

the laws⁶¹⁹, it can be also argued that the eligibility given to IP right holders associations to sue infringers can be considered as efficient tool to fight against piracy and counterfeiting cases.

d) Foreign natural and legal persons

By virtue of Article 5(2) of the Berne Convention⁶²⁰ and on the basis of the national codes of civil procedure, foreign natural and legal persons are eligible to protect their infringed rights in the Baltic national courts.

Before the adoption of the Enforcement Directive, the requirement of the “national treatment” of foreign natural and legal persons, who or which seek the protection of their rights, has been introduced into the Lithuanian CCP as well as in the CCPs of Estonia and Latvia. Articles 793(1), 38(1), 5(1) of the Lithuanian CCP constitute that any person is eligible, according to the procedure provided in the Civil Procedural Code, to apply to the court with the aim to defend his (her) rights or legally protect interests that were infringed or disputed.

The same principle was established in the CCPs of Estonia and Latvia and has been regularly applied in the judicial practice of the corresponding countries. Regarding *locus standi* of foreign legal persons in IP infringement cases, one procedural aspect is to be mentioned, though. The foreign legal persons can stand in the courts only by providing duly signed and authorized representation documents. The power-of-attorneys which contain the right to stand in the courts, duly signed, notarized and apostilled, are recognized as appropriate documents allowing the foreign company to start a civil action in the courts of Lithuania.

VI. Concluding remarks

Given that legal traditions, legal particularities and actual IP enforcement status in each Member State should have been taken into account before implementing the Enforcement Directive, it is observed that a legislative (formal) implementation by the Baltic countries omitted those considerations. The relatively speedy implementation of the Directive process by the corresponding jurisdictions was accomplished without considering the specificity of the Baltic region, collecting actual data which would have allowed evaluating the prior-to-implementation national enforcement rules, mechanisms and court practice.

On the other hand, the adoption of implementing amendments to the national legislation was influenced by rapidly changing landscape of IP protection, necessity for

619 The same suggestion to exclude from the implementing amendments to the Lithuanian Copyright Law separate provisions regarding *locus standi* of professional defence bodies can be found in Mizaras, Study on the Implementation of the Enforcement Directive into the Lithuanian Copyright Law, p. 45.

620 Also referring to the scope of Art. 5(2) of the Berne Convention, as examined in Ricketson, Ginsburg, International Copyright and Neighbouring Rights, pp. 319-320.

a more effective protection against IP rights, especially copyright infringement cases. It also depended on the general obligations assumed by the Baltic states to approximate the national legislation with the Community legal requirements due to the accession into the EU.

Some important remarks should be made regarding the implementing amendments in the Baltic legislation which concerned the substantive legal norms that existed before the implementation. The implementation of the Directive does not reveal substantial changes regarding the list of IP rights, also the principle of “fair and equitable remedies, procedures and measures”. Although not much influence on substantive legal rules can be observed, the analysis of the implementing legislation shows that the implementation influenced the regulation of some important substantive provisions in the national IP laws. This particularly relates to (1) *legal standing of licensees* and (2) *presumption of rights related to copyright* which have been amended in Lithuania pursuant the corresponding provisions of the Enforcement Directive. There can be no substantive changes observed regarding *locus standi* regulation in Latvia and Estonia. By giving the right to exclusive licensees to stand in the court to defend their rights under the assumed licenses, which is generally to assure more effective protection of IP rights, can arguably bring new colours into the national IP litigation practice, which before the implementation of the Directive was undistinguished.

By exposing the presumption of rights to rights related to copyright, the proving process in the cases of infringements of related rights can be more simplified. On the other hand, such changes in Lithuanian legislation can bring certain conceptual confusion regarding the essence of the presumption of authorship which, as a rule, is to presume moral rights. Upcoming Baltic national court practice can also illustrate how those amended provisions will be actually applied.

By incorporating the definition of the term “commercial purposes” into the implementing Lithuanian Copyright Law, which can solve an issue regarding varying judicial interpretation of the very term, the practice regarding copyright and related rights infringements is deemed to be more consistent. The national courts in criminal and administrative IP infringements cases, though, will presumably require solving issues regarding application of the term “commercial purposes” in the upcoming practice.

D. Preserving evidence in IP infringement cases and right of information under the national legislation and court practice in view of the implementation of the Enforcement Directive

I. Evidence and measures to preserve evidence in IP rights infringement cases in view of Articles 6 and 7 of the Enforcement Directive

1. General remarks

Timely and appropriate collection of evidence in IP infringement cases, *i.e.* collection of all available information about allegedly infringing copies of IP products or materials as well as technical equipment or devices used to reproduce infringing copies (for example, computer hard-disks, infringing audio and video media, also any information about infringing processes to produce patented products, etc.) plays a paramount role for preparation to hear any IP rights infringement case in the court.

Effective application of measures for preserving evidence serves to facilitate that role. It primarily allows IP right holders, who receive or collect information about alleged infringements of their rights, to assess the situation objectively and, if decided, to submit a warning letter (with a settlement agreement following it), or a substantiated, comprehensive and reasoned civil claim to the court. Furthermore, effective application of measures preserving evidence indirectly assures that the court has all possibly available evidence which is presented by the requesting party. It consequently can allow the court to render a reasoned decision on the merits of the case.

Articles 6 and 7 of the Enforcement Directive have been likewise drafted considering the importance of harmonization of certain aspects in relation to different national provisions regarding evidence and measures to preserve them⁶²¹. Although the national legislation of the Baltic countries contained a number of provisions on evidence and measures preserving them before the implementation of the Directive, certain amendments were to be adopted in order to implement Articles 6 and 7 in view of the aims of the Directive.

The prior-to-implementation national measures for preserving evidence in the Baltic countries, the corresponding amendments which were adopted due to the implementation of the Directive, as well as the national court practice, namely the Lithuanian court practice of so-called *civil (ex parte) searches*⁶²² in IP infringement cases, are further examined.

621 See examination of Arts. 6 and 7 of the Directive in supra § 5A.II.2.a) and in supra § 5A.II.2.b).

622 Although the term '*civil (ex parte) searches*' is not literary used in the national legislation of the Baltic countries, it is hereinafter used to refer to the pre-trial measures for preserving evidence which are applied on the basis of right holders' requests in the corresponding jurisdictions, following the well-established UK practice (the landmark decision in the case *Anton Piller K.G. v. Manufacturing Process Ltd.* [1976] Ch. 55 (C.A.)), also the French practise of