

aware about healthy and safety risks that might occur while using counterfeited products, small and medium size companies were informed about the positive effects of using legal products<sup>255</sup>, etc.

The transformation of local “IP mentality” on business and state institutions level, progressive consumers’ views have an immediate connection to changing public standpoints regarding IP piracy and counterfeiting which rates can be reasonably considered as a signal indicator of an actual success of the local IP enforcement systems.

## II. *IP piracy in the Baltics: prevailing tendencies and impact on the national IP rights enforcement legislation*

In view of the overall IP products piracy rate in the EU in general and in each of the EU member states, the piracy rate in the Baltic countries is still relatively high<sup>256</sup>. As the indicator to depict and to illustrate the actual IP enforcement situation in each and every country, the information regarding piracy level in the Baltic states can also demonstrate those legal issues due to which the fight against counterfeits and piracy in the local markets does not achieve expected results, although the EU-level legislation in those countries is in place<sup>257</sup>.

The piracy phenomenon in the Baltic countries has an immediate connection with the following factors:

*First*, piracy is highly influenced by the geographical position of the Baltic countries, meaning that in most cases they are so-called “cross-road” countries for the counterfeits which are imported from the neighbouring countries. The Baltic countries have a comparatively low level of domestic piracy; however, they suffer from the import of pirated goods from other, mainly Central European countries<sup>258</sup>, also transshipment of pirated and counterfeited goods from Asia, in particularly China<sup>259</sup>;

*Second*, local “IP mentality” and consumers’ attitude towards the use of IP products is very much influenced by the long-history of the suppressed protection of intellectual property rights during the Soviet occupation when such protection was on generally low level<sup>260</sup>;

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255 As referred in *Datamonitor, Growth of the Software Industry in Lithuania (2001)*, pp. 11, 12.

256 See *refs.* to software piracy rates in *supra* Ft. 16 herein. As reported in *BSA/IDC 2007 Global Software Piracy Study*, in 2007 the software piracy rate in the Baltic countries is higher than the overall rate in the EU (35 %) and in other countries, for example, in Slovenia 48 %, Finland 25 %, Germany 27 %. According to *2008 Special 301 Report IIPA Special Mention: Lithuania*, pirated products of sound recordings and musical compositions amount to 80 % in Lithuania (it reduced only 5 % since 2003).

257 *Note*: the piracy rates, though, should be examined considering certain methodology used to estimate them, *i.e.* not all business sectors are covered by estimating illegal software used, as follows from *BSA/IDC 2007 Global Software Piracy Study*.

258 See *von Lewinski*, Copyright in Central and Eastern Europe, p. 59.

259 See also additional data and *refs.* in *infra* § 5G.II.

260 See overview in *supra* § 3B.II.

Third, piracy is also linked to the fact that “consumers are still swayed by the enormous price differential between legal and illegal goods”<sup>261</sup>. Although local consumers’ attitude very much changed in the recent decade (mainly as a result of many educational programs carried throughout the Baltic countries that helped to increase awareness about a threat of illegal use of IP products), some examples illustrate that the use of illegal copies of IP products is still widespread<sup>262</sup>. Moreover, the theft of IP is still not equated in the public mind with other offences against property such as fraud, theft, etc. in other countries<sup>263</sup>, and this is also true for the Baltic societies.

By virtue of the reports regarding the piracy levels and the main IP enforcement issues in the Baltic countries, one may see that piracy has recently been changing its forms. It can be explained by pointing out the changing economic situation in the Baltic countries, the wide-spread awareness regarding illegal use of pirated products and also proclaimed benefits from the use of legal products. The growth of internet piracy, the spread of piracy at the borders, still very high level of music and recording piracy as well as optical media piracy<sup>264</sup> are indicated as the highlighted issues which should be tackled by applying effective and adequate enforcement measures.

The effective application of enforcement measures, for instance, civil remedies, can be already observed in the national court practice which dealt with the cases regarding illegal use of IP products. As an example, software copyright cases, namely the so-called “end-user” piracy or “hard-disk loader” piracy<sup>265</sup> cases can be highlighted in this regard. During 1998 – 2000 many of them have been initiated, following the police raids carried on in Lithuania<sup>266</sup>. Many of the administrative, criminal and civil cases which were initiated on the basis of illegal use of software products found during the raids ended successfully in the courts which adopted the decisions to impose administrative or criminal sanctions to the infringers of IP rights, and/or to adjudicate civil remedies, namely, the compensation for damages occurred

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261 See von Lewinski, Copyright in Central and Eastern Europe, p. 59.

262 E.g., as follows from the sociological study performed in Lithuania, 44,1 % respondents answered that the prohibition to make private copies at home will not stop from making them, and 38,7 % answered that the prohibition to make copies on the internet will not stop such activities, as observed in *Kiškis, Mizaras*, Research on Outcomes of the Mechanism of Compensation for Reproduction of Works for Personal Purposes, p. 4.

263 See *Blakeney*, Counterfeiting and Piracy in the EU: Overview, p. 5.

264 E.g., Lithuania is indicated as a transhipment of pirated optical media point in the Baltic region in 2007 with a reference to the ineffective border measures and, *inter alia*, *ex officio* actions that the customs authorities are to take. The reference is also made to the known blank infringing optic disc plant in Lithuania with huge revenues and a widespread market covering other two Baltic countries, as indicated in 2008 *Special 301 Report IIPA Special Mention: Lithuania*. The case regarding optic disc plant in Lithuania has been already initiated (case is pending): see Lithuanian Court of Appeal, Civil Case No. 2A-123/2008, *Prosecutor of Vilnius City District, La Face Records, LLC., Virgin Records America, Inc. et al. vs. UAB “Baltic optical disk”*.

265 See *Balcevič et al.*, Protection of Copyright and Neighbouring Rights: Is it Easy to be a Creator in Lithuania, pp. 54, 55.

266 In most of the cases the public opinion regarding police actions against infringers was negative, as observed in *Infobalt Press Releases (2000)*, however, they were necessary to begin certain processes to fight piracy and counterfeiting.

because of those infringements have been applied<sup>267</sup>. Such successful court practice in IP infringement cases played an enormous role in reducing software IP piracy in the Baltic markets.

## **B. Aspects of the Baltic IP research, innovation and industry**

### *I. General remarks*

As rightly referred, “the enforcement of intellectual property rights thus protects local commercial and industrial innovation, as well as encourages technology transfer and foreign investment” and has an immediate effect on the countries’ economic, social, cultural growth<sup>268</sup>. It is also to contribute to technical innovation<sup>269</sup>.

This is noticeable for the Baltic countries which are building their economies, improving their IP legislation and fighting against IP piracy which, needless to discuss, has negative economic impacts on their economies<sup>270</sup>. It is believed that the success of local commercial and industrial innovation also starts with IP teaching and research at the level of local universities, other educational as well as scientific institutions. It should be noted likewise that before the World War II intellectual property-orientated research and teaching in the Baltic countries played a very modest role. It could be conditioned by the fact that the Baltic states as well as their legal systems, including IP legislation and related infrastructure, were developing during the period of the first independent republics (1918/1919 – 1940/1941), and only, for instance, in Estonia regular scientific research and teaching began at the beginning of the nineties at the University of Tartu where it has been introduced as an independent field of research and education<sup>271</sup>.

The described aspects of such local teaching and research arguably helps to depict the features of local innovative and creative context of the Baltic countries which legislative provisions on enforcement of IP rights are further analysed.

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267 See more about “the compensation instead of damages” provision and its application in Lithuanian court practice with *refs.* to landmark court decisions on the subject-matter in *infra* § 5F.I.1.

268 See *Blakeney*, Counterfeiting and Piracy in the EU: Overview, p. 3.

269 See more in *Straus*, Reversal of the Burden of Proof, the Principle of “Fair and Equitable Procedures” and Preliminary Injunctions under the TRIPS Agreement, p. 808.

270 According to *BSA/IDC 2007 Global Software Piracy Study*, in 2007 the losses from using illegal software in the Baltic countries amounted (\$ Million): 20 \$ in Estonia, 29 \$ in Latvia, and 37 \$ in Lithuania; and in comparison with 2006 those losses increased.

271 See *Pisuke*, Estonia: Copyright and Related Rights, p. 103.