The infringement of copyright and other intellectual property rights, especially through the use of the internet

In today’s world the internet is an indispensable source of information to mankind. It is simply unimaginable how the world existed without it. The internet has been an important force in creating the global village and without it we would surely be at a loss.

In 1987 and 2003 the Third Study Commission discussed several aspects of organized crime, such as new methods of investigation and the gathering of evidence, safeguarding of human rights and the protection of witnesses. At the annual meeting in 2011 the Third Study Commission looked into another aspect of organized crime under the title “Organizations: Identification, Seizure and Forfeiture”. The Third Study Commission explored different legislative responses to what is considered to be a serious issue that transcends national borders.

This year the US Patent and Trade Office will host the IAJ annual conference. The questionnaire will enable the Third Study Commission - in cooperation with the US Patent and Trade Office - to examine whether, and how, legal systems of member countries cope with cybercrime relating to copyright and other intellectual property rights. The purpose of the questionnaire is to explore the extent to which member countries have implemented legislation that deals with this subject, and whether such legislation is effective in addressing these offences.

QUESTIONNAIRE

Question 1

- Does your country have specific legislation dealing with:

1.1. The violation of copyrights?

Copyrights and other intellectual property are protected by Copy Right Law, Criminal Law, Latvia Administrative Violation code.

The general law is Copy Right Law, that gives general definitions and define principles.

Latvia Administrative Violation Code provide liability for minor violations, Criminal Law provide liability for more serious violations of intellectual property.

There are no specific rules for investigation and all investigations have to be complete in accordance with procedure law.

1.2. Other intellectual property rights?
1.3. If so, could you specify to what extent?

Some general sections of Copy Right Law.

Section 68. Infringement of Copyright and Neighbouring Rights
(1) Violations of copyright and neighbouring rights shall be deemed to be activities by which the personal or economic rights of the rightholders are infringed, including:
   1) fixation of copyright and neighbouring rights objects, their publication, communicating them to the public, their reproduction or distribution in any form without the consent from the rightholder;
   2) activities, by which, without the permission of the rightholders, electronic information regarding the management of rights attached by rightholders has been extinguished, amended or transformed;
   3) activities, by which an object of rights for which the electronic information regarding the management of rights has been extinguished, amended or transformed without permission is distributed, broadcast, communicated to the public or published;
   4) the destruction or circumvention of such effective technological measures used by the rightholder, which were intended in order to restrict or not allow any activity with the copyright and neighbouring right object, or other activities with technological measures if such have occurred without the permission of the rightholder;
   5) the manufacture, importation, distribution, sale, lease, advertisement or use for other commercial purposes of such devices or the components thereof, as well as the provision of such services, which are directed towards the circumvention of effective technological measures or the destruction thereof;
   6) the non-payment of the remuneration provided for in Sections 34, 35 and 52 of this Law; and
   7) non-provision of the information provided for in Section 40, Paragraph five of this Law or provision of such information to an inadequate extent.

Section 34. Blank Tape Levy
(1) Without the permission of the author, a natural person shall be permitted to reproduce (including in a digital format) in one copy works that have been included in lawfully acquired films or phonograms or in other form of expression that is to be protected, as well as visual works for personal use without direct or indirect commercial purpose. Third persons shall not be involved in the production of such copy. The author is entitled to receive a fair compensation (blank tape levy) for the production of such copy.
(2) The blank tape levy for reproduction for personal use shall be paid by manufacturers and persons who import into Latvia equipment used in such reproduction and blank recording media (audio recording cassettes, videotapes or video cassettes, laser discs, compact discs, minidisks and the like).
(3) The blank tape levy shall not be paid if the equipment and blank recording media referred to in Paragraph two of this Section is imported for professional use by broadcasting organisations or the equipment and blank recording media are imported wholesale for reproduction of works for commercial purposes, as well as where natural persons import such equipment and blank recording media for non-commercial purposes.
Section 34. Blank Tape Levy

(4) If the equipment and blank recording media referred to in Paragraph two of this Section are exported unused from Latvia, persons who have paid the blank tape levy have the right to receive it back.

(5) The seller of the equipment and blank recording media referred to in Paragraph two of this Section, on the basis of a request from a collective management organisation, has a duty to prove that the blank tape levy for the referred to equipment and blank recording media has been paid.

(6) If a seller cannot prove that the blank tape levy has been paid, the seller shall pay such levy. In such case, the seller is entitled to bring a subrogation action against the manufacturer or the person who imported the referred to equipment and blank recording media into Latvia.

(7) The amount of the blank tape levy, procedures for collection, repayment and payment of the levy, as well as proportional distribution among authors, performers and phonogram and film producers shall be determined by the Cabinet.

(8) The provisions of this Section shall not apply to computer programs and data bases.

Section 35. Remuneration for Reprographic Reproduction of Works

(1) Natural persons shall be permitted to reprographically reproduce published works, except for sheet music, for personal use without direct or indirect commercial purpose without the permission of the author. Persons who have in their ownership or possession the equipment intended for reprographic reproduction and who ensure the availability of such reproduction to natural persons for a fee or free of charge shall be allowed to reprographically reproduce works for the benefit of and for the personal use of a natural person. Authors and publishers are entitled to receive a fair compensation for reprographic reproduction.

(2) The compensation for reprographic reproduction shall be paid by persons in whose ownership or possession there is the equipment intended for reprographic reproduction and who ensure the availability of such reproduction to natural persons for a fee or free of charge.

(3) The amount of compensation to be paid for reprographic reproduction, as well as the procedures for its collection, repayment and disbursement shall be determined by the organisation for collective management of economic rights of the authors according to an agreement with the persons, or an association thereof, referred to in Paragraph two of this Section.

(4) The Cabinet shall set up a commission representing the public administration and shall agree with the organisation for collective management of economic rights of the authors according to an agreement with the persons, or an association thereof, referred to in Paragraph two of this Section.

(5) Compensation shall be collected, distributed and disbursed to the authors and publishers by a single organisation for collective management of economic rights that has obtained a permit from the Ministry of Culture in accordance with Section 67 of this Law.

(6) The collected compensation shall be distributed among authors and publishers on the basis of the printed publications included in the unified National Catalogue, which have been delivered to the National Library of Latvia pursuant to the Legal Deposit Law and in compliance with the following conditions:

1) in distributing the compensation, the number of works included in the National Catalogue and the information compiled by the National Library of Latvia regarding the
number of printed sheets shall be taken into consideration, whereas the content of the works shall not be taken into consideration; and

2) authors and publishers shall reach agree upon the proportional distribution of the compensation separately for periodical publications and non-periodical publications, in compliance with the provisions of Clause 1 of this Section.

Section 52. Use of Phonograms Published for Commercial Purposes

(1) Performers and phonogram producers have the right to receive just remuneration for the use of phonograms published for commercial purposes. The use shall include broadcasting, communication to the public, public performance, the communicating to the public of broadcasts consisting of phonograms published for commercial purposes, retransmission by cable and other ways of communication to the public. As a phonogram published for commercial purposes shall be deemed also such phonograms that are made legally accessible to the public by wire or otherwise so that they are available in an individually selected location and at an individually selected time.

(2) A document that confirms the observance of the rights provided for in Paragraph one of this Section shall be with the user at the time when he or she uses phonograms published for commercial purposes.

Section 40. Rights to the Use of Works

(1) To obtain the right to use a work, it is necessary for the user of the work, for each type of use and each time it is to be used, to receive the permission of the rightholder to the use of the work. It is prohibited to use works if permission of the rightholder has not been received, except for the cases specified by law.

(2) The permission of the rightholder shall be issued both as a licensing agreement and as a licence.

(3) Before using a work, the user of the work must enter into a licensing agreement or obtain a licence for the use of the work.

(4) The document, which certifies the right to the use of a work, shall be in possession of the organiser of a concert, performance, attraction or event at least 10 days prior to the relevant event.

(5) Upon a request from a rightholder as well as from the organisation for collective management of economic rights, users of works have the duty to provide information regarding the works used in the amount requested by the rightholder or by the organisation for collective management of economic rights respectively.

1.4. Do specific rules exist for criminal investigation?

No.

Investigation actions should be perform in accordance with Criminal Procedure Law.

1.5. If not, is any such legislation under consideration?

No.

Question 2

- Does your country have specific legislation dealing with:
2.1. Trademark
Yes, general meanings and principles are establish in Law on Trade Marks and Indications of Geographical Origin

2.2. Patent
Yes, general meanings and principles are establish in Patent Law

2.3 If so, do these laws include specific punitive measures?

No.
Punitive measures have been included only in Criminal Law and Latvia Administrative Violation code.

Question 3
- Does your country have specific legislation dealing with:

3.1. The protection of copyrights based on the use of internet?

No.
The protection of copyrights in internet are realize by Copyright Law.

3.2. If so, could you specify and give a concrete example?

Any author work what have been published in internet do not mean that it could be used for any purpose.

Question 4
- Does your country have specialized agencies to investigate and identify the violation of copyrights and other intellectual property rights, especially through the use of the internet?

No.
Investigation could be done by police.
There are un-governmental organization - Copyright and Communication Consulting Agency/Latvian Authors Association. Agency represents more than four thousand Latvian authors and over four million foreign authors, administering their rights in Latvia. Could support investigation as representative of author.

Question 5

5.1. To what extent does your country have jurisdiction over issues of, for instance, intellectual property theft?

There could be criminal or administrative liability.
Criminal Law.
Section 148. Infringement of Copyright and Neighbouring Rights
(1) For a person who commits infringement of copyright or neighbouring right, if such infringement has caused substantial harm to rights and interests protected by law of a person, the applicable punishment is deprivation of liberty for a term not exceeding two years or custodial arrest, or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage. *

(2) For a person who commits the same acts, if they are committed by a group of persons according to prior agreement, the applicable punishment is deprivation of liberty for a term not exceeding four years, or custodial arrest, or community service, or a fine not exceeding two hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific employment for a term not exceeding three years.

(3) For a person who commits infringement of copyright or neighbouring right if it is committed in large scale or by an organised group, or by compelling, by means of violence, threats or blackmail, the renouncing of authorship, or commits compelling of joint authorship, if it is committed by means of violence, threats or blackmail, the applicable punishment is deprivation of liberty for a term not exceeding six years, with deprivation of the right to engage in specific employment for a term not exceeding five years, and with or without police supervision for a term not exceeding three years.

*- minimum monthly wage is LVL 200 (1€=0.7 LVL).

Latvia Administrative Violation Code.
Section 155. 8 Unlawful Acts with Objects of Copyright and Neighbouring Rights

In the case of the acquisition of copyright or neighbouring rights objects for the marketing, storage or concealment thereof, which are published, reproduced or used in another manner, violating the copyright or neighbouring rights –

a fine shall be imposed in an amount from LVL 100 (~150 €) up to LVL 250 (~370€), with confiscation of the objects and their carriers.

5.2 Should the principle of universality apply for specific types of cybercrime relating to the infringement of copyright and other intellectual property rights?

Yes.

5.3. Is there a need to establish rules of international criminal law to regulate these aspects of cybercrime?

May be.

5.4. Should there be an international authority to handle the violation of copyright and other intellectual property rights through the use of the internet?

May be, but by support of national law enforcement offices.

Question 6

6.1. Did your country sign and/or ratify international agreements or treaties relating to the violation of copyright and other intellectual property rights through the use of the internet?
Yes – Bern Convention, WIPO Copy Right Treaty, other EU treaties, directives, regulations.

6.2 Does your country participate in any other form of international cooperation relating to this subject?

Latvia are member of Word Trade Organization, World Intellectual Property Organization.

Question 7

7.1. Is it your opinion that your country could and/or should be more active in dealing with this issue?

Could be.

Question 8

8.1. Is it your opinion that you could and/or should be more active in dealing with this issue as a judge?

No comments.

8.2. Do you have sufficient means – instruments and qualifications – to address the violation of copyright and other intellectual property rights through the use of the internet?

No.

8.3. Is addressing this issue in Court considered to be a specialization?

Yes, if possible.

Question 9

Is there any other comment on the subject that you would like to make?

No additional comments.