

**METHODOLOGY OF COLLABORATION
BETWEEN RESPECTIVE INSTITUTIONS WITH
POWERS IN INTELLECTUAL PROPERTY
RIGHTS ENFORCEMENT**

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1. INTRODUCTION

1.1. Object and objective of the analysis

In the first volume of the enforcement methodology we focused mainly on the static description of the system of intellectual property rights and the system of the enforcement of these rights; the methods that prevailed in our analysis when describing these - in their essence normative - phenomena were juristic ones, which applied to the description and interpretation of effective legal rules establishing the particular legal institutes and the framework for the activities of respective institutions with powers in intellectual property rights enforcement. This juristic view was extended especially in the third part of the first volume by some metajuristic standpoints, when we described the intellectual property rights enforcement as a certain normative but at the same time social system. We thus included particularly in the third part of the first volume of the methodology also some contemplations from the field of sociology, economy and even social ethics. These considerations were indented only to extend and add to the juristic viewpoint of the described phenomena, in order that the setting of our considerations into this broader metajuristic framework served as a background for more complex explanatory deliberations within the evaluating of the existent legislation, which in a number of cases must necessarily overreach the extent of a mere exegesis and be supported by a value framework contentually defining all more complex normative systems.

In this second volume we now present we would like to elaborate on these data. In this volume, the object of our analysis will not be the static description of certain mostly normative phenomena anymore, but we will shift our focus towards the dynamic functioning of the system of intellectual property rights enforcement including the evaluation of the functioning of the system in terms of the meeting of the system objectives.

Within the framework of thus oriented considerations we will further focus on some factual limitations and reserves in the functioning of the system of industrial property rights enforcement, the disclosing of which was made possible due to the discussions of the first volume of the methodology with its audience consisting of the relevant state administration authorities and the suggestions to the first volume submitted by them.

Another area where we intend to expand our viewpoint is the complementing of our juristic analysis hitherto made from *de lege lata* point of view by *de lege ferenda* viewpoint, in particular in relation to the factual imperfections and reserves which we have discovered in the functioning of the system, or which have been communicated to us. Our approach in this matter is based on the reasoning that in relation to some of the values internalized by the system of intellectual property rights enforcement which also create a part of the Czech constitutional order, in particular in relation to the value of legal certainty, legal order stability and the protection of the confidence of the citizens in law, the priority is to attempt to make the best of the hitherto legislation framework within the attaining of the goals of the intellectual property rights protection system; indeed, it was with a view to the achieving of such goals that the relevant legislation was adopted, and it should therefore be assumed that it can serve sufficiently to the achieving of the objectives implicitly or even explicitly declared. This approach places *de lege ferenda* consideration to the second position in the formulation of our conclusions and recommendations how to improve the present state. We decided for this approach being fully aware of the fact that the legislative power in the Czech Republic pertains within the framework created by the Constitution and constitutional order to the Parliament of the Czech Republic. Therefore, we will rarely resort to the formulation of concrete recommendations from *de lege ferenda* area, just in those exceptional cases when it appears as especially advantageous with a

view to the effective legislation as well as to the present degree of actual operation of state administration authorities or other institutions acting in the intellectual property rights enforcement. Usually, we do so in concrete consultations with the representatives of relevant authorities in this field.

Our *de lege ferenda* considerations however cannot end with these concrete recommendations from *de lege ferenda* area. Such considerations are a natural complement of broader (not only exegetical) explanatory considerations in the evaluation of the effective legislation and do not necessarily lead to concrete recommendations in the area of legislation. It is a known fact that a legal doctrine affects the content of the adopted legal regulations in most cases indirectly, without formulating concrete conclusions or recommendations for a new legislation, as the need for legal regulations often stems already from a mere evaluation of the legal regulation and its interpretation, or maybe from the presentation of various possibilities of an interpretation, in the legal doctrine. Already the formulating of such “weaker” doctrinal conclusions enables in a number of cases to identify present problems and at the same time also the structures in the framework of which the solution can be optimally developed. In this way, also the undesirable intermeddling of the legal doctrine is avoided into the areas in which also broader value criteria collected and regulated by means of political decisions should apply.

On all accounts, in the second volume of the methodology that we now present, we will focus more on the evaluation of the existing legislation as well as on the functioning of the enforcement system, while we are fully aware that these systems, and the system of intellectual property rights as a normative system in particular, are by their nature evaluative systems, i.e. systems, whose operation is based on continual evaluation of factual states, i.e. especially of the behaviour of the legal norms recipients from the point of view of the legal norms forming this system including its contents. Therefore, it will be impossible for the external evaluation of both of the systems to disengage from the internal evaluation made by the systems themselves, in order that an undesirable abstraction from the subject itself of our analytical interest.

1.2. Methodology background

As already stated above, in the first volume, juristic methods were employed in the first place, as they are usually used in legal doctrine for the descriptions of normative phenomena and particularly the effective legislation. These traditional methods were supplemented only to a very limited extent by methods, which enable to exceed the framework of a mere description and exegetical interpretation of legal status. One of such methods was also the conducting of a certain basic grade of sociological observance, whose results were available to the authors from open sources, such as the Journal of the Industrial Property Office or the web sites of some institutions, as well as the including, also in a very limited scope, of certain amount of economic empiria available from economic press and spread presently in generally accepted conclusions of economic science. Even when we accepted those extraneous features, we however turned again and again to the juristic root of our analysis, where the internalization of these features could serve especially to the teleological considerations related in particular to the meaning and purpose of the relevant legal regulation.

In the submitted second volume of methodology, named “Methodology of collaboration between respective institutions with powers in intellectual property rights enforcement” not without reason, we will elaborate on these methodology sources. In view of the mostly juristic focus of our work, our methods will also remain predominantly juristic. The starting point of all our contemplations will be the description and interpretation of present legislation. In contrast to the first volume, nevertheless, our deliberations will not be limited to, however broadly perceived,

interpretation of present legislation, but will include also the description of the actual activity of respective institutions with powers in intellectual property rights enforcement, above all with a view to their mutual collaboration, but also with a view to further possibilities of such collaboration which have been made possible by the present legislation. As already notified above under point 1.1, we will go even further and will evaluate the system of intellectual property rights enforcement as a system whose indispensable part are institutions with a personal substrate (above all, administrative agencies) with competencies in such rights enforcement, as well as the evaluation – in certain aspects – of (substantial-law) system of intellectual property rights. On the basis of such considerations we will then continue with general and in especial cases also concrete reasoning from *de lege ferenda* area in relation with the meeting of the objectives of the system of intellectual property rights enforcement.

Such contentual overlap of our work focus will undoubtedly demand also methodological overlap as far as the processed employed in our research are concerned. The indispensable methodological instrument but also legitimization source of our work was the consultations with relevant institutions whose functioning we are to analytically evaluate, discussions both formal and informal with the representatives of such institutions and careful study of their suggestions supplied especially in the course of the period after the completion of the first volume of methodology and its submitting to such institutions representatives. These communication processes which can be *com grano salis* denominated as consultations (in the loose sense of the term) has opened for us at the same time in a number of cases the view of some empirical knowledge gathered within the framework of the institutions activities, may it concern the activity in itself (i.e. is a sort of an self-reflection of their own operation) or the procedures and activities of other institutions participating in intellectual property rights enforcement, but also other elements of the system of intellectual property rights enforcement, in particular the intellectual property rights holders and infringers or alleged infringers. We will attempt at making the full use of such empirical knowledge conveyed to us by the individual institutions, which were consulted in the second volume of methodology, either by means of direct incorporation into the text we are submitting or by using such knowledge for further reasoning as only implicit resources.

However, the consultations with the respective institutions with powers in intellectual property rights enforcement were not of only static character consisting in the gathering and communication of a certain type of empirical information, but involved also a dynamical component consisting in direct sharing of experience with the functioning of the enforcement system, if it reflects on the activities of the respective institutions, and suggestions to the improvement. Within these consultations, also some suggestions from legislation area were touched, even if most of such suggestions were restricted to the maximum use of the margin of manoeuvre provided respectively to the individual institutions by the national legislation, as is in accordance with our principle of prioritization of the non-legislative measures presented under point 1.1. In this scope, our deliberations based on the consultations with the addressed institutions will overreach the area of theoretical presentation, and thus also the entire methodology spectrum available, and will move to the area which can be with some reservations denoted as the area of applied research.

In this area, the prevailing applied method is the teleological method which makes it possible to set within the framework of general objectives and values defining the content of the intellectual property rights enforcement system specific groups of partial goals at various levels within an imaginary measuring scale of the individual finalities monitored by the rights enforcement system as a complex as well as by the individual institutions which this system consist of. Some elements identified in the course of the creation of the first part and the consultations which followed as the means, or more precisely, possible means to the achieving of some of the

objective of intellectual property rights enforcement system as a complex will then within the framework of this teleological procedure appear already as particular objectives, while the crux of our survey will be shifted towards the searching for other means – not only from the area of legislation – to achieve the particular objectives. Obviously, in all this, the primary method of juristic analysis which we apply in both volumes of the presented methodology in combination with necessary features of synthetical contemplations using especially the potential of the conclusions of the first volume of this methodology as well as the whole spectrum of the consultations with the individual addressed institutions should still be kept in view and not abandoned altogether. Especially these synthetical contemplations will make it possible to identify among all the possible relevant elements of teleological contemplations the most adequate ones from the point of view of the meeting of both particular and general goals of the enforcement system, especially with a view to the need of mutual congruency between the individual newly set particular objectives.

Similarly to the first volume of this methodology, also in this volume the specific procedures will be supplemented by using empirical knowledge conveyed by respective institutions with powers in intellectual property rights enforcement as well as through the newspapers and specialized legal or even economic periodicals. The indispensable source of information of empirical nature is also the experience of the authors of the methodology from their work in a law office specializing mainly in the intellectual property rights.

2. COLLABORATION IN THE AREA OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

2.1. Collaboration as a notion

2.1.1. Collaboration – legal notion?

For the defining of the content of the second part of the presented methodology, collaboration is the key word. According to the requirements of the contracting party, this part shall be focused on the methodology of the “collaboration of the respective institutions with powers in the enforcement of intellectual property rights”. As the “collaboration” between the respective institutions will be mentioned repeatedly in the following text, we see it as appropriate to premise several notes on what will be meant by such collaboration and what indeed are the possible forms of the potential collaboration between the respective institutions with competencies in intellectual property rights enforcement.

Unlike a whole range of other notions used in the definition of the thematic specialization of the methodology, such as “power”, “competence”, “jurisdiction”, “public administration authority”, but also “institution”, the notion “collaboration” is not a primarily legal one. The word comes from general language and denotes a certain form of work of several persons or institutions, which is characterized by the contributing of such participating persons or institutions to the work or activity being conducted. The dictionary of literary Czech language defines the notion “collaboration” as “work common to two or more persons or institutions”, stating “concurrence” as a synonym.

However, a conclusion that the content of the notion „collaboration” lacks legal relevance would be wrong; this applies especially to the area of administrative law. Without directly mentioning “collaboration”, the effective code of administrative procedure (Act No. 500/2004 Coll.) reminds in the provision of section 8 that “administrative authorities pursue the mutual accord of all simultaneous procedures related to the identical rights or liabilities of the concerned person”. The same provision of the code of administrative procedure orders administrative authorities to notify without undue delay the concerned person of the fact that a number such procedures proceeds simultaneously at various administrative authorities or other public authority bodies. The provision of section 8 paragraph 2 of the administrative procedure code then goes even further and explicitly states that “administrative authorities collaborate with a view to good administration”. The normative content of the lastly cited provision is certainly limited; however, we do not believe that this could be a mere declaration without any normative significance. The word “collaborate” used in the indicative mode of the verbal expression of the relevant legal rule should be perceived also in its normative sense, as an expression of the obligation of administrative authorities to collaborate. Furthermore, the cited provision is important also because it expresses the principle of good administration. This especially broad and in its essence value principle stems from the experience gained in the operation of all the member countries of the European Union and is transmitted as a concept in European Union context, especially within the framework of the code of good administrative behaviour. The term good administration covers the partial principles of legality, ban of discrimination in the sense of equal treatment of all persons, the principle of proportionality and the principle of legitimate expectations; a number of procedural principles then connect with these rules, especially from the area of administrative proceedings principles. The meaning of the notion good

administration can be described by such concepts as procedural correctness, due diligence and legitimate expectations, equality and adequacy and last but not least the observing of *sic utere tuo, ut alienum non laedas* principle.

After this reminder of the legal relevancy of the notion “collaboration”, we can go back to the analysis of the concept as such.

2.1.2. Collaboration in the area of public power execution

In general context, the notion “collaborate” designates any mutually advantageous activity of anyone or institutions in any work, however, in the context of public administration it is obvious that the activities of public administration and possibly of other bodies (courts) exercising public power in relation to intellectual property rights enforcement should be understood by the “work”. As rather extensive part of the first volume of methodology (point 3.2) dealt with the analysis of (decisive and other) activities of all these authorities, it is sufficient at this point to just refer to those descriptions. In this respect, it should be also reminded that as long as such activity consists in state authority assertion, the principle expressed in article 2 of paragraph 2 of the Charter of Rights and Freedoms applies in the full extent; the state authority can thus be asserted only in cases and to the extent defined by law, in the manner stipulated by the law. All forms of administrative activities (including actual operations) can be used in state administration only on condition that they are legally based, i.e. these must be such forms of activities, which are at least permitted by law, if not directly imposed. Also, it should be kept in mind that the activities of state administration subjects are directed towards the satisfaction of public (general) interest, while the criterion of public interest is from the legal point of view in the evaluation of the activities of administrative authorities always also the criterion of such activities legality.

The collaboration of the respective institutions with powers in the enforcement of intellectual property rights, if these are state administration bodies, thus must consist entirely in the fact that each of the administrative subjects conducts activities directed towards the satisfaction of public (general) interests pursued by the respective bodies, while the respective bodies act in such a way as to make it possible and easier for each other to realize the respective competences and powers according to their purposes. Within the framework of intellectual property rights enforcement, what is specific about the public interests pursued by the respective public administration authorities participating in the intellectual property rights enforcement is the fact that the public interests pursued by the respective authorities should basically not contradict each other. The common public interest of the authorities in the respective areas is in the first place the prevention and abatement of intellectual property rights infringements, and within this framework the protection of the rights of intellectual property rights holders; as we established in the first part of the methodology, these (subjective) rights create indispensable basis for the activities of any authority in the field of intellectual property rights enforcement, as all these rights are in their essence (subjective) private rights.

Despite this common interest, there are a number of specific public interests pursued by the respective bodies with powers in intellectual property rights enforcement, which need not necessarily be entirely congruent and whose observation by the respective authorities can call for somewhat different stresses and priorities in their activities. The collaboration of these respective bodies thus should not prejudice the consistent observation of those individual particular public interests and must not in any case exceed or abuse their respective powers. It should also be taken into consideration that in the whole range of the activities of public administration, the principle of competence speciality applies, according to which the administration can conduct

only activities focused on the realization of its purpose; from this principle also the positive obligation derives not to discontinue these activities, as well as the negative obligation to abstain from activities which would limit or impede the conduct of those activities directed towards the accomplishment of the functions of the respective authorities.

2.1.3. Forms of collaboration explicitly imposed by law and other forms of collaboration

From the viewpoint of the legal basis for the collaboration we can discern between the cases where a certain form of collaboration with other public administration authorities is to a certain public administration body (administrative office) imposed directly by law and cases where a certain form of collaboration (i.e. specific form of activity of an administrative body in the concurrence with another administrative body) is not directly imposed by law, but results indirectly from legal definition of the purpose of the relevant authority including the definition of such authority competence and powers; under all circumstances it must be maintained that any legally admissible form of collaboration of administrative bodies must be at least covered by the effective legislation in the definition of public interests, which have to be pursued by the respective administrative bodies when exercising their powers.

The example of a form of collaboration explicitly presumed by law is e.g. the power (and competence) of the State Agricultural and Food Inspection to issue certificates for the registration of appellations of origins and geographical designations in the registry (section 3 paragraph 4 letter d) of Act No. 146/2002 Coll., as amended); this certificate is issued for the Industrial Property Office which decides on the registration of appellations of origin and geographical designations in the registry.

The example of collaboration which is not defined by explicit legal provision can be the providing of information on the state of industrial property rights registration by the Industrial Property Office for the individual state administration authorities participating in the intellectual property rights enforcement, such as customs authorities. Although this activity is not explicitly stated either in Act No. 14/1993 Coll., on Measures Concerning the Industrial Property Protection, or in any other act as an activity which the Industrial Property Office is supposed to conduct, it is not possible in view of public interest to arrive at a conclusion other than this form of collaboration is necessary for the Industrial Property Office to perform its function and that it is covered by public interest to provide protection of industrial property and to inform the public of the state and content of industrial rights registration, which are both components of the Industrial Property Office function.

2.1.4. Active and passive collaboration

In addition, active and passive collaboration can be discerned.

The active collaboration consists in the relevant administrative authority conducting a certain positive activity in relation with another authority, e.g. issues reports or statements, supplies samples, carries out actual operation, participates in consultations or similar.

As passive collaboration such situations can be described when an administrative authority just executes its powers and carries out activities which are a part of its function, without coming into direct contact by the conducting of such activities or by their results with another administrative authority. An example can be the administration of the patent register and other

registers of industrial rights by the Industrial Property Office. This activity certainly is crucial for the informing of both private persons and other administrative offices of the state and registration of industrial rights and significantly facilitates the collaboration between public administration authorities with powers in intellectual property rights enforcement, as each of the authorities has access to the public registers and to possibility to search in them. However, this can not be perceived as active collaboration of the Industrial Property Office with another authority, as the Industrial Property Office does not submit the results of its activity to another authority or body, conduct the activity on their request or motion or (in the actual conducting of the activity) comes into contact with such offices or bodies. Also these forms of activities of administrative bodies should nevertheless be in our opinion listed under the term collaboration in the broader sense of the word, as these forms of activities are indispensable in the conduction of activities and execution of authorities of other public administrative bodies with powers in intellectual property rights enforcement, in contrast to other forms of activities, which do not directly affect the conducting of activities of other public administration bodies (e.g. the deciding on the registration of a trademark into the register, unless the applicant is one of state organizational components).

2.1.5. Collaboration invitational and spontaneous

The forms of collaboration between respective institutions with powers in intellectual property rights enforcement can be further split into collaboration invitational and spontaneous. This division partly relates to both of the previous classification, but is not identical to any of them.

The invitational collaboration is a form of collaboration where the collaborating body is directly addressed by another authority, office or institution with request of a certain form of collaboration, i.e. usually a certain result of administrative activity of the respective particular (addressed) body. Again, an example can be a customs authority approaching the Industrial Property Office with a request of a confirmation that a certain industrial right is effective at a certain time, who is its holder and what is the content of the entitlement. This is an active collaboration, without direct legal basis, although the invitational form of collaboration can be in particular cases also explicitly legally based (however, it could be hardly conceived that this could be a passive form of collaboration).

The spontaneous form of collaboration consists in a certain public administration authority (office, institution) making available the results of an activity or the activity itself for another authority (office, institution), without the authority's (office, institution's) request. An example can be the placing of certain decisions of other pieces of information at a common web site created with a view to coordinating the activities of intellectual property rights enforcement. Also the spontaneous forms of collaboration can occur both in cases of collaboration with explicit legal basis and cases without such explicit legal basis, as well as in cases of both active and passive collaboration.

2.1.6. Collaboration provided, demanded and mutual collaboration

The last criterion of classification worth mentioning in our opinion is based on the relationship between the collaborating authorities. The subject of this classification is not the collaboration as such, i.e. the concurrence of the collaboration bodies, but the necessity of each individual authority participating in the collaboration. From this point of view, the collaboration can be divided in collaboration provided, collaboration demanded and mutual collaboration in the stricter sense of the word.

Collaboration provided is the activity of such administrative authority (office, institution), which provides certain activity for another authority (office, institution), or possibly provides a result of such activity to such body; the body then plays an active part within the framework of the collaboration.

On the other hand, demanded collaboration occurs when a certain public administration authority (office, institution) needs for the proper conducting of activities directed towards the realization of the purpose of such authority another authority to co carry out a certain activity, or provide a certain result of its activity; this is then demanded collaboration on the part of such body.

In some cases then mutually collaborates several administrative authorities (offices, institutions), without it being possible to discern whether one of such bodies demands a certain activity or results of such activity from another, and which one is then in the position of the providing and demanding body; in such a case it is mutual collaboration in the stricter sense of the word. An example can be the above-mentioned common placing of decisions and other kinds of information at a shared web site (portal).

3. ANALYSIS OF THE SYSTEM OF COLLABORATION FROM DE LEGE LATA POINT OF VIEW

3.1. Analysis of the particular kinds of activities of institutions with powers in intellectual property rights enforcement

As advised earlier, our observations will be in this part focused especially on actual activities of the respective institutions with powers in intellectual property rights enforcement, particularly with respect to the mutual collaboration of such institutions. In order to analyse these activities, it will be necessary in the first place to classify the particular activities according to their nature into certain groups, which could then create the subject of our closer interest and which would show common specific characteristics, either within one or more institutions conducting such activity. Such analysis will then make it naturally possible for us to immediately proceed with the analysis of the particular relations of the collaboration binding the individual institutions participating in the intellectual property rights enforcement system in their mutual collaboration of any sort (see 1.3 above).

First of all, it must be stated in respect that the individual kinds of activities of the institutions within the system of intellectual property rights enforcement are not directly governed by any law or other legal regulation; in other words, the classification of such activities does not originate from effective legislation, with the exception of individual activities to which the respective state administration bodies are authorized. The classification that we now present is an ad hoc one, created for the purposes of our analysis, especially with a view to the analysis of the functioning of the mutual collaboration of the individual institutions in the conducting of such activities.

It ensues from the practical character of our classification that the presented sorting lacks unified classificatory criterion. As already mentioned above, the individual character of the respective kinds of activities carried out by the institutions participating in the enforcement of intellectual property rights can be considered as a certain classificatory criterion. When using the term “character”, we mean especially the actual nature of these activities from the point of view of the functioning of the respective institutions, not the legal nature. Thus, our classificatory criterion is not to what extent or whether at all a particular activity is regimented by law, or more precisely, by a concrete act, but a typical manner in which the respective administrative authorities or institutions proceed when conducting such activity.

Also, it is not decisive from our classification point of view to which extent the legal relations can be influenced by the particular kind of activity, rights and justified interests of individual persons who are or can be in this respect subjected to the relevant executor of public administration or power. This is however a very significant aspect from the legal point of view, which is why, although we will not employ this aspect as a classificatory criterion, we will pay attention also to these mostly legal aspects in the analyses of the individual kinds of activities where appropriate.

The nature of the typical activities carried out by the individual institutions participating in the system of intellectual rights enforcement arises and can be described only within a definite unified system of the enforcement of these rights. It is only within this system that the nature of the relevant activities can be discerned by which the respective activities are typically distinguished from other kinds of activities within the framework of one system. The criterion of the typical nature of the particular activities thus necessarily results in the evaluating of the respective particular kinds of activities from the point of view of their rank and function within the whole system of intellectual property rights enforcement. The static criterion of typical

nature thus gets into dynamic viewpoints of teleology order, which again enquire about the functions of the individual kinds of activities within the whole system of intellectual property rights enforcement and its practical operation. Such contemplations can also create a sort of a pre-stage for the analysis of processes of mutual collaboration of the respective institutions with a view to the attaining of mutual objectives of the intellectual property rights enforcement system as a whole.

Let's remind that the specific objectives of the intellectual property rights enforcement system characterizing this system as a whole are in particular:

- the ensuring of the protection of private intellectual property rights;
- the ensuring of the observation of the concurrence of the behaviour of particularly economic players but also any other persons with the law in the area of intellectual property;
- the ensuring of the actual enforceability of the rights and entitlements of individual intellectual property rights holders with a view to the full realization of economic potential of such rights;
- the prevention of intellectual property rights infringements;
- the informing of the public of both (subjective) intellectual property rights and (objective) law in the area of intellectual property and on the state of the enforcement of these rights (see part 3.1.7.1 of the first volume of the methodology).

Naturally, within the framework of the operation of the individual institutions, there is a whole range of particular goals pursued by the particular activities of the institutions, which serve to attain these specific objectives characterizing the system of intellectual property rights enforcement as a whole.

With all such particular activities, or rather, particular goals, it is nevertheless possible to observe a direct relation with the attaining of some of the above-defined objectives of the system of intellectual property rights enforcement as a whole. While the institutions with powers in intellectual property rights enforcement participate directly in the attaining of the specific goals of the system of intellectual property rights enforcement as a whole through some of their activities, other activities of theirs are of preparatory, auxiliary or supportive nature. The degree of the correlation of these individual mediating activities with the actual attaining of the specific goals of the system of intellectual property rights enforcement varies. Sometimes these activities are crucial, without which the specific goals of the system of intellectual property rights enforcement could not be achieved at all; for instance, without the issuing of decisions (usually administrative acts) on concrete rights and obligations the specific goal of the protection of subjective intellectual property rights could not be ensured. At other times, the activities facilitate the attaining of the specific goals of the system of intellectual property rights enforcement, their influence on the reaching of these specific objectives is not so pronounced; this applies especially to the securing, preventory, monitoring and inspectional activities.

After these introductory contemplations we can proceed with the actual classification of the individual kinds of activities of institutions with powers in the intellectual property rights enforcement, as it will be used as a resource in the further text:

- informatory and educational activities;
- monitoring and inspectional activities;
- securing and preventory activities;
- investigatory/ascertaining activities;
- decision-making activities;
- executory activities.

The classification that we present attempts to employ a certain chronological order, or a procedure, of the conducting of these activities. This chronological procedure is however traceable only at the level of the system of intellectual property rights enforcement as a whole, while in the analysis of the functioning of the individual institutions participating in the intellectual property rights enforcement it is as a rule possible to arrive at a conclusion that these activities proceed often parallelly or without direct time correlation. In other cases, it will be possible to observe within the analysis the activities of an individual institution participating in intellectual property rights enforcement a certain chronology of the above outlined activities within the solution of a certain concrete case or a complex of cases.

3.2. Significance of informatory and educational activities

The informatory and educational activities are designed to ensure within the system of intellectual property rights enforcement as a whole primarily the providing information on the state and content of the legislation governing the intellectual property rights (the law) to the public, including the legislation of the intellectual property rights enforcement, as well as on the state and content of the individual rights to intellectual property which are protected in a certain territory; this in the conditions of the Czech Republic always concerns the territory of the Czech Republic as a whole. Perceived as the public to be informed by means of these activities should be both the professional public, i.e. the relevant entrepreneurs circles and experts from the field of intellectual property rights, and the lay public, especially consumers. It should be also noted that despite these information being focused by their content on the state in the territory of the Czech Republic, the public to which they are intended includes also foreigners, both entrepreneurs or other professionals and consumer and other lay public, for it is possible that both the holders of individual intellectual property rights and actual, potential or assumed infringers of such rights can come from such broadly defined public.

Within the system of intellectual property rights enforcement as a whole these activities contribute especially to making it clear what is protected as the intellectual property subject, i.e. which intangible assets enjoy legal protection in the territory of the Czech Republic. Because of the insubstantial nature of the intangible assets and their potential ubiquity (see the first volume of the methodology, parts 1.1.1 and 1.1.2), the providing of such information is a prerequisite for the realization of the practical decision-making procedures in the activities of individual persons – addressees of the information, which can rule out the infringing of the rights. There is no such pressing needs for information in the area of tangible property, as each person can suppose in their conduct that the tangible assets which they encounter in their activities (such as buildings, land, cars, books or computers) are a property of another concrete person, which means that they must respect the proprietary rights of such other persons to the assets regardless of whether the concrete content of the proprietary rights and the owner are known to them. This does not apply to intellectual property, where each person can in their economic and other conduct can decide for a diametrically different approach, i.e. that in the enjoying of values which can potentially be a subject of intangible assets, it is possible to presume that these are not intangible assets, but values of public domain, which are freely accessible to and utilizable for everyone. This presumption is however legitimate only unless something different does not appear from the content of publicly accessible records in industrial rights registers as well as from the experience and knowledge of the acting person, or from facts that were proved to such acting person. Certain problem arises especially in the recognizing of authors' works and other subjects of rights protected by Copyright, as in these cases the continental concept of law is based on the fact that each person is a priori capable of recognizing such work, or such subject of rights, without needing to ascertain the existence of the rights to such work in a public register.

Educational activities are a certain variant of informatory activities. These activities do not focus simply on informing of the actual state of the law, or of rights, but tries to directly influence also the conduct of the addressees of the edification and through doing so, directly influence the manner of their behaviour especially in economic competition in relation to the enjoying of intangible assets and values potentially protected as intangible assets. Educational activities should pursue from the point of view of specific goals of the system of intellectual property rights enforcement as a whole in particular the ensuring of the observance of intellectual property rights, or laws in this area. They however can be also directed towards other fields, such as the informing of the public of the possibilities of industrial rights protection or the inviting of the public to use these possibilities in the ensuring of the legal protection of intangible assets, which are produced by public, e.g. technical solutions protectable by inventions and industrial patterns. This activity can also notify the public of the necessity of adequate legal protection of intangible assets produced and used especially by entrepreneurs public, not only within the territory of the Czech Republic, but also abroad.

3.3. Significance of monitoring and inspectional activities

The monitoring and inspectional activities intermediate within the system of intellectual property rights enforcement as a whole information on the conduct of the addressees of legal rules from the area of intellectual property rights enforcement, in particular or physical persons and legal entities in the position of holders or applicants for registration or potential holders or applicants for the registration of these rights as well as in the position of actual, potential or assumed infringers of these rights. This conduct is continuously monitored and inspected by relevant institutions participating in intellectual property rights enforcement, especially if the rights are not infringed.

The secondary subject of monitoring and inspectional activities than can be created by the activities of the individual institutions with powers in intellectual property rights enforcement as such in the enforcement of the rights, for instance the frequency and state of court proceedings whose subjects are the entitlements from intellectual property, the state of a certain kind of proceedings before the Industrial Property Office, the frequency and results of prosecutions resulting from crimes in connection with intellectual property rights infringements and similar.

Finally, the subject of monitoring and inspectional activities can be also the actual state of industrial rights records and intellectual property rights protection and the carrying out of their quantitative analysis. Although the monitoring and analysing as such neither are specific goals of the system of intellectual property rights enforcement nor directly lead to the attending of such goals, they can enable the relevant institutions to better coordinate their activities both within the framework of the internal structures of the respective institutions and in their mutual collaboration. This activity can also facilitate to trace trends arising in the creation and protection of intellectual property rights, which makes it possible to prepare for the future development in the area of these rights protection and enforcement.

3.4. Significance of securing and preventory activities

Securing and preventory activities contribute in the system of intellectual property rights enforcement as a whole particularly to the prevention of intellectual property rights infringements, and also to the facilitating of actual enforceability of infringed individual intellectual property rights. In this way they serve also to the providing for actual enforceability

of rights and entitlements of individual intellectual property rights holders so that the economic potential of these rights can be fully materialized.

A number of these activities are conducted in a situation when it is yet not definite whether in a certain concrete case intellectual property rights have been or are being infringed. These activities are then carried out exactly in order to minimize the risk of such infringements being committed, and, in case an infringement has already occurred, or is being committed, the possible ill effects of such state for the rights holder or any other concerned person or institution are minimized. In the broader context also activities could be included of decision-making nature conducted by courts within court proceeding on preliminary ruling and the securing of proof.

3.5. Significance of investigatory and ascertaining activities

Investigatory and ascertaining activities are within the system of intellectual property rights enforcement designed to establish whether certain facts occurred and possibly secure the proofs. These activities are usually conducted on the basis of reasonable suspicion that intellectual property rights have been or could be infringed, and thus a crime, a minor offence or administrative delict committed. These activities are carried out especially by the Police of the Czech Republic and to a limited extent also customs offices, State Agricultural and Food Inspection and Czech Commercial Inspection.

3.6. Significance of decision-making activities

All the previous activities are followed by the actual decision making activities. The decision-making activities lead to the decisions on rights and liabilities of a particular person or persons. These activities function directly to issuing acts, i.e. administrative acts and court decisions. To the issuing of acts also other individual activities of the respective institutions with powers in intellectual property rights enforcement, especially inspectional and securing activities, can lead.

The decision-making activities, however, are not limited to the issuing of an act as such. Talking about activities we mean the whole process of the issuing of an act. The process directly connects to the investigatory of ascertaining activities, which can be carried out either by the same authority which conducts the decision-making activities, or by another body collaborating with this authority, or whose results the decision-making body takes up. Within the process leading to the issuing of a decision then a whole range of partial acts whose particular goal is to grant protection to individual, especially procedural rights of the concerned persons, examine the ascertained issue of fact, present legal views and arguments and evaluate evidence. Specific are the decision-making activities conducted in the deciding on remedies against other decisions of the same authority or decisions of other authorities, where these individual activities can be modified to various extent and the activity of the decision-making body focuses in particular towards the assessment of the decision against which the remedy is directed, usually from the legality and correctness point of view.

The decision-making activities can be further divided into decision-making activities in the proceedings in the matter itself and decision-making activities resulting in a decision other than in the matter itself.

By a decision in the matter itself is meant a decision authoritatively stating whether intellectual property rights have or have not been infringed, and possible obligations are imposed on the

participants in the proceedings in this respect. The decisions in the matter itself are the actual merits of the decision-making activities and in most of the cases they create an indispensable result of the process of intellectual property rights enforcement in a particular case.

Decisions other than decision in the matter itself can be of various natures. In some cases also these decisions will resolve as a preliminary question whether intellectual property rights have been or are infringed, whether such infringement is imminent or possibly whether the intellectual property rights are probable to have been infringed, which approximate to a considerable extent the relevant activities to the decision-making activities directed at the issuing of a decision in the matter itself. In other cases it will be a question of decisions of procedural nature only; such decisions concern neither directly or indirectly the substantial-law questions, which in respect of intellectual property rights infringements means the question whether the intellectual property rights have been or are infringed or possibly whether such infringement is imminent, but deal usually with the procedural relations of the participants in the proceedings, the procedure in the proceedings, the procedure in the securing of proofs, investigation, prevention and similar. These decisive-making activities can create a part of other activities in accordance with the presented classification, especially of inspectional, securing, preventory, investigatory and ascertaining. However, they are segregated from these activities due to the fact that they lead directly to the issuing of a decision on legal relations of named persons with all resulting legal consequences. That is why we rank also such activities among the decision-making and pay attention to them separately within the description of these activities.

3.7. Significance of executory activities

Executory activities are the last category of the activities of institutions with powers in intellectual property rights enforcement. From the standpoint of the system of intellectual property rights enforcement as a whole these activities serve to achieve the concurrence of the actual state with the legal one, or with the state authoritatively declared through the relevant administrative or court decision. In relation to these activities, direct state coercion is typically applied.

These activities can be perceived as supportive in relation to other kinds of activities, in particular in relation to the decision-making activities, as it could be assumed that in a majority of cases the decisions (administration acts and court decisions) of authorities participating in intellectual property rights enforcement are respected by the decisions addressees already because of their authoritative and binding nature. In such cases, the whole process of intellectual property rights enforcement can end with the decision-making activity and the executory activities as such do not need to occur.

In a number of cases, however, despite the existence of a binding decision in matter of especially intellectual property rights infringements the decision is not respected by its addressees, who continue in the infringing of the relevant rights. The non-existence of mechanisms which would in such cases enable to force the addressee of the decision to behave in accordance with the obligations imposed on him by the decision would cause a negation of the actual purpose of the operation of the whole system of intellectual property rights enforcement. Such state would also seriously affect also the attaining of other specific goals of this system, especially the prevention of intellectual property rights infringements and the influencing of legal awareness of the public towards the observance of intellectual property rights. Long-time tolerance of such state could lead to effective collapse of the whole system, when the individual activities would be conducted in autopoietically, only within the operation of the respective institutions, without a response

within the functioning of the system as a whole, which could result in doubts of the legitimacy of these activities and their gradual elimination.

Therefore, the executory activities are of crucial standing and significance among the activities through which the intellectual property rights enforcement is realized, and although they are seen as supportive in relation to other activities, serving as something of a last resort (*ultima ratio*) in the securing of the observance of intellectual property rights, their position in the system of intellectual property rights enforcement is essential and should be paid adequate attention, especially from the point of view of mutual concert between the individual bodies with powers in intellectual property rights enforcement.

It is just this concert, that, as it will be later appreciated, can significantly contribute to the increasing of the degree of intellectual property rights observance and thus to the intellectual property rights enforceability as such as one of the basic specific goals of the system of intellectual property rights enforcement. At the same time, this accord can be beneficial not only for the enforceability of the single decisions, but also in view of the broader actual enforceability of rights and entitlements of individual property rights holders with respect to the realization of economical value of those rights; this concerns the claims for damages from the infringements of the rights or other monetary claims resulting from such infringements as well as the practical and timely securing of the rights observance in business activities, where because of the actual impact on the economic situation of the concerned subjects, especially the rights holders, it is more often days and hours than months and years which are decisive.

3.8. Informatory and educational activities

As already stated in the opening of this chapter, the informatory and educational activities have specific and indispensable position in the area of intellectual property rights, as the informing of the public on the state and content of particularly rights to intellectual property enables the public to acquire information on what rights to intellectual property are protected in the territory of the Czech Republic; the public including especially entrepreneurs can adjust their conduct in economic competition to the existence of such rights. It was also noted in the opening of this chapter that the public for which these information are designed is not only Czech, but concerned are also foreigners, as the business activities on the Czech territory are carried out apart of Czech also foreign business subjects.

For these subjects it is crucial to be aware what rights are protected in the territory of the Czech Republic, for instance what technical solutions are subject to patent protection, what designations are subject to trademark protection or protection by appellation of origin, what designs of products are subject to protection of industrial designs and similar, so that they in their entering the market in the Czech Republic or in the further developing of their business activities in the Czech Republic territory could refrain from such solutions which would interfere with rights to industrial property of third persons. Without the information on the state and content of industrial-law protection by the relevant offices, this professional public would be unable to learn for certain or not at all what intangible assets from the industrial property rights area are subject to legal protection in the Czech Republic territory, and therefore could not despite the best of intents adjust their conduct to the content of legal obligations ensuing for them from these rights.

4. ANALYSIS OF THE ACTIVITIES OF RESPECTIVE STATE INSTITUTIONS AND OFFICES

4.1. Activities conducted by the Industrial Property Office

The information and educational activities conducted by the Industrial Property Office can be, similarly to other activities of authorities with powers in intellectual property rights enforcement, divided into activities directly imposed on the Industrial Property Office by law, and other activities, which, though with legal background, need not be explicitly assumed by law. This classification is closely related also with another classification of the Industrial Property Office's activities (or other public administration authorities), i.e. with the classification according whether a certain act of public administration can or can not cause legal consequences.

It should be again noted at this stage that all the forms of administrative activities can be applied in public administration only on condition that they are legally based and be conducted only within the competencies granted to the relevant administrative office by the law, i. e. only within the carrying out of the public tasks commended to them. Another possible structuring of the informational activities of a public administration office is a structuring according to whether the activities are conducted for the internal use of the public administration only, or whether the information are provided externally. In the area of industrial rights it will be a matter of activities designed to provide information externally. Such information is intended to the broadest public, both entrepreneurs and other experts and customers, from the Czech Republic as well as from abroad.

In this context it is necessary to stress and explain again the significance of providing information on industrial rights to such broadly defined public. Such informing is of specific significance in relation to industrial rights to technological solutions, i.e. patents and utility models. The principal philosophy creating the basis for protection of patents and utility models by industrial rights is the idea of specific social contract concluded between the inventors and society represented by state power or other public authority (represented by multinational or international institutions), on the basis of which the inventor presents his invention to the society, thus making it possible for the whole of the society to use such invention and become familiar with its principle so that the results of investigatory activity of the inventor could be followed by activities of other individuals and technical and economical development enabled in such a way. The society in turn provides monopoly for a definite period to the inventor to use the published technical solution.

If we were to characterize the legal protection by patents and utility models in terms of performance and consideration, the performance provided by society (state) is the granting and guaranteeing of time limited monopoly to the inventor or patent owner to use the invention, and the consideration of the inventor, applicant or owner of a patent the agreement with the publishing of the patent, i.e. making it available to the whole of the public. The publishing is of dual effect: first, the public and expert public in particular, i.e. scientific circles and experts on technological innovations, familiarize themselves with the principle of the invention which they can utilize in their further scientific or innovatory activities, and second, the publishing of the invention enables the broadest public including the entrepreneurs to adjust their activities in order to refrain from the exclusive rights of the patent (utility model) owner to the protected technical solution.

What is decisive from the viewpoint of both of the previous essential purposes of providing information on technological solutions is that the publishing must be done in such a form which makes the invention really and effectively available to the relevant circle of public, i.e. especially to the scientific and entrepreneurs circles. From this, i.a. the legal requirement issues that the inventor “is disclosed in the patent so clearly and completely that it can be carried out by a skilled person” (section 23 paragraph 1 letter b) of Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as amended; compare also to article 100 letter b) of the Convention on the Grant of European Patents – the Announcement of the Ministry of Foreign Affairs No. 69/2002 Coll., in the wording of the Announcement Nos. 6/2006 Coll. and 4/2006 Coll.).

The effort to achieve these two essential objectives is also a reason why information concerning the protection rights effective in the territory of the Czech Republic must be provided in the Czech language, as stipulated in relation to European patents by the provisions of sections 35a and following of Act No. 527/1990 Coll., as amended. The requirement that the information of the content of technological solutions protected by industrial rights in the Czech Republic should be in the Czech language accommodates the needs of Czech expert public, not only scientists, but also technicians in the broader sense of the word, who usually do not participate in innovation processes in industrial enterprises and who can not be supposed to have such a good and authentic command of foreign languages which would enable them to familiarize themselves with the content of relevant technological solutions protected by industrial rights so that they could use these solutions in their further activities and refrain at the same time from infringing of the rights. We should also keep in mind that the technical expert public educated and thinking in the Czech language works not only for Czech business entities, but also for foreign businessmen operating in the Czech Republic through their subsidiaries, establishments in the Czech Republic and other forms of business activities of foreign persons in the territory of the Czech Republic.

Also providing information to the public of the state and content of the protection by industrial rights in the area of rights to designations, i.e. trademarks, appellations of origin and geographical designations is of exceptional and entirely specific significance. It should be noted that just the number of registered trademarks valid in the Czech Republic goes presently to hundred of thousands, and the number of national trademarks increases by more than 15,000 every year (details can be found for instance in the annual reports of Industrial Property Office). To these add more tens of thousands of registered international trademarks valid in the Czech Republic and Community trademarks. These are often rather banal designations used for highly specific kinds of goods only, or possibly (for the time being) not at all, with which the relevant entrepreneur or consumer public does not generally come into contact.

The only reliable way to learn which designations are protected by means of trademarks or other industrial rights in the territory of the Czech Republic is thus the carrying out of a research in relevant industrial rights registers. Although the law obliges the Industrial Property Office to keep only registers of national trademarks recorded by the Industrial Property Office itself, the information databases made public by the Industrial Property Office serve as an independent source of information on all kinds of trademarks valid in the territory of the Czech Republic, i.e. also on international trademarks valid in the territory of the Czech Republic and Community trademarks.

These information also facilitate the activities of all other institutions participating in the enforcement of industrial rights in the process of ascertaining whether a certain claimed rights or intangible asset is protected in the territory of the Czech Republic; an authentic answer to this question is a prerequisite to the relevant other institutions participating in intellectual property

rights enforcement being able to carry out their activities, either in the area of monitoring and inspection, ascertaining, prevention, investigation or, above all, decision-making.

The obligation of the Industrial Property Office to keep registers of industrial property rights is stipulated in the individual acts on industrial property protection, which are in particular Law No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as amended, Act No. 529/1991 Coll., on the Protection of Topographies of Semiconductor Products, as amended, Act No. 478/1992 Coll., on Utility models, as amended, Act No. 207/2000 on the Protection of Industrial Designs and the amendments to Act No. 527/1990 Coll., on Inventions, Industrial Designs and Rationalization Proposals, as amended, Act No. 452/2001 Coll., on protection of appellations of origin and geographical designations and on the amendment of consumer protection act, as amended, and Act No. 441/2003 Coll., on Trademarks and on Amendments to Act No. 6/2002 Coll., on Judgements, Judges, Assessors and State Judgement Administration and on Amendments to Some Other Acts (Act on Courts and Judges), in the Wording of Later Regulations (Trademarks Act), as amended.

4.1.1. Information on technological solutions

4.1.1.1. Statutory informatory duties

Act No. 527/1990 Coll., as amended, imposed on the Industrial Property Office the duty to keep the patent register where the Office enters the decisive data on invention applications, the proceedings on these and decisive data on patents granted (section 69, paragraph 1 of Act No. 527/1990 Coll., as amended). The provision of section 69 of paragraph 2 of Act No. 527/1990 Coll., as amended, imposes on the Industrial Property Office to keep a register of European patents valid in the territory of the Czech Republic, while the first paragraph of the same provision applies to the entries into European patents register. Also European patents register entries record the decisive data on invention application, the proceedings on these and the decisive data on patents granted.

The provision of section 69, paragraph 3 of Act No. 527/1990 Coll., as amended, further obligates the Industrial Property Office to issue the Official Journal, where especially facts are published concerning the inventions made available, patent granted and other data concerning inventions as well as official notice and decisions of fundamental nature.

These obligations are specified in more details in Decree No. 550/1990 Coll., on Proceedings Concerning Inventions and Industrial Designs, as amended.

The decree specifies that the Industrial Property Office records an application already submitted in the register of invention applications. The provision of section 12 of Decree No. 550/1990 Coll., as amended, stipulates that the following is recorded in the applications register:

- file identification of the patent application;
- classification of the invention according to the International Patent Classification;
- date of the submitting of the application for invention application;
- surname, name and address of the invention author;
- the identification of the applicant and his representative, if the applicant has one;
- name of the invention;
- information on a claimed priority rights according to the international contract, if applicable;

- identification of the Office official to who the processing of the application was assigned;
- licence offer;
- information on individual submissions in the matter and Office acts.

It should be kept in mind that as a rule, the submitted patent application is made public only after 18 months from the acquiring of the right of priority and that this publication is done in the form of announcement in the Official Journal of the Industrial Property Office (section 31 paragraph 1 of Act No. 527/1990 Coll., as amended). Before this period, the application of an invention can be published only in two cases:

- on the applicant's request submitted in 12 months at the latest from the date of the priority right; simultaneously, administrative fee according to specific regulations has to be paid;
- if a patent had been granted before the expiring of 18 month period from the date the acquiring of the right of priority; in that case, the application is published together with the announcing of the granting of the patent in the Official Journal; however, neither in this case will the Industrial Property Office publish the invention application before the expiring of 12 month period from the without the applicant's consent.

The Office can together with the application publish a report on the state of the art (search) relating to the invention presented in the application. This, however, does not actually occur in the Czech Republic.

The publishing of a patent application enables the whole public to view the contents of the application, make excerpts and copies. On the basis of thus acquired information the expert public then can assess whether, in their opinion, the published application meets the requirements of patentability, present possible comments on patentability or, after the grant of a patent, submit motions to the patent entire or partial cancellation.

The invention to which a patent has been granted is registered in the patent register. It is again Decree No. 550/1990 Coll., as amended, which specifies in more details the data entered in the patent register. Under the provision of section 16 paragraph 2 of the Decree, the following information is recorded for each invention:

- number of the patent;
- date of the grant of the patent;
- date of the publishing of the patent in the Official Journal of the Industrial Property Office;
- name of the patent;
- date of the submission of the application and its file identification;
- date of the publishing of the patent application;
- information on claimed priority right under international contract, if applicable;
- patent owner and his address, or the address of his representative;
- the classification of the invention according to the International Patent Classification;
- surname, name and address of the invention author;
- possible grant of supplementary protective certificate;
- patent transfer;
- licence;
- licence offer;
- forced licence;
- right of previous user;

- cancellation, or partial cancellation of the patent
- payments of administrative fees for the patent;
- patent expiration;
- other decisive data.

Patent claims, descriptions and drawings are not recorded in the patent register; it is thus impossible to learn the actual content of the granted patent only from the state of the patent register entry. Such additional information can be acquired by searching the databases of patents and industrial designs of the Industrial Property Office, or directly by obtaining background research in patent literature provided by the Industrial Property Office.

As concerns the nature of patent register entries, it should be also noted that a record in the registry is not under the effective legislation of constitutive character. Such records are not considered as administrative acts under the provision of Rules of Administrative Procedure, and are only an expression of other administrative activity conducted by the Office, which fails to create, amend or abolish any concrete legal relations. The entries in the patent register are thus only of evidence character, and the registration in the patent register cannot be prevented by legal remedies under the Rules of Administrative Procedure. Nevertheless, it is possible to allow the counter evidence in relation to the state, which is recorded, in the patent register, for instant by a court decision on a certain facts (i.e. on a bankruptcy order for the patent owner), or by a decision of Industrial Property Office.

The provision of section 2 letter c) of Act No. 14/1993 Coll., on Measures Concerning the Industrial Property Protection, as amended, further establishes that the Industrial Property Office shall administrate the central collection of world patent literature. However, either Act No. 14/1993 Coll., or any other legal regulation fails to specify the obligations and competency of the Industrial Property Office in this respect.

Before proceeding with the analysis of other informatory activities, which are not specifically regulated by the law and which are conducted in relation to patents and utility models by the Industrial Property Office, we should mention also another significant law-defined instrument of acquiring information on the state and content of technological solutions protection, which is provided by the institute of inspecting the documents.

Informatory duties of the Industrial Property Office, similar to those related to patents, are established by the law also in the area of utility models.

The provision of section 20 paragraph 1 of Act No. 478/1992 Coll., on Utility Models, as amended, establishes that the Industrial Property Office shall keep a register in which the decisive data on utility models applications and registered utility models are recorded. According to the law, the following data are recorded for each utility model:

- registration (certificate) number;
- registration date;
- date of the publication of the utility model in the Official Journal;
- name of the utility model;
- date of the submission of the application, the right of priority, if applicable, and the file identification of the application;
- the applicant for the utility model(name or denomination), address, his representative where applicable;
- surname, name and address of the utility model author;

- owner of the utility model(name or denomination), address, his representative where applicable;
- previous user's right;
- classification of the utility model according to the International Patent Classification;
- utility model transfer;
- licence;
- forced licence;
- registration validity extension;
- industrial designation cancellation;
- protection removal or overwriting;
- protection expiration.

Also as regards utility models, the Office publishes facts on utility models as well as official decisions of fundamental nature.

Until recently, the searching for information on respective industrial rights in the databases of the Industrial Property Office accessible from the internet was insufficient for the assessment, even preliminary, whether in a certain concrete case an industrial right related to technological solution has been infringed, but it was necessary to apply at the Industrial Property Office for the access to the particular patent document, which contained the formulation of patent claims defining the actual protected solutions. At present, most of patent documents are accessible in electronic form on the Internet and the required information can be found according to the relevant file number.

4.1.1.2. Official Journal

The Official Journal of the International Property Office is presently published in the electronic form and can be accessed on the Internet address www.upv.cz. Currently, in the Official Journal are published the following data on patents, utility models and industrial designs:

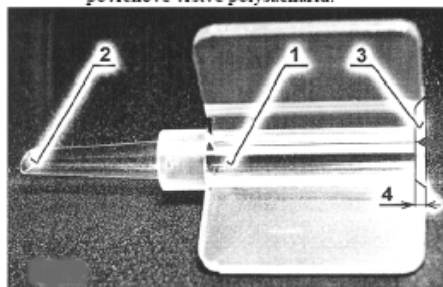
- number of the patent/registration/certificate;
- date of the entry;
- number of the application/request
- information on exhibition priority;
- number of industrial designs (where industrial designs are concerned);
- number of priority application;
- date of the submission of the priority application;
- priority country;
- date of the publishing of the invention application;
- date of the publishing of the registered industrial design;
- date of the publishing of patent grant and utility model registration;
- date of utility model registration, date of the announcement of an European patent grant in the EPO (European Patent Office) Official Journal;
- International Patent Classification/Locarno International Classification for Industrial Designs;
- name;
- industrial design image (for industrial designs);
- annotation;
- basic patent number;
- identification of applicant;
- identification of author;

- identification of owner/holder;
- identification of representative;
- number of international application;
- number of international publication;
- date of registration and registration authority;
- date of the certificate validity period;
- denomination of the preparation;
- date of submission of the application and European patent application number;
- date and number of the publication of the European patent application in the EPO Official Journal.

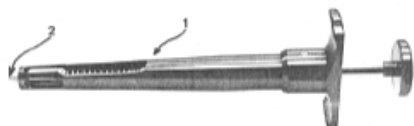
For clarity we include as example information published on an application in the Industrial Property Office Official Journal 12-2007 from 21. 3. 2007.

Zveřejněné přihlášky vynálezů - řazené podle MPT

- (51) **A61F 9/007** (2006.01)
B63B 23/00 (2006.01)
2005-565
(71) Stodůlka Pavel MUDr. Ph.D., Zlín, CZ
(72) Stodůlka Pavel MUDr. Ph.D., Zlín, CZ
(54) **Cartridge k uchování a/nebo zavádění očního implantátu**
(22) 08.09.2005
(57) Cartridge k uchování a/nebo zavádění očního implantátu, zejména umělé nitrooční čočky, je tvořena úložným boxem (1) implantátu a zaváděcí kanylou (2) z polymerního materiálu, zejména polypropylénu. Dutina úložného boxu (1) je spojena s vnitřní dutinou zaváděcí kanyly (2). Vstupní otvor (3) dutiny úložného boxu (1) má sraženou hranu (4) a vnitřní povrch zaváděcí kanyly (2) obsahuje v povrchové vrstvě polysacharid.

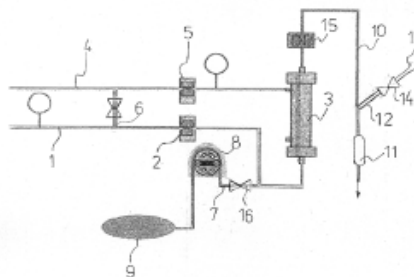


- (51) **A61F 9/007** (2006.01)
(21) **2005-566**
(71) Stodůlka Pavel MUDr. Ph.D., Zlín, CZ
(72) Stodůlka Pavel MUDr. Ph.D., Zlín, CZ
(54) **Zařízení k zavádění očního implantátu**
(22) 08.09.2005
(57) Zařízení k zavádění očního implantátu - umělé nitrooční čočky je tvořené injektorem (1) s pístem (2) k vytlačení implantátu z úložného prostoru (7) cartridge (6) přes její zaváděcí kanylu (8). Konec pístu (2) injektoru (1) je opatřen návlekmem (3), který má ve své přední čelní ploše (3') vytvořenou dutinu (5) pro okrajovou část nitrooční čočky.



- (51) **A61M 1/00** (2006.01)
A61M 1/34 (2006.01)
B01D 29/00 (2006.01)
(21) **2005-562**
(71) Fakultní nemocnice, Hradec Králové, CZ
(72) Bláha Milan Prof. MUDr. CSc., Hradec Králové, CZ
Malý Radovan MUDr. PhDr., Hradec Králové, CZ
Bláha Vlastimil Prof. MUDr. CSc., Hradec Králové, CZ
Sobotka Luboš Prof. MUDr. CSc., Hradec Králové, CZ
Mašín Vladimír MUDr., Městec Králové, CZ
Zajíc Jiří MUDr., Hradec Králové, CZ
(54) **Zařízení pro filtraci krevní plasmy**
(22) 07.09.2005
(57) Zařízení pro filtraci krevní plasmy je tvořeno filtračním prvkem (3), na který je napojena přívodní trubice (1) krevní plasmy a odváděcí trubice (4) krevní plasmy, přívodní trubice (7) regenerační kapaliny a trubice (10) pro odvádění tekutin, která je napojena na odváděcí jímku (11) a je opatřena odbočkou (12) s odebracím hrdlem (13) a uzavíracím prvkem (14). Při čištění filtračního prvku (3) krevní plasma event. regenerační kapalina odtéká tubicí (10) pro odvádění tekutin do odváděcí jímky (11). Odběr krevní plasmy nebo regeneračního roztoku se provádí

- injekční stříkačkou nasazenou na hrdlo (13) odbočky (12).
(74) Jan Brykner, Resslova 741, Hradec Králové, 50002



- (51) **B01D 61/00** (2006.01)
C12N 1/00 (2006.01)
(21) **2006-822**
(71) Biogen Idec MA Inc., Cambridge, MA, US
(72) Pham Christine, Y., San Diego, CA, US
Thommes Jörg, San Diego, CA, US
(54) **Způsob čištění kultur savčích buněk v průmyslovém měřítku**
(22) 21.06.2005
(32) 21.06.2004
(31) 2004/871261
(33) US
(86) PCT/US2005/021781
(87) WO 2006/007459
(57) Při způsobu čištění vzorku buněk v průmyslovém měřítku se vzorek buněk odstředí a pak se odstředěná kapalina filtruje soustavou filtrů pro hloubkovou filtraci. Způsob je zejména vhodný při průmyslové izolaci terapeutických proteinů secernovaných buněčnými kulturami.
(74) TRAPLOVÁ HAKR KUBAT Advokátní a patentová kancelář, Ing. Eduard Hakr, Přístavní 24, Praha 7, 17000

- (51) **B23B 51/00** (2006.01)
B23B 51/02 (2006.01)
(21) **2006-634**
(71) Seco Tools AB, Fagersta, SE
(72) Frejd Stefan, Söderköping, SE
(54) **Vrták a špička vrtáku s vodícími členy**
(22) 22.04.2005
(32) 05.05.2004
(31) 2004/0401175
(33) SE
(86) PCT/SE2005/000592
(87) WO 2005/105350
(57) Vrták má tělo (12) vrtáku, špičku (10) vrtáku a stopkovou část (13). Špička (10) vrtáku má alespoň jeden břit (19) a alespoň jeden periferně umístěný vodící člen (40). Vrták má středovou osu (CL). Vodící člen (40) špičky (10) vrtáku obsahuje částečně válcovou první část (41) povrchu a excentrickou druhou část (42) povrchu. První část (41) povrchu se axiálně zpětně napojuje podél vodícího členu (40) na druhou část (42) povrchu.
(74) Společná advokátní kancelář Vsetečka Zelený Švorčík Kalenský a partneři, JUDr. Petr Kalenský, Hálkova 2, Praha 2, 12000

For further information we also include an example on a patent grant notification in the same Official Journal.

FG4A

Udělené patenty - přehled podle čísel patentů

V období uzávěrky tohoto čísla Věstníku udělil Úřad průmyslového vlastnictví tyto patenty.

297738	<i>C 21 B 7/20</i>	(2006.01)
297739	<i>B 21 D 17/00</i>	(2006.01)
297740	<i>F 25 D 23/08</i>	(2006.01)
297741	<i>C 30 B 29/20</i>	(2006.01)
297742	<i>C 03 C 4/02</i>	(2006.01)
297743	<i>A 61 K 31/221</i>	(2006.01)
297744	<i>C 08 F 8/00</i>	(2006.01)
297745	<i>C 08 F 6/00</i>	(2006.01)
297746	<i>C 08 G 18/77</i>	(2006.01)
297747	<i>C 08 F 10/06</i>	(2006.01)
297748	<i>B 65 D 1/14</i>	(2006.01)
297749	<i>B 29 D 23/00</i>	(2006.01)
297750	<i>B 21 D 3/02</i>	(2006.01)
297751	<i>C 06 D 5/06</i>	(2006.01)
297752	<i>F 16 F 15/22</i>	(2006.01)
297753	<i>B 65 D 33/08</i>	(2006.01)
297754	<i>B 62 K 3/02</i>	(2006.01)
297755	<i>C 08 G 18/78</i>	(2006.01)
297756	<i>C 04 B 7/43</i>	(2006.01)
297757	<i>C 21 B 7/20</i>	(2006.01)
297758	<i>C 08 F 6/00</i>	(2006.01)
297759	<i>F 01 D 5/32</i>	(2006.01)
297760	<i>C 01 B 31/34</i>	(2006.01)
297761	<i>C 08 G 65/26</i>	(2006.01)
297762	<i>C 22 C 38/44</i>	(2006.01)
297763	<i>E 04 B 1/35</i>	(2006.01)
297764	<i>F 02 D 15/02</i>	(2006.01)
297765	<i>E 04 F 15/024</i>	(2006.01)
297766	<i>F 16 L 9/12</i>	(2006.01)
297879	<i>G 06 Q 50/00</i>	(2006.01)

The following examples show published translations of European patent documents for EP1279908 and for patent application:

VĚSTNÍK ÚŘADU PRŮMYSLVĚHO VLASTNICTVÍ 12-2007 CZ, datum publikace 21.03.2007
(evropské patentové přihlášky a evropské patenty)

4

Zveřejněné překlady evropských patentových spisů

U následujících udělených evropských patentů s účinky pro Českou republiku byl majitelem předložen překlad patentového spisu do českého jazyka (§ 35c odst. 2 až 4 zákona č. 527/1990 Sb., v platném znění). Údaje jsou řazeny vzestupně podle čísel evropských patentů.

(97) EP 1279908		(72) Chen, Chii-Shu, East Hanover, New Jersey 07936, US
(47) 03.01.2007		Callais, Peter A., Collegeville, Pennsylvania 19426, US
(97) 29.01.2003		West, John Michael, Hockessin, Delaware 19707, US
(51) F25B 30/04 (2006.01)		(54) Způsob vytváření směsí z lisovací směsi v plátech nebo ze sypké lisovací směsi
F25B 35/04 (2006.01)		(32) 12.10.2001
F25B 17/08 (2006.01)		(31) 2001/976939
(96) 18.07.2002		(33) US
(96) 02015697.2		(74) PATENTSERVIS Praha a.s., Jivenská 1273/1, Praha 4, 14021
(73) Vaillant GmbH, 42859 Remscheid, DE		
(72) Heim, Johann-Ludwig, 42857 Remscheid, DE		
Hocker, Thomas, Dr., 42857 Remscheid, DE		
Lang, Rainer, Dr., 51067 Köln, DE		
Marth, Frank, 56581 Melsbach, DE		
Marx, Uwe, 51375 Leverkusen, DE		
Prescha, Ralph, 42659 Solingen, DE		
Wienen, Johann, 46359 Heiden, DE		
(54) Adsorpční tepelné čerpadlo		(97) EP 1323754
(32) 23.07.2001, 16.08.2001		(47) 30.08.2006
(31) 2001/10136836, 2001/12812001		(97) 02.07.2003
(33) DE, AT		(51) C08G 18/08 (2006.01)
(74) FISCHER & PARTNER, Ing. Michael Fischer, Na Hrobci 5, Praha 2, 12800		C09D 175/04 (2006.01)
		B05B 5/04 (2006.01)
		(96) 12.12.2002
		(96) 02027818.0
		(73) E.I. DU PONT DE NEMOURS & COMPANY INCORPORATED, Wilmington, Delaware 19898, US
		(72) Holfter, Dirk, 58093 Hagen, DE
		Laack, Birgit, 42119 Wuppertal, DE
		(54) Proces aplikace vodného vícesložkového nátěrového prostředku
		(32) 27.12.2001
		(31) 2001/32857
		(33) US
		(74) Patentová kancelář Pavlica & Pavlica, Ing. Tomáš Pavlica, Branická 416/237, Praha 4, 14000
(97) EP 1288508		(97) EP 1364783
(47) 06.12.2006		(47) 22.11.2006
(97) 05.03.2003		(97) 26.11.2003
(51) F16B 12/12 (2006.01)		(51) B41F 17/26 (2006.01)
(96) 25.07.2002		B41F 5/24 (2006.01)
(96) 02450165.2		(96) 16.05.2003
(73) Harrer, Vinzenz, 8162 Neudorf bei Pass, AT		(96) 03425316.1
(72) Harrer, Vinzenz, 8162 Neudorf bei Pass, AT		(73) Cintio, Maria Teresa, 63017 Porto San Giorgio (AP), IT
(54) Zástrčková spojka		(72) Cintio, Maria Teresa, 63017 Porto San Giorgio (AP), IT
(32) 03.09.2001		(54) Vysokorychlostní tiskařský stroj
(31) 2001/13912001		(32) 20.05.2002
(33) AT		(31) 2002/AP20020005
(74) Čermák Hořejš Myslíl a spol., JUDr. Karel Čermák, advokát, Národní 32, Praha 1, 11000		(33) IT
		(74) PATENTSERVIS Praha a.s., Jivenská 1273/1, Praha 4, 14021
(97) EP 1298856		(97) EP 1393865
(47) 27.12.2006		(47) 06.12.2006
(97) 02.04.2003		(97) 03.03.2004
(51) H04L 12/56 (2006.01)		(51) B25G 3/18 (2006.01)
H04Q 7/22 (2006.01)		(96) 22.07.2003
(96) 25.09.2002		(96) 03016473.5
(96) 02021742.8		(73) Wolf-Garten GmbH & Co. KG, 57518 Betzdorf, DE
(73) LG ELECTRONICS INC., Seoul, KR		(72) Finkler, Peter, 66640 Namborn, DE
(72) You, Cheol Woo, Kwanak-gu, Seoul, KR		Alf, Herbert, 54344 Kenn, DE
Ahn, Jong Hvae, Anyang-shi, Kyonggi-do, KR		
Yoon, Suk Hyon, Yangchon-gu, Seoul, KR		(54) Zařízení pro spojení domácího nářadí s zásadou
Lee, Young Jo, Kunpo-shi, Kyonggi-do, KR		(32) 29.08.2002
(54) Způsob přenosu datových paketů v komunikačním systému		(31) 2002/20213299/U
(32) 29.09.2001		(33) DE
(31) 2001/2001060964		(74) PATENTSERVIS Praha a.s., Jivenská 1273/1, Praha 4, 14021
(33) KR		
(74) Čermák Hořejš Myslíl a spol., JUDr. Karel Čermák, advokát, Národní 32, Praha 1, 11000		
(97) EP 1302497		(97) EP 1400646
(47) 06.12.2006		(47) 29.11.2006
(97) 16.04.2003		(97) 24.03.2004
(51) C08G 63/00 (2006.01)		
C08F 299/04 (2006.01)		
(96) 29.07.2002		
(96) 02078087.0		
(73) Arkema Inc., Philadelphia, PA 19103-3222, US		

The Official Journal of the Industrial Property Office was till the end of 2006 published monthly in two parts in paper; part A was dedicated especially to facts on applications for registration of inventions, utility models, industrial designs, SPCs and topographies as well as to official notifications and decisions of fundamental nature, whereas in part B, information on trademarks, appellations of origin and geographical designations were published. Since 2007, the Journal is published weekly only in electronic form, which is accessible on the internet sites of the Industrial Property Office, while both the original parts are joined in one. The printed Officials Journals can be obtained in the study of the Industrial Property Office.

4.1.1.3. Patent literature collection administration and accessibility

The Industrial Property Office builds and makes accessible the collection of international and national patent literature. Presently, it contains over 30.000.000 documents from more than twenty countries, including documents related to the patent grants on the basis of the Convention on the Grant of European Patents and the Patent Cooperation Treaty. This patent literature is made available by the Industrial Property Office both on classical media (paper, microfiche, microfilm) and with the use of computer technology. The Office can at present access on-line a number of foreign database centres and owns an extensive collection of patent documents on CD-ROMs, both full-text and search ones. A number of services provided by the Industrial Property Office in this area is free of charge; paid are those services connected with extra costs of the Office, such as the access to foreign database centres or searches in the search files on CD.

Following a written request with a document number of the country of publication and, if possible, the main classification according to the International Patent Classification, the Office provides copies of the patent documents and delivers them for a fee to the applicants from the broadest public.

Beyond this, the Office provides search services to the public, which means that on the basis of the search applicant's specification directly carries out searches in the international patent literature. The Office also provides direct public access into the database of national documents in the study of the Office.

4.1.1.4. Information accessible through the Internet

What is significant within the framework of the informatory activities of the Industrial Property Office is the administration and publishing of the database of information related to industrial rights on the internet on the Office website www.upv.cz. This database includes i.a. also the database of patents and utility models. The database comprises the applications for inventions published since 1991, granted patents from no. 213521 (as of 30. 5. 2007), European patents valid in the territory of the Czech Republic and registered utility models. The database can be searched according to the application number, document/registration number, name, applicant/owner, author, date of the application submission, date of the right of priority, date of the patent publishing, date of the grant/publishing of the patent, international patent classification, annotation, state and kind of the document.

The Industrial Property Office website further provides also remote access to international databases, in particular into esp@CEnet database of the European Patent Office as well as into the databases of the World Organization of Intellectual Property, United States Patent and Trademark Office, Japan Patent Office, Chinese State Intellectual Property Office, Korean

Intellectual Property Office, UK Intellectual Property Office, German Patent and Trademark Office, Hungarian Patent Office, the Industrial Property Office of the Slovak Republic and others.

For clarity, we present an example of an excerpt from the database of patents and utility models of the Industrial Property Office concerning the Czech national patent no. 292849 named "pharmaceutical preparation with controlled oxycodon release". As can be seen, the database comprises the number of application, document number, date of application, date of the right of priority, numbers of the priority document, priority country, name, applicant/owner, information on the author, representative, International Patent Classification, dates of publishing, grant of the patent and the patent publication as well as the annotation of the particular technological solution.

Úřad průmyslového vlastnictví


Stránka č. 1 z 1

Výpis z databáze Patentů a Užiténých vzorů	
Údaje byly získány dne 27.3.2007. Na základě dat ze dne (poslední aktualizace DB) 26.3.2007 20:36.	
1 z 1	
Číslo přihlášky:	1999-1153
Číslo dokumentu:	292849
Datum přihlášení:	25.11.1992
Datum práva přednosti:	27.11.1991
Č. prioritního dokladu:	1991 800549
Země priority:	US
Název:	Farmaceutický prostředek s řízeným uvolněním oxykodonu
Příhlašovatel/Majitel:	EURO-CELTIQUE S.A., Luxembourg, LU
Původce:	Oshlack Benjamin, New York, NY, US Chasin Mark, Manalpan, NJ, US Minogue John Joseph, Mount Vernon, NY, US Kaiko Robert Francis, Weston, CT, US
Zástupce:	JUDr. Ph.D. Karel Čermák, Národní 32, Praha 1, 11000
MPT:	A 61 K 31/485, 9/22, A 61 P 25/04
Datum zveřejnění:	13.04.1994
Datum udělení patentu:	29.10.2003
Datum publikace patentu:	17.12.2003
Stav:	Platný dokument
Anotace:	Farmaceutický prostředek s řízeným uvolňováním oxykodonu pro perorální podání, který obsahuje a) sůl oxykodonu v množství, ekvivalentním 10 až 160 mg hydrochloridu oxykodonu a b) matici pro řízené uvolňování účinné látky, odlišnou od matrice z akrylových pryskyřic pro zajištění rozpouštění nezávisle na hodnotě pH a c) prostředek zajišťující při podávání v intervalu každých 12 hodin maximální koncentraci oxykodonu v plazmě v rozmezí 6 až 240 ng/ml v době 2 až 4,5 hodin po perorálním podání a minimální koncentraci oxykodonu v plazmě 3 až 120 ng/ml v době 10 až 14 hodin po podání.

[Zpět na titulní stránku](#)

However, it should be stressed that the data available in this database through remote access fail to contain all information on the technological solution, especially the claims, description and drawings. These data are obvious from the patent document, which the Industrial Property Office provides on request to any applicant.

The following is an example of a patent document front page and patent claims:

PATENTOVÝ SPIS		(11) Číslo dokumentu:
(19) ČESKÁ REPUBLIKA	(21) Číslo přihlášky: 1999 - 1153	292 849
	(22) Přihlášeno: 25.11.1992	(13) Druh dokumentu: B6
	(30) Právo přednosti: 27.11.1991 US 1991/800549	(51) Int. Cl. ⁷ : A 61 K 31/485 A 61 K 9/22 A 61 P 25/04
ÚŘAD PRŮMYSLOVÉHO VLASTNICTVÍ	(40) Zveřejněno: 13.04.1994 (Věstník č. 4/1994)	
	(47) Uděleno: 29.10.2003	
	(24) Oznámeno udělení ve Věstníku: 17.12.2003 (Věstník č. 12/2003)	
	(86) PCT číslo: PCT/US92/10146	
	(87) PCT číslo zveřejnění: WO 93/010765	
(73) Majitel patentu: EURO-CELTIQUE S.A., Luxembourg, LU;		
(72) Původce vynálezu: Oshlack Benjamin, New York, NY, US; Chasin Mark, Manalpan, NJ, US; Minogue John Joseph, Mount Vernon, NY, US; Kaiko Robert Francis, Weston, CT, US;		
(74) Zástupce: Korejzová Zdenka JUDr., Spálená 29, Praha 1, 11000;		
(54) Název vynálezu: Farmaceutický prostředek s řízeným uvolněním oxykodonu		
(57) Anotace: Farmaceutický prostředek s řízeným uvolňováním oxykodonu pro perorální podání, který obsahuje a) sůl oxykodonu v množství, ekvivalentním 10 až 160 mg hydrochloridu oxykodonu a b) matici pro řízené uvolňování účinné látky, odlišnou od matrice z akrylových pryskytic pro zajištění rozpouštění nezávisle na hodnotě pH a c) prostředek zajistí při podávání v intervalu každých 12 hodin maximální koncentraci oxykodonu v plazmě v rozmezí 6 až 240 ng/ml v době 2 až 4,5 hodin po perorálním podání a minimální koncentraci oxykodonu v plazmě 3 až 120 ng/ml v době 10 až 14 hodin po podání.		

CZ 292849 B6

4.1.2. Information on trademarks

4.1.2.1. Statutory informatory duties

Act No. 441/2003 Coll., on Trademarks and on Amendments to Act No. 6/2002 Coll., on Judgements, Judges, Assessors and State Judgement Administration and on Amendments to Some Other Acts (Act on Courts and Judges), in the Wording of Later Regulations (Trademarks Act), as amended, imposes in the provision of section 44 of the Act on the Industrial Property Office the obligation to keep a register containing the decisive data on applications and the decisive data on registered trademarks stipulated by law, executive legal regulation or specified by the Office.

The register of trademark is public and anybody can view it, make copies or excerpts. The Office is according to the law obliged to issue on request certified entire or partial excerpt from the register record or a copy of an entry, confirmation of a certain record or a confirmation that certain information does not exist in the register. According to the law, the Office also issues official certification confirming the conformity of the excerpt or a copy with the entry in the register. The applicant for the excerpt of copy is obliged to pay a fee together with application in compliance with Act 634/2004 Coll., on Administrative Fees, as amended.

The Trademark Act assumes at several points that the Office records data on certain facts in the register.

Thus, under the provision of section 28 of Act No. 441/2003 Coll., if the application meets the requirements stipulated by the Act, the application proceeding has not been discontinued and no objections were lodged in the legal period or such objections were finally and conclusively rejected or the proceedings on those was finally and conclusively discontinued, the Office records the trademark in the register together with the date of the entry. The Office announces the recording of the trademark in the register in the Official Journal.

The recording of the trademark in the register has constitutive effects; these effects start with the date of the record in the register.

Under Act No. 441/2003 Coll., also data on transfer or devolution of a trademark are recorded in the trademark register. Such transfer or devolution is effective towards third person only after the record in the registry (section 15 paragraph 3 of Act No. 441/2003 Coll.).

On the basis of final and conclusive court decision, the Office is obliged to designate in the trademark register the change of the owner of a trademark registered in the name of the agent (“unfaithful agent”) (section 16 of Act No. 441/2003 Coll.).

According to the law, also information on a trademark being a subject to a right of lien, a subject of execution of a decision or an execution and is included in the assets in bankruptcy or in the list of assets in the settlement proceedings (section 17 of Act No. 441/2003 Coll.). Also the record of a right of lien to a trademark in the register has constitutive effects; the right of lien is created only after the record in the register, in the absence of a specific regulation.

Furthermore, in compliance with the law, recorded in the register is also information on concluded licence agreements where the subject is the registered trademark. These licences can

be granted as exclusive or non-exclusive and can concern either all products or services for which the trademark has been registered or just some of them. The licence agreement is effective towards third persons as of the record in the register (section 18 of Act No. 441/2003 Coll.).

In compliance with section 29 paragraph 7 of Act No. 441/2003 Coll., the Office records information on trademark registration renewal.

Also, in accordance with the provision of section 30 paragraph 1 act, the waiver of rights to a trademark are recorded, either in the extent of all products or services for which the trademark has been registered or only in for some of them. The registration of such legal fact in the register has not constitutive effects; the effects of the waiver to trademark rights declaration start already with the day of the delivery of the trademark owner declaration to the Office.

Act No. 441/2003 Coll. further explicitly presumes that the Office on request records in the register a change in the associates of a legal entity or members of association, which is a user of a collective trademark.

The provision of section 44 paragraph 3 of Act No. 441/2003 assumes in the general level the obligation of the Office to record in the register immediately on delivery a change in the information on a trademark application or a registered trademark which resulted from a final and conclusive decision of a relevant authority.

The Act further explicitly imposes on the Office to keep a register in the electronic form and publish information from the register in a way enabling remote access (section 44 paragraph 4 of Act No. 441/2003 Coll.).

The data recorded in the trademark register are further specified by Decree No. 97/2004 Coll., on the Enforcements of the Law on Trademarks. On the basis of the provision of section 11 paragraph 1 of the Decree the register contains:

- application file number;
- trademark registration number;
- date of the submission of the application;
- date of the creation of priority right;
- date of the publishing of the application in the Official Journal of the Office or, in case of transition of a Community trademark into national trademark, the date of the publishing of such trademark in the Official Journal of the Office of Harmonization of the Inner Market (marks and designs);
- date of the registering of the trademark in the register;
- description or image of the trademark; if the characters in the trademark data are other than Latin, and if the applicant included the data in the application, transcript of these data into Latin;
- specification whether the trademark consists only from a colour or a combination of colours including the specification of the colour name or number together with the specification of the used colour scheme;
- classes of the image elements of the trademark
- identification of the trademark owner;
- sort of the trademark;
- products or services for which is the trademark registered, classified in the classification of the International Classification together with the respective class number;
- protection extent restriction;
- transfers or transitions of the trademark including the identification of the transferee;

- other rights to the trademark and identification of the entitled person;
- licence agreement to the trademark and identification of the licensee;
- dates of trademark renewals;
- identification of members or legal entity associates or member of association entitled to use a collective trademark;
- identification of the representative, applicant or owner;
- trademark expungement, declaring a trademark void or other expiration of rights to a trademark, including a waiver of rights to a trademark;
- other information specified by the Office.

The Decree also assumes that the register is accessible in the electronic form also through the state administration portal.

As regards the viewing of the files, in relation to trademarks the general legislation applies in accordance with Act No. 500/2004 Coll., Administrative Procedure Code. The participants of the proceedings and their representatives are entitled to view the files. Other persons can be allowed by the Office to view the file if they can prove legal interest or other serious reason and unless it is to the prejudice of a right of another of the participants, other concerned persons or the public interest (section 38 paragraph 2 of Act No. 500/2004 Coll.). With the right to view the files, the right to make excerpts and the right to obtain copies of the file or its parts made by the administrative body is connected.

4.1.2.2. Official Journal of the Industrial Property Office

The law also establishes that the Industrial Property Office issues the Official Journal, where, among other, information on trademarks are to be published. This fundamental duty arises from the provision of section 44 paragraph 6 of Act No. 441/2003 Coll., which assumes that in the Official Journal, the Office publishes especially applications and registered trademarks and other information in relation to trademarks, or possibly notifications and information of general character issued by the Office as well as official notifications and decisions of fundamental nature.

Act No. 441/2003 Coll., further assumes at a number of points that certain facts will be published in the Official Journal.

In particular, trademarks applications are published in the Official Journal, on condition they meet the statutory requirements stipulated by the Act (section 23 of Act No. 441/2003 Coll.).

Furthermore, information on a trademark rejection or on the rejection of objections filed against a trademark is published in the Official Journal (section 26 of Act No. 441/2003 Coll.).

Also the record of a trademark in the register is announced in the Official Journal (section 28 of Act No. 441/2003 Coll.).

The renewal of a trademark registration is also published in the Official Journal (section 29 paragraph 7 of Act No. 441/2003 Coll.), as well as the waiver of rights to a trademark (section 30 paragraph 1 of Act No. 441/2003 Coll.).

Furthermore, the Office is obliged to announce the decision of the waiver of lapse of time (section 33 paragraph 3 of Act No. 441/2003 Coll.).

Also, according to the provision of section 47 paragraph 3 of Act No. 441/2003 Coll., the Office announces in the Official Journal the amounts of fees for an international trademark registration defined by the international convention.

In the Official Journal, information on the transition of an already registered Community trademark into a national trademark (section 50 paragraph 4 of Act No. 441/2003 Coll.).

Presently, information on trademark applications rejected or partially rejected prior to the publication, published trademarks applications, trademark applications rejected or partially rejected after the publishing, trademark registration without changes against the published applications, trademark registrations with changes against published applications, records of trademark licence agreements, information on cancelled trademarks and on the declaration of trademarks as void, renewals of trademarks registrations, trademark expiries by the validity period expiration, waivers of rights to trademarks, changes of trademarks owners, changes in information on trademark owners and other decisive information and official corrections are published in the Official Journal.

In relation to trademarks, especially the following data can be acquired in the Official Journal:

- trademark registration number;
- date of trademark registration;
- number of trademark application (file);
- date of application submission;
- date of right of priority creation;
- date of the publishing of an application after the research;
- date of the publishing of trademark registration in the Official Journal;
- list of products and services;
- product class number, services class number;
- restriction of the protection extent by an element;
- description or image of a trademark;
- collective trademark;
- three-dimensional trademark;
- trademark consisting in a colour of a colour combination only;
- date of the decision becoming final and conclusive / decision result;
- information on the colour scheme of a trademark;
- identification of the applicant / owner of a trademark;
- representative identification;
- international registration number of a trademark;
- country of protection code of an international trademark.

For clarity, we include an example of information on published trademark applications published in the Official Journal of the Industrial Property Office on 28. 3. 2007:

Zveřejněné přihlášky ochranných známek

(210) **O-356919**
(220) 06.08.2004
(320) 06.08.2004
(511) 37
(540)

PHANTOM

(510) (37) servis, opravy a údržba počítačů.
(730) **100 MEGA DISTRIBUTION s.r.o.**, Dusíkova 3, Brno, 63800, CZ

(730) **SELIKO Opava a.s.**, Sadová 44, Opava, 74642, CZ
(740) Jiří Effmert, Halasova 314a, Říčany u Prahy, 25101

(210) **O-432024**

(220) 02.12.2005
(320) 02.12.2005
(511) 9, 16, 35, 37, 41, 42, 45
(540)

MORAVSKÁ GALERIE

(510) (9) nenahrané i nahrané magnetické, optické nebo kombinované nosiče audio, video nebo audiovizuálních záznamů, edice uměleckých děl šířených na veškerých paměťových nosičích, kompaktní disky a ostatní nosiče pro lektorské a edukativní účely, to vše spadající do této třídy; (16) reprodukce grafických i výtvarných uměleckých děl, fotografie, pohlednice, psací potřeby a potřeby pro umělce, lepenka; (35) reklamní, propagační, inzertní činnost, vydávání a distribuce propagačních materiálů a uživatelských publikací, činnosti k propagaci výtvarného umění, spadající do této třídy, organizace a realizace výstav k reklamním a obchodním účelům, automatizované zpracování dat a informací ke komerčním účelům, pronájem prostor k pořádání komerčních akcí; (37) restaurování a konzervování sbírkových předmětů, realizace výstavních expozic a provozování výstavních ploch, konzultační a poradenské služby v oblasti výstavnictví, to vše spadající do této třídy; (41) provozování muzeí, nákup sbírkových předmětů, budování muzejní sbírky, její správa a péče o ni, půjčování sbírkových předmětů, provozování knihovny, výchova, vzdělávání, zábava, organizování a pořádání kulturních, společenských a zábavních akcí, pořádání výstav ke kulturním a vzdělávacím účelům, realizace výstavních expozic a provozování výstavních ploch, spadající do této třídy, lektorská a edukativní činnost, zprostředkovatelské služby v oblasti vzdělávání a umění, redakční, vydavatelské a nakladatelské služby, vydávání časopisů, grafických i uměleckých děl a reprodukcí výtvarných uměleckých děl, vydávání kompaktních disků a jiných nosičů informací pro lektorské a edukační účely, agenturní činnost v oblasti výstavnictví, umění a kultury, výroba audiovizuálních pořadů včetně jejich půjčování, pořádání a zajišťování odborných kolokvií, přednášek, kurzů, seminářů a besed, ostatní služby v oblasti vzdělávání, tvorba radiových a televizních vzdělávacích spouň, pronájem prostor k pořádání společenských a kulturních akcí, překladatelské a tlumočnické služby, informační služby v oblasti umění a uměleckých děl, konzultační a poradenské služby v oblasti výstavnictví (organizování kulturních nebo vzdělávacích výstav), umění, uměleckých děl autorů z tuzemska i ze zahraničí; (42) vědecký výzkum v oblasti uměleckých děl, badatelské studium sbírek, odborná pomoc a služby vlastníkům sbírek muzejní povahy, odborné posudky, rešerše a expertizy v oblasti umění a uměleckých děl, tvorba programových projektů a multimediálních aplikací, spadající do této třídy, počítačová grafika a digitální tisk, tvorba programů na zakázku - např. počítačových programů; (45) zajišťování ochrany sbírek pomocí mechanických i elektronických zabezpečovacích a protipožárních systémů a ostrahou.

(730) **Moravská galerie v Brně**, Husova 18, Brno, 66226, CZ
(740) Ing. Libor Markes, Grohova 54, Brno, 60200

(210) **O-424549**
(220) 24.03.2005
(320) 24.03.2005
(511) 16, 41
(540)

BAZALKA

(510) (16) knihy, časopisy, odborné tiskoviny, letáky; (41) pořádání školení, přednášek a seminářů, vydávání knih.
(730) **Lukešová Jana Ing.**, K Bříčce 1580, Hradec Králové, 50008, CZ

(210) **O-428693**
(220) 04.08.2005
(320) 04.08.2005
(511) 9, 37
(540)



HTH system s.r.o.

(510) (9) přístroje a nástroje vědecké, námořní, geodetické, fotografické, filmové, optické, přístroje pro vážení, měření, signalizaci, kontrolu (inspekci), záchranu a přístroje pro vyučování, přístroje a nástroje pro vedení, přepínání, přeměnu, akumulaci, regulaci nebo řízení elektrického proudu, přístroje pro záznam, převod, reprodukci zvuku nebo obrazu, magnetické nosiče zvukových záznamů, gramofonové desky, automatické distributory a mechanismy pro přístroje a mince, zapisovací poklady, počítací stroje, přístroje pro zpracování informací a počítače, hasicí přístroje; (37) opravárenská činnost a instalační služby, montáž, údržba a opravy kancelářských strojů a zařízení.
(730) **HTH system, s.r.o.**, Boleslavova 3, Praha 4, 14000, CZ
(740) Mgr. Jindřich Vítek, Nad Petruskou 1, Praha 2, 12000

(210) **O-428858**
(220) 10.08.2005
(320) 10.08.2005
(511) 9, 16, 35, 41
(540)

GLOBE ATLANTIC

(510) (9) elektronické publikace; (16) tiskoviny všeho druhu; (35) propagace a reklama, zprostředkování obchodních záležitostí; (41) výchovná a vzdělávací činnost, školení, kurzy a související poradenství.
(730) **Zvagulis Peter**, Hřebovová 215/3, Praha 6 - Lysolaje, 16500, CZ

(210) **O-431749**
(220) 25.11.2005
(320) 25.11.2005
(511) 29, 30, 39
(540)

MÁJKRÉM

(510) (29) výrobky z masa, masové konzervy, masové pomazánky, paštika; (30) koření a kořenici směsi pro masové a zeleninové krémy a směsi; (39) doprava a skladování těchto uvedených výrobků.

(210) **O-436306**
(220) 07.04.2006
(320) 07.04.2006
(511) 6, 20, 35, 37, 42
(540)



(510) (6) kovové potřeby zámečnické a klempířské, obecné kovy

The following is an example of information published in the Official Journal of the Industrial Property Office relating to the registration of a trademark without a change against the published application:

Zápisy ochranných známek bez změny ve vztahu ke zveřejněným přihláškám

(111) 288208 (220) 05.02.2003 (320) 05.02.2003 (442) 13.12.2006 (151) 19.03.2007 (730) Slovakia Press, s.r.o., V Dědině 881/34, Říčany u Brna, 66482, CZ (210) O-188265	(210) O-424603
(111) 288209 (220) 05.02.2003 (320) 05.02.2003 (442) 13.12.2006 (151) 19.03.2007 (730) Slovakia Press, s.r.o., V Dědině 881/34, Říčany u Prahy, 66482, CZ (210) O-188266	(111) 288219 (220) 30.03.2005 (320) 30.03.2005 (442) 13.12.2006 (151) 19.03.2007 (730) ACTIVE WELLNESS s. r. o., Seifertova 49, Praha 3, 13000, CZ (210) O-424683
(111) 288211 (220) 14.06.2004 (320) 14.06.2004 (442) 13.12.2006 (151) 19.03.2007 (730) Janoušek Richard, Moutnice 100, 66455, CZ (210) O-347443	(111) 288220 (220) 05.05.2005 (320) 05.05.2005 (442) 13.12.2006 (151) 19.03.2007 (730) Sano - Moderní výživa zvířat spol. s r.o., Npor. O. Bartoška 15, Domažlice, 34401, CZ (210) O-426043 (526) Omezení rozsahu ochrany o prvek: Rozsah ochrany se omezuje o slovní prvek "Moderní výživa zvířat".
(111) 288213 (220) 16.07.2004 (320) 16.07.2004 (442) 13.12.2006 (151) 19.03.2007 (730) T - MOBILE Czech Republic, a.s., Tomičkova 2144/1, Praha 4, 14900, CZ (210) O-356271	(111) 288221 (220) 05.05.2005 (320) 05.05.2005 (442) 13.12.2006 (151) 19.03.2007 (730) Sano - Moderní výživa zvířat spol. s r.o., Npor. O. Bartoška 15, Domažlice, 34401, CZ (210) O-426044 (526) Omezení rozsahu ochrany o prvek: Rozsah ochrany se omezuje o slovní prvek "Moderní výživa zvířat".
(111) 288214 (220) 10.08.2004 (320) 10.08.2004 (442) 13.12.2006 (151) 19.03.2007 (730) AZ Real, s.r.o., Kroměřížská 4, Vyškov, 68201, CZ (210) O-358135	(111) 288222 (220) 02.06.2005 (320) 02.06.2005 (442) 13.12.2006 (151) 19.03.2007 (730) Novera spol. s r.o., Psáry 65, Psáry, 25244, CZ (210) O-426950
(111) 288215 (220) 03.12.2004 (320) 03.12.2004 (442) 13.12.2006 (151) 19.03.2007 (730) BENTRANS-PLUS s.r.o., Pražská 1072, Sadská, 28912, CZ (210) O-421101	(111) 288223 (220) 16.06.2005 (320) 16.06.2005 (442) 13.12.2006 (151) 19.03.2007 (730) Kaftanová Olga, Šumavská 8, Praha 8, 12000, CZ (210) O-427422
(111) 288216 (220) 19.01.2005 (320) 19.01.2005 (442) 13.12.2006 (151) 19.03.2007 (730) Šorm Josef, Svatopluka Čecha 889, Jičín, 50601, CZ (210) O-422532	(111) 288224 (220) 15.08.2005 (320) 15.08.2005 (442) 13.12.2006 (151) 19.03.2007 (730) Buriánek Tomáš, Havanská 2814/13, Tábor, 39005, CZ (210) O-428968
(111) 288218 (220) 25.03.2005 (320) 25.03.2005 (442) 17.08.2005 (151) 19.03.2007 (730) Vodafone Czech Republic a. s., Vinohradská 167, Praha 10, 10000, CZ	(111) 288225 (220) 23.08.2005 (320) 23.08.2005 (442) 15.03.2006 (151) 19.03.2007 (730) AUTO MAX spol. s r.o., Radkovicice 19, Radkovicice, 50327, CZ (210) O-429162

Further, we include an example of a publication of trademark registration with a change against the published application:

Zápis ochranných známek se změnou ve vztahu ke zveřejněným přihláškám

(111) **288210**
(220) 21.02.2003
(320) 21.02.2003
(442) 14.12.2005
(151) 19.03.2007
(540)

Extáze

(730) **MP Media s.r.o.**, Řipská 1432/2, Praha 10, 10000, CZ
(740) Bohemia Patent, Ing. Jana Vandělková, Umělecká 6, Praha 7, 17000
(510) (16) písma pro tiskárny, štočky.
(511) 16
(210) O-189061

(111) **288212**
(220) 17.06.2004
(320) 17.06.2004
(442) 12.04.2006
(151) 19.03.2007
(540)

TOP TIP

(730) **Strašák Vladimír Ing.**, Červená cesta 1130, Kunovice, 68604, CZ
(740) Ing. Dobroslav Musil, Cejl 38, Brno, 60200

(510) (1) chemické výrobky pro průmysl, vědy, fotografii, zemědělství, zahradnictví a lesnictví, hnojiva pro půdu, umělé pryskyřice v surovém stavu, plastické hmoty v surovém stavu, hnojiva pro půdu, hasící přístroje (složení), prostředky pro kalení a letování kovů, chemické výrobky určené ke konzervování potravin, tiskací materiály, lepidla pro průmysl; (2) barvy, nátěry, laky, barviva, mořidla, barviva pro barvení oděvů, barviva pro potraviny a nápoje, ochranné výrobky proti korozi a pro ochranu dřeva, kovových a nekovových materiálů, přípravky pro čištění a úpravu povrchu kovových i nekovových materiálů; (3) hygienické potřeby ve třídě 3, prací prostředky, aviváže, přípravky pro čištění, mytí, konzervování a leštění podlah, oken a nábytku, vonné oleje, přípravky na čištění odpadních rour, přípravky pro mytí nádobí ruční i v myčkách nádobí, opalovací přípravky, ochranné masti; (4) svíčky, knoty na svícení, paliva ke svícení, přípravky na pohlcování a vázání prachu, mazadla, leštidla a krémy na obuv; (5) hygienické výrobky ve třídě 5, vložky ve třídě 5, deodoranty ve třídě 5, čaje ve třídě 5, doplňky stravy ve třídě 5 a vitamínové přípravky, léčivé nápoje, potraviny pro batolata, přípravky a soli do koupele ve třídě 5, lékárníčky, přípravky pro podporu růstu vlasů, laktóza, náplasti, přípravky pro ošetřování nohou a pro péči o nohy, posilující přípravky, mucholapky, dezinfekční přípravky, výrobky pro hubení škodlivých zvířat, fungicidy, herbicidy, insekticidy, repelenty; (7) elektromechanické kuchyňské aparáty (drtiče, mixéry) pro potraviny, kuchyňské roboty, lisy na ovoce, elektrické mlýnky, např. na kávu, maso, koření, strojky ke stříhání, přístroje pro sekání potravin, balicí stroje, nářezové stroje; (8) nářadí a nástroje s ručním pohonem, nože, vidličky, lžice, břitvy, elektrické nůžky na nehty; (9) elektricky vyhřívané oděvy, zapisovací a registrační pokladny, hasící přístroje, prodejní automaty, elektrické baterie a akumulátory, nabíječky, brýle a pouzdra, ochranné helmy, ochranné masky a respirátory; (10) kondomy, dětské dudlíky a láhve, kroužky na prořezávání zubů; (11) zapalovače; (12) dopravní prostředky pozemní, vzdušné, vodní a jejich díly a příslušenství ve třídě 12; (13) ohňostroje, petardy; (14) bižuterie, šperky, přístroje pro měření času, nádobí z drahých kovů; (15) hudební nástroje a jejich příslušenství; (16) lepidla pro papírenství, nože na řezání papíru, plenkové kalhotky, kovové folie pro balení potravin; (18) kůže, imitace kůže a výrobky z nich, kufrы, zavazadla, deštníky, slunečníky, hole; (20) nádoby z umělých hmot i jako obaly, zejména pro balení potravin; (21) náčiní a nádoby pro domácnost nebo kuchyň, solničky, hřebeny a mycí houby, kartáče, čistící potřeby, malé přístroje k sekání, mletí, lisování s ručním pohonem, elektrické hřebeny, zubní kartáčky i elektrické zubní kartáčky, zubní nitě, dávkovače ve třídě 21, obouhřady, otvárače lahví, podnosy, podtácky, rukavice ve třídě 21, sítká, sušáky na

prádro, strojky na nudle, utěrky ve třídě 21, páratka a jiné kuchyňské doplňky ve třídě 21; (22) provazy, lana, sítky, síťe, stany, plachty, plachtoviny, pytle, materiál na vycpávky, textilní materiály ze surových vláken a výrobky z nich, zejména vaky, tašky, struny; (23) nitě a příze všeho druhu, pletací příze; (24) tkaniny a textilní výrobky, ložní prádlo, ubrusy, prostírání, pokrývky ložní, kapesníky, ubrousky, utěrky na sklo, ručníky; (25) oděvy, obuv, prádlo, plavky, plenkové kalhotky, plenky dětské, kloboučnické zboží, pláštěnky; (26) krajky, výšivky, stuhy, tkaničky, knoflíky, háčky a očka, poutka, galanterie, špendlíky a jehly, jehlice, umělé květiny; (27) koberce, rohožky, rohože, podlahové obklady a krytiny, tapety; (28) hry, hračky, doplňky a potřeby pro sport, sportovní nářadí a náčiní, cvičební stroje, vánoční ozdoby; (30) nápoje na základě kávy, kakaa a čokolády, tapioka, ságo, sójová mouka, mouka a přípravky z obilnin, obilniny připravené pro osobní konzumaci, chléb, pečivo, cukrovinky, žvýkačky, zmrzlina z mraženinové krémy, prášky do těsta, kečupy, dresingy, majonézy, nálevy k ochucení, sůl pro konzervování potravin, pizza, nudle, popcorn, pudink, cukroví, zákusky, čokoláda, dorty, sušenky, šlehačka, těsta, těstoviny, vložky, zahušťovací přípravky, směsi na pečení, nálevy a přípravky k zavařování, hotová jídla, polotovary jídel; (31) živá zvířata, rostliny a přírodní květiny, osivo, rýže natural, živí mělkýši a koryši; (35) zpracování a výroba reklamních návrhů a spotů, grafické a kresličské práce, obchodní administrativa, obchodní audit, manažerská činnost, personalistika a řízení lidských zdrojů, pronájem průmyslového zboží; (39) doprava osob a zboží, balení a skladování; (41) pořádání obchodních a manažerských seminářů a kurzů, včetně jejich realizace, pořádání loterií, sázek a soutěžních her; (42) vývoj, implementace, řízení a správa elektronických informačních systémů, vývoj, pronájem, provozování, údržba a prodej software.

(511) 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 35, 39, 41, 42
(210) O-347598

(111) **288217**
(220) 07.02.2005
(320) 07.02.2005
(442) 11.01.2006
(151) 19.03.2007
(540)

NES

(730) **WINEMARK, spol. s r. o.**, Oblouková 12, Praha 10, 10100, CZ
(740) **DANĚK & PARTNERS**, Advokátní a patentová kancelář, Dr. Vilém Daněk, Vinohradská 45, Praha 2, 12000
(510) (18) hole, hole se sedátkem, biče, postroje na koně a sedlářské výrobky, příkrývky nohou; (25) bryndáčky (ne z papíru), plenky dětské textilní, slintáčky (ne z papíru).
(511) 18, 25
(210) O-423073

Obnovy zápisu ochranných známek

(111) 93635
(220) 05.03.1927
(151) 05.03.1927
(540)

OSTALIDON

(730) Spolek pro chemickou a hutní výrobu, akciová společnost, Revoluční 86, Ústí nad Labem, 40032, CZ
(740) Známková kancelář Praha, v.o.s., Tichá Laura, p.o.box 46, Praha 5, 15250
(510) (21) keramické výrobky všeho druhu.
(511) 21
(210) O-9765

(111) 93674
(220) 24.03.1927
(151) 24.03.1927
(540)

POLYSAN

(730) ZENTIVA, a. s., Nitrianska 100, Hlohovec, 92027, SK
(740) Rott, Růžička a Guttmann, patentová, známková a právní kancelář, JUDr. Rott Vladimír, Nad Štolou 12, Praha 7, 17000
(510) (5) dietetické a léčivé prostředky pevné, tekuté, krystalové, tabletky, pilulky k aplikaci vnitřní a vnější.
(511) 5
(210) O-2086

(111) 94908
(220) 14.03.1947
(151) 14.03.1947
(540)



(730) Spolek pro chemickou a hutní výrobu, akciová společnost, Revoluční 86, Ústí n.L., 40032, CZ
(740) Známková kancelář Praha, v.o.s., Tichá Laura, p.o.box 46, Praha 5, 15250
(510) Lučební výrobky pro průmyslové, vědecké a fotografické účely, technicky a chemicky čisté chemikálie, jakož i chemikálie pro analýsu, nerostné suroviny, aktivní uhlí pro léčebné a průmyslové účely, ložiskové kovy, lehké kovy a slitiny lehkých kovů, lučební výrobky pro hutnictví a zpracování rud, elektrochemické a elektrotermické výrobky (karbid, ferrosilitiny), organická barviva, meziprodukty k výrobě organických barviv, organické a anorganické pigmenty, barvy, bronzový prášek, sušidla a ředidla do tiskařských barev, tiskařská válcovina, kovové folie, listkové kovy, aluminiové obaly všeho druhu, léčiva, léky, lučební výrobky pro léčebné a zdravotní účely, farmaceutické drogy, sera, léčivé profylaktické vacciny, dietetické přípravky, prostředky pro hubení škůdců, prostředky na ochranu rostlin, růstové látky rostlinné, sterilizační a desinfekční prostředky, prostředky ke konzervování pokrmů, glukosa pro vyživovací, dietetické a léčebné účely, hnojiva, fermeže, laky, mořidla, lepidla, rozpustidla, změkčovadla, prostředky na odstranění tuků, krémy na obuv, prostředky ke zpracování a zušlechťování kůže, prostředky apreturní a tríslicí, umělý kaučuk, umělé lisovací hmoty, lisované nebo stříkané výrobky z umělých lisovacích hmot, umělé hmoty pro výrobu laků a pro impregnaci, hmota pro výrobu gramofonových desek, umělý šelak, umělé pryskyřice, lisovací prášek z umělých pryskyřic, umělá vlákna, náhražka pro lýko a rákos, papír, lepenka, suroviny a polotovary k výrobě papíru, papírové a kartonové výrobky, a to: obaly všeho

druhu z impregnovaného neb neimpregnovaného papíru, papírové pohárky a nádoby, papírová vlákna, papírová příze, papírové motouzy, textilní dutinky, textilní cívky, dutinky a trubice všeho druhu, uzávěry na mléčné láhve, voskovaný papír, papírové koberce, držadla na jízdní kola, papírové sparterie, sklápěcí kovová pouzdra, technické oleje a tuky, mazadla, benzin, předměty ze dřeva, a to dřevěné sparterie, dřevní dřt, řezivo, příkna na bedny a jiné obaly ze dřeva, ocet, buničina a její deriváty, celuloza pro umělá vlákna, pro celofán, pro nitrační účely a pro papír případně také ve spojení s jinými surovinami, estery a étery celulosy pro umělá vlákna, pro výrobu laků a filmů, výrobky z viscosové celulosy, průhledné a neprůhledné folie, umělé houby, buničitá vlna a výrobky z ní, sparterie z buničité vlny, sulfíťový lih, zahuštěný sulfíťový výluh, celulozová smola, droždí pro vyživovací a krmné účely, prostředky prací stahovací, bělicí, smačecí, zušlechťovací prostředky pro textilní průmysl, škrob a škrobové výrobky pro vyživovací, farmaceutické a průmyslové účely, jakož i ke škrobení prádla, prostředky k odstraňování skvrn, prostředky proti rzi, prostředky cidící a lešticí, brousící prostředky, leonské zboží, zápalky všeho druhu, zápalkové zboží, zapalovačla.

(511) 1, 2, 3, 4, 5, 6, 16, 17, 20, 22, 23, 34
(210) O-9090

(111) 97581
(220) 11.03.1947
(151) 11.03.1947
(540)

REDLER

(730) Stock Equipment Company, Inc., 16490 Chillicothe Road, Chagrin Falls, OH, US
(740) ROTT, RŮŽIČKA & GUTTMANN Patentová, známková a advokátní kancelář, JUDr. Vladimír Rott, Nad Štolou 12, Praha 7, 17000
(510) (7) stroje na zařízení pro dopravu zboží v celku bez obalu.
(511) 7
(210) O-8675

(111) 102270
(220) 22.10.1947
(151) 22.10.1947
(540)

AEROSPORIN

(730) The Wellcome Foundation Limited, Glaxo Wellcome House, Berkeley Avenue, Greenford, Middlesex, GB
(740) KOREJZOVÁ & SPOL., v.o.s., JUDr. Zdeňka Korejzová, advokátka, Korunní 104/E, Praha 10, 10100
(510) (5) léčebné výrobky, zvláště přípravky antibiotické a baktericidní.
(511) 5
(210) O-9365

(111) 109205
(220) 10.03.1927
(151) 10.03.1927
(540)

BÍLINSKÁ KYSELKA

(730) BOHEMIA HEALING MINERAL WATERS COMPANY LIMITED, Suite 3C, Standbrook House, 2-5 Old Bond Street, London, GB
(740) Ing. Vithous Roman, Pavlíkova 605/12, Praha 4 - Kamýk, 14200
(510) (32) bílinská kyselka.
(511) 32
(210) O-9069

(111) 117751
(220) 12.09.1947
(151) 12.09.1947
(540)

MEOPTA

(730) Meopta - optika, s.r.o., Kabelkova 1, Píerov, 75002, CZ

Presently, the Official Journal is issued weekly, only in the electronic form accessible on the Internet site of the Industrial Property Office.

4.1.2.3 Making accessible the information on trademarks by the Industrial Property office

Besides the administration of the register and issuing of the Official Journal, which is statutory, the Industrial Property Office conducts a number of other informatory activities relating to trademarks. Although these activities are not directly based on the law, they present a crucial source of information for both expert and general public, including state administration authorities participating in the intellectual property rights enforcement. The activities include especially the administration of the register of trademark valid in the territory of the Czech Republic, both national and international, as well as Community trademarks.

The database can be searched according to the file (application) number, registration number, trademark, product and services class, list of products and services, Vienna classes, applicant / holder, date of the application submission, date of the right of priority, date of the publication of the application and registration date.

As an example we include the data from the database of the Industrial Property Office concerning the Czech national trademark registration no. „EZU HAR“(combined):

OCHRANNÉ ZNÁMKY

ÚŘAD PRŮMYSLUVÉHO VLASTNICTVÍ

Databáze obsahuje národní ochranné známky (ÚPV), mezinárodní ochranné známky (WIPO) s designací ČR a EU a komunitární ochranné známky (OHIM).

Data ÚPV jsou aktuální ke dni: 20.11.2007

Data WIPO jsou aktuální ke dni: 19.11.2007

Data OHIM jsou aktuální ke dni: 19.11.2007

Zdroj	ÚPV-ČR
(210) Číslo spisu	180740
(540) Reprodukce/Znění OZ	

◁EZU▷ ▷HAR▷

(111) Číslo zápisu	254365
(511) Třídy výrobků a služeb	42
(531) Vídeňské obrazové třídy	27.5.9 ; 26.3.4
(220) Datum podání přihlášky	11.06.2002
(320) Datum práva přednosti:	11.06.2002
(330) Země priority:	CZ
(442) Datum zveřejnění přihlášky	12.02.2003
(151) Datum zápisu	26.05.2003
(730) Přihlašovatel/vlastník	Elektrotechnický zkušební ústav, s.p. Pod Lisem 129 Praha 71 CZ 17102
Stav	Platný dokument
Druh	Kombinovaná
(510) Seznam výrobků a služeb	(42) certifikace a zkoušení kabelů. (42) certification and examination of cables.

[Přehled položek rejstříku](#) [Výpis z rejstříku OZ](#)

UPOZORNĚNÍ

Tento výpis má pouze informativní charakter a údaje pro jeho vytvoření byly získány na síti Internet.
Domníváte-li se, že obsahuje chyby, obraťte se prosím na Úřad průmyslového vlastnictví.
Údaje byly získány na <http://www.upv.cz> dne 21.11.2007 12:40

The following is an example of data available in the database of the Industrial Property Office concerning the international trademark no. 765352 „MATRIX“:

OCHRANNÉ ZNÁMKY

ÚŘAD PRŮMYSLVÉHO VLASTNICTVÍ

Databáze obsahuje národní ochranné známky (ÚPV), mezinárodní ochranné známky (WIPO) s designací ČR a EU a komunitární ochranné známky (OHIM).

Data ÚPV jsou aktuální ke dni: 20.11.2007

Data WIPO jsou aktuální ke dni: 19.11.2007

Data OHIM jsou aktuální ke dni: 19.11.2007

Zdroj	WIPO-CZ
(540) Reprodukce/Znění OZ	MATRIX
(811) Číslo zápisu	765352
(511) Třídy výrobků a služeb	12
(151) Datum zápisu	25.07.2001
Datum oznámení pro CZ	11.10.2001
(180) Datum konce platnosti	25.07.2011
(730) Přihlašovatel/vlastník	Hans-Georg Müller 138, Bickernstrasse D-45889 Gelsenkirchen DE
(812) Země původu	DE
Stav	Platný dokument
Druh	Slovní
(510) Seznam výrobků a služeb	12 Véhicules. Vehicles.
Transakce ovlivňující stav v CZ	[ENN] stav: 6 - Registration DE (450) 2001/20 Gaz, 08.11.2001 (831) AT - BX - CH - CN - CZ - ES - FR - HU - IT - PL - PT - RO - RU - SI - SK - YU (832) TR (580) regedat: 25.07.2001 (580) regrdat: 27.09.2001 (580) notdate: 11.10.2001 [CBNP] stav: 6 - Cancellation effected for some of the goods and services at the request of an Office of origin in accordance with Article 6(4) of the Agreement or Article 6(4) of the Protocol DE (450) 2003/4 Gaz, 03.04.2003 /12/ - List limited to: Véhicules terrestres, à l'exception des véhicules à deux roues et de leurs parties, véhicules nautiques et aériens. ----- Land vehicles, with the exception of two-wheeled vehicles and parts thereof, aerial and nautical vehicles. ----- (580) regedat: 11.07.2002 (580) regrdat: 17.02.2003

(580) notdate: 18.02.2003

Přehled položek rejstříku

UPOZORNĚNÍ

Tento výpis má pouze informativní charakter a údaje pro jeho vytvoření byly získány na síti Internet.
Domníváte-li se, že obsahuje chyby, obraťte se prosím na Úřad průmyslového vlastnictví.
Údaje byly získány na <http://www.upv.cz> dne 21.11.2007 13:11

Also, we include an example of data from the database of Industrial Property Office concerning Community trademark no. 845024 „PUMA“(verbal):

OCHRANNÉ ZNÁMKY

ÚŘAD PRŮMYSLOVÉHO VLASTNICTVÍ

Databáze obsahuje národní ochranné známky (ÚPV), mezinárodní ochranné známky (WIPO) s
designací ČR a EU a komunitární ochranné známky (OHIM).

Data ÚPV jsou aktuální ke dni: 20.11.2007

Data WIPO jsou aktuální ke dni: 19.11.2007

Data OHIM jsou aktuální ke dni: 19.11.2007

Zdroj	OHIM
(210) Číslo spisu	845024
(540) Reprodukce/Znění OZ	PUMA
(511) Třídy výrobků a služeb	5
(220) Datum podání přihlášky	09.06.1998
(442) Datum zveřejnění přihlášky	21.12.1998
(151) Datum zápisu	02.06.1999
(180) Datum konce platnosti	09.06.2008
(730) Přihlašovatel/vlastník	Bayer CropScience AG Bayer CropScience AG Alfred-Nobel-Str. 50 Monheim am Rhein DE 40789
(740) Zástupce	Bayer Aktiengesellschaft Frank Meixner . Leverkusen DE 513 68
Stav	CTM registered
Druh	Slovní
(510) Seznam výrobků a služeb	5 Produits pour la destruction des animaux nuisibles; fongicides, herbicides. Preparations for destroying vermin; fungicides, herbicides. Mittel zur Vertilgung von schädlichen Tieren; Fungizide, Herbizide. Præparater til udryddelse af skadedyr; svampe- og ukrudtsdræbende midler. Παρασκευάσματα για την καταπολέμηση επιβλαβών ζώων και ζωοφίων· μυκητοκτόνα, παρασιτοκτόνα. Productos para la destrucción de animales dañinos; fungicidas, herbicidas. Tuhoeläinten ja syöpäläisten hävitysvalmisteet; sienii- ja rikkaruohomyrkyt. Prodotti per l'eliminazione di animali nocivi; fungicidi, erbicidi. middelen ter verdelging van ongedierte;

As obvious, whereas all information concerning national trademarks and their applications are in the Czech language, the information relating to international trademarks valid in the territory of the Czech Republic and Community trademarks are partially available also in foreign languages, and the knowledge of French and English is necessary for the entire understanding of these information, especially as concerns the kinds of protected products and services.

Moreover, while searching for information in these databases, it is necessary to keep in mind that all international trademarks available in the database of the Office are at the time, when the information is required, valid in the territory of the Czech Republic. It is possible in a number of cases to learn from the data on the trademarks available in the database that a protection in the Czech Republic has been temporarily or definitely rejected, or that the original national registration on the basis of which the international trademark had been registered expired and, as a result, the international trademark ceased to be effective also in the Czech Republic. As an example can be seen a data file on international trademark no. 807530 „big puma energy drink“ (combined), which is not valid in the territory of the Czech Republic, as it was cancelled on the request of the owner of all products and services according to rule 25 of the Common Regulations to the Madrid Agreement Concerning the International Registration of Marks and the Protocol to this Agreement (more to this under part 1.5.8.2 of the first volume of the Methodology).

For information we include a collection of data on this international trademark available in the database of the Industrial Property Office, which is however invalid on the territory of the Czech Republic:

OCHRANNÉ ZNÁMKY

ÚŘAD PRŮMYSLOVÉHO VLASTNICTVÍ

Databáze obsahuje národní ochranné známky (ÚPV), mezinárodní ochranné známky (WIPO) s designací ČR a EU a komunitární ochranné známky (OHIM).

Data ÚPV jsou aktuální ke dni: 20.11.2007

Data WIPO jsou aktuální ke dni: 19.11.2007

Data OHIM jsou aktuální ke dni: 19.11.2007

Zdroj WIPO-CZ
(540) Reprodukce/Znění OZ



Slovní část	BIG PUMA ENERGY DRINK.
(811) Číslo zápisu	807530
(511) Třídy výrobků a služeb	32
(531) Vídeňské obrazové třídy	3.1 ; 3.1.1 ; 3.1.4 ; 3.1.24 ; 19.3 ; 19.3.1 ; 27.5 ; 27.5.1 ; 29.1 ; 29.1.13
Datum práva přednosti:	13.03.2003
(320) Číslo prioritní přihlášky:	303 12 840.2/32
(330) Země priority:	DE
(151) Datum zápisu	15.07.2003
Datum oznámení pro CZ	28.08.2003
(180) Datum konce platnosti	03.05.2005
(730) Přihlašovatel/vlastník	Plus Warenhandels-gesellschaft mbH Wissollstrasse 5-43 45478 Mülheim an der Ruhr DE
(812) Země původu	DE
(740) Zástupce	Kort Rechtsanwälte (GbR) Ellerstrasse 123/125 40227 Düsseldorf DE
(558) OZ tvořena pouze barvou	EN Silver, blue, red.
(558) OZ tvořena pouze barvou	FR Argenté, bleu, rouge.
(591) Stav	Barevná Zrušený platný dokument

Quite a number of similar situations can occur especially in the area of international trademarks, but also Community trademarks. From this reason it is more than advisable that the officials of any institutions participating in the intellectual property rights enforcement, when searching for information in the database, addressed the Industrial Property Office with a concrete issue each time when in any doubt on the records content and the validity or effects of the respective trademarks in the territory of the Czech Republic.

In addition, the Intellectual Property Office publishes on its internet site a list of generally known trademarks and a list of trademarks declared as famous under the provision of section 18 of Act No. 174/1988 Coll., on Trademarks.

Both of the lists are of informative character only, without having any binding effect. Therefore, it is not possible to rely on the contained information neither from the entirety point of view (generally known trademarks and famous trademarks can exist, which are not included in the lists), nor in terms of their reliability (the fact, that that certain trademarks are listed does not mean they will be in the possible future proceedings, and court proceedings in particular, reassessed as generally known or famous). In this respect, it should be stressed that the classification of a certain trademark as generally known or with a goodwill in the Czech Republic, or as famous according to (already abolished) provision of section 18 of Act No. 184/1988 Coll., on Trademarks, is primarily a matter of evidentiary proceedings carried out in a concrete proceedings resulting from the enforcement of rights relating to the trademark. The burden of proof in this respect is as a rule on the trademark owner or another person claiming the rights to the trademark.

Both lists however can be significant indicia in the preliminary evaluation whether a certain trademark is being infringed. If such trademark is listed in the list of known trademarks or on a list on trademarks declared as famous, it can be deemed probable that such trademark will enjoy broader legal protection in the territory of the Czech Republic, either because of being generally known or because it has a goodwill. This assumption can be taken into account especially in preliminary proceedings relating to the granting of protection to rights resulting from such trademarks, while a of course a proof to the contrary in later meritorious trial can not be ruled out.

4.1.3. Information on industrial designs

4.1.3.1. Statutory informatory duties

Act No. 207/2000 on the Protection of Industrial Designs and the amendments to Act No. 527/1990 Coll., on Inventions, Industrial Designs and Rationalization Proposals, in the wording of later regulations, as amended, imposes by its provision of section 39 on the Industrial Property Office to keep a register of industrial designs, where decisive data on registered industrial designs are recorded. The provision of section 39 paragraph 2 of Act No. 207/2000 Coll., as amended, defines that especially the following information are recorded in the register for each industrial design:

- number of registration (certificate);
- registration date;
- date of the industrial design publication;
- name of the industrial design and, where applicable, of collective application of industrial designs and their number;

- date of the application submission and its file number;
- definition of the product in which the industrial design is embodied or in which is applied, including its classification according to the relevant classes of the International Classification of Industrial Designs; for an industrial design registered on the basis of a collective application the list of included industrial designs;
- applicant for the industrial design (name and surname, business company or company name), his address (company seat), if applicable, the representative;
- industrial design owner (name and surname, business company or company name), his address (company seat), if applicable, the representative;
- industrial design author;
- industrial design transfer;
- licence;
- expungement of the industrial design from the register;
- removal of the protection or its rewriting;
- creation and expiry of right of lien to the industrial design;
- renewal or the period of protection of the industrial design;
- expiration of the protection.

Further, the law explicitly defines the right of the industrial design author to be stated in the industrial design application and recorded in the register (section 28 of Act No. 207/2000 Coll., as amended).

The industrial design register has legal significance especially in the defining of the extent or the protection resulting of industrial design. The provision of section 10, paragraph 1 of Act No. 207/2000 Coll., as amended, states that the extent of industrial design protection is defined by the industrial design image which is recorded in the register, with the exception of the features which are predetermined by the technical function of the industrial design or features which must be reproduced in the precise shape and dimensions in order that the product in which the industrial design is embodied or in which it is applied can be mechanically attached to other product or placed in another product, around it or against it, in such a way that both products can be fully functional.

The industrial design registration in the register has constructive effects. Only a registered industrial design grants exclusive rights to its owner to use it, prevent third persons from using it, give permission with its usage to third persons or transfer the right to the industrial design to them (section 19, paragraph 1 of Act No. 207/2000 Coll., as amended).

4.1.3.2. Official Journal of the Industrial Property Office

Act No. 207/2000 Coll., as amended, also assumes that the Industrial Property Office issues the Official Journal, and establishes the obligation to publish in it facts concerning registered industrial designs and other information related to industrial designs protection as well as official notices and decisions of fundamental nature (section 39, paragraph 3 of Act No. 207/2000 Coll., as amended).

In the Official Journal of the Industrial Property Office, industrial designs registrations are published. Industrial designs are published at the time of the registration of the designs in the register. The applicant however can ask when submitting the application for a delay of the industrial design publication not extending 30 months from the date of the application submission or from the day of the creation of right of priority. In that case, the Office publishes the industrial design only after the lapse of the required period, while the Office announces the adjournment of the publishing together with the registration of the industrial design in the register. The court proceeding resulting from the infringement of the rights of a still unpublished industrial design can be nevertheless commenced only on condition that the person against who the claim is directed was notified of the information contained in the register in the file relating to the industrial design application.

The following is an example on registered industrial designs published in the Official Journal, from the Official Journal of the Industrial Property Office 13-2007 published on 28.3.2007:

FG4Q

Zapsané průmyslové vzory - přehled podle tříd

(51) 02-01
(11) 33869
(21) 2006-36946
(22) 18.12.2006
(15) 20.03.2007
(45) 20.03.2007
(54) Límečková část košile s dvěma límečky
(28) 2
(73) Novobilský Jan, Plzeň, CZ
(72) Novobilský Jan, Plzeň, CZ
(55)



1.1



1.2



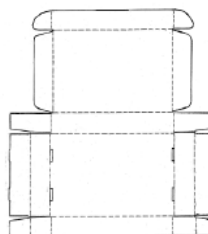
2.1

(51) 09-01
(11) 33866
(21) 2006-36853
(22) 11.09.2006
(15) 15.03.2007
(45) 15.03.2007
(54) Láhev
(28) 1
(73) Vošoust Jiří, Liberec, CZ
(72) Vošoust Jiří, Liberec, CZ
(74) Ing. Vladimír Janko, Národní 348, Liberec 8, 46008
(55)



1.1

(51) 09-03
(11) 33865
(21) 2006-36717
(22) 13.04.2006
(15) 15.03.2007
(45) 15.03.2007
(54) Nástřih krabice
(28) 1
(73) MEGA Production, a. s., Brno, CZ
(72) Wojnar Martin Ing., Třebíč, CZ
(74) KANIA, SEDLÁK, SMOLA Patentová a známková kancelář, Ing. Jiří Malíšek, Mendlovo nám. 1a, Brno, 60300
(55)



1.1

(51) 07-01
(11) 33867
(21) 2006-36873
(22) 06.10.2006
(15) 15.03.2007
(45) 15.03.2007
(54) Korbek
(28) 1
(73) Kučerka Miroslav Ing., Brno, CZ
(72) Kučerka Miroslav Ing., Brno, CZ
(74) JUDr. Miroslav Vitek, patentový zástupce, Neumannova 54, Brno, 60200
(55)



1.1

(51) 19-04
(11) 33868
(21) 2006-36832
(22) 14.08.2006
(15) 20.03.2007
(45) 20.03.2007
(54) Přední strana přebalu knihy a brožura
(28) 2
(73) BOBO BLOK, spol. s r. o., Vrchotovy Janovice, CZ
(72) Kabát Václav, Krásná Hora, CZ
(74) UNIPATENT, Ing. Jiří Chlustina, Jana Masaryka 43-47, Praha 2, 12000

4.1.3.3. Inspection of the file

Act No. 207/2000 Coll., as amended, defines specific regulation of viewing the files in matters of industrial designs. The Office allows a third person to view a file only on condition that such person proves legal interest. However, prior to the registration of an industrial design in the register, only the information on who is the author of the industrial design, who is the applicant, facts on priority right, name of industrial design application and its file identification can be conveyed.

When the publishing of the industrial design has been adjourned, until the industrial design has been registered, the Office enables to view the files only a person, which the industrial design owner identified as the industrial design right infringer.

4.1.3.4. Information accessible through the Internet

Moreover, beyond the extent of the duties explicitly stipulated by law, the Industrial Property Office makes accessible the information databases of industrial designs on its Internet websites. In the databases of industrial designs of the Industrial Property Office, it is possible to search for national industrial designs recorded in the register from entry no. 3500, while the search can be done according to the application number, record number, name, owner, author, application submission date, number of the Official Journal where the industrial design was published, date of publication and class according to Locarno classification.

As an example of information on industrial designs published by Industrial Property Office on the Internet we include the excerpt from the database concerning industrial design registration no. 24525 named "Roof rack designed especially for vans":

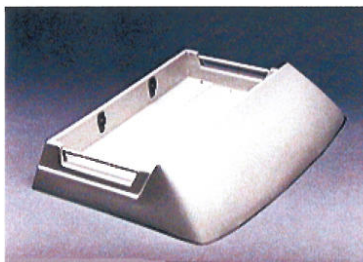
REŠERŠNÍ DATABÁZE PRŮMYSLOVÝCH VZORŮ

ÚŘAD PRŮMYSLOVÉHO VLASTNICTVÍ

Poslední aktualizace 20.11.2007 20:01.

Databáze obsahuje národní průmyslové vzory zapsané do rejstříku- bibliografie a vyobrazení od č. zápisu 3500.

-
- (11) Číslo zápisu: **24525**
(15) Datum zápisu: 25.10.1993
(45) Datum zveřejnění: 25.10.1993
(21) Číslo přihlášky: **1992-25874**
(54) Název: **Nástřesní nosič zavazadel zejména pro dodávková motorová vozidla**
(51) Zatřídění Locarnské: 12-16
(22) Datum podání přihlášky: 27.08.1992
Číslo věstníku publikace: 1900/01
(73) Vlastník: MAVE spol. s r.o., Liptál, 75631, CZ
(72) Původce: Vrla Martin, Liptál 164, 75631, CZ
(28) Počet vzorů při zápisu: 1
Stav řízení: Zaniklý dokument
(55) Vyobrazení:



1 . 1

[Přehled položek řízení](#)

UPOZORNĚNÍ

Tento výpis má pouze informativní charakter a údaje pro jeho vytvoření byly získány na síti Internet.

Domníváte-li se, že obsahuje chyby, obraťte se prosím na Úřad průmyslového vlastnictví.

Údaje byly získány na <http://www.upv.cz> dne 21.11.2007 16:07

[Nápověda při problémech tisku češtiny](#)

4.1.4. Information on appellations of origin and geographical designations

4.1.4.1 Statutory informatory duties

Also in the area of appellations of origin and geographical designations protection the Industrial Property Office is obliged under the legal regulations administer the register and issue the Official Journal.

The provision of section 15, paragraph 1 of Act No. 452/2001 Coll., on protection of appellations of origin and geographical designations and on the amendment of consumer protection act, as amended, establishes that the register is public and anyone has a right to view it. The provision of section 15, paragraph 2 of Act No. 452/2001 Coll., as amended, defines the decisive data on appellations of origin and geographical designations recorded by Industrial Property Office in the register, which are as follows:

- number of appellation of origin or geographical designation registration, date of the registration in the register;
- appellation of origin or geographical designation wording;
- date of appellation of origin or geographical designation application;
- geographical definition of the territory where the goods are produced, processed or prepared;
- name or business company and its seat, or name, surname and permanent address of the applicant and his representative, where applicable;
- address of the business premises where the goods designated by appellation of origin or geographical designation are produced or processed or prepares in the location whose geographical name creates the appellation of origin or geographical designation;
- goods covered by the appellation of origin, or geographical designation, including the definition of quality and characteristics of the goods; when the goods is an agricultural product of foodstuff listed in the notice under section 26, then also the specification of the goods including the amendments;
- cancellation the registration of appellation of origin or geographical designation.

Also other information significant for the appellation of origin and geographical designation can be recorded in the register.

The record of appellation of origin in the register is of constructive nature; the protection of appellation of origin starts with the date of the record. The same applies to geographical designations.

The Office issues on request statements to anybody who applies. Such statement contains information valid as of the date of its issue.

4.1.4.2 Official Journal

According to the provision of section 15, paragraph 4 of Act No. 450/2001 Coll., as amended, the Industrial Property Office announces in the Official Journal the record of appellation of origin or geographical designation in the register, its cancellation and other significant information in relation to the appellation of origin or the geographical designation.

In accordance with the law, the Office announces in the Official Journal the record of appellation of origin or geographical designation in the register (section 7, paragraph 4 of Act No. 450/2001 Coll., as amended), the cancellation of appellation of origin or geographical designation registration (section 11, paragraph 4 of Act No. 450/2001 Coll., as amended), and the amounts fees stipulated by international convention for the international registration of appellation of origin (section 16 paragraph 2 of Act No. 450/2001 Coll., as amended).

4.1.4.3. Viewing the files

The viewing of files in relation to appellations of origin and geographical designations is governed by general legal regulation defined by the provision of section 38 of Act No. 500/2004 Coll., Administrative Procedure Code.

4.1.4.4. Information accessible via the Internet

Beyond the framework of the specific statutory duties, the Offices publishes on its website a list of registered appellations of origin which contains the wording of the respective appellations or geographical designations as well as the products for which they were registered.

Further information related to the respective appellations of origin or geographical designations can be obtained at request directly at the Industrial Property Office.

The Industrial Property Office also publishes on its website the database of origin or geographical designations valid in the territory of the Czech Republic in the database of the European Commission as well as appellations of origin protected under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. In this respect the Industrial Property Office website refers to the original foreign databases in French and English.

4.1.5. Information on topographies of semiconductor products

4.1.5.1. Statutory informatory duties

According to Act No. 529/1991 Coll., on the Protection of Topographies of Semiconductor Products, as amended, imposes on the provision of section 16 on the Industrial Property Office the duty to administrate a register of topographies, where the decisive information on topographies applications and registrations are recorded. In particular, the following information is entered for each of the topographies:

- number of the registration (certification);
- registration date;
- date of the publishing of the topography registration in the Official Journal;
- name of the topography;
- date of the application filing and its file identification, or the date of the first public commercial exploitation of the topography provided such date is earlier than the date on which the application has been filed;
- applicant for the topography registration (name or company name), address (company seat), his representative where applicable;
- topography owner (name or company name), address (company seat), his representative where applicable;
- topography transfer;
- licence;
- topography expungement;
- removal or rewriting of the protection;
- protection expiration.

The record of the topography of a semiconductor product has no constructive effects. The protection of a topography starts already on the date of the first commercial exploitation of the topography other than confidential if such topography has been duly filed with the Office within two years of such exploitation, or on the date of filing of regular application with the Office pursuant to the provisions of section 7, provided the topography has not been previously exploited commercially, or exploited confidentially.

4.1.5.2. Official Journal

Act No. 529/1991 Coll., as amended, further imposes on the Office the duty to issue the Official Journal, where the information is published concerning registered topographies together with other information in relation to the topographies protection, as well as official notices and decisions of fundamental nature (section 16, paragraph 3 of Act 529/1991 Coll., as amended).

In view of the limited practical importance of semiconductor products topographies due to the small number of topographies protected in the Czech Republic, we refrain from a more detailed explanations and examples of published information on topographies.

4.1.6. Educational activities

As already stated above, educational activities do not focus on mere providing information on actual state of law, or rights, but also try to directly influence the behaviour of the education audience and thus directly influence their behaviour especially in economic competition in relation to using intangible property and values which can be protected as intangible property.

Educational activities of the Industrial Property Office are not specifically constituted by law. However, there is no doubt as to the fact that the conducting of such activities by the Industrial Property Office arises from the general definition of its competencies in the area of industrial property based on Act No. 14/1993, on Industrial Property Protection Measures, and individual acts on industrial property protection.

Educational activities of the Industrial Property Office focus in particular on:

- providing information on industrial law protection of technical solutions and designations created or used by public especially in entrepreneur activities;
- providing information to public on already granted industrial rights with the aim to prevent such rights infringement.

Educational activities of the Industrial Property Office result from other activities conducted by the Office on the basis of the law. Very important for educational activities in relation to both expert and general public is consistent, thorough and convincing substantiating of the decisions of the Industrial Property Office in matters in which the Office was granted statutory authorities. Also the professional character and continual updating of the Office's website contribute to the educational function.

In addition, there are specific activities carried focused on the enhancing of general consciousness of the system of industrial rights protection. The Industrial Property Office informs regularly on such activities in its annual reports. Such activities include for instance organizing of various seminars or trainings for entrepreneurs, experts from the field of industrial property and other public administration executors. The Office also organizes seminars and excursions for universities.

The Industrial Property Office also works together with a number of non-governmental organizations participating in the industrial property protection, such as Association Internationale pour la Protection de la Propriété Intellectuelle (AIPPI), or, more precisely, its national group, Licensing Executive Society (LES), International League for the Law of Competition, Ligue Internationale du Droit de la Concurrence, the Czech Association for Brand Products and others.

Among educational activities in the broader sense of the word, also the organizing of the activities of the Industrial Property Training Institute can be included. The Institute provides for educational, promotional and publishing activities of the Industrial Property Office, offering anyone interesting in education in the area of industrial property a two-year study. Further, it organizes, according to the interest of expert public, professional training and seminars, and, in collaboration with the Chamber of Patent Attorneys, participates in the organizing of the examinations of the applicants for registering in the Patent Attorneys Register.

4.1.7. Other informatory activities

Article 17, paragraph 5 of the Charter of Rights and Freedoms applies to the Industrial Property Office and other government and local administrative bodies, imposing on them the duty to provide information on their activities in an adequate manner; the conditions and way to comply with this duty are supposed to be regulated by law.

The Office is obliged to inform the broadest public of its activities by procedure defined in Act No. 106/1999 Coll., on Free Access to Information, as amended. In this respect, it should be stated that most of the information that the public can require from the Industrial Property Office on the basis of this Act is published by the Office in a way enabling remote access on the Office's website. However, this fact does not diminish in any way the fundamental significance of the institute of right to information in public administration as defined in more details by the above mentioned Act.

In respect of the actual activity of the Industrial Property Office in this area, the Industrial Property Office has been very helpful and communicative in its approach towards the public for a number of years. The Industrial Property Office willingly answers concrete inquiries of both the expert and non-expert public concerning the possibility to register intangible property for industrial law protection as well as the content of such protection already granted or in the process of granting and the content of the legal protection of already granted industrial rights. The activities of the Industrial Property Office in this area cannot, however, substitute the services of professionals-entrepreneurs specializing in the consultancy and representation in relation to intellectual property rights. The Office refers to those experts in more complicated cases or where an extensive consultancy activity in respect of a private person could disturb the principle of equality before the law and the equal standing of the administrative proceedings participants.

Similarly helpful is the Industrial Property Office traditionally also in interaction with other administrative offices and state power executors. The Offices established a specialized department for answering the questions of the officers of, in particular, customs offices and the bodies of the Police of the Czech Republic; this department answers, usually in written, concrete questions asked the Industrial Property Office, often also in cases where the relevant information can be get on the Office's website.

4.2. Activities conducted by the Ministry of Culture

Unlike industrial rights, the protection of author's works and other intangible property protected by the Copyright Act is in the Czech Republic based on the principle that legal protection is formed informally and there is no need of registration. This considerably restricts the area for the activities of the Ministry of Culture in relation to providing information to the public on the content of the existing rights protected by copyright. This situation corresponds with the legal state in other continental European countries as well as the continental legal tradition of copyright. It is not a purpose of this methodology to evaluate these traditions, let alone criticise them. From the point of view of intellectual property rights protection it is however impossible to refrain from mentioning that the principle informal protection of the intangible property protected by copyright frequently fails to meet with understanding on the part of non-expert public, thus often causing in practice dubiety which could result in faulty conclusions on the existence and content of legal protection of intangible property protected by copyright.

It must be stated that voices calling for a certain form of registration or record of, in particular, author's works can be often heard from the ranks of mostly non-expert public, most often from such works' authors. On the other hand, there exists, again among non-expert public, a tendency to search for a (non-existing) register of author's works and other intangible property protected by copyright, or for at least a sort of informatory database, where it would be possible to verify whether third persons' rights are infringed by using a certain (author's) work. It is just similar inquiries that the public approaches the Ministry of Culture with.

The above mentioned tendencies cannot be denied a certain foundation resulting from the enhanced awareness of the public on the significance of intellectual property protection and from the increasing number of author's works enjoying legal protection in the territory of the Czech Republic; a certain part of such works becomes more and more banal, especially as concerns works of commercial art, product design, product packaging, simple work of arts, but also simple musical works etc. A separate category is computer programs; in addition, it is very difficult to ascertain whether a computer program is a work according to the Copyright Act. It is rather complicated even for judges and other trained and professionally experienced people with competencies to make decisions in relation to rights to intangible property protected under Copyright Act to assess whether such program really meets the requirements of the Copyright Act that the author's work must be original, which, in case of computer programs, is not even the necessary criterion of the copyright protection.

Act No 2/1969 Coll., on the Establishment of Ministries and Other Central Government Authorities of the Czech Republic, as amended, establishes that the Ministry of Culture is a central state administration authority for arts, cultural and educational activities, cultural relics, church and religious organizations matters, matters of press including the publishing of non-periodical prints and other information media, for radio and television broadcasting in the absence of a special law, for Copyright Act implementing and for the production and trade in relation to culture. Neither this Act nor another legal regulation stipulates any specific obligations of the Ministry of Culture in relation to providing information to public, educational activities or cooperation with other state administration authorities and with societies and associations.

The Ministry of Culture publishes at its website information on legal regulations from the area of copyright applicable in the territory of the Czech Republic – both national regulations and the regulations of international and European (Community) law.

Under preparation is a section of the website of the Ministry of Culture named "Frequently Asked Questions".

In addition, the website of the Ministry of Culture contains a list of citizens associations authorized in collective administration including exact names of the individual collective administrators and contact information.

Moreover, an independent department of copyright law of the Ministry of Culture provides contact addresses of the agents of collective and associate contracts.

The independent department of copyright law also continually answers inquiries of public related to copyright protection. These inquiries are answered ad hoc and relate usually to the legal regulation of remuneration for making copies for personal use and collective administrators' authorities.

4.3. Activities performed by the Police of the Czech Republic

The Police of the Czech Republic plays an unsubstitutable role among authorities active in the field of intellectual property rights protection and enforcement as it participates, or better, should participate in almost all kinds of activities. The legal framework of the activities of the Czech Police has already been outlined in the first volume of the methodology; this second volume will therefore focus on analysis of the current procedures of the Police of the Czech Republic in the field of intellectual property rights and we will eventually try to uncover some deficiencies of the current practice.

4.3.1. Historical excursion

A strict centralization was a typical feature of Czech economy management until the second half of 1990. The state and its authorities controlled all economical activities (production, trade and services) through a plan. As the Czech Republic switched to market economy and the private enterprise field grew, many new entrepreneurial subjects were established. Their activities did not avoid the field in which the subject of production, trade and services is based on intellectual property.

In this respect, we have to remind that a Czech citizen had only limited possibility of legal access to music, films, books and other works manufactured in other countries than those in the so-called socialistic bloc in the past. The situation changed rapidly from quality and quantity point of view after the politic and economic changes at the beginning of 1990 (thanks to the removal of obstacles). Radical changes also took place in the field of using hardware and information technologies.

Czech Police registered first contacts with crime in this field in 1990 when cases of **infringement of trademark rights, trade name and protected appellation of origin** were first investigated. These namely concerned sales of jeans marked with LEVIS trademark without authorization.

The forms and means of commission of crime depend on the subject of offender's interest. In the beginning of this kind of crime the offender focuses his or her interest on **trademarks**, whose use with low-grade products may improve marketability of these products. Later on, criminal activities focus on individual works (music, film and television works and especially works with the status of software) whose saleability is increased both by lucrative low price and certain advance before the official production, distribution and sale.

Criminal activity in the field of trademarks namely consisted in putting **goods illegally marked with a trademark** into circulation. This activity was preceded with the production of such goods in the Czech Republic and later with import of such goods from Asia and their subsequent distribution through sales network. The main role in committing crime belonged

(and still belongs) to stall sale of textiles, sports clothes, shoes, electronics, watches and other goods.

As regards copyright, the crimes concerned **unauthorized use of work**, which was subject to protection in conformity with copyright or subject of a right related to copyright. Basically, it was illegal (counterfeit) production, copying, distribution and sale of audiocassettes and visual recordings. This kind of crime later continuously expanded to contain illegal manufacture/copying and sale of compact discs and mainly copying of software without the consent of the authorized person, i.e. owner of rights to a certain work.

4.3.2. Analysis of the forms of crime

4.3.2.1. Product plagiarism

Product plagiarism depends on the subject of offender's interest. As far as trademark field is concerned, it namely includes putting products bearing an unauthorized trademark or a trademark easily confusable with such trademark into circulation. Such activity is preceded by the production of such goods or their delivery and subsequent distribution.

It is mainly the notorious stall sale of textiles, sports clothes, shoes, electronics, watches and other goods bearing unauthorized trademarks of world-renowned companies, i.e. abuse of individual signs and company logos which are generally renowned and which evoke a certain image of quality, colours and, most of all, of price range of these products in each of us.

Abuse of similarity to a renowned trademark is a problem not only for its owner, but also for consumers as the quality of a counterfeit copy is not identical to the quality of an original product. There are three kinds of activities, which are considered negative conduct in connection with trademark protection and use. These include:

- a) trademark plagiarism field,**
- b) label forgery and imitation field,**
- c) field of imitation of competitor's goods packaging.**

The form of this criminal activity itself does not directly afflict individual citizens, but mainly companies and exclusive dealers who use legal practices and whose very existence is endangered. If goods are imported to the Czech Republic for a price, which is even lower than the domestic price of raw materials needed for their production, there is no wonder that the dissatisfaction of domestic producers is increasing. It is a bare fact that many footwear and textile producers had to close down as they had not been able to compete with such consistent

criminal activities and grey and black economy associated therewith.¹

These unwanted economic relations more or less take effect in the field of import of textile, footwear and alcoholic products. They mainly concern “connected vessels“ of two kinds of performance:

- a) quantity and value under invoicing,**
- b) improvement of price through plagiarism.**

The aim of both kinds of performance is mainly to gain illegal profits or better market position.

In the previous years (namely around 2000) the occurrence of textile and footwear plagiaries was an import matter. Counterfeit textile goods were mainly imported from Turkey and counterfeit shoes were made in China. The plagiarism trend has currently returned to the beginning, i.e. to the same state as in the years 1992 to 1995, as the counterfeit goods are manufactured in our country again (at least a part of them). In this respect it is necessary to point out the decisive fact, i.e. that these counterfeits are not mere cheap and amateurish copies as in the beginnings, but they are very good and high-quality works.

The reason for this change is mainly the fact that the competences of customs authorities were widened in 2001 and concurrently border and customs procedures became stricter. Pirates (offenders) therefore had to adapt their behaviour. They only import goods, or better, semi-finished products which are finally equipped with trademarks in our country.

There are various routes through which these “hot“ goods are imported to the Czech Republic. The most common one is probably truck transport, which is usually performed by domestic transport companies. The second common shipping route uses containers, which are sent by air to the Czech Republic or by freight ship to Hamburg and then by train to the Czech Republic.

A very serious threat is currently sale of counterfeit goods via the Internet, which cannot be controlled by supervisory bodies at all. If it is not too late, it is necessary to focus actions

and cooperation of all repressive bodies on criminal activities, which are associated with counterfeiting of so-called sensitive goods in the near future. These mainly include counterfeit medicaments and medicinal preparations, foodstuffs, spirits, cosmetics, sanitary supplies, etc.

Counterfeits of the abovementioned commodities pose a threat not only to owners of intellectual property rights but also to consumers. Counterfeit medicaments and medicinal preparations may cause serious health problems or even death to their users. The same applies

¹ GREY ECONOMY – a set of economic relations which breach ordinary, ethical and moral forms of the society and which are on the borders of the law and therefore hard to punish – one such example is corruption.

BLACK ECONOMY – a set of economic relations which breach the laws of the given country and are unambiguously uncovered and proved – these include economic crimes, money forging, tax evasions, drug sale, prostitution, gambling, organized crime (mafia) etc. – we deal with them through criminal law regulations (the Penal Code).

to counterfeit spirits and other daily used products and necessities.

Due to the fact that the Czech Republic is bound by international agreements concerning intellectual property, import of any counterfeit goods is not easy but it is still a good business with regards to the amount of profit.

4.3.2.2. Music piracy

What does music piracy actually mean? Such term is not defined in any legal provision. In most cases, this term is used to define illegal copying and distribution of music recordings on carriers of sound or audiovisual recordings without the consent of authors, artists and producers. The term pirate is thus interpreted and it is generally understood as an offender (from criminal law point of view) who performs illegal activity in the field of infringement of copyright. This term is not included in any Penal Code in this meaning, but it is a generally widespread term, which is often used by organizations active in the field of protection and abidance by copyright as well as by wide public.

The origin of the term “piracy“ in the music field dates back to the early 60’s when radio broadcasts were performed from ships anchored outside territorial waters of individual countries. The operators of such broadcasting stations avoided paying correspondent fees for using authors’ musical works, which were their principal production. These ships were called “pirate radios“. When their activity ceased in the early 70’s, this term continued to be used to name an activity consisting in unauthorized use of authors’ works.

Objective conditions, which motivate, facilitate and enable development of this undesirable antisocial activity include:

- a) existence of enormous demand for counterfeit copies;
- b) relatively lot of free time, or better, more possibilities to use counterfeit copies;
- c) wide availability of reproduction equipment;
- d) reasonable prices.

Another factor acting in favour of mass increase of the production of counterfeit copies is the fact that the character and possibility of consumption of these products is distinctly international as musical works (and that even musical works with lyrics) are a product with strongly international character. Such anti-social behaviour or plundering affects not only authors’ works with performances of performing artists but also protected personality elements.

4.3.2.2.1. Development on the market

Audiotape cassettes as carriers of audiovisual recordings were the first copyright-infringing objects, which started to spread illegally in the Czech Republic after 1989. Pirate workshops,

where unauthorized copies were processed, were usually situated outside the Czech territory. Poland was the illegal producer and distributor number one at that time.

Sale of such illegal sound carriers took place at junk sales and marketplaces, which were very popular and widespread, especially in border areas. The distributors were mainly citizens from Asia. These audiotape cassettes can thus be characterized as pioneers in the field of illegal recordings. A look at these cassettes, especially at the quality of the cover, usually revealed that they were not original products but rather pirate copies. The quality of the recordings was directly proportional to the quality of the carrier, i.e. woeful.

As the time went, illegal copies of CDs and videocassettes appeared. You can still see them in stalls on the border with Germany and Austria. These recordings have one important feature – they are dubbed in German and intended exclusively for sale to foreign customers.

The last attacked product in the field of carriers was DVD system in all its modifications, which meets high demand on picture and sound.

4.3.2.2.2. Individual kinds of piracy

We divide pirated products into four main groups:

- (1) bootlegs,**
- (2) pirate copies,**
- (3) (identical) counterfeits,**
- (4) music files offered via the Internet through P2P exchange networks.**

(1) Bootlegs

Bootlegs are unauthorized music recordings of live concerts. A pirate – “bootlegger” records the concert without the consent of the performer (and concert organizer) on a smuggled in recorder.

The improvement and current technical level of these activities greatly help pirates, as miniature microphones with excellent parameters can be smuggled in unnoticed despite thorough body search. Microphones themselves are not necessary if a pirate connects to a cable or an audio mixer or if he or she eventually bribes technical personnel for this purpose. This kind of piracy is evenly spread in the field of rock, pop, jazz and classical music. Two forms of selling of these live recordings have developed in the recent years:

- “classical“ bootleg addresses collectors and is sold underhand on grey or black market
- “listener“ bootleg addresses common customers and can be purchased in an ordinary music shop.

This group often includes unauthorized radio recordings and unauthorized publications of unpublished studio recordings. The name is not completely apt as these products use other sources than real live recordings. However, this classification has become accepted and is partially justified as the “bootlegs in the broad sense of the word“ get to the market via the same channels as the genuine ones.

(2) Pirated copies

With all forms of stolen copies pirates use existing sound carriers as a master copy. This group can be divided into three main fields based on the kind and amount of master copies used:

- (i) classical pirate copy,**
- (ii) pirate compilations,**
- (iii) pirate mix.**

(i) Classical pirate copy

A pirate copy completely takes over the master sound carrier, which it brings to the market as an original copy with a different look. Pirates use fictive brands to deceive a customer that they are buying a legal licensed product, which is cheaper than the original. These pirated copies always address ordinary customers, who are attracted by very favourable price, but they never address collectors. Pirates take advantage of both ignorance and carelessness of the customers. An expert immediately recognises that the latest work of a professional artist, which appears under a different recording company brand (label) than the original, must be a pirated product.

(ii) Pirate compilation

With this form of a pirate copy a pirate does not use only one master copy, but compiles a collection of more original musical titles in an order, which the original producers or their licence partners do not offer in such combination. These compilations are often offered by “interest pirates“ on the basis of advance payment in the field or at discos and they present the current music charts approximately once a month.

Licence frauds are a similar kind of compilation piracy. In this case dubious companies sell licences to interested musical companies, which they would not gain, from right owners themselves or for which they would pay much more. The business thus takes place prior to the actual production of music carriers. It is actually licensed production of music carriers. These licence contracts are in fact mere papers without any real value. The authorization to provide copyright is proved by forged contracts or a chain of contracts, which cannot be tracked back to the artist.

A forged licence does not give any authorization but it provides relative protection against criminal prosecution. If the original producer proves their right to the

recording, the unauthorized user may claim that they trusted the authenticity of the licence and therefore did not act intentionally.

(iii) Pirate mix (illegal discomix)

In this form of pirate activity the whole titles are not copied one after another but fractions of music are cut so that an uninterrupted piece is created. Available sound carriers serve as the input material for this activity.

Pirate mix also includes “sampling“ which is technically the most demanding stage.

In this case individual instrumental or vocal sequences up to individual fragments of an existing sound carrier are copied to a computer in digital format. Suitable programs are then used to work with this input material and own pieces of music are added to it. The resulting work is then presented as one’s own work.

(3) Identical counterfeits

Counterfeits differ from pirate copies mainly by precise and relatively thorough imitation of the outside look of the master copy. They exclusively focus on ordinary consumers as they are very difficult to distinguish and they are capable of confusing even experienced traders. Counterfeits whose look cannot be told apart from the look of original copies have been appearing on the market for many years and they mostly originate in Eastern Asia and Eastern Europe. When imported to the Czech market, these counterfeits should give the impression that they are a legal import of authorized recordings. With regards to the growing amount of pressing plants in the whole Europe, the significance of this form of piracy is expected to grow constantly.

It is almost impossible for a laic and very difficult for an expert to distinguish whether the product is a counterfeit copy or an original product. This shows the dangerousness of such form of piracy, as it is virtually impossible for a laic to recognise a counterfeit CD among original production in a shop. Safe recognition of a counterfeit copy is possible in specialized labs only. This fact makes the fight against this form of piracy more difficult.

(4) Peer-to-peer (P2P) networks

The latest and currently very popular form of music piracy is offering of music (and audiovisual) files via the Internet using P2P exchange networks. Peer-to-peer (also P2P) can be translated as an equal to an equal. It is a means for communication of author’s work to the public via the Internet which has several advantages compared to classical offering of work by uploading it to a computer - server intended for this purpose - and creating links to it. The classical centralized model for distribution of a work via the Internet works as follows: Certain data is made available on one of the computers connected to the Internet (server) which is identified through its IP address and the end user can then download this data to his or her

computer. A typical example of a file transfer different from the peer-to-peer method is an FTP server, where client and server programs fundamentally differ from each other: the client initiates downloading and the server reacts and satisfies these demands. In comparison to this model, in a peer-to-peer network each of the nodes (computers) acts both as a server and as a client. A personal computer, which is a part of such peer-to-peer network, thus provides some of its content to other computers (it functions as a server) and downloads some contents from other computers (it functions as a client). A detailed description can be found in a part called the Internet.

4.3.2.3. Counterfeiting of audiovisual works

In the field of audiovisual works this mainly includes attacks against copyright of the producers of these works, who are the only persons who can give their consent with the use of the given cinematographic work. It is not possible to make copies of cinematographic works and subsequently distribute them without such consent. A producer as the executor of copyright to a cinematographic work may grant rights to use and distribute such work to a distribution subject in the territory of a certain country through a distribution licence agreement (distribution rights). A subject, to whom such distribution rights have been granted, becomes the one who is authorized to distribute the concrete cinematographic work within precisely set and defined forms of such distribution (cinema, home video, public performance) in a concrete territory and for a certain period of time.

In this field it is possible to particularize objective conditions, which caused and still influence the development of this unwanted phenomenon or eventually cause continuous development of new forms of audiovisual piracy. With regards to the fact that these conditions and forms differ from conditions and forms particularized for the field of music piracy only in small details it is not necessary to discuss them any further.

Recordings of counterfeit audiovisual works were mainly intended for home use with the exception of those sold at marketplaces on the border. Besides this form of use, there were also frequent occurrences of unauthorized use for public performance. Classical cases of this form of unauthorized use are video projections in video cafés, video clubs and long-distance buses, which are the most common examples of copyright infringement. The parallel that every operator must obtain permission of the right holders shall apply even in these cases, similarly to music production.

Videocassettes with recordings of audiovisual works were often used for public production without authorization. They have recently been superseded by more modern high quality formats, namely DVD. Counterfeit digital videodiscs started to appear in the beginning of 2000 in connection with the widespread use of DVD players and their favourable prices, which made them available to the public. Similar to musical works, we also encounter distribution of film recordings in a compressed format, e.g. in DivX program.

Technical development of these technologies and competition struggle caused considerable decrease of purchase price of burning equipment and recordable media. These influences naturally started mass copying (burning) of DVDs (or eventually CDs) in such a way that this phenomenon can be efficiently prevented only by early registration of the arrival of new technologies in this field.

4.3.2.4. Software piracy

Software piracy appeared approximately at the turn of the 1970's and 1980's. It was facilitated by the possibility of saving or copying data on a cassette. With the development of piracy and mass spreading of computers some of them were more or less "affected". Software pirates are responsible for the cessation of production of some types of computers as programming and releasing of new games was no longer profitable for the programmers.

The greatest focus of all 8-bit computers was given to Commodore 64 whose development and origin dates back to the period around 1983. PC range computers already existed at that time but they were paid little attention. PC-based piracy began around 1987 and it thrived together with the development of Amiga computers. The pirate scene was strongly connected to demo scene in this period.

Besides Germany and the United States, mainly Scandinavian countries are to blame for the beginning of piracy.

Use of computer programs in contradiction with contractual stipulations or eventually completely illegally has several causes in the Czech Republic and we can say that it certainly became an ordinary habit after 1989, at least in households. The use of legal software is currently becoming an important part of company culture. Legal software was first systematically and efficiently dealt with by the state administration, which codified well processed methodology for dealing with software resources. This methodology can be successfully used for commercial sector as well. State administration showed greatest interest in quality solving of the problem of software piracy and therefore it bought most software licences in 2002. The commercial sector followed its example in the second half of this year. Another huge step towards reduction of software crime was the government Decree no. 624/2001 on the rules, principles and means of ensuring inspection of computer program use in state administration. The decree set very high standards in the observance of copyright.

The foundations of software piracy are usually laid at primary schools. This is where massive infringement of laws takes place through seemingly innocent lending and exchange of computer programs between pupils. This habit has negative influence on the near future because it becomes normality. Older generation, on the other hand, does not consider this activity immoral, let alone illegal, often due to lack of information.

We can positively judge the activity of Microsoft, which introduced a product called Microsoft Campus Agreement on the market. It is a worldwide licence program focusing on all educational institutions, which allows easier and more operative access to software. It was created on the basis of opinions and suggestions from various university facilities and therefore it meets their specific demands.

Microsoft Campus Agreement is a prepaid licence program, which allows installation and use of Microsoft products for a certain predefined period of time. It is usually a period of one or three years for which a licence agreement is concurrently concluded. Users are entitled to use the latest versions of selected products or their previous versions instead or eventually automatically switch to the latest versions, which may be introduced on the market in the duration of this agreement.

Educational institutions may order free licences for work at home for all authorized teaching staff members and other employees, so-called Work at Home (WAH). Such licences allow use of the same applications and client access licences, which the institution has selected for licensing in the Campus Agreement even on home computers of all authorized members of teaching staff and other employees and that for the purposes of preparation for lessons arising from their employment. The Campus Agreement allows educational institutions to order licences of selected Microsoft products even for students and that both for their home computers and for computers owned by the institution. There is a condition that at least 300 units must be purchased in order to allow licences for students via the multiple licence agreement.²

Software piracy includes all attacks against copyright and other rights concerning computer programs (databases), which are stated in the Copyright Act.

4.3.2.4.1. Software piracy forms

Software piracy can generally be divided into four basic forms:

- (1) **unauthorized use**, which can further be divided pursuant to the means of use:
 - (i) home user who obtained illegal software for their own use;
 - (ii) use of illegal software for commercial purposes – a company uses illegal software or more copies than they have licence for;
 - (iii) computer game rooms.

- (2) **illegal production**, namely:

² Source: www.microsoft.com

- (i) industrial production (in pressing plants) – rather exceptional in the Czech Republic;
 - (ii) manufacturing production (on burning devices);
 - (iii) home production;
- (3) **distribution**, which can be divided into:
- (i) direct sale;
 - (ii) advertising (newspapers, Internet);
 - (iii) installation of illegal software on a new computer.
- (4) **infringement into a program**, its modifications and adjustments.

4.3.2.4.2. Kinds of software piracy

It is impossible to simply classify software piracy and sort it out into groups, to which all cases of illegal handling of software can be assigned. The best-known forms are shown below.

(1) **End User Piracy**

It is the most widespread form of software piracy. The principle lies in using a multiple copy of one software package on several computers or eventually distribution of copies of the software in question to other interested persons.

(2) **Home Piracy**

This kind of piracy has many common features with the end user piracy category. Home piracy includes activities ranging from innocent exchange of floppy disks and CDs between friends over the use of illegally gained software on a family computer to the operation of a non-profit BBS with the aim to distribute illegal software. Purchasing power and software package price are an important aspect. Majority of home users obtain new and more efficient software, which they subsequently use. Home piracy is, due to understandable reasons, the worst detectable and controllable kind of piracy.

(3) **Reseller Piracy**

This kind of piracy is committed by commercial companies, which sell computer hardware with preinstalled illegal copies of some computer programs or which eventually upload the software to the systems without providing original discs and manuals.

These cases also include cases when software withdrawn from distribution is sold to an unaware customer. This kind of software piracy spreads all over the world and its intensity is currently increasing.

(4) BBS/Internet Piracy

The BBS (Bulletin Board Systems) abbreviation has no sensible equivalent in Czech language.

BBS is basically formed by one computer, which works in fully automated mode and has at least one modem connected. An interested person who phones to the modem number can communicate with BBS program installed on the computer and he or she can browse its selection. The Internet is currently such widespread technology that it is not necessary to introduce it any further.

This kind of piracy is carried out through electronic transfer of illegal software. A prerequisite for this kind of piracy is the fact that system operators or users upload legal software on the Internet or on BBS or download legal software from it in order to make another copy and use it without an appropriate licence.

(5) Corporate Piracy

Corporate piracy is similar to BBS/Internet piracy in many aspects. In this case the “root of evil” is represented by local networks (LAN) in companies or enterprises, where several hundreds of employees have access to one legally installed copy of a certain program. Secure access to individual parts of the network is not usually given much attention and security measures are basically considered a waste of money and human resources in this respect. No wonder that the idea of obtaining certain software or its copy easily, for free and without risk is so tempting for employees.

(6) Industrial Piracy

This kind of piracy is based on the fact that an individual or a group of individuals copy and distribute software on a large scale with an aim of gaining considerable property gains. There is an inverse proportion between this kind of software piracy and prices of copying devices and recording media – reduction of the price of copying devices and recording media resulted in considerable increase of activity of subjects in this field. The largest scope of software piracy is traditionally found in developing countries where counterfeit copies are produced even in government-owned enterprises, which mass produce thousands of CDs every day. This kind of software piracy is rather exceptional in the Czech Republic.

4.3.2.5. The Internet

The Internet is a worldwide network of mutually connected computers (servers), which is used by various users for communication, obtaining information and work. The Internet may serve for various conducts, the result of which is the breach of copyright and rights related to copyright. The Internet is thus used as a medium for advertising or offering sale of unauthorized material copies of works or it may be employed to breach protection of technical means for the protection of rights (such as encoding). This document deals only with those conducts during which authors' works and audiovisual recordings are distributed directly via the Internet, **i.e. in intangible form.**

Copyright is also infringed in cases when files containing authors' works are made available (e.g. through web pages or via so-called peer-to-peer networks) on the Internet.

Pursuant to provisions of Section 18 Par. 1 of the Copyright Act, the communication of work to the public shall be understood as making the work available in an intangible form, live or from a recording, by wire or wireless means. The provisions of Section 18 Par. 2 of the Copyright Act adds that the communication of the work to the public shall also be understood as making the work available in such a way that members of the public may have access to the work at a place and at a time individually chosen by them, especially by using a computer or similar network. It is thus obvious that making a work available to the public without the consent of the holder of copyright to such work is copyright infringement irrespective of the means by which the copy of work has been obtained.

Making a work available in a closed computer network cannot probably be qualified as use of work by its communication to the public. However it is not allowed from the legal point of view to make copies of works made on the basis of legal exception for free use available to other persons. This case cannot logically be considered a copy for one's personal need and such conduct is naturally considered copyright infringement.

Absolute majority of files, which are shared via peer-to-peer networks, do not meet the prerequisites set by the Copyright Act and mentioned in the previous two paragraphs. Their distribution via the Internet can thus be qualified as unauthorized distribution of authors' works and seen as a commission of a crime pursuant to Section 152 of the Penal Code.

Copyright infringement also takes place (in certain situations) during download by individual peer-to-peer network users. The offered files are naturally copied ("reproduced" in the Copyright Act terminology) during this conduct as the original copy remains in the original place – on the disk of other user's computer.

Pursuant to Section 30 Par. 1 and Par. 2 of the Copyright Act, downloading (reproduction) of author's work for the personal use of the person who makes such reproduction is deemed free use for which author's consent is not necessary. This means that if a peer-to-peer network user downloading music or films does not overstep the borders of their use for one's personal need,

he or she does not violate the Copyright Act. However, we have to say that the nature of peer-to-peer networks causes each user to breach the Copyright Act as he or she not only downloads authors' works but also offers them. The only exception includes cases when authors' works are provided by the author him/herself.

4.3.2.6. FTP servers

FTP servers belong to basic Internet services. FTP servers function on the principle of direct uploading and downloading for which storage space of some server is used, as compared to exchange networks. A file is put on this server and the interested persons download it from this server. An interested person who connects to FTP server can directly see files and directory structure (just like on their own disk). FTP servers are often used to distribute illegal contents and that both by non-professional pirates (public servers with limited amount of data which usually function for short time only), and by professional pirates (secret servers not available to the public with large amount of data).

Direct download shall be understood as download via an Internet browser without the need to use specialized programs. Direct download is closely connected with the creation of large amount of so-called file hosting servers³ like Rapidshare.de, MegaUpload.com or Czech Nahraj.cz or eDisk.cz. Large volume files can be uploaded to these servers (the limits range from 100 MB to several GB) and therefore their existence is tempting for pirates. Films are usually divided (due to the volume) into several parts usually using WinRAR compression program or Total Commander.

A wide range of programs can be used for download from FTP servers and a lot of programs are also used for their operation – we cannot provide any unique instructions saying how to proceed in this case. However, there is a rule that FTP server content copies part of the directory structures on the disk of the computer itself and therefore one simply has to look for files and directories, which were originally present on the FTP server.⁴

4.3.2.7. Subtitles and covers

Two widespread forms of copyright infringement are also associated with Internet piracy:

- a) distribution of subtitles (either a protected translation of original dialogues or unauthorized translation of original dialogues which was made without authors' consent and which must not be distributed),

³ Usually foreign servers intended for uploading large files. They give the impression that they fight against uploading of illegal content to them, but in fact, they live of such content. An internet browser is all one needs to download or upload files from or to the server.

⁴ Source: The Czech Anti-piracy union – Introduction to piracy

- b) distribution of scanned DVD and CD covers (works of art, graphic or photographic works allowing anyone to make a printed cover for a downloaded and burned work).⁵

The popularity of servers, on which subtitles are placed, is caused by the fact that majority of pirates download works from foreign networks, where no Czech versions are usually available. ~~The subtitles themselves are~~ stored in a small text file and they are displayed either directly by a player (e.g. BSPlayer) or via a specialised program (e.g. VobSub), which puts them in the picture independently on the player.

There are many rip⁶ versions for each film, which can differ in timing (left out tunes); therefore there are also various subtitle versions. Due to this fact, subtitle authors usually put detailed information concerning concrete use of their versions on the subtitle server.

4.3.2.8. Peer-to-peer (P2P) networks

The latest and largely widespread form of piracy in the field of musical and audiovisual works is the offer of digital files containing authors' works via the Internet using Peer-to-peer (also P2P) exchange networks, which can also be translated as an equal to an equal.

Sharing as a term used in association with this kind of piracy means conduct when a user makes part of his or her hard disk available to other P2P network users together with the files stored therein. He or she concurrently allows the other users to download these files. In some kinds of networks a user who makes certain files available uses a list of files to inform other users – interested persons that files he or she shares.

Networks using BitTorrent technology operate differently as they direct the interested person to a tracker through files located on certain websites. The tracker controls downloading and subsequent sharing of individual parts of the requested file, which are stored separately.

More generally, Internet sharing means that various users transmit files to each other by sharing them via a certain P2P network. In order to perform such activity, a P2P network user must install a special program (a P2P client). Using this program, the user connects to the network and records offers. He or she concurrently seeks the requested file and, if the need arises, contacts an inquirer and an offerer.

Peer-to-peer networks can be divided into:

- (i) **centralized** networks which are fully dependent on a central control element and which

⁵ Source: www.cpufilm.cz

⁶ **a rip** – a film which is obtained from any media (cinema, TV, DVD) and compressed to a standard size of one or two CDs for the purposes of pirate copying.

provide information and connection by which they actually make the way for file transfer and usually further facilitate the transfer;

- (ii) **decentralized** networks, on the other hand, are based on the principle that the information travels through the whole network and they are transferred exclusively through individual clients .

A certain intermediate step is represented by *Direct Connect* networks whose control elements lie within subnetworks, which are independent on each other. If one such control element is put out of operation, the whole hub ceases to exist.⁷

The best known networks include:

Napster – when its activity was terminated by the court, it was purchased by another company and now operates on a legal basis;

FastTrack – a network used by Kazaa client; its activity has been suspended by a court;

Soulseek – a centralized network, which is mainly music-oriented;

Gnutella – a decentralized network of lesser significance;

eDonkey – a centralized network with large amount of control elements (very popular);

Direct Connect - a globally decentralized network (popular);

BitTorrent - a globally decentralized network, which is probably the most popular network nowadays.

Direct Connect

It is a decentralised network, which operates on the principle that users connect to concrete hubs. Once connected to the network, a user may search for files, which are stored in the hub and download them. There are thousands of hubs in the world, which are not interconnected, and which work completely independently. There are approximately 200 hubs in the Czech Republic. Many various modifications of the basic program or its improved version DC++ can be found in Direct Connect network. The best-known programs, which are most frequently used in the Czech Republic, include StrongDC++, CZDC++ and BCDC++.

BitTorrent

This is a decentralised network functioning on a different principle than other exchange systems.

⁷ Independent group of Direct Connect network users who connect to the same server. There is no connection to other hubs. The term "hub" is sometimes used to mean a control element of a hub, i.e. server to which all hub users connect.

The network functioning system is based on the following principle: a user finds the requested file which he or she is interested in on one of the servers organizing transmissions (e.g. ThePirateBay.org). He or she then downloads a small-sized file with .torrent extension, which is then uploaded into a special program.

The .torrent file contains the following information: name, size, creation date, means of division of the film into individual data blocks and control sums of individual blocks. Above all, the file contains a link to the place where the control file to which the program should connect is located.

The data, which a user downloads, is automatically shared in this network type so the users commit illegal data sharing during the download.

eDonkey

It is an exchange network whose operation is organized by several hundred interconnected servers. When a user connects to a network, he or she connects to the whole network. He or she can look for files, which he or she is interested in directly in the program and start to download them. Files, which exceed certain size, are divided into blocks of approx. 10 MB. At the moment the user downloads the whole block and its integrity is verified, it is automatically shared.

The most frequently used program for working in eDonkey network is eMule. Just like in the case of BitTorrent, the data, which the user downloads, is automatically shared so the user commits illegal sharing even during the download.

FastTrack (Kazaa)

It is a global network⁸ whose system of functioning has not been completely uncovered yet. The network operates via so-called super nodes and network super nodes.

Network super nodes are interconnected servers that gather information concerning users and their files. They subsequently provide this information to other users during searching.

Super nodes perform similar activities on a lower level. These are ordinary users with sufficiently fast PCs and fast Internet connection. When they meet these conditions, they may become communication nodes.

The network behaves similarly to eDonkey network. Once connected to this network via a special program, a user may search and download. As compared with eDonkey network, it does not share downloaded files. Opposing to the majority of other networks, the user does not have to share anything and he or she is not even penalised for this.

Kazaa Lite Resurrection (KLR) program is almost exclusively used for downloading from

⁸ Global network – it does not have any control element whose switching off could disturb its operation.

FastTrack network.

With the final summary we find out that if copyright to a concrete reproduction of author's work in material form expires, the proprietary right to this reproduction can be further transferred and that without further consent of the right holder. It is always necessary to strictly differentiate between handling of a reproduction (copy) of an author's work in material form and communicating of the work to the public via the Internet. Communication of work to the public is another means of use and such use may take place with the right holder's consent only.⁹

4.3.2.9. The right sui generis of a maker of a database

A database shall be understood as a collection of independent works, data, or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means, irrespective of the form of their expression. A database may (but does not have to) be a collection of works.

A database shall be considered a collection of works:

- if it is a unique result of author's creative activity due to the manner of selection or arrangement of its content (Section 2 Par 5 of the Copyright Act), or
- if it is the author's own intellectual creation due to the manner of selection or arrangement of its content (Section 2 Par 2 of the Copyright Act)

Two kinds of rights to a database arise in the abovementioned cases when the database is concurrently a work in the sense of the Copyright Act:

- copyright to the database as a work,
- right sui generis of the maker of a database.

Besides these rights concerning a database in its entirety, copyright to individual works, which are part of the database content, may exist concurrently. Right sui generis of the maker of a database applies to a database irrespective of whether it is a collection of works or not if the acquisition, verification or display of the database contents represents qualitatively or quantitatively substantial contribution irrespective of whether the database or its contents are a subject of copyright or other protection.

The maker of the database is a natural or legal entity who has compiled the database on his or her own responsibility, or who has had a database compiled by another person or entity. The maker of the database may or may not be author of the database as a collection of works and in

⁹ www.ifpicr.cz

majority of cases he or she is not the author.

Right sui generis of the maker of a database is of exclusively material nature. The maker of the database shall have the right to extraction or re-utilisation of the whole content of the database or of its qualitatively or quantitatively substantial part, and the right to grant the authorisation to execute such right to another person. The extraction shall be understood as permanent or temporary transfer of the whole content of the database or its substantial part to another medium by any means or in any form. The re-utilization shall be understood as any form of making the whole content of the database or its substantial part available to the public by the distribution of copies, by rental, by on-line connection or other forms of transmission. The Act also prohibits repeated and systematic extraction or re-utilization of insubstantial parts of the database content as well as other acts which are not habitual, which are inappropriate and which unreasonably prejudice the legitimate interests of the maker of the database.

Right sui generis of the maker of a database is restricted in cases when a legitimate user extracts qualitatively or quantitatively insubstantial parts of the database content or its part for whatever purpose on condition that such user uses the database in a habitual and appropriate manner, not systematically or repeatedly and without damaging legitimate interests of the maker of the database, and that he does not cause damage to the author or the holder of rights related to copyright to works or other protected items contained in the database. The prerequisite for such restriction of right sui generis of the maker of a database is that the database is extracted or re-utilized by a legitimate user, e.g. a consumer, or better, the end database user (e.g. subscriber to a collection of judicial decisions, acquirer of a licence to an electronic encyclopaedia etc.).

The law also lays down special cases of gratuitous statutory licences which limit rights sui generic of the maker to his or her database. These gratuitous statutory licences take effect for the benefit of a legitimate user who extracts or re-utilises a substantial part of the content of the database:

- for his or her personal needs;
- for scientific and educational purposes if he or she indicates the source in scope justified by the desired non-gainful purpose;
- for the purposes of public security or an administrative or judicial procedure.

However, a legitimate user who extracts or re-utilises a substantial part of the content of the database for his or her personal need has no right to make reproductions of a computer program or an electronic database.

The right sui generis of the maker of the database shall last for 15 years of the making of the database. If, however, the database is made available during such period (i.e. not concurrently with its making), the right sui generis of the maker of the database shall expire 15 years of the date when the database has thus been made available for the first time.

If the right of the maker of the database is infringed, the authorized person shall have the same statutory possibilities of protection against infringement as an author of any other work (provisions of Section 94 of the Copyright Act).

4.3.3. Police statistics in the field of rights arising from intellectual property

4.3.3.1. Observed indicators

Criminal statistics indicators are divided into basic groups pursuant to how they are defined by Act no. 140/1961 Coll., the Penal Code, and how they currently occur in intellectual property rights field, i.e.

- infringement of trademark rights, trade name and protected appellation of origin (Section 150 of the Penal Code),
- infringement of industrial rights (Section 151 of the Penal Code),
- infringement of copyright, rights related to copyright and rights to a database - Section 152 of the Penal Code,
- damage to and misuse of a record on a data carrier (Section 257a of the Penal Code),
- unfair competition (Section 149 of the Penal Code).

(a) Statistics in the field of infringement of trademark rights, trade name and protected appellation of origin (Section 150 of the Penal Code).

Criminal statistics have been dealing with this problem since 1997. Until then it was not possible to monitor the development of this kind of crime separately over a certain period of time as the statistics showed this problem in a consolidated form, or better, as a collection of Sections 149, 150, 151 and 152 of the Penal Code. It is quite obvious that this collection did not allow any systematic and analytical work. At the insistence of the Economic Crime Department of the Police Presidium, the statistic indicators were divided according to individual abovementioned crimes on 1st Jan 1997.

The current statistics allow us to find out facts, which show the genesis and current state in this criminal activity field. The statistics shows that there was an increase of both detected and solved crimes in the Czech Republic between 1997 and 2000. The number of prosecuted persons grew. The increasing trend of damage caused by the criminal activity in question was also noted in connection to this indicator.

This problem underwent a radical change in 2001. The crime has been stagnating on ¼ of the crime detected in 1999 since then (2006 is the last indicator).

(b) Statistics in the field of infringement of industrial rights (Section 151 of the Penal Code)

As the previous text may imply, any genesis in the field of infringement of rights arising from intellectual property may be monitored successfully only since 1997. Criminal statistics for this kind of criminal activity clearly show that this field has not been the centre of focus on offenders' interest in the long term. A slight increase of crime can be seen in 2001 and 2002 only, but the amount of solved cases has recently returned to the same level as it was in 1997. This kind of crime is very low in the Czech Republic, it ranges within units.

Damage caused by these crimes oscillates according to the subject of crime and it is impossible to come to a clear conclusion based on the statistic data.

(c) Statistics in the field of infringement of copyright, rights related to copyright and rights to a database (Section 152 of the Penal Code)

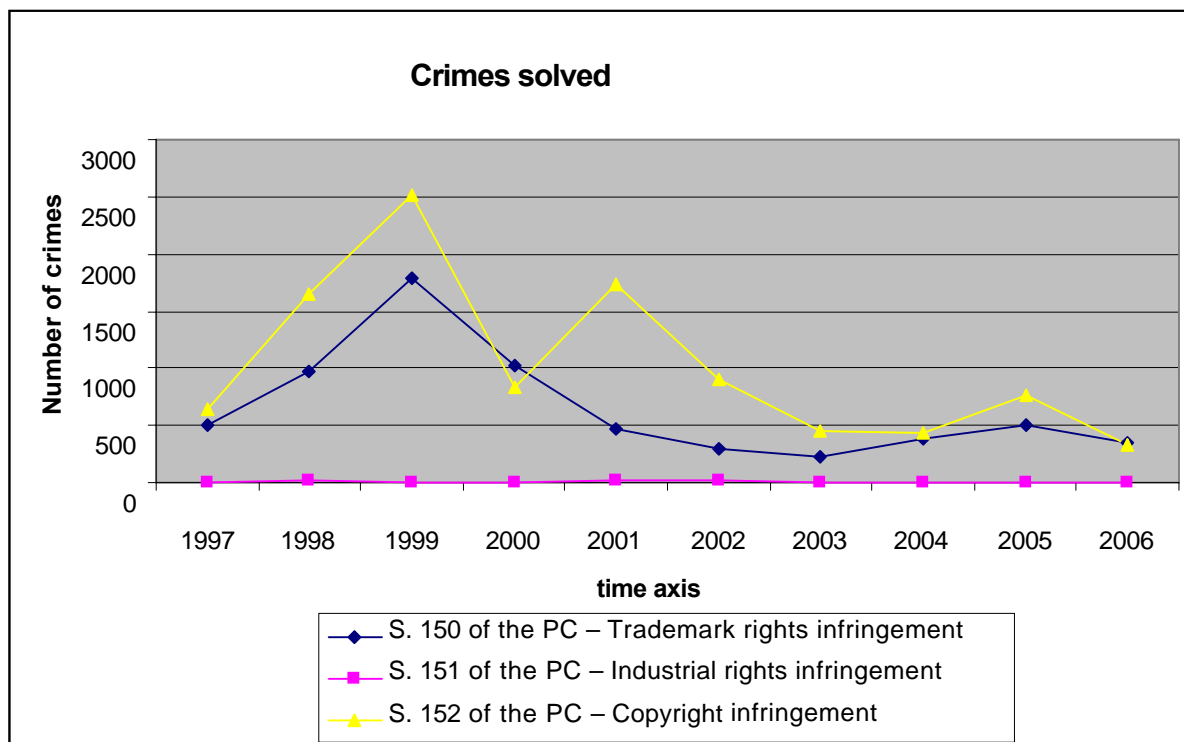
Also in this field the statistic evaluation and analysis of this kind of crime is negatively influenced by the consolidated form of police statistics until the end of 1996.

If we compare criminal statistics in the field of plagiarism (Section 150 of the Penal Code) and criminal statistics in the field of piracy (Section 152 of the Penal Code), it is obvious that these two kinds of crime have basically a lot in common. It is mainly genesis and development, number of attacks against a protected interest, their increase and decrease and the amount of damage.

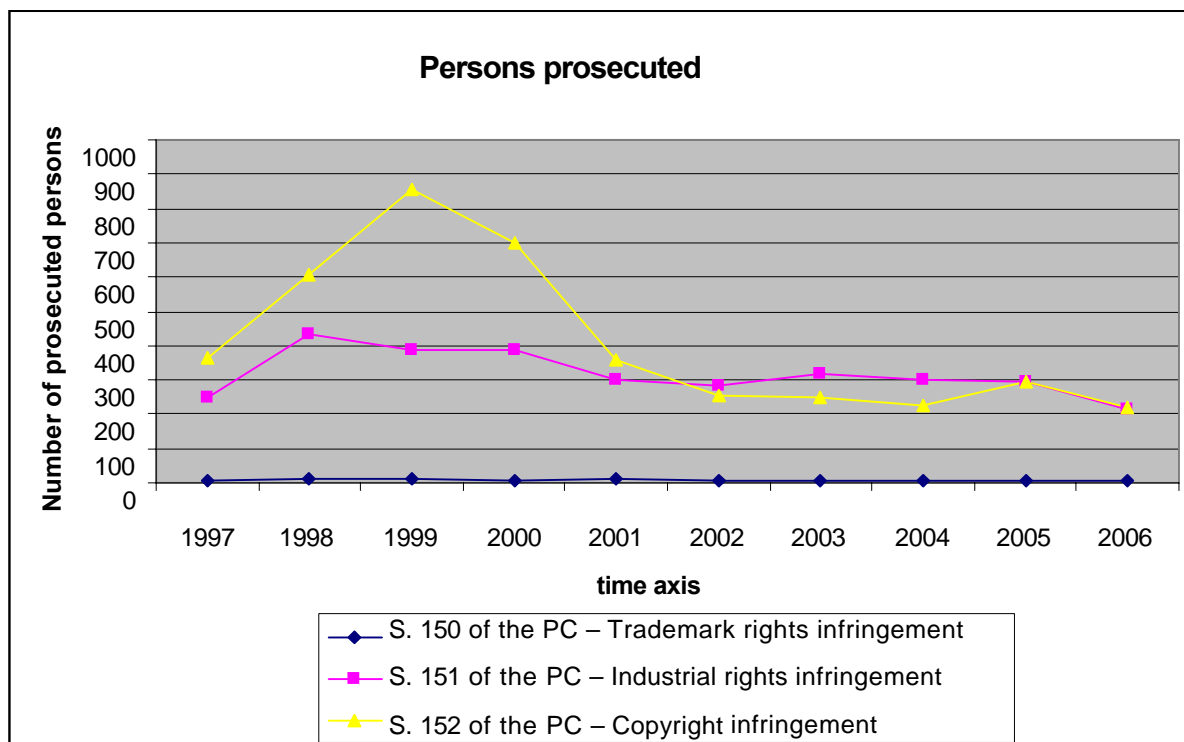
The statistics shows that there was a **step** increase of criminal acts (both detected and solved) in copyright infringement field from 1997 to 1999. The increasing trend of damage incurred in connection with this indicator was seen in this activity just like in case of plagiarism.

Similarly to plagiarism, the problem of piracy underwent a radical change in 2002 and particularly in 2003. Since then (2006 is the last indicator) the crime has stagnated on 1/7 of the crime detected in 1999.

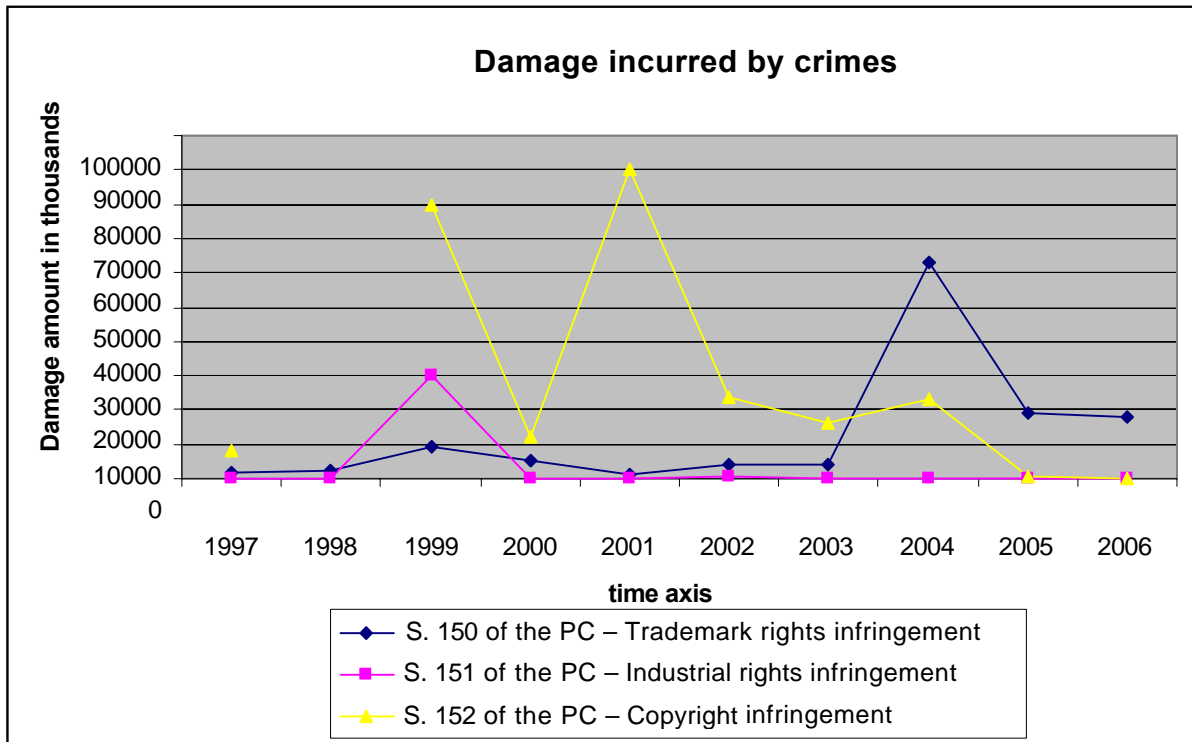
4.3.3.2. Monitored indicators in graphs



Source: www.mvcr.cz/statistiky/ - as per the day of processing



Source: www.mvcr.cz/statistiky/ - as per the day of processing



Source: www.mvcr.cz/statistiky/ - as per the day of processing

4.3.4. Organized crime

4.3.4.1. Characteristics and development

Organized crime has become one of the most dangerous social problems influencing various spheres of our society. The situation, which developed due to the changeover of economics from planned economy to market mechanisms and concurrent liberalization of law and economics created suitable conditions for the development of organized crime even in the Czech Republic. These conditions may be clearly defined as economic transformation associated with transfers of large property, fast development of a market and accumulation of capital, opening of borders and migration of people associated herewith.

Organized crime represents specific type of multilateral criminal activity, showing a range of formal features identical to entrepreneurial activity. This kind of crime is organized with the aim of gaining maximum possible profit regardless of the used resources and spheres of business. It reacts to the structure of public demand, which may either be caused by insufficient satisfaction of needs or by artificially induced demand.

The existential principle of organized crime is provision of goods (or services) which are restricted (or forbidden) by law but for which demand exists in the population and that with no regard to moral barriers established by the society. The purpose of organized crime is then gaining of profit whereas the commission of crime is only secondary. Crime can thus be understood as a specific tool for reaching the main goal – profit which should be permanent and as high as possible.

The economic power of organized groups has been trying to integrate into political and state authorities and acquire real power in the government. Organized crime is able to destabilize social and political system thanks to high and permanently gained profits.

In its Decree no. 673 of 29th October 1997, the government of the Czech Republic adopted the Updated concept of fight against organized crime which also included the Schedule of activities of the Ministry of the Interior in the fight against organized crime. This schedule also contains a task named “Prepare a concept for fight against trading with counterfeit and pirated goods”.

The processed concept, which brought forth objective analysis of the overall scope of crime in the intellectual property field, became a basis for government resolution. The government then defined the complete intellectual property rights field as a safety risk by its decree no. 342 of 18th May 1998.

Mostly foreign criminal organizations operate in the intellectual property rights infringement field in the territory of the Czech Republic. They penetrate to our territory using various companies to cover up their activities (their members gain residence permits for the purpose of employment in their own company or a company operated by some other relevant persons). Such established and legalized companies form a basis for illegal migration, which subsequently provides personnel resources for criminal organizations.

4.3.4.2. Signs of organized crime

- **professional approach;**
management hierarchy, planning, distribution of labour;
technical background, use of modern technologies;
advisors, high-quality and up-to-date information;
- **wealth:**
high profits create enormous financial resources which can be invested in the development and improvement of criminal procedures;
high profits enable ensuring relative safety of organizers and their assistants;
- **international connection and influence:**
unrestricted or very little restricted movement of people;
money flow is very difficult to follow;
tax havens and money laundries;
unrestricted and on-line flow of information;
- **penetration into official social structures:**
compromising;
abuse;
corruption.

4.3.4.3. Instruments for the withdrawal of profit

Legal instruments for the withdrawal of profit from criminal activities of organized groups are codified in the Penal Code, namely in its special part. Thanks to this standard, withdrawal of profits from criminal activity is allowed and it can be used with any criminal activity through which an offender gained illegal profit. Of all facts of the case, which might come into consideration, it is necessary to mention namely the provisions of Section 251 and Section 252 of the Penal Code, i.e. provisions governing share activities.

Besides these provisions affecting share activities, the Penal Code defines another fact of the

case in the provisions of Section 252a of the Penal Code – legalization of profits coming from criminal activity which affects concealing of the origin or eventually making it difficult or impossible to find out the origin of an item or other tangible property acquired through criminal activity.

Other provisions of the Penal Code may be applied to this kind of criminal activity, namely the provisions of the general part. These include provisions concerning punishments by forfeit of property, namely:

forfeit of property - Sections 51 and 52;

statutory penalty – Sections 53 and 54;

forfeit of an item or some other assets - Sections 55 and 56);

forfeit of a replacement assets - Section 56a.

The forfeit of property affects the whole property of the offender or a part defined by a court. The forfeited property becomes state property.

Besides their primary penal character (purpose), these punishments can also be understood as instruments for withdrawal of profit coming from criminal activities.

Protective measures of property character (i.e. confiscation of an item or other assets pursuant to the provision of Section 73 and confiscation of replacement assets pursuant to the provision of Section 73a of the Penal Code) can also be taken as an instrument for withdrawal of profit coming from criminal activities.

A confiscated item or other assets and confiscated replacement assets become the property of the state.

As regards the Criminal Procedure Code and the point of view of the observed problems, we can draw your attention to the provisions concerning the execution of the abovementioned punishments by forfeit of property (Sections 341, 342, 344, 345 and 346, and Section 349b of the Penal Code) and protective measure by seizure of an item (Section 358) which are imposed during criminal proceedings.

In this respect we can further mention those provisions of the Penal Code whose use ensures that the imposed punishments and protective measures are carried out. These namely include the duty do surrender items (Section 78), the possibility to seize items (Section 79), seizure of funds on a bank account (Sections 79a, and 79b), seizure of dematerialized securities (Section 79c), seizure of immovable property (Section 79d), seizure of other assets (Section 79e) and seizure of replacement assets (Section 79f). The others are ensuring of the execution of punishment consisting in the forfeit of property (Sections 347 to 349b) and securing of a demand of an aggrieved party (Section 47). The seizure shall apply to the whole property of an offender, increments and profits coming from the seized property as well as property which the offender acquires after the seizure. However, it shall not apply to

instruments and items to which forfeit of property shall not apply pursuant to the law. The chairman of the senate shall send a copy of the sentence, which imposes punishment by forfeit of an item or some other assets to an organizational authority of the state, which is entitled to administer state property pursuant to a special act - the Office of the Government Representation in Property Affairs.

If an item or other assets to which the punishment by forfeit of an item or other tangible value or eventually forfeit of replacement assets applies is seized, the chairman of the senate shall adopt measures to entrust the abovementioned organizational authority with the administration of these, unless the organizational authority already performs administration of the seized item or other assets or replacement assets. The purpose of these is to restrict the offender's disposal of the seized property as soon as possible, for the necessary period of time and in correspondent scope so that his or her profit from crime can be finally forfeited once he or she has been legitimately convicted even if he or she lives in a foreign country.

4.3.4.4. Minimization of profit and system weaknesses

The previous text implies that criminal activity is organized with the aim of gaining profit. Crime in intellectual property field creates high amount of profits, which are again invested into development and improvement of criminal procedures.

The high amount of profits from organized crime creates the possibility of financing various trades, which result in the loss of competitive power of companies, which carry out their business within the limits of legal standards, and in the dependency of whole branches of national industry on illegal capital flows.

One of the effective methods of fight against this kind of crime is forfeiture and confiscation of illegally acquired funds. Here we have to realise that while most of the members of an organized group are involved in the commission of crime itself, the handling of funds is a matter of the highest-ranking members of the organization, often the highest link of the organization hierarchy. It would be naïve to think that a leader of an organization legalizes the funds. Various cooperation agreements with organizations, which have nothing in common with the criminal activity in question, are concluded for this purpose. The companies present themselves as completely legal with legitimate scope of business on the outside. As a rule, legalization is provided in return for payment.

The wording of the previous paragraph clearly implies that proving of origin of funds coming from organized crime in the field of plagiarism and piracy is much more difficult problem than proving of the criminal activity of an organized structure itself. In order to be able to proceed efficiently in the fight against this kind of crime, it is at least necessary to change the current view of the problem, eliminate the effects of disparagement, clearly define crime in the field of intellectual property as organized crime if there is political and

legislative will, classify this kind of criminal activity among serious offences, change the approach to fighting this kind of crime, as if the profit coming from organized crime is not eliminated, it is impossible to eliminate the organized crime itself, focus of employees which concentrates only on the detection and documentation of primary (source) crime, view of the time demand – activities focusing on the fight against legalization of profits coming from organized crime are time-consuming, and deal with economic working out of individual organized groups which lies in registration of all property and its movements.

4.3.5. Basic terms of criminal law

4.3.5.1. Bodies active in criminal procedure

Bodies active in criminal procedure include police authorities, public prosecutor's office and a court. Each of these bodies has clearly defined competences in various stages of a criminal procedure.

The main focus of the work of the Police of the Czech Republic lies in the preliminary procedure. Their task is to gather information about whether a crime has been committed and who could have committed it. They provide and gather evidence about these facts, which then serve as documentation for the court decision.

A public prosecutor supervises over the whole preliminary procedure. When the preliminary procedure is finished, the public prosecutor decides whether he or she will bring an action before a court or deal with the whole matter him/herself in some other way. The public prosecutor may for example call off the prosecution or transfer the issue to another body as a petty offence. If the public prosecutor brings an action suit in the given matter, he or she represents the state in the procedure before the court.

The main activity of a court comes after the bringing of an action, but despite this, the court issues decisions during the preliminary procedure, which concern police actions during investigation, by which the police significantly intervenes in the basic rights of citizens (e.g. decides about domiciliary search permit or about telephone tapping and monitoring of telecommunication traffic).

When an action is brought before a court, the court investigates the file and it orders a trial, unless it comes to a decision that the matter must be returned to the public prosecutor, transfers it as a petty offence or calls off the prosecution. It can also issue a criminal order without a trial in simple matters.

During the trial, the court performs criminal evidence, i.e. interrogates the defendant,

witnesses or experts and reads documentary evidence. Once this evidence is assessed, the court decides whether the defendant is guilty or not and what the eventual punishment should be. If an appeal is lodged against the decision, the whole case shall be investigated by a superior court.

Criminal act

A criminal act is only such conduct whose characteristics are stated in the Penal Code and which is socially dangerous. Two conditions must thus be concurrently met. The first condition is formal and says that only such conduct, which is marked as a criminal act by the law, can be considered a criminal act. Therefore, if some conduct is not included in the Penal Code, it cannot be considered a criminal act however dangerous and immoral it may seem. One of the basic principles of a constitutional state says that there is no crime without law (*nullum crimen sine lege*).

However, in some cases, such formal approach might lead to criminalization of acts which correspond to the legal definition of a concrete criminal act on the one hand, but which are not socially dangerous on the second hand. Therefore the law also requires meeting of a material condition, which limits the scope of criminal activities to those, which are socially dangerous. The dangerousness of such conduct must also be larger than negligible (larger than little in case of minors). If someone commits an act, which formally corresponds to the facts of the case of a criminal act, but does not reach the level of social dangerousness required by law, it cannot be qualified as a criminal act but the whole case may be qualified as an offence only. The scope of social dangerousness is assessed by the court as well as by all bodies active in criminal procedure on the basis of the significance of protected interest which was affected by the act, means by which it was carried out and consequences of such act, and that also with regard to the circumstances of the act, the offender and his or her motives.

In order to be assessed as a criminal act, the offender's conduct must be a culpable conduct. In order to meet the facts of the case it must be intentional culpability (e.g. a theft), in some cases culpability by negligence suffices (e.g. bodily injury in a car accident).

Culpability

A conduct defined by law as a criminal act must be culpable on the part of the culprit to be considered a real criminal act. The culpability may either be intentional or caused through negligence.

Intention can be divided into:

- **direct intention** - the offender wanted to infringe or endanger an interest protected by the Penal Code in a manner, which is stipulated in this Code (e.g. house robbery)
- **indirect intention** - the offender knew that his or her conduct might infringe or endanger interests which are protected by the Penal Code and if he or she caused such danger or infringement he or she agreed with its result (e.g. the offender does not pay maintenance although he or she knows that this might cause distress to the maintained person)

Culpability by negligence also has two stages:

- **active negligence** – the offender knew that his or her conduct might infringe or endanger interests protected by the Penal Code but believed that he or she would not cause such infringement or danger without any adequate reasons (a offender did not abide by traffic regulations and reckoned that he or she would not cause accident and subsequent injury)
- **simple negligence** – the offender did not know that his or her conduct might infringe or endanger interests protected by the Penal Code, even though he or she should and could have known it given the circumstances and his or her personal situation (e.g. a doctor chose a therapy for a concrete patient which caused damage to the patient's health due to his health problems which the doctor had not known about, but he or she had had the possibility to find out this information before the commencement of treatment)

It generally applies that intentional culpability is necessary to fulfil the facts of the case of a criminal act. If in some cases culpability by negligence suffices to perpetration of a criminal act, it must be stated explicitly in the description of formal fact of the case

Damage as a sign of a criminal act

In case of some criminal acts it is necessary to assess the amount of damage incurred in order to determine precise legal evaluation (namely in case of so-called crimes against property, but also in some other cases). In such cases, the amount of damage is important for the decision whether it is a criminal act or a petty offence or eventually how severe the punishment should be for such criminal act. The Penal Code divides damage as follows:

- **damage which is not negligible** – at least CZK 5.000,-,
- **damage which is not small** - at least CZK 25.000,-,
- **significant** damage - at least CZK 50.000,-,
- **substantial** damage - at least CZK 500.000,- and
- **large scale** damage - at least CZK 5.000.000,-

Here we have to point out that damage is not a decisive factor for the assessment of criminal acts in the field of intellectual property.

An attempt to commit a criminal act and its preparation

Not only a completed criminal act is a crime but also an offender, who attempts to commit a crime but fails to complete it, shall be criminally responsible. An attempt to commit a criminal act is punished pursuant to the same sentencing guidelines as a completed criminal act. The conduct of an offender who for example shot at somebody with the intention to kill him or her but missed shall be judged from the criminal responsibility point of view in the same way as if he had hit the person.

Preparation of especially serious crimes (simply said, those in whose case the upper limit of punishment reaches at least 8 years) is punished in the same way as the crimes themselves. On the contrary to an attempt to commit a crime, preparation does not lead directly to the completion of such crime but it provides conditions for completion of such crime (e.g. an offender purchases a gun with an intention to kill somebody with it).

Facts of the case of criminal acts in intellectual property field are not included in the group of especially serious crimes in the sense of the provisions of Section 41 Par. 2 of the Penal Code. Due to this fact, preparation of these criminal acts (Section 7 Par. 1 of the Penal Code) is not considered a crime.

Accused person

Accused person is the most general term used for a person against whom a criminal prosecution is conducted and who is a party to criminal proceedings. The term “accused person” is a procedural law term, which must be differentiated from the term “offender”, which is a substantive law term.

Pursuant to the current Criminal Procedure Code, a person suspected of commission of a crime shall become an accused person when the decision to commence criminal prosecution issued exclusively by a police authority or exceptionally by a public prosecutor is delivered to him or her.

Once a trial is ordered, the accused person is referred to as defendant.

A convict is a person to whom a judgement of conviction has been issued and came into force.

Aggrieved party

An aggrieved party in the sense of valid laws is generally a person to whom damage has been caused. An aggrieved party in criminal procedure is defined as a person whose health was damaged by a criminal act or to whom material, moral or other damage has been caused, while a person who feels morally or otherwise damaged by a criminal act but whose loss has not been caused by the offender or its occurrence is not in causal relationship with the

criminal act shall not be considered an aggrieved party.

An aggrieved party shall take part in criminal procedure as a party to an action if he or she decides to exercise his or her rights (e.g. right to make suggestions to complete the evidence, right to view the criminal file, take part in the trial and assist in discussing an appeal and give their opinion in the given matter before the end of the procedure). If the aggrieved party decides to demand compensation from the accused person for damage incurred, he or she must do so by special procedure in so-called accession proceedings.

An aggrieved party may take part in contravention proceedings only on condition that he or she has put in a claim for damage compensation. As far as administrative offence proceedings are concerned, the aggrieved party may never take part in the proceedings pursuant to the current practice.

Police authority

Police authority is one of the [bodies active in criminal procedure](#) and this term is used to mean a department of [the Police of the Czech Republic](#) or a lower organizational section which performs tasks in [criminal proceedings](#). Police departments act in the position of a police authority most frequently and they are divided into departments with limited territorial competence and departments with competence for the whole [Czech Republic](#).

The below mentioned institutions can also act as a police authority:

- Department of the Ministry of the Interior (Inspection of the Ministry of the Interior) in procedures concerning crimes committed by police officers,
- competent Military Police bodies in procedures concerning crimes committed by members of armed forces,
- authorized bodies of the Prison Service of the Czech Republic in procedures concerning crimes committed by members of this service,
- authorized bodies of the Security Information Service in procedures concerning crimes committed by members of this service,
- authorized bodies of the Office for Foreign Relations and Information in procedures concerning crimes committed by members of this office,
- authorized customs authorities in procedures concerning crimes committed by infringement of customs regulations, regulations concerning import, export and transit of goods and that even in case that they concern members of armed forces, the abovementioned services or offices and also in procedures concerning crimes committed by infringement of regulations upon placement and purchase of goods in member countries of the European Union if such goods are transported across the border of the Czech Republic and also in procedures in tax-related crimes if the

customs authority serves as a tax administrator.

These other bodies perform verification; the investigation is then performed by the criminal police and investigation service department. Criminal activity of the members of the Police of the Czech Republic, Security Information Service and the Office for Foreign Relations and Information shall be investigated by a public prosecutor.

As regards long-range ocean navigation, investigation of criminal acts committed on board may be carried out by the captain.

Penal order

A decision which a court may issue without hearing the accusation at a trial, so-called decision "at a table", if the evidence collected by the Police of the Czech Republic and the public prosecutor during preliminary proceedings allows the court to decide without any doubt whether the accused person is guilty and about the punishment.

A penal order may only be issued for crimes for which can be punished by imprisonment not exceeding 5 years.

However, a penal order must not be used to impose unconditional imprisonment sentence. In order to grant the accused person the right to a proper and public trial, he or she may appeal against the penal order (the public prosecutor shall have the same right).

If an appeal is lodged against the penal order, the penal order shall automatically be cancelled and proper trial shall be ordered in the given matter.

4.3.6. Criminal law protection

Criminal law protection of intellectual property rights is stated in Section four Chapter two of the Special part of Act no. 140/1961 Coll., the Penal Code, as amended. These include provisions of Sections 149 to 152 of the Penal Code. Individual provisions of criminal law standards are so-called blanket provisions. This means that they contain legal terms governed by standards of another legal branch.

During detection of crimes and investigation whether any of the facts of the case have been met, a police authority must assess concrete definitions in other legal regulations.

There is a rule that ignorance of a blanket standard shall be assessed in the same way as ignorance of a criminal standard and therefore the offender shall not be exculpated due to

ignorance of a criminal standard.

The law requires intentional culpability in all facts of the case of the crimes in question; crimes caused by negligence do not exist in the field of intellectual property protection.

Criminal law is ultima ratio law, i.e. law whose instruments shall be and must be used if and only if other legal order instruments cannot be used or are obviously purposeless. Criminal law and criminal law qualification of certain conduct basically have no room in cases where they would substitute individual activity of individuals to protect their rights and legal interests in the field of ordinary private law relations. Otherwise there would be inequality between the persons in their mutual relations and disrespect of public authorities to the equality of citizens, i.e. infringement of Art 1 of the Charter of Fundamental Rights and Basic Freedoms and Art 1 Par. 1 of the Constitution. In other words, conduct-infringing rights arising from civil law regulations should be first dealt with using private law regulations and if they prove inefficient, then administrative sanctions should be used. Criminal law should be the last resort. Reverse approach, i.e. use of criminal law without having used the instruments offered by other legal branches, would be in contradiction to the penal repression subsidiarity principle outlined above which requests the state to use criminal law instruments guardedly.

When an action, which has a character of a disagreement over payment of a certain amount from the civil law point of view, is judged in criminal procedure, it is necessary to look at the case primarily from civil law point of view and consider whether conditions for the use of the utmost repressive instrument – criminal law have been met¹⁰.

4.3.6.1. Unfair competition - Section 149 of the Penal Code

Pursuant to provisions of Section 149 of the Penal Code, facts of the case of unfair competition are met by whoever behaves in contradiction to regulations governing competition in economic relations or common practice of the competition thus damaging reputation of competitor's company or endangering its operation or development.

Facts of the case of this criminal act are defined generally, which leads to certain inconsistency in assessment of such cases (regional law) in practice.

As regards unfair competition, the Penal Code requires intentional conduct, which must include all substantive features characterizing the act of the case of this kind of crime. The conduct must cumulatively meet the following requirements:

¹⁰ Wording of Judgement 69/06 of the Constitutional Court (concerning criminal liability for public performance of musical works without an appropriate contract with the collective administrator of copyright)

- it must be in contradiction to regulations governing competition in economic relations,
- it must take place in economic competition,
- it must damage reputation of competitor's company or endanger its operation or development.

The purpose of this provision of the Penal Code is protection of economic competition participants, not economic competition itself.

Definitions of facts of the case:

Conduct, which is in contradiction to regulations governing competition in economic relations, is stipulated in provisions of Sections 44 to 52 of Act no. 513/1991 Coll., the Commercial Code, as amended.

The basic provision is Section 44 of the Commercial Code, Unfair Competition which stipulates that:

(1) Unfair competition shall mean conduct in economic competition which is in contradiction to the accepted practices of competition and which may be detrimental to other competitors or customers. Unfair competition is prohibited.

(2) Unfair competition under Par. (1) shall include the following:

- (a) misleading advertising;*
- (b) misleading marking of goods and services;*
- (c) conduct contributing to confusion;*
- (d) parasitic use of the reputation of another competitor's enterprise, products or services;*
- (e) bribery¹¹;*
- (f) disparagement;*
- (g) comparative advertising;*
- (i) violation of trade secrets;*
- (j) endangering the health of consumers and the environment.*

The quoted provision includes a general clause in Par. 1. Meeting of this clause is sufficient for the assessed conduct to be considered unfair competition (in relation to the CC, not to criminal law).

Paragraph 2 is a list of examples of special cases whose definition and analysis are stated in the primary methodological part. The general clause must always be met in addition

¹¹ The Commercial Code understands this term broadly, not only in association with the acquisition of items of general interest.

to these special cases (and not only for them and not only in relation to the CC).

- **accepted practices of competition** – such term is not governed by any legal standard. An example mentioned in comments is a case when somebody publishes information about their competitor which does not concern the competitor's economic activities (e.g. information about his or her past) but which is nevertheless able to inflict damage to him or her as a competitor.
This term shall also include stealing experienced employees.
- **damage reputation of competitor's company or endanger its operation or development** – these terms are clear in their meaning and they represent a result of a criminal activity. We shall only remind that the danger does not have to be serious.
- Damaging of reputation or danger to company operation or development does not have to be proved by any special means, or better through an expert opinion. Credible documentation of occurrence of damage or harmful consequence is sufficient as nearly every detriment consequently endangers company development.
- **a competitor** – every party, which takes part in economic competition as a subject, shall be considered a competitor. However, anyone can be an offender.

Combination of this criminal act with the infringement of rights to a trademark, a trade name and a protected appellation of origin pursuant to Section 150 of the Penal Code and with industrial rights infringement pursuant to Section 151 of the Criminal Act is excluded. The reason for this exclusion is the fact that the abovementioned criminal acts are in speciality relation to Section 149 of the Penal Code.

4.3.6.2. Infringement of rights to a trademark, a trade name and a protected appellation of origin - Section 150 of the Penal Code

The facts of the case of infringement of rights to a trademark, a trade name and a protected appellation of origin - Section 150 of the Penal Code shall be considered fulfilled by whoever *imports, exports or puts into circulation goods or services unjustifiably marked with a trade- mark the exclusive right to which is owned by some other party or a trademark easily confusable herewith.*

The same punishment shall apply to whoever commits the following in order to gain economic benefits:

- a) unjustifiably uses trade name or any name confusable herewith, or*
- b) puts into circulation goods unjustifiably marked with an appellation of origin the exclusive right to which belongs to some other party or an appellation of origin easily confusable herewith.*

This provision of the Penal Code is also a standard with a so-called blanket disposition.

A trademark must meet the condition of being recorded in the Trademark Register administered by the Industrial Property Office. A trademark owner has an exclusive right to mark his or her products or services with a trademark, which has been registered for them, or use such trademark in connection with these products and services. Nobody may use a denomination identical to or confusable with a trademark for products or services identical or similar to those for which the trademark has been registered or use such denomination in connection with these products or services, namely put it on products or their labels, offer or put into circulation products bearing such denomination or use such mark in trade name, correspondence or advertising, unless the trademark owner gives his or her consent with such use.

First of all, we must realise that the criminal act stated in Section 150 of the Penal Code is an intentional criminal act. This means that the offender must want to infringe the interest in protection of rights associated with a trademark, a trade name or a protected appellation of origin, i.e. he or she must know that the goods he or she puts into circulation are counterfeit goods or at least take such possibility into account and be aware of it in this case.

Definitions of facts of the case:

- **trademark** – denomination consisting of words, letters, digits, drawing or shape of a product or its package or eventually a combination of these which enables differentiation of products or services made by different suppliers.
- **mark easily confusable herewith** – is such mark, which can easily be confused for a protected trademark due to the similarity of both denominations. Confusability must be assessed from the point of view of a consumer for whom the product is intended.
- **imports, exports or puts into circulation** – this term shall be understood as any kind of distribution of the product, i.e. sale to the end user, wholesale and even distribution in the form of advertising items.
- **economic benefits** – these benefits shall not only include financial profit, but also any advantage in economic competition.
- **trade name** – a name under which an entrepreneur or an enterprise performs legal acts when carrying out their business activities. This term is broader than the term “commercial firm” defined in the Commercial Code. The provisions of Section 8 of the Commercial Code, as amended, define a commercial firm as a designation under which an entrepreneur is entered in the Commercial Register. An entrepreneur who is not entered in the Commercial Register shall not be subject to the provisions concerning the commercial name. If such entrepreneur is a natural entity, he or she shall perform legal acts under his or her full name, and if such entrepreneur is a legal entity, under its designation. An entrepreneur nor recorded in the Commercial Register may add a supplement or another denomination to his or her full name and

use it in business in order to differentiate him/herself, on condition that it is not confusing and its use is in conformity with legal regulations and honest practices of competition; such supplement or designation is not a commercial firm and it is protected by law against unfair competition just like a trade name.

- **appellation of origin** – an appellation of origin shall be understood as the name of a region, a specific place or country used for identification of the goods originating from this territory provided that quality or characteristics of these goods are exclusively or predominantly given by special geographical environment with its characteristic natural and human factors and provided that production, processing and preparation of such goods takes place within the defined territory (Provisions of Section 2 letter a) of Act no. 452/2001 Coll., on the Protection of Designations of Origin and Geographical Indications. However, as far as criminal law is concerned, the term appellation of origin cannot be interpreted in the narrow sense of the definition provided by the Act on Protection of Designations of Origin and Geographical Indications. Criminal law protection must be provided not only to the designations of origin but also to geographical indications with regard to European legislature governing the issue of appellations of origin and protected geographical indications, which has become a part of Czech legal order upon the accession of the Czech Republic to the European Union.

4.3.6.3. Industrial rights infringement - Section 151 of the Penal Code

The facts of the case of industrial rights infringement pursuant to Section 151 of the Penal Code shall be considered fulfilled by *whoever infringes on rights to a protected invention, industrial design, utility model or semi-conductor product topography and he or she shall be punished with imprisonment for up to two years or with a fine.*

Rights protected with this provision of the Penal Code are defined enumeratively; they include invention, industrial design, utility model and semi-conductor product topography.

The subject of protection in this case includes rights to the results of creative intellectual activity.

Definitions of facts of the case:

The terms used in the provisions of this criminal act have been defined in the primary methodological part. It is obvious that the infringement of protected rights must be intentional and industrial rights shall enjoy protection since the day on which they are entered in the relevant register administered by the Industrial Property Office.

4.3.6.4. Infringement of copyright, rights related to copyright and rights to a database - Section 152 of the Penal Code

The facts of the case of infringement of copyright, rights related to copyright and rights to a database pursuant to Section 152 of the Penal Code shall be considered fulfilled by *whoever unjustifiably infringes in legally protected rights to an author's work, artistic performance, sound or audiovisual recording, radio or television broadcast or database.*

A stricter punishment shall be imposed to whoever gains *considerable benefit* by such conduct or *commits such conduct to a considerable extent.*

This provision of the Penal Code is also a standard with so-called blanket disposition which contains legal terms governed by standards of a legal branch different from criminal law, namely by copyright and related rights.

Facts of the case protect against unjustified infringement of rights protected by the Constitution and the Copyright Act. Act no. 121/2000 Coll. on Copyright and Rights Related to Copyright (Copyright Act), as amended is the fundamental legal standard in this context.

Definitions of facts of the case:

- **unjustified infringement** – the definition can be found in the Copyright Act, which defines what is meant by infringement of rights. Besides these definitions, the Copyright Act enumeratively defines legitimate uses of works, which shall not be understood as unjustifiable infringement of these rights (e.g. quotation, official and reporting licence). The justification of copyright infringement is thus not based on author's consent only.
- **legal protection of rights** – unlike with industrial rights, copyright protection shall apply to any work even if its author did not apply for such protection.
- **considerable benefit** – this term is defined through the profit from criminal activity. We have to remind in this context that the valid jurisdiction expects taking offender's expenses into consideration.
- **considerable extent** – this term can apply not only to the number of counterfeit copies sold, but also to the extent of copyright the offender has infringed. Offender's conduct can also be assessed as being committed "to a considerable extent" when the distribution of a large amount of counterfeit copies is not documented but the offender offers a wide range of titles for sale.

It therefore applies from the point of view of assessment of subjective side of the conduct of a person who commits such criminal act that ignorance of the Copyright Act shall be assessed in the same way as ignorance of criminal standards and the offender shall therefore

not be exculpated.

The facts of the case of this crime are not included in the group of especially serious crimes in the sense of the provisions of Section 41 Par. 2 of the Penal Code and therefore preparation (Section 7 Par. 1 of the Penal Code) for such criminal act shall not be considered a crime. When deciding about a criminal act, it is always necessary to take its development stage into consideration.

Databases shall also be the subject of protection pursuant to the Copyright Act. The preamble to the Copyright Act states that a collective work where creative activity takes place during selection or arrangement of its content by its author shall be an independent subject of copyright law. Under these circumstances, even a database exclusively containing only certain facts, which individually do not meet the formalities of a work in the sense of copyright, may be considered a collective work. Databases gathered on the basis of a certain key are of considerable value in the world of business. They are usually made by companies, either marketing or other ones. They are employee works pursuant to Section 58 of the Copyright Act from the Copyright Act point of view.

4.3.7. Minor offences in intellectual property field

Less serious conducts infringing rights in intellectual rights protection field may be punished pursuant to Act no. 200/1990 Coll., on Offences, as amended, with the exception of offences in copyright field. There was a change (through Act no. 216/2006 Coll., of 25th April 2006 which amends Act no. 121/2000 Coll., on Copyright and Rights Related to Copyright and on the Amendment of Some Acts (the Copyright Act), as amended, and some other acts 25.4.2006) and offences were transferred from the Offence Act to the Copyright Act.

New provisions pursuant to Sections 105a, 105b and 105c have appeared in the Copyright Act under Title VI called Administrative Offences. The breakthrough fact here is that besides the punishment of a natural entity for the commission of an offence in copyright infringement field, the possibility of punishment even of a legal entity or an enterprising natural entity for an administrative offence in association with copyright infringement has been codified. The sanction imposed for such conduct has also increased radically.

The term offence

An offence shall be understood as a culpable conduct, which infringes or endangers interests of the society. The conduct must be explicitly labelled as an offence in the Offence Act or in another act, whereas it must not be classified as another administrative offence punishable

pursuant to special legal regulations or a criminal act.

An administrative offence shall not mean conduct by which anyone averts:

- adequately an imminent or continuing attack against an interest protected by law or
- imminent danger to an interest protected by law, unless such conduct is likely to cause probably as serious consequences as those, which are imminent, and such danger can be averted by any other means.

The term culpability

Unless the law states explicitly that intentional culpability is required, culpability by negligence shall suffice in case of responsibility for an offence.

An offence is committed **by negligence** if an offender:

- knew that his or her conduct might infringe or endanger interests protected by law but believed without any adequate reasons that he or she would not cause such infringement or danger
- did not know that his or her conduct might breach or endanger interests protected by law, even though he or she should and could have known it given the circumstances and his or her personal situation.

An offence is committed **intentionally** if an offender:

- wanted to infringe or endanger an interest protected by law with his or her conduct
- knew that his or her conduct might endanger interests, which are protected by law, and if he or she caused such danger or infringement he or she agreed with its result.

A conduct shall also be understood as omission of such conduct to which the offender was obliged pursuant to the circumstances and his or her personal situation.

4.3.7.1. Offences in the field of infringement of industrial rights and rights to a commercial firm – Section 33 of Act no. 200/1990 Coll. on Offences, as amended.

The facts of the case of an offence in the field of infringement of industrial rights and rights to a commercial firm shall be considered fulfilled by whoever:

- a) unjustifiably exercised rights which are reserved to owners of such rights by laws protecting industrial property,
- b) unjustifiably used a commercial firm or any other indication confusable with a commercial firm or an indication characteristic for another entrepreneur.

An offence under the previous paragraph shall be punished by a fine of up to CZK 15 000.

4.3.7.2. Offences in copyright field - Section 105a of Act no. 121/2000 Coll., on Copyright and Rights Related to Copyright and on the amendment of some rights (Copyright Act), as amended.

A natural entity shall be deemed to have fulfilled the facts of the case of an offence pursuant to this Act by his or her conduct when he or she:

- a) unjustifiably uses an author's work, artistic performance, sound or audiovisual recording, radio or television broadcast or a database,
- b) unjustifiably infringes copyright by means stated in Section 43 Par. 1 or 2 or in Section 44 Par. 1, or
- c) partakes in the sale of an original work of art as a seller and fails to fulfil his or her notification duty pursuant to Section 24 Par. 6.

The offence under letter a) is punishable with a fine of up to CZK 150 000, the offence under letter b) with a fine of up to CZK 100 000 and the offence under letter c) with a fine of up to CZK 50 000.

4.3.7.3. Cooperation - Section 58 of Act no. 200/1990 Coll. on Offences, as amended.

The Police of the Czech Republic have undergone a radical change in relation to detection and hearing of offences when most of their competences were handed over to administrative bodies, which include municipal offices or municipal authorities in conformity with Section 52 and the following of Act no. 200/1990 Coll., on Offences, as amended.

State authorities, police authorities and municipalities report offences which they find out about to the corresponding administrative bodies if they are not competent to deal with them themselves. The reports must at least contain:

- names,
- which offence has been caused by the conduct,
- evidence which is known to them and which proves that it is an offence and that it was committed by a certain person.

If a police authority reports offences belonging in the field of offences arising from

intellectual property to the correspondent administrative bodies, the police authority shall carry out necessary investigations in order to find a person suspected of having committed an offence and to secure evidence necessary for subsequent performance of criminal evidence before an administrative body. A police authority shall make an official record concerning the discovered facts which they shall attach to the report. The police authority shall send the report within 30 days of the day on which they find out about the offence.

4.3.8. Public dangerousness criteria

A general guide for the assessment of degree of public dangerousness is provided in the provision of Section 3 Par. 4 of the Penal Code by demonstrative listing of facts which have to be taken into consideration when determining the degree of dangerousness of a certain conduct for the society. The structure and interpretation of the term public dangerousness clearly implies that its assessment is a multicriterion one, while the decision as to what significance shall be given to the individual criteria always depends on the nature of the case. Each case has to be assessed individually and that with regards to formal and material features of the correspondent offence. It can be inferred from the systematic classification of crimes concerning infringement of rights arising from intellectual property that the lawmakers namely intended to deal with more serious infringement of these rights with regard to the generic object of economic crimes.

We can try to prepare a list of the facts, which could generally influence public dangerousness in infringement of these rights, while the literature¹² usually states the following circumstances as decisive for the assessment of public dangerousness of a given conduct:

- the importance of the protected interest, which was influenced by the act.
- means of performing of the act – offender who infringed the rights did so in a group or with the aid of other offenders.
- duration and intensity of the act – this will namely concern how long the offender had been infringing the rights, e.g. how often he or she had been using illegal computer programs.
- consequences – this will again concern consideration of the nature and consequences of the infringement of rights.
- the extent of damage – the amount of damage caused can be important for determination of public dangerousness of an act in a concrete case, but its determination is very problematic. However, from the relative point of view, we can

¹² Novotný, Dolenský, Jelínek, Vanduchová - Trestní právo hmotné - I. obecná část, 3. vydání Substantive criminal law - I. General part, 3rd edition, Praha. Codex 1997

say even without agreement on the method of calculation of damage that more illegal programs installed equal higher amount of damage caused (however evaluated) and therefore also greater public dangerousness on the offender's conduct in the given case.

- circumstances, under which the act was committed. It is said among others¹³ that crimes that thrive in some place at some time are a greater danger to the public.
- person of the offender – it is relevant to investigate the offender's personality and behaviour with regard to the committed offence. This concerns personal and professional situation of the offender, his or her behaviour before and after the act, offender's attitude to the criminal act etc.
- the scope of culpability – it can be generally said that direct intention shows higher degree of public dangerousness. It can also be important to know whether the act had been well-considered, and planned in advance.
- motive – this mainly concerns why the offender committed the offence of copyright infringement. For example, the motive can be unwillingness to pay for legal products, attempt to cause damage to the aggrieved subjects and, last but not least, a certain kind of entertainment (namely in case of juvenile offenders).

¹³ Šámal, Púry, Rizman, Trestní zákon, Komentář, 3. vydání Penal Code, 3rd edition , Praha, C.H.Beck 1998,

4.3.9. Documentation of criminal activities¹⁴

Documentation of criminal activities consists of several consecutive operations and activities.

Operatively investigative instruments – sham transfer, surveillance and even use of an agent in exceptional cases – may be used within the framework of finding of facts important for criminal procedure in intellectual property field under conditions set by a special legal regulation. Operatively investigative instruments (used in accordance with the Criminal Procedure Code) are one of the elements used in a commenced criminal procedure.

When documenting criminal activities prior to the commencement of a criminal procedure, the Criminal police and investigation service (hereinafter referred to as the CPIS) may use **ancillary operatively investigative instruments** within the framework of their investigating activity on the basis of Act no. 283/1991 Coll., on the Police of the Czech Republic, as amended. These instruments namely include – cover documents, conspirative means, signalling equipment, special financial resources and the use of an informer.

The use of operatively investigative instruments can be divided to the following sections pursuant to the use of these instruments and time when they are used and concurrently from theory and practice point of view:

following the commencement of a criminal procedure – operatively investigative activity using operative instruments (in accordance with the Criminal Procedure Code) specially focused on the finding of probative values and information concerning infringement of rights in the field of intellectual property,

prior to the commencement of a criminal procedure - operatively investigative activity using ancillary operatively investigative instruments (pursuant to the Police of the Czech Republic Act) focused on and intended for acquisition, gathering, verification or eventually elaboration of operative information.

4.3.9.1. Operatively investigative instruments

When documenting criminal activities after the commencement of criminal proceedings, CPIS employees may use all operatively investigative activity instruments which have been codified by the Criminal Procedure Code, Act no. 283/1991 Coll. on the Police of the Czech Republic, as amended, and related internal management acts. Probative values and information, which can be used during the criminal procedure itself, are detected during this

¹⁴ TRAPP VI.: Organizace a taktika služby kriminální policie a vyšetřování při odhalování porušování autorských práv v oblasti audiovizuální a výpočetní techniky, Organization and tactics of the criminal police and investigation service in detection of copyright infringement in audiovisual and information technology field
PA Praha 2007

activity while the conditions and requirements for the use of these instruments are concurrently met.

Operatively investigative instruments may only be used if certain conditions are met. The fundamental premise for the use of these instruments is the condition that their use may not pursue another aim than acquisition of facts important for criminal proceedings. These instruments may only be used if the pursued aim cannot be achieved by any other means or if its achievement would otherwise be significantly more difficult. The Criminal Procedure Code further stipulates that sound, visual and other recordings gained by the use of operatively investigative instruments in a way corresponding to the provisions of the Criminal Procedure Code can be used as evidence.

If these conditions are met, operatively investigative instruments can be used only in such scope that would not mean an undesirable infringement of rights and freedoms of citizens.

Operatively investigative instruments for the detection and documentation of intentional criminal activity shall be understood as:

- **sham transfer,**
- **surveillance of persons and items,**
- **use of an agent.**

Although the institution of sham transfer is explicitly an instrument that can be used for detection of corruptive conduct together with other operatively investigative instruments, these instruments have not been used sufficiently in the practice of corruption detection yet (i.e. detection of corruption associated with criminal activity in the field of industrial rights and copyright). The cause of this situation may be the fact that they were transferred to the Criminal Procedure Code from the Police Act relatively recently and therefore their use in gaining evidence is still a relatively new element in criminal proceedings.

The change of sham transfer of an item to the sham transfer in its current version considerably broadened the possibilities for utilization of this institution and therefore its use should be broader and more consistent. Despite this fact, the use of the institution of a sham transfer will not be possible in some situations. These namely include situations when the detected facts will not be sufficient to commence criminal procedure pursuant to the Criminal Procedure Code.

4.3.9.2. Ancillary operatively investigative instruments

In order to prevent commission of criminal acts and to document criminal activity **prior to the commencement of criminal proceedings**, the Criminal police and investigation service (hereinafter referred to as the CPIS) may use **ancillary operatively investigative instruments** within the framework of their operatively investigative activity on the basis of Act no. 283/1991 Coll., on the Police of the Czech Republic, as amended. These instruments namely include – cover documents, conspirative means, signalling equipment, special financial resources and use of an informer.

4.3.9.3. Operatively investigative activity procedures

Documentation of criminal activity consists of several concurrent acts and activities. Their interconnection and relationship as well as cooperation of police authorities active in criminal procedure and cooperation of institutions acting outside the field of repressive organs (OSA, IFPI, CII etc.) is necessary and there would be no implementation of these forms of criminal activities without it.

The starting point leading to detection of criminal activity is thorough knowledge of an operational situation, namely knowledge of the market and goods. The prerequisites for this include the ability to differentiate between original products and counterfeit copies, local knowledge and overview of places where illegal goods are sold. Cooperation with non-governmental organizations and right owners' representatives play an unsubstitutable role in this part of documentation.

This shall be followed by knowledge about distributors and information on production plants or import, which is concurrently the target of documentation of such criminal activity.

This mainly includes gaining of concrete information about:

- findings and evidence about the committed criminal activity,
- counterfeit copy distribution network and about distributors,
- places where pirated goods are manufactured,
- offenders.

Concentrated fulfilment of these procedures together with combination of ancillary operatively investigative instruments can systematically uncover activities and structure of the whole organized group which is often connected to contacts with groups performing the same criminal activity abroad.

4.3.9.4. Documentation of UNFAIR COMPETITION - Section 149 of the Penal Code

We most often encounter this criminal act during division of companies or eventually in association with departure of company employees who have established their own companies unjustifiably using information, documents, know-how, distribution network etc. of their former employer.

(a) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 1 of the Criminal Procedure Code

The basis for an investigation by a police authority are facts gained on the basis of this authority's own findings (usually within other proceedings with these concrete facts of the case), or the investigation can eventually be carried out on the basis of complaints or suggestions received from other parties and authorities. If the obtained background information is not enough to make a conclusion that a crime has been committed in the given case, its completion by procedure pursuant to Section 59 Par 4 of the Criminal Procedure Code is requested in order to sufficiently particularize it and come to a conclusion.

The following facts must namely be found out in this stage:

- exact description of the conduct in which the informant sees contradiction to regulations governing economic competition;
- find out where the informant sees a consequence for himself or herself (its definition);
- find out whether the consequence has been caused in causal connection with the offender's conduct;
- obtain an opinion of an authorized person concerning the endangering of operation or development of the company;
- obtain documentation confirming competitor status of the aggrieved party,
- determine the time of probable commission of crime and determine the place of commission with regard to determination of local competence.

A police authority shall obtain the abovementioned facts without carrying out criminal procedure acts codified in Section 158 Par. 3 of the Criminal Procedure Code. In this stage of proceedings the police authority merely verifies the degree of suspicion and finds out whether there has been a conduct showing signs of a criminal act.

(b) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 3 of the Criminal Procedure Code

If a materially and locally competent police authority has come to a conclusion that the offender can be justly suspected of having committed a crime, they shall write a Record on commencement of criminal procedure acts. The following general principles for its processing have been set: The record must contain description of the act with specified conduct (without general formulations), the regulation which was infringed must be stated, an aggrieved party and its position as a competitor must be defined together with the damaging consequence.

The output of this part of criminal procedure is a document, which confirms whether a crime has been committed, and whether a concrete person fulfils the facts of the case of a criminal act.

It is advisable to gain as much evidence as possible in this stage of proceedings with regard to the persons of the offenders and this kind of economic crime.

If there is no suspicion that a crime was committed, the public prosecutor or police authority shall suspend the case through a decision pursuant to Section 159a of the Criminal Procedure Code, unless it is suitable to deal with the matter in some other way. Such dealing would namely include transferring the case to a correspondent authority in order to discuss it as a petty offence or some other administrative offence. The case can also be suspended temporarily with the consent of a public prosecutor pursuant to Section 159b of the Criminal Procedure Code, but the period of suspension may not exceed two months.

(c) Commencement of prosecution – pursuant to Section 160 of the Criminal Procedure Code

If the facts detected and reasoned by investigation pursuant to Section 158 of the Criminal Procedure Code indicate that a crime has been committed and if the conclusion that such crime was committed by a concrete person is sufficiently reasoned, the police authority shall decide to commence criminal prosecution without any undue delay. Criminal prosecution shall be commenced through a decision pursuant to Section 160 Par. 1 of the Criminal Procedure Code. The wording of the decision on the commencement of criminal prosecution must contain description of the conduct of which the person is accused in order to prevent its confusion with a different one and legal classification of the criminal act, which is seen in this conduct. Facts, which influence the conclusion about the legitimacy of criminal prosecution, must be marked precisely in the grounds of the decision.

If the results of criminal prosecution subsequently provide enough reasons to bring the

accused person to a court, the public prosecutor shall institute an action against him or her in the sense of Section 176 of the Criminal Procedure Code and provide files and their appendices for this action. The public prosecutor shall also inform the accused person, his or her barrister and the aggrieved party if their residence or place of business is known.

The action can only be instituted for an act for which the prosecution was previously commenced. If the public prosecutor intends to judge this act as a different criminal act than it was judged by the police authority, he or she shall notify the accused person and his or her barrister prior to instituting the action and find out whether they surest complementing of the investigation with regard to the intended change. Once the action has been instituted, the case shall be dealt with at a correspondent court.

4.3.9.5. Documentation of INFRINGEMENT OF RIGHTS TO A COPYRIGHT, A TRADE NAME AND A PROTECTED APPELLATION OF ORIGIN - Section 150 of the Penal Code

We most often encounter this kind of crime in stall and street trading of goods bearing protected trademarks of renowned companies.

(a) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 1 of the Criminal Procedure Code

The investigation by a police authority in this kind of crime shall be based on facts gained on the basis of the police authority's own findings (usually via operational investigation activity), or the investigation can eventually be instituted by other parties and authorities.

In this stage of the proceedings, it is namely verified whether the trademark exists and whether it is registered with effect in out territory. Besides verbal trademarks it is concurrently assessed whether it is an author's work protected with copyright.

(b) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 3 of the Criminal Procedure Code

If a materially and locally competent police authority has come to a conclusion that the offender can be justly suspected of having committed a crime, they shall write a Record on commencement of criminal procedure acts. The following general principles for its processing have been set: The record must contain **description of the act** with specified conduct (without general formulations – put into circulation, distributed), the **used denomination** must be stated (together with a statement that this happened without the right

owner's consent) the **aggrieved party must be defined** and **denomination** the rights to which were infringed **must be specified** (by reference to the wording or record number).

The output of this part of criminal procedure is a material which confirms whether a crime has been committed and whether a concrete person fulfils the facts of the case of a criminal act, or better, whether he or she has infringed a protected right to a denomination without the owner's consent and that this protection acted against the subject of infringement (product).

When criminal procedure acts are instituted, it is possible to perform all criminal procedure acts, namely exert procedure pursuant to Section 88 of the Criminal Procedure Code – telephone tapping and monitoring of telecommunication traffic, as this concerns an intentional criminal act the prosecution of which is requested by a declared international agreement.

In this stage of criminal procedure the police authority has to obtain comment of the aggrieved party concerning the infringement of their rights, and it concurrently has to inform the aggrieved party about their rights in the criminal procedure. These acts must always be performed. It is obvious that they also concern right holders abroad. If the right holder has no representation in this country, or eventually if he or she is without contact, the resulting situation shall be solved by asking for international legal aid, which is very time-consuming.

In order to prove the objective side of a criminal act, the aggrieved parties or eventually representatives appointed by these parties shall present written documents to the police authority. These documents shall prove that the product is genuine, or, as the case may be, that it is not genuine and they are marked as expert opinions in the sense of Section 105 Par. 1 of the Criminal Procedure Code. Acceptance of these documents usually depends on public prosecutor's opinion and on the assessment of the concrete case.

In order to document the conditions of distribution in the sense of the facts of the case, a test purchase which is usually performed by a right-holder's representative takes place in some cases. The purchased goods then serve as a proof for their claims, or better for complaint against the offender. The subject (item) itself cannot be considered evidence pursuant to the Criminal Procedure Code, unless the person is interrogated about these facts (Record on the disclosure – Section 158/5 of the Criminal Procedure Code). The protocol thus becomes evidence (in the sense of the Criminal Procedure Code), whereas the purchased item is merely supportive evidence. This procedure has become accepted mainly in dealing with criminal activity in marketplaces or in case of stall and street sale.

If there is no suspicion of a crime, the public prosecutor or police authority shall suspend the case through a decision pursuant to Section 159a of the Criminal Procedure Code, unless it is advisable to deal with the matter in some other way. Such dealing would namely include transferring of the case to a correspondent authority in order to discuss it as a petty offence

or some other administrative offence.

(c) Commencement of prosecution – pursuant to Section 160 of the Criminal Procedure Code

If the facts detected and reasoned by investigation pursuant to Section 158 of the Criminal Procedure Code indicate that a crime has been committed and if the conclusion that such crime was committed by a concrete person is sufficiently reasoned, the police authority shall decide to commence criminal prosecution without any undue delay. Criminal prosecution shall be commenced through a decision pursuant to Section 160 Par. 1 of the Criminal Procedure Code. The wording of the decision on the commencement of criminal prosecution must contain description of the conduct of which the person is accused in order to prevent its confusion with a different one and legal classification of the criminal act, which is observed in this conduct. Facts, which influence the conclusion concerning the legitimacy of criminal prosecution, must be marked precisely in the grounds of the decision.

The speciality of this kind of criminality, or better, of these criminal acts, is the seizure of items. This usually concerns large amounts of these items, which have to be properly documented and secured. A police authority may (under certain conditions) assess the seized items as worthless in the sense of provisions of Section 81 Par. 3. of the Criminal Procedure Code in preparatory proceedings and decide to destroy them. This procedure should at least be consulted with a public prosecutor as it is a destruction of material evidence and it is completely clear that the assessment of value is a highly subjective opinion.

If the results of criminal prosecution subsequently provide enough reasons to bring the accused person to a court, the public prosecutor shall institute an action against him or her in the sense of Section 176 of the Criminal Procedure Code and provide files and their appendices for this action. The public prosecutor shall also inform the accused person, his or her barrister and the aggrieved party if their residence or place of business is known.

The action can only be instituted for an act for which the prosecution was previously commenced. If the public prosecutor intends to judge this act as a different criminal act than it was judged by the police authority, he or she shall notify the accused person and his or her barrister prior to instituting the action and find out whether they surest complementing of the investigation with regard to the intended change. Once the action has been instituted, the case shall be dealt with at a correspondent court.

4.3.9.6. Documentation of INFRINGEMENT OF INDUSTRIAL RIGHTS - Section 151 of the Penal Code

We very rarely encounter these cases. Each case is unique and therefore it must be dealt with competently and with due responsibility.

(a) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 1 of the Criminal Procedure Code

Police authorities act namely on the basis of complaints on the part of the aggrieved parties in this field. These complaints are usually brought against a concrete person (natural - legal), they shall be presented in writing and supported by large amount of documents.

If the obtained background information is not enough to make a conclusion that a criminal act has been committed in this case, its completion by procedure pursuant to Section 59 Par 4 of the Criminal Procedure Code is requested in order to sufficiently particularize it and come to a conclusion (unless delay is imminent).

In this stage, police authorities namely verify whether a right enjoying protection is concerned and also whether the technical solution or product in question infringe on this protected right.

(b) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 3 of the Criminal Procedure Code

If a materially and locally competent police authority has come to a conclusion that the offender is justly suspected of having committed a crime, they shall write a Record on commencement of criminal procedure acts. General principles for its processing are given. The record must contain description of the act with specified concrete industrial right (without general formulations), together with definition of concrete legal protection, it must be said how the right was infringed (together with a statement that this happened without the right owner's consent), the aggrieved party must be defined and common features of the products must be described.

The output of this part of criminal procedure is material which confirms whether a crime has been committed and whether a concrete person fulfils the facts of the case of a criminal act, or better, whether he or she has infringed a protected right without the owner's consent.

A procedure pursuant to Section 158 Par. 3 of the Criminal Procedure Code is used to find out and verify whether the infringement of rights was illegal. Documentation of these facts is usually an easy matter and does not constitute any special problem.

However, the issue of proving infringement of industrial rights, which are protected in association with a legal product, is more difficult. The police authority usually uses expert opinions and expert's statements in this issue. However, such procedure has a drawback in question framing by experts as the opinions must answer the questions on technical level, or

better, the opinions must focus on what is the subject of protection, not on legal relations.

If there is no suspicion that a crime was committed, the public prosecutor or police authority shall suspend the case through a decision pursuant to Section 159a of the Criminal Procedure Code, unless it is advisable to deal with the matter in some other way. Such dealing would namely include transferring of the case to a correspondent authority in order to be discussed as a petty offence or some other administrative offence. The case can also be suspended temporarily with the consent of a public prosecutor pursuant to Section 159b of the Criminal Procedure Code, but the period of suspension may not exceed two months.

(c) Commencement of prosecution – pursuant to Section 160 of the Criminal Procedure Code

If the facts detected and reasoned by investigation pursuant to Section 158 of the Criminal Procedure Code indicate that a crime has been committed and if the conclusion that such crime was committed by a concrete person is sufficiently reasoned, the police authority shall decide to commence criminal prosecution without any undue delay. Criminal prosecution shall be commenced through a decision pursuant to Section 160 Par. 1 of the Criminal Procedure Code. The wording of the decision on the commencement of criminal prosecution must contain description of the conduct of which the person is accused in order to prevent its confusion with a different one and legal classification of the criminal act, which is observed in this conduct. Facts, which influence the conclusion about the legitimacy of criminal prosecution, must be marked precisely in the grounds of the decision.

If the results of criminal prosecution subsequently provide enough reasons to bring the accused person to a court, the public prosecutor shall institute an action against him or her in the sense of Section 176 of the Criminal Procedure Code and provide files and their appendices for this action. The public prosecutor shall also inform the accused person, his or her barrister and the aggrieved party if their residence or place of business is known.

The action can only be instituted for an act for which the prosecution was previously commenced. If the public prosecutor intends to judge this act as a different criminal act than it was judged by the police authority, he or she shall notify the accused person and his or her barrister prior to instituting the action and find out whether they surest complementing of the investigation with regard to the intended change. Once the action has been instituted, the case shall be dealt with at a correspondent court.

4.3.9.7. Documentation of INFRINGEMENT OF COPYRIGHT, RIGHTS RELATED TO COPYRIGHT AND RIGHTS TO A DATABASE - Section 152 of the Penal Code

This kind of crime is most often dealt with on the basis of suggestions or complaints. The complainant is usually a representative of authors' rights who monitors illegal activities.

The conduct of the suspect is documented with a test purchase in some cases (see previous chapters).

(a) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 1 of the Criminal Procedure Code

The basis for an investigation by a police authority are facts gained on the basis of the authority's own findings, or the investigation can eventually be carried out on the basis of a received complaint or suggestions of other parties and authorities. If the obtained background information is not enough to make a conclusion that a criminal act has been committed in this case, its completion by procedure pursuant to Section 59 Par 4 of the Criminal Procedure Code is requested in order to sufficiently particularize it and come to a conclusion.

The following facts must namely be found out in this stage:

- verification of the existence of a work,
- verification of the duration of copyright protection,
- determination of the right-holder.

A police authority shall obtain the abovementioned facts without carrying out criminal procedure acts codified in Section 158 Par. 3 of the Criminal Procedure Code. In this stage of proceedings the police authority merely verifies the degree of suspicion and finds out whether there has been a conduct showing signs of a criminal act

(b) Procedure prior to the commencement of prosecution – pursuant to Section 158 Par. 3 of the Criminal Procedure Code

If a materially and locally competent police authority has come to a conclusion that the offender is justly suspected of having committed a crime, they shall write a Record on commencement of criminal procedure acts. The following general principles for its processing have been set: The record must contain description of the act together with specification of concrete legal protection and it must be said how the right was infringed (together with a statement that this had happened without the right owner's consent). It is

also necessary to define the aggrieved party and duration of copyright protection.

The record in question may be used as a relevant background for the decision of a public prosecutor and judge concerning putting the offender into custody if his or her conduct meets the characteristics of Par. 2 of the provisions of Section 152 of the Penal Code. It is therefore necessary to pay as much attention as possible to this operation.

When criminal procedure acts are instituted, it is possible to perform all criminal procedure acts, namely exert procedure pursuant to Section 88 of the Criminal Procedure Code – telephone tapping and monitoring of telecommunication traffic, as this concerns an intentional criminal act the prosecution of which is requested by a declared international agreement.

In this stage of criminal procedure the police authority has to obtain comment of the aggrieved party concerning the infringement of their rights, and it concurrently has to inform the aggrieved party about their rights in criminal proceedings. These acts must always be performed. Once these obligations are fulfilled, it is possible to address organizations representing the aggrieved parties.

If there is no suspicion that a crime has been committed, the public prosecutor or police authority shall suspend the case through a decision pursuant to Section 159a of the Criminal Procedure Code, unless it is suitable to deal with the matter in some other way. Such dealing would namely include transferring the case to a correspondent authority in order to discuss it as a petty offence or some other administrative offence. The case can also be suspended temporarily with the consent of a public prosecutor pursuant to Section 159b of the Criminal Procedure Code, but the period of suspension may not exceed two months.

(c) Commencement of prosecution – pursuant to Section 160 of the Criminal Procedure Code

If the facts detected and reasoned by investigation pursuant to Section 158 of the Criminal Procedure Code indicate that a crime has been committed and if the conclusion that such crime was committed by a concrete person is sufficiently reasoned, the police authority shall decide to commence criminal prosecution without any undue delay. Criminal prosecution shall be commenced through a decision pursuant to Section 160 Par. 1 of the Criminal Procedure Code. The wording of the decision on the commencement of criminal prosecution must contain description of the conduct of which the person is accused in order to prevent its confusion with a different one and legal classification of the criminal act, which is seen in this conduct. Facts, which influence the conclusion about the legitimacy of criminal prosecution, must be marked precisely in the grounds of the decision.

If the results of criminal prosecution subsequently provide enough reasons to bring the

accused person to a court, the public prosecutor shall institute an action against him or her in the sense of Section 176 of the Criminal Procedure Code and provide files and their appendices for this action. The public prosecutor shall also inform the accused person, his or her barrister and the aggrieved party if their residence or place of business is known.

The action can only be instituted for an act for which the prosecution was previously commenced. If the public prosecutor intends to judge this act as a different criminal act than it was judged by the police authority, he or she shall notify the accused person and his or her barrister prior to instituting the action and find out whether they surest complementing of the investigation with regard to the intended change. Once the action has been instituted, the case shall be dealt with at a correspondent court.

4.3.10. Dealing with property in criminal procedure

Dealing with seized property represents an organizational problem, not a legal one. If a criminal procedure is running, it is possible to take advantage of the institution of forfeiture of an item, which is imposed as a punishment pursuant to Section 55 of the Penal Code. If such punishment is not imposed it is possible to use confiscation of an item pursuant to Section 73 of the Penal Code. In both cases, the state becomes the owner of the item, which is then handed over to the Office of the Government Representation in Property Affairs.

Items may be seized during various procedural acts, e.g. in time of surrender of an item upon request (Section 78 Par. 1 of the Criminal Procedure Code, part of the first sentence before the semicolon), in time of surrender of an item if it is necessary to seize it for the purpose of criminal procedure (Section 78 Par 1 of the Criminal Procedure Code, part of the first sentence following a semicolon), seizure of an item (Section 79 Par 1 of the Criminal Procedure Code), during house search (Section 82 Par 1, Section 83 of the Criminal Procedure Code), inspection of other premises and plots (Section 82 Par. 2, Section 83a of the Criminal Procedure Code), body search (Section 82 Par. 4, Section 83b of the Criminal Procedure Code), when carrying out evidence in a flat, house, other premises and plots (Section 85c of the Criminal Procedure Code), during interception of mail consignments (Section 86 Par. 1 of the Criminal Procedure Code), opening of mail consignments (Section 87 Par. 1 of the Criminal Procedure Code) and supplanting of content of consignments (Section 87a of the Criminal Procedure Code); and also during searching of the scene of the crime (Section 113 of the Criminal Procedure Code).

4.3.10.1. Surrender of an item

Whoever is in the possession of an item relevant for criminal procedure shall have the duty to hand it over, when requested, to the court, public prosecutor or police authority pursuant to Section 78 of the Rules of the Procedure (the term *corpus delicti* is often used in practice)

if the purpose of a criminal procedure requires it, he or she shall have the duty to surrender, when requested, such item to these bodies.

The person requested to surrender an item must be informed that if he or she fails to comply with the request, the item may be seized and also that there can be other consequences of such failure (i.e. a procedural fine of up to CZK 50.000).

Both a public prosecutor and a police authority are entitled to ask for surrender of an item in the preliminary procedure. The request may be made both orally and in writing.

In cases of suspicion that a criminal act associated with infringement of rights arising from intellectual property protection was committed, the surrendered items will often include a trademark plagiarism and a data carrier with an audiovisual work and with illegal contents whose content will eventually serve as evidence in criminal procedure.

4.3.10.2. Seizure of an item

If an item relevant for criminal proceedings is not surrendered upon request by the person who has it in his possession, it may be seized in the preliminary procedure upon an order issued by a prosecutor or a police authority. The police authority shall issue such order only upon a prior authorization by a prosecutor (Section 79 of the Criminal Procedure Code).

The order for forfeiture of an item is sometimes issued together with an order for house search due to practical reasons in practice. A police authority may issue the order without public prosecutor's authorization only if it is impossible to obtain such authorization immediately and the issue cannot be delayed (e.g. there is a danger that the item will be destroyed, etc).

A party, which does not take part in the case, is usually recruited to perform the act. It usually consists of a non-interested person present during house search.

An authority, which seized an item, shall immediately issue a written certificate of receipt or a copy of a report of surrender and seizure of an item to the party which surrendered the item or whose item was seized. The copy of the protocol must contain sufficiently accurate description of the surrendered or seized item, which allows its identification.

4.3.10.3. Forfeiture and confiscation of an item

Forfeiture and confiscation of an item shall be decided by the court within the framework of its decision about guilt and punishment, as these measures are a kind of punishment

(confiscation is a protective measure). An appeal may be lodged against them as well as against the decision on guilt and punishment.

The appeal shall have a suspensory effect, i.e. if an appeal is lodged in time, the effects of forfeiture or confiscation of an item shall not come into force. The legal effects shall come into force only after the first instance court judgement becomes effective, i.e. when an appeal is lodged, the legal effect shall not come into force sooner than on the day of receipt of the decision of the court of appeal.

If a first instance court issues a decision on the forfeiture of an item, it is not possible to dispose of the item and e.g. sell or give it to somebody, as the prohibition of misappropriation of the forfeited item applies even before the decision on forfeiture comes into force. This prohibition also includes other disposal of the item leading to the obstruction of the item forfeiture punishment.

A court may impose forfeiture of an item in the sense of Section 55 of the Penal Code if such item was used for commission of a criminal act, if it was intended for commission of a criminal act, if the offender acquired it through a criminal act as a reward for such act or if the offender acquired it or its part in exchange for the abovementioned item or some other tangible value, unless the value of this item or some other tangible value is negligible in relation to the value of the acquired item or other tangible value.

In practice, this mainly concerns forfeiture of CDs or DVDs, trademark plagiarisms and PCs used or intended for commission of a criminal act. **A court may impose a punishment by forfeiture of an item only if the item is in the offender's possession.** The forfeited item or another tangible value shall belong to the state.

If no punishment by forfeiture of an item is imposed, a court may rule that such item shall be confiscated pursuant to Section 73. There is a condition that the item must:

- belong to an offender who cannot be prosecuted or sentenced,
- belong to an offender whose punishment was remitted by a court,
- threaten the safety of people or property, or eventually a company, or there must be a danger that it will serve for commission of especially serious criminal acts,
- have been acquired through a criminal act or as a reward for such act and it must not belong to the offender, or it must have been (even partially) acquired by a person different from the offender in exchange for an item or some other tangible value which the offender acquired through a criminal act or as a reward for it or which the offender acquired (even partially) in exchange for such item or another tangible

value, unless the value of the confiscated item or some other tangible value is negligible in relation to the value of the acquired item or other tangible value.

Besides the institution of confiscation of an item, a court may impose a duty to modify it to make it impossible to use for a socially dangerous purpose, remove certain equipment, remove a trademark from the item or modify it, or restrict disposal of this item or another tangible value and set an adequate deadline for it.

Only if such obligation is not fulfilled in the given deadline, the court shall decide on confiscation of the item or another tangible value.

4.3.10.4. Restitution and further disposal of an item

Pursuant to Section 80 of the Criminal Procedure Code, an item shall be restituted to the party who surrendered it or to whom it was confiscated on condition that it is no longer needed for further procedure and its forfeiture or confiscation is impossible.

If the abovementioned conditions are met, an item may be restituted upon a proposal or even without a proposal of the owner of the item, and that not only after the completion of criminal procedure but also in its course. Most often the requests for restitution concern CDs and DVDs which are obviously original and in whose case it is certain that they will not be used as evidence in the course of criminal procedure. As far as other items (namely computers) are concerned the restitution is possible only if an authority active in criminal procedure has secured the evidence, e.g. information from a hard disk.

When doubt in whose possession a surrendered or seized item is arises (another party may claim the right to it), the surrendered or seized item shall be restituted to a party whose right to the item is unquestionable (e.g. when an ownership document is presented). Should the doubt remain, the item shall be deposited into custody. A party who lays a claim to the item shall be notified to lodge their claim through a civil action, and that namely through a declaratory action concerning ownership. If the person with an unquestionable right to the item fails to reclaim it when repeatedly requested to do so, the item shall be sold and the amount obtained shall be deposited at the court.

A public prosecutor or a police authority shall decide on restitution or surrender of an item or on its deposit in writing in preliminary procedure. It is possible to lodge a complaint against such decision. The complaint shall have a suspensory effect until the day when the decision on the complaint is delivered to all participants concerned by return, surrender or deposit of the item. In practice, the most frequent complaints come from a public prosecutor or a person who claims the item as an alleged owner.

4.3.11. Repressive strategy

The problem of criminality in the field of protection of intellectual property rights and other negative phenomena associated with this antisocial conduct is very relevant for the Czech Republic nowadays. This field of criminality has developed rapidly from qualitative and quantitative point of view since 1990, so that fighting against this phenomenon has currently become a state interest and essentially one of the hot topics of the present time.

Police statistics show that from the quantitative point of view, crime in this field stagnates on

a level which is not at all favourable for the Czech Republic. Shown from the qualitative point of view, this kind of crime experiences rapid expansion, namely on the Internet. The discovery that the average age of persons who commit these crimes decreases disproportionately together with development and availability of information technologies is also very dangerous.

In order to be successful in our fight against these negative phenomena including this kind of criminality, we have to make full use of two basic strategies – a preventive one and a repressive one.

Repressive policy represents defensive strategy of crime controlling and its mainly repressive part is oriented to the past, to concrete events, criminal acts which were already committed.

Preventive policy focuses on the future – it represents offensive strategy of crime controlling and mainly depends on non-repressive means. It aims to decrease the likelihood of commitment of crimes.

Both approaches are specific and if they are to succeed in fighting crime, they must form one balanced aggregate and complement one another. Only if these conditions are observed, we may be able to reach the desired goal, i.e. effectively counteract infringement of intellectual property rights.

4.3.11.1. Subjects active in repression field (structure, competence, powers)

(1) Criminal police and investigation service departments (hereinafter CPIS)

Protection of intellectual property rights is managed by Criminal police and investigation service departments. They namely perform their duties in the form of:

- police authority proceeding in the sense of the Criminal Procedure Code, internal normative acts in cases a charge is brought against somebody or procedure pursuant to ex offio principle,
- performance of training and introduction of the given problem to other departments and services of the Police of the Czech Republic,
- provision of personal and methodical aid to the departments of other services of the Police of the Czech Republic during implementation of direct security actions against distributors of counterfeit goods (classical stall sale or sale of counterfeit copies in buildings),
- performance of actual operatively investigative activities, operative elaboration of the acquired findings concerning criminal activity,

- cooperation with the Department for detection of organized crime a Police department for detection of corruption and serious economic crimes.

(2) Basic police departments

These namely include basic departments like Order police service, Traffic police service and Foreign and border police service which can take their own measures during the performance of rounds and patrol service in conformity with criminal law regulations, the Offence Act, internal normative acts and other regulations either independently or in cooperation with other subjects (regional units of the Czech Trade Inspection (CTI), CAFIA, the General customs directorate, revenue offices, trade licensing unions etc.).

This kind of crime is most frequently encountered by police officers in Basic departments of the Police of the Czech Republic during their rounds and patrol service. Therefore the Criminal police and investigation service should train these police officers in the relevant crime field and introduce new information to them. Only if these conditions are observed will they be able to perform a successful action independently in such place including correct and legal securing of evidence.

The basic police departments need methodical and namely personal help on the part of CPIS in direct security actions aimed against sellers of illegal goods infringing intellectual property rights. These namely include eventual inspections of Asian marketplaces, junk sales and other sales activities.

(3) CPIS Department for detection of organized crime (CPIS DDOC PCR)

The problem of criminal structures, risks associated with international trade, high level of crime organization in intellectual property field may be dealt with by regional branches of the CPIS Department for detection of organized crime within the framework of their competences. Other departments of the criminal police and investigation service may also participate in this activity.

(4) INTERPOL national headquarters in Prague

With regards to the international character of commission of this kind of crime, cooperation with INTERPOL national headquarters in Prague is more and more often necessary. This headquarters, as the basic organization unit of INTERPOL on a national level provides basic service in the field of international police cooperation to all interested institutions participating in application and enforcement of laws both in the Czech Republic and abroad.

The main activities of INTERPOL in Prague include:

- (i) ensuring and improvement of the broadest possible cooperation of all law-enforcement institutions within the framework of national law limits while abiding by the Universal Declaration of Human Rights;
- (ii) support of development of institutions contributing to the repression of crime, namely in the following fields:
 - obtaining and transferring information concerning cases of criminal character;
 - searching for persons and items;
 - extradition of offenders to the Czech Republic from abroad;
 - handing offenders over to foreign countries;
 - organizing working meetings of Czech policemen with foreign partners;
 - checking of abidance by Czech legal regulations on the part of foreign subjects;
 - preparation of the concept of police cooperation with foreign countries;
 - advisory activity in the field of international police cooperation;
 - police diplomacy.

4.3.12. Criminal law protection of intellectual property in selected countries around the world

First of all, we have to say that an exact and precise listing and comparison of methods and means of criminal protection, or better, analysis in individual countries is not possible, and that both due to the scope of this topic and due to the availability and validity of information concerning this issue and, last but not least, due to the practical importance for the needs and purpose of the processed material.

We will therefore restrict ourselves to an informative and educational view of the problem of intellectual property protection through criminal law institutions in the discussed countries.

The basis for assessment of the given issue is namely general geopolitical and constitutional development in the given country or region, as the case may be. Other important factors include historical roots, enforced rights in general and namely intellectual property protection rights, and development in this field until the present time. This all can be subsumed under the term “legal culture in the field of intellectual property protection”. A very important guideline for the analysis of assessment of how much a country is advanced in the field of intellectual property protection is the scope of its engagement in the international process of intellectual rights protection as a participant and signatory of important international conventions and treaties in this field. Finally, it is necessary to assess the scope of actual projection of international obligations of individual countries to the national legislation and their concrete laying down in relevant domestic legal regulations. With respect to the outlined solutions, the countries may be divided into three basic categories from the point of view of intellectual property right protection enforcement through criminal law instruments:

- (1) **Developed countries** – these include countries of the so-called Western world, i.e. the USA, Canada, EU countries, Switzerland, Australia and New Zealand and several other countries, regardless the fact that some of them use Anglo-Saxon system of law and some use Continental European one;
- (2) **Developing countries** – include countries, which want to join the EU, former Soviet Union countries, former SFRY countries, the RSA, the People’s Republic of China, India, Brazil, the Kingdom of Thailand, the Socialist Republic of Vietnam, etc.;
- (3) **Undeveloped countries** – the weakest subjects from social and economic point of view, so-called “Third world countries” – these include Somalia, Ethiopia, Cambodia, Burma, etc.

If we try to analyse the abovementioned categories of countries from the point of view of enforcement of criminal protection of intellectual property rights, we come to the following facts:

4.3.12.1. Developed countries

Criminal law protection of intellectual property rights is fully developed in these countries and it fits in and supplements other legal fields, namely administrative and civil law, or eventually commercial law. Countries belonging in this category are signatories of all international conventions in intellectual property field and actively participate in the protection process using international law tools. Detailed analysis shows that double approach to criminal protection of intellectual property rights basically applies here. In the first kind of approach the protection of intellectual property rights is implemented exclusively through the use of the code of criminal law – the Penal Code in which the correspondent provisions of facts of the case influencing the intellectual property field are laid down. Such approach is exerted in Slovenia, France, Spain and some other countries. Other countries, on the other hand, chose the way of laying down criminal law provisions into special legal regulations influencing intellectual property field. In such cases, the copyright act, patent acts or trademark acts also include concrete provisions of corresponding facts of the case including sanctions. In some countries a hybrid form of criminal law protection system has developed. Its basis consists of correspondent provisions of the Penal Code and these are supplemented, or better, tied up with provisions in special legal regulations. Despite that, these standards are not criminal law regulations from the meritorious point of view. Criminal law protection of intellectual property in Germany is a representative example. Each German act concerning intellectual property also contains criminal regulations, i.e. provisions, which threaten with punishment for infringement of intellectual property rights. Section 142 of the Patent Act, for example, threatens with three-year imprisonment sentence or financial penalty to anyone who manufactures or puts into circulation a product, which is a subject of a patent, without the patent owner’s consent. If the offender is an entrepreneur, the upper length of imprisonment increases to five years. The same conception applies to the provisions of Section 143 of the Trademark Act, i.e. provisions concerning a case when an offender uses a trademark in his or her business which

does not belong to him or her and which is identical to or confusable with a valid trademark. German lawmakers used similar conception for correspondent provisions of their national Copyright Act – Sections 106 and 108a. These provisions concern unauthorized reproduction, distribution or other use of author's work. If we compare these to sanctions imposed for criminal acts attacking intellectual property rights, we will find out that the imposed sanctions are practically identical or comparable and that regarding both their legal extent and the frequency of their imposing by relevant courts. The general feature is that criminal law protection in patent and trademark field is rather sporadic and the protection itself is rather carried out in the field of civil and commercial law. Compared to this, there is completely different situation in the field of protection of copyright and rights related to copyright, where criminal law applies much more frequently as a tool, namely with regard to the public law aspect in copyright field. The trend brings increase of frequency of criminal cases, namely in the field of criminal law protection of software.

4.3.12.2. Developing countries

This group of countries comprises a whole number of variously developed countries. Their common feature is that criminal law protection is basically embodied here and corresponding state executive authorities including bodies active in criminal procedure enforce it more or less consistently. These countries are usually signatories of the Convention establishing the World Intellectual Property Organisation (WIPO) and the Agreement Establishing the World Trade Organization (WTO) as well as the Agreement on Trade Related Aspects of Intellectual Property Rights (Appendix 1C to the Agreement Establishing WTO – TRIPS Agreement), signed in Marrakesh on 15th April 1994. The guarantee that intellectual property will really be protected by criminal law tools in these countries lies namely in the fulfilment of TRIPS Agreement in the provision of Section 61 concerning criminal procedure. This article stipulates that: “Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.”

The People's Republic of China is a very important representative of this group of countries. With its immense economic and human potential it is a completely exceptional country with considerable influence on the course of events all around the world and further development on Earth in the future. China joined the WIPO – the World Intellectual Property

Organization on 4th March 1980 and the World Trade Organization – WTO on 11th December 2001 and it is also a signatory of a range of other international conventions. China can be characterized as a country where there is a considerable difference between valid legal regulations and actually implemented law enforceability.

As an international player China is notorious for massive infringement of intellectual property and it has a dominant position as a producer of counterfeit copies of all kinds in this sense. Under the influence of international pressure, Chinese government is gradually beginning to implement valid legal regulations and international obligations, which they accepted. As far as criminal law field is concerned, China can be characterized with very strict sanctions, which can be imposed for criminal acts in intellectual property field – the upper length of imprisonment is seven years together with monetary fine and damage compensation. However, another important feature is that the limit as to what intensity of law infringement shall be classified as a criminal act is also set very high. Therefore a conduct, which would be punished as a criminal act in Europe, is considered an administrative offence with considerably milder sanctions in China. Another typical feature of application of law in China is insufficient cooperation between administrative offices and bodies active in a criminal procedure due to which many illegal acts are never punished. Moreover, a typical feature of the functioning of state mechanism in China is local protectionism, which results in inconsistent enforcement of legal order all over this vast country. Therefore China is presently criticised by international associations and the US government repeatedly includes it in its Special 301 Report, which lists countries where intellectual property rights of US subjects are infringed.

Another very interesting representative in the given category is the Russian Federation (hereinafter the RF) together with a group of countries called the Commonwealth of Independent States (hereinafter the CIS). It is a matter of common knowledge that when the Soviet Union split up in December 1991, 22 union republics became independent and subsequently established the Commonwealth of Independent States as a free alliance of former union countries. Only the Baltic countries Lithuania, Latvia, and Estonia did not join this alliance.

Political, economic and legal development in these countries was completely different and the Baltic republics, as EU member countries, are currently comparable with the old EU members even in the field of criminal law protection of intellectual property. Estonia namely stands out in the progressiveness of legal regulation. The Russian Federation as a successor state of the Soviet Union took over its international law obligations in the field of intellectual property. The RF has been a WIPO member since 1967 and it is on the verge of joining the WTO, its Patent Act has been valid since 1992 and the Copyright Act since 1993 and it has been amended several times. Criminal law protection of intellectual property is implemented through the “Ugolovnyj kodeks Rossijskoj federaciji.” This Penal Code embodies intellectual property protection to a scope comparable with European countries including stipulated sanctions. However, application of this regulation in practice in the given field is

completely insufficient for the time being and it is largely underestimated by bodies active in criminal procedure with reference to its very little dangerousness to the public. Therefore the amount of persons prosecuted for criminal acts belonging to this group is negligible in comparison with other developed countries and with other kinds of criminal acts. The RF legislature was more or less adopted by CIS member countries. Therefore legal regulations in the Republic of Ukraine, Belarus, Kazakhstan, the Kyrgyz Republic, Armenia, Uzbekistan, Moldova, Azerbaijan, Tajikistan or Georgia are similar to the legal regulation of the RF and they follow it. As the time went and autocratic or even dictator regimes came into force in some of the abovementioned countries, there were also changes in their legal orders which namely projected themselves in a new legal regulation in criminal law field, as stricter sanctions and new punishments were introduced. However, these changes did not have any influence on the problem of intellectual property protection. Georgia experienced slightly different development. The country is a signatory of TRIPS Agreement and its Patent Act has been in force since 1999, as well as its Commercial Code. Georgia strives for joining the European structures (NATO, the EU) and therefore its legal system has developed as a pro-European one. Compared to this, Central Asian republics with outstanding influence of Islamic religion show the possibility of introducing Sharia Islamic law in the future. We also have to mention development in the Republic of Ukraine where the legislature development following the basis given by the RF rather stagnated due to political instability. The first industrial property protection act was adopted in December 1993. Another act concerning intellectual property protection came into force in 1994. Although Ukraine has been an independent member of the WIPO since 1970, the actual level of intellectual property protection through criminal law tools and other fields of law has been insufficient in this country since the time it became an independent state. The country is thus criticized both by international associations and by the US government, which demands improvement of this state and threatens to withdraw the most-favoured nation clause. There has been a gradual improvement and positive influence of this pressure has taken effect lately. We can generally state that criminal law protection is sufficient and the enforceability of law is gradually improving in this country.

The Republic of India is a very interesting state. This densely populated subcontinent boasts rich history as well as remarkable cultural heritage. India has traditions in the field of intellectual property protection. It participates actively on an international level. It has been a WIPO member since 1967 and it is also a signatory of the TRIPS agreement. The national legislation system in India is based on Anglo-Saxon law, which is projected in many aspects ranging from drafting criminal laws to the structure and functioning of judicial power. This also directly influences realization of criminal law protection of intellectual property, which seems appropriate and functional with regard to the local conditions. India has and applies Patent Act and Trademark Act (1999) as well as Copyright act. However, the efficiency of application of criminal law in protection of intellectual property rights is not on the requested level yet. Interesting information can be found in the published IFPI statistics per 2005 concerning the number of confiscated counterfeit sound carriers in which India ranks 8th in

the world with approx 2 million carriers within the framework of performed criminal procedures and other measures of the local state authorities. To compare, the first two places belong to Saudi Arabia with 16 million pieces and Mexico with approx 15 million pieces of CD's. The 11th place of the Czech Republic with approx. 1 million pieces of counterfeit CDs is rather "spicy" in this respect.

It implies from the abovementioned that India still has obvious reserves in the application of criminal law in order to protect intellectual property. It is a paradox that the punishments imposed for criminal acts against intellectual property are rather stricter than usual in developed countries. An indisputable fact is that in relativized expression, i.e. in relation to the number of citizens, there is minimum enforcement of criminal law repression in the given field.

The Kingdom of Thailand (hereinafter referred to as Thailand) has been a WIPO member since 25th December 1989 but it has not become involved in the WTO yet. Thailand has and applies Trademark Act and Commercial Code valid since 2000 and fulfils conditions stipulated by the TRIPS Agreement. It therefore also projected intellectual property protection in its criminal law. Thailand is characteristic with the fact that criminal law legislature uses very strict sanctions for criminal acts and the whole criminal policy of the country seems very repressive. However, the truth is that activity of the local authorities active in criminal procedures in the field of detection and solving of crimes in the field of intellectual property still shows considerable reserves. General legal consciousness in this country is rather in favour of counterfeiting of all kinds than protection of intellectual property rights. An interesting fact is that a special court for the protection of intellectual property was established in Bangkok through a royal decree as per 1st Dec 1997 and it is expected that similar court institutions will be established in several other parts of the country.

The Socialist Republic of Vietnam (hereinafter referred to as Vietnam) was constituted as an independent state by the unification of the Republic of South Vietnam (South Vietnam) and the Democratic Republic of Vietnam (North Vietnam) on 30th April 1975 after the Vietnam War had ended.

Vietnam legislation is generally influenced by France and its laws as Vietnam had long been under the dominion of this colonial power. The basis of local legal regulation for intellectual property protection field is a valid Civil Code adopted on 28th October 1995. The provisions of its Sections 780 – 805 directly concerning intellectual property came into force on 1st July 1995. However, more detailed legal regulation is laid down in a bylaw act, namely in a government decree issued in February 2001. Vietnam has been a member of the WIPO since 1967. It is also a signatory of the Berne Convention for the Protection of Literary and Artistic Works in its Paris revision of 1971. This convention came into force in Vietnam on 26th October 2004. This created prerequisites for national protection of copyright using national legislation tools. Vietnam has a National Office of Intellectual Property, which is concurrently an office for communication with foreign countries in this field. Protection of

intellectual property rights through criminal law is applied very sporadically in Vietnam, even though it is possible with regard to its legislative basis. The local state authorities tolerate mass infringement of industrial rights and copyright. The country produces counterfeit copies and pirated goods of all kinds and floods vast territories with these illegal products. The Czech Republic also has negative experience with Vietnamese community, which significantly contributes to pirate activities, namely production and distribution of plagiarisms by stall sale. Vietnam is still strongly criticized on international level, namely due to its protectionist state policy and failure to fulfil obligations arising from international treaties.

The states established after the dissolution of the former **Socialist Federal Republic of Yugoslavia** (hereinafter referred to as the SFRY) underwent very interesting historical constitutional development. This former multi-ethnic country, which had a stabilizing function in the Balkans peninsula at its time, was a member of the WIPO and the WTO and therefore solid foundations for intellectual property protection had been laid here which was also projected in national legislation including criminal law regulation. The most developed country in the monitored field of those, which arose from the ruins of the SFRY, is undoubtedly **the Republic of Slovenia**. Slovenia is currently a member of the EU and as a member country it also meets the strictest criteria in the field of intellectual property protection. Its legal system is fully compatible with the EU and the Slovenian Copyright Act is considered a model of modern copyright regulation and it serves as an example for a range of other member countries. Criminal law protection applies routinely in this country. Another subject is **the Republic of Croatia**. This country would like to become a member of the EU. The national legal order comprises Patent and Trademark Act as well as Copyright Act. Croatia is a member of the WIPO and its international obligations are projected into its national legislation including criminal law, even though not as well as in Slovenia. Croatia undoubtedly still has reserves in the field of intellectual property protection. As the main successor state subject of the former SFRY, **the Republic of Serbia and Montenegro**, sometimes also called Small Yugoslavia has its legal system most solidly fixed to the legal foundations laid in the SFRY. It has thus met all conditions both from international obligations and national legislation point of view. However, the application of law for the protection of intellectual property, and that even criminal law, is minimal. This is connected, inter alia, with relative political instability and separatist tendencies of Montenegro as well as political and ethnic friction in Kosovo province. A very similar situation as in Serbia and Montenegro can be seen in the **independent Republic of Macedonia**. Macedonia became independent on 8th September 1991. Its Industrial Property Protection Act has been in effect since 1st July 2004. Macedonia ascended both to the WIPO and to the WTO – TRIPS. The punishability of a conduct attacking intellectual property rights has been laid down in its law. However, its application and overall performance of the state mechanism is utterly insufficient. Similar or even slightly worse situation is in the Republic of Bosnia and Herzegovina. This turbulent and ethnically divided country shows only little signs characterising functioning of a state as a legal subject. There is de facto no national

legislation focused on intellectual property protection. The criminal law regulation was partially taken from the former SFRY but it is currently obsolete and ineffective. The state mechanism works only with the help of international communities and the peace status in the country is practically enforced by the presence of international military units. There is still a danger that an internal ethnic war will start again. Intellectual property protection thus stands out of focus of the correspondent state authorities. Of all successor countries of the SFRY, Bosnia and Herzegovina is the worst as regards protection of intellectual property and its enforcement in practice.

4.3.12.3. Undeveloped countries

This is a category, which comprises undeveloped countries from all over the world, not just those examples stated in the structured overview. It includes a wide variety of countries with different ethnic groups, cultures and geographical position on the globe. Their common feature is very low economic level, which causes very frequent dysfunction of the state apparatus or resignation of the government on its functioning or existence of dictatorial regimes ignoring the law. It is often a result of current or recent wars. Intellectual property and its protection is often an unknown term in these countries and we cannot expect improvement by natural course. International help of developed countries is objectively needed here, as these countries may otherwise pose an extraordinary threat for the developed world. One such example is Indonesia where the amount of music piracy has reached 88%. This country floods otherwise stabilised legal market in Australia with its production. There are many similar cases all over the world.

To sum it up, we can say that thus outlined issue of intellectual property protection in individual countries through criminal law tools should merely outline basic orientation of the reader in this matter.

Any deeper analyses and especially comparisons of legal regulations in individual countries both from the point of view of construction of legal standards, sanctions used or incorporation to the legal system or from the point of view of other factors, e.g. legal regulation of intellectual property protection through criminal law in the conditions of the Czech Republic must be a subject of a detailed study using well-established procedures and methods of comparative law. However, the basic general postulate is that the degree of intellectual property protection in a concrete country can namely be expressed through the degree of its involvement in international protection of intellectual property, concretely by membership in the WIPO and especially in the WTO and the following TRIPS agreement. If the obligations arising from these international acts are projected into the jurisdiction of the relevant country (which generally happens in absolute majority of cases), the prerequisites for intellectual property protection by the national law including criminal law instruments are met. This information is fundamental for anyone who wants or needs to investigate the degree of intellectual property protection through criminal law in a foreign country.

However, should a need arise to deal with concrete legal cases when criminal law regulations of a foreign country come into play in association to criminal law regulation in the Czech Republic, it will always be necessary to investigate legal system and the degree of legal protection of intellectual property field by criminal law, and that always concretely and precisely together with correct local and time setting of the given case. Such inquiry must make use of all possible and available sources including information from the Foreign Service of the Czech Republic and from other sources. The current practice in the Czech Republic clearly shows that criminal cases in the field of intellectual property, in which a foreign law element, which has to be taken into consideration by Czech authorities active in criminal procedure, enters either directly or indirectly, are either sporadic or absolutely unique. Therefore adequate attention may be given to them in concrete cases. Not even the introduction of digital technologies in IT field, improvement of electronic communication and other phenomena modifying intellectual property protection to the environment of these technologies has been able to bring any fundamental change in this sense.

4.3.12.4. Summary

With regard to the abovementioned facts, we can state basic information concerning intellectual property protection field in selected countries in this summary:

The People's Republic of China

The Chinese Penal Code regulates “criminal acts infringing intellectual property rights” in its Part 1, Chapter 2, Article 7 and that in eight Sections (Sections 213 to 220).

There are the following eight facts of the case of criminal acts¹⁵:

- registered trademark counterfeiting;
- sale of goods bearing counterfeited trademarks;
- illegal manufacture;
- sale of illegally manufactured logo of a registered trademark;
- patent counterfeiting;
- copyright infringement;
- sale of pirated products;
- breach of business secret.

Criminal prosecution pursuant to the abovementioned facts of the case is based on the seriousness of such infringement of protected right, which is always determined for a concrete case. Punishments for a committed criminal act of greater seriousness are in the form of imprisonment for up to 3 years or alternatively, or eventually together with a monetary fine (e.g. Section 216 – patent counterfeiting). If gross infringement is committed – e.g. in case of trademarks, imprisonment for up to 7 years may be imposed.¹⁶

¹⁵ http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=5229&col_no=235&dir=200605 (of 23rd Sep 2007).

¹⁶ http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=5227&col_no=235&dir=200605 (of 23rd Sep 2007).

Increase of penalties for the abovementioned criminal act is currently discussed, as imprisonment sentences do not have sufficiently deterring character despite the fact that they are imposed relatively commonly. The new legal constitution should also contain special facts of the case pursuant to which it will be a crime to place an order for the production or distribution of counterfeited goods from abroad. Chinese intellectual property rights enforcement bodies do not currently have the possibility to prosecute someone who orders counterfeit goods from abroad.¹⁷

Russian Federation

Russian law – regardless of the validity of international contracts in the field of intellectual property protection – also contains criminal law and administrative regulation of protection and enforcement of these rights.

Sanctions as a punishment for intellectual property rights infringement are also regulated within the framework of administrative law (namely the Consumer Protection Act). The main competence of consumer protection offices is the possibility to prohibit import, parallel import or export of counterfeit goods. The offices determine in concrete cases whether suspicious goods are counterfeit copies or not on the basis of a register administered by the customs administration in which information which has to be assessed can also be recorded upon request of authorized subjects. The principle of a bail paid by an authorized subject for the event that counterfeiting is not proven after the seizure of goods and the seizure causes damage to the owner also applies in Russian law.

The following facts of the case are regulated within the framework of administrative punishment:

- copyright infringement with an aim of making profit and that even in the form of sale, rent or another unauthorized use of a work or its recording;
- unauthorized use of an invention, utility model or industrial design;
- unauthorized use of a trademark.

The abovementioned administrative offences are punishable with monetary fines, the amount of which depends on whether the offender is a natural entity or an enterprise. Administrative punishments often prove ineffective and do not offer sufficient deterrent effect.¹⁸

Russian Penal Code governs facts of the case of the infringement of copyright and related rights (Sections 146), infringement of inventor's rights and patents, utility model or

¹⁷ http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=73202&col_no=925&dir=200704 (of 23rd Sep 2007).

¹⁸ http://www.buildingipvalue.com/05_EU/281_284.htm (of 23rd Sep 2007).

industrial design (Section 147) and unauthorized trademark use (Section 180).

Russian law punishes such conduct, which infringes copyright, and rights related to copyright when considerable damage is caused to the copyright as a result of unauthorized copying. The amount of damage incurred is thus decisive – e.g. if sale, storing or transportation of unauthorized copies of a work is concerned, this must concern large amount of copies. Pursuant to Russian judicature, large-scale damage is defined as damage exceeding approx USD 350. The scope of large-scale damage is not defined in the law and is always assessed separately in concrete cases.

As far as trademarks are concerned, even unauthorized use of a trademark not registered in Russian Federation is a criminal act – if it is a case of gross and repeated infringement of trademark owner's rights.

Punishments for the abovementioned crimes include either monetary fines or imprisonment for up to five years.

Vietnam

Intellectual property rights enforcement in Vietnam is more effective by means of administrative punishments than in the form of civil actions, and that namely owing to a new legal regulation – Act no. 106/2006.¹⁹ This act governs the competences of state administration in enforcement of these rights including a set of punishments and a system of notices.

The abovementioned act contains facts of the case of administrative offences in the form of unauthorized manufacture, transportation, import and sale of goods bearing a trademark or an appellation of origin. It further regulates administrative offences consisting in infringement of rights to a patent, an industrial design or a utility model. Conduct which results in breach of business secret or which can be classified as unfair competition is also punished.

The amount of fine depends on the amount of damage incurred and it can reach up to five times the amount of damage incurred. Imprisonment sentence is not governed by the abovementioned act.

We can say that it was not possible to conclude from the available documentation that the investigated jurisdictions took intellectual property rights infringement via the Internet strongly into consideration – e.g. in a form of special facts of the case.

¹⁹ <http://www.dnlaw.com.vn/Home/index.php?mdl=NE&typ=news&id=79>(of 23rd Sep 2007).

4.4. Activities conducted by the Customs Administration of the Czech Republic²⁰

4.4.1. Introduction

The Customs Administration of the Czech Republic (“Customs Administration” hereinafter) has joined the fight against counterfeit copies as early as in 1995. It was Act 137/1995 Coll., on Trademarks, that made it possible for the Customs Administration to provide general protection in this area. In 1997 to 1995, the Customs Administration recorded an extraordinary increase in the detected counterfeit goods especially in the import of goods to the Czech Republic, which was why it was necessary to adopt i.a. also such legislation amendments which would enable to Customs Administration to protect more effectively the rightful interests of the intellectual property rights holders (“**right holder**” hereinafter) as well as inner market, economic interests of the Czech Republic and last, but not least the Czech citizens – consumers against dangerous products.

In 1999, a special legal regulation was adopted, which was Act No. 191/1999 Coll., on **measures concerning import, export and re-export of goods infringing certain intellectual property rights and on the amendment of certain other acts, as amended (“Act No 191/1999” hereinafter)**, granting the Customs Administration new and enhanced legal instruments in the combat of counterfeit goods. This regulation made it possible for the customs authorities to take measures against goods that could infringe intellectual property rights on import, export and re-export of goods, i.e. goods subject to the supervision of customs bodies.

In 2000, the Customs Administration obtained further authorities in intellectual property rights enforcement by Act No 634/1992 Coll., on Consumer Protection, as amended (“Act No 634/1992” hereinafter). The Customs Administration became the supervisory body authorized under the provision of Section 23, paragraph 7 of Act 634/1992 Coll.. The said provision enabled the Customs Administration particularly to detain goods **not liable to customs supervision**, justly suspected from infringing intellectual property rights, and hand such goods over to other supervisory state bodies (the Czech Commercial Inspection or State Agricultural and Food Inspection) for further proceedings.

If the Customs Administration found goods **subject to** the customs supervisions suspected from infringing intellectual property rights, it detained such goods and proceeded in compliance with Act 191/1999 Coll.

On the accession of the Czech Republic to the European Union, the Customs Administration was further empowered in intellectual property rights enforcement pursuant to Council Regulation (EC) No 1383/2003 (“**Regulation 1383/2003**”) and Commission Regulation (EC) No 1891/2004; on the other hand, the powers of the Customs Authorities to take an action against goods suspected of infringing intellectual property rights **not liable** to the customs supervisions were restricted by Act No. 634/1992 Coll.

²⁰ The closing date of this part of Mythology corresponds with the law as at 1 June 2007. Any amendments made after this date will be included in the course of lectures.

Regulation 1383/2003 enables the customs bodies to protect more effectively just interests or right owner, however only as regards goods **originating in third countries** (i.e. goods **liable** to customs authorities supervision).

To make the list of Customs Administration authorities in the area of intellectual property enforcement complete, we must not omit the authorizations of specialized sections of the Customs Administration, i.e. Departments 03 – Investigations and the Supervision of Customs Directorates as investigating, prosecuting and adjudicating bodies (see the provision of Section 12, paragraph 2 of Act No. 141/1961, Criminal Procedures Code, as amended). The specialized sections, mentioned above, are inter alia authorized also to acts in criminal procedures as regards crimes under Sections 150 to 152 of Act No. 140/1961 Coll., Criminal code, as amended, where intellectual property right is a subject of protected interest:

- **Infringing rights to a trademark, business name and protected designation of origin** – Section 150 of Act No. 140/1961 Coll., Criminal Code, as amended,
- **Industrial Rights infringing** – Section 151 of Act No. 140/1961 Coll., Criminal Code, as amended,
- **Infringing of copyright, rights related to copyright and rights to databases** – Section 152 of Act No. 140/1961 Coll., Criminal Code, as amended.

4.4.2. Evaluation of current situations, trends and issues in the area of intellectual property

The production of counterfeit goods on international scale endangers the health and security of both European Union companies and citizens, their employment, competitive strength, trade, investments into development and innovations and, last but not least, safety risks and loss in tax revenues, as most of the products is sold in black market. The industry of counterfeit goods brings about also illegal employment and is often connected with illegal immigration.

The infringing of intellectual property rights has become highly profitable also for criminal structures (organized crime and criminal conspiracies), as these activities often bring higher financial profits than other types of illegal trading. Financial means gained from the sales of counterfeit goods serve mostly to finance other criminal activities, terrorist acts and also to money laundering.

The Customs Administration of the European Union member states (including the Czech Republic) often found that the deliveries of counterfeit goods contain also other illegal goods, such as opiates and psychotropic substances, weapons and so on. The fact that intellectual property infringing is an issue throughout the whole Community can be evidenced by more than 1,000 % increase of the counterfeit goods detected by European Union customs bodies in the last ten years. The mentioned cases of detention make represent more than 100 million products a year, which is only a tip of the iceberg.

One of the storm signals of this phenomenon is the ever-stronger danger for the European Union citizens in the form of counterfeit goods occurrence. As examples can be named counterfeit medicines and pharmaceuticals, car and aircraft spare parts, food and cosmetics,

sanitary preparations, electronics, alcoholic beverages, DVDs and CDs, coffee, detergents, tooth pastes, mineral waters, toys, **tobacco products, sport equipment** and so on.

It should be stressed that counterfeit and pirated goods as a rule fail to comply with requirements on general safety of products as well as sanitary and health standards.

As an example, the fact can be stated that in 2004, more than 4.4 million of counterfeit foods and alcoholic beverages, which is an increase of 196 % in comparison with the year 2003.

According to EOCED studies, in 1998, counterfeit goods already represented 5 to 7 % of world trade (8 to 9 % according to present studies).

In the same year, customs authorities detained on the outer border of the Community around 10 million of counterfeit and pirated products and in 2004, EU customs bodies detained more than 103 million pieces of counterfeit goods.

In 2003 and 2004, the number of cases treated by EU customs authorities in the concerned area doubled to more than 22,000 cases a year.

In 2006, the **customs bodies** detained on the European Union outer border three times more of counterfeit and pirated records than in 2005. While two years ago, 75 million pieces of counterfeit goods ended up in customs storage facilities, in 2006, it was already around 250 million pieces.

Most of the detained goods come from China. More and more counterfeit medicals flow into the European Union. While in 2006, the customs officers detained 2,5 million pieces in total on the outer border, this amount increased to 500,000 million pieces (this statistics were published by the Commission on 31 May 2007).

4.4.3. Reasons for the vast increase trade with counterfeit goods

The reasons for the fast increase of the trade with counterfeit goods include in particular high profits, moderate risks in terms of punishment, permanent demand for the goods and general increase of international industrial capacity of the production of high quality products.

Other reasons why the trade with counterfeit goods increases can be seen in the incompetence of certain public administration authorities to effectively treat this problem, for instance by changes in organizational structure, reinforcing of human resources or technical facilities of territorial authorities. Despite the concentration of unlawful activities especially in market places and in border areas of the Czech Republic and comparatively simple way of the detecting of legal regulation infringements, problems are ignored and tolerated. These locations thus became breeding and safe ground for very extensive criminal activity.

A typical example can be counterfeit DVDs. The financial profit from them is higher than from comparable weight of soft drugs, while the punishment in case of detection is much milder.

Further, we can mention cigarettes. Although the falsifiers succeed in the delivering of just one in ten of containers with counterfeit cigarettes, the investments successfully pay for themselves. Counterfeiting on this scale gives the criminals also a useful instrument for the laundering of money from criminal activities.

The increasing capacity of industrial production in certain countries (especially in China) provides enormous opportunities for the counterfeit field. Another ineligible reason for the unusual increase in counterfeits trading is the ever-growing interest of organized crime in the enormous profits sharing.

4.4.4. New threats in the area of counterfeit goods

Counterfeiting and pirating is increasingly often mentioned as a threat for investments and employment in our economics based on knowledge, as well as a phenomenon damaging cultural inheritance of many countries including the Czech Republic.

As a result of ever growing industrial production and unscrupulousness of the perpetrators, the individual EU member states have to deal with serious risks concerning public health and safety.

Recent cases of forfeited medicines detained by customs authorities concerned inter alia also counterfeit medical preparations (including the Czech Republic). Counterfeit medical preparations (such as Viagra, Cialis, Spiropent, Sustanon) represent a great health risk for citizens, as the content of effective substances in the medicals is often either exceeded or there is no effective substance at all, or are contained in the medicine in much smaller content than declared on the packaging. The medicals can be also contaminated with toxic or other substances dangerous to human health. Internationally, ten of thousands cases of death occurred as a result of taking a counterfeit medical preparation.

Another threat in the area of medical preparations for EU citizens consists in the Internet trading. In the Czech Republic, the mail-order sale of medical preparations (which includes sales based on an order made via Internet) was allowed by Regulation No. 220/2006 Coll., amending Regulation No. 255/2003 Coll., on Good Pharmaceutical Practice. It means that the sales of medical preparation via Internet has been permitted since 15 June 2006, providing that the following conditions are complied with:

- mail-order sale can be operated only by legal pharmacies already existing;
- such legal pharmacy has to add mail-order sale to its licence;
- only **non-prescription medicals** may be mail-ordered (i.e. mail-order sale of prescription drugs is forbidden).

The lists of pharmacies with a licence for Internet sale of medicals as well as databases of medicinal products are publicly accessible on the Internet site of the State Institute for Drug Control on www.sukl.cz.

The public is not endangered while buying medicals from legal pharmacies providing mail-order services via Internet, as such pharmacies are supervised by the State Institute for Drug Control.

Nevertheless, there are website on the Internet (also Czech ones) with blatantly illegal offer of prescription drugs (these are in particular anabolic steroids, preparations for erectile dysfunction treatment, weight-loss preparations, sedatives, or, on the contrary, stimulants). The World Health Organization together with the European Council estimates that 50% of the drug black market supplies on the Internet are counterfeit medical products.

It means that the buying of medicals from such illegal sources involves such risks that not only the Customs Administration, but also the Police of the Czech Republic and other responsible institutions has to pay this issue closer attention and possibly create teams focused on the detection of organized groups (often international) operating on the Internet. In illegal Internet drug trade, not only intellectual property rights or their owner's goodwill are injured, but, in particular, the health or life of the users of the medicals bought in such a way is endangered.

Pharmaceutical companies which find (either themselves or at the impulse of another body) that their original product has become a subject to counterfeiting, usually withdraw the concerned batch from distribution net, thus incurring considerable financial losses including the damage of goodwill. There is no state authority paying direct and coordinated attention to the issue of unauthorized use and illegal sale of medicals on the Internet, with the exception of the State Institute for Drug Control in Prague, whose authorities as an administrative body are however limited, and, in addition, whose activities are not aimed at intellectual property rights protection but at the protecting of public health.

Also detained counterfeit food, detergents, toys, alcoholic beverages, cigarettes and other goods show that it is necessary to intensify countermeasures and to provide for the effective enforcement of legal regulations.

Another danger for EU citizens presents the buying of counterfeit alcohol. Such products are frequently manufactured in unsatisfactory hygienic conditions from raw materials of extremely low quality (for instance, from technical spirit, spirit intended as fire-lighter and so on). The distillates contained in counterfeit alcohol are of low quality, often containing extraneous substances endangering the consumers' health. Even in this area cases were recorded where a consumer experienced serious health problems after consuming of greater amount of counterfeit alcohol, and even cases of death occurred. In the detecting of counterfeit alcoholic beverages, customs authorities closely cooperate also with national and international organizations and institutions. As an example, the International Federation of Spirits Producers (IFSP) can be stated.

The increase in the industrial production of counterfeits also fundamentally increases the risk that the governments in both the countries of manufacture and in the countries of consuming (in the Czech Republic, the counterfeits are both produced and consumed) will suffer significant tax losses in the area of direct taxes (income tax) as well as indirect taxes (VAT, consumption taxes), as the counterfeiters operate almost entirely in the unofficial sphere of economy. The yearly loss of VAT caused by counterfeit goods for instance in the United Kingdom are estimated by the companies at more than EUR 2.5 milliard (the relevant statistics – estimations of possible losses from VAT in the Czech Republic are not known).

Equally serious problem in the European Union countries including the Czech Republic is the increasing sale of counterfeit goods via the Internet (most often of medicines and medical products, DVDs and CDs, cosmetics and so on).

In the Czech Republic, the Customs Administration detected the counterfeit and pirated goods mostly in market places, in the course of inspections carried out within customs proceedings, and, recently, also in regular shops. In spite of the fact that in the Czech Republic, the Customs Administration detains counterfeit and pirated goods mostly in market places and in the course of inspections carried out within customs proceedings, also in the Czech Republic we can talk about the increase of sales of counterfeit goods in regular shops.

Presently, it appears that the fields protected by copyrights (film, software, music) are most endangered by counterfeiting and pirating.

4.5. European Union recommendations – action plan on effective response of customs authorities to counterfeiting and pirating²¹

4.5.1. European Union Action Plan for the period of 2005 – 2008

The Action Plan of the European Union for the years 2005 – 2008, prepared in the period of British chairmanship in cooperation with the European Commission, establishes in particular the following goals:

- to improve the operational effectiveness of customs administrations – risks management,
- to improve the partnership between customs administrations and the business sector,
- to initiate special events,
- to increase publicity,
- to activate international events.

The crucial position of customs authorities in the prevention of international movement of counterfeit goods reflects the fact that internationally, they are responsible for roughly 70 % of cases of detained products.

Customs authorities are also the only subject enforcing intellectual property rights with special mission according to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization. The European Commission stated, among other facts, that the customs authorities of the individual EU member countries could do more as concerns the detection of counterfeit goods. It is necessary to focus not only on the detention of goods, but also on investigation leading to the discontinuing of manufacture, distribution and sale of counterfeit products.

²¹ Information in this part are based mostly on sources accessible on the websites of the European Union Council, European Commission, European Union customs administrations, press releases published on the Internet, as well as from the “Notice of the Commission to the European Council and European Economic and Social Committee on the response of customs authorities to the newest development in the area of counterfeiting and pirating” http://ec.europa.eu/taxation_customs/resources/documents/COMM_NATIVE_COM_2005_0479_3_de_ACTE.pdf and <http://www.evropska-unie.cz/cz/>.

To attain these goals, customs administrations have to be granted more powers which would make the intellectual property rights enforcement more effective.

Another task of customs administrations is to improve collaboration with the rights owners, associations and societies, non-governmental organizations and other subjects and institutions.

Activities should be increased especially in the three main areas:

- a) the increasing of protection on the Union level,
- b) the improving of international collaboration of customs bodies,
- c) the improving of international cooperation.

4.5.2. Increasing of protection on the Union level

In this area, it appears to be necessary that the authorities of customs bodies are enlarged as concerns products – goods, which can endanger the health and safety of consumers in the European Union (counterfeit medicines, car and aircraft products, foods, infant goods and so on), or which is probable connected with organized crime (cigarettes, alcoholic beverages, DVDs and CDs).

The Community regulations (especially Council Regulation 1383/2003 and the European Parliament Directive (EC) 2004/48/EC, concerning customs duties in the European Union, are considered for a given area of intellectual property enforcement as one of the strongest in the world, which shows in the fact that the customs bodies of the member countries detain more counterfeit goods than elsewhere in the world.

The supervision of the movement of goods conducted by customs authorities protect the inner market of not only European Union, but also of other parts of the world, especially of less developed countries, which frequently become the counterfeiters' target (for instance counterfeits of medicines and medical products, food, beverages).

4.5.3. Present law in the given issue, task and objectives of Customs Administration in intellectual property rights enforcement, cooperation and concurrence with state authorities and other subjects

The Customs Administration is fully aware of all risks and negative impacts impend due to the distribution of counterfeit, which is why it pays intensive and focused attention to the issue of intellectual property rights since 1995. Working together with right owners it ensures, among other activities, regular trainings for customs administrations, focused on the identification of counterfeit goods.

A lot has changed in this area on the accession of the Czech Republic to the European Union. The Customs Administration cannot conduct direct supervision on the state border (prior to the accession, the control systems of the Customs Administration operated both on the state border and inland), which fundamentally increased the risk of particularly import of counterfeit goods to the Czech Republic. On the accession of the Czech Republic to the European Union, all the controls of the Customs Administration are located inland. The

Customs Administration is authorized to inspect goods originating from third countries liable to customs proceedings, or goods subject to customs authorities supervision (it concerns the import, export and re-export of goods) and all goods suspected that it avoided or was removed from customs supervision.

If the customs authorities detect goods **liable to customs authorities supervision** which is suspected from infringing legal regulations – violates intellectual property rights, they detain such goods in compliance with the Community and national legislation (see Council Regulation 1383/2003, Act No. 191/1999).

However, if the Customs Administration detects goods **not anymore liable to customs authorities supervision** (for instance counterfeit or pirated goods released into free circulation by another European Union member country, counterfeit goods manufactured in the territory of the Czech Republic or freely marketable between EU member countries), **customs bodies cannot take any measures against such goods under Council Regulation 1383/2003 and Act No. 191/1999 Coll.**

The Customs Administration is authorized on the basis on strengthened competencies to adopt protective measures according to Act No. 634/1992 Coll. against goods infringing intellectual property rights which is **not liable to customs supervision** of the customs bodies (in respect of authorities in relation to goods within the Community, manufactured or obtained entirely in the Czech Republic or similar).²²

4.6. Cooperation and collaboration with state authorities and other subjects – conclusions and assessment

4.6.1. The Police of the CR, public prosecutors, judges

The cooperation with the Police of the CR is based on cooperation agreements. Even though these cooperation agreements already exist, their practical fulfilment is mainly based on personal relations of individual departments. There is nothing to criticize about such kind of cooperation, but in the eventual consequence, we must naturally come to a conclusion that coordinated and goal-directed cooperation of both departments would undoubtedly bring more positive results, namely in case of criminal activities committed by organized groups. One way to solve the given situation would be to establish specialized teams consisting of representatives of the Police of the Czech Republic and Customs Administration and eventually comprising a public prosecutor. These joint teams would primarily engage in searching for illegal workshops situated in the Czech Republic, distribution channels (foreign and domestic distribution), monitoring and assessment of findings gathered in the Czech

²² Authorities of the Customs Administration based on legal regulations (in particular, Act No. 191/1999 Coll., Council Regulation No. 1383/2003, Act No. 634/1992 Coll., Act No. 121/2000 Coll., as amended, are dealt with in more details further in the text).

Republic and in foreign countries, monitoring and evaluation of sale of counterfeit goods on the Internet, etc.

However, it is clear that mere creation of joint teams will not solve the given problem and therefore we shall consider taking further measures, such as establishing a system of lifelong education (specialization) of police and customs officers in intellectual property field. Trainings and seminars organized once or twice per year cannot cover the demand of police officers and specialized customs officers in the given field at all.

Last but not least, another idea worth considering is to train and professionally focus specialized public prosecutors and judges and, in the context hereof, establish specialized criminal courts, which would primarily deal with the intellectual property issue.

One of the practical problems is the fact that it is not possible to find a perpetrator in many cases, the criminal deeds are then suspended and the percentage of unsolved crimes increases. That is why the Police of the Czech Republic are losing interest in documenting criminal activity in intellectual property field.

Another possible reason of not so intensive cooperation between the Customs Administration and the Police of the Czech Republic in the given field can also be the fact that the Customs Administration basically has all the powers, i.e. powers concerning import, export, transfer of goods, powers in the field of customs supervision, internal market and criminal proceedings.

Even though the customs administration is equipped with all the abovementioned powers, specialized and goal-oriented cooperation could help improve positive development in the given field. Both the customs administration and the Police of the Czech Republic undoubtedly have a lot of information about crime in the intellectual property field, but if such information is not mutually assessed and coordinated, both departments can even mutually jeopardize the final prosecution.

4.6.2. Czech Trade Inspection

Cooperation with the Czech Trade Inspection (hereinafter mentioned as “the CTI“) is also basically functional. The CTI cooperates with the Customs Administration namely during their inspectional activities in order to be accompanied by uniformed and armed forces which basically provide protection to CTI employees. We can say that the supervising bodies of the CTI and the Customs Administration have identical supervisory powers pursuant to Act no. 634/1992 Coll., and therefore joint operations take place on the basis of an agreement and if currently available capacity allows deployment of the requested number of Customs Administration employees in the inspections.

4.6.3. Diplomatic corps of foreign countries in the Czech Republic

The Customs Directorate in Hradec Králové has managed to establish very good and effective cooperation with the diplomatic corps in the Czech Republic in the recent years. The diplomatic corps want to be kept informed about infringement of intellectual property rights and therefore they organize seminars on the given problems for both expert and non-professional public in cooperation with Customs Administration and other subjects. The seminars in question are perceived very positively by non-professional and expert public and they undoubtedly contribute to the increase of legal protection of right-holders and to positive development in the given field.

4.6.4. Trade licensing offices

The cooperation with trade licensing offices is practically realized on a regional level. Trade licensing office employees usually take part in the joint inspections of stall and similar sale upon the request of the Customs Administration. Goal-oriented and systematic inspections are performed by trade licensing offices in limited scope, as they allegedly do not have enough staff.

The General Directorate of Customs made an agreement with the Ministry of Industry and Trade of the Czech Republic (Department of Trade) in which it arranged cooperation regarding notification of the breach of duties arising for marketplace operators from the provisions of Section 14a of Act no. 634/1992 Coll., which consists of sending impulses to initiate proceedings against operators in whose case the customs office finds out that they do not keep records or fail to keep records in the scope required by law. Trade licensing offices should sanction such breach.

4.6.5. Tax offices

Cooperation with tax offices in the field of intellectual property rights protection is implemented on a regional level. Tax office employees seldom directly take part in inspections in the field. Larger-scale cooperation usually takes place only after the completion of physical inspections – based on impulses from the Customs Administration to perform inspection of accounting at selected entrepreneurs, etc.

Regional tax office employees shall find out basic information, which is decisive for the inspection of subjects performing stall sale within the framework of search activity performed at least twice per year. When performing local investigation pursuant to provisions of Section 15 of Act no. 337/1992 Coll., on the Administration of Taxes and Fees, as amended (hereinafter referred to as “ZSDP“), or eventually search activity governed by Section 36 of

the ZSDP at persons engaged in stall sale, the tax office employees shall mainly look for the following information:

- a) basic information about the tax subject (owner, operator, lessee): name, surname, TRN and ID as well as the place of business of a natural entity, name, head office and TRN of a legal entity according to an extract from the Trade Register, or eventually from some other evidence;
- b) number of operated stalls and their position;
- c) time period for which their stall will be in the territorial competence of the tax office;
- d) offered assortment of goods, purchase and sales price of goods, reported revenues;
- e) address of the place where the goods are stored apart from the stall.

However, the Diction of Section 24 of the ZSDP allows handing the discovered information over to the other authorities only in cases explicitly stated by this Act.

4.6.6. Cooperation with other subjects

Basically, we can say that cooperation with other subjects, and that both within the framework of the state administration system (e.g. with the State Institute for Drug Control in Prague), and outside the Czech Republic state administration (e.g. with the Czech Anti-piracy Union, the Association for the Protection of Rights of Music Authors and Publishers or the International Spirit Producers' Federation) works well and it is gradually shaping.

Even in this field we can think of further steps with the aim of improving and strengthening cooperation, e.g. give particular powers to intradepartmental groups if they have been established with an aim to solving specific problems in intellectual property field. These could be used directly to increase the efficiency of intellectual property rights enforcement.

4.6.7. Proposal of measures

In order to protect EU citizens and right-holders more efficiently and effectively, the Customs Administration must adopt the following measures:

- improve cooperation with right-holders, interest groups, associations and other authorities involved and make it more efficient,
- improve cooperation with foreign customs authorities (exchange of up-to-date information – trends in the field of counterfeit products, etc.) and make this cooperation more efficient,

- establish cooperation with more diplomatic corps in the Czech Republic,
- improve right-holders' awareness concerning the powers of customs authorities in intellectual property rights enforcement field,
- increase public awareness concerning risks arising from sale, purchase and distribution of counterfeited products, namely of so-called sensitive products,
- improve education and publicity of the given issue,
- improve professional preparedness of all Customs Administration employees who engage in given problem (establish a lifelong education system),
- apply Customs Administration powers efficiently within the framework of criminal proceedings in cases when ordinary inspection means have failed. These powers still seem the most efficient,
- focus on deficiencies in the current legislative field within the framework of efficient exercise of powers in intellectual property rights field. Remove legislative deficiencies in the currently valid laws, which define conditions for the sale and offer of goods. Legislatively secure the field governing stall sale itself, establishment of marketplaces and operator's or eventually owner's responsibility for offered goods, coordination of all state administration departments, strengthening of supervisory bodies' powers.

As the Customs Administration has more and more often been detecting movement of intracommunitarian goods (goods not subject to customs authorities supervision), which could infringe intellectual property rights within the whole Czech Republic, it has been given new powers on account of the Act no. 634/1992 Coll. Until this moment, the customs authority basically had no right to detain intracommunitarian goods which could possibly breach intellectual property rights and hand it over to other supervisory bodies (see the Czech Trade Inspection, the State Agricultural and Foodstuff Inspection).

4.7. Overview of the most important domestic and Community legal regulations concerning the issue of intellectual property rights protection

- Act no. 191/1999 Coll., on measures concerning import, export and re-export of goods infringing certain intellectual property rights, and on amendment to some other Acts as amended,
- Council regulation (EC) no. 1383/2003, of 22nd July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and measures to be taken against goods found to have infringed such rights,
- Commission Regulation (EC) no. 1891/2004, laying down provisions for the implementation of Council Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and measures to be taken against goods found to have infringed such rights,
- Act no. 634/1992 Coll., on consumer protection, as amended,

- Act no. 121/2000 Coll., on copyright, rights related to copyright and on amendment to some acts (Copyright Act),
- Council Regulation (EC) no. 6/2002, of 12th December 2001 on industrial designs of the Community,
- Commission Regulation (EC) no. 2245/2002, of 21st October 2002, laying down provisions for the implementation of Council Regulation (EC) No. 6/2002 on industrial designs of the Community,
- Council Regulation (EC) no. 1768/1992, of 18th June 1992 concerning the creation of supplementary protection certificates for medicinal products,
- Regulation (EC) no. 1610/96 of the European Parliament and the Council of 23rd July 1996 concerning the creation of a supplementary protection certificate for plant protection products,
- Regulation (EEC) no. 2913/1992 of 12th October 1992, establishing the Community Customs Code,
- Regulation (EC) no. 40/94 of 20th December 1993 on the Community trademark,
- Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trademark,
- Act no. 441/2003 Coll., on Trademarks, as amended,
- Decree no. 97/2004 Coll., implementing the Act on Trademarks,
- Act no. 207/2000 Coll., on protection of industrial designs and the amendment to Act No. 527/1990 Coll., on inventions, industrial designs and rationalisation proposals, as amended
- Act no. 478/1992 Coll., on utility models, as amended,
- Act no. 527/1990 Coll., on inventions and rationalisation proposals, as amended,
- Act no. 452/2001 Coll., on protection of appellations of origin and geographical denominations, as amended,
- Act no. 140/1961 Coll., Criminal Code, as amended,
- Act no. 141/1961 Coll., Code of Criminal Procedure, as amended,
- Act no. 500/2004 Coll., Administrative Act, as amended.

4.8. Practical application of REG. 1383/2003 and Act no. 191/1999 Coll.

4.8.1. Introduction – Overview of principles

First of all, it is necessary to point out that the measures adopted by the Customs Administration pursuant to the abovementioned legal provisions concern exclusively goods suspected of having breached intellectual property rights which is subject to supervision by customs authorities.

Before customs offices adopt measures against goods, which might infringe intellectual property rights, certain prerequisites must be met beforehand. First of all, it is necessary to cope with conceptual features which are stated in REG. 1383/2003, i.e. “reasonably presume“, “good reasons for the suspicion that the goods infringe – may infringe intellectual property rights“. In practice, it means that there must be relevant reasons for the detention of goods – see Article 2 Par. 1 letters a) and b) of REG. 1383/2003, as this is a case of intervention in the rights of a declarant, owner, holder, seller and stockholder of goods, etc.

If the following does not exist or is not proven:

- a) justified suspicion that the goods are counterfeit copies or pirated goods (see Article 2 Par. 1 letters a and b) of REG. 1383/2003 or
- b) trademark or another intellectual property right has not been legally registered or
- c) trademark has the status “applied for“ or “published” or
- d) trademark does not enjoy legal protection,

no measures may be adopted against such goods (products) on account of the abovementioned legal regulations.

Before a customs office eventually issues a decision on the detention of goods in the sense of REG. 1383/2003 and Act no. 191/1999 Coll., it is necessary to verify:

- a) whether the wording etc. (compare with the Provisions of Section 1, Section 2 and Section 3 of Act no. 441/2003 Coll., on trademarks, as amended – **hereinafter referred to as “ZOZ“**) stated on the goods is a trademark in the legal sense, i.e. if it is a trademark registered in the relevant trademark registers (legal protection in the sense of REG. 1383/2003 and Act no. 191/1999 Coll. shall be enjoyed by **registered trademark – valid document**, not a trademark with the status “applied for” or “published”). Data concerning current trademark registration can be obtained at the Industrial Property Office in Prague – see national, international and Community trademarks.
- b) whether the trademark in question or some other intellectual property right enjoys legal protection in the territory of the Czech Republic.²³

²³ If a trademark is registered, i.e. enjoys legal protection in the Czech Republic territory, if there is a justified suspicion, that the goods are counterfeit copies or pirated goods, if a trademark holder is known, but the authorized person is not domiciled in the Czech Republic territory (he or she is not yet represented by a law office, a patent office or a trademark office etc., on the basis of letter of attorney.), the right-holder shall still enjoy the same rights as a trademark holder with registered office in the Czech Republic despite this fact. It is thus not decisive whether the right-holder is or is not represented by a lawyer on the basis of a letter of attorney, etc.

4.8.2. Subject and sphere of action (see Art. 1 to 3 of REG. 1383/2003 and provisions of Section 1 Par. 1, 2 of Act no. 191/1999 Coll.)

Article 1 of REG. 1383/2003 governs the conditions for adoption of measures taken by customs authorities, if there is a **suspicion**, that the goods infringe intellectual property right in the following situations:

- a) **if an application for its release into free circulation, exportation or reexportation has been filed in conformity with Article 61 of the Council Regulation (EC) no. 2913/92 of 12th October 1992 establishing the Community Customs Code (hereinafter “the Codex“).** *Article 61 of the Codex governs the form of filing of customs declaration, i.e. customs declaration can be filed either in writing or through a data processing device or through an oral customs declaration or some other act.*

- b) **If it is discovered during inspections of goods entering the customs territory of the Community or leaving such territory in conformity with Articles 37 (Article 37 of the Codex – “Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision and they may be subject to customs controls in accordance with the provisions in force. The goods shall remain under such supervision for as long as necessary to determine their customs status, and in the case of non-Community goods and without prejudice to Article 82, Par 1 – when goods are released for free circulation at a reduced or zero rate of import duty on account of their use for special purposes, they shall remain under customs supervision. Customs supervision shall end when the conditions laid down for granting such a reduced or zero rate of duty cease to apply, when the goods are exported or destroyed or when the use of the goods for purposes other than those stated in the application for the reduced or zero rate of duty is permitted and the duties due are paid – until the moment when the customs status of the goods is changed, when the goods enter a free zone or a free warehouse or when they are re-exported or destroyed in accordance with Article 182 – see destruction conditions“)** **and 183 of the Codex** (“Goods leaving the customs territory of the Community shall be subject to customs supervision. The customs authorities may inspect the goods in accordance with the provisions in force. This goods must eventually leave the abovementioned territory using a route determined by the customs authorities and through a procedure laid down by those authorities“), **that these goods are in the state of conditional exemption from customs duty in the sense of Article 84 Par. 1 of the Codex, that they are a subject of re-exportation subject to reporting duty pursuant to Article 182 Par. 2 of the Codex** (“Re-exportation shall eventually be subject to the formalities laid down for goods leaving, including commercial and political measures“) **or that they belong into free customs zone or free customs warehouse in the sense of Article 166 of the Codex** (“Free zones and free

warehouses shall be parts of the customs territory of the Community or premises situated in this territory and separated from the rest of it in which:

a) non-Community goods are considered, for the purpose of claiming import duties and commercial policy import measures, as not being on Community customs territory, unless they have been released into free circulation or placed under another customs procedure or used or consumed under conditions other than those stipulated in customs regulations,

b) Community goods for which such provision is made under special Community legislation qualify, by virtue of being placed in a free zone or free warehouse, for measures normally connected with the export of goods“).

Provision of Section 1 Par. 1 of Act no. 191/1999 Coll. governs the conditions of customs office intervention against persons who **own, hold, store or sell** products whose manufacture or modification infringes intellectual property rights in the customs territory of the Community, i.e. REG. 1383/2003, Commission Regulation (ES) no. 1891/2004.

Provision of Section 1 Par. 2 of the Act no. 191/1999 Coll. also refers to another power of customs authorities – to detain goods about which there is a reasonable suspicion that their manufacture or modification infringes intellectual property rights. Another power of customs authorities is to ensure destruction of goods, to remove the goods from trade and other handling of goods, discuss offences and administrative torts in case of breach of Act no. 191/1999 Coll.

4.8.3. Conduct of a customs office during performance of supervision pursuant to the provisions of Section 1 Par. 1 and 2, provisions of Section 9 Par. 1 and 2 of Act no. 191/1999 Coll.

As an introduction, it must be said that the legal protection of intellectual property rights in question, or simply, during customs proceedings or inspections of goods entering the customs territory of the Community etc., shall be primarily governed by Article 1 Par. 1 Letters a, b) of REG. 1383/2003.

Terms stated in the provision of Section 1 Par. 1 of the Act no. 191/1999 Coll.: “**own, hold, store or sell**“ namely relate to Article 4 Par. 13 and 14, Art 37 of the Codex.

Article 4 Par. 13 of the Codex states “*‘Supervision by customs authorities’ shall be understood as general action taken by these authorities in order to ensure that customs rules and eventually other legal provisions applicable to goods **subject to customs supervision** are observed“.*

Article 4 Par. 14 of the Codex specifies the definition of what to understand under the term ‘Customs supervision’ – “‘*Customs supervision shall be understood as performance of specific acts, such as examination of goods, verification of the existence and authenticity of written documents, examination of accounting documents and other records, inspection of transport vehicles, inspection of luggage and other goods carried by or on persons and carrying out official inquiries in order to ensure abidance by customs rules and other legal provisions concerning goods subject to customs supervision*”.

Article 37 of the Codex states that „*Goods brought into the customs territory of the Community shall, from the time of their entry, be subject to customs supervision and they may be subject to customs controls in accordance with the provisions in force. **The goods shall remain under such supervision for as long as necessary to determine their customs status*** “.

If customs authorities perform inspection of stall or similar sale, transport vehicles etc. and find out that the found goods are not Community goods and that they are suspected of infringing intellectual property rights and no decision on adoption of measures has been issued for goods which are marked with an XY trademark by the Customs Directorate in Hradec Králové, customs authorities are recommended to detain such goods by decision with reference to the provisions of Section 9 Par. 2 of Act no. 191/1999 Coll. with support of Article 4 of REG. 1383/2003. An application for action by customs authorities shall be submitted by a right-holder in a prescribed form – see Appendix II – Commission Regulation (EC) no. 1891/2004.

Goods can be held by the decision on detention for **three workdays** of the day on which a notification is received by a right-holder, declarant or holder of goods if the last two are known in order to enable the right-holder to lodge an application for action by customs authorities in conformity with Article 5 of REG. 1383/2003 and the provisions of Section 4 of the Act no. 191/1999 Coll. (as regards this, see Article 5 of the Commission Regulation (EC) no. 1891/2004 – calculation of terms).

A person whose goods have been detained can appeal against such a decision within a time period for which the goods have been detained and which is also stated in the decision, i.e. within **3 working days** of its receipt – see the provisions of Section 9 Par. 2 of the Act no. 191/1999 Coll.

If a right-holder fails to lodge an application for action by customs authorities within three working days, it is recommended that a customs office should allow e.g. release of goods on condition that all customs formalities have been met (we cannot exclude eventual commencement of criminal procedure).

Should a right-holder deliver an application for action by customs authorities to the Customs Directorate in Hradec Králové within 3 working days after the receipt of notification concerning detention of goods, the terms stated in Articles 11 and 13 of REG. 1383/2003 shall begin on the day following the day of receipt of an application for action by customs authorities adopted by the Customs Directorate in Hradec Králové (see Article 5 of the Commission Regulation (EC) no. 1891/2004). If the application for action by customs authorities is approved by the abovementioned Directorate – a decision on action by customs authorities is issued and the customs office in question shall not release the detained goods, which are suspected of infringing intellectual property rights. The customs office shall wait whether the right-holder will claim his or her rights – see Articles 11 and 13 of REG. 1383/2003 (see further steps – destruction of goods under customs supervision, filing of so-called declaratory action).

If a customs office performs inspection in conformity with Article 4 Par. 14 of the Codex – inspection of transport vehicles, stall or similar sale etc., the first thing it shall check within the framework of this inspection is the status of the goods (verification of the status of goods – whether they evaded customs supervision or not, and whether customs regulations or eventually other regulations are observed). If the customs office finds out that the goods in question are subject to customs supervision (they are not Community goods – they are goods which have evaded escaped customs supervision) and of there is a suspicion that the goods infringe intellectual property rights, the customs authority shall detain the goods by a decision pursuant to the provisions of Section 9 Par. 2 of the Act no. 191/1999 Coll. Supported by Article 4 of REG. 1383/2003.

As regards the terms “owns“ or “holds“ – see reference to part two, Chapter I – property right – Act no. 40/1964 Coll., the Civil Code, as amended.

In practice, there can also be a situation when a customs office has certain doubts whether the goods are subject to customs supervision at the moment of the performed customs inspection and whether they have evaded customs supervision or not and therefore it is recommended to take advantage of Section 50 Par. 3 of the Act no. 13/1993 Coll., Customs Act, as amended in such cases, i.e. issue a decision to transfer the goods under direct supervision of the customs office and impose duty to present additional documents which prove proper import on the person whose goods has been transferred.

As soon as the customs office receives the requested written documents, it shall check all documents concerning the inspected goods and decides how to deal with the goods in conformity with customs regulations (there are only two situations – they either are Community goods or not, there is no other legal possibility).

If a customs office considers it proved that the goods **are not** Community goods and if the goods are suspected of infringing intellectual property rights (they are subject to customs

supervision – goods which evaded customs supervision), the customs office may detain the goods pursuant to Act no. 191/1999 Coll. – see above, where detention of goods pursuant to the provisions of Section 309 of Act no. 13/1993 Coll., Customs Act, as amended, is not basically excluded – see administrative punishment.

If a customs office considers it proved that the goods **are** Community goods and are suspected of infringing intellectual property rights (if there is an expert opinion issued by a right-holder or some other authorized person or if there is some other evidence that the goods might infringe intellectual property rights), the customs office shall further proceed in conformity with the provisions of Sections 23b and 23c of Act no. 634/1992 Coll., on Consumer Protection, as amended.

4.8.4. Conduct of a customs office upon performance of customs supervision – stall or similar sale pursuant to provisions of Section 1 Par. 1 and 2 of Act no. 191/1999 Coll., with the support of provisions of Section 61 Par. 1 of Act no. 500/2004 Coll., the Administrative Procedure Code, as amended (hereafter referred to as “Administrative procedure code“), in situation when an application for action by customs authorities has been filed, i.e. a decision on action by customs authorities has been issued by the Customs Directorate in Hradec Králové

If, during the performance of customs supervision in the abovementioned situation and under the abovementioned conditions, a customs office discovers goods which are subject to customs supervision and which are suspected of infringing intellectual property rights, but which are goods bearing a trademark for which a decision on action by customs authorities has already been issued, such goods cannot be detained in the sense of REG. 1383/2003 or Act no. 191/1999 Coll., as part three of Act no. 191/1999 Coll. governs only a situation when an application has not been filed yet – see Section 9 Par. 1 of Act no. 191/1999 Coll. It is also impossible to detain the goods pursuant to provisions of Section 11 Par. 1 of the Act no. 191/1999 Coll., as the cited provision uses a term “who has detained“, whereas the power to detain goods is not regulated and, last but not least, the goods cannot be detained pursuant to Article 9 of REG. 1383/2003, as this provision responds to situations stated in Article 1 Par. 1 of REG. 1383/2003.

Due to the abovementioned reasons a customs office is recommended to issue a decision on provisional measures in conformity with Section 61 Par. 1 of the Administrative Procedure Code with respect to the provisions of Section 31c of Act no. 191/1999 Coll. By detaining the goods by these means, the customs office meets the condition for the conduct by a customs office pursuant to Section 11 Para. 1 of Act no. 191/1999 Coll. – see the term “and that has detained“ giving the right-holder the right to obtain information concerning a party suspected of having infringed intellectual property rights in conformity with the provisions of Section 11 Par. 1 of Act no. 191/1999 Coll. (see so-called release from the obligation to maintain

secrecy). The right-holder can thus claim his or her rights by bringing a civil action at a corresponding court or proceed in conformity with the provisions of Section 14 Par. 1 letters a) to c) of Act no. 191/1999 Coll. and Article 11 of REG. 1383/2003.

Before a locally competent court issues final decision on the declaration of right in the given matter or before a customs office issues a decision to destroy the goods in question, the customs office shall keep the goods detained by its decision – further see the conduct pursuant to the provisions of Section 11 of Act no. 191/1999 Coll. and Article 13 of REG. 1383/2003.

When the customs office receives a final decision of the court (the goods is declared goods infringing intellectual property rights), it shall proceed in conformity with provisions of Section 14 of Act no. 191/1999 Coll.

4.8.5. Measures preceding an application for action by customs authorities – ex offo procedure, Article 4 of Dir. 1383/2003 and provisions of Section 9 of Act no. 191/1999 Coll. – procedure with reference to Article 1 Par. 1 Letters a) and b) of Dir. 1383/2003

If, during intervention in one of the situations stated **in Art. 1 Par. 1 Letters a and b) of Dir. 1383/2003** supported by the provisions of Section 9 of Act no. 191/1999 Coll. and before a right-holder files an application for action by customs authorities or before such application is received, customs authorities obtain sufficient information for the suspicion that the goods infringe intellectual property rights, they can suspend release of goods or detain them **for the period of three working days of the moment of receipt of the notice by the right-holder, declarant or holder of the goods if the last two are known**, in order to allow the right-holder to file an application for action by customs authorities in conformity with Art. 5 of DIR. 1383/2003 and the provision of Section 4 of Act no. 191/1999 Coll.

In practice, the abovementioned means that a customs office may **suspend** release of goods in conformity with the abovementioned article when it discovers goods suspected of infringing intellectual property rights – see the reference to Art. 1 Par. 1 of DIR. 1383/2003 (*I do not recommend applying the institution of “suspension – interruption of customs proceedings“ in practice, i.e. issue decisions. I rather recommend taking advantage of the institution of “detention of goods“, because DIR. 1383/2003 gives either the possibility to suspend the release – interrupt – customs proceedings or to detain the goods. The institution of suspension of the release of goods would be an option only if, for example, a preliminary question, etc. arose during the customs proceedings, which is highly unlikely in case of proceeding pursuant to DIR. 1383/2003. As the customs office discovered goods suspected of infringing intellectual property rights (see the prohibitions and restrictions field) with reference to Art. 1 Par. 1 of DIR. 1383/2003, it is not necessary to issue an independent decision on suspension – interruption of customs proceedings, as the*

discovery of goods suspected of infringing intellectual property rights and their detention by a decision is a legal obstacle to assignment of customs-approved designation in itself – see for example the reference to Article 58 Part. 1, 2; Article 75 Letter a) etc. of the Codex – and therefore I further use only a reference to the institution of “detention – detention“) or **detain** such goods for the period of **three working days of the moment of receipt of notification concerning the detention of goods, i.e. of the day of delivery (i.e. delivery of notice concerning detention of goods in case of a right-holder, or delivery of the decision to detain the goods in case of a declarant or a holder of the goods) by a right-holder and declarant or older of goods**, in order to allow the right-holder to file an application (to the Customs Directorate in Hradec Králové) for action by customs authorities in conformity with Art. 5 of DIR. 1383/2003 and the provision of Section 4 of Act no. 191/1999 Coll.

If a customs office knows the right-holder, it shall immediately provide him or her only with data about the actual or presumed amount of goods and its nature (a right-holder shall not be sent the decision on the detention of goods, but only a so-called notice concerning the detention of goods).

Article 4 Par. 2 of DIR. 1383/2003 allows a customs office to ask a right-holder to provide information which the office might need in order to confirm its suspicion.

It is recommended to take advantage of this provision only in cases when a customs office is not sure whether concrete goods are really goods suspected of infringing intellectual property rights, i.e. when it is necessary to ask a right-holder or some other authorized party for detailed additional information.

Detention of goods suspected of infringement of intellectual property rights (see the terms – counterfeit copies or pirated goods – Art. 2 of DIR. 1383/2003) – shall be carried out by issuing a decision with all formalities pursuant to the Rules of Administrative Procedure. The decision (its operative part) shall – among other things – refer to the power to detain goods – see the provisions of Article 4 of DIR. 1383/2003 and provisions of Section 9 Par. 2 of Act no. 191/1999 Coll. (attention – not with reference to the provisions of Section 9 Par. 1 of Act no. 191/1999 Coll., as this paragraph already uses the term “detained“ but first the customs office must be given the power to detain goods – see the term “can detain“), and that power is mentioned in the provisions of Section 9 Par. 2 of Act no. 191/1999 Coll.

A customs office may leave the detained goods with the party whose goods were detained by the decision and put this party under an obligation not to use or misappropriate the goods or dispose of them by any means. However, this approach is not recommended with regards to the possibility of misappropriation of the goods. All acts breaching this prohibition shall be invalid (in practice, this means that if the detained goods are stored at an importer and the importer misappropriates or sells the goods or gives them to somebody as a present, etc, all these acts shall be considered absolutely invalid, and that from the very beginning).

A person to whom a decision to detain goods has been delivered (attention – the person shall be informed in the decision that if he or she breaches – fails to observe conditions for handling of detained goods pursuant to the law, he or she can be sanctioned by means of a fine with reference to the provisions of Section 15 Par. 1 Letter e) of Act no. 191/1999 Coll.) is obliged to **hand** the goods **over** to the customs office, otherwise the customs office may **confiscate** the goods.

The customs office shall make an **official record** on handover or confiscation of goods. The record shall be signed by two customs officers and the person, who handed the goods over, or eventually whose goods were confiscated, and it shall also state the amount of goods and their description. The customs office shall give a copy of the official record to the person who handed over the goods, or eventually, whose goods were confiscated.

Let me add, for the sake of completeness, as regards the provisions of Section 9 Par. 5 of Act no. 191/1999 Coll., that sanctions in the form of a fine, confiscation or a decision on detention of goods in petty offence or administrative tort proceedings may only be imposed after the final decision of a court, saying that the goods are counterfeit copies or pirated goods – see outlined facts of the case in the provisions of Section 15 Par. 1 Letters a) to d) of Act no. 191/1999 Coll. Unless the court issues a final decision stating that the goods are counterfeit copies or pirated goods (intellectual property rights have been infringed), it is not possible to impose any sanctions for the violation of Act no. 191/1999 Coll. including protective measures in the form of detention of goods.

We can therefore sum up the abovementioned as follows:

- a customs office may restrict the right of disposal of goods which are suspected of infringement of intellectual property rights under the abovementioned conditions, i.e. issue a decision to detain these goods,
- goods can be detained by a decision for a period of three working days (if a right-holder files an application for action by customs authorities and if the Customs Directorate in Hradec Králové approves such application, i.e. a decision on the action by customs authorities is issued, a customs office shall provide information leading to the commencement of simplified proceedings, to a declaratory action upon the right-holder's request),
- the term, i.e. 3 working days cannot be extended in any case, the term for appeal shall also be 3 working days (beware – pursuant to the Administrative Procedure Code, the term for appeal shall be 15 days), but pursuant to Act no. 191/1999 Coll., Article 4 Par. 1 of DIR. 1383/2003 the term for an appeal and detention of goods shall be 3 working days, decision terms – see the Administrative Procedure Code,
- goods should be left at the person at whom they were detained by a decision only if no suitable warehouse premises are available or if there is no danger of misappropriation or some other unauthorized handling of the detained goods,

- if an application for action by customs authorities is not lodged within 3 working days at all, a customs office shall have no right to detain the goods any longer under authority of DIR. 1383/2003 and Act no. 191/1999 Coll. (see possible commencement of criminal proceeding),
- it is recommended to cooperate namely with Department 03 – Investigation and Supervision of Customs Directorates (generally speaking, with a body active in criminal proceedings – see Section 12 Par. 2 of Act no. 141/1961 Coll., Code of Criminal Procedure, as amended) which can investigate a criminal act under conditions stipulated by law from the criminal-law point of view, either ex officio or on its own initiative or on the basis of a charge filed – see the facts of the case in Sections 150 to 152 of Act no. 140/1961 Coll., the Criminal Code, as amended. Customs authorities are recommended to check with Department 03 – Investigation and Supervision of Customs Directorates (bodies active in criminal proceedings), whether goods are to be detained for the needs of criminal proceedings (see Section 78 and the following of Act no. 141/1961 Coll., the Criminal Code, as amended) before they eventually return the goods to an authorized person.

If another person lodges a claim to detained goods and if a customs office is in doubt as of whether such person or the person whose goods have been detained is the goods owner, it shall suggest these persons to lodge their claims at a court in a term provided to them for this purpose by a customs office (it is recommended that the customs office should order oral proceedings in this matter in conformity with Section 49 of the Rules of Administrative Procedure and suggest the parties to lodge their claims at a court and set a term for that at the end of a protocol on these oral proceedings – a recommended term is 15 days).

4.8.6. Conditions for action by customs authorities pursuant to Articles 9 – 15 of DIR. 1383/2003 and provisions of Sections 11 – 13 of Act no. 191/1999 Coll.

If a customs office to which a decision on approval of application lodged by a right-holder pursuant to Article 8 of DIR. 1383/2003 has been sent considers it proved that goods in one of the situations mentioned in Article 1 Par. 1 of DIR. 1383/2003 are **suspected** of infringing intellectual property rights included in the abovementioned decision, it shall detain the goods by its decision with reference to Article 9 of DIR. 1383/2003 with regards to the provisions of Section 11 of Act no. 191/1999 Coll.

In practice, this means that a customs office issues a decision on the detention of goods, which it delivers to a declarant or holder of goods (see Article 38 of the Codex), and it shall

also send a report about the detention of goods to the Customs Directorate in Hradec Králové and inform a right-holder.

A customs office shall deliver the correspondent decision on the detention of goods to a declarant or holder of goods. It shall also send information about the detention of goods (not the decision in question) to a right-holder.

If a right-holder requests so (he or she can send an application via e-mail, in writing or via fax), the customs office shall also send a notification to him or her including information – see Section 11 Par. 1 of Act no. 191/1999 Coll. Due to the fact that a **special legal regulation** (namely Act no. 191/1999) relieves the customs office of the duty to maintain secrecy, it allows the customs office to provide information concerning customs and tax proceedings to a right-holder under conditions stipulated by law.

It is recommended that the customs office should concurrently instruct the right-holder in its notice that the data and information provided by the customs office are intended **only and exclusively** for the assertion of the right-holders rights at a court or for the needs of a simplified proceedings and may not be used for other purposes and activities (e.g. information communication – publication of information and data from customs tax proceedings in business correspondence intended for their business partners, publication on the Internet etc.). **It is recommended to include the abovementioned instructions for a right-holder both in a notification concerning the detention of goods and in a notification through which the customs office provides information about the party suspected of infringement of intellectual property rights.**

A right-holder shall be entitled to inspect the detained goods. A customs office may take samples and hand them over or send them to the right-holder at his or her express request for the purposes of analysis and to facilitate the subsequent procedure (it is recommended that the customs office should hand the samples to the right-holder on the basis of a protocol stating written instructions saying that the samples must be returned to the customs office after completion of the technical analysis etc.).

A right-holder is entitled to bring an action for the protection of his or her right at a locally competent court within 10 working days **of the receipt of notification on the detention of goods** and he or she is obliged to inform the correspondent customs office that proceedings for the protection of the corresponding rights have been initiated, and that within the same term of 10 working days **of the receipt of notification about the detention** of goods. However, in suitable cases, this term may be extended by a **decision** by additional 10 working days at the maximum (such extended term may not be further extended under any circumstances).

This shall not affect the conduct of a customs office and a right-holder in simplified proceedings – destruction of goods under customs supervision.

In a situation when a right-holder claims his or her rights at a court, a customs office is recommended (Act no. 191/1999 or DIR. 1383/2003 do not directly impose such duty to the

customs office – see Article 13 Par 1 DIR. 1383/2003 – “notification“ – the means of notifying are not specified, in the provisions of Section 11 Par. 3 of Act no. 191/1999 Coll. – “immediately inform either in writing or in electronic form“), to demand the right-holder (plaintiff) to send it a copy of the accusation in declaratory action, so that the office can verify from formal and legal point of view whether the plaintiff requests (see the claim of action) the court to decide that the goods infringe intellectual property rights (they are counterfeit copies or pirated goods) in the action or claim of action in question. Should the plaintiff fail to present the wording of the accusation to the customs office, he or she is recommended to do so in writing or in electronic form by **provable means** (see Section 11 Par. 3 of Act no. 191/1999 Coll., Article 13 Par. 1 of DIR. 1383/2003), i.e. by declaration that an action for the protection of intellectual property rights has been brought to a correspondent court (the court proceedings have been factually instituted by bringing the declaratory action on the existence of rights – see Section 79 of the Code of Civil Procedure). Verification of the claim of action (subject of action) by the customs office shall be decisive mainly due to the fact that the customs office decides whether the legal reasons for the detention of goods by the customs office are still valid (the court decides only about the contents of the claim of action, it does not decide beyond the claim of action – see the Code of Civil Procedure).

It is further recommended that a customs office should keep **continuously** examining the legal reasons (entitlement) for the detention of goods despite the fact that that it has verified the claim of action.

Should a customs office find out that it is impossible to conclude from the claim of action whether a right-holder claims legal protection of intellectual property rights, it is recommended to immediately inform the plaintiff (right-holder) thereof in writing and by provable means – compare namely Article 12 of DIR. 1383/2003 and Section 4 Par. 3 of Act no. 191/1999 Coll.

***Note:** In practice, a customs office may encounter a situation when an action for the protection of intellectual property rights was provably brought to a correspondent court by a plaintiff, the court returned it back to the plaintiff due to formal deficiencies in the filing (or asked the plaintiff to complement it), but the plaintiff has decided not to bring a new or complemented action at the correspondent court again. The plaintiff should logically inform the customs office about such situation, as the customs office is not a party to the judicial proceedings and therefore neither the court, nor the plaintiff are obliged to inform the correspondent customs office about such situation.*

4.8.7. Treatment of goods whose manufacture or modification infringes intellectual property rights – provisions of Section 14 Par. 1 Letters a – c) of Act no. 191/1999 Coll. and Article 11 of DIR. 1383/2003 (so-called simplified proceedings)

If goods, which are suspected of infringing intellectual property rights under situations stated in Art. 1 Par. 1 DIR. 1383/2003, have been detained, a customs office may **decide upon the right-holder's request** to destroy the goods, whereas it will subsequently ensure destruction of goods under the supervision of three customs officers, on condition that:

- **the right-holder (another authorized person) informs the customs office that the detained goods are goods whose manufacture or modification infringes his or her intellectual property rights. The right-holder shall do so in writing or electronically and within 10 working days (after the receipt of notification that the goods have been detained)** (the term of 3 working days for perishable goods shall not be affected by this). *This concerns presenting written declaration, which must namely imply that the goods in question infringe intellectual property rights. It must be said that the declaration must be delivered to the customs office within 10 working days. However, this term can be extended by a decision upon the right-holder's request if the circumstances require so,*
- **the right-holder presents to the customs office a consent of the declarant, owner or holder of the goods concerning destruction of these goods in a written or electronic form; if the customs authorities agree, the declarant, the holder or the owner of the goods may present this information directly to the customs office, and that either in writing or in electronic form,**
- **if the declarant, the holder or the owner of the goods fail to lodge objections against the destruction of goods within the set deadline (i.e. within 10 working days, eventually in a term extended by further 10 days), this consent shall be considered accepted.**

The aim and point of Section 14 Par. 1 Letter a) to c) of Act no. 191/1999 Coll., Article 11 of DIR. 1383/2003 is destruction of goods suspected of infringing intellectual property rights under the supervision of customs authorities, without the need to further verify whether intellectual property rights have been infringed, i.e. without the existence of the final decision of a court concerning the determination of right.

We can sum up the abovementioned as follows:

As implies from the provisions of the abovementioned, a **right-holder**:

- lodges a request for the destruction of goods to the customs office which has detained the goods,

- he or she shall inform the declarant, owner or holder of the goods that the goods in question infringe his or her rights and that he or she asks the declarant, owner or holder of the goods for a consent with the destruction of these goods,
- asks the customs office to extend the term for the confirmation of consent of the declarant, owner or holder of the goods,
- sends a statement to the customs office – consent of the declarant, owner or holder of the goods (this shall not apply to direct handover of the consent by the declarant, owner or holder of the goods to the customs office with its consent).

The right-holder shall ask the customs office, which has detained the goods. to destroy these goods in simplified proceedings (he or she can submit the application either in writing or in electronic form); the right-holder shall deliver the application to the customs office as soon as possible, but not later than 10 working days after he or she is informed about the detention of goods. Once the customs office receives the right-holder's application for the destruction of the goods, an administrative procedure shall commence (see the provisions of Section 37 and the following of the rules of administrative procedure).

The right-holder shall inform the declarant, owner or holder of the goods in writing (the right-holder gains information concerning the declarant, owner or holder of the goods from the customs office on the basis of a written request – see Section 11 Par. 1 of Act no. 191/1999 Coll.), that the goods in question infringe his or her rights and ask for their consent with the destruction of goods. The right-holder shall also inform the declarant, owner or holder of the goods that he or she has filed an application for the destruction of goods to the customs office XY. The goods shall be destroyed under customs supervision at the expenses of the declarant, owner or holder of the goods.

The right-holder shall send the letter in question to the declarant, owner or holder of the goods as soon as possible and by provable means (by e-mail, through a registered letter), so that the declarant, owner or holder of the goods has a real possibility to react to the correspondence.

It is also necessary to warn of the fact that the term stated in the provisions of Section 14 Par. 1 Letter a) of Act no. 191/1999 Coll. and the term stated in Article 13 of DIR. 1383/2003 run independently on each other and therefore it is recommended that the right-holder should apply to the customs office for the destruction of goods in simplified proceedings and concurrently lodge a declaratory action on the existence of rights at the correspondent court within the stipulated deadline.

4.8.8. Treatment of goods (use of goods for humanitarian purposes), which have been designated counterfeit copies or pirated goods by the final ruling of a court – overview of the basic principles – Section 14 of Act no. 191/1999 Coll.

If the court lawfully rules that the goods infringe intellectual property rights – they are counterfeit copies or pirated goods – and the right-holder gives his or her consent with the use of counterfeit copies for humanitarian purposes and if the goods are lawfully forfeited or confiscated and suitable for humanitarian purposes, they can be handed over to humanitarian associations for free, on condition that the following principles are observed:

- recipient organizations – see the provisions of Section 14 Par. 7 Letter a) of Act no. 191/1999 Coll.,
- the counterfeit copies must not be clearly dangerous to one's health,
- the recipient organization must adopt measures to prevent misuse of the counterfeit copies and their repeated sale,
- marks which infringe intellectual property rights shall be removed by humanitarian organizations at their own expenses and under the supervision of customs authorities,
- humanitarian organizations are obliged to mark all the goods with "HUMANITY" sign in such a way, that the sign is not directly visible and the dignity of persons who use these counterfeits is not lowered,
- customs authorities have the right to verify the fulfilment of conditions determined by a decision and agreement on free transfer of counterfeit copies at humanitarian organizations – recipient organizations.

Note: *Goods, which cannot be used for humanitarian purposes, must be destroyed.*

4.9. Authorization of customs authorities pursuant to Act no. 634/1992 Coll., on Consumer Protection, as amended

4.9.1. Introduction

With regards to the fact that customs authorities had more and more often been detecting goods with Community status which were suspected of infringing intellectual property rights during performed customs inspections, the Customs Administration aimed at gaining such powers which could help it protect intellectual property rights more efficiently.

The amendment to Act no. 229/2006 Coll., which amends Act no. 634/1992 Coll., and which came into force on **29th May 2006** strengthened the competences of customs authorities in the fight against intellectual rights infringement in the internal market.

In cases when goods are subject to customs supervision in situations stated in Article 1 of DIR. 1383/2003 and provisions of Section 1 Par 1 of Act no. 191/1999 Coll., customs authorities act in conformity with the abovementioned legal regulations in case of goods which are suspected of infringing intellectual property rights.

Customs authorities' conduct pursuant to Act no. 634/1992 Coll. applies exclusively to goods infringing intellectual property rights which are **not subject** to the supervision of customs authorities, i.e. goods which have Community status – see Article 4 subparagraph 7 of the Codex or Section 1 Par. 3 of Act no. 634/1992 Coll.

4.9.2. Basic terms

- (1) **a consumer shall be understood as:** A natural or legal entity purchasing goods or using services for other reason than trading of these goods or services. When we perform language analysis of the word “consumer” we will find out that it is a person who consumes something. However the important thing is that it is a person using services (goods) as final products, which means that a consumer is always the final addressee of a service or goods. A consumer is a subject, a market participant. He or she is a subject of a legal relationship, which arises on the basis of a contract concluded between a consumer and a service provider. Most often, it will be a purchase contract, a contract for work or eventually contracts of procurement etc. A very important conceptual feature is that a consumer does not use the services for business. This is how a consumer differs (and the term is narrower) from general terms like a purchaser, client, mandatory etc.
- (2) **a seller shall be understood as:** An entrepreneur who sells products or provides services to a consumer,
- (3) **a manufacturer shall be understood as:** An entrepreneur who has made a product or its part or provided services, who has mined the primary raw material or processed it or who has designated himself or herself as a manufacturer,
- (4) **an importer shall be understood as:** An entrepreneur who introduces a product from another member country of the European union on the market,
- (5) **a supplier shall be understood as:** any other entrepreneur who supplies products to a seller and that either directly or through other entrepreneurs,

- (6) **a product shall be understood as:** any item which has been manufactured, mined out or acquired otherwise, regardless the level of its processing, and which is intended to be offered to a consumer,
- (7) **a textile product shall be understood as:** textile fibrous material, linear and surface fabric, a textile piece product or clothes, and that in any stage of processing,
- (8) **a service shall be understood as:** any entrepreneurial activity which is intended to be offered to a consumer, with the exception of activities governed by a special legal regulation (e.g. Czech National Council Act no. **85/1996** Coll., on advocacy, Czech National Council Act no. 523/1992 Coll., on tax advisory services and on the chamber of tax advisers of the Czech Republic, and Act no. 273/1993 Coll., on some conditions of production, dissemination and archiving of audiovisual works, on an amendment and addition to several statutes and other legislation),
- (9) **footwear shall be understood as:** a product intended for protection or covering of feet which has a sole attached, including main parts of such footwear, even if they are sold separately,
- (10) **a product or goods infringing some intellectual property rights shall be understood as:**

A counterfeit copy which is a product or goods including packaging bearing a sign **identical** or **confusingly similar** to a trademark which infringes trademark owner's rights pursuant to a special legal regulation (see provisions of Section 8 Par. 2 of Act no. 441/2003 Coll., on trademarks, as amended) **without the consent of the trademark owner, and also all items bearing such sign (trademarks, logos, labels, stickers, handouts, instructions for use, warranty documents etc.), and that even if they are used separately, and separate packaging on which such sign is used,**

pirated goods which are products or goods that are copies or comprise copies produced without the consent of an owner of **copyright or similar rights** or without the consent of an owner of **industrial design rights** if the making of the duplicate infringes the abovementioned rights pursuant to special legal regulations (see the provisions of Section 13 of Act no. 121/2000 Coll., Copyright Act, as amended, see Section 10 of Act no. 207/2000 Coll., on the protection of industrial designs, as amended),

a product or goods, infringing rights of a patent owner (see the provisions of Section 13 of Act no. 527/1990 Coll., on inventions and rationalization proposals, as

amended) or a **utility model owner** (see the provision of Section 12 of Act no. 478/1992 Coll., on utility models, as amended) or **rights of an owner of supplementary protection certificates for pharmaceuticals and plant protection products pursuant to a special legal regulation** (see the provisions of Section 35l of Act no. 527/1990 Coll., on inventions and rationalization proposals, as amended),

a product or goods, infringing rights of a person who enjoys protection of a registered appellation of origin or a geographical denomination (see the provisions of Section 23 of Act no. 452/2001 Coll., on the protection of appellations of origin and geographical denominations, as amended),

- (11) **an offer shall be understood as:** display in the point of sale, or eventually a catalogue provided or published by the seller for the purpose of sale (signing of a purchase contract) in the form of mail-order service, internet sale, etc.,
- (12) **storing shall be understood as:** placement of goods in warehouse premises, transport vehicles, offices or other non-residential premises and points of sale, including stall sale,
- (13) **a right-holder shall be understood as:** an authorized person who is an owner – proprietor of a trademark, copyright or a related right, right to an industrial design, a patent, a supplementary protection certificate, a national plant variety right or right to protected origin or geographical denomination (representation of an authorized person on the basis of a letter of attorney shall not be influenced by this),
- (14) **humanitarian purposes shall be understood as:** activities performed with the aim of ensuring basic needs of people who have found themselves in an onerous situation or have been affected by an emergency event which justifies the use of extra material resources.

4.9.3. Material and territorial competence (local competence) of customs offices pursuant to Act no. 634/1992 Coll.

Material competence of customs offices for supervision of consumer protection – abidance by the obligations stated in the provisions of Sections 7b, and 8 Par. 2 and Section 8a of Act no. 634/1992 Coll. in the field of protection of intellectual property rights – is implied by the provisions of Section 23 Par. 6 of Act no. 634/1992 Coll. in connection with the provision of Section 5 Par. 3 Letter o) of Act no. 185/2004 Coll., on the Customs Administration of the Czech Republic, as amended.

Territorial competence of customs offices for inspections focusing on supervision of consumer protection in the field of protection of intellectual property rights is implied by

Appendix no. 2 to Act no. 185/2004 Coll., on the Customs Administration of the Czech Republic, as amended.

4.10. Overview of legal regulations and provisions governing the subject of protected interest as well as rights and obligations of right-holders

a) Act no. 141/2003 Coll., on trademarks, as amended

- signs and indications which may form a trademark: Under conditions determined by the Trademark Act, a trademark may consist of any signs and indications that can be represented graphically, namely **words, including names, colours, drawings, letters of the alphabet, numerals, product shape or its packaging**, if such sign or indication is capable of differentiating goods and services of one entity from goods and services of another entity,
- only the following trademarks enjoy protection in the Czech Republic territory: those registered in a Trademark Register administered by the Industrial Property Office in Prague – **national trademarks**, or those effective in the Czech Republic recorded in the register administered by the International Intellectual Property Office on the basis of an international application in the sense of the Madrid Agreement – **international trademarks**, or those recorded in the register administered by the Office for Harmonization in the Internal Market – **Community trademarks**,
- **a trademark owner has an exclusive right to use their trademark in connection with goods or services for which it is protected. An owner of a registered trademark proves his or her right by an extract from the correspondent register or eventually by a registration certificate. A trademark owner shall be entitled to use the ® sign together with his or her trademark,**
- **nobody can use the following signs in commercial intercourse without a trademark owner's consent: signs identical to a trademark for goods and services which are identical to those for which the trademark has been registered, a sign which is likely to confuse the general public due to its identity or similarity to a trademark and identity or similarity of goods and services bearing the trademark, including association between the sign and the trademark,**
- **use in commercial intercourse shall namely be understood as: placement of a sign on goods or their packaging, offer of goods bearing such sign, their putting on the market or storing for this purpose or offer or provision of services under this sign, import or export of goods bearing this sign and use of the sign in business documents and in advertising,**

- trademark registration shall be in force for **10 years** of the day of application. If the owner fails to apply for renewal of the registration, the trademark shall expire (trademarks are renewed for further 10 years).

b) Act no. 121/2000 Coll., on copyright and rights related to copyright, as amended (hereafter referred to as “the Copyright Act“)

- the subject of copyright is a **literary work or other work of art or a scientific work** which is a unique outcome of the creative activity of the author and is expressed in any objectively perceivable manner including electronic form. A work shall namely be understood as a **literary work expressed by speech or in writing, a musical work, a dramatic work or a dramatico-musical work, a choreographic work and a pantomimic work, a photographic work and a work produced by a process similar to photography, an audiovisual work such as a cinematographic work, a work of fine art such as a painting, graphic or sculptural work, an architectonic work including a town-planning work, a work of applied art, and a cartographic work. A computer program shall also be considered a work if it is original in the sense of being the author's own intellectual creation,**
- a work is made public by its first authorised public **recitation, performance, showing, exhibition, publication or other manner of making available to the public,**
- an author is the natural person who has created the work,
- copyright to a work shall arise at the moment when **the work is expressed in any objectively perceivable form,**
- **Copyright shall be considered infringed by whoever** circumvents efficient technical protection means pursuant to this Act, produces, imports, accepts, disseminates, sells, rents, promotes sale or lease or receives for the purpose of trade devices, products or spare parts, offers services or allows, facilitates or conceals copyright infringement by removing or altering any electronic data identifying rights, or whoever disseminates, imports or accepts with the aim of dissemination, broadcasts or communicates to the public works whose electronic data identifying the rights to the work have been removed or altered,
- an author shall have the right to decide about the publication of his or her work,
- an author shall have the right to use his or her work in the original form or in a form processed by another person or altered by any other means, and that either separately or in a set or in connection with another work or elements and grant a licence to use such right to any person through a contract,

- unless stipulated otherwise, material rights shall run for the life of the author and for 70 years after his or her death,
- unless this Act stipulates otherwise, **use of a work by a natural entity for personal needs**, the purpose of which is not direct or indirect economic or commercial advantage shall **not be considered** use of work. Copyright shall therefore not be infringed by **whoever makes a recording, reproduction or imitation of a work for his or her own personal use** ,
- use pursuant to this Act shall include use of a computer program or an electronic database even for personal use of a natural entity or personal internal needs of a legal entity or natural entities – entrepreneurs, including making of such works even for such needs,
- use pursuant to this Act includes making of a recording of an audiovisual work during its performance from a fixation or its broadcast even for the needs of a natural entity,
- **audiovisual** work shall mean a work created by the arrangement of works used audio visually, adapted or unadapted which consists of a number of recorded interlinked images evoking the impression of movement, accompanied by sound or mute, perceivable by sight and, if accompanied by sound, perceivable by hearing,
- the author of an audiovisual work is the director of the work,
- **a computer program**, irrespective of the form in which it is expressed, including preparatory design material, **shall be protected as a literary work**,
- **a performing artist** shall mean a natural entity who has created artistic performance,
- **sound recording** shall exclusively mean a recording of sound of performing artist's performance or other sounds or their expression perceivable by hearing,
- **a sound recording producer** shall mean a natural or legal entity who makes the first recording of performing artist's performance or other sounds or their expression at his or her own responsibility or for who initiates another person to do so for him or her,
- **an audiovisual recording** shall mean a recording of an audiovisual work or a recording of another range of recorded interlinked images evoking the impression of movement, accompanied by sound or mute, perceivable by sight and, if accompanied by sound, perceivable by hearing,
- **an audiovisual recording producer** shall mean a natural or legal entity who makes the first audiovisual recording at his or her own responsibility or who initiates another person to do so for him or her.

c) **Act no. 527/1990 Coll., on inventions and rationalisation proposals, as amended**
(hereafter referred to as “the Invention Act“)

- the Industrial Property Office in Prague **grants patents** for **inventions** which meet the conditions set out in this Act,
- **patents shall be granted for any inventions which are new, which involve an inventive step and which are susceptible of industrial application,**
- **an owner of a patent shall have the exclusive right to use the invention, to authorize other parties to use the invention or to assign the patent to them,**
- **a patent shall have effect as from the date of the notification of its grant in the Official Journal of the Industrial Property Office,**
- **without the consent of the patent owner, no one may: produce, offer, put on the market or use a product which is a subject of the patent, import or store a product for this purpose or dispose of it by any other means, use a method which is the subject of a patent, eventually offer this method for use, offer, put on the market or use a product directly gained by a method which is the subject of a patent or import or store such a product for this purpose,**
- **the term of a patent shall be 20 years of the filing date of an application of an invention.**

d) **granting of supplementary protection certificates for pharmaceuticals and plant protection products**

The Industrial Property Office **grants supplementary protection certificates for substances protected by a valid patent in the territory of the Czech Republic, if they are active substances of agents which are subject to registration before their putting on a market pursuant to a special legal regulation,** i.e. Act no. 326/2004 Coll., on medical plant care and amendment of some related acts, as amended, Act no. 79/1997 Coll., on medicinal products and on the amendment and additions to some related acts, as amended.

An active substance shall mean a chemically produced substance or a mixture of substances, a microorganism or a mixture of microorganisms which have general or specific healing or preventive effects in relation to human or animal diseases or which can be administered to them in order to diagnose a disease, improve or change their health status or which are intended for the protection of plants or plant products.

An agent shall mean an active **substance** or a **mixture** containing one or more active substances processed into a form which is put to the market as a **pharmaceutical product**

(see Section 2 Par. 1 of Act no. 79/1997 Coll.) or as an **agent for the protection of plants** (see Section 2 Par. 2 Letter g) of Act no. 527/1990 Coll.).

e) **Act no. 207/2000 Coll., on the protection of industrial designs, as amended (hereafter referred to as “the Industrial Design Protection Act“)**

- the Industrial Property Office shall enter industrial designs fulfilling conditions according to this Act into a register,
- for the purposes of this Act, industrial design shall namely mean **the appearance of a product or its part consisting namely in the features of lines, contours, colours, shape, texture of materials of the product itself or its ornamentation,**
- **the scope of protection shall be given by the representation of an industrial design as it is recorded in the register,**
- **a registered industrial design shall be protected for 5 years of the day on which the industrial design application is filed,**
- **a holder of a registered industrial design may repeatedly renew this term of protection, and that for a period of 5 years each time, up to a total term of 25 years of the day on which the industrial design application is filed,**
- **right to an industrial design shall rest on the designer or his or her successor in title,**
- **registration of an industrial design shall give its holder an exclusive right to use this industrial design; Use of an industrial design shall namely mean production, offering, putting on the market, import, export or use of a product in which the industrial design is incorporated or to which it is applied, or storing such a product for the abovementioned purposes,**
- **rights based on a registered industrial design shall come into force on the day of filing of the application. If an industrial design has not been published, its holder can assert his or her rights from the registration against third parties only in case when the industrial design is not being used in good faith.**

f) **Act no. 478/1992 Coll., on utility models, as amended (hereafter referred to as “the Utility Model Act“)**

- **technical solutions** which are new, exceed the framework of mere professional skill and are industrially applicable **can be protected as utility models,**
- **utility models shall be entered in the Utility model register by the Industrial Property Office,**

- no person may **manufacture, put on the market or use** a technical solution enjoying utility model protection without the consent of utility model owner,
- utility model protection shall last four years of the filing date of utility model application or eventually the filing date of an earlier patent application concerning the same subject.

g) **Act no. 452/2001 Coll., on the protection of appellations of origin and geographical denominations and on the amendment to the act on consumer protection (hereafter referred to as “Act on the Protection of Appellations of Origin and Geographical Denominations“)**

- **an appellation of origin** shall mean the name of a region, a specific place or a country used for identification of goods originating from this territory, provided that the quality or characteristics of these goods are exclusively or predominantly given by special geographical environment with its characteristic natural and human factors and provided that production, processing and preparation of such goods takes place within the defined territory; appellations of origin for agricultural products or foodstuffs shall also mean traditional geographical or non-geographical indications of goods originating in a defined territory if such goods fulfil other conditions according to this provision,
- **a geographical denomination** shall mean the name of a territory used for identification of goods originating in this territory, provided that these goods have certain quality, reputation or other characteristics which are attributable to this geographical origin and provided that production or processing or preparation of such goods takes place within the defined territory;
- **appellation of origin and geographical denomination** shall be entered in the register of appellations of origin and geographical denominations administered by the Industrial Property Office,
- **protection of an appellation of origin** shall come into force on the day of its entry into the register,
- **the duration of protection shall be unlimited,**
- it is **not possible to grant a licence** for a registered appellation of origin.

4.11. Proceedings of customs authorities within the framework of supervision over the consumer protection in the domestic market in the field of intellectual property rights

4.11.1. Section 23b Par. 1 of Act no. 634/1992 Coll.

Pursuant to Section 23 Par. 6 of Act no. 634/1992 Coll., customs authorities shall have the following powers during the performance of inspection:

Letter a)

perform inspections of legal and natural entities who **manufacture, store, distribute, import, export, purchase, sell or supply** products and goods to the domestic market or carry out any similar activity on the domestic market; in doing so, the customs authorities act either in cooperation with the Czech Trade Inspection or **independently**, if there is a **justified suspicion that products or goods violate certain intellectual property rights** (see the provisions of Section 2 Par. 1 Letter r) subparagraphs 1 to 4 of Act no. 634/1992 Coll.),

***Comment:** Customs authorities' power to perform inspections implies directly from the abovementioned provisions, while it is not necessary to conclude authorization for inspection from other legal regulations (e.g. Act no. 13/1993 Coll., the Customs Act, as amended). The aim of customs inspections within the framework of supervision over consumer protection on the domestic market is to find out whether intellectual property rights are infringed during production, storing, purchase, sale, supply etc..*

The terms "import" and "export" shall relate to inspections focused on placement and purchase of goods in member countries of the European Community if the goods are transported across the borders of the Czech Republic. If a customs office discovers goods which are subject to customs supervision (see legal situations stated in Article 1 of DIR. 1383/2003 and provisions of Section 1 Par. 1 of Act no 191/1999) and the goods are suspected of infringing intellectual property rights, the customs authorities shall detain the goods under other conditions stipulated by law and in conformity with DIR. 1383/2003 and Act no. 191/1999, not pursuant to Act no. 634/1992 Coll. In other words, customs authorities proceed pursuant to Act no. 634/1992 Coll. in cases when the goods suspected of infringing intellectual property rights are not subject to the supervision of customs authorities and if they are Community goods.

It is recommended that a customs office should document the performed inspection by the means of an inspection protocol, regardless whether the inspection result is positive or negative (i.e. whether sale,...of goods or products infringing some intellectual property rights is detected or not).

The inspection protocol shall namely serve as a document for the issuing of an official record on the detention of goods or products, whereas the protocol shall also be stated in the official

record on detention of goods or products. If the performed inspection does not detect sale,... of products or goods infringing some intellectual property rights (no official detention record is issued), the inspection protocol may also serve for eventual further procedure (e.g. for dealing with a complaint on the behaviour of customs offices lodged filed by the inspected person, etc.).

It is necessary within the framework of a performed inspection that the customs office has information from which it is possible to formally legally conclude that inspected goods are “justly suspected of infringing intellectual property rights“.

When right-holders refuse to cooperate with customs offices as supervision authorities, participate at inspections, issue expert opinions, hand over information for the identification of goods, etc., it is recommended to limit inspection actions at least until the cooperation with right-holders, etc. improves.

It is necessary to realize that if it is not proven – decided that the goods are counterfeits or pirated goods – due to a lack or absence of information for the identification of goods or products, a customs office is obliged to return the goods or products to the inspected person, and it shall bear the costs of securing, transport and storing.

Letter b)

enter, at performing their inspections

1. retail outlets or storage facilities (Section 8 Par 6) with respect of which they hold a justified suspicion that they **offer, store or sell** products or goods infringing certain intellectual property rights (Section 8 Par 2); the government shall be the party liable for any damage caused at that; it cannot be exempted from such liability,

2. premises of a **manufacturer, importer or distributor** and require submission of relevant documentation and provision of truthful information. Manufacturers, importers or exporters may be invited by a customs officer to obtain and submit expert opinions of a professionally qualified person (see for example the provisions of Section 11a of Act no. 22/1997 Coll., on technical requirements for products, as amended) on the subject of supervision, or a customs officer may hire a professionally qualified person for the course of supervision. A fee for the work performed by a professionally qualified person shall be agreed according to a special regulation (see Act no. 526/1990 Coll., on Prices, as amended).

Comment:

A customs office is entitled to ask a manufacturer, importer or distributor to submit correspondent documentation. The term “documentation“: it may for example concern submission of a certificate, a licence or some other document which certifies the entitlement to use intellectual property rights, e.g. a trademark, copyright etc. or it will certify an

assignment, passing of ownership, use of rights etc. – see for example Section 15 of Act no. 634/1992 Coll. – change of owner, Section 18 of Act no. 634/1992 Coll. – licences.

A manufacturer, importer or distributor is obliged to obtain and submit an expert opinion of a professionally qualified person concerning the subject of supervision upon a custom officer's request. In practice, this mainly concerns the following qualified persons – right-holders, persons authorized by right-holders, professional association members, experts, accredited and authorized persons.

Members of professional associations are for example: Association for the Protection of Rights of Music Authors and Publishers – OSA, Integram – Independent Society of Performing Artists and Manufacturers of Audio and Audio-visual Recordings, Theatre and Literary Agency – DILIA, Czech Anti-piracy Union – CPU or the International Federation of the Phonographic Industry – IFPI.

For the practice, it is necessary to be aware that customs authorities are entitled in the context of Section 23b Par. 1 Letter a) of Act no. 634/1992 Coll. to inspect goods about which they already have “justified suspicion” that the goods infringe intellectual property rights. This provision thus assumes that the customs office already has documentation, information, etc. saying which concrete goods infringe, or better may infringe intellectual property rights before the inspection itself.

Letter c)

establish the identity of individuals if they are persons subjected to an inspection, as well as identity of physical entities who represent inspected persons during the inspection and verify the authorization for representation of such persons,

Letter d)

ask the inspected persons to provide all necessary documents, information and oral or written explanations,

Comment: *A customs office is entitled to verify the identity of physical entities only in case that they are inspected persons or persons who represent inspected persons. The aim of this power of the customs office is to identify and appoint a person who sells, exhibits, stores, etc. goods or services justly suspected of infringing intellectual property rights. Identification of a person and his or her appointment is decisive for further conduct of the customs office before eventual commencement of an administrative procedure, which begins, with the detention of goods.*

Another power of customs authorities is to request necessary documents to the inspected goods or products from inspected persons. It is usually a matter of presenting acquisition documents for goods or products, namely invoices, delivery notes, bills of transfer, issue vouchers, etc.

Two situations may arise during the inspection:

- *an inspected person presents documents to the inspected goods or products and provides the requested data to the customs office. In such situation the customs office shall enter the facts directly to the inspection protocol, or*
- *an inspected person does not have the required documents to the inspected goods or products at the time of inspection and he or she is not able to provide the required data on the spot. In such situation and if the nature of the finding requires so, the customs office shall invite the inspected person in writing to present the required documents and communicate the requested data.*

The entitlement of the customs office to request written or oral explanation directly implies from the following provision.

Within the framework of the performed inspection, it is appropriate that the inspected person should comment the findings on the spot, and that either orally or in writing – the explanation shall be recorded in the inspection protocol. If the nature of the findings does not require so or if the inspected person refuses to give explanation to the findings, the customs office shall enter this fact in the inspection protocol. If the nature of the finding requires so, the customs office may invite the inspected person to give explanations. For the invitation to give explanation, record of explanation – see Chapter III Special provisions concerning the procedure before commencement of proceedings of Section 137 of the Administrative Procedure Code.

Letter e)

seize required samples of products or goods from inspected persons for compensation, in order to assess whether or not the products or goods violate certain intellectual property rights with the aim of deceiving consumers. Inspected persons shall receive compensation for seized samples of products or goods in the amount equalling the price for which the products or goods are offered at the time of sample seizure. However, no compensation will be provided if waived by the inspected person. No title to compensation will arise if the final conclusion says that the product or goods concerned infringe certain intellectual property rights.

Comment: *It can be expected in practice that this power of customs authorities will be exercised in exceptional cases as, with regards to the provisions of Section 23b Par. 1 Letter a) of Act no. 634/1992 Coll., the subject of inspection will always be goods or products, which are justly suspected of infringing intellectual property rights, i.e. the customs office must have*

relevant information, documentation which will enable identification of goods on the spot or the identification of goods shall be provided on the spot by a professionally skilled person (right-holder, expert on merchandise, etc.).

4.11.2. Section 23b Par. 2 of Act no. 634/1992 Coll.

In discharge of tasks pursuant to this Act, customs officers shall identify themselves with an authorisation issued by the customs authority and with a custom officer's service ID card even if they are not asked to do so.

4.11.3. Section 23b Par. 3 of Act no. 634/1992 Coll.

Customs officers shall maintain secrecy about any facts constituting the subject of a business secret (see Section 17 and the following of Act no. 513/1991 Coll., Commercial Code, as amended) that they discover during performance of their supervisory tasks or in performance of duties relating to such secret, with the exception of disclosure of information required for the purposes of and relating to criminal proceedings.

***Comment:** This provision shall not affect a custom officer and tax administrator's duty to maintain secrecy in accordance with provision of Sections 29a of Act no. 13/1993 Coll., the Customs Code, as amended, and provisions of Section 24 of Act no. 337/1992 Coll., on the administration of taxes and fees, as amended.*

***Business secret shall comprise:** "All facts of commercial, production or technical character related to a company which are of real or at least potential material or immaterial value, which are not normally available in the correspondent business circles, which shall be kept secret pursuant to an entrepreneur's will and whose security the entrepreneur ensures".*

4.11.4. Section 23b Par. 4 of Act no. 634/1992 Coll.

The customs office shall inform the person who has instituted the inspection on any discovered cases of consumer deception as per Section 8 paragraph 2 or on any identified deficiencies and their causes.

***Comment:** A customs authority shall perform inspections pursuant to Act no. 634/1992 Coll. on its own initiative (ex officio procedure) or initiated by a right-holder or another person who proves legal interest in the matter (another person who proves legal interest in the*

matter can mean such person whose rights have been infringed by the alleged misleading and who must prove his or her legal interest in the matter).

If a customs authority performs inspection initiated by a right-holder, it shall inform the initiator after the completion of inspection, i.e. at the moment when the customs authority has detected misleading of a consumer, but not later than within 30 days of the day on which it received the incitation – see the provisions of Section 42 of the Administrative Procedure Code.

4.11.5. Section 23b Par. 6 of Act no. 634/1992 Coll.

The customs office is authorised to invite persons professionally qualified pursuant to special legal regulations to the inspection, if it is justified by the nature of the inspectional activity. Such persons shall have rights and obligations identical to those of the customs officers in the extent of authorisation issued for them by the customs office. Professionally qualified persons cannot be authorised to impose measures or penalties pursuant to this Act or any other acts.

***Comment:** In practice, this mainly concerns invitation of right-holders or persons authorized by a right-holder or other authorized persons entitled to assessment of goods or services or other persons who have a relevant authorization – warranty.*

Customs authorities shall invite a professionally qualified person to an inspection through an authorization. Customs authorities shall require the professionally qualified person to present an authorization to perform assessment of goods, i.e. to issue issuing expert opinions.

4.11.6. Section 23b Par. 7 of Act no. 634/1992 Coll.

Inspected persons are obliged to allow customs officers and professionally qualified persons invited to the inspection perform their tasks related to the performance of inspections.

***Comment:** If inspected persons do not allow customs officers or professionally qualified persons to carry out their duties associated with the performance of inspection, this may for example include unreasonable refusal to give explanation pursuant to the provisions of Section 137 of the Administrative Procedure Code, the administrative body – customs office may impose a disciplinary fine of up to CZK 5000,-.*

The provision of explanation pursuant to the provisions of Section 137 of the Administrative Procedure Code is an act, which shall come prior to the commencement of administrative procedure. Unreasonable refusal shall not only include refusal to give explanation without providing any reasons, but also refusal to give explanation and provision of reasons which do not justify the refusal to give explanation. When discussing the administrative tort in question,

the procedure shall be the same as in case of the refusal to provide testimony (compare comments to the provisions of Section 62 of the Administrative Procedure Code).

The administrative office is entitled to summon the concrete person to give explanation and in the person fails to arrive he or she can be brought to the court under the same conditions as those under which a witness is summoned (compare comments to Sections 59 and 60 of the Administrative Procedure Code).

*The administrative body shall make a **record**, not a protocol of the explanation.*

4.11.7. Section 23c Par. 1 of Act no. 634/1992 Coll.

A customs officer shall, at a proven identified instance of **offering, selling, storing, distribution, or eventually export or import of products or goods, or supply of products and goods to the domestic market, or carrying out any similar activity on the domestic market** - see Section 7b and Section 8 Par. 2, impose detention of such products or goods. A customs officer shall orally inform the inspected person or person present at the inspection about such measure to detain products or goods, and shall immediately make an official record stating, inter alia, the reason for the seizure, description of the detained products or goods and their quantities.

***Comment:** detention of products or goods infringing certain intellectual property rights (see Section 8 Par. 2 of Act no. 634/1992 Coll.), shall be carried out in the form of an official detention record pursuant to Act no. 634/1992 Coll.*

A customs officer shall hand a copy of the official record to the inspected person.

4.11.8. Section 23c Par. 2 of Act no. 634/1992 Coll.

A customs office is authorised to deposit detained products or goods stated in Section 7b and Section 8 Par. 2, out of the inspected person's reach. The inspected person is obliged to surrender the detained products or goods to a customs officer. Should the inspected person refuse to do so, he or she shall be dispossessed of the products or goods. The customs officer shall make an official record of the detention or dispossession. Costs of dispossession, transport and storage shall be paid by the inspected person. The inspected person shall not be liable to cover the costs if it is proved that the products or goods are not those stated in Section 7b or Section 8 Par. 2.

***Comment:** It is recommended to store goods, which have been detained by an official record out of the inspected person's reach namely in order to minimize the risk of misappropriation*

of the goods or products or to prevent any other unauthorized handling. In exceptional cases it is possible to leave the detained goods at the inspected person.

The costs associated with the detention, transport and storing shall be decided by the customs office – mainly in a separate administrative decision – compare Section 23c Par. 8 of Act no. 634/1992 Coll.

4.11.9. Section 23c Par. 3 of Act no. 634/1992 Coll.

The inspected person may lodge objections against imposed measures to detain the products or goods pursuant to paragraph 1 with the customs office director. This shall be done in writing and within 3 working days of the day on which the inspected person learns about the imposed measure. Such objections shall have no dilatory effect. The customs office director shall decide on the objections without undue delay. His or her decision shall be final. A written decision on the objections shall be delivered to the inspected person.

***Comment:** Only an inspected person (no other person is materially competent to lodge objections) may lodge objections against imposed measures on the detention of goods or products. (It is not an appeal, as the official record of the detention of goods or products does not constitute an administrative decision in the legal sense, but it is rather a measure of preliminary character issued by the customs office from the title of this Act).*

The inspected person may raise objections only in a term stipulated by law, i.e. within 3 working days. Should the inspected person raise objections after the 3-day term has passed, the customs office shall examine whether the inspected person has been duly informed about his or her right to lodge objections against measures on the detention of goods. If the customs office finds out that the inspected person has not been duly informed about his or her right to raise objections in a term stipulated by law, it shall take these objections into consideration and decide about them.

Should the customs office find out that the inspected person has been duly informed about the right to raise objections in a term stipulated by law, it shall not take these objections raised after this term into consideration. In such case the director of the customs office shall not issue any decisions but he or she shall inform the inspected person in writing that the customs office has not taken the objections into consideration due to the lapse of time, etc.

Objections shall be decided by the customs office, or better, by its director. The customs office director shall decide the objections without any unnecessary delay, but within 30 days at the very latest (see provisions of Section 71 of the Administrative Procedure Code). The decision on objections shall meet the requirements for decision pursuant to the Administrative Procedure Code (see Section 68 and Section 69 of the Administrative Procedure Code). The customs office director shall state in the advice on the objection that “his or her decision is final“, i.e., the inspected person is not entitled to lodge an objection to the decision on objections (note: the inspected person shall not be able to raise eventual objections until the

meritory decision in the given matter, i.e. decision on the forfeiture, confiscation or imposing of a fine – see Section 23c Par. 5 of Act no. 634/1992 Coll.).

Important advice: *Until the moment of issuing a decision on objections, a customs office proceeds pursuant to Act no. 634/1992 Coll. Administrative proceedings are an administrative body procedure whose aim is to issue a decision in the given matter (see Section 9 of the Administrative Procedure Code), which in this case constitutes issuing a decision on forfeiture, confiscation or inflicting of a fine – see Section 23c Par. 5 of Act no. 634/1992 Coll. With regards to the abovementioned, the customs office shall commence administrative procedure pursuant to Section 46 Par. 1 of the Administrative Procedure Code (commencement of proceedings ex officio – see the linked provisions of Section 47 and the following of the Administrative Procedure Code) at the moment it has issued a decision on objections which forms the background for the issue of a decision in the given matter.*

The local competence of the customs office to commence administrative proceedings: The provision of Section 11 Par. 1 of the Administrative Procedure Code governs the local competence of an administrative body. As implies from this provision, the customs office in the place of business, place of permanent residence or place of residence of a foreigner in the Czech Republic shall be the locally competent customs office – administrative body.

Interpretation (excerpt) of a comment to the provisions of Section 11 Par. 2 of the Administrative Procedure Code:

*“If a subject, activity or boundary indicator of the local competence criterion institutes local competence of multiple administrative bodies and no arrangement has been made between them, **the proceedings shall be carried out by the one which has commenced the proceedings first** (Note: see a record on the detention of goods or products justly suspected of infringing intellectual property rights). It is upon the agreement of administrative bodies to determine which of them will carry out the proceedings and this agreement shall enjoy priority over other indicators. The agreement between administrative bodies must be provable and verifiable, but it does not have to be made in writing (note: in practice, a telephone agreement between two administrative bodies which is entered in a file as a record is possible, but it is more difficult to prove). However, in all cases the agreement between administrative bodies must be certifiable and verifiable. The law does not lay down any limitations for the agreement, with the exception of **generally declared principles of promptness and efficiency of proceedings. Parties to the proceedings cannot influence the agreement between administration bodies concerning local competence to further proceedings in any way, but they can file a proposal to assign the case to another locally competent administrative body if they do not agree with the determined local competence.** An administrative body is then not obliged to discuss further procedure with the parties to the proceedings before an agreement with another locally competent administrative body, nor is it obliged to inform them about the discussion concerning this matter. It shall only inform them about eventual assignment of the case to another locally competent administrative body.*

If the locally competent administrative bodies fail to come to an agreement on which of them shall carry out the proceedings or if the local competence cannot be determined, it shall be decided by a common superior administrative body in its decision.

4.11.10. Section 23c Par. 4 of Act no. 634/1992 Coll.

Detention of products or goods pursuant to paragraph 1 above shall last **until a conclusive and final decision on their forfeiture or confiscation is made, or until they are proved not to be the products or goods infringing certain intellectual property rights**. Cancellation of a measure to detain the products or goods that are then proved not to infringe certain intellectual property rights shall be made in writing by the customs office director. The decision shall be delivered to the inspected person. If a measure on detention is cancelled, the detained products or goods shall be returned to the inspected person intact and without undue delay, except for products or goods used for the assessment. A customs officer shall make a written record of the return.

***Comment:** In order to prevent doubts concerning the duration of detention of goods or products, Act no. 634/1992 Coll. has unambiguously provided for this field by laying down that goods or products shall remain detained until it is **finally decided** about their forfeiture or confiscation – see treatment of goods or products in Section 23c Par. 6 and the following of ACT NO. 634/1992 COLL. or until it is proved that they are **not goods or products infringing certain intellectual property rights** – see Section 23c Par. 4, sentence 2 of Act no. 634/1992 Coll. (cancellation of the measure on detention of goods or products).*

*If it is proved during an administrative procedure (namely compare the reference to the provisions of Section 49 – oral proceedings, Section 50 – background data for a decision, Section 51 – evidence, Section 53 – documentary evidence, Section 55 – evidence by witnesses and other of the Administrative Procedure Code), that the goods **do not infringe** intellectual property rights, the customs office director shall cancel the measure on detention of goods or products through a decision which shall only be delivered to the inspected person. The decision on the cancellation of the measure shall contain all formalities pursuant to the Administrative Procedure Code (see Sections 67, 68, and 83 – cancellation of the Administrative Procedure Code).*

If the measure on detention is cancelled through a decision, the goods or products shall be returned to the inspected person on the basis of a protocol without any unnecessary delay, i.e. in the shortest time possible. The handover protocol shall be signed by at least two customs officers and by the inspected person. The protocol shall, inter alia, say that the goods or products have been returned undamaged, the inspected person has been acquainted with the state of the returned items and takes them over without any restrictions.

4.11.11. Section 23c Par. 5 of Act no. 634/1992 Coll.

The customs office director shall also **impose in his or her decision, in addition to a fine, forfeiture or confiscation of the products or goods** referred to in Section 7b or Section 8 paragraph 2. The government shall become the owner of any such forfeited or confiscated products or goods. (se Act no. 219/2000 Coll., on the property of the Czech Republic and its representation in legal relations as amended)

***Comment:** the decision on forfeiture or confiscation of goods – products or imposing a fine is a decision in the given matter. For the formalities of the decision – see Section 67, Section 68, Section 83 – appeal of administrative character.*

***Information intended for an appeal authority (customs directorate):** An appeal authority shall state in its decision by which it rejects an appeal against a decision pursuant to Act no. 634/1992 Coll., information including a term in which it is possible to bring an action for review of this decision at a court – see the provisions of Section 247 of Act no. 99/1963 Coll., the Civil Procedure Act.*

***Quotation from the law:** “The action must be brought within **two months** of the receipt of an administrative body decision. Failure to meet this deadline may not be excused. An action shall be inadmissible if the plaintiff has not used **proper** remedial measures in the proceedings before the administrative body or if the proper remedial measures which he or she had applied were not discussed by the administrative body due to their delay“.*

The customs office director shall also impose an obligation to the inspected person to reimburse the costs of proceedings pursuant to the Administrative Procedure Code and costs which arose pursuant to Section 23c paragraphs 2 and 7 of Act no. 634/1992 Coll. in his or her decision. If, at the time of decision, the customs office does not know all costs, which have arisen pursuant to Section 23c Paragraphs 2 and 7 of Act no. 634/1992 Coll., it shall impose the obligation to the inspected person to reimburse the costs through a new decision.

A customs office which has issued a decision on forfeiture, confiscation or imposing a fine shall send a copy of its final and enforceable decision for the information of the customs office in whose district the inspected person permanently resides, stays, has a place of business etc. – see the provisions of Section 11 of the Administrative Procedure Code.

4.11.12. Section 23c Par. 6 of Act no. 634/1992 Coll.

The customs office director shall determine that the confiscated or forfeited products or goods shall either be destroyed or, if they are suitable for humanitarian purposes, the director may instruct to use them for such purposes, and that free of charge. Humanitarian purposes shall be

understood as activities carried out with an aim to provide for the basic needs of citizens who have been exposed to a situation of personal distress or suffered from an extraordinary event, when use of extraordinary subsistence resources is justified

4.11.13. Section 23c Par. 7 of Act no. 634/1992 Coll.

If a decision as per paragraph 5 above is final and conclusive and if the customs office director has determined that the confiscated or forfeited products or goods are to be destroyed, such destruction shall be carried out officially under the supervision of a three-member commission appointed by the customs office director. The commission shall draw up a record of the destruction, signed by all three members of the commission. The destruction shall be carried out at the expense of the inspected person who offered, sold or stored the products or goods

***Comment:** Destruction of goods or products or the use of goods or products for humanitarian purposes may not be carried out until a final decision concerning the goods or products has been made, i.e. when the goods or products have become a state property.*

Goods or products, which cannot be used for humanitarian purposes, (see below for further procedure,) shall be destroyed. Physical destruction of goods or products must be carried out by means, which do not endanger the environment (ecological landfills, incinerating plants, etc.).

The commission shall draw up a protocol on destruction of goods or products which shall, inter alia, state: the place of destruction, date of destruction, means of destruction (incineration, crushing, cutting, etc.), the exact description of the destroyed goods or products including the number of pieces. The protocol on destruction shall be signed by all three members of the commission, and eventually by the inspected person if he or she was physically present at the destruction.

*The destruction of goods shall **always** be carried out at the expense of the inspected person, whereas it is recommended – if it is feasible – that the inspected person shall pay for the destruction of goods or products on the spot. If the inspected person is not present at the physical destruction of goods, the costs shall be paid by the customs office whereas the customs office will then impose the obligation to pay these costs to the inspected person in its decision - see Section 23c Par. 8 of Act no. 634/1992 Coll.*

*The customs office shall take samples before the destruction of goods or products (it is recommended to take at least one piece of every kind), and it shall keep these samples for **2 months**, in order to use them as evidence in an eventual lawsuit – see the provisions of Section 247 of Act no. 99/1963 Coll., the Civil Procedure Act, as amended.*

The costs of destruction of goods or products can be charged exclusively to the inspected person who offered, sold or stored the goods or services.

4.11.14. Section 23c Par. 8 of Act no. 634/1992 Coll.

The customs office shall impose an obligation to pay the costs as per paragraphs 2 and 7, through a decision with a maturity term of 30 days of the date of notification about the decision. If the abovementioned costs are not settled within the maturity term, the customs office shall proceed with their exaction in accordance with special legal regulations (see Act no. 337/1992 Coll., on the administration of taxes and fees, as amended).

Comment:** The decision in administrative proceedings imposes the inspected person to pay the costs of **storing of goods** (the inspected person shall not be obliged to pay the costs in case that the goods do not infringe intellectual property rights) **and destruction of goods**. Should the inspected person fail to pay the abovementioned costs within a maturity term equalling 30 days of the day of notification about the decision, the customs office shall proceed with their exaction with regards to the provisions of Section 59, Section 73 and Section 73a of Act no. 337/1992 Coll., on the administration of taxes and fees, as amended. **Further see the above comment.

4.11.15. Section 23c Par. 9 of Act no. 634/1992 Coll.

Products or goods forfeited or confiscated on the basis of a decision, which has come into force, may be provided for humanitarian purposes under conditions laid down by this Act, solely to recipient organisations, which may include:

Letter a)

organizational bodies and contributory organisations of the government and territorial self-governed units, established for the purposes of provision of social care or for activities in health care or education, or

Letter b)

other legal entities (e.g. Act no. 248/1995 Coll., on public utility societies and on the amendment and supplementation of certain laws, as amended, Act no. 227/1997 Coll., on foundations and endowment funds and on the amendment and supplementation of certain laws (the foundations and endowment funds act), as amended by Act no. 210/2002 Coll. and Act no. 257/2004 Coll., Act no. 83/1990 Coll., on the association of citizens, as amended, Act no. 3/2002 Coll., on freedom of religious confession and the position of churches and

religious societies and on the changes of some legal acts (Act on Churches and Religious Societies), as amended by the Constitutional Court Judgement No.4/2003 Coll., and by Act no. 562/2004 Coll. Act No. 495/2005 Coll., Act no. 325/1999 Coll., on asylum amending the Act No. 283/1991 Coll., on the Police of the Czech Republic as amended (Asylum Act), as amended,

if they meet the following requirements:

1. they have not been established for entrepreneurial purposes,
2. their scope of registered activities includes only those referred to in letter a) above,
3. they have been providing humanitarian aid for at least 2 years, and
4. they prove they have no overdue tax liabilities or overdue premiums for social insurance and contributions for the state employment policy, nor has any judicial procedure been commenced against them

4.11.16. Section 23c Par. 10 of Act no. 634/1992 Coll.

Only such products or goods may be provided for humanitarian purposes, which are obviously safe to human health, safe to use and from which a recipient organisation has entirely removed and destroyed any elements infringing intellectual property rights. Each product or item of goods must be marked with “humanity” inscription in permanent ink, in a manner, which does not lower the dignity of individuals who use such products

4.11.17. Section 23c Par. 11 of Act no. 634/1992 Coll.

The General Customs Directorate and the recipient organisation shall conclude a written agreement on the provision of a product or goods for humanitarian purposes, which must, apart from the usual important data, include the type and quantity of the provided products or goods and also a contractual fine clause (see Sections 544 and 545 of the Civil Code) applicable in case of a breach of the commitment to provide the products or goods solely for humanitarian purposes, and specification of the purpose for which they will be used by the recipient organisation; the purpose can be changed via an amendment to the agreement while concurrently remaining in conformity with this Act. Products or goods are provided to the recipient organisations pursuant to the order of received applications, with regards to the effectiveness of use and urgency of needs. Removal of elements infringing intellectual property rights, their destruction, and respective marking pursuant to paragraph 10 above shall be performed or procured for by the recipient organisation at its own expense. A record of

performed modifications and destruction shall be drawn up by a three-member commission appointed by the customs office director, whose members may include intellectual property right owners or their representatives. The record shall be signed by all three members of the commission.

The customs office is obliged to ensure immediate destruction of goods or products if:

- the stored goods or products show obvious health hazards (goods attacked by mildew, rodents etc.),
- goods or products are unsuitable for the provision for humanitarian purposes, and that namely due to the fact that the removal of trademarks or other modifications cannot be carried out without damaging their function.

Locally competent customs office which supervises over the removal of marks (elements) on goods or products at a humanitarian organization is obliged to ensure that the organization destroys all removed marks (elements) so that they cannot be misappropriated at all, i.e. the marks (elements) must be physically destroyed under direct supervision of the customs office. The means of destruction of removed marks (elements) shall be determined by the customs office upon agreement with the humanitarian organization.

The customs office (three-member commission) shall make a protocol on the performed modifications and destruction, which shall be signed, by all three customs officers and a responsible person on behalf of the recipient organisation.

The customs office is recommended to inform the correspondent right-holders or their representatives in the Czech Republic in writing about the fact that they may partake in the inspection of removal or marks (elements) from the goods or products (be members of the commission) and also about when the removed marks (elements) are to be physically destroyed under direct supervision of the customs office. If the right-holder or his or her representative does not show interest in becoming a member of the commission, the customs office shall put this statement in the file – rights and obligations of a customs authority and a right-holder – see the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

4.11.18. Section 23c Par. 12 of Act no. 634/1992 Coll.

Upon receipt of the products or goods, the recipient organisation shall:

Letter a)

immediately remove and destroy any elements infringing intellectual property rights,

Letter b)

use the products or goods solely for humanitarian purposes in the territory of the Czech Republic, and

Letter c)

adopt measures to prevent any misuse of the products or goods and their re-sale.

4.11.19. Section 23c Par. 13 of Act no. 634/1992 Coll.

A customs office shall inspect whether the recipient organisation fulfils the duties laid down by this Act, as well as duties contractually undertaken by such recipient organisation

Comment: The customs office in whose territory the recipient organization is based shall perform inspection of the fulfilment of obligations laid down in this Act and obligations which the organization undertook to fulfil the signed written contract. The customs office (dispenser) which physically releases the goods on the basis of a contract signed by the recipient organization and the customs office (supervisor) which inspects fulfilment of obligations laid down by Act no. 634/1992 Coll. and obligations to which the recipient organization has bound itself contractually shall closely cooperate with each other and coordinate activities arising from this provision.

*If a customs office finds out that somebody (natural or legal entity) **sells and exports** products or goods intended for humanitarian purposes and marked with “humanity” inscription pursuant to Act no. 634/1992 Coll., **with the aim of sale**, it can impose a fine up to the amount of CZK 50 000 000 for the breach of this obligation (see Section 24 Par. 1 of Act no. 634/1992 Coll.).*

4.11.20. Section 23c Par. 14 of Act no. 634/1992 Coll.

The recipient organisation shall, for the purposes of supervision carried out by the customs office, record and file documents supporting the receipt of the products or goods, removal and destruction of elements infringing intellectual property rights and manner in which they have been demonstrably disposed of for the period of 3 years of the date of provision of these products or goods. This provision shall not apply to provisions of special legal regulations, governing recording and filing of determined documents (see for example Act no. 563/1991, on Accounting, as amended, Act no. 337/1992 Coll., on the administration of taxes and fees, as amended)

4.12. Customs office supervision pursuant to Act no. 634/1992 Coll. on the basis of a complaint of an intellectual property right-holder or another authorized person pursuant to the provisions of Section 8a Par. 2 of Act no. 634/1992 Coll.

4.12.1. Section 8a Par. 2 of Act no. 634/1992 Coll.

If a supervisory body conducts an inspection **based on a complaint** of a holder of intellectual property rights **or another party** that demonstrates legal interest in the matter, such parties must **pay an adequate deposit** (hereafter referred to as " the deposit") for the purpose of covering expenses of the supervisory authority in the event that the inspection **fails to prove the justification of the complaint**. The amount of the deposit shall be set by the director of the supervisory authority. The deposit shall be calculated on the basis of the average cost of work performed by one inspector per day in the preceding year. The deposit shall be paid by the holder of intellectual property rights or another party that demonstrates legal interest in the matter to the account of the supervisory authority within 15 days of the filing of a complaint. If the deposit is not paid within the set deadline, the supervisory body shall be under no obligation to investigate the complaint

*Comment: This provision governs the procedure of the customs office exclusively in cases when the customs supervision is performed on the basis of a complaint made by a **right-holder or another person** (hereafter referred to as "authorized person").*

At the moment when the customs office receives a request to perform an inspection from an authorized person, it shall immediately examine whether it has been made by an authorized person, the scope of request – the subject of filing (whether the inspection shall be carried out by one customs office or multiple customs offices) etc. If a request has not been made by an authorized person or if it is a vague request, the customs office shall ask the person who filed the request to add the relevant information, background etc. The authorized person is obliged to pay the set deposit within 15 days of the filing of request. If the set amount is not paid within the deadline laid down by law, the authorized person shall be informed that the complaint will not be dealt with by the customs office (customs offices) due to the fact that the deposit has not been paid within the set deadline.

If the authorized person pays the set amount of deposit within the deadline laid down by law, the customs office shall examine the complaint immediately, but not later than 30 days of the receipt of the complaint, whereas the customs office (customs offices) shall also inform the authorized person within the same deadline – see Section 23b Par. 5 of Act no. 634/1992 Coll.

For the procedure in case of detection of goods or products infringing intellectual property rights – see the comment above.

4.12.2 Section 8a Par. 3 of Act no. 634/1992 Coll.

If the results of an investigation show that a complaint was justified, the supervisory authority shall refund the deposit within ten days of the completion of investigation. If the complaint is not found to be justified, the supervisory authority shall charge the actual cost of the conducted investigation. If the sum of the actual costs is lower than the deposit, the supervisory authority is obliged to refund the difference to the holder of intellectual property rights or another party that demonstrated legal interest in the matter within ten days. If the sum of actual costs is higher than the deposit, the holder of intellectual property rights or another party that demonstrated legal interest in the matter is obliged to pay the difference up to the amount or actual costs within ten days of the receipt of notification.

***Comment:** At the moment when the complaint is proved justified – the inspection of the supervisory body, i.e. the customs office is completed (goods or products infringing intellectual property rights have been detained), the paid deposit shall be refunded to the authorized person within 10 (calendar) days from the completion of inspection (proving that the complaint was justified). The customs office shall concurrently inform the authorized person in the sense of the provisions of section 23b Par. 5 of Act no. 634/1992 Coll. Further procedure of the customs office – see the comment above.*

***If the complaint is not proved justified**, the actual costs of the performed inspection shall be charged.*

*If the amount of actual costs of inspection is **lower** than the paid deposit, the calculated difference shall be refunded to the authorized person's account within 10 days (calendar days).*

*If the amount of actual costs of inspection is **higher** than the paid deposit, the right-holder (authorized person) is obliged to pay – put to an account – the difference up to the amount of actual costs upon request, and that within 10 days (calendar days) from the day on which he or she receives the notification – invitation to pay the difference.*

4.12.3. Section 8a Par. 4 of Act no. 634/1992 Coll.

If a holder of intellectual property rights submits untrue, incorrect, incomplete or invalid documentation to the supervisory authority and if damage is incurred to the inspected person on the basis of this documentation, the holder of intellectual property rights shall be liable for such damage incurred.

***Comments:** As clearly implies from this provision, the **right holder** shall be fully responsible for the information, documentation, etc. which he or she submits to the customs office. However, eventual damage (incurred to the inspected person), could occur as a result of the*

issued decision of the detention of goods or products or issue of a decision in the matter. Civil liability of the right-holder shall be governed by the Civil Code.

4.13. Implementation of goods for humanitarian purposes

Implementation of goods for humanitarian purposes is basically identical as in the Act no. 191/1999 Coll.

4.14. Fines

The competence of the customs office as a supervisory body to impose fines pursuant to the provisions of Section 24 of Act no 634/1992 Coll. arises from the provision of Section 24 Par. 1 of Act no. 634/1992 Coll.

Bodies stated in the provision of Section 23 shall impose a fine for the breach of obligations stated in Section 7b, Section 8 Par. 2, Section 8a of Act no. 634/1992 Coll. up to the amount of CZK 50 000 000; when determining the amount of fine, the nature of unlawful conduct and the scope of its consequences shall be taken into consideration.

Facts of the case pursuant to Act no. 634/1992 Coll.:

- a) **Section 7b** – “offers for the purpose of sale, sells and exports products or goods intended for humanitarian purpose and labelled with the mark “humanity”. Breach of this legal obligation can be committed by both legal and natural entities, whereas culpability is nor required,
- b) **Section 8a Par. 1** – “fails to present the required documentation within the set deadline, presents untruthful, inaccurate, incomplete and invalid documents, fails to immediately report changes, which can influence the correctness of assessment of goods or products“. Breach of this legal obligation can be committed by both legal and natural entities, whereas culpability is nor required.
- c) **Section 8 Par. 2** – “offers for the purpose of sale or sells products or goods infringing certain intellectual property rights, stores such products and goods with the aim of offering or selling them “.Breach of this legal obligation can be committed by both legal and natural entities, whereas culpability is nor required.

4.15. Authorization of the customs administration pursuant to Act no. 121/2000 Coll., the Copyright Act, as amended

4.15.1. Authorization of the customs office pursuant to the provisions of Section 42a of Act no. 121/2000 Coll., the Copyright Act, as amended

In 2006, an amendment to the Copyright Act strengthened customs administration powers in the course of supervision and inspection of goods, which is **not subject** to customs supervision, i.e. of Community goods.

Brief overview of customs offices powers:

- a customs office is entitled to detain items whose holder is suspected of infringing copyright,
- a customs office which has detained an item shall send a written notification on the detention of the item to the author, collective administrator, ... ,
- the author, collective administrator,.... is obliged to notify the customs office within 15 working days that he or she intends to exercise a claim for the protection of rights at a court,
- if the court decides legitimately that copyright has been infringed, the customs office shall hand the items over to the author,
- the customs office shall charge the costs through its decision.

4.16. Risk countries which produce counterfeit goods

- **China** – textile goods, consumer goods of all kinds, toys, medicines, cosmetics, car accessories, spare parts;
- **Hong Kong** - electronics, watches, medicines, medicinal preparations, sports clothes, clothing accessories;
- **Israel** – medicines and medicinal preparations, clothes;
- **Sri Lanka** – clothes;
- **Thailand** – watches, medicines and medicinal preparations, clothes;
- **Turkey** – foodstuffs, clothes;
- **Ukraine** - clothes;
- **USA** – watches, clothes;
- **Vietnam** – electronics, games and toys, clothes.

4.17. Risk kinds of transportation of counterfeited goods

Mail transport, air transport, container transport, truck and passenger transport.

4.18. Achievements of the customs administration in the field of protection of intellectual property rights

A coordination group was established within the Customs Administration in the period between 1st Nov and 31st Dec 2006 with the aim of increasing the efficiency of inspectional activities. The aim of the group is to provide central planning and coordination and ensure and assess the performance of activities leading to the increase of activity in the field of intellectual property rights protection at all levels of the Customs Administration.

Due to the fact that statistical data concerning the Customs Administration results are changing all the time, such data is not and will not be published in this document. Quoted information can be found on the web page of the Customs Administration of the Czech Republic.²⁴

In the period from April 2005 to March 2006 a countrywide inspection action of the Customs Administration took place in cooperation with the General Customs Directorate. It namely focused on the issue of taxing entrepreneurial activity of tax subjects, which engaged in import, and sale of goods originating in Southeast Asia.

The basis for the selection of particular tax subjects for inspection was data provided by the General Customs Directorate and data from databases of individual tax directorates and tax offices concerning years 2002, 2003 and 2004. The results of local investigations were also taken into consideration as well as the initiatives of the Police of the Czech Republic and citizens in some cases. Activities of persons economically and personally connected with the selected subjects were also mapped.

The Customs Administration performed and completed 887 inspections in the abovementioned period. Additional income tax payments worth CZK 53.202.232,- and additional VAT payments worth CZK 34.564.384,- were charged.

Difficulties during tax inspections are often caused by the transition from proving to determining tax on the basis of aids when a tax administrator may determine the tax using aids which they have at their disposal or which they obtain without cooperation with the tax subject in conformity with the law. The institution of aids was used in 67 inspections only, 74 % of which surprisingly concerned Czech tax subjects. The inspection action confirmed the

²⁴ www.cs.mfcr.cz, <http://www.cs.mfcr.cz/CmsGrc/Tiskove-centrum/mobilka-2007.htm>

well-known fact that running one's business honestly and in conformity with the correspondent laws is better than paying additional tax and penalties.²⁵

²⁵ More information in the press release of the Ministry of Finance dated 2006.

5. ACTIVITIES PERFORMED BY THE CZECH TRADE INSPECTION

The Czech Trade Inspection (hereafter referred to as “the CTI”) was established by Act no. 64/1986 Coll. as a successor organization of the State Trade Inspection. In connection to legislative changes, the CTI has become the main supervisory authority for the field of non-foodstuff products from the point of view of technical requirements for products and product safety, as well as a supervisory authority in the field of protection of consumers’ economic interests and in the field protecting even fiscal interests of the country in a limited scope in the recent years.

The CTI was already dealt with in the first part of this methodology; we will therefore repeat only the most important data here and outline eventual problems and difficulties of the current cooperation between the CTI and other state administration authorities in the field of intellectual property rights enforcement.

5.1. Structure, sphere of action and competence

The Czech Trade Inspection is a state administration authority subordinate to the Ministry of Industry and Trade. It is organizationally divided into the Central Inspectorate and 7 inspectorates subordinate to it, including 7 branches based in district towns (the exception is Vysočina district whose inspectorate is based in Tábor). The Central Inspectorate ensures management and service activity and it also serves as an appeal authority. The CTI is presided by the managing director who follows the orders of the Ministry of Industry and Trade. The inspectorates are presided by directors, controlled by the managing director.

Within the framework of execution of its powers, the CTI inspects legal and natural entities selling or supplying products and goods to the domestic market, providing services or performing similar activities on the domestic market or providing consumer credits unless another administrative authority performs the supervision pursuant to special legal regulations.

5.2. Execution of powers

In conformity with legal regulations governing its competences, the CTI mainly performs inspections of:

- abidance by conditions laid down to ensure quality;
- health friendliness;

- safety of both products and services;
- provision of proper information on products and services.

It also inspects whether products put into circulation have been equipped with proper marking pursuant to a special legal regulation, or eventually whether a required document was issued or added to them and whether the properties of the given products comply with the set technical requirements.

Last but not least, the CTI inspects whether sellers fulfil the required information obligations for products and services towards consumers, whether the principles of honest practices in the sale of products and provision of services are followed or whether consumers are not misled by stating untrue, unfounded or incomplete data on the actual properties of goods or services or the standard of buying conditions.

An important fact is that offer or sale of products or goods infringing certain intellectual property rights as well as storing of such products or goods with the aim of offering or selling them shall also be considered misleading of consumers.

5.3. Sanctions

The CTI may sanction inspected persons for discovered offences in administrative proceedings pursuant to the Czech Trade Inspection Act with a fine of up to CZK 1.000.000,-. Should a repeated breach of obligations be detected within one year (of the last inspection), a fine of up to CZK 2.000.000,- may be imposed.

Pursuant to Act no. 634/1992 Coll., on consumer protection, as amended, the CTI may impose a sanction of up to CZK 50.000.000 to the inspected person in administrative proceedings.

An inspector may sanction an inspected person for a less serious breach of the Czech Trade Inspection Act or the Consumer Protection Act with an on-the-spot fine of up to CZK 5.000,-.

Pursuant to the Act on technical requirements for products, the CTI may impose a fine up to the amount of CZK 20.000.000 to a person who:

- a) unlawfully or misleadingly used the Czech mark of conformity, certificate or another document issued by an authorized person in connection with the assessment of conformity or who counterfeited or falsified these documents,
- b) put to a market or distributed the set products without the required mark or document laid down by a government regulation or with misleading or unauthorized mark or document,
- c) has not fulfilled the decision on protective measures,

d) has not followed any measures imposed in order to remove unauthorized marking of a product pursuant to Section 18 of the Act.

Besides financial sanctions, prohibitions of the sale of products, or better, prohibitions to put the products to the market are also imposed, and that in case that these do not meet the requirements of special legal regulations. Samples of products or goods are taken in order to assess their quality and safety, unless these are samples of foodstuffs, meals or tobacco products, or in order to determine whether the products or goods mislead consumers.

6. ACTIVITIES PERFORMED BY THE STATE AGRICULTURAL AND FOOD INSPECTION

The State Agricultural and Food Inspection (“the SAFI“) was established by Act no. 146/2002 Coll., on the state agriculture and food inspection authority, as amended, as a legal successor of the Czech Agricultural and Food Inspection. The SAFI is an administrative authority subordinate to the Ministry of Agriculture whose main task is to inspect natural and legal entities which put agricultural products, cut flowers and foodstuffs or materials for their production or tobacco products into circulation. It is divided into the Central Inspectorate and seven inspectorates subordinate to the central one. The SAFI is based in Brno.

Inspectional activity of the SAFI in conformity with provisions of Section 2 of Act on the State Agriculture and Food Inspection Authority shall be understood as inspections performed by an inspector or inspectorate which determine the conformity of inspected products and materials, technological equipment, operating procedures and health and hygienic prerequisites as conditions for correct manufacturing process during production of and trading with agricultural products, foodstuffs or materials or tobacco products with the requirements laid down by special legal regulations on which an opinion on the spot or a protocol on inspection is issued or on the basis of which other measures are adopted by the correspondent inspection authority.

Inspection of observation of intellectual property rights implies for the SAFI from the provisions of Act no. 634/1992 Coll., on consumer protection, as amended, Act no. 110/1997 Coll., on foodstuffs and tobacco products, as amended and Act no. 146/2002 Coll., on the state agriculture and food inspection authority, as amended. Inspection of observation of intellectual property rights shall be limited to the inspection of infringement of trademark rights, and rights associated with appellations of origin, geographical denominations, and traditional specialities guaranteed. Concrete inspectional powers of the SAFI are laid down in detail in Section 3 of the Act on the state agriculture and food inspection authority and they comprise inspection and assessment whether consumers are mislead in the sense of Section 8 of the Consumer Protection Act, pursuant to which offer or sale of products or goods infringing certain intellectual property rights as well as storing of such products or goods with

the aim of offering or selling them shall also be considered misleading of consumers, and whether rights of persons who enjoy protection of a registered appellation of origin or geographical denomination of products, foodstuffs or materials or tobacco products are infringed.

Pursuant to provisions of Section 3 Par. 4 Letter h) of the Act on State Agriculture and Food Inspection Authority,²⁶ the inspection shall, during performance of its duties pursuant to this Act and pursuant to special Acts, cooperate with the correspondent administrative offices, municipal authorities, foreign institutions and correspondent authorities of the European Union whose cooperation is necessary for the performance of inspection or is implied by international contracts, and inform them immediately about important facts which infringe or are capable of infringing consumer protection. This provision also applies to cooperation with other state administration authorities in intellectual property rights field in which the SAFI participates in the scope of its competences namely during inspection of foodstuffs and tobacco products in whose case plagiarism, counterfeiting and other infringement of intellectual property rights is often committed. Closer cooperation with selected state administration authorities (e.g. the CTI, the Customs Administration of the Czech Republic, the Police of the Czech Republic, etc.) takes place within the framework of the so-called “Octalateral Agreement“.

²⁶ Cooperation of the SAFI with other authorities is mentioned not only in the Act on State Agriculture and Food Inspection Authority, but it also implies from the European Parliament and Council Directive (EC) no. 2006/2004 of 27th October 2004 on Co-operation between national authorities competent for the enforcement of acts on protection of consumers' interests.

7. SYSTEM DEFICIENCIES OF THE CURRENT REPRESSION

The Czech Republic faces the danger of being put on the “**Priority Watch list**“ again. This trend in the field of intellectual property rights protection in the Czech Republic is against the world trends as even dominant pirate countries (e.g. China) are adopting effective measures to prevent these undesirable effects.

There has been critical or maybe even catastrophic situation in the field of intellectual property protection in stall sale, or better in marketplaces on the borders with Germany and Austria for many years. The interior areas are organizationally structured namely to large warehouses, production facilities and logistic background.

We cannot talk about any improvement or positive advancement in the field of stall sale in marketplaces and in connection with infringement of rights arising from intellectual property rights protection. A flagrant infringement of rights takes place in the marketplaces as such environment itself offers significant criminal advantages:

- large concentration of people in a small space,
- provides anonymity to offenders,
- allows guarding and performance of effective measures to hide one’s activities from the execution of state authority.

Running of marketplaces and activities associated herewith show, despite some positive measures (of customs authorities), increasingly worsening tendency with fatal impact on the production and trade with legal goods in the country. We also have to warn about the fact that besides right-holders, stall sale also massively damages the state, which loses enormous amounts in tax and other fees. It also secondarily loses money in taxes that would otherwise be paid by legal industry and in decrease of offered jobs.

It is completely legitimate to say that the controlling influence of the state does not practically apply in case of stall sale and the international obligations of the Czech Republic in the field of intellectual property protection are not even partially fulfilled.

It was already obvious in 1998 when individual conceptions of fight against this kind of crime were being formulated and adopted, that the too complex mechanisms of confiscation and destruction of goods would not lead to the elimination of this phenomenon. Due to this reason there was a transfer of competences (or eventually extension of the current ones) to the CTI and the Customs Administration in order to allow the employees of the Economic Criminality Department of the Police of the Czech Republic on individual levels of management to actively deal with illegal networks, production plants and shops at that time.

This strategy has not been fulfilled, and we can only speculate about the causes. However, in this context, we have to agree with the critics who say that the punishment of the end sellers, or better, mere confiscation of goods infringing intellectual property rights does not lead to the elimination of this phenomenon. The axiom of economic exhaustion of pirate and plagiarist environment thus does not take place.

The reasons for the failure of the Conception of the Fight Against Crime in the Sphere of Intellectual Property adopted by the Government Decree no. 330 of 14th April 1999 lie mainly in the resignation of all state authorities to the execution of their powers in this field of crime.

Trade licensing offices merely record and monitor eventual notifications on the infringement of law. Inspectional activity is only theoretical, though. In practice, it is completely natural that stalls in marketplaces are not marked as places of business, or better, in conformity with legal requirements. The sellers evade prosecution during inspections by saying that they do not speak Czech, whereas they are still holders of a trading licence just like those who are repeatedly caught performing illegal activities and even punished (legitimately found guilty) of committing a crime.

Similar situation is in case of tax offices. Tax offices often do not even have a factual possibility to find out who runs the business and whose tax duties they should thus inspect.

System deficiencies shall also include inactivity of local authorities which welcome the establishment of marketplaces in their territory and support this kind of business and which fail to see the criminality connected herewith as a problem, or better, they do not perceive infringement of intellectual property rights as a criminal activity. Tax laws play a decisive role in this as they determine local competence in case of income tax paid by both natural entities and entrepreneurs pursuant to the place of domicile, not pursuant to the place of business. Local authorities are thus not interested in proper payment of taxes as the only funds to the municipal budget flow from renting of municipal premises or eventually buildings and from services used.

Another system deficiency is undoubtedly the unprofessional behaviour of local state administration employees. Knowledge and indices have been obtained that the problem of stall sale and marketplaces is causally connected with the manifestation of harmless overlooking of events, bribery and even corruption. Entrepreneurs engaged in this kind of black economy own sizeable capital and thus become locally very influential, so they are at least informed in advance about some raids. This phenomenon also directly results in the fact that employees of the local state authorities who live in these localities with their families may feel endangered to a certain extent and this results in the possible overlooking or “professional blindness”.

The Government Decree no. 330 of 14th April 1999 imposed the ministers of interior, justice, industry and trade and finances to prepare and set concrete criteria for the assessment of efficiency with the deadline being 30th November 1999. These criteria were to concurrently serve for the assessment of efficiency of individual authorities and institutions engaging in fight against illegal activities in intellectual property field (Trade Licensing Offices, the Czech Trade Inspection, the Police of the Czech Republic, the General Customs Directorate). Regular assessment in the documents for the Report on Security Situation (or eventually other materials) was to be carried out pursuant to these criteria.

Neither the available resources, nor inquiries at individual state authorities brought the answer as to whether these criteria have been processed and whether any assessment is carried out pursuant to them.

The abovementioned decree concurrently imposed all abovementioned ministers to prepare a project of (preventive-) security actions focusing on repression of criminality in intellectual property field in cooperation with other interested subjects (individual services of the Police of the Czech Republic, the Czech Trade Inspection, the General Customs Directorate, the Department of Trade of the Ministry of Industry and Trade etc) with the same deadline. This task and project has never been fully completed and the results of this inactivity are still worsening and they are strikingly showing up at marketplaces.

8. SYSTEM DEEFFICIENCIES IN COOPERATION WITH THE POLICE OF THE CZECH REPUBLIC

The criminal police and investigation services as the main administrator of the field of crime in the section of protection of rights arising from intellectual property face certain system deficiencies similarly to other parts of the state administration.

The issue of intellectual property is managed (if it is managed at all) only methodically, without any powers. The superior department always serves as a methodical department for the subordinate department, so unless the issue of intellectual property is the field of interest of the director of the given department, its solving is only marginal.

Methodical management institute is basically a mere advisory body for the subordinate departments, without any possibility to influence the given phenomenon. If a superior body wants to achieve any changes, it can only directly inform its superiors (in the service line), who (if they are interested) may influence directors of subordinate departments in the field of direct management.

This deficiency may be removed only if the top management of the police adopts measures leading to comprehensive solution to this problem, the problem should be called organized crime and the police response should be adequate to this definition, namely focused on the field of working out, discovering and dealing with organized networks, production facilities and warehouses.

Another deficiency, which applies generally, is the minimum use of supporting operative measures and operative measures in operative working out of central and top management of networks with pirated and plagiarist goods. No knowledge or information has been gained about the fact that this central segment is anyhow worked out or monitored.

The use of operative measures (including the supporting ones) on by the police is not flexible, it is too complex from the administrative point of view and it cannot be kept secret. Or better, use of these measures by the police is bound by so many internal directives that when they are all met, there is usually a leakage of information.

In this regard, there was very positive response to operative work including the use of measures, which the Customs Authority has. These responses came both from expert public and from current police officers.

A significant system handicap of the police is the fact that it is dependent on state budget. This fact negatively influences its activities, namely as regards use of measures and working out of findings.

The dependency on state budget is also associated with quick deconscription. Central purchases of instruments (motor vehicles, walkie-talkies and their specific design etc.), uniformity and connecting to the criminal environment through www.mvcr.cz sever instead of connecting through a commercial provider usually give up a police officer before he or she can record any criminal activity.

Another significant system deficiency is the approach to the solving of intellectual property problem. Territorial station employees basically approach the solving of this problem in two ways:

- they trivialize the given problem – they decrease its public dangerousness and importance,
- they exaggerate the problem beyond their capabilities – they approach the problem in a way that it is not in their power to change anything and therefore they will not deal with it.

It implies from the performed consultations and acquired documentation that the trivialization takes place on all levels of police management, even in places where legal awareness should be on adequate level. The issue of protection of rights arising from intellectual property is solved by the police merely on the basis of good personal relationship with the complainants, or better, aggrieved parties and their representatives, and that only in the given location.

Statistic numbers indicate and the acquired information from expert public confirm that the Police has resigned on any working out of the structures, it only solves new cases of this criminal activity.

If criminal activity detection rate (and system based on solved crimes) remains the main criterion for assessing efficiency of police departments, it is obvious that no correspondent steps will be taken even against obvious signs of crime in the field of piracy and counterfeiting, unless it is sure that a concrete offender will be detected and prosecuted.

Criminal activity detection rate is the basis criterion for assessment of each police department and it affect the system of remuneration. Therefore it is quite clear that none of the police officers are interested in detecting criminal acts whose result is unclear from the outset

Pursuant to the state and scope of this antisocial phenomenon in the recent years, it is expected that the statistic decrease in criminal statistics has not been caused by decline of this kind of crime, it is merely a shift to the statistics of administrative torts of the CTI and the Customs Administration. This shift in statistics causes an undesirable phenomenon, namely the fact that the offenders are not dealt with in criminal proceedings, therefore the repressive institutions of other state administration authorities may not apply. This approach closely reminds moving in a circle.

9. POSSIBILITIES OF SYSTEM CHANGES

There is no doubt that the stall sale system (or better trading in marketplaces) is a problem which must be dealt with comprehensively. In this matter, it must be a long-term concentrated pressure of state authorities and institutions at strict abidance by the current legal standards.

Besides this obvious form of right infringement, it will be necessary to deal with the issues of right infringement on the Internet in the near future. This mainly concerns already mentioned “sensitive” commodities. The increase of this crime is unstoppable and its elimination may not be solved by the “trial-and-error “ system, which has been practised until now in this field of crime.

The abovementioned implies that it is a completely legitimate request consisting in rethinking of the Government Decree no. 330 of 14th April 1999, or better, the Conception of the Fight Against Crime in the Sphere of Intellectual Property adopted by this Decree. It is also necessary to unambiguously define “why“ this conception has failed, “where“ its deficiencies are and “what“ needs to be done in order to eliminate at least the most significant manifestation of this crime.

One thing is obvious now. The advisory and initiation authority established by this conception must be equipped with executive powers in individual departments in the future and it **must coordinate the procedures goal-oriented**. Mere statements will never lead to the solving of the problem.

Trade licensing authorities and tax offices must start with uncompromising insistence on following legislatively set duties and begin strictly exercising their powers. Thorough and continuous inspection of accounting documents should also deal with the opposite situation, i.e. laundering of money coming from piracy.

Elimination of stall sale and marketplaces as we know them from border regions should become a priority. There should be transparent definition of obligations for owners, lessees, sub lessees etc., particularly in the following fields:

- when signing a lease agreement (sublease agreement, etc.) the new lessee shall be identified on the basis of an authentic document,
- a written contract must be concluded and it must contain accurately specified place of business / stall / premises,
- it is necessary to define restrictions that the agreement may not be signed with a foreigner who fails to present a long-term residence permit, thus failing to prove the legitimacy of his or her business.

The amended Consumer Protection Act imposes an obligation to marketplace lessees and owners to keep a record of sellers, **but there is a problem with enforcement of this obligation**. The proposed amendment should give state administration authorities the power to supervise over the abidance by this obligation.

The Police of the Czech Republic which has been facing lack of funds for a long time and which is nowadays also facing lack of professionally able personnel may not become resigned to the performance of activities associated with detection of this kind of criminal activity.

It is possible, to certain acceptable extent, to substitute the Police with Customs Administration authorities during detection of this kind of crime (it is, basically, the current “status quo“, when only Customs Administration authorities perform any activity, although we have to say that they are successful and highly professional), but this approach does not solve the problem of criminality and its manifestations and it cannot even solve it in the future.

The police management must begin with radical system changes, improve the current personnel, technical and financial resources and minimize costs of detecting this kind of crime in an effective way.

The primary measure seems to be the system measure consisting in establishment of a special department dealing with organized crime in the field of intellectual property rights. The sphere of action of this department must cover the whole Czech Republic and it must be equipped with resources and powers standardly used by the Office for Detection of Organized Crime. In this respect, it is necessary to say that the new cases of this kind of criminal activity should still be dealt with by police authorities with territorial competence.

The establishment of this department should eliminate negative influences to police activities. The influences namely include:

- environment,
- corruption and professional blindness,
- treatment of operative and supporting operative measures,
- unambiguous approach to and understanding of the issue of intellectual property protection as a whole,
- direct and close cooperation (in the field of knowledge) with the Customs Authority and the CTI, the Ministry of Finance and their specialized departments,
- exercise of legislative powers to withdraw profits from criminal activity.

There is no doubt that the stall sale system (or better trading in marketplaces) is a problem, which must be dealt with comprehensively. In this matter, it must be a long-term concentrated pressure of state authorities and institutions at strict abidance by the current legal standards.

Besides this obvious form of right infringement, it will be necessary to deal with the issues of right infringement on the Internet in the near future. This mainly concerns already mentioned “sensitive” commodities. The increase of this crime is unstoppable and its elimination may not be solved by the “trial-and-error “ system which has been practised until now in this field of crime.

10. PREVENTIVE STRATEGY

10.1. Crime prevention

Crime prevention may simply be defined as an offensive strategy of fight against criminal activity. Crime prevention methods are – contrary to repressive methods (outlined mainly within the framework of criminal policy) - non-repressive methods in which a wide range of public institutions and private subjects participate. The aim of focused preventive action is to decrease the scope and seriousness of the criminal activity and increase the feeling of security of natural and legal entities.

Preventive policy focuses on elimination of criminogenic factors and criminal risk phenomena. And we should not forget help to victims of criminal acts, which is also included.

We understand crime as the most extreme section of social pathology. Its sources lay in the social (it concerns causes) and situational section (it concerns opportunities). Elimination of social causes is a subject of wide conception of social policy (upbringing, education, adult education, social security, labour market etc., but also criminal policy), while situational aspects lay in elimination of opportunities to commit crime. This namely concerns identification of conditions facilitating commitment of crime (*this means all particularities of social and natural environment in relation to space and time, which facilitate or accompany inception of criminal acts. They can exist objectively without being caused by a culprit, or they can eventually be induced by the culprit or the aggrieved party, and that either intentionally or unintentionally*). To put it briefly – social prevention focuses on the culprit and the situational one on reduction of the opportunity to commit crime.

The current conception significantly widens the preventive theory. The preventive theory used to be associated only with so-called traditional criminality (property crimes, violent crimes and crimes against morality) in the past. The current preventive theory deals with elimination of social causes within the framework of modern political strategies and research work in the field of prevention as well as implementation of practical measures. The centre of focus is on social causes, which enable spreading of criminal infection among endangered social groups of the population. From this point of view, prevention also becomes a significant component of strategies for fighting against organized crime, terrorism, economic criminality and corruption.

10.2. Criminogenic factors

Based on the current state and the genesis of criminal activity in intellectual property field, we can determine certain **causes and conditions**, which have negatively influenced this kind of criminal activity and still influence it to certain extent. These namely include:

- development of free market economy caused increase of the amount of entrepreneurs active in the given field;
- release of goods sale regulation enabled development of pirated goods market;
- liberality of legal regulations governing the conditions for enterprising in the given field;
- primarily, development of stall sale and its insufficient control mechanism;
- low prices compared to the prices of original goods and low purchasing power of potential customers interested in certain intellectual property item;
- easy technical feasibility of plagiarism/piracy;
- wide possibility of variability of the subject of interest of offenders;
- legal consciousness (both of criminals and of potential customers and users), trivialization of criminal activity;
- lack of experience (particularly in the beginning) of authorities active in criminal proceedings with dealing with this kind of criminal activity;
- punishment (criminal/administrative) of end sellers – culprits only, with no regard to accomplices and organizers;
- avoidance of punishment by leaving the point of sale;
- avoidance of criminal punishment by using selected citizens in social distress, or better, using minors /juveniles;
- well-organized and professional criminal structures organizing commitment of this kind of crime;
- high level of latency of this kind of crime, use of conspiratorial methods to cover it,
- accumulation of financial capital allows penetration of criminal structures in the field of interest and its corruption;
- strong influence of international element.

The abovementioned factors negatively influence not only the state and development of criminality in the given field, but also the efficiency in detection and documenting of this kind of criminal activity.

10.3. Possible preventive strategy trends

As implies from the previous text, criminal activity in the field of infringement of intellectual property rights is an inseparable part of our society. It appears in two different forms, namely:

- in an obvious and public form (stall sale),
- in a highly latent form, which is nevertheless notorious (home piracy).

Extension of powers in the repression field has not brought the required effect pursuant to the statistics, while the so-called home criminality cannot be monitored at all. There are only qualified estimates for this kind of criminality, but these estimates are experiencing growth in values even in the worldwide scope.

Aim-oriented and scientifically elaborated preventive strategy should play central role in elimination of this pathological phenomenon in the future. The thesis is based on the belief that criminality in this field is most dangerous for the society (including authors and right-holders) in its “home“ form where the use of severe repressions will always fail.

We can successfully dispute the below mentioned trends of preventive strategy, but the decisive factor will be a performance of serious scientific research and its conclusions.

Possible trends of preventive strategy:

- create and support specific preventive programs implemented by repressive departments and non-state non-profit organizations
- improvement of legal conscience and continuous action in the field of legal conscience, mainly of children and youths,
- effort to remove tolerance of citizens against commitment of this kind of criminal activity.

11. PROBLEMS AND POSSIBLE SOLUTIONS TO THE LACK OF COOPERATION

Cooperation between state administration bodies in the field of repression of intellectual property rights infringement takes place in two platforms. Both are on intradepartmental level. The first of them was established in July 1997 when the Agreement on cooperation between four state administration authorities was signed. The need to cooperate with other subjects gradually arose and therefore eight state authorities currently cooperate within the framework of this agreement. The second platform is the Intradepartmental advisory committee on repression of intellectual property rights infringement at the Ministry of Industry and Trade.

(a) Agreement on cooperation - history

The Agreement on cooperation in the field of repression of intellectual property rights infringement was signed between the Czech Trade Inspection, the Police of the Czech Republic, the Ministry of Finance – the General Customs Directorate and the Industrial Property Office on 21st July 1997. Based on the needs for cooperation and on government measures, other parties acceded to the Agreement. Currently it is the “Agreement on Cooperation“ between eight state administration authorities, so-called “Octalateral Agreement“. The authorities include:

- **Czech Trade Inspection**
- **Police of the Czech Republic**
- **Industrial Property Office**
- **Ministry of Finance – General Customs Directorate**
- **Ministry of Industry and Trade – Department of Trade**
- **Ministry of Finance – Central Financial and Tax Directorate**
- **Ministry of Culture**
- **State Agricultural and Foodstuff Inspection**

Activities arising from the implementation of the Agreement were mainly focused on the field of mass production, distribution, export and import of pirated goods. Centrals (headquarters) of individual institutions have controlling, coordination and inspection function and the measures themselves are implemented by territorial departments of individual subjects.

One of the first tasks of the work group, which had been established on the basis of the Agreement, was to formulate the principles of cooperation, which could enable repression of intellectual property rights infringement under the laws valid at that time. The group formulated the “Principles of cooperation in protection of the domestic market against the infringement of rights associated with trademarks, trade names and

protected appellations of origin“, which defined procedures, information flows and contact points so that each detected breach of regulations could be qualified either as an administrative tort or as a criminal act. Based on these principles, the CTI employees were regularly trained to recognize genuineness of textile goods of world famous trademarks and joint inspection raids were carried out. Another significant event was the conclusion of an agreement between the CTI and the Ministry of Industry and Trade – Department of Trade concerning new means of transferring information between Trade Licensing Offices and CTI inspectorates.

The activity of the Agreement also focused on the sale in marketplaces where many products infringing intellectual property rights are sold and where all efforts to exercise fiscal interests of the state and consumer protection fail. Therefore an analysis of stall sale was drawn up together with material called “Comprehensive solution of stall sale in the Czech Republic“, which dealt with solving of negative phenomena in stall sale and with draft acts in the field of repression of trademark rights infringement. These drafts were also adopted in the wording of the “Conception of the Fight Against Crime in the Sphere of Intellectual Property“ approved by the government of the Czech Republic in April 1999.

Ever since the beginning of the existence of the “Agreement“ the working group has felt the need to improve informedness between individual offices and engaged in thoughts about establishment of information system for intellectual property field. However, only the Measures aimed at fighting against crime in intellectual property field adopted by the government and the activity of the Industrial Property Office enabled creation of such system.

The information system was established within Phare project called “Intellectual rights enforcement “ and it has been operating at www.dusevni vlastnictvi.cz website since 2004.

(b) Agreement on cooperation – the present day

The Agreement on cooperation in the field of repression of intellectual property rights infringement still officially exists at present. However, is the existence real or just formal? Let us ask a few questions, which could help us, uncover this problem.

- **Do the authorities participating in the Agreement cooperate during operations aimed at repression of right infringement?**

Yes, they do, but less than they used to a few years ago. An Amendment to Act no. 634/1992 Coll. on Consumer Protection, as amended equipped one of the main participants of the field cooperation – Customs Administration – with competences to

inspect both legal and natural entities which produce, store, distribute, import, export, purchase, sell or supply goods to the domestic market or exert some other activity at the domestic market, in cooperation with the Czech Trade Inspection or separately, in cases of justified suspicion that products or goods infringe certain intellectual property rights.

Together with competences to detain goods, decide on its forfeiture or confiscation, impose a fine or decide on destruction and competences for the destruction itself, the Customs Authority obtained additional competences to perform inspections in the field of intellectual property in the whole process of production, distribution and sale of such goods and that both on the domestic market and during import and export. For this purpose, the Customs Authority is also an authority active in criminal proceedings. It thus currently has all competences, structure and number of employees to act independently in the process of repression of intellectual property rights infringement and not to be just an authority which provides protection to CTI employees and participates in heavy manual labour during detention of goods without the possibility to boast with this as results of common work. Even the recent results show that the Customs Administration works mainly separately. The acquirement of new competences of the Customs Administration was the moment when all the authorities should have arranged even closer cooperation. It surely was not an intention of the changes in legislature to cause the competences of state administration authorities to overlap, but they were rather intended to make the authorities divide the work for the common good, to use their unique advantages and together cover the whole process of intellectual property rights infringement from the production or import up to the sale to the end consumer.

- **Do state administration authorities share information concerning infringement of intellectual property rights so that all forms of punishment of such activity can be used?**

They share the information, but often in a form, which does not enable its use for further action. One such example may be the reporting of cases of intellectual property rights infringement to Trade Licensing Offices. Although such notifications are submitted in practice, they usually do not lead to the withdrawal of a trading licence or to a decision on suspension of business. There is a lot of space for the improvement of cooperation in this field. Do all the notifications not meet all requirements for the Trade Licensing Office to act? Is it possible to determine minimum requirements for formally correct notification or are there any other obstacles to the final decision of the Trade Licensing Office? It is a matter of cooperation, knowledge about the activity of the other offices and also fulfilment of legal information duties!

- **Do individual authorities use the knowledge and abilities of employees of other state administration authorities for education and training of their own employees in the field of intellectual property?**

Yes, they do, but to a minimum extent these days. It is not systematic cooperation in educational field. It is important that the employees of individual offices know about inspection powers and competences of other offices and about working procedures of authorities active in criminal proceedings as well as about criminal acts in the field of intellectual property. Only then will they be able to assess the situation in the field and invite an authority whose work will be more efficient and they will also be able to send a usable notification.

All this should be a part of cooperation in education of employees in the field of repression of intellectual property rights infringement. It is thus not only about knowing the regulations which govern individual intellectual property rights, but also about knowing what the competences of other authorities performing their activities in the same field are.

- **Does the Agreement also apply on other level than the statewide one?**

There are no regular meetings of employees of individual offices, which have signed the Agreement. Cooperation on regional and formerly also district levels where organization and methodical organization of most of the actions is rather accidental, and in most cases it is based on personal acquaintance of individual employees. It is surely important and contributes to more efficient cooperation but only if it is supported by managers of territorial units who can give solid framework and clear rules to the cooperation.

12. PROPOSAL OF MEASURES

As implies from the abovementioned answers, the Agreement on cooperation between the eight state administration bodies in the field of repression of intellectual property rights infringement is only formally functional and there are two possibilities how to deal with the situation: Either cease the cooperation or give it a new impulse and come up with fields in which it would be substantiated.

What should thus be solved by cooperation in the field of repression of intellectual property rights infringement? A lot can be deducted from the Measures aimed at fighting against crime in intellectual property already approved by the Decree of the government of the Czech Republic no.330 of 14th April 1999. These measures which should have been implemented (except the continuous ones) by the end of 1999 and which were of intradepartmental character remained more or less incomplete, although most of them could have brought the required results after eventual update.

12.1. Proposal of the set of necessary measures

(a) **Media influence field**

- popularise activities of individual subjects (including non-government ones) acting in the field of intellectual property rights protection through discussions, exhibitions, talks for the public, etc. Support discussion on the current problems in intellectual property rights protection section, namely from the international law and international trade point of view.

(b) **Education field**

- propose and implement further education of employees of the Police of the Czech Republic, public prosecutors, judges, employees of the Czech Trade Inspection, the Trade Department of the Ministry of Industry and Trade, Trade Licensing Offices, tax offices and customs authorities through common educational projects aimed at selected problems of intellectual property rights protection.

(c) **Analytical field**

- analyse situation in intellectual property rights infringement section within the framework of preparation of the Report on security situation in the Czech Republic (by 30th May every year);
- set concrete criteria for assessment of efficiency of activities of individual authorities and institutions engaged in fight against illegal activities in the field of intellectual property (Trade Licensing Offices, the Czech Trade Inspection, the Police of the

Czech Republic, the General Customs Directorate) and perform regular assessment in the documentation for the Report on security situation (or eventually other materials) pursuant to these criteria.

(d) Organizational and technical field

- prepare a project of (preventive) security actions aimed at the repression of crime in intellectual property field in cooperation with other interested subjects (individual services of the Police of the Czech Republic, the Czech Trade Inspection, the General Customs Directorate, the Department of Trade of the Ministry of Finance, etc.);
- prepare single methodology for detection and examination of facts of the crime and also methodology for sanctioning of offences and other administrative torts in the field of intellectual property in one's sphere of authority and that with regard to the duties of a supervisory body when imposing sanctions. Ensure continuous updating of this methodology to include newly appeared forms of criminality;
- ensure coordination of the activities of the Czech Trade Inspection and Trade Licensing Offices in repression of illegal conduct in intellectual property field;
- annually monitor all cases of crimes against intellectual property rights for the purposes of their regular assessment in terms of the forms of crime and in terms of the effectiveness of procedures of state authorities during their repression. Cooperate with non-government organizations dealing with intellectual property rights protection during the monitoring;
- perform analysis of mutual possibilities and needs for the securing of information flow between subjects active in the section of intellectual property rights protection and create legal, organizational and technical conditions for the establishment of a common information system for all interested subjects and analysis results.

(e) Legislative field

- Propose establishment of such legal institutes which would allow effective and quick punishment of intellectual property rights infringement within the framework of criminal law recodification process;
- present a draft amendment to Act no.634/1992 Coll., on Consumer Protection defining a counterfeit copy and pirated goods and draft amendment to Act no. 64/1986 Coll., on the Czech Trade Inspection which should give the CTI the power to confiscate and destroy such goods.

(f) Intradepartmental cooperation field

- extend the Agreement on cooperation in activities aimed namely at the breach of regulations concerning unfair competition, trademarks, appellation of origin of products, utility models, industrial designs, inventions and copyright to include the Ministry of Culture as another contracting party;

- establish the Intradepartmental commission for the repression of illegal activities against intellectual property rights at the Ministry of Industry and Trade and equip this commission with coordination powers when initiating legislative and other measures.

(g) International cooperation field

- monitor foreign activities aimed at intellectual property rights protection, analyse the acquired findings and use them in performance of individual measures in the Conception.

The analysis of individual measures implies that some of them have not been implemented completely and some have not been implemented at all. These are measures mentioned above under clauses 2 to 8. What do these measures have in common? They all need intradepartmental approach and close coordination and cooperation between state administration bodies active in the field of repression of intellectual property rights infringement and they are analytic, technical or organizational measures.

It is surely worth thinking to perform thorough revision of these measures and propose implementation of such measures, which would deal with their substance.

13. CONCLUSION

Cooperation between state administration bodies in the field of repression of intellectual property rights infringement has reached the point when it outwardly seems that it is not necessary, that all interested subjects have their powers and are able to use them completely without the need for any close cooperation. The authorities have their own criteria pursuant to which they assess their work and the statistic results of the repression of intellectual property rights infringement are continuously improving.

On the other hand, practical and real situation in the infringement of intellectual property rights is not improving and it has its social and economic consequences as well as other consequences from the international law point of view. Would it not be better to ensure cooperation between state administration bodies in the given field from legislative and personnel point of view and require them to implement measures leading to the remedy of the condition instead of almost annual processing of statements and documentation for international discussions concerning the field of intellectual property rights protection in the Czech Republic, and that namely in the UNA/European Commission and in relation to the USA in association with the threat of political and commercial measures as a result of the Czech Republic being put on the so-called "*Watch List of countries infringing intellectual property rights*" pursuant to provisions of Special 301 of the US Trade Act?

We do not necessarily have to restore the so-called "Octalateral Agreement", even though it proved its viability during the dealing with the initial problems with repression of intellectual property rights infringement, but it is necessary to ensure that measures which can only be implemented in cooperation are prepared by experts from the offices whose competence and sphere of authority is repression of intellectual property rights infringement.