
CHAMBERS GLOBAL PRACTICE GUIDES

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Law and Practice

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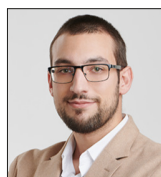
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1. Patents

1.1 Legal Framework and Patentable Subject Matter

The legal framework governing patent protection in the Republic of Serbia primarily consists of the Patent Law, as well as implementing regulations (bylaws regulating, inter alia, the content of patent applications and fees), applicable international treaties, and case law. It should be noted that case law does not constitute a formal source of law, but it plays an important interpretative role.

To get a patent, an invention has to meet certain requirements. There are three main criteria: it must be new, it must be a real innovation, and it must be applicable in industry. The first two requirements must be true when the patent application is filed. The third requirement, being applicable in industry, can be demonstrated later, but no later than the date on which the patent is actually granted. This means that when an application is submitted, the invention must already be new and innovative, and evidence of how it can be used in industry must be provided before the patent is approved.

When deciding what can be patented, the law excludes certain subject matter from being regarded as inventions; therefore such subject matter cannot be patented. This includes discoveries, scientific theories, and mathematical methods, as they cannot be owned by one person or company. Aesthetic creations, like art or music, are also not eligible for patent protection. The law also excludes certain schemes, rules, and methods for performing mental acts, playing games, or doing business, as they are not regarded as inven-

tions. Computer programs, in and of themselves, are not patentable, nor are presentations of information. In addition, there are also some things that, even if they could be considered inventions, are not allowed to be patented because they are contrary to public order or morality.

For example, if someone develops a way to perform surgery that was considered unethical, it would not be eligible for patent protection. Similarly, methods for diagnosing or treating animals or humans cannot be patented if they involve procedures performed directly on the body. Plant varieties, animal breeds, and biological processes for producing plants or animals are also excluded from patentability. This is because such subject matter is either just too important or too closely connected to living things to be owned by one person or company.

Serbian law also provides for a utility model (so-called petty patent), which grants protection for inventions for a period of ten years. A utility model may be granted only for a product, while protection is excluded for inventions in the field of biotechnology, substances, pharmaceuticals, substances or compositions as defined by the Patent Law, plant varieties or animal breeds, as well as processes that may otherwise be protected by a patent. A utility model granted by the Intellectual Property Office has legal effect only within the territory of the Republic of Serbia.

1.2 Patent Granting Procedure

When a patent application is filed, it is like starting a timer as the applicant must follow a strict schedule with deadlines that cannot be changed. In Serbia, the Intellectual Property Office, which is based in Bel-

grade, handles this process. The Office assigns the application a special date, known as a priority date, which marks the moment from which the invention is considered protected, and this protection lasts until the entire process is completed.

This priority date is important because it sets the clock ticking for the patent protection and is a crucial part of the overall patent application procedure. To obtain a patent, an application must first be filed. This can be done in person, by mail, or online. The Patent Office will then check to make sure all the paperwork is in order. After that, they will examine the invention to determine whether it is truly new and innovative. If all the requirements are met, the patent is granted and the invention is entered into their official records.

In Serbia, domestic applicants can handle the patent process on their own. However, foreign applicants will need to work with a patent attorney who is registered in Serbia.

1.3 Scope, Term and Maintenance of Patent Rights

A patent is an exclusive right that protects its holder with regard to the economic exploitation of the patented invention and constitutes an absolute right enforceable against third parties. A patent gives its owner a special form of protection, which means they have complete control over how their invention is used to make money. This protection acts like a strong shield that prevents others from using the invention without permission. Not only does the patent owner have economic rights, but they also have certain moral rights.

For example, they have the right to be named as the inventor on the patent application and on any other important documents related to the patent. This is important because it recognises the inventor's hard work and creativity.

When a patent is granted, the owner has the right to control how the invention is used. This means they can decide who makes it, uses it, sells it, and even who gets to bring it into or out of the country. They also have the power to stop others from carrying out these activities without permission. The standard term of patent protection is 20 years from the filing date

of the patent application. In contrast, a utility model (petty patent) is granted for a shorter duration of ten years.

Patent protection is subject to the payment of annual maintenance fees. Failure to pay such fees results in the lapse of the patent right. However, the law provides for an additional period during which the maintenance fee may be paid with a surcharge, allowing for the restoration of rights under prescribed conditions.

Finally, the duration of protection may, in certain cases, be extended through the grant of a Supplementary Protection Certificate (SPC), which provides additional protection beyond the standard patent term in specific fields.

1.4 Ownership, Assignment and Licensing

A patent application may be filed by the inventor or by a person to whom the right has been transferred. If the application is filed by someone other than the inventor, a statement explaining the basis for acquiring the right to file must be included.

Patent rights arise upon publication of the grant in the official gazette and are effective from the filing date. While the law does not provide specific provisions solely for universities, employer rights and contractual arrangements can apply to research agreements and internal institutional regulations, with employment contracts or special agreements commonly governing the transfer of rights.

Assignments and licensing agreements must be in writing, and licences may be exclusive or non-exclusive. A patent can also be transferred or pledged, with registration in the Intellectual Property Office's patent register required for legal effect against third parties.

1.5 Patent Infringement and Defences

Patent infringement occurs when a product or process protected by a patent is produced, used, offered, imported, or sold without authorisation, covering both direct acts, such as production or offering, and indirect acts, including distribution of products resulting from a protected process. Direct infringement involves performing such acts without the patent holder's permission, while indirect or contributory infringement

applies when a supplier or distributor knows, or should know, that a product is intended for infringement. The scope of protection is determined through literal infringement, where all claim elements are present, and the doctrine of equivalents, where courts assess whether differing elements are technically equivalent. Defences include prior use, exhaustion of rights, or challenging patent validity, and the law allows exceptions for personal, non-commercial use and research and development activities, including preparation for regulatory approvals.

1.6 Patent Enforcement and Remedies

In Serbia, patent infringement disputes are not resolved before the Intellectual Property Office. The Office only grants and registers patents, but does not adjudicate on infringement. Jurisdiction over patent infringement cases lies with the ordinary courts, typically commercial courts, depending on the value and nature of the dispute. These court proceedings can be lengthy, often ranging from several months to over a year, depending on the complexity of the case and the workload of the courts.

It is common for validity challenges to be initiated concurrently during infringement proceedings, either before the Intellectual Property Office or, in the case of European patents, before the European Patent Office. Courts may consider such validity challenges and, if necessary, request additional evidence or even temporarily suspend proceedings until validity is determined. However, parallel proceedings do not automatically halt the infringement case; the court assesses each situation individually. During proceedings, courts may also impose interim measures, including measures prior to the main trial or, in exceptional cases, ex parte measures (without the presence of the opposing party), such as securing evidence to prevent its destruction or concealment.

If infringement is established, the patent holder may seek several remedies, including injunctions to immediately stop the infringement, damages or other compensation for losses incurred, seizure or destruction of infringing products, and publication of the court decision at the infringer's expense. Litigation costs and attorneys' fees may be claimed separately or awarded at the court's discretion, but there is no automatic

entitlement to full reimbursement. The court evaluates such requests according to the circumstances of the case and applicable procedural rules.

2. Trade Marks

2.1 Legal Framework and Protectable Signs

In the Serbian legal system, trade mark protection is governed by the Law on Trademarks. In trade mark law, a mark is considered to be any name or sign capable of distinguishing, in the course of trade, the goods or services of one economic entity from the same or similar goods or services of another entity. A mark may be verbal, graphical, three-dimensional, or combined, and may even consist of a sound, provided that it can be represented in musical notation.

2.2 Requirements for Trade Mark Protection

For a sign to be protected as a trade mark, certain statutory requirements must be met.

First, the absolute grounds must be satisfied. The primary requirement is distinctiveness, meaning that the sign must serve to individualise and distinguish the goods or services of one entity from the same or similar goods or services of another.

For example, signs devoid of any distinctive character do not meet this requirement, such as a barcode, as well as generic or descriptive signs, for instance, an image of a bouquet for a flower shop. Signs that are in free use also lack distinctiveness.

However, this requirement should not be approached too formalistically, as there are many cases where a non-distinctive sign has, through long-term and consistent use, acquired distinctiveness.

The second requirement is that the sign must not be misleading in trade, meaning it must not deceive consumers.

For example, using the word "choco" for chewing gum or an image of an olive for motor oil.

The third requirement is that the sign must not be contrary to law or morality.

For example, signs that incite the overthrow of the constitutional order.

The fourth requirement is that the sign must not contain official quality marks.

In addition to absolute grounds, there are also relative grounds.

A sign cannot be protected if it is identical to an earlier protected mark for the same type of goods or services, nor if it is identical or similar to an earlier protected mark of another person for the same or similar goods or services, where there is a likelihood of confusion among the relevant public, including the likelihood of association with the earlier mark.

Furthermore, a sign cannot be protected if it is identical or similar to a well-known mark in the Republic of Serbia, or to a famous trade mark, regardless of the type of goods or services, if its use would unfairly take advantage of the reputation of the famous mark or harm its distinctive character or reputation. Protection is also excluded for signs that infringe copyright or other industrial property rights.

A sign containing a personal name or likeness may be protected only with the written consent of that person, or, in the case of a deceased person, with the consent of their parents, spouse, and children. For historical or other prominent figures, approval from the competent authority is also required, along with the consent of the spouse and relatives up to the third degree.

An earlier protected mark is considered to be a mark registered for the territory of the Republic of Serbia, as well as a mark that is the subject of an application, provided that it is eventually registered. In such cases, protection of a later sign may be granted with the express written consent of the holder of the earlier right.

When assessing whether a mark is well-known or famous, account is taken of its degree of recognition within the relevant public, which includes actual and potential consumers of the goods or services, as well as persons involved in their distribution channels,

including recognition acquired through the promotion of the sign.

2.3 Trade Mark Registration System

Trade mark registration is important because it grants the holder the exclusive right to use a particular sign to designate their goods or services, thereby enabling them to prohibit others from using the same or a similar sign for similar goods or services. It also increases the value of a company through the protection of intellectual property and helps avoid legal disputes and potential financial losses resulting from unauthorised use of the brand. Without registration, a sign is exposed to the risk of imitation and damage to its reputation.

The registration procedure in Serbia is conducted by the Intellectual Property Office of the Republic of Serbia and begins with the filing of a proper application containing a request for trade mark registration, a representation of the sign, a list of goods and/or services, and the applicant's details. It is recommended that this step be entrusted to a professional. This is followed by the payment of the applicable fees, depending on the number of classes.

The Office then carries out a formal examination of the application to verify compliance with basic requirements, followed by a substantive examination to determine whether there are grounds for refusal, such as similarity to previously registered trade marks or failure to meet statutory criteria. If the requirements are satisfied, the application is published in the official gazette, triggering a three-month period during which third parties may file oppositions. If no oppositions are filed, or if they are rejected, the trade mark is registered, entered into the register, and the relevant certificate is issued, after which the granted right is published.

In practice, the entire procedure takes from several months up to about one year, depending on the complexity of the case and any oppositions that may arise.

2.4 Term, Use and Maintenance

Trade mark protection in the Republic of Serbia lasts for ten years from the date of filing the application with the Intellectual Property Office, with this period

running from the filing date rather than the date of registration. Upon expiration of this period, the trade mark holder may renew the protection an unlimited number of times, each time for an additional ten-year period, provided that a renewal request is submitted in due time and the prescribed fee is paid, either by the holder or an authorised person.

The renewal request may be filed no earlier than six months before the expiry of the current ten-year period and must be accompanied by payment of the applicable fee, the amount of which depends on the number of classes for which the trade mark is registered. Currently, the fee for an individual trade mark amounts to RSD39,780 for up to three classes, while an additional RSD5,970 is payable for each extra class, as well as an additional RSD5,970 if the trade mark includes a graphical or figurative element.

If the fee is not paid before the expiry of the registration, the law allows the request to be filed and the fee to be paid within an additional six-month grace period following the expiration date, subject to payment of a surcharge, otherwise, if the holder fails to submit the request and pay the fee within the prescribed deadlines, the trade mark ceases to be valid by operation of law.

2.5 Trade Mark Rights and Limitations

A trade mark prevents other persons from using an identical or similar sign for identical or similar goods or services, thereby avoiding consumer confusion and strengthening the position in relation to competitors, including protection against unfair competition.

The trade mark owner has the exclusive right to prohibit third parties from unauthorised use of a sign that is identical to its previously registered trade mark for identical goods or services, as well as a sign that is identical or similar to its trade mark for identical or similar goods or services, where such identity or similarity creates a likelihood of confusion among the relevant public, including the possibility of association between the sign and the earlier registered trade mark.

Furthermore, the trade mark owner has the right to prohibit the affixing of the protected sign to goods,

packaging, or means used for labelling goods such as labels and stickers, as well as the offering, placing on the market, or storing of goods or services under such a sign.

Finally, a trade mark also has independent economic value as an intellectual property right that can be monetised. It may be subject to pledge, contributed as a non-monetary contribution to a company, sold, licensed, or used in other ways that generate economic benefit, thereby making it a significant business asset.

2.6 Trade Mark Enforcement and Remedies

The Trademark Law of the Republic of Serbia protects the rights of the trade mark holder by enabling them to file a lawsuit before the competent court against any unauthorised use of a sign that is identical to their previously registered trade mark in relation to goods or services for which the trade mark is registered.

Protection also extends to similar signs if there is a likelihood that such similarity or identity may cause confusion among the relevant segment of the public.

Through such a lawsuit, the claimant may request a declaration of infringement, cessation of the infringement, seizure, removal from circulation, destruction, or alteration of the infringing goods, as well as of the tools and equipment used for their production, where necessary for the protection of rights. The claimant may also request compensation for damages, publication of the judgment at the defendant's expense, and disclosure of information about third parties involved in the infringement.

Damages are determined in accordance with the general principles of tort liability under the Law on Obligations of the Republic of Serbia. A lawsuit may be filed within three years from the moment the rights holder became aware of the infringement, while in any case the right to judicial protection becomes time-barred after five years from the date the infringement occurred.

The court proceedings are governed by the general rules of civil procedure law.

3. Copyright

3.1 Legal Framework and Copyrightable Works

Copyright Protection in Serbia

Legislative framework

The primary legislation governing copyright in the Republic of Serbia is the Law on Copyright and Related Rights. This legal framework establishes the protection of original intellectual creations, regardless of their scientific, artistic, or other value. The law adopts a broad approach, ensuring that any work expressed in a specific form receives protection from the moment of its creation.

Protected categories of works

The Serbian legal system protects a wide range of intellectual creations, provided they satisfy the requirement of originality. While the law offers an extensive list of protected works, these are considered illustrative rather than exhaustive. Key categories include:

- Literary and oral works: this covers books, brochures, articles, translations, and speeches.
- Digital and technical creations: computer programs are protected in any form of expression, including their accompanying technical documentation and preparatory materials.
- Artistic and performance works: this group includes musical compositions, dramatic works, choreography, and cinematographic creations.
- Visual and spatial arts: protection extends to paintings, drawings, sculptures, and photographic works.
- Technical and cartographic works: plans, sketches, maps, and architectural models are also recognised as copyrightable subject matter.

Applied art and industrial design

Works of applied art and industrial design enjoy explicit protection under the Serbian Law on Copyright and Related Rights. This ensures that aesthetic creations used in everyday objects are treated as artistic works. Such protection focuses on the original expression of the creator rather than the functional aspects of the item.

While copyright covers the artistic elements, industrial designs are also subject to a separate specialised legal regime. The Law on the Legal Protection of Industrial Design provides a specific framework for protecting the three-dimensional or two-dimensional appearance of a product. Consequently, creators in Serbia often benefit from a dual system of protection, utilising both copyright and registered design rights to secure their intellectual property.

3.2 Requirements for Copyright Protection

Requirements and Formalities for Copyright Protection

Standards for originality and creativity

In the Republic of Serbia, a work must be an original spiritual creation expressed in a specific form to qualify for copyright protection. The legal framework focuses strictly on the individual intellectual expression of the author, reflecting their unique personality and creative choices. Consequently, the specific artistic, scientific, or social value of the work does not influence its eligibility for protection.

Expression and fixation of ideas

Copyright protects the expression of an idea rather than the idea itself. A concept only receives legal protection once it is manifested in a specific form, such as a written manuscript, a musical recording, or a captured film sequence. This requirement ensures that protection is granted to tangible creative outputs rather than abstract thoughts or methods.

Human authorship and artificial intelligence

The Serbian legal system recognises only natural persons as authors because a work must represent a reflection of the human spirit and intellect. This human-centric approach distinguishes traditional creations from those generated by non-human entities. Under current interpretations, outputs produced solely by artificial intelligence do not meet the criteria for authorship as they lack the required subjective spiritual expression.

Automatic protection and deposit procedures

Copyright protection in Serbia is acquired automatically at the moment of the work's creation. There are no mandatory formalities or registration requirements to secure these rights. An author enjoys full legal pro-

tection from the instant their creation is expressed, regardless of whether the work has been published or officially recorded.

Practical benefits of voluntary deposit

While registration is not a legal prerequisite, authors may voluntarily deposit their works with the Intellectual Property Office of the Republic of Serbia. This administrative procedure serves as a reliable method for establishing a timestamp and a “presumption of authorship.” Depositing works is considered a best practice as it significantly simplifies the burden of proof in the event of future legal disputes or infringement claims.

3.3 Authorship and Ownership

Primary and Joint Authorship

Under Serbian law, an author is exclusively defined as the natural person who created the work. When a work is the result of the joint creative efforts of two or more individuals, these contributors are recognised as co-authors. They hold joint copyright over the collective creation, and unless otherwise agreed, they share economic benefits in proportion to their actual creative contribution.

Special Provisions for Audiovisual Works

The legal framework specifically defines the circle of co-authors for cinematographic works to ensure clarity in the film industry. This group typically includes the scriptwriter, the director, and the principal director of photography. In specific cases, such as musical or animated films, the composer or the lead animator may also be recognised as co-authors if their contribution is essential to the work’s core identity.

Combined Works Versus Co-authorship

It is important to distinguish between co-authorship and the mere combination of independent works for collective exploitation. When two or more authors merge their individual creations - such as an author who writes a novel and an illustrator who later creates specific drawings to accompany the text - they do not necessarily become co-authors. In these instances, each creator retains the individual copyright over their respective part (the text and the illustrations, respectively), while collaborating only for the purpose of joint commercial use.

Works Created Within Employment

For works created during the course of employment, the Serbian Law on Copyright and Related Rights establishes a specific temporary transfer of rights. By default, the employer holds the exclusive economic rights to exploit the work within their business activities for a period of five years. After this period expires, the full economic rights revert to the author, unless a different arrangement is stipulated in the employment contract or internal company bylaws.

Specific Regime for Software and Databases

The legal treatment of software and databases created within an employment context deviates significantly from the general rule. For these types of works, the employer is the permanent owner of all exclusive economic rights from the moment of creation, unless the contract states otherwise. This distinction is critical for the technology sector, as it provides companies with long-term legal certainty regarding their digital assets and intellectual property.

3.4 Scope of Rights and Moral Rights

Economic Rights and Exploitation

The Law on Copyright and Related Rights grants authors the exclusive right to economically exploit their work, including any derivatives created through modification. Authors are generally entitled to remuneration for each instance of use by third parties, unless otherwise specified by law or contract. These economic rights encompass various methods of exploitation, such as reproduction, distribution, public performance, broadcasting, and making the work interactively available to the public. The specific right invoked depends on the nature of the user, whether they are a distributor putting copies into circulation or an on-demand platform providing digital access.

Nature and Inalienability of Moral Rights

Moral rights in Serbia are strictly personal, inalienable, and cannot be assigned or waived during the author’s lifetime. These rights include the right of paternity, the right to be named as the author, the right of publication, and the right to protect the integrity of the work against undignified use. While some practical interpretations suggest that the right to publish may be subject to contractual restrictions, this does not constitute a legal transfer of the right. Instead, it is viewed

as a contractual obligation where the author agrees to refrain from exercising certain moral prerogatives to facilitate the commercial use of the work.

Inheritance and Post-Mortem Protection

Upon the author's death, the protection of moral rights passes to their legal heirs, who may exercise these powers to preserve the author's legacy. Heirs are permitted to enforce the rights of paternity and integrity, although they cannot alter the work or publish it if the author explicitly prohibited such action. Beyond the immediate heirs, professional associations and cultural or scientific institutions also hold the standing to protect the paternity and integrity of a work. This multi-layered approach ensures that the spiritual bond between the creator and their creation remains legally protected even after the economic rights have expired.

3.5 Term of Protection and Termination

Duration of Copyright Protection

In the Republic of Serbia, economic rights last for the life of the author plus 70 years after their death. For works of joint authorship, this period is calculated from the death of the last surviving co-author. If the work is anonymous or published under a pseudonym, the protection expires 70 years after the date of its lawful publication. This long-term protection ensures that the author's heirs can economically benefit from the creation for several generations.

Termination and Reversion Rights

Serbian law recognises specific mechanisms that allow an author to terminate a contract or regain their rights under certain conditions. For instance, if a holder of exclusive economic rights fails to exploit the work within two years of the assignment, the author may request the termination of the agreement. This "right of non-use" prevents the stagnation of creative works and ensures they reach the public as intended.

Right of Withdrawal and Disproportionate Remuneration

Authors also possess a unique moral right to withdraw their work from circulation if its further use would significantly damage their reputation or conflict with their changed convictions. Exercising this right requires the author to compensate the right holder for any actual

damages incurred by the withdrawal. Furthermore, if the agreed remuneration becomes clearly disproportionate to the profits generated by the work's exploitation, the author may seek a contract revision. This protection serves as a mechanism to ensure a fair distribution of economic success between the creator and the exploiter.

3.6 Limitations, Exceptions and Defences

Statutory Framework for Copyright Limitations

The Serbian Law on Copyright and Related Rights establishes a clear framework where certain uses of protected works do not require the author's explicit permission. These limitations are strictly defined by law to ensure they do not undermine the author's moral and economic interests. The legal system distinguishes between two primary categories of limitations: the complete suspension of rights and the application of statutory licences.

Suspension of Rights and Free Use

The suspension of rights applies to specific cases where a work may be used without the author's permission and without the obligation to pay remuneration. This includes the use of works for judicial or administrative proceedings, public security, and reporting on current events by the media. Furthermore, rights are suspended for non-commercial educational purposes, such as direct teaching or school performances, and for the internal archival needs of public libraries and museums. The law also permits the reproduction of works for the personal, non-commercial use of natural persons, as well as the creation of parodies, caricatures, and the right to quote published works.

Statutory Licences and Mandatory Remuneration

In contrast to exclusive rights, a statutory licence allows for the use of a work without seeking the author's prior consent, provided that a prescribed fee is paid to the right holder. This regime primarily permits the reproduction of excerpts or short published works from multiple authors - including scientific, literary, and visual arts - into collections specifically intended for teaching, exams, or scientific research, although this privilege does not extend to musical sheet notation. It further allows media outlets to reproduce and communicate articles on current economic, political, or religious topics from other publications, as well as the

three-dimensional reproduction of works permanently displayed in public spaces, provided the author has not explicitly prohibited such use. Fundamentally, this framework of statutory licensing also encompasses the rights of performers and phonogram producers; they are guaranteed a right to mandatory remuneration for the broadcasting, rebroadcasting, and public communication of their performances and recordings, ensuring economic protection in instances where the requirement for their prior permission is legally waived.

Courts generally assess these exceptions by applying the cumulative “Three-Step Test” established by the Berne Convention. Under this standard, courts ensure that the statutory use is restricted to specific cases, does not conflict with the normal commercial exploitation of the work, and does not unreasonably prejudice the author’s legitimate interests.

3.7 Copyright Enforcement and Remedies

Copyright infringement in Serbia occurs when a protected work is used, reproduced, distributed, or communicated to the public without the author’s prior consent or legal authorisation. The legal system provides a robust framework for enforcement, allowing right holders to seek protection through civil, criminal, and administrative proceedings. Civil remedies are the most common and include the issuance of permanent injunctions to stop the infringing activity and the destruction of infringing copies or tools used for their creation.

The courts may award damages for both material loss and non-material harm, such as damage to the author’s reputation or emotional distress. While Serbian law does not recognise “statutory damages” in the traditional common-law sense, it employs a valuation method based on the “usual licence fee.” Specifically, the awarded compensation for infringement cannot be lower than the royalty that would have been received for the legal use of the protected subject matter; however, if the infringement was committed intentionally or through gross negligence, the court has the discretion to increase this amount significantly. There is no longer a statutory cap on this multiplication, allowing the court to scale the award to an extent that ensures full economic protection and acts as a deterrent, pro-

vided the claimant can justify such a higher valuation relative to the nature of the infringement.

Criminal sanctions are also applicable for more serious or commercial-scale infringements, potentially leading to fines or imprisonment. Administrative enforcement is primarily handled through the Market Inspection and Customs authorities, who can temporarily seize suspected counterfeit goods. In the digital environment, right holders can also seek blocking orders or notice-and-take-down procedures through internet service providers to address online piracy and unauthorised content sharing.

3.8 Infringement Tests and Substantiality

When assessing copyright infringement, Serbian courts focus on whether an “original spiritual creation” or a substantial part of it has been taken without authorisation. The determination of what constitutes a “substantial part” is qualitative rather than purely quantitative, focusing on whether the core creative elements of the original work are present in the unauthorised copy. This means that even a small excerpt can trigger an infringement claim if it contains the unique intellectual expression that defines the work.

Non-literal copying, which involves taking the structure, sequence, or organisation of a work, is also actionable under Serbian law. This is particularly relevant in the software industry, where the protection extends beyond the literal source code to the underlying technical documentation and preparatory materials. Courts analyse whether the alleged infringer has “borrowed” the creative choices made by the original programmer, such as specific architectural designs or database structures.

The assessment usually involves expert testimony from court-appointed specialists who compare the two works to identify similarities in expression. It is important to distinguish between the unprotected “idea” or “function” and the protected “expression.” For software, elements that are dictated solely by technical necessity or standard industry practices are generally excluded from protection, ensuring that the law does not stifle legitimate competition or interoperability.

3.9 Collective Management and Licensing

Collective management organisations (CMOs) play a central role in the Serbian copyright landscape, particularly for the management of rights that are difficult to enforce individually, such as music broadcasting or public performance. These organisations operate under a licence from the Intellectual Property Office and are responsible for collecting royalties from users and distributing them to right holders. The tariffs for the use of protected works are generally established through negotiations between the CMOs and representative associations of users.

If a voluntary agreement on tariffs cannot be reached, the law provides for a mediation process, while the final determination regarding the tariff is made by the Intellectual Property Office of the Republic of Serbia. This ensures that the fees remain reasonable and reflect the economic value of the use while preventing monopolistic pricing. The legal framework also includes mandatory collective management for certain rights, such as the right to remuneration for private copying, the broadcasting of phonograms, and cable retransmission, where individual licensing is not practically feasible.

Disputes regarding the distribution of collected royalties or the application of tariffs are typically resolved before the civil courts. These organisations are required to operate with a high degree of transparency, providing regular reports on their financial activities and distribution criteria. This collective system provides a streamlined licensing solution for businesses, such as broadcasters and hospitality venues, allowing them to legally use vast catalogues of creative content through a single agreement.

4. Industrial Designs and Trade Dress

4.1 Legal Framework and Protectable Subject Matter

The legal framework for the protection of industrial design in the Republic of Serbia is regulated by the Law on Legal Protection of Industrial Design (Official Gazette of the RS, No 104/2009, 45/2015, and 44/2018 – amendment adopted through another law).

Under this Law, an industrial design is defined as the three-dimensional or two-dimensional appearance of the whole product or a part of it, determined by its visual characteristics. These characteristics particularly include lines, contours, colours, shape, texture and/or materials of the product itself or its ornamentation, as well as their combination.

In essence, industrial design refers exclusively to the external, aesthetic appearance of a product, rather than its technical functionality or the way it operates.

Accordingly, the subject matter of protection may cover a wide range of products, including packaging, furniture, clothing, automobiles, and similar goods, provided that the protection relates solely to their visual appearance and not to technical solutions or functional characteristics.

4.2 Requirements for Protection

In most countries, including the Republic of Serbia, industrial design is protected through registration with the competent Intellectual Property Office. The registration procedure involves filing an application, submitting representations and a description of the design, as well as paying the relevant administrative fee.

In order for a design to be successfully registered, it must meet certain legal requirements, primarily novelty and individual character.

Novelty means that an identical industrial design has not been made available to the public before the date of filing the application for its protection, or that there is no earlier filed application for an identical design that later became publicly available.

Individual character exists when the design produces a different overall impression on the informed user compared to any other design that was made available to the public before the filing date or the recognised priority date. This criterion also depends on the degree of freedom the designer had in creating the design.

Other conditions for protection include that the design must not be contrary to law or morality in its disclosure

or use, it must not infringe prior intellectual property rights of others, and it must not contain or reproduce the name or emblem of a state or international organisation, nor the name, image, or likeness of a living or deceased or notable person.

4.3 Registration and Term

Applications for the protection of industrial design may be filed by both domestic and foreign natural and legal persons. The right to file an application primarily belongs to the author of the industrial design or their legal successor, while in cases where the design is created within an employment relationship, the employer has the right to file the application, provided there is an appropriate legal basis.

Protection of industrial design in the Republic of Serbia is obtained through an administrative procedure before the Intellectual Property Office, which is initiated by filing an application for the recognition of industrial design rights. The application must contain the elements prescribed by law. Upon receipt of the application, the Office first conducts a formal examination to verify whether all formal requirements have been met and whether the relevant fee has been paid, followed by a substantive examination to assess whether the material requirements for protection are fulfilled, namely novelty and individual character of the design.

Protection of industrial design lasts for five years from the date of filing the application, with the possibility of renewal every five years, up to a maximum total duration of 25 years.

4.4 Enforcement and Remedies

In the event of an infringement of rights in a protected industrial or handicraft design, the right holder may bring an action before the competent court seeking cessation of the infringement, compensation for damages, destruction or removal from the market of the products infringing the protected design, as well as publication of the judgment at the expense of the defendant.

An infringement of rights shall be deemed to include any unauthorised use of a registered industrial design, including imitation of a registered or applied-

for design, as well as unauthorised disclosure of the subject matter of the application.

Unauthorised use of a design may also constitute a criminal offence or an economic offence, and protection is additionally ensured under special regulations governing the powers of administrative authorities in the field of intellectual property protection.

An action for infringement may be brought by the applicant, the holder of the industrial design right, as well as the holder of an exclusive licence, unless otherwise stipulated by contract.

Where infringement is established, the claimant may request:

- a declaration of infringement;
- an injunction against further or similar acts;
- compensation for pecuniary and non-pecuniary damage;
- publication of the judgment;
- withdrawal of infringing products from the market;
- seizure or destruction of infringing products; and
- provision of information on third parties involved in the infringement.

When deciding, the court shall take into account the proportionality between the severity of the infringement and the measures sought, the interests of third parties, as well as all relevant circumstances for determining the amount of damages.

An action may be brought within three years from the date the claimant became aware of the infringement and the infringer, and no later than five years from the date of the first infringement. The proceedings shall be urgent.

Upon request of an authorised person, the court may order provisional measures to prevent infringement or the occurrence of damage, including seizure of the infringing products, prohibition of their manufacture or distribution, as well as prohibition of acts constituting a threat of infringement. Such measures may be ordered without prior hearing of the opposing party, particularly where there is a risk of irreparable harm,

provided that proceedings are initiated to justify the measures within the prescribed time limit.

If it is subsequently determined that no infringement occurred or if the proceedings are not initiated, the person against whom the measure was ordered shall be entitled to compensation for damages. The court may condition the granting of provisional measures on the provision of appropriate security.

4.5 Functionality and Technical Features

If there is a possibility of alternative solutions, that is, different forms capable of achieving the same technical function, the design is not considered to be solely dictated by function.

Conversely, a design may be declared invalid if its appearance is entirely determined by the technical function of the product, which constitutes a ground for invalidation under Article 58 of the Law on the Legal Protection of Industrial Design.

5. Trade Secrets

5.1 Legal Framework and Protectable Information

The primary legislation governing the protection of business secrets in the Republic of Serbia is the Law on the Protection of Business Secrets (2021). This Law represents a significant step towards aligning domestic legislation with European legal standards and creating a more comprehensive regulatory environment for confidentiality. It protects information that is not generally known or easily accessible, has commercial value because it is secret, and has been subject to reasonable measures by its holder to maintain its secrecy. The statutory definition explicitly encompasses “know-how” (knowledge and experience), as well as business and technological information.

5.2 Reasonable Measures and Confidentiality

To qualify for legal protection, the holder of a business secret must actively demonstrate that they have taken reasonable steps to preserve its confidentiality. The Law provides a clearer framework for what constitutes “reasonable measures,” emphasising that the holder’s proactive stance is critical.

According to the Law, these reasonable measures typically include:

- adopting internal protocols regarding the handling of business secrets, defining the circle of authorised persons, as well as their specific rights and obligations when managing such information;
- executing confidentiality agreements (NDAs) or obtaining signed confidentiality statements from employees, business partners, external associates, and consultants;
- implementing physical or electronic access controls specifically targeting both premises and digital files where sensitive information is stored; and
- clearly marking documents with the label “Business Secret” or similar designations of confidentiality.

Disclosure to Employees and Third Parties

The disclosure of a business secret to employees or third parties does not inherently strip the information of its protected status, provided it occurs within a controlled legal framework. Under the Law, such disclosure is considered “lawful” when it is necessary for the performance of work duties or business operations and is accompanied by appropriate safeguards. To maintain protection, the holder must ensure that the recipients are bound by statutory or contractual confidentiality obligations. If a secret is shared without these reasonable measures — such as an NDA or an internal act — it risks losing its legal character as a business secret because it may no longer be considered “not generally known” or “easily accessible.” Therefore, the focus of Serbian courts is not on the act of disclosure itself, but on whether the holder took proactive steps to restrict further dissemination and ensure that the recipient understood the confidential nature of the information.

5.3 Misappropriation of Trade Secrets

The Serbian legal framework distinguishes between lawful and unlawful acquisition of trade secrets. Unlawful conduct occurs when a secret is obtained through unauthorised access, appropriation, or duplication of documents or files without the holder’s consent. A notable modernisation in the current Law is the explicit recognition of “reverse engineering” as a lawful method of acquiring information, provided it meets

specific legal criteria. This alignment with global IT industry standards marks a significant move toward modernising the domestic legal system, particularly for the intellectual property and technology sectors.

Disputes involving specific actors are treated based on their underlying legal relationship, as set out below.

- Employee disputes: governed by both trade secret and labour laws, breaches often justify termination. Courts verify if the employer explicitly defined the information as a secret via internal acts. Notably, the Law protects whistleblowers, exempting disclosures made in the public interest or to reveal illegal activities.
- Joint venture and partnership disputes: conflicts typically arise during “exit” phases or regarding the unauthorised use of shared know-how for competing projects. Courts treat these as contractual breaches, focusing on the enforcement of non-compete and non-disclosure clauses within the partnership agreements to prevent unfair advantages.
- Competitor disputes: these are often categorised as unfair competition. Serbian law strictly prohibits acquiring a competitor’s secret through industrial espionage or by inducing their employees to breach confidentiality. Holders can seek injunctions to prohibit the marketing of “infringing goods” developed through such misappropriation.

5.4 Duration and Loss of Protection

Duration of Protection

Unlike other forms of intellectual property, such as patents or trade marks, trade secret protection in Serbia is not subject to a fixed statutory term or renewal requirements. Protection lasts indefinitely, as long as the information continues to meet the three essential legal criteria: being secret, possessing commercial value due to its secrecy, and being subject to reasonable measures to maintain confidentiality. Consequently, a trade secret can theoretically last forever, providing a competitive advantage for as long as the holder successfully prevents it from entering the public domain.

Effect of Disclosure and Proactive Protection

- Authorised disclosure: sharing a secret with employees or partners for operational purposes does not terminate protection, provided it occurs under controlled conditions. The recipient must be bound by a legal or contractual duty of confidentiality (eg, NDAs or internal acts).
- Accidental disclosure: if a secret becomes public through error or negligence, protection typically ceases as the “secrecy” element is lost. Once in the public domain, the information cannot be “re-privileged.”
- Unauthorised disclosure (infringement): in cases of unlawful acts like espionage or breach of contract, the holder retains the right to judicial relief (injunctions and damages). However, if the infringement results in the secret becoming widely known, its status as a trade secret is extinguished, leaving the holder with only a claim for monetary compensation.
- The loss-prone nature of protection: under Serbian law, protection is contingent upon continuous effort. If a holder stops applying “reasonable measures,” the information may lose legal eligibility for protection even before a leak occurs. The duration of protection is therefore directly tied to the holder’s proactive and ongoing commitment to secrecy.

5.5 Enforcement and Remedies

Civil Remedies and Damages

Holders of trade secrets or authorised licensees can initiate urgent proceedings to seek the following.

- Injunctive relief: courts can order the cessation or prohibition of the unlawful acquisition, use, or disclosure of a secret, including measures against intermediaries.
- Corrective measures: prohibiting the trade of “infringing goods,” including their withdrawal from the market, removal of infringing characteristics, or total destruction at the infringer’s expense.
- Damages: compensation covers actual losses (*obična šteta*), lost profits (*izmakla korist*), and any unfair gain realised by the infringer. The Law also explicitly recognises non-material damages for harm to reputation. If exact calculation is impossible, the court may award a reasonable royalty

based on the amount that would have been paid for lawful use.

Criminal and Punitive Sanctions

Misappropriation triggers significant punitive liability.

- Economic offences: legal entities face fines up to RSD3 million, while individuals and entrepreneurs are subject to misdemeanour fines.
- Criminal liability: under Article 240 of the Criminal Code, unauthorised disclosure or acquisition of trade secrets is a criminal offense punishable by six months to five years of imprisonment. In cases involving personal gain or highly confidential data, the penalty increases to two to ten years. Negligent disclosure is punishable by up to three years.

Confidentiality During Litigation

To prevent further dissemination during legal proceedings, the Law provides specific procedural mechanisms.

- Access restriction: the court may limit the number of persons authorised to attend hearings or access evidence.
- Redaction: sensitive information can be redacted from non-confidential versions of court decisions.
- Confidentiality orders: all participants (parties, lawyers, experts) are legally bound by strict confidentiality duties regarding any secrets disclosed during the trial, a duty that persists after the litigation concludes.
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6. Know-How

6.1 Definition and Legal Basis of Know-How

Serbian law does not explicitly define “know-how” as a separate legal category. In practice, it is subsumed under the concept of trade secrets, regulated by the Law on Protection of Trade Secrets. Know-how typically includes practical knowledge, experience, and technical information that is not publicly available. It differs from confidential information in that it usually has commercial value and practical application. It is not recognised as a property right in rem, but rather as a protected interest. Protection is primarily achieved through contracts and statutory rules on unfair competition and trade secrets.

6.2 Protectability Requirements and Scope

For know-how to be protected, it must meet the criteria of a trade secret: it must be secret, economically valuable, and subject to reasonable protection measures. In practice, it does not require novelty, unlike patent protection. The scope of know-how is broad and includes technical processes, manufacturing methods, algorithms, business strategies, and customer data. Even relatively simple information can qualify if it is not publicly known and has value. The key factor is whether the holder has taken steps to keep the information confidential. Without such measures, protection may be lost.

6.3 Ownership, Creation and Employee Know-How

Know-how created by an employee in the course of employment generally belongs to the employer, especially if it is within the employee’s duties. This is based on labour law principles and contractual obligations.

Employees are subject to a duty of loyalty and confidentiality during and after employment. In the absence of a contract, disputes may arise, particularly regarding independently developed know-how. For contractors and consultants, ownership depends entirely on the agreement between the parties. Therefore, clear contractual clauses are essential to avoid ambiguity.

6.4 Protection Through Contract and Confidentiality

Know-how in Serbia is primarily protected through contractual mechanisms, such as NDAs, confidentiality clauses, and non-use provisions. These agreements define what constitutes protected information and how it may be used. Serbian contract law allows broad freedom, so such clauses are generally enforceable if not contrary to mandatory rules. It is common to include penalties for breach of confidentiality. Non-compete clauses may also be used but are subject to stricter legal limitations. In practice, well-drafted contracts are the most effective form of protection.

6.5 Licensing and Assignment

Know-how can be licensed or assigned independently of other intellectual property rights such as patents. Serbian law does not require registration of such agreements, as know-how is not a registered right. However, written agreements are strongly recommended for legal certainty. There are no strict formalities such as notarisation unless agreed by the parties. The effectiveness of the transfer depends on maintaining confidentiality. Therefore, contractual safeguards are essential in licensing arrangements.

6.6 Reverse Engineering

Reverse engineering is generally lawful under Serbian law, provided that the product was lawfully obtained. It is considered a legitimate way of acquiring information unless prohibited by law or contract. The Law on Protection of Trade Secrets explicitly allows reverse engineering in such cases. However, contractual clauses may restrict or prohibit reverse engineering. These clauses are typically enforceable if clearly agreed. Reverse engineering must not involve unlawful access, breach of confidentiality, or violation of intellectual property rights.

7. Data, AI and Emerging IP Issues

7.1 Data Rights and Database Protection Legal Framework for Database Protection

In the Republic of Serbia, databases receive dual protection through both copyright and related (*sui generis*) rights. A database is defined as a collection of independent data, works, or other materials arranged in a systematic or methodical manner, which are individually accessible by electronic or other means. This structure ensures that databases are regulated under specific sections of the Law on Copyright and Related Rights, particularly focusing on the rights of database producers.

Copyright Versus Related Rights

A database qualifies for copyright protection if the selection and arrangement of its content are original and meet the general statutory requirements for an intellectual creation. While copyright protects the original structure and expression of the database, related rights focus on protecting the substantial investment made by a person or entity in creating the database. Crucially, copyright protection for a database does not extend to its actual content, nor does it limit any existing rights associated with that content.

Rights of the Database Producer

The producer of a database holds the exclusive right to prohibit the extraction or re-utilisation of the entire content or a qualitatively or quantitatively substantial part thereof. Extraction refers to the permanent or temporary transfer of content to another medium by any means or form, while re-utilisation involves making the content available to the public through distribution, rental, or online transmission. Furthermore, producers can prohibit the systematic extraction of even non-substantial parts if such actions conflict with the normal exploitation of the database or unreasonably prejudice the producer's legitimate interests.

7.2 AI-Generated Works and Inventorship/ Authorship

The Requirement of Human Authorship

Under the Law on Copyright and Related Rights of the Republic of Serbia, a copyrighted work is strictly defined as an original intellectual creation of a natural person. This legal framework requires the work to

reflect the author's personality, spiritual expression, and creative intellect. Since artificial intelligence lacks a personality and self-awareness, the content it generates cannot currently meet the statutory test of "originality" or "spiritual creation" required for authorship.

Legal Status of AI as an Author

Current Serbian regulations do not recognise artificial intelligence as a legal or natural person, thus excluding it from being considered an author. Even in the case of complex audiovisual works or scripts, such as those generated by models like Sora or Benjamin AI, the law maintains that only a human can express a state of spirit in a regulated form.

Ownership of AI-Generated Works

The inability of AI to hold authorship leads to two primary legal possibilities: the work falls into the public domain or is attributed to a natural person. Attribution to a human, such as the programmer or the user, depends on the extent of their creative influence. For a user to be recognised as an author, they must provide a real and essential creative contribution that goes beyond simple data selection or prompts. If the final output is an expression of the user's creative spirit and key creative choices, it may qualify for protection, though any parts resulting solely from autonomous AI choices remain exempt.

Corporate Frameworks for AI-Assisted Ownership

In the absence of specific statutory provisions, businesses in Serbia primarily structure ownership of AI-assisted content through precise contractual frameworks. Companies incorporate broad intellectual property assignment and "work-for-hire" clauses into employment and service agreements to ensure that all outputs generated by staff or contractors automatically vest in the employer. To prevent such works from falling into the public domain, businesses focus on documenting the human creative contribution, such as the formulation of specific prompts, iterative refinement, and final editorial selection. Where the originality of AI-generated content is legally uncertain, firms increasingly rely on the Law on the Protection of Business Secrets to protect algorithms, prompt libraries, and resulting datasets as confidential information that provides a competitive advantage.

7.3 Training Data, Model Development and Infringement Risk

Current Status of Serbian Legislation

Serbian copyright law has not yet been aligned with the EU Directive on Copyright in the Digital Single Market (the "DSM Directive"). Consequently, the statutory exceptions for text and data mining (TDM) are currently not provided for in the domestic legal framework. This lack of harmonisation creates a more restrictive environment for automated data extraction compared to the EU, as any reproduction of protected works for the purpose of data mining generally requires explicit authorisation from the rights holders.

Distinction Between TDM and Generative AI

Even upon the eventual implementation of TDM exceptions into Serbian law, there are substantive reasons why such provisions should not automatically apply to the training of generative AI (GenAI) systems. TDM and GenAI serve fundamentally different purposes; while TDM focuses on analysing existing information to uncover patterns and correlations for knowledge extraction, GenAI utilises massive datasets to create entirely new synthetic content. TDM is essentially a non-transformative analytical process, whereas GenAI adopts and "memorises" the styles and characteristics of original works to generate competing outputs.

Functional and Legal Implications

The core distinction between these technologies lies in their functional outcome and market impact. TDM seeks patterns in existing data for the purpose of analysis and scientific insight, whereas GenAI utilises those same patterns for synthetic expression, often resulting in content that competes in the same market as the original works used for training. Therefore, the legal interpretation of TDM exceptions should remain narrow and should not be extended to cover the commercial training of AI models, which represents a significant shift from data analysis to content creation.

Enforcement and Remedies in Intellectual Property

In the event of an infringement or a serious threat to copyright and related rights, the legal landscape in Serbia provides for comprehensive judicial protection, allowing rights holders to seek declaratory relief, permanent injunctions against infringing acts under the threat of monetary penalties, and the recovery of

both material and non-material damages. Furthermore, upon establishing a likelihood of infringement, the court may grant preliminary injunctions to immediately prohibit acts that constitute a violation or a serious threat to the right, ensuring prompt protection before the final resolution of the dispute.

7.4 Enforcement Against AI-Enabled Infringement

Status of Judicial Precedent in Digital Matters

The judicial landscape in Serbia regarding complex digital rights and the liability of online platforms is still in an early stage of development. While the Law on Copyright and Related Rights and the Law on Electronic Commerce provide a basic legal framework, there is a notable lack of consistent and highly specialised judicial practice concerning emerging technologies. Serbian courts have limited experience in dealing with nuanced disputes involving automated content recognition systems, the specific liability of hosting service providers for AI-generated infringements, or the enforcement of rights in decentralised digital environments.

Challenges in Practical Application

The current approach of the judiciary remains largely traditional, focusing primarily on classic forms of copyright infringement. Consequently, legal certainty for businesses operating in the digital sphere is often sought through conservative interpretations of existing statutes rather than established case law. This underdeveloped practice means that many legal questions regarding the intersection of intellectual property and new digital services have yet to be tested in higher courts, leading to a reliance on legal theory and comparative regional perspectives rather than domestic precedents.

Future Outlook and Legal Certainty

As the Serbian market continues to integrate into the European digital economy, it is expected that the number of disputes involving digital assets and platform liability will increase. However, until the domestic courts establish a more robust body of case law, businesses must navigate a landscape where legal outcomes can be difficult to predict. This environment underscores the importance of preventive legal strategies and meticulously drafted contractual terms to

mitigate risks that have not yet been clearly addressed by the Serbian judiciary.

8. Intersections and Overlaps

8.1 Choice of Protection and Strategic Considerations

In Serbia, the choice between different forms of intellectual property protection, especially patents and trade secrets, is mainly a strategic business decision.

A patent is typically preferred when an invention can be disclosed without losing competitive advantage, when a strong exclusive right for up to 20 years is needed, when the invention is likely to be easily reverse-engineered, or when an IP asset is required for investors, licensing, or valuation purposes.

Trade secret protection is more appropriate when the value lies in secrecy itself, when the information is difficult to independently discover, when access can be effectively controlled through confidentiality measures, and when the right holder prefers potentially unlimited protection without disclosure.

The most important factors influencing this choice include the risk of reverse engineering, speed of market entry, cost and complexity of patenting, the requirement of disclosure in patents versus secrecy in trade secrets, and industry practice, where pharmaceuticals usually rely on patents, software often relies on trade secrets, food recipes are kept secret, and mechanical inventions are commonly patented.

8.2 Cumulative and Overlapping Protection

Serbian law allows a significant degree of cumulative and overlapping intellectual property protection over the same subject matter. This means that a single product or feature may be protected simultaneously under different IP regimes, such as patents and trade secrets at different stages, trademarks and industrial designs, or copyright and design protection in cases of applied art.

Trade dress protection is usually achieved through a combination of trademark law and unfair competition rules.

However, this overlap has limits. A right holder cannot use multiple IP rights to bypass the legal scope or limitations of a single regime, and courts focus on the economic reality rather than formal layering of rights.

When resolving conflicts, courts apply a structured approach: special IP laws prevail, each right is assessed separately, and the dominant nature of the subject matter technical, aesthetic, or source-identifying is considered, while ensuring there is no double compensation for the same harm.

8.3 Patents and Trade Secrets

Confidential know-how and technical information may be protected as trade secrets before, during, and after a patent application, as long as the information has not been disclosed.

During the patent application process, secrecy can be maintained until publication. Once a patent is published, all disclosed information enters the public domain and loses trade secret protection.

However, trade secret protection may continue after patent expiry for any additional know-how not disclosed in the patent, such as manufacturing optimisations or operational techniques. In practice, a patent replaces secrecy with a time-limited monopoly, while residual know-how can remain protected as a trade secret even after patent expiry.

8.4 Trade Marks, Trade Dress and Industrial Designs

In Serbia, trade marks, industrial designs, and trade dress are distinct but sometimes overlapping forms of protection.

A trade mark protects signs that identify the commercial origin of goods or services, while an industrial design protects the aesthetic appearance of a product, including its shape, lines, colours, and ornamentation. Trade dress is not a separate legal category but refers to the overall visual impression of a product or packaging, typically protected through trade mark law, design law, and unfair competition principles. The same product can therefore enjoy multiple layers of protection.

For example, a bottle shape may be protected as an industrial design, its name and logo as a trade mark, and its overall appearance as trade dress.

However, design protects appearance, trade marks protect origin, and neither can be used to monopolise purely functional features.

8.5 Copyright and Trade Marks

Copyright and trade mark protection often overlap in Serbia, particularly in relation to logos, branding elements, slogans, and mascots. Such elements can be protected by copyright if they are original creative works and simultaneously by trade mark law if they function as identifiers of commercial origin.

Copyright protection arises automatically upon creation, while trade mark protection requires registration and use in commerce. Although both rights can coexist, they serve different purposes:

Copyright protects creative expression, while trade marks protect market identity and prevent consumer confusion.

Copyright cannot extend trade mark monopolies, and trade mark law cannot override copyright limitations. Courts distinguish between them by assessing whether the issue concerns creative authorship or commercial source identification.

8.6 Enforcement and Remedies Across Multiple IP Rights

Serbian law allows multiple intellectual property claims to be brought in a single court proceeding.

A single lawsuit may include patent infringement, trade mark infringement, industrial design infringement, copyright infringement, trade secret misappropriation, and unfair competition claims if the facts support them.

Courts assess each IP right separately but evaluate the factual situation collectively.

However, Serbian courts strictly prohibit double recovery, meaning a claimant cannot receive multiple

compensations for the same damage even if several IP rights are infringed by the same act.

Damages are generally calculated based on hypothetical licence fees, actual damages, and lost profits, with possible increases in cases of intentional infringement.

8.7 International and Cross-Border Considerations

In Serbia, intellectual property protection is governed by the principle of territoriality, meaning rights are enforceable only within Serbia if registered or recognised there.

The system operates within an international framework that includes the Paris Convention, TRIPS Agreement, the Madrid System, and the European Patent Convention.

These instruments influence Serbian law but do not override domestic jurisdiction.

Foreign decisions, including those from the European Patent Office, do not automatically apply in Serbia but may serve as evidence or guidance.

In cross-border disputes, courts focus on where the infringement occurred, where goods are marketed, and whether the Serbian market is targeted.

Enforcement decisions issued by Serbian courts apply strictly within Serbian territory.

Trends and Developments

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T-S Legal

T-S Legal is a full-service firm operating across diverse industry sectors. Its IP practice spans the full spectrum of intellectual property and unfair competition matters. The firm is particularly noted for its work in electronic media, telecommunications, and pharmaceuticals, handling complex cross-border transfers, copyright protection, and the commercialisation of intangible assets. A key differentiator is the firm's

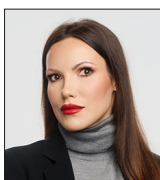
advisory role to national regulators, with the team frequently appointed to working groups responsible for drafting Serbia's media and digital legislation. T-S Legal offers seamless multijurisdictional support through strategic alliances with ODML Law (Croatia) and a 2025 partnership with GRATA International, providing clients access to a global legal network spanning 24 countries.

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Can Artificial Intelligence Be the Author of a Film Work?

Introduction

Artificial intelligence (AI) has experienced significant developments in the past decade, thanks to the massive amount of available data, improved computer performance, and the development of new architecture based on deep learning. In contrast to a classic computer program, which serves as a simple tool in the hands of a person and older artificial intelligence systems based on behaviour prediction, new forms of AI based on the principles of deep learning and artificial neural networks are capable of autonomously generating completely new content (hence the term “generative AI”).

These developments are not merely incremental improvements in computing power but represent a fundamental shift in how machines interact with information. Instead of following rigid, pre-programmed instructions, modern systems learn patterns from vast datasets and then apply those learned patterns in ways that can appear creative, adaptive, and even unpredictable to human observers. This shift has raised both enthusiasm and concern across legal, economic, and cultural domains.

The consequences of the so-called “fourth revolution” are being felt across society, whether through excitement about the new possibilities of applying AI or concern about the potential job losses. AI takes many forms and serves different purposes, while also having the potential to replace human labour in any industry. The creative industry has proven itself to be particularly fertile ground for the “proliferation” of vari-

ous forms of AI. AI composes music, writes songs, novels, newspaper articles, creates pictures and photographs, and recently began to “film” movies!

This transformation is especially visible in media production workflows, where AI tools are now used not only for the automation of repetitive tasks but also for creative functions, such as ideation, drafting, and even stylistic imitation. The speed and scale at which content can be generated have increased dramatically, allowing a single user to produce what once required entire teams of professionals. This raises fundamental questions about value creation and the meaning of creativity itself in the digital age.

Currently, the most famous AI model for creating audiovisual works is Sora. Developed by the company Open AI, this model generates short video clips based on user prompts (text-to-video model). Several other models for generating audiovisual content from prompts were developed before Sora, including Make-A-Video by Meta and Google’s Lumiere. The capacity of AI to be a good screenwriter was demonstrated by the 2016 Sci-Fi film “Sunspring”, which made it to the top ten entries at the annual Sci-Fi Film Festival in London. The complete script was written by Benjamin, an AI system based on an artificial neural network trained on the scripts of sci-fi movies from the 1980s and 90s.

The emergence of such systems illustrates the rapid convergence between linguistic models and visual generation systems. What once required separate specialised tools for text, image, and video is now increasingly integrated into unified models capable

of producing multimodal outputs. This convergence intensifies the legal uncertainty, as the boundary between “tool” and “creator” becomes increasingly blurred.

Legal framework and the requirement of human authorship

Given that generative AI creates completely new content that is difficult to attribute to the intellectual work of a specific natural person, whether the developer of the AI system, the author of the work that was used for its training, or the user who initiated the creation process through prompts, the question arises as to how such content should be situated within the current system of copyright protection. More specifically, for the purpose of this discussion, the question is whether AI can be considered the author of a film.

This ambiguity is at the heart of contemporary copyright debates. Unlike traditional creative processes where authorship can be traced through a relatively linear sequence of human decisions, AI-generated outputs emerge from complex interactions between training data, algorithmic architecture, and user input. Each of these elements contributes in some way to the final result, yet none alone fully explains or controls it.

The answer to this question can be found in the Law on Copyright and Related Rights of the Republic of Serbia, specifically in Article 2, which defines the concept of copyrighted work, and Article 9, which determines who may be regarded as the author of the work. In other words, it is first necessary to determine whether the content created by AI is subject to copyright, and only if the answer is affirmative, who is to be regarded as the author of that work.

Article 2, paragraph 1 of the Law on Copyright and Related Rights defines copyrighted work as the original intellectual creation of the author, expressed in a certain form, regardless of its artistic, scientific or other value, its purpose, size, content and manner of expression, as well as the permissibility of publicly communicating its content.

Therefore, in order for a work to be copyrighted, it must represent the original spiritual expression of the

author, an expression of their personality, creation, state of mind, ie, intellect. Originality and spirituality are two sides of the same coin since originality is defined by the representation of the author's personality. Already at this first stage, AI has failed to meet this requirement, given that the content it generates cannot represent an expression of its personality (because this is a quality it does not possess), nor its own spiritual creation, at least until the such a time when AI becomes “real” intelligence or a self-aware entity capable of representing “itself” through its work.

This requirement of personality expression has historically served as a safeguard ensuring that copyright protects human intellectual labour rather than mechanical reproduction. However, AI challenges this assumption by producing outputs that appear original without possessing subjective experience or intention. The law is therefore forced to consider whether “originality” must always be tied to consciousness or whether functional creativity may be sufficient.

The legislator is also aware of this issue; accordingly, Article 9 of the Law on Copyright and Related Rights stipulates that an author is a natural person who created the copyrighted work. Therefore, only a natural person can express their intellectual or spiritual state in a certain form, ie, only a natural person can create a copyrighted work. AI is not a natural person, and in accordance with current regulations, it will not be considered the author of the content it has generated. Considering that AI is not even a legal entity and that the question of responsibility for the damage caused by it acting autonomously in accordance with its own programming and purpose could potentially be raised, the European Parliament is considering the possibility of introducing a third category of persons, so-called “electronic persons”, which would include robots and AI.

Authorship challenges in AI-generated works

The proposal of “electronic personality” reflects an attempt to bridge the gap between traditional legal categories and emerging technological realities. However, such proposals remain controversial, as they risk attributing legal agency to systems that lack moral responsibility, consciousness, or intent. Critics argue

that this could dilute accountability rather than clarify it.

To conclude, in accordance with domestic positive legal regulations, content generated by AI does not constitute a work that can be attributed to the authorship of AI itself.

The inability of AI to be considered the author of the content it generates leads to two possibilities: either the work produced by AI falls into the public domain, or another individual is recognised as the author of that work.

Legal status and possible classifications of AI-generated content

Artworks in the public domain are works on which no person has the right of ownership, ie, they are part of the general cultural and intellectual heritage of humanity that is freely available for anyone to use. The question arises whether, from the point of view of “incentive theory”, it is at all necessary to extend the system of copyright protection to works generated by AI, or whether it is more rational to treat such works as part of the public domain. Also, even if it is assumed that these artworks are not part of the public domain, it may be possible to protect them with other legal mechanisms such as the “right of the first publisher” (publication rights) or through the introduction of a new related right similar to database producer rights, which would de facto protect the investment in the AI system. All of these issues should be explored from both a legal and an economic point of view before favouring a solution.

From an economic perspective, the allocation of rights over AI-generated content directly influences innovation incentives. If outputs are freely accessible in the public domain, developers may lack motivation to invest in expensive models. Conversely, granting overly broad rights may stifle downstream creativity and limit public access to machine-generated cultural goods. The optimal balance remains unresolved.

On the other hand, the authorship of a work generated by AI could eventually be attributed to a natural person. Who that person could be depends on the extent of creative influence over the final product, and poten-

tial candidates are primarily the programmer who created the AI system and the user whose instructions (prompts) initiated the content creation process.

The programmer of the AI system could be considered as a possible author, given that artificial intelligence is based on a computer program, the author of which is a natural person - the programmer. However, the problem with this solution is that, at least in the case of new forms of AI (deep learning and artificial neural networks), there does not seem to be a direct causal link between the software developer and the final generated result, ie, systems capable of generating completely new content. There is already judicial practice on this issue; in the case of *Rearden v Walt Disney Co.*, the American court took the position that films made using Rearden’s software could not be considered derivative works of the software, as although the software performed a significant part of the work, the decisive share of creative expression in the film was attributable only to the employees of the Walt Disney Company.

Content generated by AI is rather an expression of instructions or prompts given for the creation of certain specific content, so recognising the authorship of the AI user could be a more acceptable solution. However, it should be borne in mind that the mere selection of data and its classification by the user is not enough to fulfil the requirement of “originality.” Recognition of authorship in favour of the user would be possible only where the user makes a real and essential contribution to the operation of the AI system in the creation process, that is, if the key creative choices are made by the user and not by AI.

Therefore, to the extent that the content generated by AI is an expression of the user’s creative spirit or the message that they wanted to communicate to the audience, and to the extent that such an outcome can be foreseen by the user, such content may be regarded as the user’s work and the user may be recognised as an author. In the event that the generated content is the creative result of both human and machine decision-making, content that is the result of choices made by AI should be excluded from copyright protection. Only independent human contributions are protected by copyright.

Training data and the limits of copyright attribution

Finally, the influence of the works of authors used to train AI systems cannot be ignored. However, as it is a case of millions of works by known and unknown authors, it would not be feasible to treat them as potential candidates for authorship of the generated content.

This raises another unresolved issue in copyright theory: the relationship between input data and output creativity. While the works contained in training datasets are essential to the functioning of AI systems, their influence is diffuse and statistically mediated rather than directly traceable to a particular work. This makes traditional notions of derivation and adaptation difficult to apply in a meaningful way.

Conclusion

The authors hope to have provided fresh insights into the potential issues and challenges that intellectual property law may encounter in relation to AI. The intention has been to highlight the complexity of the question of authorship in relation to works generated by AI, not to offer a definitive solution. Finally, in order to see what the possibilities of generative AI really are, the authors asked ChatGPT to write the conclusion to this article. When asked to provide a the conclusion, ChatGPT produced the following response.

“The conclusion of this paper can be summarized as follows: the authorship of works generated by artificial intelligence presents a challenge to the existing legal framework, because artificial intelligence cannot itself be regarded as an author. Potential candidates for authorship include the developers who developed the technology and the users who directed its operation. A key factor in attributing authorship to the user is the existence of a substantial creative contribution during the content generation process. Also, the rights of the authors whose works were used to train artificial intelligence systems must also be taken into account, which further complicates the issue. Further research is needed to determine the most appropriate legal solutions capable of both protecting rights and fostering innovation in this rapidly evolving field.”

Ultimately, the legal system is being forced to evolve at the same pace as the technology it seeks to regulate.

Whether through reinterpretation of existing doctrines or the creation of entirely new legal categories, the challenge will be to preserve the core principles of copyright originality, human creativity, and fair attribution, while adapting to a world where machines increasingly participate in the production of culture.