

## Chapter 14

# Intellectual Property

## 1. General

Romanian legislation on intellectual property is generally in line with the global standards in the sector. Beginning with the Paris Convention for the Industrial Property Protection, dated March 20<sup>th</sup>, 1883, and the Bern Convention for the Protection of Literary and Artistic Works, dated September 9<sup>th</sup>, 1886, Romania gradually adhered to almost all the international enactments on intellectual property, both to those administered by the World Intellectual Property Organization (“WIPO”) and by other organizations. Presently, Romania, is a founding member of WIPO, and a signatory party of almost all the international enactments binding the EU Member States or the states belonging to the World Trade Organization („WTO”).

According to the provisions of the Romanian Constitution, the international treaties ratified by Romania are part of its internal law. Moreover, in case of any inconsistencies between the national legislation and the above-mentioned international treaties, the international treaties shall prevail.

## 2. Main regulations

### 2.1. Industrial property

- Law no. 84/1998 on trademarks and geographical indications, as further amended and republished („Law no. 84/1998”);
- Law no. 64/1991 on patents, as further amended and republished („Law no. 64/1991”);
- Law no. 350/2007 on utility models („Law no. 350/2007”);
- Law no. 16/1995 on semiconductor products’ topography protection, as further amended and republished („Law no. 16/1995”);
- Law no. 129/1992 on the protection of models and designs, as further amended and republished („Law no. 129/1992”);
- Government Ordinance no. 41/1998 on industrial property protection taxes, as further amended and republished („G.O. no. 41/1998”).

### 2.2. Literary and artistic property

- Law no. 8/1996 on copyright and neighboring rights, as further amended and republished („Law no. 8/1996”);

- Government Ordinance no. 25/2006 for the consolidation of the administrative capacity of the Romanian Copyright Office, as amended and republished (“G.O. no. 25/2006”).

### **2.3. Supplementary enactments**

Over the past years a significant body of supplementary legislation was enacted for the purpose of ensuring the proper protection of and enforcement means for intellectual property rights in Romania, in line with the EU requirements, such as Government Emergency Ordinance no. 100/2005 on the enforcement of industrial property rights, as further amended and supplemented.

Moreover, it is noteworthy that in the wake of the Romania’s accession to the European Union (“EU”), all relevant EU Regulations became directly applicable in Romania and thus establishing their validity with no need for transposition in the Romanian legislation. The Romanian courts have also built up an impressive case-law that confers a certain degree of legitimate expectation and guides the companies in their activities.

## **3. Competent Authorities**

### **3.1. State Office for Patents and Trademarks („OSIM”)**

OSIM is the sole administrative authority in Romania entrusted with the protection of industrial property in accordance with the applicable legislation.

OSIM has, inter alia, the following main powers and duties:

- (i) to register and examine applications in the field of industrial property;
- (ii) to issue protection titles granting exclusive rights on the Romanian territory to their holders;
- (iii) to administer the national registers related to inventions, trademarks, geographic indications, industrial designs, integrated circuit topographies, new plant breeds, etc, in accordance with the applicable regulations in Romania.

### **3.2. Romanian Copyright Office („ORDA”)**

ORDA is the sole Romanian authority with respect to the recording, observance and control of copyright and neighboring rights.

Secondly, ORDA’s powers are as follows:

- (i) to organize and manage works, records and author lists received from the collective societies related to copyright and neighbouring rights;
- (ii) to approve the setting up of Collective societies, as legal entities, with the observance of the legal provisions, and to monitor the application of laws by the said entities;

- (iii) to apply sanctions for minor offences and to notify the competent authorities in those cases where criminal proceedings should be started ex officio.

In addition, ORDA administers a number of six national registers, including the National Phonograms Register and the National Computer Programs Register, with a view to supervising and controlling the circulation of products which are subject to copyright and neighbouring rights. A similar role is played by the Cinema Register Office for the classification of the cinematographic works, established by the former National Cinematography Office and currently managed by the National Cinematography Center.

## **4. Inventions**

The rights over an invention patented by OSIM, as well as the rights conferred by European patents are acknowledged and protected on the Romanian territory.

### **4.1. Patentability**

A patent may be obtained for any invention, in all fields of technology, provided that the invention subject to the patent application is new, involves an inventive step and is susceptible of industrial application.

The law expressly excludes certain categories of inventions from the possibility of being patented, such as discoveries, scientific theories and mathematic methods or software.

Moreover, the inventions contrary to the public order or morals may not be subject to a patent.

Under certain circumstances, the law allows for biotechnology inventions to be subject to patents, as well as for any substance or composition that is part of the “state of the art”<sup>1</sup>, for the use of such in relation to a method for the treatment of humans or animals or a diagnostic method, unless the use of such methods already forms part of the state of the art.

### **4.2. Patent Application and Procedure**

The patent application contains the applicant's identification data, a description of the invention, one or more claims, and explanatory drawings. The date of the application duly filed constitutes the so-called regular national filing, that is the date from which the patent holder enjoys a right of priority over subsequent application filings or claims made by other persons.

Natural or legal persons having their residence or principal place of business outside Romania must be represented before OSIM by certificate patents attorneys.

OSIM shall examine, in accordance with the applicable laws, whether the application and the invention subject to such application satisfy all the requirements laid down in the law.

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<sup>1</sup> “State of the art” is a very broad notion comprising all the knowledge available anywhere in the world before the filing of the patent application.

#### **4.3. Protection period**

The protection period of a patent is 20 years, starting as of the filing of a complete application as described above. Upon the expiry of the protection period, the invention will become public domain.

Over the entire validity period of the patent, the holder will owe annual taxes for the patent being maintained in force. Failure to pay such taxes leads to the loss of the rights resulted from such patent.

#### **4.4. Rights resulting from the patent**

The owner of a patent is deemed to be the exclusive proprietor of the invention, therefore having the exclusive right to use and exploit the invention and prohibit any unlawful use by a third party consisting inter alia in: manufacturing, usage, offering for sale, selling or importation for usage, offering for sale or selling purposes, in case the object of the patent is a product, or the use of the method, selling or importation of the product obtained directly through the patented method.

#### **4.5. Assignment of rights**

The patent right, the right to be granted a patent, as well as the rights arising from the patent can be assigned either in full or in part, by means of exclusive or non-exclusive assignment or license agreements, or by legal or will succession. Such an assignment will only be ostensible towards third parties as of the date when the assignment notice, registered with OSIM, is published in the Industrial Property Official Bulletin.

Under certain circumstances expressly provided by the law, and upon request by any interested person, the Bucharest Tribunal may grant a non-exclusive mandatory license. Mandatory licenses will be basically ordered for market requirements.

#### **4.6. Supplementary Protection Certificates for Medical Products and Plants**

Law no. 64/1991 gives the patent holders the possibility to obtain a supplementary protection certificate for medical products and plants, under the relevant EC Regulations<sup>2</sup> directly applicable in Romania as of the date of its accession to the EU.

Any medical product subject to a patent granted in a member state of the EU, which has previously obtained an initial authorization to place the product on the market as a medical product, can receive a supplementary protection certificate for a maximum period of 5 years. The certificate shall take effect at the end of the lawful term of the basic patent for a period equal to the period which elapsed between the date on which the application for a basic patent was lodged and the date of the first authorization to place the product in the market reduced by a period of 5 years.

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<sup>2</sup> Regulation (EC) No. 469/09 of May 6, 2009 concerning supplementary protection certificate for medicinal products and Regulation (EC) No. 1610/96 of July 23, 1996 concerning the creation of a supplementary protection certificate for plant protection products.

The application for the supplementary protection certificate shall be submitted to OSIM six months after the marketing authorization was obtained. In case the marketing authorization is issued before the patent is granted, the 6 months term begins as of the date when the patent is granted.

#### **4.7 Paediatric extensions**

[Regulation \(EC\) No. 1901/2006 on medicinal products for paediatric use](#) also regulates the possibility for a 6-month extension to the supplementary protection certificate term. The extension is subject to the requirement that applications for marketing authorizations for new medicinal products include either the results of studies in the paediatric population that have been carried out in accordance with an agreed Paediatric Investigation Plan (PIP), or proof of having obtained a waiver or deferral from this obligation.

### **5. Industrial designs and models**

The rights over industrial designs and models subject to registration with OSIM are acknowledged and protected as such on the Romanian territory.

#### **5.1. Registration terms and conditions**

The appearance of a product, expressed in two or three dimensions, may be registered as industrial design or model, if such an appearance is particularized by:

- (i) *novelty*. The industrial design or model should not have been made available to the public prior to the the date of the registration application;
- (ii) *individuality*. The overall impact of the industrial design or model on the average consumer should be different than the impact on such consumer of any other industrial design or model made public before the date of the registration application.

#### **5.2. Registration certificate**

The certificate is granted by OSIM upon the application being lodged by any interested party to that effect.

The registration application for industrial designs or models, containing the applicant's identification data and the author's name, together with the description of the new elements and the graphical representations or specimens, and indicating the number of industrial designs and models for which registration is required, as well as the description of the product for the creation of which such design/model are meant – all presented in Romanian – will be submitted to OSIM and will constitute a regular national filing.

The registration certificate will be issued based on the decision given by the OSIM Examination Commission and will be recorded in the National Register for Industrial Designs and Models.

### **5.3. Protection period**

The validity period of a registration certificate for industrial design or models is of 10 years as of the regular filing date (deposit date) with the possibility of further periods of renewal up to 15 years.

### **5.4. Rights resulting from the registration certificate**

Throughout the validity period, the registration certificate grants its holder an exclusive exploitation right for the respective industrial design or model, as well as the right to prohibit and prevent third parties from manufacturing and/or marketing of a product incorporating the industrial design or model without the holder's prior consent.

### **5.5. Assignment of rights**

The transfer may be performed by means of assignment or license, as well as through succession. Such assignment should be registered with OSIM and will only be ostensible towards third parties starting with the date when the assignment notice is published in the Industrial Property Official Bulletin.

## **6. Semiconductor products' topographies**

The rights over semiconductor products' topographies subject to registration with OSIM are acknowledged and protected as such on the Romanian territory.

### **6.1. Registration terms**

Semiconductor products' topographies may be protected, provided that they are original. Original topographies are those which represent the result of the intellectual effort of their creators, and which, on the date of their creation, were not usual for the topography creators or for the semiconductor products manufacturers.

The rights over protected circuits will only be applicable to the per se topographies and neither to concepts, procedures and devices nor to the technique or information stored on the topographies.

### **6.2. Registration certificate**

The filing of the registration application must be accompanied, inter alia, by the following documents: technical documentation comprising graphic materials and texts, two copies of the semiconductor product – if the latter was created and used commercial-wise. All documents must be submitted before OSIM in writing in Romanian language.

The registration certificate will be issued based on the decision given by the OSIM Examination Commission and will be recorded in the National Topography Register.

### 6.3. Protection period

The protection period of a topography will begin on its registration date or on the date of its first commercial use or of its official registration date, and will expire after ten years, without taking into account the year of registration or that of the first commercial use

### 6.4. Rights conferred by the registration certificate

The holder of a duly registered topography will benefit, for the entire protection period, from the right to use the topography as well as from the right to allow or prevent others to use such products in the ways set down by the law.

### 6.5. Assignment of rights

The protection and other rights resulting from registration may be transferred entirely or partially, by means of assignment or license – either exclusive or not, or through legal or will succession. Such assignment will only be ostensible towards third parties starting with the date when the assignment notice, registered with OSIM, is published in the Industrial Property Official Bulletin.

Under certain circumstances, expressly set forth by the law, at the request of any interested person, the Bucharest Tribunal may grant a mandatory non-exclusive license.

## 7. Trademarks

Trademarks registered with OSIM, as well as notorious trademarks, even if not registered in Romania, are acknowledged and protected as such on the Romanian territory.

### 7.1. Registration terms

A trademark is eligible for registration if it is:

- (i) *fit for graphical representation*. The sign chosen as trademark should be fit for graphical representation by full lines, colors, designs, on a material support;
- (ii) *distinctive*. The trademark should be capable to identify a product or a service in a manner that should allow the consumers to recognize and acknowledge it as such;
- (iii) *available*. The trademark should not affect any prior intellectual property right;
- (iv) *lawful*. The trademark should not contain any elements contrary to public order and public morals, or false or deceiving indications, or defamatory signs to the State representative symbols, to international organizations or to those having universal symbol value.

The law also provides other additional conditions for collective marks and certification marks, such as the holder's quality or the existence of a usage regulation.

## 7.2. Registration certificate

The Registration certificate is granted following the filing of an application to that effect and the examination of OSIM as to whether there are any absolute grounds for rejection. Under the most recent amendment to the Law no. 84/1998, OSIM no longer examines *ex officio* relative grounds for rejection (*i.e.* conflicts with previous rights belonging to third parties). Such may be invoked only by the interested third parties holding such rights, by means of opposition, within the registration procedure, or via an annulment claim, in case of an already registered trademark.

The trademark application, containing the applicant's identification data, the trademark reproduction, as well as the indication of products or services for which registration is requested, must be filled in and submitted to OSIM either directly by the applicant (should that be a Romanian natural or legal person) or by the applicant's authorized representative (should the applicant be a foreign natural or legal person) The application will refer to a single trademark and will provide sufficient information as to the colors and figurative elements claimed by the applicant.

Pursuant to OSIM issuing a final registration decision, and after possible opposition or contestation is rejected, should it be the case, the trademark will be recorded in the National Trademark Register and OSIM will issue the registration certificate, provided that the due taxes are paid.

## 7.3. Protection period

The trademark registration is granted for a 10-year period starting from the filing date. At the request of the holder, the trademark registration may be renewed for successive 10-year periods, provided that the due taxes are paid.

During the protection period, and under certain conditions expressly provided by the law, the holder may lose his rights upon the registered trademark.

## 7.4. Rights resulting from the registration certificate

The trademark registration grants its holder the exclusive right over the trademark in relation with the products/services for which the trademark was registered. By virtue of its exclusive right, the owner of a trademark may exploit the benefits either directly (by manufacturing and marketing products bearing the trademark) or indirectly (by assigning or licensing the trademark to third parties upon the payment of certain royalties). Furthermore, the holder of the trademark may prevent or prohibit any third parties from taking actions such as:

- (i) the use in the course of trade without the rightholder's consent of any sign which is identical with the trademark in relation to goods or services identical with those for which the trademark is registered;
- (ii) the use in the course of trade without the rightholder's consent of any sign where, because of its identity with or similarity to the trademark or the identity or similarity of the goods or services on which the sign is affixed with the goods or services for which the trademark is registered, there exists

a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the mark;

- (iii) the use in the course of trade without the rightholder's consent of any sign which is identical with or similar to the trademark in relation to goods or services which are not similar to those for which the trademark is registered, where the latter has a reputation in Romania and where use of that sign without due cause would be detrimental to the distinctive character of the trademark or to the reputation thereof.

Therefore, the trademark holder may require that third parties be forbidden, mainly:

- (i) to apply the trademark or a similar sign on products or packages;
- (ii) to offer products or sell or hold the same for such purposes, or, as the case may be, to offer or provide services under the said trademark or a similar sign;
- (iii) to import or export products under the trademark or a similar sign thereto;
- (iv) to use the trademark or a similar sign on documents or for advertising purposes.

## 7.5. Assignment of rights

The rights over the trademark may be voluntarily transferred by means of assignment or license, anytime during the trademark protection period, and will become ostensible towards third parties only upon the registration of the assignment/license contract with OSIM.

## 8. Copyright

### 8.1. Copyright terms

The copyright is intended to protect the works of human intellect, such as literary, artistic or scientific works, including writings, music, paintings and sculptures, and technology-based works like computer programs. The copyright is acknowledged and protected provided that the work is original, takes a concrete expression form and is susceptible of being made known to the public.

The copyright protection applies, *inter alia*, to:

- (i) works whose authors are Romanian citizens or are domiciled in Romania, even though such works have not been made known to the public yet;
- (ii) architectural works located on the Romanian territory.

Foreign holders of the copyright will benefit from the protection granted by international treaties and agreements to which Romania is party. In the absence of such enactments, foreigners will benefit from the same treatment as Romanian citizens do, based on the same legal treatment principle.

## 8.2. Subject matter of a copyright

The law lists various types of works which, irrespective of their creation methods, concrete manner or form of expression, value or destination, may be subject to copyright: literary and press writings, software, scientific works, musical compositions, dramatic or musical works, choreography and pantomime works, cinematographic works, as well as any other audio-visual or photographic works and any other works expressed by way of photography-related means, as well as works of art applied to products destined to a practical use, architectural works, plastic works, topography/geography drawings and designs, and, generally, scientific maps and drawings.

Additionally, the following may be subject to copyright: translations, adaptations, documentary works, musical arrangements and any other kind of transformation of a work representing intellectual creation work, as well as collections of works such as encyclopedias, collections and compilations of data and materials – either protected or not, databases included, which, through the material selection or disposition, represent intellectual creations.

The following cannot benefit of copyright protection: ideas, theories, concepts, discoveries and inventions contained in a certain work, regardless of the manner of their obtaining, writing, conveyance or expression; official texts of political, legislative, administrative or judicial nature and their official translations; the official symbols of the State and of the public authorities and organizations; payment means; news releases and press information; simple facts and data.

## 8.3. Protection period

The patrimonial copyrights are, as a matter of principle, protected during their author's lifetime and the following 70 years after his/her death. In certain cases, the protection period is shorter: the collective works will be protected 70 years from the date when they are made known to the public, or from the date of their creation, as the case may be. In all such cases, upon the date of their protection expiration, such works become public goods.

The personal non-patrimonial or moral rights, such as the right to claim the work paternity, and work integrity and to oppose any modification that may harm the author's reputation are transmissible by way of succession for an unlimited period of time.

## 8.4. Rights protected by copyright

The copyright gives rise to two categories of rights: economic rights and moral rights.

The moral rights are the inalienable rights of the author and they are non-economic in nature, as they do not directly confer a financial advantage upon their holder.

In Romania, the following moral rights are acknowledged by the law: authorship (right to be acknowledged as the creator of the work), right of integrity (which bars the work from being attired or distorted) and the right of disclosure (the right to make the work public), as well as the right to retract the work from public circulation.

By contract, economic rights entail pecuniary benefits and relate to the possibility of the author to decide if, how and when his/her work will be made known to the public. The creation of a work results in the author's distinct and exclusive right to authorize, among others, the reproduction and distribution of his/her work, the import of its copies in view of their sale, leasing and lending his/her work public communication, directly or indirectly, by any means, including by allowing the public to have access to his/her work anywhere and anytime, the radio and TV broadcasting, cable retransmission of his/her work, translation, publication in work collections, adaptation, as well as any other transformation of his/her work which give rise to derived works.

## **8.5. Copyright transmission**

As opposed to moral rights, economic rights may be transferred, in whole or in part, exclusively or non-exclusively, by means of an assignment or a license. The relevant contract must contain the economic rights transferred, the prescribed usage manner, the assignment duration and its territorial limitation, the royalties owed to the author, as well as other secondary details required by the law.

## **9. Copyright neighbouring rights**

### **9.1. Acknowledgement terms**

Besides copyright, Law no. 8/1996 provides, acknowledges and protects the neighbouring rights, i.e. the rights of artists or performers over their own interpretations or performances, the audio and audio-video recording producers' rights over their own recordings, and the rights of the radio or TV broadcasting bodies over their own shows.

In order to be protected, the performances of artists or performers should take place on the Romanian territory or be affixed to recordings protected by law, or, should they not be affixed to recordings protected by law, they would have been broadcasted via protected radio or TV shows.

For the audio and audio-video recordings to be protected they have to be produced by Romanian nationals or Romanian based entities or they have to first be recorded on a material support on the territory of Romania.

Foreigners, holders of such neighbouring rights, will benefit from the protection granted by international conventions, treaties and agreements to which Romania is party, and, in the absence thereof, they will benefit from the same treatment as the Romanian nationals, based on reciprocity principle.

### **9.2. Neighbouring rights**

The objects of the neighbouring rights are interpretations or performances of the artists, the phonogram and audio-video producers' recordings, as well as the shows and broadcasts of radio or TV stations.

### 9.3. Protection period

The duration of the patrimonial rights for artists and performers is of 50 years, starting on January 1<sup>st</sup> of the year following the first performance or, alternatively, the first licit publication or communication to the audience of such fixed performance.

The duration of the patrimonial rights for audio recording producers is of 50 years, starting, as a rule, on January 1<sup>st</sup> of the year following the first recording or, alternatively, the first licit publication or communication to the audience of such recording.

The duration of the radio and TV broadcasting stations is of 50 years, starting on January 1<sup>st</sup> of the year following the first broadcasting of the program.

In all cases, upon the expiry date of the protection period, the object of the neighbouring rights becomes public good.

The duration of moral rights, specific only to artists and performers, is unlimited in time.

### 9.4. Attributes of the neighbouring rights

The moral rights of artists and performers cover the right to the paternity of his/her own interpretation or performance, the right to have their name indicated, the right to claim respect of his/her performance quality and to oppose any transformation, counterfeit or any other substantial alteration of his/her interpretation or performance, or any other infringement of his/her rights, which might severely harm his/her honor or reputation, as well as the right to oppose any utilization of his/her performance, if, as a result of such utilization, he/she would be severely harmed.

The patrimonial rights refer to the right to authorize the recording, reproduction, distribution, leasing, loaning, importing and broadcasting of the neighbouring right's object.

### 9.5. Transmission of the neighbouring rights

The moral rights of artists may not be subject to transfer. The patrimonial rights of all the neighbouring rights holders can be transferred, totally or in part on an exclusive or non-exclusive basis. As a matter of principle, the copyright assignment rules also apply to the neighbouring rights assignment.

### 9.6. Collective societies

The holders can authorize the collective societies to collect royalty payments from various individuals or corporations using the works protected under copyright and/or neighbouring rights.

The collective societies/agencies are established for each category of copyright holders, and to date, they are: the Union of Composers and Musicologists of Romania – Association for Copyrights, the Union of Phonogram Producers of Romania, Copyro, the Union of Film and Audiovisual Producers of Romania, the Romanian Center for Artists Right Administration – CREDIDAM, the Company for Copyright in

Cinematography and Audiovisual – the Company of Audiovisual Romanian Authors, the Company for Copyright Collective Administration in Audiovisual -VISARTA.

The royalties collected by the agencies are established in accordance with the applicable legal provisions. Thus, the user of a work protected under copyright must ensure that it either concluded a license/assignment agreement with the holder or pays the applicable royalties to the competent collective societies.

## **10. Employees' intellectual property**

It should be mentioned that, as a matter of principle, the authors of inventions, industrial designs and models, works, etc., who are also employed based on individual employment contracts, might exercise their rights within some constraints, the employer having a preeminent right, mainly in using such intellectual creations. However, the employer's rights may be limited contractually.

## **11. Protection of the intellectual property during customs operations**

In such cases where there is information about the possibility of counterfeit goods, pirated goods, or goods that may harm any intellectual property right, by any means, are imported in Romania, the National Customs Authority, either *ex officio* or at the request of any interested person, may suspend the customs operations and seize the goods, until the settlement of the civil or criminal claims brought before the courts by the property right holders against the importers of such goods.

In order to prevent any abuse, the proceedings for the intellectual property protection during customs operations are performed subject to the applicant's statement regarding the payment of any costs and losses that might be incurred by the importing company/person in case the suspected goods prove not to infringe any intellectual property rights.