to indicate on the recording or cover of the recording, the right to oppose deformation, shortening or other alteration of the performance, and in particular the marketing of performance recordings. but also to any other unworthy use which insults the honor and reputation of the artist-performer.

2.2 Unauthorized use of copyright

Who, without permission or another copyright holder, or a person authorized to give permission when permission is required by the law of Bosnia and Herzegovina, or contrary to their prohibition, fixes it on a material basis, reproduces, reproduces, puts on the market, rents, imports, transfers over state borders, display, perform, transmit, transmit, make available to the public, translate, adapt, process, process or

otherwise use a copyright work, shall be punishable by a fine or imprisonment for a term not exceeding three years.

The same penalty shall be imposed on anyone who, without the approval of the performer, ie the person authorized to grant the approval, when required by the law of Bosnia and Herzegovina or contrary to their prohibition, records, reproduces, reproduces, places on the market, rents, imports, transfers state borders, displays, performs, transmits, transmits, makes available to the public or otherwise uses the performance of a performing artist.

The same penalty shall be imposed on anyone who, in order to enable the unauthorized use of a work of art or performance by a performer, produces, imports, transfers across the state border, places on the market, rents, allows another to use or use any type of equipment or means enable the unauthorized removal or thwarting of any technical device or computer program intended to protect the rights of authors or performers from unauthorized use.

A person who finds objects that were intended or used to commit, or were created by a criminal offense, and who knew or could or should have been aware of this, shall be punished by a fine or by imprisonment for a term not exceeding six months.

If the commission of a criminal offense has resulted in significant property gain or caused significant damage, and the perpetrator acted with the aim of obtaining such property gain or causing such damage, he shall be punished by imprisonment for a term between six months and five years.

While the object of protection of the criminal offense of copyright abuse are moral copyright, this criminal act protects the property copyrights of authors and performers, ie protection from unauthorized use of copyrighted works or performances of performers.

The work has a blanket character, the analysis of its essential elements necessarily requires reference to the relevant regulations on copyright, especially the Law on Copyright and Related Rights in BiH, as well as the relevant international conventions. According to the Law on Copyright and Related Rights in BiH, the author of a work is a natural person who created the work, ie the author is a person whose name and surname or pseudonym are marked on the work, until proven otherwise. In addition to the provisions of the said law, it is envisaged which persons and under what conditions have certain or individual copyrights. The property copyrights protected by this criminal offense are, as a rule, the exclusive right of the author to highlight his copyright work in any way; the right to provide authors and other copyright holders with material benefits from the exploitation of a work, but with exceptions provided by law such as cases of personal use of the work or use of the work to satisfy certain public interests, such as teaching interests, development of science and art, public information, etc. . The rights to use a copyright work are not exhaustively listed in the Law on Copyright and Related Rights in BiH. According to this law, the author has the right to reproduce the work, place on the market or

copies of the work, including their import, public performance, public presentation, broadcast, communication to the public, translation, adaptation, recitation, and any other exploitation in any form (Babić, Filipović & Marković, 2005).

A criminal offense is committed by anyone who, without the permission of the author or other copyright holder or a person authorized to give permission, when permission is required under BiH law, or contrary to their prohibition, puts on the market, rents, imports, transfers over the border, transmit, transmit, make available to the public, translate, adapt, process, process or otherwise use the copyright work. The act of committing the offense is determined alternatively; the work will exist by taking any of the stated actions, ie actions that represent the use of the author's work.

The condition for the existence of a criminal offense is that the said acts were committed without the permission of the author or other copyright holder, or without the permission of the person authorized to give permission when permission is required by BiH law or that actions were taken contrary to the prohibition of such persons. It is not decisive whether the perpetrator of the criminal act acted with the intention of obtaining material gain or causing damage.

As can be seen, behaviors that history the property rights of performers are criminally sanctioned; the performances of the performers are partly protected. Similar to copyright and the rights of performers, they consist of two components: property rights and moral rights. Property rights, as an object of protection of this form of criminal offense, provide the performer with the exclusive right to exploit the work (broadcasting the performance, communicating the performance to the public through loudspeakers or other technical devices outside the premises or place of performance, audio and visual recording of performance, duplication of recorded performance trade in the original or a duplicate copy of the recorded performance, the right to import and rent, as well as the right to compensation in case of secondary use).

A work is made by someone who, in order to enable the unauthorized use of a work of art or a performance by a performer, produces, imports, transfers across the border, places on the market, rents, enables another to use or use any type of equipment or device whose primary or predominant purpose is unauthorized removal or thwarting any technical means or computer program intended to protect the rights of performers or performers from unauthorized use.

The act of committing the offense is determined alternatively; by taking any of the envisaged actions that directly or indirectly consist in enabling the use or utilization of means or equipment whose primary or predominant purpose is to enable unauthorized removal or thwarting of any technical means or computer program intended to protect the rights of authors or performers from unauthorized use form of crime. These are means and equipment that, for example. performs unauthorized decoding, so-called "*Breaking through*" protection on items in which protected copyrighted works and performances, etc., or devices with which protected copyrighted works and performances are used.

The law distinguishes between two types of cases, namely those intended or used to commit a criminal offense; instrument sceleris (eg recording chambers, cameras, special presses for reproducing graphics, computers, etc.). The second type of case consists of cases created by the commission of a criminal offense, producta sceleris; these objects are the immediate product of the process of committing the act (film tapes, gramophone records, CD players, CD-ROM, video discs, video tapes, videophones, image plagiarism, graphics, statues, etc.).

2.3 Unauthorized use of audio recording manufacturer rights

Who without the approval of the producer of the sound recording, when the approval in accordance with the law of Bosnia and Herzegovina is required, or contrary to its prohibition, broadcasts, reproduces directly or indirectly its sound recording, places it on the market, rents, imports, transfers it across the state border public, shall be punished by a fine or imprisonment for a term not exceeding one year. The same penalty shall be imposed on anyone without the approval of the rights holder in connection with broadcasting programs when such approval is required by the law of Bosnia and Herzegovina, or contrary to the prohibition, re-broadcast the program, or record, duplicate or place on the market a recording of the program.

This crime protects producers of sound recordings and rights related to broadcasting programs (the right of broadcasting organizations).

The law of broadcasting organizations is a new related law, the right of absolute action, limited in time and freely available. The object of protection is broadcasting, ie not the content of what is broadcast, but the very diffusion of sounds, images or their combination.

While copyright also applies to intellectual creations, copyright-related rights apply to the performance of a work, the right to record the sound of a performance or other sounds (manufacturers of gramophone records, cassettes, CDs, other sound carriers), and includes a recording of a performance and the right of organizations to broadcast (broadcast) relating to a broadcast. Given the blanket character of this criminal offense, the interpretation of certain essential features of the criminal offense requires reliance on the relevant international conventions and legal and other regulations which more precisely define certain characteristics of the criminal offense. These are, first of all: the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms (*Phonogram Convention*), the Law on Copyright and Related Rights in BiH, the Law on Fundamentals of the Public Broadcasting Service and the Public Broadcasting Service of BiH, the Law on Communications. According to Art.1. of the said Convention a sound recording (phonogram, Greek fon = sound; graphene = to write) is any exclusively sound fixation of performance or other sounds, the producer of a phonogram is a natural or legal person who first records performance sounds or other sounds, a duplicate is a product containing sounds taken directly or indirectly from a phonogram and

containing all or a substantial part of the sounds fixed on that phonogram, while “making available to the public” means any operation by which reproduced copies of a phonogram are made available directly or indirectly to the general public or to any part thereof (Babić, Filipović & Marković, 2005).

Broadcasting means any transmission of signs, signals, text, images, sound or data from one to more points by wire, optical cable, radio or any other electromagnetic means, intended for general reception by the public via receivers set up therein. purpose, and broadcaster means a legal and natural person engaged in broadcasting.

The criminal offense protects producers of sound recordings from unauthorized dubbing, marketing and various forms of making sound recordings available to the public.

A criminal offense is committed by a person who, without the permission of the producer of a sound recording, when permission is required by law, or contrary to its prohibition, broadcasts, reproduces directly or indirectly his sound recording, places it on the market, rents it, imports it, transfers it over the border or makes it available to the public.

The act of committing an offense is determined alternatively, the commission of any act of commission constitutes a criminal offense. The above description of actions is only given, for example. These can be other actions that are conceptually defined as: „... make available to the public“. For the existence of a criminal offense, it is necessary that the indicated actions are taken without the approval of the producer of the sound recording if the approval is required by law or that the actions are taken contrary to the prohibition of the producer of the sound recording. Appropriate legal regulations regulate when and under what conditions there is a possibility, ie the right to broadcast, reproduce, etc. sound recordings without the approval of their manufacturer. Such a criminal offense will not exist if the producer of the sound recording has granted a license (the right to use someone else’s intellectual or industrial property rights) to reproduce and market phonograms of the sound recording, taking into account the protection of copyright and artist rights (Babić, Filipović & Marković, 2005).

The subject of protection of the rights of the right holder in connection with broadcasting programs is the broadcasting program. According to Art. 3. of the Rome Convention, an emission is the diffusion of sounds or images and sounds by means of radio-electric waves for the purpose of receiving it to the public. For the term broadcasting, as defined by the Rome Convention, it is also important that the broadcasting of sounds, ie images and sounds has the purpose of receiving them by the public, which means anyone who has an appropriate device for receiving the broadcast. In this way, broadcasts intended for one person (eg a radio amateur or a taxi driver or a certain group of persons, eg on a ship or on a plane) are excluded from this term.

The terms broadcasting, duplication, etc. are given in the explanations to paragraph 1. according to the Law on Copyright and Related Rights in BiH, broadcasting organizations have the exclusive right to give approval for the rehabilitation of their broadcast wires and without wires, recording their broadcasts, duplication and placing on the market such reproduced copies of recordings of its broadcasts and communicating to the public its television broadcasts, if such communication is available to the public for a fee (Babić, Filipović & Marković, 2005).

The offense will only exist if the perpetrator acts without the approval of the broadcasting rights holder, when such approval is required, or when he acts contrary to the prohibited broadcasting rights holders. International conventions and the Law on Copyright and Related Rights in BiH provide for provisions on the legal organization for broadcasting to allow and prohibit rebroadcasting of their programs, recording, reproduction, etc. In certain cases, exceptions are prescribed from the protection of the rights of right holders in regarding broadcasting in terms of private use, the use of short passages in connection with reporting on current events, use exclusively for teaching or scientific research purposes.

2.4 Unauthorized use of broadcasting rights

Whoever, without the approval of an authorized encrypted satellite signal distributor, manufactures or mounts, modifies, imports, exports, sells, rents or otherwise places on the market a tangible or intangible device or system for decoding such a signal, if he knows or must know that the device or the system is mainly used to decode the encrypted satellite signal, will be fined or imprisoned for up to three years. If the commission of a criminal offense has resulted in substantial material gain or caused significant damage, and the perpetrator acted with the aim of obtaining such material gain or causing such damage, he shall be punished by imprisonment for a term between six months and five years.

The criminal offense referred to in this Article, as well as the criminal offense of unauthorized distribution of satellite signals, shall protect the rights of authorized distributors of encrypted satellite signals for the transmission of programs. Given the blanket nature of the criminal offense, and the fact that it is a new criminal offense, a brief review of the provisions of international conventions and domestic legislation is needed to further clarify the meaning of certain terms used in these incriminations. The basic international acts regulating distribution rights, satellite signals and broadcasting rights are: the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the so-called Rome Convention), the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms (so-called Phonogram Convention), Convention on the Distribution of Signals for the Transmission of Programs via Satellite (so-called Satellite Convention), etc. Article 1 of the Convention on the Distribution of Signals for the Transmission of Programs by Satellite defines the following terms: “signal”

means a frequency generated electrically and suitable for transmitting programs, “program” means the sum of material obtained directly or by recording consisting of images, sound or images and sound transmitted via signals for further distribution, a “satellite” is any device located in a space outside the country and suitable for transmitting signals, a “broadcast signal” is any signal for the transmission of a program sent to a satellite or passing through a satellite, a “distributor” is a physical or a legal entity that decides whether the transmission of modified signals is intended for a wider audience or a part thereof, “distribution” is any action by which a distributor transmits a modified signal intended for a wider audience or a part thereof, while the “initial organization” is a physical or the legal entity that decides which program will transmit the broadcast signal. The provision of Art. 3. the same convention stipulates that it does not apply when signals broadcast by the initial organization or broadcast on its behalf are intended to be received directly by a wider audience via satellite. The provisions of the Convention seek to prevent the distribution of signals carried by programs transmitted by satellite to those distributors for whom the signals are not intended, it provides for the obligation of Contracting States to prevent unauthorized distribution of signals on their territory or from their territory (Babić, Filipović & Marković, 2005).

In order for this to be a criminal offense, it is necessary that the indicated actions are taken without the approval of the authorized distributor of the encrypted satellite signal. The second condition is that the perpetrator knows or must know that the tangible or intangible device or system for decoding the encrypted satellite signal is predominantly used to decode the encrypted satellite signal.

2.5 Unauthorized satellite signal distribution

Whoever receives an encrypted satellite signal that has been decoded without the approval of its authorized distributor and performs further distribution of such signal, if he knows or had known that such signal has been decoded without authorization, shall be fined or imprisoned for up to six months. If the commission of a criminal offense has resulted in significant property gain or caused significant damage, and the perpetrator acted with the aim of obtaining such property gain or causing such damage, he shall be punished by a fine or imprisonment for a term not exceeding three years.

This criminal offense protects the rights of authorized distributors of encrypted satellite signals, prevents and punishes the unauthorized distribution of signals carried by programs transmitted via satellites (Babić, Filipović & Marković, 2005).

3. Penalty compensation of damage

Penalty compensation of damage are specific to Anglo-Saxon law. It is a monetary compensation that is awarded in the case of particularly serious violations of rights and

which is many times greater than the actual damage suffered. The goals of criminal compensation are to punish pests and deter future violations of rights, ie prevention, both special and general. Punishment and prevention are the goals of criminal law, not civil law, so criminal compensation is often defined as a kind of combination of criminal and civil sanction. Penalty compensation is, in the true sense of the word, a “quasi-criminal” sanction, because it is halfway between civil and criminal law. It is awarded as “damage” to the plaintiff against the defendant in a private lawsuit, and yet the majority believes that the purpose of such damages is not compensation, but that by its nature it is a fine. Given that the amounts awarded can be extremely high and many times greater than the damage suffered, this form of compensation exceeds compensation, which is the legitimate goal and purpose of compensation in civil law. Criminal damages are, essentially, a form of private punishment awarded on a private lawsuit for damages. Although, due to its excessiveness and criminal character, it is the subject of criticism in the countries where it exists, the tendency of its spread is more and more pronounced, especially in media law, intellectual property law and within the protection of personal rights (Ivanović, 2017).

In the literature , there are understandings that the right to compensation in European countries is not fully compensatory, and that the court’s ability to take into account the financial condition of the injured party and the pest, the degree of guilt of the pest, and whether the damage was caused by committing a crime, indicate elements of the criminal nature of damages. According to Fiebig, satisfaction as the purpose of compensation for non-pecuniary damage goes beyond simple compensation and has elements of punishment (Fiebig, 1992). There are several reasons why criminal damages are incompatible with the traditional concept of Eurocontinental law. The first reason refers to the function of the right to compensation, ie the purpose of compensation. The goal of compensation for material damage is to bring the property of the injured party to the condition in which he would be if the violation of rights had not been committed. Monetary compensation for material damage is determined as a compensatory-reparative sanction (Nikolić, 1995). Unlike American law, Eurocontinental law emphasizes the difference between public and private law, ie criminal and civil law. Criminal law and criminal law protection is within the competence of the state because only the state has the right to punish. On the contrary, an individual cannot punish another because there would be a danger of arbitrariness and lack of objectivity. Finally, the role of government, ie the public sector, in the enforcement of law in Anglo-Saxon and continental law is different. In Europe, the public sector is largely responsible for preserving social welfare. In American law, the so-called private enforcement of rights, while on European soil it is clearly delineated what is within the competence of the state, and what the citizens themselves take care of. Finally, procedural differences in the exercise and protection of rights before the courts should not be overlooked (Ivanović, 2017).

4. Conclusion

Criminal protection of intellectual property rights in Bosnia and Herzegovina belongs to the system of general criminal law, i.e. it belongs to the legislative approach that regulates the criminal protection of intellectual property rights in the general part of criminal law, i.e. in general criminal codes.

Chapter XXI of the Criminal Code of BiH contains criminal offenses of copyright infringement and copyright related rights. These are five criminal offenses whose prescribing is, first of all, a consequence of the harmonization of domestic criminal legislation with numerous international conventions and acts which oblige the contracting states, i.e. signatories, to appropriate criminal and other copyright protection.

These acts criminally protect both the moral and property rights of authors and performers, the rights of producers of sound recordings and rights related to broadcasting programs, i.e. the rights of authorized distributors of encrypted satellite signals. The incriminations are also harmonized with the provisions of domestic legislation, primarily with the Law on Copyright and Related Rights in BiH. The object of protection in these criminal offenses are copyrights and other related rights in the field of intellectual property.

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