

HELLENIC REPUBLIC
HIGH COURT PUBLIC PROSECUTOR

Athens 31-12-1996
Protocol number: 3953 / circular 35

SUBJECT: "Penal protection of intellectual property"

To
Procurator Generals

I. The Hellenic Republic, in response to its international obligations and expressing its particular disapproval of the moral and social demerit inherent in the infringement of intellectual authors' rights over their intellectual works, has introduced with Law 2121/1993 "Copyright, related rights and cultural issues" a system of complete protection over intellectual property. Based on the correct assumption that the infringement of intellectual property, under the shape of the public execution or reproduction of the intellectual work, without the beneficiary's license, constitutes an expropriation, article 66 of the same law is used to provide penal sanctions against the violators of intellectual property.

More particularly, this regulation provides that:

"1. Anyone who, without a right and by infringing the regulations of this law or regulations validated by a multilateral international conventions law, regarding the protection of intellectual property, records, reproduces originals, translations or adaptations, proceeds to distribution or owns with an aim to distribute, uses by infringing limiting provisions, presents to the public, executes in public, broadcasts by radio / TV in any given way and generally exploits a work which is part of intellectual property or imports copies or organizes public execution of such work or infringes the right of the intellectual author to decide on the work's presentation to the public and present it undistorted, without additions or abridgments, is punished with an imprisonment of at least one year and a pecuniary fine of 1 to 5 million drachmas.

2. The same sanction is valid for anyone who by infringing the regulations of this law or regulations validated by law of international conventions for the protection of related rights, proceeds to the following acts: a) without the performers' or performing artists' license, records the performance on an audio or video or both audio and video material entity or broadcasts by radio or television in any given way, or presents to the public a live performance or execution without the performer's or performing artist's license; b) broadcasts in any given way or records or presents to the public, in places where admittance is only allowed with a ticket, a radio / television show without the radio / television organization's license; c) without the performers or performing artist's license and without the material entity's producer's license, reproduces or distributes or owns with an aim to distribute, material entities containing a recording of the performance or execution; d) presents to the public the live performance or execution in any given way, except radio / television broadcast, without the performer's or performing artist's license; e) reproduces, distributes or uses in any other manner, the recording of a show without the license of the beneficiary radio / television organizations; f) imports material entities produced abroad without the producer's license or imports material entities with a license

forbidding importation in Greece. In the cases of parts d', e' and f', the violator is punished even if he was obliged to be aware of the lack of license.

3. If the profit solicited or the damage threatened by acts of par. 1 and 2 are particularly high, an imprisonment of at least two years and a pecuniary fee of 2 to 10 million drachmas apply. If the offender proceeds to the aforementioned acts by profession or if the occasions under which they are executed manifest that he is particularly dangerous for the protection of intellectual property or related rights, he is sentenced to an imprisonment of up to 10 years and a pecuniary fee of 5 to 20 million drachmas as well as a revocation of the operation permit of the company within which the act occurred. It is considered that the act has been committed by profession when the offender has been convicted regarding offences of this article or breach of regulations regarding intellectual property valid before that, with an irrevocable decision regarding an imprisonment sentence.

5. In case the imprisonment sanction is changed, the alteration fee is determined to the decuple of the alteration amount provided each time by the Penal Code.

6. In case of attenuating circumstances, the pecuniary fee cannot be reduced further to the half of the lower limit provided by occasion in this law.

7. In any case, the court can order the publication of the convicting decision order, with all expenses covered by the convicted”.

Apart from the above sanctions regarding a completed or attempted infringement of intellectual property, the law also provides measures for the prevention of infringement, particularly providing the following in article 63:

“1. In all cases where there is an imminent act of offence towards the intellectual property, such as when a public performance of a theatrical or cinema or musical work is about to be made, without the necessary author's license, the according police authorities are obliged to forbid this act, further to a request by the author or his beneficiaries. The prosecution, if requested, ought to give a relative order to the police authority. The same also applies when the public performance began with permission of the author, but the payment of the due fee was delayed for more than two days.

2. In order to grant the necessary police license according to the law, to use musical instruments or regarding the suitability of the space, or any other license regarding a place where musical compositions or other works are about to be performed, whose administration has been assigned to a collecting society, it is necessary to present a written public performance license, granted by the collecting society or the authority of public performance.”

II. There is no protective legislative framework, regardless of how complete it is, that can reassure effective protection, unless the ordered instruments do not implement it with the necessary speed. This has also happened with the described system of intellectual property protection. The result of the slow activation of intellectual property penal protection is that the phenomenon of intellectual property expropriation still flourishes and has extended to a large degree, particularly in the shape of radio / television piracy, that is the broadcast of audiovisual works by radio / television stations without the given rights. This is a phenomenon that exposes the country on an international level and provides more profit, easily and economically, for the audacious expropriators of the authors' intellectual struggle or those who for a price, have gained the right to exploit the intellectual work. This phenomenon cannot continue. It has to be stopped very fast with all the legal means provided by the law.

III. The High Court Prosecution, with its circular direction by protocol number 2387/25.10.1994 has suggested the acceleration of the hearing of all relative cases and to that aim, the application of the provided for the cases of committed capital offences

or misdemeanors, the immediate termination of infringement and the confiscation of the used mechanical or other equipment of the radio / television station. We consider the assistance of the prosecution to be extremely effective in order to prevent an isolated infringement or terminate a continued infringement of intellectual property, according to the specifications of regulations in article 63, par. 1 and 2 of the law.

IV. In regards to the views expressed by the High Court Prosecution, referring to the effective activation of the intellectual property penal protection system, we would like to urge the Prosecutor Generals to forward this circular to the prosecution authorities in their district, to request the publication of the present and the previous relative circular of the High Court Prosecution to the precognitive employees, to suggest the fastest and most effective possible activation of the intellectual property penal protection system, especially by the application of the aforementioned legal means and to exercise their supervision on the course of the pertinent cases.

The High Court Prosecutor
(signature)
Panagiotis Dimopoulos

Forwarded to:

1. Ministry of Justice
2. Ministry of Press and Mass Media
3. Ministry of Public Order