

QUESTION 102:

In answer to question 100, Croatia indicated that it would adhere to the Patent Cooperation Treaty at the end of 1995. Please indicate what progress has been made in achieving this goal. (WT/ACC/HRV/3)

ANSWER:

The Republic of Croatia is about to institute a parliamentary procedure for the accession to the Patent Cooperation Treaty so the accession is planned for this year.

QUESTION 103:

How effective is the up to date IPR protection done only by the organizations of common management?

ANSWER:

The protection of phonogram and videogram producers ensured through the protection of copyright, enforced by the Ministry of Interiors, Department for the Prevention of Economic Crimes, has been, as of the beginning of 1994, very effective.

QUESTION 104:

When does Croatia expect the rights of phonogram producers to be included on the Law on Copyright?

ANSWER:

The rights of phonogram producers will be included in the new Law on Copyright and Neighbouring Rights in 1997.

QUESTION 105:

In answer to question 80 and 93, Croatia reported that protection of rights of phonogram producers would be protected under future legislation. Please describe the legislation planned and give us an estimate of when the legislation will be enacted. Please provide a copy of the draft legislation. (WT/ACC/HRV/3)

ANSWER:

The protection of the producers of phonograms will be regulated in the framework of the new Law on Copyright and Neighbouring Rights. For the time being the comparative analysis particularly of the Swiss, Dutch and Slovenian legislation in this filed is being carried out. The Draft of the new Law on Copyright is planned to be carried out during 1997, and is to be sent to you soon after its completion.

QUESTION 106:

What are the copyrights protection of the producers of phonograms due to the lack of univocal regulations regarding protection of producers in Croatia?

ANSWER:

The legislation of the Republic of Croatia doesn't, for the time being provide, for the protection of phonogram producers. The provisions exist on the protection of literary and artistic work (The Copyright Law, as amended in 1993), through which the protection on phonogram producers shall be acquired indirectly, meaning that criminal procedures concerning the infringement of the authors' rights shall be instituted against illegal producers.

QUESTION 107:

Among the legislative activity of the Government of the Republic of Croatia related to the field of intellectual property rights, the Copyright Law and Law on the Protection of Topographies of Integrated Circuits is planned for 1997. Will this Law also include the protection of phonogram producers and how does Croatia plan to deal with possible conflicts between copyright and industrial design protection?

ANSWER:

The new Copyright Law shall include the protection of producers of phonograms. The conflict between copyright and industrial design protection shall not be possible because the Croatian legislation provide for the cumulative protection of both rights.

QUESTION 108:

Does the Government of Croatia dispose of the data on the share of the illegal production of phonograms, video tapes and CD copies in the market?

ANSWER:

The share of the illegal production of audio and video cassettes, and the effectiveness of measures mentioned in item 9, shall be indicated by the data showing that in 1994 and 1995 the following have been sized:

22.554 audio cassettes

2.140 CDs

52.345 video cassettes

QUESTION 109:

How does Croatia intend to respect the high level standards of the protection of copyrights and related rights stipulated by the TRIPS Agreement? Will Croatia seek a transition period to that set forth in article 65.3 of the TRIPS Agreement?

ANSWER:

The preparatory works concerning the amendment of the Law on Copyright and Neighbouring Rights have been initiated, so by the completion of that action the high level standards stipulated by the TRIPS Agreement shall be achieved. The Republic of Croatia shall respect the provisions of article 65.3 of the TRIPS Agreement.

QUESTION 110:

Do there already exist more detailed plans on how Croatia intends to regulate the protection of layout-designs (topographies)? When can the entry into force of a respective law be expected?

ANSWER:

The preparation of the Law on the Topographies of Integrated Circuits (which includes semi-conductors) is planned for 1997. So far there are no detailed plans on how this protection is intended to be regulated.

QUESTION 111:

As you know, Article 14 of the TRIPs Agreement requires that protection of sound recordings be provided retroactively for a period of fifty years in accordance with the principles of Article 18 of the Berne Convention. Please describe Croatia's plans for providing this protection and estimate when that will occur. (WT/ACC/HRV/3)

ANSWER:

It is expected that the Republic of Croatia harmonize its new Law on Copyright and Neighbouring Rights also with the Article 14 of the TRIPS Agreement, in accordance with the principles of Article 18 of the Bern Convention.

QUESTION 112:

In answer to question 91, Croatia states that lending and rental rights follow from the exclusive distribution right. We believe it is preferable to have a specific right enumerated in the law because the lending and rental rights continue to apply after a copy of a work has been sold. Are there any plans to amend the copyright law to expressly limit the rental of copies of a work even after those copies are purchased by others? (WT/ACC/HRV/3)

ANSWER:

We cannot give you an explicit answer until the enactment of the law on Copyright is carried out.

QUESTION 113:

Please describe the structure of Croatia's court system. Which courts have initial jurisdiction over intellectual property matters? What procedures exist for appealing decisions of courts of original jurisdiction? (WT/ACC/HRV/3)

ANSWER:

Commercial Courts as special courts of the first degree are actually competent for the protection of the intellectual property while the High Commercial Courts are competent for the second degree. In the case of the infringement of procedural right the decisions of the Supreme Court of the Republic of Croatia are also provided for.

Regarding the organization of court system in the Republic of Croatia, it is regulated by the provisions of the Law on Courts (NN 3/94). Under Article 13 of the mentioned Law, the judicial authority is performed by:

- Municipal Courts
- District Courts
- Commercial Courts
- High Commercial Court of the Republic of Croatia
- Administrative Court of the Republic of Croatia
- Supreme Court of the Republic of Croatia, as the highest court in the Republic of Croatia

Of 8 Commercial Courts of first instance in the Republic of Croatia, disputes concerning intellectual property matters have been dealt with by 4 courts only, and those are the courts: in Osijek, Rijeka, Split and Zagreb covering the entire territory of the Republic of Croatia.

As a special legal instrument in disputes concerning intellectual property matters, there shall also be a revision of the decision of the High Commercial Court of the Republic of Croatia which shall be submitted to the Supreme Court of the Republic of Croatia and which shall be always allowed in such disputes.

QUESTION 114:

What provisions are available to enable a right holder to obtain information necessary to develop the right holder's case? (WT/ACC/HRV/3)

ANSWER:

The right holder may, on the basis of the provisions of the Law on Civil Procedure, obtain from a court information to develop the right holder's case.

QUESTION 115:

Please describe in general the procedures followed in a case of infringement before a court. What is the average period of time between the bringing of an action and a decision of the court? Are court decisions in writing? Is there a compilation of decisions that would permit a party to look at cases similar to the party's own in order to evaluate the strength of the party's case? (WT/ACC/HRV/3)

ANSWER:

In the case of infringement of industrial property rights, a process - a procedure before a court is regulated by the Law on Civil Procedure.

In the case of infringement of rights, the court procedure shall be initiated by filing a claim to a territorially competent court of first degree. After having received the claim, the court shall send a claim to the defendant for a response, fixing the term for response.

After having received the answer to the claim, the court shall immediately fix the term for a trial, on which the parties in dispute may additionally present their attitudes. Evidence proposed in a claim or in an answer to a claim (articles 224, 302, 303 and 304) shall also be presented on a trial. The evidence may comprise witnesses, experts and written documentation offered by the parties in order to prove their rights, as well as objects and creations respectively, involved in the infringement of intellectual property rights.

The period of time between the bringing of an action and a decision of the court shall depend on the complexity of a case, particularly on the duration of the hearing evidence, on obtaining expert opinion and on establishing the facts. This procedure may last for 2 - 3 months or a year or more.

The court decisions shall be in a written form and shall be substantiated - contain reasons for a particular decision (Article 338, Law on Legal Proceedings).

Owing to the long legal tradition a collection of court decisions, covering sequence of decades, shall permit a party to look at cases similar to the party's own case. The court decisions relating to intellectual property disputes have been published in the Collection of Court Decisions of the Supreme Court of the Republic of Croatia, the Collection of the Court Decisions of the Commercial Courts ("Praxis Iuridica Mercatoria), as well as in other professional periodicals dealing with the legal matters. Such publications are available to all interested persons.

QUESTION 116:

In answer to question 97, Croatia identified some of the remedies that would be available in an action for infringement. Please describe each of these remedies and indicate in what circumstances they would be available. What are "financial police" and how to they function? (WT/ACC/HRV/3)

ANSWER:

In the protection of copyright by directly applying the Copyright Law (Article 95-99), any person whose author's rights, whether economic or moral, have been infringed may demand protection of such rights in legal proceedings and claim damages for the harm suffered by the infringement. The court may order in its decision that the defendant be forbidden to continue his infringement of copyright, that objects by means of which the infringement of copyright was committed be destroyed or modified and that the decision be published at the expense of the defendant. At the request of the plaintiff who

furnishes evidence that his copyright has probably been infringed, the court may, even before taking a decision on the merits of the case, order the provisional seizure and withdrawal from circulation of objects capable of infringing copyright, or the prohibition of the continuation of any works commenced by which infringement of copyright could be caused.

Concretely, according to Article 94 of the Copyright Law, the impresarios of cultural and artistic entertainments and other users of intellectual works shall be required to obtain permission for performance of such works in cases where such permission is required under the provisions of this Law, and to supply without delay, and at the latest within 15 days from the date of performance, the organization of authors or the associated work organizations with the programs of the works performed and to pay them royalties for the exploitation of such works.

At the request of the author or the associated work organization, the competent police administration or police station shall prohibit the performance at which the intellectual works are used, or the other use of intellectual work, if the entertainment impresario or other user of the intellectual work does not have permission for performance from the author or the associated work organization.

At the request of the associated work organization the financial police shall provide necessary assistance in administration of the authors' rights.

At the same time, by virtue of Article 9 of the Law on Financial Police (NN 89/92) the financial police inspectors shall be authorized to temporarily seize, until the decision on commitment of the offence, and decision on the merits of the case, respectively, on committed economic or criminal offence, money, securities, objects and documentation which have been used or may be used for the commitment of a criminal or economic offence or infringement, and can be used as evidence in infringement or court proceedings. A receipt on temporary seizure shall be issued.

Article 100 of the Copyright Law stipulates that any person who, under his own name or the name of another person, publishes, presents, performs or transmits the work of another, or who permits such acts, shall be punished for a criminal offence by imprisonment of up to five years.

Any person who without an indication of the author's name or pseudonym publishes, presents or transmits another person's intellectual work containing the author's name or pseudonym, or permits such acts, shall be punished for a criminal offence by a fine or imprisonment of up to a year.

Any person who unlawfully inserts excerpts from the work of another into his own intellectual work, shall be punished for a criminal offence by a fine or imprisonment of up to a year.

Any person who distorts, mutilates or otherwise modifies the intellectual work of another, shall be punished for a criminal offence by a fine or imprisonment of up to six months.

QUESTION 117:

In answer to question 102, Croatia indicated that legislation would be necessary to correct and amend existing enforcement legislation to bring it into conformity with the TRIPs Agreement. (WT/ACC/HRV/3)

Please indicate what progress has been made in preparing such legislation and, if possible, indicate when enactment might occur.