

Intellectual Property Law in the Baltic States

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Copyright Legislation

- All three Baltic States (Lithuania, Latvia, Estonia) have fully internationally harmonized copyright regulations
 - All EU IPR directives, except for Enforcement Directive
 - WTO TRIPS
 - Berne, Geneva, Rome and WIPO Treaties
- Lithuania and Estonia renewed membership in the Berne Convention 1994, Latvia in 1995
- First modern Copyright Act introduced in Estonia in 1992 (amended many times), Latvia in 1993 (completely revised in 2000)
- Lithuania introduced modern copyright legislation in 1999 (overhaul of the Soviet Civil Code Copyright Rules in 1994)
- Governmental resolution in Lithuania regulated software as a special subject matter since 1992, replaced by the special law in 1996

Copyright legislation II

- Lithuania implemented the EUCD as of March 2003, Latvia and Estonia in 2004
- Administrative/criminal liability for copyright infringement (commercial purpose / scale)
 - Lithuania introduced administrative liability in 1996, criminal in 2000
 - Estonia introduced administrative and criminal liability in 1995, revised in 1999 and 2002
 - Latvia introduced criminal liability in 1999, revised in 2001
- Overall, legal systems underwent a lot of changes in the last decade – 1992 Estonian Copyright Act amended 16 times (!), Lithuanian 1999 Law on Copyright and Related Rights completely revised in 2003, second overhaul is in the pipeline
- Legislation usually hasty and inadequately debated (understood)

Features of Baltic Copyright Regulation

- Soviet legacy:
 - perception of copyright as public, while legally very proprietary
 - strong doctrine of moral rights
 - private use rights and significant number of exceptions
 - limited protection of the authors against contractual abuse
- Priority to sanctions rather than real enforcement (sanctions are generally stricter than the EU average) – result of strong EU and US lobby – Enforcement directive almost needs no implementation
- Copyright is not recognized as an important business instrument (mainly because of difficult and costly enforceability)
- Copyright has lost trust of the authors (due to abuse of authors by the publishers and collecting societies)

The Exceptions (Lithuania)

- Three step test applicable for all exceptions plus individual conditions for each of the exceptions
- Private copy (one copy from legally owned original for one time only)
- Citation
- Scientific and education purposes (library exceptions; copying of insubstantial parts; reproduction for deaf and visually impaired; electronic copies in libraries)
- Reprographic copying rights (insubstantial parts)
- Use for media reports
- Parody right
- Free use for religious purposes
- Temporary copies
- Special exceptions for paintings, software, databases

The Mistakes

- Foreign legal concepts and institutes implemented verbatim
 - It took 2-3 years for the judiciary to sort out the principal notions
- Enactment preceded evaluation/understanding
- The pace of legislative changes was too fast not allowing the society to adjust
- Exceptions are numerous, but very restrictive
- Too little protection for the authors
- Too heavy reliance on collecting societies

Main actors

- Ministries of Culture
- Collective Administration Societies
- BSA
- Other copyright holder organizations (Music Industry Association, Writers Union, etc.)
- Little or no copyright user's representation (incl. libraries)

Collective Administration (Collecting Societies)

- Although established earlier, real activities started in 1998-1999
- Perceived as “leeches” of business and individual money, what may be caused by outrageous internal spending, questionable levy practices and distribution of proceeds
- Substantial number of litigation involving simple payments of copyright levies (including international companies)
- Library loan compensations (i.e. public money) go to collecting societies

Library related issues

- Libraries are entitled to provide loans, subject to a fee
 - Library loan fees cut into library budgets
 - Library loan fees not applicable for libraries in science and education institutions
- No legal mechanism for libraries to deal with TPM protected content
- Electronic copies are allowed for libraries (limited to library intranet), subject to prohibition of the rightholders
- Library loan statistics formally is the basis for distribution of royalties by collecting societies

Other important issues

- Enforcement (lack thereof) of national copyright
 - national right holders are poorly educated on copyright
 - abuse of the authors
- Misuse of copyright agreements (licenses) for tax evasion
- Compensation for Private Use: Lithuania has introduced fair compensation only as a result of the EUCD implementation as of 1 Jan 2004, Estonia and Latvia in 1997 and 1999 respectively
- Electronic licenses

Practical Issues: Piracy

- Piracy (Lithuanian research: <50% in software, and ~65% in audiovisual; IFPI and BSA numbers substantially (15-20%) higher)
- Pirated copies available, especially on the internet
- Piracy encouraged by clumsiness of the copyright industry (new releases are late, pricing is inappropriate for the economic state)

Practical Issues: Other

- Little public recognition of copyright importance
- Businesses perceive copyright as weak IPR (preference is given to trademarks)
- Copyright is a common instrument for tax evasion
- Enforcement hardly available to individuals, mostly available to businesses

Enforcement Issues

- BSA active since 1998
- BSA was caused to retreat offensive practices, as a result of political pressure
- All Baltic countries have significant civil liability (statutory damages)
- Most of enforcement against businesses
- Enforcement is somewhat contained by high litigation cost and low possibility to recover damages

Future Outlook

- Piracy is decreasing by itself (main reasons – economic growth and flexible local industry pricing)
- Copyright regulation (including case law) are maturing
- In the last couple of years software industry started to accelerate substantially
- Pickup of national copyright industries may mean increase in copyright awareness/ importance
- Slowed implementation of new EU regulations (past EU accession and political reasons)