

INTELLECTUAL PROPERTY: INTER-DISCIPLINARY NATURE – SOME LEGAL, SOCIAL AND ECONOMIC ASPECTS (PART 1)

G. Chiladze, Doctor of Jurisprudence, Full Professor
The University of Georgia, Georgia

In Georgia, similar to developed industrial countries, IP should become more and more expensive asset and can play the determining role in idealization of any governing/managerial strategies – be it strategies for development, stabilization, anti-crisis or other. Realization of given strategy will increase market capitalization of assets by an average 10-12%. Unfortunately, the majority of registered legal persons in Georgia does not properly manage intellectual property and does not take appropriate measures for its protection. When exporting goods to foreign countries, they often avoid lengthy procedures and financial expenditures needed for patenting devices, methods, substances or microorganism strains. At the same time, the existing mechanisms of state regulation in the sphere of IP are rather limited due to low effectiveness of applied forms and methods. Such an assumption is validated by the fact that the state governance mechanisms mostly rely on the economic and administrative influence methods which are less effective and require significant corrections.

Paragraph 154 of the Agreement on association between the EU and Georgia essentially concerns protection and realization of the authors' economic, business interests as well. It is pity that in the Agreement on association, with regard to intellectual property, the discussion concerns only economic and business aspects of this institute, but does not make any emphasis on its sociological component. To put order to the above and similar issues and to eliminate existing faults it is necessary to create a parliamentary commission on studying the intellectual property in the Parliament of Georgia and also to establish the Experts Council for protection of intellectual property and fighting against the counterfeit and piracy by the Government of Georgia.

In Georgia, there is a high rate of violation of the special property and personal non-property rights of the holders of copyrights and adjoining rights, as well high share of counterfeit products. The culture of replicating and using the objects of intellectual property is at the relatively low level.

Non-existence of a conceptually grounded policy harms the interests of the stakeholders such as creators of the intellectual property objects and those using these rights (holders of rights).

In modern Georgia, none of the above mentioned stakeholders (society, state, other stakeholders) can be considered as fully protected by state from the violation of their rights. In particular, creators are frequently deprived of the possibility to make complete realization of own property or personal non-property rights, holders of rights – to protect themselves from piracy and unfair competition, consumers – to receive goods of the appropriate quality and the state – to receive the hidden tax revenues into state budget. Apart from that, significant violation of intellectual property rights brings the serious social effect.

Keywords: intellectual property, intellectual property management, Agreement on Association, Georgian legislation, non-material assets.

Conference participant,
National championship in scientific analytics,
Open European and Asian research analytics championship



Digital Object Identification: <http://dx.doi.org/10.18007/gisap:ejm.v0i8.1160>

General Aspects of the Intellectual Property Rights. Intellectual Property is related to mental and creative activities of a human being and encompassing the spheres of science, production, literature and art. Intellectual Property makes the combination of rights emerging as a result of such intellectual activity. These rights do not touch directly the material objects, in which the results of intellectual activity are manifested (for example, substance which is made on the basis of an invention or brochure with a printed piece of literature), but are solely related to the creation of a human mind, as such [1, 2].

Since Intellectual Property Objects, by their essence, represent information (expressed as an idea or a form), it is impossible to impose and exercise some kind of control on their usage through applying mechanisms (primarily legal, but also social) that are acceptable for material forms of property. Therefore, special norms and mechanisms related to the origin of the right of ownership (property) have

been developed worldwide, and have found their reflection in corresponding legal acts, international agreements and conventions [3,4].

Sociological, as well as juridical and economic sciences, do not provide any formalized definition of the Intellectual Property and are reduced only to listing the protected objects. This can be generally said about both national and international acts. For instance, according to paragraph 2[VIII] of the Convention Establishing the World Intellectual Property Organization (adopted on July 17, 1967, Georgia joined on December 25, 1991), “intellectual property” shall include the rights relating to: (1) literary, artistic and scientific works; (2) performances of performing artists, phonograms, and broadcasts; (3) inventions in all fields of human endeavor; (4) scientific discoveries; (5) industrial designs; (6) trademarks, service marks, and commercial names and designations; (7) protection against unfair competition and all other rights resulting from intellectual activity in the

industrial, scientific, literary or artistic fields” [5].

From the standpoint of protecting rights of intellectual property we can mark out two spheres – particularly, protection of rights for industrial property and protection of copyrights.

Georgian legislation does not include any of two above-mentioned spheres into scientific discoveries and unfortunately does not practically award property rights to scientific discoveries. However it is clear that scientific discoveries (cognition and acknowledgment of this phenomenon, characteristics or objective laws of nature that have not been known before) create the basis of scientific knowledge and they exactly provide the foundation for further development of science and creation of the pioneering inventions. Just like any other property right, intellectual property right provides the creator or holder of patent, trademark or copyright, with the possibility to receive benefits from own piece of work or investment, strengthen own positions in the social medium, feel more comfort

and stability. The main principles of these rights are given in the paragraph 27 of the Universal Declaration of Human Rights, where the right of receiving benefits through protection of the moral and material interests resulting from any scientific, literary or artistic production is determined [6].

Intellectual Property needs support and protection. In this direction, there is a list of weighty arguments: 1) Progress and prosperity of the particular social medium and the whole mankind is directly connected with introduction of technological innovations into the industry and the creative novelties in the sphere of culture; 2) Development of social, economic and legal system for protection of rights for intellectual property products facilitates the allocation of additional resources and stimulates further innovations; 3) Protection of intellectual property rights and facilitation of their exercising towards the process of economic and social development creates new branches of industry and new work places, improves the quality and the level of live [7, 8].

Aspects of Intellectual Property Management. At current stage, it is important to create the atmosphere of social development and innovative upheaval in the country. It would ensure the development and motivation of structures existing in both public and private sectors so that they would accumulate and grow the intellectual property objects. Creation of organizational-methodological basis for the intellectual property management and ensuring appropriate conditions will facilitate their effective usage. It is necessary to organize the information streams flow process, as well as its control and regulation within and outside the structure of private and public legal entities.

Just like in developed industrial countries in Georgia **Intellectual Property should become more and more expensive asset.** This especially should concern those branches where decisive role is played not only by buildings and equipment, but by revenue gained from inventions, industrial models, trademarks, other non-material assets and copyright. Apart from that,

with time the value of non-material assets will surpass the value of material assets. This will allow the owner of the intellectual property to significantly lower production costs [9, 10].

Intellectual Property can play the determining role in idealization of any governing/managerial strategies – no matter if these are the development, stabilization, anti-crisis or other kinds of strategies. This is proved by the analysis of the intellectual property state and the search for ways of its effective application and improvement. It is not accidental that during the collapse of the Soviet Union, the Patent fund was taken out of Georgia. And this fund could have become the source of significant revenues through selling patent licenses. The practice of selling such licenses is widespread in the foreign countries. It is important that appropriate amendments are made to the law of Georgia “About Entrepreneurs” to relevantly reflect the institution of non-material assets. A program for enterprise restructuring should be carried out. Particularly, special attention should be paid to non-material part of company assets. Special units aimed at intellectual property management should be created and financed. According to our assessment, realization of the given strategy will increase market capitalization of assets by an average 10-12%. Unfortunately, the majority of legal persons registered in Georgia do not properly manage intellectual property, do not sufficiently acknowledge its importance and do not take appropriate measures aimed at its protection. When exporting goods to foreign countries, they often avoid lengthy procedures and financial expenditures needed for patenting devices, methods, substances or microorganism strains. Because of this, Georgian products do not comply with patent purity requirements which automatically bring the subsequent imposing of relevant sanctions on them [11 - 14].

Intellectual Property and the Agreement on Association. Intellectual property as one of the forms of property, having become a dominating property type, has been defining the international development trends more and more. In such a reality, one of the state governance priorities for Georgia should

be maintaining a sound balance of interests for all participants in the sphere of intellectual property. At the same time, the existing state regulation mechanisms in the sphere of intellectual property are rather limited due to low effectiveness of applied forms and methods. Such an assumption is validated by the fact that the state governance mechanisms mostly rely on the economic and administrative influence methods which are less effective and require significant corrections [15, 16].

One of the vivid examples of this is the “Agreement on association between the EU, European Atomic Energy Community and its member countries, on the one side and Georgia, on the other side”. Particularly, chapter 9 of the agreement, relating to the intellectual property rights, declares the following as the chapter objectives: a) facilitate the production and commercialisation of innovative and creative products between the Parties and b) achieve an adequate and effective level of protection and enforcement of intellectual property rights; i.e., the discussion essentially concerns the achievement of economic and commercial goals. Particularly, the participating sides, according to Paragraph 151 of the Agreement, should ensure the adequate and effective implementation of those international agreements concluded in the sphere of intellectual property, which were signed by them and which are encompassed by the agreement of the World Trade Organization on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement). Protection of intellectual property includes protection from unfair competition, as it is regulated by paragraph 10*bis* of the Paris Convention (1967) on protection of industrial property (Paris Convention).

In addition, paragraph 154 of the Agreement essentially concerns the protection and realization of the authors’ economic, business interests. In particular, they are provided with special rights to permit or prohibit: (a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their works; (b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof; (c)

any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them [17-19].

It is a pity that in the Agreement on Association, with regard to intellectual property, the discussion concerns only economic and business aspects of this institution, but does not make any emphasis on its sociological component. To bring order to the abovementioned and similar issues and eliminate existing faults we should establish a parliamentary commission focused on studying the intellectual property in the Parliament of Georgia and the Experts Council for protection of intellectual property and fighting against the counterfeit and piracy in the Government of Georgia.

In Georgia, there is a high rate of violation of the special property and personal non-property rights of the holders of copyrights and the neighbouring rights, as well high share of counterfeit products. The culture of replicating and using the intellectual property objects is at the relatively low level. Such a state of affairs weakens the position of Georgia as a sovereign state possessing significant economic, political and intellectual resources. Absence of a conceptually grounded policy harms the interests of the creators of the intellectual property objects and those using these rights (possessors of rights). Apart from that, intellectual property objects are made for consumers in the end. That is why, the whole Georgian society is considered to be participants of such relations. The state also participates in the processes of creation and use of intellectual property products both by regulating relations between other participants of relations within this sphere and through the use of the intellectual property objects. Because of that, in modern Georgia, none of the abovementioned participants can be considered as fully protected by the state from the violation of own rights. In particular, creators are frequently deprived of the possibility to completely realize own property or personal non-property rights, holders of rights – to protect themselves from piracy and unfair

competition, consumers – to receive goods of the appropriate quality, and the state – to receive the hidden tax revenues into the state budget. Apart from that, significant violation of intellectual property rights brings the serious asocial effect [20 – 23].

References:

1. What is Intellectual Property? Access mode: <http://www.wipo.int/about-ip/en/>
2. Intellectual Property Rights (Regulation 12(5)(c))., Access mode: https://ico.org.uk/media/for-organisations/documents/1632/eir_intellectual_property_rights.pdf
3. Bilateral agreements., Georgian National Intellectual Property Center SAKPATENTI., Access mode: http://www.sakpatenti.org.ge/index.php?lang_id=GEO&sec_id=336
4. Legislation., Georgian National Intellectual Property Center SAKPATENTI., Access mode: http://www.sakpatenti.org.ge/index.php?lang_id=GEO&sec_id=266
5. WIPO - Convention Establishing the World Intellectual Property Organization., Access mode: http://www.unelections.org/files/WIPO_Convention_EstablishingWIPO_14Jul1967.pdf
6. UNIVERSAL DECLARATION OF HUMAN RIGHTS OFFICIAL DOCUMENT., Access mode: <http://www.humanrights.com/what-are-human-rights/universal-declaration-of-human-rights/preamble.html>
7. JONATHAN BLUM How to Protect Your Intellectual Property Rights., Access mode: <http://www.entrepreneur.com/article/220039>
8. Your Europe Intellectual property rights., Access mode: http://europa.eu/youreurope/business/start-grow/intellectual-property-rights/index_en.htm
9. From Intellectual Property to Business Assets – WIPO., Access mode: http://www.wipo.int/edocs/mdocs/arab/en/wipo_ip_dam_07/wipo_ip_dam_07_1.ppt
10. George Chiladze. Some Aspects of Protecting and Developing Intellectual Property Rights in Georgia., 3rd International Scientific Conference “Modern Private Law”. – Tbilisi., May 30-31, 2014., Access mode: <http://gtu.edu.ge/sciensStu/allConference.php?nid=4061&>
11. George Chiladze, The Role and Importance of Intellectual Capital for the Purposes of Business Organization., Batumi International Conference on Law and Politics., 23-24 August, 2014. – Batumi., Georgia, pp. 123-131., Access mode: www.batumiconference.com
12. George Chiladze, New Realities and Legal Analysis of the Changes in Patent Laws of Georgia., Batumi International Conference on Law and Politics / 23-24 August 2014 – Batumi, Georgia, pp. 132-140., Access mode: www.batumiconference.com
13. Business Use of Intellectual Property Protection Documented in NSF Survey., Access mode: <http://www.nsf.gov/statistics/infbrief/nsf12307/nsf12307.pdf>
14. Avtorizovannyj Ressler kompanii Xerox [Authorized reseller of Xerox] Access mode: <http://stv-service.pulscen.ru/licenses/10441>
15. Intellectual Property Management. Access mode: <http://era.gv.at/directory/99>
16. Janis H. Bruwelheide, Ed.D. Intellectual Property and Copyright: Protecting Educational Interests and Managing Changing Environments., Access mode: <https://net.educause.edu/ir/library/html/edu9935/edu9935.html>
17. “Agreement Between the World Intellectual Property Organization and the World Trade Organization”., Access mode: http://www.wto.org/english/tratop_e/trips_e/wtowip_e.htm
18. “Agreement of the World Trade Organization regarding the aspects related to trading with the intellectual property rights (TRIPS agreement)”.
19. “Agreement on association between the EU, European Atomic Energy Community and its member countries, on the one side and Georgia, on the other side”., Access mode: http://www.mfa.gov.ge/index.php?lang_id=GEO&sec_id=30&info_id=17011
20. The Tbilisi Times. “How much are copyrights protected in today’s Georgia?”., Access mode: <http://www.ttimes.ge/archives/30518>
21. Agency “ExclusiveNews.ge”., Access mode: <http://www.exclusivenews.ge/?page=cat&id=5&catpage=106>
22. GeoNews.ge., Access mode: http://geonews.ge/category/12/law/news/205084/adidasi_sagamodziebo_samsaxuri_dakaveba.html
23. EY ... - Ernst & Young., Access mode: <http://www.ey.com/Publication/vwLUAssets/EY-tax-and-law-brief-november-2013-geo/%24FILE/EY...>

Information about author:

Chiladze George - Doctor of Jurisprudence, Full Professor, University of Georgia; address: Georgia, Tbilisi city; e-mail: dr.chiladze@yahoo.com