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## 9. INTELLECTUAL PROPERTY

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Intellectual property refers to the creations of the mind, such as inventions, literary and artistic works, designs, symbols, names, and images in commerce. Kosovo has undergone an imperative development regarding the music and film industry, fashion industry and Kosovar singers, filmmakers and fashion designers are well known among the worldwide alike industries.

Kosovo not only has a very active youth but also a very active business environment, which led Kosovo to create a robust intellectual property regulation. In order to fulfill its social and economic requirements and to stay updated on European regulations and directives, Kosovo has recently profoundly reformed and amended its IP Legislation. In 2022 Kosovo approved the new Trademarks, Patents, Industrial Design, and Trade Secret laws.

Kosovo provides comprehensive regulation regarding intellectual property and has set the necessary implementation and enforcement of such regulations.

The enforcement and implementation of these regulations are the responsibilities of two distinct bodies: the Copyright and Related Rights Office, functioning as an administrative body under the Ministry of Culture, Youth, and Sports, and the Industrial Property Agency, which serves as an administrative central entity within the Ministry of Trade. These administrative bodies are responsible for the overseeing the implementation of copyrights and other related rights, trademarks, industrial designs, designations of origin, geographic indicators, and other issues arising from all the laws that regulate Intellectual Property.

Apart from the administrative protection, in 2022 Kosovo also established the Commercial Court which is competent to adjudicate, among others, all disputes from copyright and industrial property rights including trademarks, patents, industrial design, and commercial secrets.

While having both, an updated legal framework and the proper implementation and enforcement of such a legal framework, Kosovo presents an outstanding Intellectual Property environment. Individuals and businesses in Kosovo benefit from strong protection of their intellectual property rights.

### 9.1. INTELLECTUAL PROPERTY OBJECTS

Businesses use different Intellectual Property objects, copyrights, trademarks, patents, and industrial designs to acquire innovations and other commercial results from their economic activity.



Another method that enables the acquisition of the results of business innovation is the protection of trade secrets. The rights of producers may also be protected through the registration of geographical indications.

For foreign individuals/entities seeking to register their intellectual property rights in Kosovo, it is imperative to engage official authorized representatives designated by the Industrial Property Agency. By mandating the involvement of such authorized representatives, Kosovo aims to provide a structured and compliant approach to foreign entities seeking to protect their intellectual property within the country.

### 9.1.1. Copyrights

Copyrights are the intellectual property rights that creators have over their works in literary, scientific, and artistic works. Because of the creativity and innovation of creators, copyrights are a factor of great importance in the economic development of a country. Kosovo's copyright regulation is based on international copyright agreements and the latest European Regulations, and provides for the protection of the rights of creators of original works, such as authors, musicians, artists, and software developers.

Copyrights in Kosovo are constitutionally guaranteed, safeguarded by Law No. 08/L-205 on copyright and related rights (referred to as the "Copyright Law"), and sanctioned by the Criminal Code.

The copyright belongs to the author with the fact of creation. Therefore, no administrative procedure is required to be fulfilled in order for the copyright to be protected.

Copyright grants the creator of an original work the exclusive right to use and distribute their work, and to prevent others from doing so without their permission. It runs for the life of the author and for seventy years after his death (or seventy years from the death of the last surviving co-author in case of co-author's work) or for seventy years after the lawful disclosure of the work in case of collective work.

The Law in Kosovo stipulates the same protection of copyright for foreigners as for domestic persons if international agreements or the law provide so, or in case factual reciprocity exists. Foreign authors and performers enjoy the same protection of moral rights recognized by the law. Foreign authors of works of art enjoy the protection of the law regarding the resale of the right, but only when factual reciprocity exists.

When the author's work is created by the employee during his working relationship, while fulfilling his work duties or according to the instructions given by the employer, it is considered that the property rights and other author's rights were assigned exclusively and without limitations to the employer, for a period of ten years, unless otherwise provided by the employment contract or by another signed act with the employer.



With the 2023 law on Copyright and Related Rights, Kosovo offers Sui Generis protection on the rights of the Database Creators. A creator of a database that involves significant qualitative and/or quantitative investments in obtaining, verifying, or presenting its contents is entitled to prohibit the extraction and/or substantial re-utilization, both qualitatively and quantitatively assessed, of the entire database or a significant portion of its contents. The rights of the database creators are protected from the date of completion of the making of the database until the expiry of fifteen years.

Another positive step that Kosovo has taken in order to provide a healthy environment regarding copyright and other related rights is the fact that Kosovo has established the Task Force against Piracy since 2013. The main duties of the Task Force are the implementation of the strategy against piracy and counterfeiting.

In case of any violation of rights, the copyright holder may raise claims in order to find evidence of the violation, prohibit the continuation of the infringement, have the infringing goods removed and destroyed, and recover material or non-material damages. Violation of copyrights is considered a criminal offense under Art. 290 of the Criminal Code. Civil and Criminal proceedings remain however quite rare.

### **9.1.2. Trademarks**

A mark is a distinctive sign which identifies the goods or services of one (or a group of) person(s) or enterprise(s) from those of others. It must be distinctive, available, and not mislead the public about the product it represents.

In Kosovo, the creator's right protection of marks is based on the first-to-file system. Therefore, filing is the only way to acquire the right over a mark. The trademark registration process takes around twelve months. This right is granted for a period of ten years, which starts retroactively from the filing date and is renewable for the same amount of time every ten years.

According to the official database of the Industrial Property Agency, until now there are around 40,000 applications for trademark registration. The number of applications is rising every year with local and international applicants.

The Industrial Property Agency updates its database regularly, so every interested party can see the status of their trademark, if it filed, registered, rejected, renewed, opposite or expired.



To secure trademark protection, specific registration procedures must be followed. Initially, the registration application is made public by the Industrial Property Agency (referred to as “IPA”) in the Official Bulletin. Subsequently, any interested parties have a 90-day window to file opposition against the trademark application. Following both the ex officio examination and the assessment of any opposition, if the application aligns with the legal prerequisites, the IPA will, upon the applicant’s request, issue the certificate confirming the registration of the trademark.

Traditional visible signs are protected under Kosovo trademark regulations, in particular words, including personal names or drawings, letters, numbers, colors, the shape of goods, or their packaging. The New Law No 08/L-075 on Trademarks (hereinafter “Trademark Law”) however sets some limits, in particular, prohibits the registration of a mark that has a similarity with a geographical indication, a traditional wine expression, a traditional specialty, or a plant variety denomination.

The non-traditional signs are not specifically protected under the current Trademark Law in Kosovo. However, the shape of goods or their packaging may be registered as a trademark. Administrative Instruction 08/2023, published on August 7, 2023, provides guidance on the registration of three-dimensional trademarks, motion marks, multimedia marks, and hologram marks, thereby enabling registration of such trademarks.

Kosovo also recognizes Sound and multimedia marks, they can be registered under the Trademark Law and must be submitted in the form of a sound or audio-visual recording. Apart from sound, other non-visual marks, such as smell, are still not protected by Kosovar Law.

Kosovo Customs plays a pivotal and proactive role in safeguarding the rights of trademark owners. Since most of the infringed products are imported from other countries, the role of the Kosovo Customs was obviously important. Kosovo Customs has taken an active role in offering the protection needed to the trademark owners by taking active role in destroying infringed goods and materials.

Along with the administrative protection for the trademark owners, Kosovo’s legislation also provides them with judicial protection. Civil action can be intended by the trademark holder or by an authorized person or eventually a licensee in order to establish and/or stop the infringement and prohibit further infringement. The applicant may also ask for the withdrawal or seizure of infringed goods and materials, the removal of the infringed mark, and the destruction of the goods. Upon request of the trademark owner, the court may order provisional measures, including termination and prevention of the Infringement or measure to preserve evidence.

Since there is an updated legal framework in place, the Industrial Property Agency and the Commercial Court have been adjudicating respectively large number of cases lately, which once again confirm that the trademark protection system in Kosovo is very effective.

### 9.1.3. Patents and Industrial Designs

Patent and industrial designs regulations are governed by the new Law No 08/L-059 on Patents and Law No 08/-055 on Industrial Design, respectively published on 20 and 21 January 2022, which abolished previous Kosovo laws on these matters and align further Kosovo legal framework to European Directives.

#### *Patents*

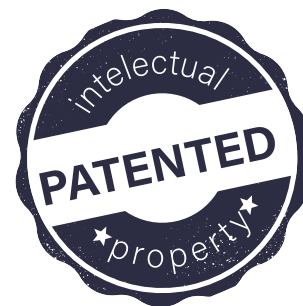
A patent is an exclusive right granted for an invention in all fields of technology that is new, involves an inventive step, and is susceptible to industrial application. Protection of patent rights is granted through registration at the Industrial Property Agency.

The right to a patent belongs to the inventor or his legal successor. An inventor is a person who has created an invention in the course of his/her creative work. In the case of the joint invention, two or more co-inventor (or their successor) may own the right to the patent. However, in case of commissioned work or execution of an employment contract, the right to Patent belongs to the person who commissioned the work or the employer, unless otherwise provided by the contract.

A patent confers the exclusive right to the owner to prevent third parties from commercially exploiting the patented invention. Patent protection is granted for a limited period of 20 years from the application's filing date. Annual fees shall be payable for the third and every subsequent year, calculated from the date of filing.

Overall, Kosovo's legal framework for patents offers a reliable and stable environment for investors looking to protect their intellectual property rights. With a strong legal framework, a professional and efficient Industrial Property Agency, and a supportive environment for innovation, Kosovo is an attractive destination for anyone looking to invest in research and development and protect their patents.

According to the latest IPA data, in Kosovo, there are over 1000 patent registration applications.



## ***Industrial designs***

An industrial design consists of the outer appearance of the whole or of a part of a product resulting from features of shape, form, color, lines, contours, texture, or materials of the product itself or its ornamentalations. The acquisition of industrial designs is granted through registration at the Industrial Property Agency. In order to be protected, the design must be new and have an individual character.

The right to an industrial design belongs to the designer or his legal successor. The designer is the natural person who created the industrial design. In case of joint creation of an industrial design, the co-designer (or their successor) may own the right to the design. However, in the case of commissioned work or execution of an employment contract, the right to an industrial design belongs to the person who commissioned the work or the employer, unless otherwise provided by the contract.

The owner of the industrial rights has the exclusive right to register it and to prevent third parties from using the design without his/her decision. Industrial Design protection is granted for a period of 5 years from the filing date and may be extended one or more additional periods of 5 years, on a total period of 25 years. The request and payment for renewal should be done within 12 months before the expiration of the industrial design right.

The Industrial Design application is subject to other party opposition if the industrial design does affect his previous rights. IPA examines each application and opposition and then issues the certificate of industrial design registration.

### ***9.1.4. Geographical Indications***

A geographical indication is a distinctive sign used to identify products with a specific geographical origin and qualities or reputation related to that origin. Geographical indications are protected under Law no. 05/L-051 on Geographical indications and Designations of Origin, through registration at the Industrial Property Agency.

Any association of producers or processors working with the same product, a single natural or legal person provided he is the only producer in the certain area at the time of the application can apply for registration. The application for registration should include the details of the applicant, the description of the product, the definition of the geographical area, the product specifications, the description of the connection between the product and the geographical origin, and the evidence of payment of the fees.



The protection starts from the date of entry in the Register of designations of origin or geographical. The right of use of the designation of origin or geographical indications last for ten years from the date of entry of the authorized user in the Register of Authorized Users and may be renewed indefinitely for 10 years, as long as a designation of origin or geographical indication is registered.

#### **9.1.5. Trade Secrets**

Besides trademarks, copyrights, and patents, another method that enables the acquisition of the results of business innovation is the protection of access to information that is valuable for the business and that is not widely known. This valuable information, which is undisclosed and intended to remain so, is called a trade secret.

Law No. 08/L-076 on the Protection of Trade Secrets, which entered into force on June 15, 2022, aims to protect trade secrets from illegal acquisition, use, and disclosure. This law defines a trade secret as information that meets the following requirements:

- it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally or readily accessible to persons within the circles that normally deal with the kind of information in question;
- it has commercial value because it is secret; and
- it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Whereas the acquisition of trade secrets, according to this law, is always considered illegal when carried out through unauthorized access, which means the acquisition or copying of various documents, objects, or materials, which contain the trade secret and which are legally under the control of the holder of trade secret, as well as any other behavior which according to the circumstances of the case is considered contrary to honest commercial practices.

Likewise, the use of a trade secret is also considered unlawful when the person has violated the confidentiality agreement or any other obligation not to disclose the trade secret.

Law No. 08/L-076 enables the protection of trade secrets in judicial proceedings. In most of its provisions, the Law defines the procedures, measures, orders, and court decisions, through which it is possible to ascertain or stop the violation of the trade secret, to fine the violator of the trade secret, as well as the adequate compensation for the party damaged by trade secret violation.

It is important that companies draw up agreements with employees, as well as issue relevant decisions and regulations on this matter, to benefit as soon as possible from the implementation of this law.

## 9.2. INTELLECTUAL PROPERTY AGREEMENTS

Provisions concerning intellectual property rights may be found in various types of contracts, including nondisclosure and confidentiality agreements, distribution and manufacturing agreements, IT-related contracts, and joint venture agreements.

Below, we will discuss the three most common types of agreements where intellectual property rights are either the primary focus (transfer of ownership or assignment and license contracts) or a fundamental component (franchise agreements).

### 9.2.1. *Intellectual Property Assignment*

An intellectual property assignment is the transfer of the ownership of intellectual property rights. Patent, industrial design, and trademark regulations include a few dispositions related to assignment. Pursuant to these dispositions, patents, industrial, and trademarks may be transferred.

Trademarks can be transferred as part of the transfer of enterprise ownership or separately. Transfer of trademarks can be done for some or all of the goods and services for which it has been registered.

At the request of one of the parties, the transfer of patent, industrial design, or trademark, may be registered on the corresponding register and published in the IPA bulletin. In regards to patents and industrial design, the transfer shall have an effect against third parties only after its entry in the relevant register. This however does not apply to the Patent if the third parties already had knowledge of the transfer.

Copyright law permits authors and copyright owners to assign their exclusive economic rights and rights to remuneration through copyright contracts. This means that the assignee becomes the new copyright owner. The author cannot however transfer his/her moral rights to another person.



### **9.2.2. License Contract**

An intellectual property license is a contract between an IP rights owner (“licensor”) and a third party (“licensee”) that allows the latter to use the IP rights in exchange for monetary compensation. The scope of the activity and the IP rights licensed should be clearly defined in the agreement. A patent, an industrial design, or a trademark may be licensed for the whole or part of the territory of the Republic of Kosovo. A trademark may be licensed for some or all of the goods or services for which it is registered.

The license may be exclusive or non-exclusive. In the case of an exclusive license, no person or company, other than the licensee, can exploit the licensed IP rights. In the case of a nonexclusive license, the licensor remains free to exploit the licensed IP right or to allow any number of Licensees to do so.

At the request of one of the parties, the license contract may be registered on the corresponding register and published in the IPA bulletin. The license agreement shall have an effect against third parties only after its entry in the relevant register, unless, for patents or trademarks, the third parties already had knowledge of the license.

Copyrights and trade secrets may be licensed through license agreements. However, there is no specific disposition regarding such agreement in Law No. 08/L-205 on copyright and related rights and No. 08/L-076 on the Protection of Trade Secrets.

### **9.2.3. Franchise Agreement**

The franchise agreement is a contract under which the franchisor gives the franchisee the right to commercialize the franchisor’s products or services under its name and system, in exchange for financial compensation.

There are no specific legal requirements for franchising in Kosovo. In absence of local regulations, the European Commission’s Guideline on vertical restraints will be generally used in order to regulate such agreements. There are however a few legal dispositions that apply to a franchise agreement in Law No 08/L-056 on Protection of Competition and in Law no. 08/L-028 on Private International Law.

The Law on Protection of Competition allows an exception to the prohibition of agreements aimed at preventing, restricting, or distorting competition for “vertical agreement”, between enterprises not operating at the same level of production or distribution. Such exception should apply to Franchise agreements under conditions set in Paragraph 2 of Article 5 of the law, in particular if it benefits the market and the consumer and if the impact on competition is relatively minor. Determining the categories of agreements and circumstances which could benefit this exemption should however be further defined in a sub-legal act.

It is worth also mentioning Paragraph 1.5 of Article 76 of the Law no. 08/L-028 on Private International Law, which states, in absence of a choice of the applicable law by the parties, that a franchise contract shall be governed by the law of the state where the franchisee has his/her habitual residence.