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THE LAW ON ENFORCEMENT OF THE LEGISLATION THAT REGULATES PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

SECTION ONE

BASIC PROVISIONS

Subject matter of the Law

Article 1

(1) This Law shall designate authorities responsible to enforce the legislation that regulates protection of intellectual property rights, regulate procedures applicable to actions of responsible authorities where goods suspected of infringing intellectual property rights are produced, bought, sold or placed into circulation, broadcasted or used in any other way, and establish penalties for commercial offences and misdemeanors.

(2) Provisions of this Law shall apply *mutatis mutandis* to services and service providers.

(3) This Law shall not apply to:

1) goods that bear a trade mark with the consent of the holder of that trade mark or that are protected by a copyright or related right or a design right and that have been manufactured with the consent of the right holder but are placed into circulation without the latter's consent;
2) goods that have been manufactured or bear a trade mark under conditions other than those agreed with the right holder;
3) non-commercial goods and personal belongings, i.e., to goods intended strictly for personal use, provided that multiple identical copies of the same product are not being owned or used.

Prohibition of Production and Circulation
Article 2

Production, holding and placement into circulation of goods that infringe upon the intellectual property rights established by law and an international agreements shall be prohibited.

Prohibition of Transmission and Broadcasting
Article 3

(1) Transmission and broadcasting in the absence of the evidence that all obligations with respect to the use of copyrights and related rights were fulfilled in accordance with the law, shall be prohibited.

(2) The evidence of the fulfillment of obligations referred to in paragraph 1 of this Article shall be submitted along with the application for the broadcasting license.

(3) The broadcasting license shall be canceled if it is determined that the broadcaster did not fulfill the obligations established by law with respect to the use of copyrights and related rights.

Definitions
Article 4

(1) For the purposes of this Law:

1) ‘intellectual property rights’ shall mean copyright and related rights, trademarks, geographical indications, designs, patents and topographies of integrated circuits;

2) 'right holder' shall mean the initial holder of an intellectual property right, any successor in title to such initial holder, or any other person duly authorized to use the right in accordance with the applicable law, including professional associations and rights management bodies representing rights holders;

3) ‘infringing goods’ shall include but are not limited to pirated copyright goods, counterfeit trademark goods, goods infringing design rights, goods infringing patents, goods infringing topographies of integrated circuits as well as any goods the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any technological measure, a device or a component that is designed to prevent or restrict acts, with respect to protected subject matter, that are not authorized by the right holder;

4) 'pirated copyright goods' shall mean a copy of copyrighted work or any goods that contains copies of copyrighted works, made without the consent of the holder of the copyright or related right, or of a person duly authorized by the right holder;

5) 'counterfeit trademark goods' shall mean:

1. any goods or packaging, including goods that may not bear a counterfeit mark but are directly contained within packaging that bears a counterfeit trademark, bearing without authorization a trademark that is identical to, or substantially indistinguishable from, a trademark validly registered in respect of similar or closely related goods or that cannot be distinguished in its essential aspects from such a trademark;

2. any label, sticker, brochure, instructions for use, guarantee document, or other thing, whether presented separately or not, that includes a mark,

symbol or logo that is identical to or substantially indistinguishable from a trademark registered in respect of goods that are similar or closely related to the goods with which such things are or may be associated.

3. any goods bearing marks that are identical to, or differ only minimally from registered trademarks, when used on related or similar goods.

6) ‘Goods infringing design rights’ shall mean any goods, produced without authorization of the right holder, containing a design identical to the design validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from the registered design;

7) ‘Goods infringing patents’ shall mean any goods that are identical to patented goods or obtained directly by a patented process, made without authorization of the right holder;

8) ‘Protection defeating devices’ shall mean devices, products, or their components or parts, that are primarily designed or adapted to circumvent any effective technological measure;

9) ‘Effective technological measure’ shall mean any technology, device or a component that in the normal course of its operation, either controls access to a protected work, performance, phonogram, broadcast, transmission or similar subject matter, or protects any copyright or related right or facilitates the detection of counterfeit trademark or pirated copyright works.

10) ‘Broadcasting’ shall mean public remote communication of the work by wire or wireless transmission of electro-magnetic, electric and other signals (radio transmission or cable transmission).

11) ‘Broadcaster’ shall mean any natural or legal person registered for production, transmission and broadcasting (radio and/or television) licensed for transmission and broadcasting of a signal, in accordance with the law that regulates broadcasting activities.

(2) Any mould or matrix which is specifically designed or adapted for the manufacture of a counterfeit trade mark or of goods bearing such a trade mark or of pirated goods shall be deemed to be 'counterfeit trademark goods' or ‘pirated copyright goods.’

SECTION TWO

RESPONSIBLE AUTHORITIES

Responsibilities
Article 5

(1) Authorities responsible for enforcement of the intellectual property legislation shall be: state administrative authority in charge of economy, state administrative authority in charge of medicines and medical devices, state administrative authority in charge of urban planning, state administrative authority in charge of tourism, state administrative authority in charge of culture and media and an independent regulatory authority in charge of broadcasting (hereinafter referred to as: the responsible authority)

(2) Inspectorial supervision with respect to protection of intellectual property rights within responsibilities of the authorities referred to in paragraph 1 of this Article shall be performed by: market inspection, inspection for medicines, inspection for medical devices, building inspection, tourist inspection and the authorized official of the independent regulatory authority in charge of broadcasting (hereinafter referred to as: the responsible inspector).

Powers of the Inspector
Article 6

(1) Market inspector shall supervise production and circulation of goods that infringe industrial property rights (trademark, design, patent, geographical indications and topographies of integrated circuits) and the circulation of goods protected by copyrights and related rights.

(2) Inspector for medicines shall supervise production and circulation of goods infringing industrial property rights with respect to medicines.

(3) Inspector for medical devices shall supervise production and circulation of goods infringing industrial property rights with respect to medical devices.

(4) Building inspector shall supervise building activities that infringe intellectual property rights.

(5) Tourist inspector shall supervise providing of services that infringe intellectual property rights with respect to tourism and catering.

(6) The authorized official of the independent regulatory authority in charge of broadcasting shall supervise activities of electronic media with respect infringement of copyright or related right by unauthorized broadcasting of a protected work.

SECTION THREE

PROCEEDINGS OF THE RESPONSIBLE AUTHORITY

Initiation of the Proceedings
Article 7

(1) Proceedings by the responsible authority for the protection of intellectual property rights shall be initiated *ex officio* or upon the initiative-application (hereinafter referred to as: the application) of the right holder.

(2) The law that regulates inspectorial supervision shall be applicable to all matters that are not specifically regulated by this Law.

Types of the Application

Article 8

(1) The application to initiate proceedings for the protection of intellectual property rights shall be submitted to the responsible authority in writing.

(2) The application may be submitted as:

1) an individual application, if it is related to a particular consignment of goods;
2) a general application, where it is related to all quantities of certain goods within the specified period of time.

Content of the Application

Article 9

(1) Application referred to in Article 8 of this Law shall include description of goods that enables identification of infringing goods and the proof that the applicant is a right holder with respect to concerned goods.

(2) The applicant referred to in paragraph 1 of this Article may also submit other information, including the following:

1) details identifying the consignment or packages;
2) information about the place where the goods are situated or their intended destination;
3) data on identity of the manufacturer, importer, owner or holder of the goods;
4) information about the scheduled dispatch or delivery date;
5) information about the means of transport used; and
6) sample of goods, photographs and a like.

(3) The general application shall specify the period during which the protection of intellectual property rights is being requested.

Article 10

Where the intellectual property right ceases to exist during the proceedings, the right holder shall notify the responsible authority.

Article 11

All expenses incurred with respect to proceedings initiated by the application of the right holder shall be assumed by the applicant.

Proceedings Upon An Application

Article 12

(1) There shall be an obligation of the responsible inspector to act upon an application and to notify the applicant in writing about the supervision performed and any action taken within eight days as of the filing date.

(2) Where the applicant requests urgent action and where sufficiently specific information concerning allegedly infringing goods is provided, responsible inspector shall notify the applicant about the supervision performed and any action taken within three days as of the filing date.

Security

Article 13

Where the measure referred to in Article 14 of this Law was taken in the proceeding initiated upon the application, the applicant shall, upon the request of the responsible inspector, provide a bank guarantee or an evidence of a deposit to a specially designated account, in an amount equal to any costs that may incur if the proceedings are discontinued owing to omission by the right holder or if it is determined, in the course of proceedings, that there was no infringement.

Measures Taken by the Inspector

Article 14

(1) Where, in the course of inspectorial supervision proceedings, it was established that intellectual property rights were infringed by production or circulation of goods, medicines and medical devises, market inspector, inspector for medicines and inspector for medical devices shall be authorized to:

   1) temporary prohibit production or activity;

   2) temporary seize goods, medicines and medical devises.

(2) Where the measures referred to in paragraph 1 of this Article were taken, responsible inspector shall immediately, but not later than within two days, notify in writing the right holder and/or the applicant, in order to enable them to initiate a proceedings before the competent court for the protection of intellectual property rights.

(3) The right holder shall, not later than 15 days as of the day the notification referred to in paragraph 2 of this Article was served, submit to the responsible inspector a proof that the proceedings before the competent court have been initiated, or that an interim measure has been ordered.

(4) Notification referred to in paragraph 2 of this Article shall include the name and address of the person from whom the goods were seized, and of the owner, importer and manufacturer of the goods, if available, as well as of quantity, type of goods, etc.

Taking of Samples

Article 15

Upon the request of the right holder, applicant and the person from whom the goods were seized, responsible authority shall allow samples to be taken insofar as and to the extent that such samples are needed as evidence in any proceedings before the competent court.

SECTION FOUR

ACTIONS WITH RESPECT TO GOODS

Release of Goods

Article 16

(1) Where the right holder, within a period referred to in Article 14, paragraph 3 of this Law did not notify the competent inspector the proof that the proceedings before the competent court have been initiated, or that an interim measure has been ordered, temporary seized goods shall be released to the person from whom they were seized.

(2) Where the proceedings before the competent court have been initiated, but the court has not ordered any interim measures to temporary prohibit production or circulation of goods, temporary seized goods shall be released to the person from whom they were seized.

(3) Where the responsible inspector was provided with the proof that the competent court has ordered an interim measure, the responsible inspector shall dispose with temporary seized goods in accordance with such order.

Compensation of Damages

Article 17

(1) The responsible authority and/or responsible inspector shall not be liable to compensate for any damages resulting from temporary seizure of goods upon the application of the right holder.

(2) Where it was determined in the course of proceedings upon the application of the right holder that the goods were seized without justification, an applicant shall be liable to compensate to the person from whom the goods were temporary seized for any damages caused by such seizure.

Destruction of Goods

Article 18

(1) Responsible inspector shall be authorized to destroy the goods, upon the court order or *ex officio*.

(2) Responsible inspector may destroy temporary seized goods ex officio if the owner of goods or the person from whom the goods were temporary seized is not accessible by the responsible inspector within 30 days as of the day of seizure of goods.

SECTION FIVE

PENAL PROVISIONS

I. ECONOMIC OFFENCES

Article 19

(1) Any company or any other form of a commercial entity that:

1) discloses, records, reproduces or communicates to the public in any manner wholly or partly, a work of authorship, performance, phonogram, videogram, broadcast or database without permission, or markets or rents or holds in possession in commercial purposes copies of works of authorship, performances of phonograms, videograms, broadcasts or databases that have been reproduced or placed on the market without authorization;

2) markets or rents copies of works referred to in paragraph 1 of this Article, for the purpose of deriving pecuniary benefit for itself or somebody else, knowing that they were disclosed, recorded or reproduced without authorization;

3) produces, imports, markets, sells, rents, advertises for the purposes of sale or renting, or holds for commercial purposes devices primarily constructed, produced or adjusted for enabling or facilitating the circumvention of any technological measure, which do not have any other significant purpose than the said one;

4) circumvents any technological measure, or supplies or advertises the services that enable or facilitate such circumvention;

5) removes or alters electronic information on rights, or markets, imports, broadcasts or in any other manner communicates the work of authorship or the subject-matter of related right to the public, from which the electronic information on rights has illegally been removed or altered, while knowing or having reason to know that by doing so it instigates, enables, facilitates or conceals the infringement of a copyright or related right.

shall be fined € 3,000 – € 30,000 for the economic offence.

(2) Any person in the company or any other form of commercial entity responsible for any commercial offence referred to in paragraph 1 of this Article shall be fined € 300 – €3,000.

(3) The objects of the economic offenses and the devices used or intended to be used to commit the economic offence referred to in paragraph 1of this Article shall be forfeited, and the objects of the economic offence shall be destroyed.

Article 20

(1) Any company or any other form of a commercial entity that:

1) being the owner of a building, makes an alteration on the building which is materialized copy of the work of architecture without prior offering the author to do the alterations of the work ;

2) conducts collective exercise of copyright and/or related rights without permission of the competent authority;

shall be fined € 1,500 – € 15,000 for the economic offence.

(2) Any person in the company or any other form of commercial entity responsible for any commercial offence referred to in paragraph 1 of this Article shall be fined € 150 – € 1,500.

Article 21

(1) Any company or any other form of a commercial entity that:

1) without authorization affixes a mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro to its goods or a package thereof;

2) without authorization offers, places into circulation, stores the goods for such purposes or provides services under the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro.

3) without authorization, imports or exports the goods under the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro.

4) without authorization, in its business documents or for advertising purposes, uses the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro;

shall be fined € 3,000 – € 30,000 for the economic offence.

(2) Any company or any other form of a commercial entity that in its commercial activities uses:

1) a mark created by imitation of the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro;
2) a mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro, with the addition of the words 'type', 'manner', 'according to the procedure' or a like.

shall also be fined for the economic offence by the fine referred to in paragraph 1 of this Article.

(3) Any person in the company or any other form of commercial entity responsible for any commercial offence referred to in paragraphs 1 and 2 of this Article shall be fined € 300 – € 3,000.

(4) The objects of the economic offenses and the devices used or intended to be used to commit the commercial offence referred to in paragraphs 1 and 2 of this Article shall be forfeited, and the objects of the economic offence shall be destroyed.

Article 22

(1) Any company or any other form of a commercial entity that without authorization:

1) fabricates, industrially or handcrafted, products intended to be marketed, based on a protected design or a design for which design application has been filed;

2) uses any product protected by the design right and/or any products fabricated based on a design for which design application has been filed;

3) offers, places into circulation and stores for such purposes any products fabricated based on a design for which design application has been filed;

4) imports or exports any products protected by the design right and/or any products fabricated based on a design for which design application has been filed;

shall be fined € 3,000 – € 30,000 for the economic offence.

(2) Any company or any other form of a commercial entity that commits any act referred to in paragraph 1, items 1-4 with respect to any products created by imitation of a protected design and/or a design for which design application has

been filed shall be fined for the economic offence by the fine referred to in paragraph 1 of this Article.

(3) Any person in the company or any other form of commercial entity responsible for any commercial offence referred to in paragraphs 1 and 2 of this Article shall be fined € 300 – € 3,000.

(4) The objects of the economic offenses and the devices used or intended to be used to commit the commercial offence referred to in paragraphs 1 and 2 of this Article shall be forfeited, and the objects of the economic offence shall be destroyed

Article 23

(1) Any company or any other form of a commercial entity that publicizes the subject of another persons' design application without authorization shall be fined € 1,000 – € 10,000 for the economic offence.

(2) Any person in the company or any other form of commercial entity responsible for any commercial offence referred to in paragraph 1 of this Article shall be fined € 100 – € 1,000.

Article 24

(1) Any company or any other form of a commercial entity that without authorization manufactures, imports, exports, offers to place into circulation or places into circulation, stores or uses in its commercial activity any product or process protected by a patent, shall be fined € 3,000 – € 30,000 for the economic offence.

(2) Any person in the company or any other form of commercial entity responsible for any commercial offence referred to in paragraph 1 of this Article shall be fined € 300 – € 3,000.

(3) The objects of the economic offenses and the devices used or intended to be used to commit the economic offence referred to in paragraph 1of this Article shall be forfeited, and the objects of the economic offence shall be destroyed

II. MISDEMEANORS

Article 25

(1) Any company or any other form of a commercial entity that:

1) without stating the author's or performer's name or under different name, wholly or partially discloses, performs, presents, communicates the performance or presentation or broadcasts work of authorship or performance of another person;

2) without permission of the author modifies or adapts work of authorship or recorded performance of another person;
3) as a gallery keeper or an organizer of a public auction of original works of fine are, and/or original manuscripts does not inform the author of the work of name and address of the seller of its work, name and address of the new buyer and price which was paid or does not pay the author the amount of 3% of the sale price of the work within the period of 30 days as of the day of the sale of the original works and/or manuscripts;
4) when filing an application for entering into the records and depositing copyrighted work or a subject-matter of related right with the authority responsible for the protection of intellectual property, provides false data or withholds true data on copyrighted work or an subject-matter;
5) as a publisher sells the unsold copies of the work as scrap paper without previously offering it to the author or his/her heir for purchase;

shall be fined for the misdemeanor in the amount equal to 15-150 times the minimal salary in the Republic of Montenegro.

(2) Any person in the company or any other form of commercial entity responsible for any misdemeanor referred to in paragraph 1 of this Article shall be fined for the misdemeanor in the amount equal to 2-20 times the minimal salary in the Republic of Montenegro.

Article 26

Any natural person shall be fined for the misdemeanor in the in the amount equal to 2-20 times the minimal salary in the Republic of Montenegro, if:

1) as an owner of the building makes alternations to building that represents materialized work of architecture, without prior offer to the author the alternation the author of the work;

2) without authorization affixes a mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro to its goods or a package thereof;

3) without authorization offers, places into circulation, stores the goods for such purposes or provides services under the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro;

4) without authorization, imports or exports the goods under the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro;

5) without authorization, in its business documents or for advertising purposes, uses the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro;

6) uses a mark created by imitation of the mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro;

7) uses a mark protected by a trademark, a mark for which trademark application has been filed or a mark that is well-known in Serbia and Montenegro, with the addition of the words 'type', 'manner', 'according to the procedure' or a like;

8) fabricates, industrially or handcrafted, products intended to be marketed, based on a protected design or a design for which design application has been filed;

9) uses any product protected by the design right and/or any products fabricated based on a design for which design application has been filed;

10) offers, places into circulation and stores for such purposes any products fabricated based on a design for which design application has been filed;

11) imports or exports any products protected by a design right or fabricated based on a design for which design application has been filed;

12) commits any act referred to in items 8-11 of this Article with respect to products created by imitation of a protected design and/or a design for which design application has been filed;

13) as a gallery owner or organizer of public sale of original fine arts or original manuscripts, within a period of 30 days from the date of sale of original works or manuscripts, does not inform the author of the name and address of his work's seller, the name and address of the new owner and the price for which the work has been sold, or pay to the author an amount equal to 3 per cent of the selling price;

14) when filing an application for depositing a copyrighted work or an object of related right to the authority responsible for the protection of intellectual property rights provides false or withholds true data on copyrighted work or a subject-matter of related right.

15) as a publisher sells the unsold copies of the work as scrap paper without previously offering it to the author or his/her heirs for purchase.

SECTION SIX
TRANSITIONAL AND FINAL PROVISION

Article 27

At the date when this Law comes into force, the provisions of Article 31, paragraphs 1,3 and 4 of the Law on Cinematography shall cease to effective.

Article 28

This Law shall come into force on the eight day after its publication in the Official Gazette of the Republic of Montenegro, and shall be effective as of January 1, 2006.