

ers<sup>174</sup> on one side and, for instance, consumers' associations on the other, allow the legislators to implement or adopt legal provisions which mirror the local IP situation and practice, while, at the same time, being in compliance with international obligations.

## *II. Competence and functions of the main national IP institutions*

As a rule, national laws are to be enforced by adopting the national secondary legislation, which concretizes the legislative provisions as embodied in the primary laws. According to the national Constitutions, the responsible institutions approved by the Governments in the field of copyright and neighbouring rights, namely, the national Governments and the national Ministries of Culture, adopt legal acts (regulations, decrees, or orders, respectively) in which concrete enforcement rules are embodied. IP institutions are established and they function under the secondary legislation which clearly list and define their aims, competencies, and functions.

The role and functions of the national Copyright Boards at the Ministries of Culture, the national patent and trademark offices, and the collective administration societies should be especially considered in a discussion on the enforcement of IP rights. Moreover, as follows from the actual practice of application of certain enforcement provisions, the quality and accuracy of the national secondary legislation plays a role. Hence, the effective work of these institutions in the field of drafting laws is highly valuable.

### *1. The Ministries of Culture: the Copyright Divisions and Boards*

With regard to influencing their societies' views and attitude towards intellectual property as well as to their participation in the processes of adopting and amending IP laws, the role of the national Ministries of Culture cannot be underestimated<sup>175</sup>. Since their creation<sup>176</sup>, the Copyright and Neighbouring Rights Divisions and the Copyright Boards at the national Ministries of Culture of the Baltic countries played, and are playing, an important role in both the processes of the creation of the enforcement system of IP rights and the approximation of the EU legal provisions with the national ones.

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174 *E.g.*, the opinions provided by the foreign associations of IP right holders such as BSA, IFPI are meant herein.

175 This could be well illustrated by referring to the objects and activities planned by the national governments and the Ministries of Culture. *E.g.*, one of the priority questions in the program of the Lithuanian Government for the year 2007-2008 was educating the public on IP questions. Moreover, the Ministry is prepared to create an anti-piracy centre concept as well as draft amendments to the Criminal Code and Code of Administrative Offences, as listed in *Report (2007 Annual) by the Lithuanian Ministry of Culture*, pp. 10-11.

176 The Copyright Committee at the Ministry of Culture of Estonia was established in 1992, the Copyright Board in Lithuania in 2000. In Latvia the Copyright and Neighbouring Rights Division at the Ministry of Culture started to function at the beginning of 2000.

From an IP perspective, the main functions of the mentioned divisions and boards cover, *inter alia*: participation in the law adoption processes; participation in and organization of IP-related educational programs; attendance (mainly, as legal experts) at court hearings of IP rights infringement cases<sup>177</sup>. It should be noted that sometimes even very declarative provisions prospects approved by the Ministries of Culture concerning the establishment of a more effective legal system to fight against piracy find their way to actual application. For example, in Lithuania anti-piracy projects can now be partially financed from the state budget<sup>178</sup>, which is considered a big step towards the actual effective implementation of the enforcement provisions.

## 2. The collective administration societies

The national collective administration societies, whose functions were re-established after the independence of the Baltic States<sup>179</sup>, also play an important role in terms of the effective protection of IP rights. Although the national collective societies have their own history, as they existed before the Soviet occupation in 1940/1941 in the Baltic countries<sup>180</sup> (it should also be noted that the legal protection of neighbouring rights in the Baltic countries was introduced only after the Soviet period, meaning that the collective societies had to deal with a relatively new field of IP rights), their role and functions are sometimes falsely interpreted by the general public, which associates them with the institution that functioned during Soviet occupation times, *i.e.* the collective society (the Union Agency of Copyright (VAAP)), which enjoyed a state monopoly and was the sole licensing authority<sup>181</sup>, and which clearly disseminated the Soviet ideal that the state must control all sectors of the country's cultural life. Therefore, the national collective societies, by fulfilling their duties under the provided competence, are still sometimes criticized by Baltic society<sup>182</sup>.

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177 The competencies and functions of the Ministry of Culture and the Copyright Board of Lithuania are listed in Arts. 71, 72 of the Lithuanian Copyright Law. The competencies and functions of the Latvian Ministry of Culture can be found in Arts. 67, 67(1) of the Latvian Copyright Law. For more on the functions of the Estonia Copyright Committee see at *Pisuke*, Estonia: Copyright and Related Rights, pp. 107-108.

178 Under the Order of the Minister of Culture of the Republic of Lithuania on the Approval of the Forms of Rules, Application, Contract and Reports in regard to the Partial Financing of the Anti-Piracy Campaigns from the State Budget, 29 June 2007, No. IV – 421, Vilnius (OV).

179 The collective administration societies have functioned in Lithuania since 1990 (and since 1999 for holders of neighbouring rights), since 1991 in Estonia, and since 1992-1995 in Latvia. See *Baltic Collective Administration Societies' Information (2008)*.

180 For more about the history of the Baltic collective administration societies see at *Pisuke*, Estonia: Copyright and Related Rights, pp. 100, 107.

181 See *von Lewinski*, Copyright in Central and Eastern Europe, p. 44.

182 *E.g.*, the recent dispute in Lithuania between LATGA-A and the company "Hesona" explicitly illustrates that there many remaining "soviet" points of view in regard with an adequate remuneration to be paid to authors on the basis of Art. 33 of the Lithuanian Copyright Law due to the well-established soviet notion that "art belongs to people", as observed following Lithuanian Court of Appeal, Civil Case No. 2-564/2007, *LATGA-A et al. vs. AB "Hesona" et al.* According to LATGA-A information (July 2008), there were more than 250 cases in the

In discussing the collective administration societies concerning the enforcement of IP rights, one important tendency should be taken into consideration. Arguably, with reference to the Soviet Union period, when cultural life was also centrally planned and organized, right holders had less motivation to initiate court actions against infringers of their rights. This tendency is unfortunately obvious nowadays as well, *i.e.* individual right holders are not willing to start legal processes against infringers. This is surely related to the fact that the court proceedings are still relatively long, require an appropriate professional preparation and representation in the courts, and are costly.

### 3. The trademark and patent offices

The first national institutions dealing with IP rights that were re-established after the declarations of independence in 1990/1991 were the national patent and trademark offices<sup>183</sup>. Along with the first new legislation in the field of industrial property, which was adopted immediately after the declarations of independence<sup>184</sup> in the Baltic States, the national patent offices played an important role in recreating the national system of registration of IP rights and the work of the national patent offices that functioned during the first independence<sup>185</sup>. They also had to become an equal member of the European patent<sup>186</sup>, trademark, and design systems gradually, by ensuring the protection of community rights as well as the rights under European patents.

In terms of patent or trademark litigation, the pre-trial procedures which are held at the national patent offices, namely, the cases heard by the Board of Appeals, should be duly considered. As stated in the national industrial property laws, disputes regarding decisions related to industrial property rights taken by the national patent offices are to be firstly resolved by the Board of Appeals<sup>187</sup>. The decisions

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courts (in the period January 2000 to July 2008) against user-companies which did not pay royalties.

- 183 Under the Order of the Government of Lithuania, the State Patent Bureau was established and began functioning in 1991. In the same year the Patent Offices started their functions in Estonia and Latvia (hereinafter – the “*national patent offices*”).
- 184 Such as the 1991 Order of the Government of Lithuania on “Registration of Firm Names” or the 1992 Order on “The Legal Protection of the Industrial Property in the Republic of Lithuania” which provided the order under which the patent, trademark, and design registration documents were to be registered at the State Patent Bureau, etc., or in Estonia in which the national patent office started its work with a registration of trademarks and service marks under the 1992 Trademarks Act by the Supreme Council, or Latvia in which the first patent application after independence was filed in February, 1992.
- 185 During the first independence, the patent offices functioned from 1919/1920 until 1940 by registering industrial property rights.
- 186 Starting with Estonia, which joined the EPO on 1 July, 2002. Lithuania joined the organization on 1 December, 2004, and Latvia on 1 July, 2005.
- 187 *E.g.*, Art. 40(1), Lithuanian Patent Law; Art. 27(1), Latvian Patent Law

can be appealed to, respectively, the Tallinn Administrative Court<sup>188</sup>, the Riga Regional Court and the Vilnius District Court<sup>189</sup>. Based on statistical data on appealed decisions of the patent office in Lithuania, the tendency that the Board of Appeals is playing an evidently important role is observable<sup>190</sup>. Moreover, the specialization and work of the members of the Board of Appeals is likewise significant in the pre-trial procedures.

### *III. The role of the government institutions responsible for IP rights enforcement*

#### 1. The police authorities: a good start in IP rights infringement cases is crucial

Regarding prosecution of infringers of IP rights and as far as the administrative and criminal enforcement of IP rights is concerned, the police fulfil an important function in terms of initiating and leading criminal and administrative IP cases to the courts<sup>191</sup>. It is observed that during the last decade, the national Baltic police authorities mainly dealt with copyright and neighbouring rights infringements<sup>192</sup>. Considering such observations, the main aspects of police functions in the primary investigation process in such cases should be noted.

Primary prosecution in administrative and criminal IP cases is held by the police officers, meaning that they can initiate actions either based on an individual complaint submitted by the right holders or right holders associations, or *ex officio*. Generally, after a case against the IP infringer is initiated, the functions of the police authorities, most importantly, comprise, *inter alia*, evidence collection and the preparation of the procedural documents (a protocol, a document on a seizure of infringing

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188 Art. 30(1) of the Estonian Patent Law establishes that an appeal against the decision of the Patent Office can be filed either to the Board of Appeals or to an administrative court.

189 The number of cases regarding invalidation of registered trademarks is dominant among IP cases in Lithuania, also Latvia; as follows from *Questionnaire Regarding Implementation of the Enforcement Directive in Lithuania in 2005-2008. Answers by Lithuanian Supreme Court, the Court of Appeal and the Vilnius District Court (unofficial publication)*, also *Latvian Ministry of Justice Information (2008) (unofficial information)*.

190 E.g., in 2007 the Board of Appeals of the Patent Office considered 197 protests and 10 appeals in LT. The number of the enlarged European patents increased 10 %, whereas the number of the registered trademarks 29 %; see more statistical information in *Lithuanian Patent Office Information (2008) (EV)*.

191 See more information about administrative and criminal liability for IP infringement cases in infra § 5G.I. *Note*: there were also special IP units established in the national (economic, tax, or finance) police departments in the Baltic countries.

192 As referred to in the Letter by the European Committee at the Government of the Republic of Lithuania No 10-488 as of 19 April 2002 (OV), the effective police activities in fighting against infringements of IP rights helped Lithuania to strengthen the protection of IP rights and to fulfil its international obligations, by making an example that the commonly-named finance police initiated only 81 administrative cases against the infringers of IP rights during 1998-1999, whereas there were 147 administrative cases already initiated in 2000.