

Romania

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OVERVIEW OF MAIN IPRS

1. Please give a brief overview of the main IPRs in your jurisdiction, including how they are protected (whether through registration or otherwise). Consider:

- Patents.
- Trade marks.
- Copyright.
- Design rights.
- Confidential information.
- Any other main IPRs that apply in your jurisdiction.

Patents

A patent can be obtained for any invention, in any technological field, if it:

- Is novel.
- Involves an inventive step.
- Is capable of industrial application.
- Does not fall within a statutory exclusion.

Registration is handled by the Romanian State Office for Patents and Trade marks (OSIM) (see www.osim.ro). A fee of RON108 (about US\$36) is payable within three months of the application. Total median fees for the registration of a patent are then RON2,088 (about US\$700). Protection lasts for 20 years from application, subject to payment of annual maintenance fees. Patent maintenance fees are RON1,764 (about US\$591) for the first five years of protection and RON19,548 (about US\$6,550) for the following 15 years.

A supplementary protection certificate is available for medicinal and plant protection products, extending the protection offered by the patent for a period equal to the interval between the patent grant and the first marketing authorisation, but not longer than five years.

A patent valid in Romania can also be obtained through the European Patent Office under the European Patent Convention 1973.

Trade marks

A sign can be registered as a trade mark if it:

- Can be represented graphically.

- Has distinctive character.
- Is available for registration.
- Is not within the categories excluded from registration by statute.

Registration is handled by the OSIM. A fee of RON36 (about US\$12) is payable on application. Total minimum fees for the registration of a trade mark are RON824 (about US\$276). Protection lasts for ten years from application, and can be renewed indefinitely, subject to renewal fees.

A trade mark that is valid in Romania can be obtained from the Office for the Harmonisation of the Internal Market or the OSIM under Regulation (EC) No. 207/2009 on the Community Trade Mark.

Copyright

A work is protected if it is original, meaning it bears the imprint of the author's personality.

Original works are protected from their creation with no other requirements. The protection normally lasts for the duration of the author's life plus 70 years.

A *sui-generis* right is available for the makers of databases, irrespective of any copyright in the database or its contents. Protection lasts 15 years from the first year following its creation.

Designs

Both registered and unregistered designs are protected.

For a design to be registered it must:

- Be novel.
- Show individual character (that is, forms an overall different impression on the relevant public from any other design made public before the application or priority date).
- Not be within a statutory exclusion.

Registration is handled by the OSIM. A fee of RON216 (about US\$72) is payable on application. Total minimum fees for the registration of a trade mark in Romania amount to RON468 (about US\$157). Protection lasts for ten years from application, and can be renewed for three successive periods of five years, subject to renewal fees. Renewal fees amount to RON360 (about US\$121) for each period of five years.

Design protection in Romania can be obtained through the Office for the Harmonisation of the Internal Market or the OSIM under Regulation (EC) No. 6/2002 on Community designs.

Confidential information

Information is protected if it is:

- Not generally known or easily accessible to the relevant public.
- Commercially valuable because it is secret.
- Protected by reasonable measures, devised by the owner, designed to keep its secrecy.

Protection lasts as long as these conditions are met.

MAINTAINING IPRS

2. What facilities are available to conduct IP searches and obtain IP information on registered IP rights, for example to search:

- Before an application to register an IPR.
- After registration to maintain IPRs and monitor possible infringement?

Patents

The OSIM publishes the *Intellectual Property Official Bulletin* (BOPI) monthly, which contains various sections on patents-related matters. The publication is available free of charge on the OSIM's website (see www.osim.ro). OSIM's website also has a search engine allowing searches of patents both in the OSIM's national database and in the EPO's database, through a permanent link to the esp@cenet website. The OSIM also allows documentary research to be conducted before the filing of a patent application and provides watch services that are available on subscription.

Trade marks

The OSIM has recently upgraded the trade marks search engine available on its website so as to enable third parties to search for nationally registered trade marks by owner, trade mark text, classification and registration or deposit numbers. As with patents, trade marks are also published monthly in the BOPI and its trade marks-related sections are also available online. Interested parties can file a request with the OSIM for documentary research to be conducted.

Designs

The OSIM has implemented the same research possibilities for models and designs as for trade marks and any operation in respect of designs is published in the BOPI and is also accessible on the OSIM website. Documentary research is also available.

3. What steps must a business take to maintain the registration and status of its main IPRs (for example, registration renewal, using an IPR in a certain time period, and avoiding misuse of the IPR)?

The initial protection for a trade mark is for ten years from the deposit date, with the possibility of renewal for additional periods of ten years, subject to renewal fees (*Trade Marks Law, No. 84/1998, as amended*). A trade mark owner must use its regis-

tered trade mark, in order to avoid the possibility of interested third parties requesting the court to cancel the trade mark for lack of use if it is not used for a five-year period.

The validity period for patents is a maximum of 20 years. However, patents related to medicines and plant products can benefit under certain conditions from an extension under a supplementary protection certificate. As patents are not subject to renewal, owners must pay annual fees to the OSIM maintain the registration. Failure to observe this obligation results in the owner losing its rights over the patent.

Models and designs are maintained in a manner similar to that of trade marks. Their initial validity period is of ten years, which is subject to three consecutive renewals of five years each. The maximum duration of the validity is therefore 25 years.

4. What steps can a business take to avoid committing an infringement of a main IPR and to monitor whether a competitor is infringing its IPRs?

In order to avoid infringements of different protected IP rights, companies should first perform searches with the OSIM so as to ensure that their trade marks, name, logos and so on do not infringe previously registered trade marks (at national, EU and international level) and that the products that are about to be launched do not conflict with previously registered patents. Other than the institutional research methods available (see *Question 2*), companies should also search the internet so as to ensure that the names, logos, marks and so on that they intend to use do not conflict with other rights.

A company needs to be diligent in enforcing its IPRs against third parties' infringing activities. It should track competitors' catalogues, publications and so on and review the internet and the market that it is active on so as to discover infringing activities. Delayed responses to such matters can prove harmful for the business by decreasing the value of the brand in question or raising issues with licensees.

EXPLOITING IPRS

5. What are the main steps in an IP audit in your jurisdiction to determine the content of an IP portfolio?

An IP audit typically involves:

- Identifying the IPRs in the portfolio, creating a comprehensive list of individual IPR-protected items belonging to the client, involving:
 - identifying the registered rights;
 - running a checklist on the types of IPRs and their context;
 - carrying on an extensive search of client activity focusing on contracts that normally involve IP (for example, franchising, licensing, assignment and employment contracts);

- a review of in-house documents (for example, manuals, databases, publications and know-how).
- Identifying the ownership and the subsequent assignments or licences of these IPRs so as to determine the current ownership regime applicable.
- Determining the value of the IPRs. IPRs are categorised according to:
 - their importance for the client's activity (for example, core, line, incidental, peripheral and external);
 - their replacement value;
 - the amount of income they generate or are likely to generate, bearing in mind market conditions and the possibility of being challenged by competitors' IPRs.

ASSIGNMENT

6. How can main IPRs be assigned (for example, in whole or part, with or without goodwill (in the case of trade marks), in relation to future rights, and with jurisdictional restrictions)?

Patents

Patents can be assigned entirely or partially. The assignment can be limited in time. Only patents that are registered in Romania (either directly or through transitory protection) and limited to Romania can be assigned. Assignments of patents must be registered with the OSIM and published in the BOPI to ensure that they are ostensible towards third parties.

Trade marks

Trade marks are registered by territorial criteria, that is, at national level. Trade mark assignments must be registered with the OSIM and published in the BOPI to ensure they are enforceable against third parties (*Trade Marks Law*).

Copyright

An author can assign rights on either an exclusive or non-exclusive basis, by way of a written agreement (*Copyright Law, No. 8/1996, as amended*). Assignment agreements must expressly set out the rights that are assigned, as the assignment of rights over the entirety of the author's future works is void as a matter of public order. Moral rights are inalienable.

Designs

The assignment of industrial designs should be by contract, which then serves as proof of the assignment for registration with the OSIM. The assignment must be published in the BOPI so as to ensure it is enforceable against third parties.

7. What formalities are required to assign each of the main IPRs (for example, in writing, signed by both parties and registration)?

Patents

An assignment must be in writing and signed by the legal representatives of the parties thereto. The assignment must be regis-

tered with the OSIM to ensure it is enforceable against third parties. A Romanian official translation of the assignment agreement is necessary for this.

Trade marks

In principle, assignment agreements need not be written in order to be valid but a written document is required as proof when the assignment is registered with the OSIM. Therefore, in practice the assignment agreement should be in written form and signed by the empowered representatives of both parties, and should be registered with the OSIM and published in the BOPI to ensure it is enforceable against third parties.

Designs

There are no additional procedural matters for the assignment of design IPRs, although the assignment agreement must be written and signed by the authorised signatories of both parties to serve as proof when registering it with the OSIM. Design assignments must be registered with the OSIM and published in the BOPI to ensure they are enforceable against third parties.

Copyright

The assignment of a copyright must be in writing (*Copyright Law*). In addition, the assignment must specify several factors, including the:

- Exact subject matter.
- Duration of the assignment.
- Remuneration of the copyright assignor.

The enforceability of a copyright assignment against third parties is not subject to prior registration with the Romanian Office of Authors Rights.

8. What main terms should be included in an assignment of IPRs?

Parties can include any commercial terms within the assignment agreement. However, the following conditions must be included:

- An indication of the assigned IPR along with a clear assignment provision.
- Any limitations on the assignment (if the assignment refers only to part of the rights conferred under the registration).
- Any time limit.
- The form of consideration.
- The governing law.

In principle, the rights of the assignee are protected against any actions from the assignor or third parties to hinder the proper use of the assigned IPRs by the assignee. However, the assignee may seek to include an indemnification mechanism in case the assignor, its potential licensees or any other third parties bring any claims in relation to the assigned IPRs.

The assignee may also seek to obtain any assistance necessary from the assignor for registering the assignment with the OSIM.

LICENSING**9. How can each of the main IPRs be licensed (for example, in whole or part, with or without goodwill (in the case of trade marks), and with jurisdictional restrictions)?****Patents**

Patents can be licensed entirely or partially. The licence can only refer to patents that are registered in Romania (either directly or through transitory protection) and is limited in jurisdiction to Romania.

A licence can give exclusive rights, in which case the licensor cannot license the patent to any third party or use it itself where there is a clause in the agreement to that effect. If the contract does not provide otherwise, sub-licences can also be granted by the licensee with the consent of the licensor.

The parties can also agree to allow the licensee to bring legal actions against alleged patent infringers. The exclusive licensee is entitled to bring legal actions if the patent holder does not defend the patent on notice from the exclusive licensee.

It is also possible to grant compulsory licences if the invention is not used by the patent holder within three years of the patent granting (or four years from the deposit date, whichever is longer). Compulsory licences can only be granted if the potential licensee and the patent holder could not reach an agreement in relation to a licence agreement.

Trade marks

Trade mark licences can be exclusive or non-exclusive, and general or limited in scope (*Trade Marks Law*). In a limited licence, the licensor grants the licensee the right to use the trade mark only in respect of some of the registered goods and/or services, or only within a given territory. Unless the contract provides otherwise, the licensee cannot grant sub-licences without the licensor's approval as it cannot begin infringement actions against third parties without the licensor's approval.

Designs

A design licence can be either exclusive or non-exclusive. Although the Designs Law (*No. 129/1992, as amended*) is silent on this point, it is likely that a licensee will not be able to grant sublicences without the approval of the licensor and without an express provision to that effect in the agreement. It is also likely that the licensee will not be able to commence infringement litigations against third parties without the titleholder's approval.

10. What are the formalities to license each of the main IPRs (for example, is registration required)?

A licence agreement must be made in writing and signed by the companies' legal representatives. The assignment must be registered with the OSIM for the licence to be enforceable against third parties. A Romanian official translation of the assignment agreement is necessary for this.

Registration of the licence with the OSIM is required for the licensee to be able to defend its rights against potential infringers and obtain damages for any third party's infringements.

11. What main terms should be included in an IP licence?

The parties can include any commercial terms within the licence agreement, depending on the actual situation. However the following conditions should be included:

- An indication of the licensed IPRs along with a clear licence provision.
- The duration of the licence.
- Any limitations on the licence (if the licence only refers to part of the IPRs).
- The form of consideration (fixed amount or royalties).
- A clause mentioning whether the licence is exclusive or non-exclusive and whether the licensor can continue to use the protected IPR.
- Whether granting sub-licences is allowed.
- The licensee's rights in relation third-party infringements.
- A clause regulating the right over potential improvements made by either the licensor or the licensee.
- The governing law.

The licensee may seek to include an indemnification mechanism, in case the licensor, its potential other licensees or any other third parties bring any claims in relation to the licensed IPRs.

The assignee may also seek to obtain any assistance necessary from the assignor for the purpose of registering the assignment with the OSIM.

Any licence agreement should also be assessed from the perspective of competition law (see *Question 18*).

TAKING SECURITY**12. Is security commonly taken over IPRs? If yes, which types of IPRs are commonly secured? What problem areas commonly arise (for example, problems valuing the secured IPR assets, or when enforcing the security)?**

Although security can be taken over IPRs this is rare because there is a general lack of expertise in the valuation of these rights in relation to both their monetary value and their weaknesses. There have been very few known cases where security was taken over trade marks.

13. What are the main security interests taken over IPRs? How are they created (for example, in writing) and how are they perfected (that is, made enforceable against third parties, for example by registration)? Consider:

- Patents.
- Trade marks.
- Copyright.
- Design rights.

A security interest over IPRs has two parts:

- A security agreement, either notarised or bearing the signature of the person giving security.
- A secured debt (either present or future) that is either determined or determinable.

The security interest must also be registered with the Electronic Archive of Security Rights in Personal Property, if the value of the debt is more than EUR300 (about US\$416). The security interest is enforceable against third parties and a priority ranking is established as from its registration. There is no need for the security on IPRs to be registered with the OSIM.

M&A

14. What IP-related due diligence is commonly carried out in:

- A share sale?
- An asset sale?

In both share sales and asset sales, IP due diligence will require full information from the seller in relation to any:

- IP rights held by the seller (including computer software licences).
- Know-how transfer agreements concluded by the seller.
- Third-party claims in relation to the above (including any encumbrances created).

With this information, the due diligence team can investigate public databases for the existence and registration of the relevant IP rights with the OSIM or any other international IP authorities (especially for trade marks). The Romanian courts database can also be accessed to obtain information on ongoing court actions related to IP rights.

The Trade Registry and Electronic Archive for Movable Securities database should also be consulted to identify any encumbrances created over the goodwill of the target company or individual IP rights.

The due diligence investigation should also assess the target company's use of unregistered IP rights, or its potential infringement of third parties' rights, and should assess the potential remedies to any such situations.

All agreements under which the target company has acquired IP rights should be verified in order to assess whether the target company obtained full and beneficial rights over the IP and whether the transaction could affect the transfer of the rights (such as the existence of change of control or assignment authorisation clauses).

15. What IP-related warranties and/or indemnities are commonly given by the seller to the buyer in:

- A share sale?
- An asset sale?

Warranties and indemnities do not usually replace the purchaser's due diligence assessment. Although a purchaser's rights are protected against any threat to the seller's title, warranties and indemnities can have a bearing on the consideration for the sale-purchase agreement, as well as provide an indemnification mechanism (which would otherwise be decided by the court).

Warranties may take the form of general representations that the target company's legal and economic situation was not misrepresented by the seller, as well as specific warranties against events identified as potentially adversely affecting the sale.

The following warranties are generally used in sale purchase agreements:

- The information disclosed in relation to IP rights is full and accurate.
- The target company or seller owns the IP rights and has complied with all formalities and made all payments to ensure ongoing protection of the IP rights in accordance with the applicable law.
- The target company or seller has valid ownership, licence or consent to use all IP rights being used, including the IT rights relating to software.
- The target company or seller is not in default under any IP licence or consent and has not infringed any third party's IP rights.
- There are no claims, challenges, disputes or proceedings, either administrative or judicial, over the IP rights.
- The target company or seller has not breached any contractual obligation under any IP agreement concluded with third parties.

Indemnities depend on whether any irregularity concerning IP rights is material to the transaction and can vary from the payment of damages to the termination of the agreement.

16. How are the main IPRs transferred in:

- A share sale?
- An asset sale?

In a share sale IP rights remain property of the target company and the only formalities are in relation to any potential change of control authorisation necessary under agreements concluded by the target company.

In an asset sale, a transfer agreement should be concluded in relation to each IP right. If a company's goodwill is transferred, the agreement covers the IP rights. However, if these are not individualised, separate agreements may be necessary for registration purposes with the OSIM. If so, the transferee may include an obligation for the transferor to provide any assistance necessary for the purpose of registering the assignment with the OSIM. Authorisation from third parties may also be necessary if the IP rights are used under a licence agreement and this is required by the agreement.

JOINT VENTURES

17. Is it common for companies to set up joint ventures in your jurisdiction to develop projects that heavily involve IPRs? If yes, please briefly outline the main IP-related provisions that should be included in the joint venture agreement.

It is not very common for companies to set up joint ventures to develop projects heavily involving IPRs. However, there have been, to our knowledge, few cases of companies setting up a contractual joint venture (without the creation of a new company) in order to exploit an IPR (usually a patent) owned by one of the companies. There have also been a few cases where a company has contributed a trade mark right to either a contractual or a newly set-up limited liability company in order for the new company to market locally-produced goods under the trade mark. This is unpopular as it is perceived to be an unnecessary, more risky alternative to normal franchising agreements.

Key IP-related provisions included in such a joint venture agreement relate to confidentiality, licensing and ownership of know-how associated with the IPR, as well as know-how developed during the joint exploitation of the IPR. Careful consideration should also be given to obligations concerning the maintenance of IPRs (including defending any challenges to the IPR) and the possibility of challenging the validity of the IPRs. Termination of the agreement and its co-ordination with the possible expiration of the IPRs should also be addressed. Warranties for the IPRs pooled in the joint venture are normally the object of special provisions in the joint venture agreement.

COMPETITION LAW

18. Please briefly outline the main provisions of your national competition law that can affect the exploitation of the main IPRs.

Law No. 21/1996 on competition, as further amended and re-published (Competition Law) does not make any specific mention of IP rights. However, it is accepted, and the practice of the Competition Council has proved, that it is possible for the IP rights to create a monopoly for their holder on a market for products covered by the rights. To that effect, the abusive exploitation of IPRs may be subject to Article 6 of the Competition Law prohibiting the abuse of a dominant position.

The transfer of technology, that is, licences of patents, software copyright or know-how and licences of other IPRs that are ancillary to such agreements may also fall within the scope of Article

5 of the Competition Law dealing with anti-competitive practices. In 2005, the Competition Council issued a Regulation and subsequent Guidelines for the block exemption of the agreements dealing with technology transfer (Technology Transfer Regulation and Guidelines) (see Questions 19 and 20).

19. Please give brief practical examples of national competition law issues that can arise in the exploitation of the main IPRs (such as problematic licence terms) and briefly outline any possible solutions to manage them.

The Technology Transfer Regulation and Guidelines, contain a list of hard-core restrictions that, if included in the agreement, make exemption impossible. Examples of hard-core restrictions include an obligation for the licensee to:

- Sell at a fixed or minimum price.
- Exclusively licence or to assign non-severable improvements to the licensor or a third party designated by the licensor.

There are also fact-specific scenarios that may lead to an infringement of the Competition Law, such as refusal to supply access to an essential facility that amounts to an abuse of a dominant position.

20. What exclusions or exemptions are available for national competition law issues involving the exploitation of the main IPRs (for example, are parallel exemptions available)?

Agreements dealing with transfer of technology benefit from a block exemption from the application of Article 5 of the Competition Law if:

- They comply with all the Technology Transfer Regulation and Guidelines' requirements.
- The parties involved in the agreement do not hold either:
 - a cumulated market share above 20% (if they are competitors); or
 - individual market shares above 30% (if they are non-competitors).

Otherwise, the agreements must be notified to the Competition Council for the latter's prior approval.

Before notifying, the parties may conduct their own assessment as to whether the agreement in question is restrictive of competition.

If an agreement cannot benefit from a block exemption, it may be individually exempted by the Competition Council if the following conditions are concurrently met (*Article 5(2), Competition Law*):

- The positive effects prevail over the negative ones or are sufficient to compensate for the restriction of competition caused by the agreement.
- Consumers receive a benefit corresponding to that realised by the parties to the agreement.
- The possible restrictions of competition are indispensable for obtaining the expected advantages, and the agreement

does not impose on the parties restrictions that are unnecessary to attain the objectives.

- The agreement does not allow the undertakings to eliminate competition from a substantial part of the product or service market in question.
- The agreement in question must contribute or be likely to contribute to one of the following:
 - improving the production or distribution of goods, executing work operations or supplying services;
 - promoting technical or economic progress and raising the quality of goods or services;
 - consolidating the competitive position of the small- and medium-sized undertakings on the domestic market;
 - charging consumers significantly lower prices in the long run.

Unlike agreements that are restrictive of competition, the abuse of dominance cannot be subject to a block or individual exemption.

ADVERTISING

21. Please briefly outline the extent to which advertising laws impact on the use of third party trade marks.

In 2008 Romania adopted Law No. 158/2008 on comparative and deceitful advertising (Comparative Advertising Law), aligning its advertising legislation to EU standards. Deceitful advertising is prohibited due to its negative effects on the public's commercial behaviour and adverse effect on competition. Comparative advertising is permitted if it concurrently meets the following conditions:

- It does not amount to the tarnishing of the trade marks.
- It does not take unlawful advantage of the trade mark's goodwill.
- It objectively compares the features of the competing products and/or services.

Therefore, if the use of a third party's registered trade mark is detrimental to its goodwill, it is an infringement and subject to the sanctions imposed by both the Trade Marks Law and the Comparative Advertising Law.

EMPLOYEES AND CONSULTANTS

22. Who owns each of the main IPRs created by an employee in the course of his employment? Is compensation payable in relation to employee IPRs? What main steps can an employer take to ensure it owns each of the main IPRs (for example, by including an assignment of IPRs clause in the employment contract)?

Generally, IPRs created by employees within the scope of their employment are owned by the employer, if there is no specific provision to the contrary in the employment contract. The Patents Law (No. 64/1991, as amended) enforcement regulation expressly regulates the remuneration payable to employees and although there

is a statutory distinction between IPRs belonging to employees and those belonging to employers, employment contracts should contain specific clauses as to the assignment of IPRs developed in the course of employment.

23. Who owns each of the main IPRs created by an external consultant? What main steps can a business take to ensure it owns each of the main IPRs (for example, by negotiating an assignment of IPRs)?

A consultant that develops an IPR generally remains the IPR holder, until it assigns it to a third party. However, the situation is different for designs, as IPRs developed by a consultant under a commission from a third party, are owned by the commissioner (*Designs Law*). It is advisable for companies commissioning the development of IPRs to have clauses in the specific commission agreements particularly dealing with the assignment of IPRs by the consultant to the commissioner.

TAX

24. What are the main taxes payable by a licensor on the licensing of the main IPRs (for example, withholding tax on royalty payments)?

Companies pay a flat-rate tax of 16% of profits and this is the same for royalty payments. However, natural persons who license IPRs are subject to a flat-rate tax of 16% of net income obtained from any monetisation of IPRs. A 40% share of gross profit (50% in the case of IPRs relating to monumental works of art) and all amounts paid as social contributions are deductible. For money obtained through Collective Management Societies (CMS), the only sums deductible are those charged by the CMS. There is a 10% withholding tax in the case of IPRs.

25. What are the main taxes payable by a seller on the disposal of the main IPRs?

The taxes payable on disposal are the same as in the case of licensing (see *Question 24*).

CROSS-BORDER ISSUES

26. What international IP treaties is your jurisdiction party to?

Romania is party to the major international agreements regulating the protection of intellectual property, as follows:

- WIPO Paris Convention for the Protection of Industrial Property 1883 (Paris Convention).
- WIPO Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention).
- WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961.
- European Patent Convention 1973.

- Patent Cooperation Treaty 1970.
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).
- WIPO Hague Agreement Concerning the International Deposit of Industrial Designs 1925.
- WIPO Copyright Treaty 1996.
- WIPO Performances and Phonograms Treaty 1996.

27. Are foreign IPRs recognised in your jurisdiction? Please briefly outline any relevant recognition or registration procedure for each of the main IPRs.

Patents

It is possible for foreign inventors to obtain patent protection in Romania, through international registration in the international system established by the Patent Cooperation Treaty. Foreign inventors from a state that is member of the European Patent Convention can also obtain patent protection of their inventions in Romania, by designating this when they apply for a European patent.

Trade marks

Protection is granted if the trade mark benefits from a registration that covers Romania, be it national, European (through the registration of a trade mark with the EU Office for Harmonisation in the Internal Market (OHIM)), or international through the registration of a trade mark under the Madrid System administered by the WIPO. However, a foreign trade mark may benefit from protection in Romania even if not registered, if it is notorious or well-known in Romania as assessed according to the rules laid down in the Paris Convention and the Trade Marks Law.

Copyright

Copyrights owned by nationals of the signatory states of the Berne and Rome conventions benefit from protection in Romania. Fol-

lowing EU directives, Romania has amended its Copyright Law, so as to protect databases and computer programs.

Designs

Individuals domiciled abroad or foreign companies headquartered outside Romania may benefit from the protection granted by the Designs Law under the provisions of international conventions on models and designs to which Romania is party. In addition to national applications under the Designs Law, community designs applications can be filed either in Romania with the OSIM or directly with the OHIM. Registration of a community design grants the holder unitary rights over the design in the entire territory of the EU.

REFORM

28. Please briefly summarise any proposals for reform and state if they are likely to come into force and, if so, when.

The Trade Marks Law and the Copyright Law are currently amended. There is a clear and undisputed trend that not only the minimum mandatory provisions of the international treaties to which Romania is a party be transposed in the domestic legislation, but also that the subsequent developments achieved by the EU jurisprudence and the practice of the institutions entrusted with the application of such treaties be acknowledged at the statutory level.

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