ANALYSIS OF THE LITHUANIAN INTELLECTUAL PROPERTY POLICY TRENDS, LAW AND ENFORCEMENT ISSUES

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Background information

During the period of independence the Republic of Lithuania ratified all relevant international treaties in the field of copyright and related rights and harmonized its legal rules with all the European Union directives adopted to date in the field of intellectual property. Between 1990 and 2007 Lithuania underwent a period of major reforms and legislative change in the field of intellectual property. Since restoration of independence in 1990, Lithuania has seen at least 5 major reforms of intellectual property law (including copyright, neighbouring rights, patent and trademark regulations). Most of these reforms were caused by the implementation of the EU Acquis Communautaire and the WIPO intellectual property legal framework, including:

- All EU directives related to intellectual property, including Information Society Directive 2001/29/EC, Enforcement Directive 2004/48/EC and Resale Directive;
- WTO TRIPS treaty;
- Berne Convention, Geneva Convention, Rome Convention, as well as 1996 WIPO Copyright Treaty, and 1996 WIPO Performances and Phonograms Treaty.

Limited protection to intellectual property in Lithuania was restored immediately after the restoration in independence on 11 March 1990 through the rules of the Soviet Civil Code. First national legislation in the sphere of intellectual property was introduced in 1992 resolutions of the Government of the Republic of Lithuania. Next major step was restoration of membership in the Berne Convention in 1994, which caused major revision of the Civil Code introduced fairly modern Lithuanian Copyright legislation. In 1996 special regulations (separate laws) were introduced for the protection of computer software, databases and industrial property rights. Up to date European standards of protection of copyright and related rights were introduced into national legislation through enactment of the completely new Law on Copyright and Related Rights of the Republic of Lithuania in 1999. This law underwent two major revisions – one in 2003, and most recent in 2006. Industrial property

legislation also underwent significant revisions, with the latest being enacted in 2006 and related to the implementation of the EU directives.

In additional to positive regulation, since 1996 Lithuanian law provides legal liability for the violations of intellectual property rights, which experienced similar number of important reforms. Civil remedies were introduced in 1996, along with the administrative liability. They were significantly revised in 2003, and to a certain extent (introducing more alternative remedies) in 2006. Criminal remedies were introduced in 2000, and underwent revisions in 2003.

Principal legal regulations

Although the main legal acts of the sector were approximated with the EU Acquis Communautaire already in 1999, however the enforcement level, as well as public awareness on the importance of the protection of copyright and related rights was far from sufficient. The Lithuanian society had accustom itself that the author or related rights subjects have intellectual property rights, which are essentially property rights, and shall receive remuneration for the use of their works and other objects. The legislation did not change predominant social attitudes that intellectual property is non-property, which shall not be remunerated. Such inertia of the attitude is partly determined by the historical heritage, and time is needed to change the prevailing public opinion. Moreover the huge difference between the prices of legal and illegal production significantly influenced a negligent public posture.

Lithuanian experience in implementing the EU legal framework in the field of intellectual property was (and to some extent still is) laden with difficulties in achieving coherent legal regime. Although Lithuania was one of the first new EU Member States to implement the EU Acquis requirements for intellectual property, the implementation thereof may be described as formal, i.e. resulting in translation of the regulations, rather than implementation thereof, lacking account for the peculiarities of the national legal system and other localities, and lacking any attention to the practical capabilities of the affected parties. All this caused certain moral devaluation of the intellectual property in the Lithuanian society, which is difficult to reverse, although Lithuania has received “perfect” marks for implementing the EU Acquis. Several general examples of difficulties may be mentioned:

1) generalization of the rules missing the local specifics;

2) introducing of the new legal concepts and institutes;
3) lack of account for the capabilities to take advantage of the new rules by the local parties.

It must be recognized that external regulations sometimes also bring in conflicting provisions into established national regimes, as well as untested legal instruments. Examples of such controversies may be regulations on technical protection measures, Internet service provider's liability, levy systems, etc. All these institutes are suitable for specific societies or even situations, and depend on the maturity of the industries, prevailing cultural norms and democratic processes. Moreover the hasty pace of change of the EU regulations in the field and their national implementations also contributes to the failures in the daily implementations thereof, especially when it comes to learning the new rules and taking advantage thereof. It took almoust a decade (from 1996 to 2004) of the academic work and judicial practice (including decision of the Constitutional Court of the Republic of Lithuania), as well as numerous amendments of the laws, to tune the intellectual property legislation pertaining just to legal liability for violations of intellectual property rights into accord with the needs of the intellectual property right holders and the general society.

On 5 March 2003, having regard to the international obligations of Lithuania, related to the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights and WIPO Treaties, the Seimas of the Republic of Lithuania adopted a new edition of the Law on Copyright and Related Rights of the Republic of Lithuania, which implemented the EU Information Society Directive 2001/29/EC, as well as 1996 WIPO Internet Treaties. The new Law among other things introduced strict protection for technical protection measures and no effective possibility to lawfully circumvent any applied technical protection measures. The parties – copyright holder and user – are only obligated to negotiate the access to protected content on a good will basis. The Law banned any devices for circumvention of the technical measures, as well as such circumvention activities and or any relevant services, including manufacturing, import, distribution, sales, lease, advertising for sale or lease, as well as storing for commercial purposes. Similarly the Law outlawed the infringements of rights management information in the copyrighted works. The regulation of copyright and related rights enforcement measures has improved in the 2003 Law, the list of the remedies how the rights could be protected has been extended and the requirements to prohibit any actions posing the threat to the rights' infringement or possible damage have been provided.

The 2003 Law also contained novelties pertaining to the enforcement of the copyright and related rights. The Law introduced the requirement for the offenders of intellectual property rights who reproduce and disseminate unlawful copies of the works or other objects, that violate the rights of the subjects of the copyright, related rights or sui generis rights, to immediately disclose all the information about the origin of such copies, in particular about the names and addresses of the producers, suppliers (distributors), clients, the channels of distribution of unlawful copies of the works, as well as the amount of the produced, supplied, received or ordered unlawful copies. In protection of their rights, the subjects of the copyright and related rights are entitled to apply to court and demand to prohibit the service provider (carrier) from rendering the services via computer networks (the internet) to the third persons who use such services thereby infringing the copyright or related rights. The prohibition to render such services embraces the blocking of the network access to the information or works pertaining to the infringement of the copyright and related rights, or, if the service provider (carrier) is technically possible, the elimination of the information infringing the copyright or related rights, or the prohibition to have access to the information infringing the copyright or related rights. Such enforcement of the court decision is a primary remedy available for the protection of the infringed rights and does not release the service provider (carrier) from the liability for the actions or omission related to the storage or supply of such information effected prior to enforcement of such decision. The bulk of these rules essentially carry on in the current legislation.

The most important new remedy provided in the 2003 Law established that the holder of copyright or related rights was entitled to claim compensation from the offender as an alternative to the claim for property damages (including lost profits) incurred due to infringement. The amount of the compensation within the range from 10 to 1,000 Minimal Living Standards (currently 125 LTL or ~37 EUR) will be established by the court taking into account the offender's fault, financial status, the reasons of unlawful actions and other circumstances relevant to the case, as well as the criteria of equity, justice and reasonability. Moral damages may be claimed in addition to compensation or property damages. These principles remain unchanged to date.

Above rules come as the decrease in liability, since 1999 Law provided for the compensation of up to 300 percent of retail value of each unlawful copy. On the other hand provisions of the 2003 Law represented the trend of the copyright case law, where courts were often ruling for

decreased compensations. The current brackets of monetary remedy also are more realistic, since it was hardly possible to recover amount of the compensation from the offenders under the 1999 Law.

Seeking to fully implement the requirements of the TRIPS, the 2003 Law included revised rules on interim measures. Most important amendment is that interim measures may be applied on *in obsentia* of infringing party basis, if the infringement threatens major unrecoverable loss or destroying of evidence. In all cases the interim measures may only be applied by the competent court at request of the interested party (right holder).

On 12 October 2006 the Seimas of the Republic of Lithuania adopted a batch of significant amendments of the Law on Copyright and Related Rights of the Republic of Lithuania, which implemented the EU Enforcement Directive 2004/48/EC, as well as other less important regulations. Implementation of the EU Enforcement Directive 2004/48/EC has also caused an overhaul of industrial property legislation enacted on 28 July 2006 and affecting Trademark Law, Patent Law Design Law, and Semiconductor Topography Law. Enforcement Reform has introduced a set of alternative remedies of both substantial and procedural nature. Procedural remedies cover evidence and securing thereof, interim and preventional measures, procedural expenses. Substantial law remedies include rights to obtain information, calculation and basis for loss, alternative systems for calculating compensation, prohibiting and restoring court orders, publicizing of the violation. Principal novelties include:

- Evidence sufficiency rules for a representative part of all evidence;
- Extensive *ex parte* interim measures, including *ex parte* measures for securing of evidence;
- Publicizing of violation and court decisions;
- Rights to obtain information from the violator and other related parties;
- License fee or royalty analogy as the basis for loss calculation.

Except for publication and evidence sufficiency rules, the remaining novelties are mostly applicable only with respect to industrial property, since 2003 Copyright and Related Rights Law already contained many relevant provisions, which required no or minor adjustment. It is also noteworthy that Lithuanian case law developed during the 1996-2004 period provided the notions of „commercial scale“ and „commercial purpose“, which essentially corresponds to

the provisions of the Enforcement Directive. Novell is only clear exception for the activity of the natural persons.

Publication of the violation of intellectual property rights and pertinent court decision shall be implemented at the expense of the violator and based on request of the affected party (intellectual property rights. It is expected that such negative publicity will be both a deterrent, as well as and effective remedy against the violations of intellectual property rights.

Alternative compensation basis for calculating damages of intellectual property violations provide enlarged variety for copyright and related rights cases, and introduce choice for industrial property cases.

Administrative developments

Although legislation was followed by the administrative reforms, including appointing special officers (or *de* facto specialization, i.e. specialization of general practice officers), the administrative capacity has always lagged behind the legal reform, thus further measures for strengthening the administrative capacities of law enforcement bodies should be implemented, including strengthening administrative capacity of enforcement bodies of Intellectual property rights and increase efforts to fight against piracy and counterfeiting, improving co-operation among enforcement bodies notably the Police, Customs and the Judiciary, intensify training for enforcement bodies including judges and prosecutors. Moreover, the sustained efforts of improving the cooperation between law enforcement institutions shall be coherent with taking more stringent measures to fight piracy. Although raising public awareness, improving administrative capacity (including training of the law enforcement officials) and strengthening cooperation between state bodies operating in this field was envisaged in the Strategy for the Protection of Copyright and Related Rights for the Years 2000-2003 approved by the Government of Republic of Lithuania in 1999 and the measures designed for public awareness and training of law enforcement institutions were implemented successfully, it was clearly not sufficient. Nevertheless, as a result of the implementation of the Strategy for the Protection of Copyright and Related Rights, the administrative and social capacity of the intellectual property protection has improved.

The owners of the rights, whose rights are collectively administered by copyright and related rights collective management associations, have their positions represented and defended through collective management associations. In Lithuania the collective administration system included the Agency of Lithuanian Copyright Protection Association (LATGA-A) and the Lithuanian Related Rights Association (AGATA). It must be note though, that collective administration societies during more that a decade have failed to establish the public case for the importance of the implementation of collective copyright and collective rights either to the protection of intellectual property or to the improvement of business conditions. After the Lithuania's accession to the World Trade Organization, the importance of intellectual property rights in trade has been increasing. The commercialization of intellectual property requires a system for the implementation of these rights that would ensure investments into creative and artistic work, but, unfortunately, improper balance of interests of the copyright and related rights owners and their users hinder the implementation of the intellectual property rights. Legal entities, which are commercially using the results of intellectual activity (publishing houses, editorial offices of the periodicals, concert organizers and others), making use of their stronger negotiating positions, often prepare and sign contracts whose provisions are not favourable in respect of the owners of the rights, or sometimes even avoid concluding contracts.

Not enough attention is paid to the influence of international governmental and non-governmental organizations in co-ordinating the protection of intellectual property. Lithuania's membership in the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO) obliges to improve the process of public awareness about the issues related to intellectual property rights. In 2002, the International Intellectual Property Alliance (IIPA) made a Statement, which was distributed worldwide, where it was proposed that in the year 2003 Lithuania should be included into the list of countries where attention paid to the protection of intellectual property is insufficient. Small and medium-sized business associations in Lithuania do not pay enough attention to the informative material provided by these organisations that would help to improve business conditions, and shape favourable opinion of the society about the importance of intellectual property and intolerance towards the producers and distributors of illegal production.

The influence of the new technologies in determining the appearance of new kinds of works and new ways of their usage has posed new requirements for the administrative capacities of

the State and law enforcement institutions. On one hand, rapid development of technologies creates more favourable conditions for the creation and the dissemination of its results, but on the other hand, there appear wider opportunities for the illegal usage of the creative works. The fact that nowadays the works are publicly available on the global network calls for improvement of the intellectual property rights enforcement system. Technological development requires to raise the qualification of the people employed in enforcement bodies and to prepare them to work in the information society, what is currently lacking especially in the geographical periphery.

The major part of the earlier implemented measures was aimed at educating the society focused on the prevention of usage of illegal intellectual production and the effective protection of intellectual property rights in Lithuania. The people were explained about the losses that the national economy suffers because of the usage of illegal production, they were also provided with the information about the sanctions for the usage of the works infringing the intellectual property rights; the law enforcement officials and the employees working in the institutions representing the rights owners of the copyrights and related rights had an opportunity to increase their knowledge. Other measures were aimed at the owners of the rights, namely, at their education about the system of intellectual rights and the protection of these rights in Lithuania. Although all the measures were successfully implemented, there were too few of them to reach all the groups of the society.

No comprehensive surveys and researches on the piracy and use of the objects of intellectual property rights (audiovisual works, phonograms, computer programmes and other items) is carried in the Lithuania. During the last 5 years only two official and statically incomplete surveys were carried.

Liability for Intellectual Property Rights Infringement

Lithuanian Copyright and Related Rights Law does not directly provide any administrative or criminal sanctions, instead it refers to the Criminal Code of the Republic of Lithuania, as well as Code of Administrative Violations, which currently provide criminal and administrative liability for up to 2 years of imprisonment term. Legal liability for the intellectual property violations having commercial purpose was first introduced in Lithuania in 1996 in the form of administrative liability. In 2000 the Constitutional Court of Lithuania has upheld these

provisions and unambiguously stated that legal protection of intellectual property must be ensured by norms of penal and administrative law alike the tangible property.

Article 214-10 of the Code of Administrative Violations sets forth administrative (misdemeanor) liability for violation of copyright and neighbouring rights. The Article criminalises unlawful performance, reproduction, making available to the public and any other use of the work of litarature, science or art (including computer program and data bases) having commercial purpose, as well as distribution, storage, import, export and carriage of unlawful copies thereof having commercial purpose. The applicable sanction is monetary fine from 1000 to 2000 litas, along with the confiscation of all unlawful copies and reproduction equipment.

In case of repeated administrative violation the sanction increases from 2000 to 3000 litas. It is noteworthy that these fines were increased in 2002. Reproduction equipment is considered to include all technical equipment, supplies and other instruments, which are exclusively or most frequently applied for producing unlawful copies, or have the direct purpose of reproducing and/or distributing unlawful copies. Based on the above the only requirement to apply administrative liability is the presence of the commercial purpose. The administrative liability protocol is written down by the police officers, after performing investigation and or expert investigation (if necessary), while the sanction is applied by the court of first instance (local courts). Administrative liability may be applied only with respect to natural persons.

Criminal liability for violations of copyright and related rights was first established in 2000 and currently regulated by the Articles 191-194 of the 2003 Criminal Code of the Republic of Lithuania (which are very close in content to the Articles 142-1 – 142-3 of the old Criminal Code, with the omission of related rights objects (see explanation in the case law below)). These provisions of the 2003 Criminal Code criminalize all unlawful dealing with intllectual property, including circumvention of technical protection measures, dealing with circumvention instruments and interfering with rights management information. Article 192, which is the most important Article criminalises unlawful dealing (reproduction, distribution, carriage and storing of unlawful copies of literature, science, art or any other work. Thi Article provides two basic conditions for criminal liability in case of intellectual property infringements:

- Commercial scale; and

- Commercial purpose.

The first condition for application of criminal liability prescribed for reproduction, delivery and holding of infringing copies of intellectual property products is established in the form of commercial scale, i.e., if the retail value of illegal copies exceeds 12.500 LTL (~3600 EUR). This “commercial scale” criterion is applied as the criteria of detaching administrative and criminal liability, and has not caused any controversy (i.e. if the said commercial scale threshold is not reached administrative liability shall apply.

Much more controversy was caused by the interpretation of the second condition of "commercial purposes", which was never explained in the legislation itself. This controversy extends to both Lithuanian Criminal Law and Administrative law, as "commercial purposes" are prerequisite for both criminal and administrative violations in the field of intellectual property rights. Generally the Lithuanian courts and prosecution offices tended to require proof of direct financial gain from intellectual property violation in order to establish commercial purposes. Only in the last two years the judiciary has developed the notion of the “indirect commercial purposes”, which infer reproduction, delivery and holding of infringing copies of intellectual property for the general purposes of the commercial entity and without the direct financial gain therefrom. On the other hand, the judiciary denied criminalization for intellectual property violations causing damage without any financial profit, as well as for intellectual property violations by non-profit entities. In the latter cases the Lithuanian law enforcement authorities have suggested that civil remedies shall be used to protect the interests if the holders of intellectual property rights. Criminal Code Articles 193-194 provide the same requirement of “commercial purposes”, which shall be interpreted no differently.

It shall also be mentioned, that criminal liability against infringements of industrial property rights has never been subject to any “commercial purposes” or “commercial scale” requirements, and were always treated as crimes, as opposed to dual crime/administrative violation treatment in case of the violations of copyright and related rights in Lithuania.

The actual sanctions imposed for the violation s of the Articles 192-194 of the Criminal Cide are – public works or fine, or imprisonment for up to 2 years. Legal persons may also be drawn to liability under these Articles. The Criminal Code allows mutual amicable settlement between the accused and the right holder of intellectual property rights, since intelectual

property crimes (and general property crimes) are not considered grave crimes (Article 38 of the Criminal Code).
Differently from before 2003, the intellectual property crimes are not considered private indictment crimes, i.e. criminal case may be initiated and charges brought regardless of the actual position (complaint) of the affected rightholder.

Current (as well as previous) administrative and criminal laws do not provide any liability for specific online violations of intellectual property rights, and do not mention specific issues of the internet (e.g. linking to unlawful content, dealing with P2P networks, etc.). This may be considered as a certain shortcomming of the law, eliminating liability for online infringements of the intellectual property rights.

One additional law, which deals with the liability principles for online content (including unlawful intellectual property content) is the 25 May 2006 Law on Information Society Services, which implements the EU E-Commerce Directive 2000/31/EC. Unfortunately apart from replicating general principles of the EU E-Commerce Directive 2000/31/EC this law is extremely vague. It charged the Information Society Development Commitee at the Government of the Republic of Lithuania to enact and implement the „notice and take down" regulations, regulations for judging the unlawful online content, as well as regulations for identifying individuals responsible for dealing such unlawful content. Unfortunately, all these regulations are still in the draft stage.

The above mentioned controversies at least partially may be explained by the fact that "commercial purposes" in an alien concept in the Lithuanian criminal and administrative law, introduced from international regulations discussed above. Lithuanian criminal law has long standing traditions of the concepts such as "significant harm", "selfish activity", etc. which could have been preferred and proper form for the transfer of "commercial purposes" into the Lithuanian criminal and administrative law. Unfortunately, the implementation followed the exact letter of the international regulations, rather than substantially indifferent but formally dissimilar concepts of the Lithuanian criminal law.

Civil remedies for intellectual property infringements have also seen similar controversies. In particular, although the intellectual property rights provide for the institute of statutory

damages, which is an alternative available to the rightholders instead of the civil damage claims, the courts have held that the rightholders still have to establish all constituents for the civil damage claim (i.e. an act, fault, harm and causality), and statutory damages provisions shall only release the rightholders from establishing the particular amount of damages. This situation also resulted from straight-forward implementation of the international framework, without regard to the long-standing rules of civil liability in Lithuania.

Procedural issues have also been the source of controversy in intellectual property rights infringement cases in Lithuania. Only after the judiciary has established that involvement of the collective administration bodies in the expertise of infringing copies of intellectual property products is the source of unfair trial (since these bodies are parties, which upon establishment of the violation are entitled to civil damages), the legislator was caused to repeal their right to be involved into investigation of administrative and criminal violations of intellectual property rights.

It is important to note that institutional jurisdiction of intellectual property law cases has also been switched several times between local and district (county) courts. Current setup presumes that the courts of first instance for intellectual property law (civil, criminal and administrative) cases in Lithuania are local courts. The District Courts act as the first instance for civil cases where the amount of the claim exceeds 100 000 LTL (~28 000 EUR) or in case infringement of moral rights is claimed. Vilnius District court has exclusive jurisdiction over registrable industrial property cases. Prior to 2003 district courts were the courts of first instance for all intellectual property cases.

Review of practice issues

Evidence related issues (admissibility, collecting and securing of evidence);

Based on the principles and rules of the Lithuanian criminal procedure the categories and principal features of evidence (including admissibility are pertinence) are defined by the Criminal Procedure Code. According to Article 20 of the Criminal Procedure Code any data verified in accordance to the legal requirements may be considered as evidence. Said article also established the following legal rules for evaluation of evidence:

- Court has a full discretion to qualify particular data as evidence;

- Only data, which confirms or denies facts important for the case may be regarded as evidence;
- Evidence may be based only on data collected in accordance with legal requirements and procedures;
- Court shall evaluate evidence in accordance with inner belief, based on comprehensive and unprejudiced analyses of all facts and materials of the case, according to the legal requirements.

In Lithuanian administrative process (misdemeanor process) the evidence is defined according to the Code of Administrative Violations. Article 256 of this Code sets forth that factual data, based on which the authorized person evaluates the administrative violation and other circumstances important for the case, shall be considered evidence. Said article provides the following legal rules for evidence:

- Evidence shall only be collected according to legal requirements;
- Evidence shall only be collected by authorized persons;
- Evidence shall only be evaluated through comprehensive, full and unprejudiced analysis by the authorized person and in accordance to legal requirements.

According to both the Lithuanian Criminal Procedure Code and Code of Administrative Violations the evidence shall meet the criteria of admissibility, collection and security.

General requirement of admissibility is fulfilled if data is collected and evaluated strictly in accordance to legal requirements, and is exhaustive. Existing case law clearly upholds that violation of legal procedure in obtaining the evidence is an essential ground to dismiss such evidence as inadmissible (Decisions of Supreme Court of Lithuania in Criminal cases No. 2K-363/2004 and No. 2K-630/2004).

Requirement for proper collection is fulfilled if evidence in the criminal or administrative procedure is duly fixed in the respective procedural documentation, i.e. protocols (minutes) of the procedural action, and preferably – audio-visual media (e.g. photographed, filmed, printed out, etc.) (Article 179 of the Criminal Procedure Code and Article 256 of the Code of Administrative Violations). Evidence may also be provided by the interested parties (Articles 21, 22, 47, 81, 86 and 89 of the Criminal Procedure Code and Articles 256 and 259^{1} of the Code of Administrative Violations).

Requirement for security of the evidence is fulfilled in criminal process if all evidence is duly fixed by protocoling it, as well as in any other means (if available) (Article 179 of the

Criminal Procedure Code). In administrative procedure evidence also has to be fixed by special protocol (Article 256 of the Code of Administrative Violations). Case law clearly suggests that absence of protocol (evidence fixing documentation) is a basis to dismiss any evidence produces by the enforcement authority (Decision of the Supreme Court of Lithuania in criminal case No. 2K-512/2005). Lithuanian Criminal Code, Criminal Procedure Code and Code of Administrative Violations provide a right for the parties participating in the process, as well as any interested persons to render evidences to the court or enforcement authority, which conducts the investigation.

As it may be observed, the rules of evidence are fairly general and do not contain any specific features for intellectual property rights enforcement. Case law and practice in enforcing intellectual property rights suggests the following key issues of evidence in criminal/administrative investigations:

- Proper fixation of evidence;
- Collecting of evidence by the law enforcement authorities (officers);
- Interpretation of collected evidence (forensic expertise of the presumed „unlawful copies“ of intellectual property);
- Staffing and capability issues.

Proper fixation of evidence is important practical issue, since due to strict requirements of the criminal/administrative law failure to properly fix evidence would mean inadmissibility of such evidence in court. Common mistakes in fixing the evidence are – failure to list all items of the presumed „unlawful copies“ of intellectual property; failure to properly identify (misnaming) of the presumed „unlawful copies“ of intellectual property; brief and inadequate description of evidence in the protocols of the procedural actions (e.g. general and vague description); failure to tape and seal boxes with evidence; failure to take photographs of the situation and evidence (including lack of equipment to do so). Fairly commonplace is improper filing of the administrative violation protocol, which shall clearly list the indictment, as well as all supporting evidence. Based on the case law of the Higher Administrative Court (case No. N12–1216/04 and consultation on the administrative violation protocol), failure to properly formulate indictment leads to dismissal of charges, while evidence not mentioned in the administrative violation protocol is not allowed in court.

Collecting of evidence by the law enforcement authorities (officers) is an issue due to high legal standard required for most law enforcement action (including prior court sanctions, etc.). From a practical point of view the requirements for evidence produces by the parties or interested persons are lesser than the requirements for the enforcement authorities, i.e. any interested person is free to record own phone conversation with another person, and to produce such record as evidence, while the enforcement authority (officer) in most cases needs prior court authorization to record such phone conversation, where the officer disguises him/herself as a member of the general public).

Interpretation of collected evidence (forensic expertise of the presumed „unlawful copies" of intellectual property) is present in most intellectual property cases, due to the specificity of the intellectual property items and media. Forensics are governed by the Law on Forensics of the Republic of Lithuania (No. IX-1161/2002). One of the key principles for any forensic findings and data is derived from the evidence rules and includes fixing of results of the findings of forensics in the special protocol. Forensics actions may only be perform by authorized independent expert or specialist (Articles 84 and 89 of the Criminal Procedure Code and the Article 256 of the Code of Administrative Violations). Expert may only be a person who has a special knowledge and is a member of Lithuania expert society.

Specialist is a person who has a special knowledge and is appointed by court or authorized officer to perform analysis of evidence and produce answers requiring specific knowledge (thus, the specialist essentially may be any person, who has a specific knowledge). Specialist is more common in the civil procedure and rarely used in the criminal/administrative due to little regulation and lack of practice and difficulty in ensuring impartiality. In any case, the expert of the specialist needs to be approved by the court and/or the enforcement authority (officer).

In Lithuania forensics could be performed by state or private forensics institutions. Forensic investigations in Lithuania are performed in accordance with the general evidence treatment rules set forth in the Criminal Procedure Code and the Code of Administrative Violations. If the expert is chosen and expertise is ordered at the discretion of the private party (e.g. one of the parties involved in the process), such expertise can not be accepted as forensic findings (Article 18 of the Law on Forensics), but can be used as a measure of averment in court (e.g. to challenge the other evidence).

Official intellectual property forensics in Lithuania is performed by Forensics Science Centre of Lithuania. The Centre follows elaborate Methodology of audiovisual, phonogram, video

games and programs examination. Most important problem with the Centre is the time expenses necessary for the examination, caused by complexity of examination, common multiplicity of items to be examined, as well as general expertise load (requests for expertise of intellectual property items enter common queue). Average time expenses required by the expert analysis are 4-6 months. Such time lapse poses major challenge for administrative enforcement due to tight statutory limitation terms (6 months for drawing of the protocol of the administrative violation and 12 months total period for sentencing).

According to the practice of the Supreme Court of Lithuania forensics should satisfy following requirements:

- The mater of forensics examination should be expressed in concrete questions: retail price, originality of the copies, etc. Second (follow-up) expertise could be performed only to approve or deny results of previous one (Decisions of Supreme Court of Lithuania in criminal case No. 2K–7–3/2006);
- Experts have to disclose to court methodology of examinations and explain its results, if they are queried (Decisions of Supreme Court of Lithuania in criminal case 2K-179/2005).
- In case the expert went beyond the questions formulated by the court, all this additional information is deemed irrelevant and may not be considered as evidence. In case the expert failed to directly answer the questions formulated by the court, the factual circumstances requested by the court are deemed not-proved by the expert.

Staffing and capability issues is arguably most important issue in the enforcement of intellectual property rights. Central police authority has inadequate resources for properly dealing even with the incoming number of complaints from the public and disallowing any pro-active action on enforcement of intellectual property rights. Situation in the regions is even worse. Related issue is very high staff turn-over which precludes accumulation of experience, as well as maintains high level of repetitive procedural mistakes.

Right-holder involvement and co-operation;

A common reason for delays in enforcement intellectual property rights is *de facto* requirement to involve the intellectual property right holders with respect to counterfeit/pirated goods. Although, since the 1996 amendments of the Code of

Administrative Violations and 2000 amendments of the Criminal Code, the police, the prosecutor‘s office and the customs are entitles to pursue the enforcement of intellectual property rights on their own initiative, in proactive this is rather rare. Most actual (as well as 95% successful) enforcement cases happen when there is complaint of the intellectual property rights holder.

As a separate issue, the general unwillingness of the enforcement authorities to pursue „difficult“ cases shall be mentioned. The enforcement authorities are essentially discouraged from pursuing cases where intellectual property right holders are not involved (e.g. there is no complaint or referral from the intellectual property right holder or its representative), where there is no prima facie evidence suggesting the presence of the infringement of intellectual property rights, or where the case poses novel and untried issues (e.g. database sui generis rights). Further discouragement comes from the internal incentive systems in most enforcement authorities, i.e. failed cases compromise the promotion possibilities for the involved officers. Thus the system essentially encourages fewer but „guaranteed“ cases.

Time expenses pertaining to enforcement

As a general rule, cases related to intellectual property require more time expenses that most other types of cases, what is mainly due to novelty and complexity of the cases, as well as complexity of the evidence (especially if external experts are appointed/consulted).

On the average a civil case is tried in the court of the first instance (local or district courts) for about 12 months. Appeal and cassation are usually faster, each taking 4-6 months. This does not account for the possibilities of remand of the lower court decision.

Administrative cases are tried faster than civil cases, due to short statutory limitation terms (one year general term. On the average administrative violation case is tried for 2 months in the court of first instance (local courts) and for 4-6 months in the appellate instance (which is Higher Administrative Court).

Criminal cases are arguably the slowest progressing cases due to highest standard of appearance of the involved parties (esp. witnesses). Nevertheless, the average case terms are similar to civil cases, i.e. the court of the first instance (local or district courts) tries the case for about 12 months. Appeal and cassation usually take 4-6 months each. Again this does not account for the possibilities of remand of the lower court decision.

It is uncommon for the case to be downgraded from criminal to administrative, since short statutory limitation terms make it impossible to try the same case twice through the criminal system and the administrative court system. In practice this means, that cases where there is no sufficient evidence to uphold criminal charges (although there is ample evidence to uphold administrative charges) are routinely dismissed or do not even enter the administrative court system (following the failure to establish a criminal case), since by the time the case exits criminal courts the term of statutory limitation for the administrative case has already lapsed. Thus, such situation is the most common case where the infringer of intellectual property rights escapes both criminal and administrative liability.

Review of trends in Administrative and Criminal case law

In addition to the outlined features of the administrative enforcement, it is worth mentioning the following Lithuanian administrative case law formulated by the Higher Administrative Court of Lithuania.

Administrative case No. A^3-441-04 formulated the rule of national law disposition in accordance to international treaties' requirements. According to this rule Lithuania can provide a higher level of legal protection for intellectual property if international treaty's rules on subject matter are discretionary or minimum standard type. In this case the defendant pleaded that transit of illegally made intellectual property goods through territory of Lithuania doesn't apply for obligatory requirements of its seizure by Paris convention. Court has ruled that Lithuania has a right to provide higher requirements of legal protection for intellectual property because mentioned rules have discretionary nature and allow member states to adopt higher level of protection.

Administrative case No. N^3-1134-05 provides the rule of non-essential (writing) mistakes. Presence of writing mistakes in the administrative protocol can not be accepted as a ground for dismissal of whole case. Administrative infringement protocol in this case has incorrectly described the illegal activity of the defendant. The activity of the defendant was illegal distribution of video games, but in protocol it was described as illegal distribution of phonograms although related evidence clearly supported the former. Court has ruled that such type of mistakes isn't essential for investigation of case facts and can not be the ground for dismissal of the case.

Administrative case No. N^{9}-62-677/2006 sets the standards of the administrative indictment for continuous administrative infringement averment. The grounds for continuous administrative infringement averment have to rely on multiple established cases of administrative infringement. In this administrative case private person was accused for continuous illegal use of phonograms for commercial activity. According to administrative infringements protocol fact of illegal use of phonograms was established only once, however administrative indictment was based on continuous administrative infringement for whole period of its commercial activity. The court has affirmed the accusation.

Administrative case No. N^{14}-896-05 provides the rule of authorized person submission of administrative appeal complaint. Only persons authorized by Lithuania law have a right to submit an administrative appeal to the court. In this particular case the request for review of administrative case was submitted by an advocate assistant. Court has stated that person was not sufficiently authorized under the Lithuanian law to perform such action and dismissed the appeal.

Administrative case No. N^{15}-48/06 sets forth the rule of continuous administrative infringement date estimation. The date of administrative infringement estimation is the day on which this infringement was indicated (in intellectual property protection cases – the day when investigator has been officially notified by an affected party or initiated the investigation *ex parte*). According to the provided interpretation of the statutory limitation rules of the Code of Administrative Violations, the beginning of statutory limitation term shall commence as of the said learning on the administrative violation, which in case of intellectual property infringement shall be established only after analysis of seized goods.

Lithuanian administrative case law in the field of industrial property protection is also affected by decision of High Administrative Disputes Commission No. 2005/05-4R-113. This decision provides the rule on customs protective measures. Customs protective measures shall be applied only to goods which were properly described in accordance to Community Customs Code and will be applied only to goods directly indicated in the description. In this case private person had appealed Customs decision not to enforce customs protective measures against the goods similar to trademarked goods. Customs had motivated their decision on formal spelling differences in the names of the goods. High Administrative

Disputes Commission had upheld the Customs decision because of the Lithuanian Trademark Law provides extended protection only to trademarks, which were registered in States Patent Bureau of the Republic of Lithuania and protection may only be granted based on the exact registered material, unless substantial similarity is established through the special legal procedure.

Criminal case law in Lithuania is relatively scarce and immature, due to novelty of the criminal liability crimes. As it was noted, originally intellectual property violations were criminalized in 2000, however were revised in 2003 with the introduction of the new Criminal Code.

Since 2003 intellectual property criminal case law in Lithuania is highlighted by the following principal criminal cases, which were adjudicated by Supreme Court of Lithuania (Court), and formulates novel procedural rules.

Criminal case No. 1A-64-2005 defendant had pleaded that:

- Lower instance courts had performed an essential violation of criminal procedure because they had not evaluated legality and retail price of all copies;
- Distribution was legal forasmuch as illegal copies had been obtained legally from other commercial subject and documents of such acquisition had been presented to court;
- First instance court had performed an essential violation of criminal procedure forasmuch as he had accepted as an evidence forensics examination which main question was altered by expert.

The court had ruled that:

- A court has to estimate and establish an amount value of illegal copies that makes up to the threshold to consider the activity an intellectual property crime.
- The value amount of illegal copies may be only estimated through forensics examination. Statement of intellectual property crime is possible only by estimation of illegal copies quantity and retail price.
- The main and only fact of copy legality is an intellectual property license according to Lithuania copyright and related rights law. Absence of license confirms fact of copies illegality.

- Alteration of forensics examination questions by an expert (i.e. where the expert decides to answer different question or to investigate different aspect of evidence, than prescribed by the court) is an essential violation of criminal procedure and a direct ground to dismiss a case according to Lithuania criminal procedure code.

In the criminal case No. 2K-7-3/2006 prosecutor had appealed the judgement of Lithuanian Court of Appeals court because on the appeal procedure Appeal court had assigned a new forensics examination and provided different examination questions compared to previous forensics examination, which was appointed by the court of first instance. The Court had ruled that Lithuanian criminal procedure law provides requirement for courts and experts to perform secondary forensics examination only to correct the result matter of previous. Substitution of previous forensics examination questions is an essential violation of criminal procedure and hence ground to dismiss the case.

In the Criminal case No. 2K-44/2005 prosecutor had appealed the judgement of Lithuanian Court of Appeals because of essential criminal procedure violations. On the cassation complain prosecutor had stated that Lithuanian Court of Appeals had not properly evaluated and rejected essential violations made by the first instance court and acquitted the alleged violator. The Supreme Court had upheld the cassational complaint because ambiguity of case facts may be the ground to dismiss criminal charges only if all measures to estimate the case matter have been exhausted. The exhaustion of case matter estimation measures is finished only upon estimation of essential case aspects such as fact of crime, constituent elements of crime, guilt or innocence of accused person and other matters of the case. During the appeal procedure the exhaustion of case matter estimation measures is stated by reply to essential claims of appeal complaint in the motives of the decision of the appeals courts.

In the Criminal case No. 2K-179/2005 defendant pleaded that:

- The fact of seized copies legality and distribution forasmuch as defendant had had a license of distribution;
- Legal protection for distributed copies does not apply because those copies had been imported to Lithuania before signing Rome convention.

The court has concluded that:

- The intellectual property copies are illegal forasmuch as they had been produced in violation of intellectual property license. This fact needs to be proved through forensics examination of seized copies. Experts had concluded that copies are illegal by their comparison with original copies. For verification of forensics examination court had demanded the expert to reveal exact applied methodology. The court has stated that legality of intellectual property copies may be established through comparing design of the original and pirate copies, in case the intellectual property owner has chosen specific design for protection and distribution, because Lithuania copyright and related rights law provides an exclusive right of intellectual property right holders to decide on the design of the original intellectual property copies.
- Rome convention does not prohibit legal protection for intellectual property (related rights) before the state has joined it. The legal protection for related rights before joining Rome convention is provided by national law.

One of the substantially important criminal cases is case 2K-218/2004, which has corrected a legislative error made in the 2003 Criminal Code, where the liability for related rights violations was erroneously omitted. In this case the defendant pleaded that:

- New Lithuanian criminal code does not prohibit illegal distribution of phonograms, because Article 192 of the Lithuanian Criminal Code provides prohibition of illegal reproduction only of literature, science, art or other works, also distribution and possession of illegal copies, no related rights objects are mentioned;
- Forensics examination was not performed accurately in accordance to legal requirements;

The Supreme court has ruled that:

- In accordance to Lithuania criminal procedure in cassation process court reviews only the legitimacy and consistency of forensics examination, matter of forensics examinations is established and evaluated by the lower courts.
- Despite the fact that Lithuania criminal code does not foresee direct prohibition of illegal distribution of phonograms such type activity shall be prohibited by the Article 192 of the Lithuanian criminal code. Article 192 of the Lithuanian Criminal code by its origin is deflective and must be interpreted in the context of all Lithuanian legal system and international treaties, to which Lithuania is a party. Lithuanian Copyright and related rights law prohibits illegal distribution of phonograms. Moreover the court believes that

the legislator omitted phonograms by error, rather that willful intention to exclude related rights.

- Such extending interpretation of the said provisions of the Criminal code does not violate the requirements of European Court of Human Rights for accessibility and foreseeability. Lithuanian legal acts and judgements of Supreme Court are public and legal practice of the article has not been changed from the historical interpretation of the related rights violations.

Criminal case 2K-354/2006 defendant pleaded that Appeal Court has not provided arguments for all claims of appellate complaint. The Supreme Court has ruled that neither Lithuania statutory law nor case law requires courts to provide arguments in order to reject each and every argument of appellate complaint. Courts must provide arguments for rejection of essential claims of appellate complain, which are sufficient to dismiss the case. Essential claims of appellate complaint are qualifications of a crime and estimation of legitimacy of the criminal procedure.

In the Criminal case 2K-378/2005, the defendant pleaded his innocence due to expiration criminal prosecution statutory limitation terms. The Supreme Court has ruled that Lithuanian court of appeals has established guilt of the defendant in accordance with Lithuanian legal acts. Condemnatory judgement of the case is adopted in accordance to judicial scrutiny rules of criminal procedure. Expiration of statutory limitation terms for the prosecution is only a ground to release defendant for criminal sentence in conformity with Lithuania Criminal procedure code.

In the Criminal case 2K- 506/2005 defendant pleaded that Lithuanian court of appeals and First instance court have not estimated all copies, also part of the copies was obtained legally and had proved legality of their acquisition from intellectual property owner. The Supreme Court has established that although some of the copies were legal, however distribution of them was illegal due to absence of the distribution license. The court has ruled that courts of lower instance had partly proved elements of crime by forensics examination and expert testimony, nevertheless the illegal distribution of legal copies is not a crime because Lithuania criminal code does not prohibit illegal distribution of legal copies. This type of activity was classified by the court as a civil tort and was recommended to be dealt in a manner of civil procedure.

In the criminal case 2K-512/2005 defendant pleaded that:

- Illegal copies had been seized illegally, because: defendant was not participated on the seizure action, material evidences were not described appropriately and they do not belong to defendant.
- The forensics examination is void because the expert is a member of Lithuania phonogram association and had participated in the procedural actions of copies seizure.

The Supreme court has ruled that:

- Participation of defendant in the seizure action is not required by the Lithuanian Code of Criminal Procedure. Lack of description of material evidences of the seizure protocol does not suppose invalidity of material evidences in this case because seizure of material evidences was performed in accordance to the Lithuanian Code of Administrative Violations and the Lithuanian Police Law. Also fact of possession of seized copies was confirmed through the statements of eyewitnesses in the case.
- Lithuanian law on forensics does not prohibit performance of forensics examination by the specialist, who has been approved by Forensics Science Centre of Lithuania in accordance to legal requirements. Also that participation of one and the same person in procedural seizure action and performance of forensics examination is not prohibited by Lithuania criminal procedure law, hence is allowed.

In the criminal case Nr.2K-705/2004 defendants pleaded that court has failed to state subjective side of crime consistence because defendant acquired illegal intellectual property copies legally and had not had any awareness of their illegality, even though the copies were later established to be illegal. The defendant acted as the distributor for such copies, hence he had not found sympathy of the court. The court has ruled that distribution of intellectual property copies in Lithuania according to legal requirements obliges distributor to obtain them in a manner of Lithuania copyright and related rights law. Performance of illegal copies distribution and failure to provide a license for copies shall assume awareness of illegal distribution activity.

In the criminal case Nr.2K-718/2003 the defendant pleaded that lower instance court had failed to prove his guilt because the expert had changed courts questions for forensics examination and had provided results of his own examination different from forensics examination matter requested by the court. The court has ruled that the expert statement is

legal if it was ruled in accordance to requirements of Lithuania criminal code and Criminal procedure code. The statement is appropriate if a court has fully and without prejudice established the fact of crime, elements of crime, guilt or innocence of accused, defined a punishment and other matters of the case. The elements of intellectual property crime a court may prove only through forensics examination. Forensics examinations must be performed in accordance to law and according to Lithuanian Code of criminal procedure. Only the court may form forensics examination questions. Lack or failure to provide answers to forensics examination questions formulated by the court is essential violation of the Code of criminal procedure and is a ground to dismiss the case.

It is noteworthy that there are no criminal case law pertaining to violations of industrial property rights.

Summarizing the above reviewed cases the following rules accepted by the Supreme Court of Lithuania may be identified:

- Courts must estimate a criminal amount value of illicit copies to state criminal charges for intellectual property crime. Lack of criminal amount value estimation supposes administrative violation charges.
- The estimation of criminal amount value of illicit copies must be performed by an expert in accordance to legal requirements. The expert must provide answers for quantity of illicit copies and retail price. Errors or any non-court changes in forensics analysis is a ground to dismiss the case.
- The requirement for courts of appellate instance to examine all material aspects of the case and provide motives for the decision. Error of examination or decision motives is the ground to dismiss the case.
- The legality of intellectual property copy may be estimated by its design, if intellectual property owner had prescribed design requirements for the distribution of original copies.
- Experts in the court have to reveal methodology of expert examination on the demand of the court.

Most of the above also applies to the administrative enforcement procedures, due to essentially similar nature of enforcement, i.e. superficial differentiation of the same activities based on quantitative/qualitative criteria. Main difference between Lithuanian criminal law

enforcement and administrative law enforcement is different statutory limitation terms, and their substantial incompatibility (i.e. attempt to indict criminal liability essentially eliminated downgrading to administrative liability), regardless of the creative interpretation of the commencement of administrative violation in the case law.

Intellectual property output, enforcement and piracy statistics

As it was outlined above Lithuania has new and fairly modern intellectual property legal framework. Notably, Lithuania has been at the forefront of implementation of the international framework.

Notwithstanding of this intellectual property framework the actual use and creation of intellectual property has followed its own path, which little correlates with legislative change. All existing research of intellectual property in Lithuania seems to point to significant lack of understanding of intellectual property both among businesses and ordinary citizens. Surveys of Lithuanian businesses suggest that businesses consider protection of intellectual property as insufficient, despite being unable to identify any particular shortcomings. Survey of the sample of Lithuanian university students of the Mykolas Romeris University done by the author suggests perceptions of irrelevance and lack of socially recognizable value in intellectual property.

Publicly available empirical data on the intellectual property (patents) registration and use in Lithuania is analyzed below. Most comprehensive data is provided by the State Patent Bureau of the Republic of Lithuania (http://www.vpb.lt). The data covering all major reforms of the intellectual property legal framework (1996-2006) in Lithuania is available.

Registrable intellectual property rights (patents) in Lithuania for the period of 2001-2006:

Year / Applications		2001	2002	2003	2004	2005	2006
Inventions	Lithuanian applicants	68	85	64	70	73	58
	Foreign applicants	3856	4593	4707	5807	NA	NA

Note: Applications for national extension of the European Patents are included in the number of foreign applications.

First easily observable trend is the minor number and lack of upward trend of the Lithuanian domestic patent applications, which is extremely significant in view of the constantly increasing and incomparably higher number of foreign patent applications. The trend is especially worrisome in consideration of the modern legal framework, relatively low cost of obtaining and maintaining Lithuanian patents, as well as low patentability thresholds. This trend suggests that modern legal framework for the protection of intellectual property (patents) has neglible (if any) effect on local intellectual property production.

Additional data coming in line with the above suggestion comes from the number of intellectual property enforcement cases initiated in 2001-2006. Due to lack of availability only the highest instance court reviewed cases are surveyed (what is fair representative of the trend due to low threshold of the highest instance review). It must be noted that there is no or very incomplete data on the cases, which were settled through mutual agreement, hence they are excluded from the data below. This exclusion, however affects only BSA and IFPI led enforcement, since in other cases the settlement is unlikely.

Year / Number of reviewed cases	2001	2002	2003	2004	2005	2006
Civil enforcement cases	11	5	6	6	4	9
Administrative enforcement cases	6	2	2	5	2	3
Criminal enforcement cases	13	1	1	4	4	NA

Note: only cases related to copyright and related rights are surveyed.

Intellectual property piracy levels have decreased very significantly over the 2000-2006 period. Although official piracy indicators are scarce (the Ministry of Culture survey in 2003). The decrease amounts to up to 40% decrease in software piracy, 30% decrease in piracy of foreign audiovisual produce and 90% decrease in piracy of foreign audiovisual produce. Existing Lithuanian research suggests the following current piracy levels – <50% in software, and ~65% in audiovisual. Current IFPI and BSA numbers suggest substantially (15-20%) higher piracy levels. Please note that these numbers are indicative only of commercial piracy

and do not represent individual piracy (e.g. P2P piracy, which is on the increase, although was never measured in Lithuania). It must also be noted that over the 2000-2006 Lithuanian economy grew for ~50% percent, what unsurprisingly correlates with the drop in piracy levels.

Conclusions

Legislative regulation of intellectual property enforcement in Lithuania is modern and fully complies with the international standards. From a purely legal point of view only two significant gaps may be identified:

- lack of regulation (and liability) for internet specific intellectual property infringements, such as infringements on the P2P networks, linking or cybersquating, etc.;
- incompatibility (inability to downgrade) of the criminal and administrative liability (what essentially is a matter of statutory limitation terms of the administrative liability).

To a limited extent (convenience) "commercial purpose" criteria may also be substituted and/or supplement with "significant harm" and/or "selfishness" criteria, which would allow certain expansion of criminalized intellectual property violations, especially in cases where there is no direct monetary gain.

All these gaps shall be addressed through legislative fixes.

A practical legal problems were caused by the foreign legal concepts and institutes being implemented verbatim at a very fast pace, where even the judiciary struggled to adapt. Enactment of intellectual property regulations clearly preceded appreciation and understanding thereof, as well as capacity to enforce such regulations from an organizational/administrative point of view. Both public enforcement bodies and private enforcement bodies (collective administration bodies) struggle with lack of staff and competence to implement the available legislation. Such struggle severely compromises the necessary inescapability of liability for intellectual property infringements, as well as overall appreciation of intellectual property in the society. It also results in inability of private parties (especially natural persons) to individually enforce their rights. Only well funded and most competent private party groups (such as BSA or IFPI) are able to take advantage of the available legal remedies. Public enforcement agencies and officers (especially in the geographical periphery) are clearly underfunded, understaffed and underequipped. Major time and financial costs of the enforcement are major obstacle to private enforcement. These issues

shall be addressed through comprehensive reform of the public intellectual property rights enforcement infrastructure, as well as a set of incentives for private individual (natural persons') enforcement.

Analysis of the administrative and criminal enforcement case law supports the above arguments, that enforcement failure are mostly caused by the insufficient competence and capacity, rather than legislative gaps (save for the outlined above).

Notwithstanding of the above, the very limited statistical data suggests that the level of commercial piracy is decreasing and may even be below the EU 25 average, while at the same time the volume of local creative output (local intellectual property) is also waning. The former may be explained by the burgeoning economy in Lithuania, as well as major decrease in the prices of legitimate intellectual property produce, while the latter suggests prohibitive effects of the high cost, complexity and lack of competence with intellectual property enforcement.