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SBORNIK

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POVLASTIČNI VIJESTNIK

# **N**NATIONAL STRATEGY FOR THE DEVELOPMENT OF THE INTELLECTUAL PROPERTY SYSTEM OF THE REPUBLIC OF CROATIA

2005 - 2010

A Document of the Government of the Republic of the Croatia



STATE  
INTELLECTUAL  
PROPERTY  
OFFICE OF  
THE REPUBLIC  
OF CROATIA

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for the Development  
of the Intellectual  
Property System  
of the  
Republic of Croatia,  
2005 – 2010

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A document of the Government of the Republic of Croatia adapted on 13. October 2005

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## Abbreviations

CA – **C**ustoms **A**dministration  
CAPPR – **C**roatian **A**ssociation for the **P**rotection of **P**erformers' **R**ights  
CARDS – **C**ommunity **A**ssistance for **R**econstruction, **D**evelopment and **S**tabilisation  
CCE – **C**roatian **C**hamber of **E**conomy  
CCS – **C**roatian **C**omposers' **S**ociety  
CCTC – **C**roatian **C**hamber of **T**rades and **C**rafts  
CFDG – **C**roatian **F**ilm **D**irector's **G**uild  
CIS – **C**roatian **I**nnovation **S**ystem  
CMAs – **C**ollective **M**anagement **A**ssociations  
CPA – **C**roatian **P**honographic **A**ssociation  
CRR – **C**opyright and **R**elated **R**ights  
EPO – **E**uropean **P**atent **O**rganization/**O**ffice  
EU – **E**uropean **U**nion  
GRC – **G**overnment of the **R**epublic of **C**roatia  
HITRA – **C**roatian **I**nnovation **T**echnology **D**evelopment  
IP – **I**ntellectual **P**roperty = **I**ndustrial **P**roperty + **C**opyright and **R**elated **R**ights  
IPR – **I**ntellectual/**I**ndustrial **P**roperty **R**ights  
MAFWM – **M**inistry of **A**griculture, **F**orestry and **W**ater **M**anagement  
MC – **M**inistry of **C**ulture  
MELE – **M**inistry of the **E**conomy, **L**abor and **E**ntrepreneurship  
MFIN – **M**inistry of **F**inance  
MHSW – **M**inistry of **H**ealth and **S**ocial **W**elfare  
MI – **M**inistry of the **I**nterior  
MJ – **M**inistry of **J**ustice  
MSES – **M**inistry of **S**cience, **E**ducation and **S**ports  
MSTTD – **M**inistry of the **S**ea, **T**ourism, **T**ransport and **D**evelopment  
NIPS – **N**ational **I**ntellectual **P**roperty **S**ystem  
OHIM – **O**ffice for **H**armonization in the **I**nternal **M**arket  
RAZUM – **D**evelopment of **K**nowledge-**B**ased **E**nterprises  
SAO – **S**tate **A**ttorney's **O**ffice  
SI – **S**tate **I**nspectorate  
SIPO – **S**tate **I**ntellectual **P**roperty **O**ffice  
TEST - **T**echnology **R**esearch and **D**evelopment **P**rojects  
TRIPS – **A**greement on **T**rade **R**elated **A**spects of **I**ntellectual **P**roperty **R**ights  
WIPO – **W**orld **I**ntellectual **P**roperty **O**rganization  
WTO – **W**orld **T**rade **O**rganization

## INTRODUCTION

## I. INTRODUCTION

### A) About Intellectual Property

“Intellectual property is a force that can be used to enrich the lives of individuals and the future of nations – materially, culturally and socially.

Renaissance northern Italy is thought to be the cradle of the intellectual property system. A Venetian law of 1474 made the first systematic attempt to protect inventions by a form of patent, which granted an exclusive right to an individual for the first time.”<sup>1</sup>

Other forms of the results of human intellectual work and creativity were also protected in the manner that their creators were granted moral and economic rights in their works. Such an atmosphere stimulating intellectual property made the then Italy the most advanced part of the world.

Through various historical periods and various parts of the world a high correlation between a social (national) attitude towards intellectual property, and a level of development or welfare, respectively, can infallibly be followed and confirmed.

The roots of the international intellectual property system date back to the second part of the 19<sup>th</sup> century, a period of industrialization and growth of international trade. Two treaties of that time, being the pillars of the world intellectual property system even today are:

- the Paris Convention for the Protection of Industrial Property of 1883, and
- the Berne Convention for the Protection of Literary and Artistic Works of 1886.

At that time, Croatia had its intellectual property system regulated in accordance with the then highest criteria. The common Croatian and Hungarian Parliament passed the Copyright Law on 4 May 1884 and the Patent Law on 7 July 1895. **So, the work on this Strategy has begun in the year witnessing the celebration of the 120<sup>th</sup> Anniversary of the first Croatian Copyright Law (2004), and will be finished in the year witnessing the celebration of the 110<sup>th</sup> Anniversary of the first Croatian Patent Law (2005).**

From its the beginnings and up to the present day, the intellectual property protection has been continually present in the Croatian territory, so soon after the gain of the national independence, the Government of the Republic of Croatia (GRC)<sup>2</sup> has established its national competent body (the today's State Intellectual Property Office – SIPO) and adopted laws and regulations necessary for the acquisition of new rights, and the provision of continuity of protection of earlier acquired rights.

<sup>1</sup> Dr. Kamil Idris, Director General of WIPO, Intellectual Property a Power Tool for Economic Growth

<sup>2</sup> Decision of GRC of 31. December 1991, on the establishment of the National Industrial Property Office



Such a history is binding, while the modern needs and predictable future require arrangement of the national intellectual property system on the principles of excellence. Care for the results of human intellectual work has also been expressed in Article 68 of the Constitution of the Republic of Croatia, which, among other things, guarantees:

*"... The State shall stimulate and assist the development of science, culture and the arts. The State shall protect scientific, cultural and artistic goods as national spiritual values. Protection of moral and material rights deriving from scientific, cultural, artistic, intellectual and other creative activities shall be guaranteed ..."*

## **B) About the Strategy**

The Strategy is based on:

1. Experience, activity and strategic documents of relevant national bodies and institutions competent for the intellectual property matters, first of all of the State Intellectual Property Office and the Ministry of Science, Education and Sports;
2. Results and recommendations arising from the CARDS 2001 Programme – Strategy and Action Plan for the Implementation and Enforcement of Intellectual Property Rights;
3. Results and recommendations arising from other program documents and working materials in the framework of various strategic initiatives on national and international levels<sup>3</sup>.

The Strategy has been prepared on the basis of a fact-finding mission and a professional assessment of the overall national system of acquisition, maintenance and enforcement of intellectual property rights in the legislative, institutional and implemental/practical terms.

A close cooperation between the SIPO management team and the CARDS 2001 expert team has led to highly agreed findings concerning the present situation and the preferable directions for development and improvement of the national intellectual property system.

Since August 2004, the Strategy has been considered by the members of the CARDS 2001 Steering Committee, the representatives of competent ministries, other bodies of the executive and judicial authorities and interested groups concerned by the Strategy, in order to confirm that the analysis and conclusions are justified. The conclusions and proposals have been published on the SIPO web site. A public debate was held on 18 November 2004. The content of the Strategy has been accepted and supported by the participants of the public debate.

<sup>3</sup> For instance: National Programme for the Integration of the Republic of Croatia into the European Union, National Programme for the Strategic Development of Science and Technology, HITRA Programme Documents (MSES); Plan of Short-Term and Long-Term Measures for the Prevention of Grey Economy, "Innovation" Programme for 2004 (MELE); Innovations in the Croatian Enterprises 2001-2003, Institute of Economy, Zagreb, and MSES; TOR-CARDS 2003 IP Infrastructure for the R&D Sector; CARDS 2002 IPR – Assessment Report; EPO – AC Strategy debate on the future of the European patent system, etc.

The above remarks concern primarily the CARDS 2001 document, while the parts of the Strategy relating to support provided for the Croatian innovation system (CIS) have been based on the MSES, MELE, SIPO and CIS Council plans.

In addition to the above mentioned, the Strategy includes, in an appropriate manner, recommendations and policies provided by the relevant bodies and forums on the world and European regional level. This primarily concerns the Declaration on Intellectual Property and other WIPO strategic documents, as well as the results of the strategic debate concerning the future of the European patent system led in the EPO Administrative Council, with the participation of the Republic of Croatia in the observer status.

The Strategy is directed towards the improvement of the investment climate, and the stimulation of economic, scientific and cultural development by providing a reliable and stimulating system of protection of intellectual property rights through the improvement of the legal, institutional and program framework for the effective protection, maintenance, exercise/enforcement and use/exploitation of intellectual property. The purpose of this document is to offer a clear answer to a question, or to **determine, who is doing what in the performance of this huge task.**

For the purpose of this document the measures have been defined as:

- a) SHORT-TERM MEASURES - covering the period up to the end of 2005
- b) MEDIUM-TERM MEASURES – covering the period from 2006 to 2007
- c) LONG –TERM MEASURES – covering the period up to the end of 2010

**The Strategy was prepared in the period covering August 2004 – February 2005, so the short-term measures were realized in their entirety or in part, simultaneously with the preparation of the Strategy.**

THE AIM OF THE STRATEGY AND  
THE STRATEGIC GOALS

## II. THE AIM OF THE STRATEGY AND THE STRATEGIC GOALS

The Strategy relates to the following **THREE ASPECTS**:

- a) adaptation of the national intellectual property system (NIPS)
- b) protection of intellectual property rights, and
- c) improvement of the use of intellectual property as a resource in the economic, scientific, cultural and overall social development of the Republic of Croatia.

**The adaptation of NIPS** is defined as measures for the development of the legislative and institutional framework and stimulation of the development of interested participants of the system (interest groups).

**The protection of intellectual property rights** is defined as an effective application of legal means by the institutions competent for carrying out intellectual property rights granting and protection procedures.

**Intellectual property use (exploitation)** is defined as use of the results of human intellectual work, protected in the system of intellectual property rights, as an entrepreneurial resource at all the levels.<sup>4</sup>

**THE AIM** the Government of RC wish to achieve by the implementation of this Strategy is the following:

- To guarantee (within a short term) the level of protection of intellectual property rights similar to that existing in the European Community, and to permanently maintain and harmonize that level of protection in accordance with all the international obligations and agreements concluded by the Republic of Croatia in this field,
- To ensure (within a medium-term) the improvement of the use of intellectual property as a power tool for economic growth and an actuator of scientific, cultural and overall social progress up to reaching the average level of such use in the EU<sup>5</sup> or (within a long-term) the level of such use in the leading EU countries<sup>6</sup>.


The Government of RC will achieve the above mentioned by the realization of the following **STRATEGIC GOALS**:

<sup>4</sup> Micro-level – individual researcher/inventor, designer, author, performer, craftsman, etc.; mezzo level – institute/enterprise/institution; macro level - national economy.

<sup>5</sup> Referent level includes the so called "Up and comers", first of all Ireland, Portugal and Austria

<sup>6</sup> Referent level includes countries with the highest ECI (European creativity index). According to the recent research those countries are Finland, Sweden and Denmark.

1. Adaptation of the legislation framework in the field of intellectual property rights in accordance with the *acquis communautaire* and international legal order in the field of intellectual property;
2. Improvement of the NSIP institutional framework in the Republic of Croatia through:
  - a) organizational and managerial development of institutions, modernization of methods and procedures, employment and development of human resources, equipment;
  - b) transparent and effective cooperation between bodies, institutions and organizations competent for intellectual property, established on agreed policies;
3. Improvement of the protection of intellectual property rights and reduction of the infringement rate to average levels of the EU Member States or below;
4. Improvement of the use of intellectual property as a power tool for economic, technological, scientific, cultural and overall social progress by developing public services for the collection, storage, processing and dissemination of business, technological and legal information intended for all the interested sectors, including consulting aspects related to intellectual property;
5. Stimulation of adequate development of activities of interest groups in this field;
6. Increase of the level of public awareness about the importance and value of intellectual property.



PRESENT STATE – STARTING POINT

### III. PRESENT STATE – STARTING POINT

The present state of NIPS in the Republic of Croatia as a basis for the adoption of this Strategy is defined to the greatest extent by the following factors:

1. International intellectual property ambience
2. National intellectual property legal regulations
3. Institutional framework for the exercise of intellectual property rights
4. Use (exploitation) of intellectual property in the Republic of Croatia
5. System of management of copyright and related rights

#### 3.1 International Intellectual Property Ambience

**3.1.1 WIPO;** The content and scope of activities of SIPO and other state bodies the scope of which include particular aspects of enforcement of intellectual property rights, is substantially defined and regulated by the international laws and regulations to which the Republic of Croatia is a party. The majority of such conventions and treaties are adopted and administered within the framework of the World Intellectual Property Organization (WIPO), as a specialized agency of UN. A complex combination of such documents constitute the international legal order in the field of intellectual property. The treaties and conventions binding the Republic of Croatia are listed in Attachment 1.

**3.1.2 WTO;** Obligations concerning the functioning of NSIP according to the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (WTO-TRIPS), the so called “Up and comers” as minimum protection standards. Croatia has given a complete overview of the fulfillment of those obligations in its response to the questions posed by the EC (Document WTO IP/Q to Q4/HRV/1 pp of May 2003).

**3.1.3 EU;** The main strategic commitment of the Republic of Croatia is full membership of the EU. To achieve this goal, and in accordance with the Stabilization and Association Agreement, and soon opening of negotiations on the accession to full membership of the EU, Croatia intensifies and speeds up substantial adaptations of the legislative and institutional nature. The Interim Agreement on Trade and Related Matters contains the obligation of the Republic of Croatia to guarantee the level of protection of intellectual property rights similar to that in the EU, within three years from the date of its entry into force, i.e. up to March 2005.

EU has expressed its interest in developed and effective NIPS in Croatia through significant professional and technical assistance provided for the improvement of NIPS within the CARDS programmes specialized for intellectual property. At the time of preparation and adoption of this document four CARDS IP programs are running their various realization phases, the main recipient of which is SIPO, the Croatian coordinator thereof, while a special

CARDS 2003 *Intellectual Property Infrastructure for the R&D Sector* the principle recipient of which is MSES is under preparation.

**3.1.3 USA;** The obligations arising from the Memorandum of Understanding between the Government of the Republic of Croatia and the Government of the United States of America have been fulfilled to the greatest extent at the same time when the TRIPS provisions have been complied with, and the relevant legal regulations amended, including the Law on Drugs and Medicinal Products. The Memorandum was signed on 26 May 1998, and ratified by the Parliament in February 2004. The application of the provisions set out in Article 6 paragraph (2) concerning subsequent protection of pharmaceutical and agrochemical inventions comprising substances is disputable even today.

## **3.2 Intellectual Property Legal Regulations;**

### **3.2.1 Applicable National Laws**

The Croatian legislation regulating specifically<sup>7</sup> NIPS comprises:

1. Patent Law
2. Trademarks Law
3. Law on Geographical Indications and Designations of Origin of Products and Services
4. Law on the Protection of the Topographies of Semiconductor Products
5. Industrial Designs Law
6. Copyright and Related Rights Law

The first five listed Laws regulating the field of the so-called industrial property were adopted on 21 October 2003, published in OG no. 173/03 of 31 October 2003, entered into force on the eight day following the date of their publication, and have been applied as from 1 January 2004.

The Copyright and Related Rights Law (CRRL) regulates the rights of the authors, performers, producers of phonograms, film producers, broadcasting organizations, publishers and producers of databases. It was adopted on 7 October 2003, published in OG no. 167/03 of 22 October 2003, entered into force on the eight day following the date of its publication, and has been applied as from that date.

### **3.2.2 Other Applicable Legal Regulations**

By-laws regulating the implementation of the mentioned laws are:

<sup>7</sup> Legal framework of intellectual property protection in a broader sense is also constituted by other legal regulations including the Constitution of the Republic of Croatia, the Criminal Code, the Law on Administrative Procedure, the Companies Law, the Food Law, the Wine Law, the Labour Law etc.



1. Patent Regulations
2. Trademark Regulations
3. Regulations on Geographical Indications and Designations of Origin
4. Regulations on the Protection of Topographies of Semiconductor Products
5. Regulations on Industrial Designs
6. Regulations on the Professional Criteria and Procedures for Granting Authorizations for Performing Collective Management of Rights and on Remunerations for the work Done by the Council of Experts.

The mentioned Regulations, adopted by the Minister of Science, Education and Sports on 21 May 2004 were published in OG no. 72/04 of 1 June 2004, entered into force on and have been applied as from the date of the publication thereof.

In the meantime, some of the legal regulations, as missing at the time of the assessment of the overall national intellectual property system, and forming the basis of this Strategy, have been adopted. Such legal regulations regulating the functioning of the intellectual property system (in a narrower sense) have been adopted as follows:

1. Law Amending the Law on Administrative Fees in the Field of Intellectual Property, OG 160/04 of 15 November 2004;
2. Regulation Amending the Regulation on Special Procedural Charges and Charges for the Information Services Provided by SIPO OG 187/04 of 29 December 2004;
3. Law on Representation in the Area of Industrial Property Rights, OG 54/05 of 27 April 2005.

### **3.2.3 Missing National Legal Regulations<sup>8</sup>**

The laws which regulate the functioning of the intellectual property system (in a narrower sense) and which are missing are such as follows:

1. Regulations on Qualifying Examinations for Authorized Representatives in the Field of Intellectual Property Rights;
2. Decision on the Appointment of Members of the Council of Experts;
3. Decision on Remunerations for Participation in the Work of the Council of Experts;
4. Regulations on Measures for the Use of Copyright Works referred to in Article 98 paragraph (2) of the Copyright and Related Rights Law.

## **3.3 Institutional Framework for the Exercise of Intellectual Property Rights**

SIPO is a pivotal institution of national intellectual property system. As the essential factor of NIPS, SIPO must be active and effective, and must take into consideration particularities

<sup>8</sup> During the preparation of this document, the indicated legal regulations have been under adoption.

of the present state and the foreseeable improvement of this field in Croatia in accordance with this Strategy.

Therefore, SIPO will adopt its own strategy and basic policies derived from it, in particular in the field of management, employment, procurement of material resources (adequate premises i.e. facilities, modern equipment, in particular the IT one) and development of human resources etc.

The organizational structure of SIPO has to be improved in accordance with modern tasks of the national intellectual property offices. In addition to its primary functions SIPO has also a connecting role and a function of coordinating and helping (inter)action of other participants of NIPS.

The assessment of the institutional framework of NIPS in Croatia and its functioning as found in 2004 have been given by the experts of the Regional CARDS 2002 Intellectual Property Project, as follows:

- Croatia is ahead in terms of experience in combating the intellectual property infringements on the practical level in respect to the region.
- Croatia has passed the initial phase of institution building, it has achieved the TRIPS compliance and it harmonized its intellectual property laws with the *acquis communautaire*.
- Due to the continuous presence of the right holders on the local markets the institutions have been tested, and gained significant experience. The institutions have begun to realize that they have to increase their efforts in linking up and achieving efficient interoperability.
- The phase of the specialization within the institutions, by means of setting up separate intellectual property departments has begun, i.e. the IP departments have been founded at the Ministry of the Interior, at some courts, etc. However, other institutions such as the State Attorney's Office, municipal courts and others are slow in institutionalizing specialization of their intellectual property functions, thereby endangering real progress towards full systematization of the intellectual property protection.
- The most significant problems lay in the field of judiciary and prosecution *ex officio* in criminal intellectual property enforcement.

In addition to the assessment as indicated above, the Government of RC has observed:

- Insufficient connection between the participants, and absence of joint planning, implementation and monitoring of measures for the improvement of the national intellectual property system;
- Insufficiency of resources (technical, and, in particular, human) and absence of the program of their acquisition and development.

A presentation of components of the intellectual property system is given in the Attachment no. 2.

### **3.4 Use (exploitation) of Intellectual Property in the Republic of Croatia**

#### **3.4.1 *Use of Intellectual Property Rights for the Protection of Innovative Products and Business Identity in the Republic of Croatia***

Intellectual property rights have been actively used in the Republic of Croatia since early days of its national independence. However, this primarily concerns elementary procedures for the acquisition of the rights in the territory of the Republic of Croatia, and not their sophisticated economic applicability. On the other hand this primarily concerns foreign holders of the rights, although the trend of domestic applicants/holders is continually rising.

An overview of the intellectual property rights in force in the Republic of Croatia, as made according to their structure, is given in the Attachment no. 3.

#### **3.4.2 *Innovation Structure and Culture in the Republic of Croatia***

National innovation system (NIS) is, according to the OECD, the manner of organizing and managing research and development resources for the purposes of creating technological innovation as a central category of knowledge management. Economic exploitability of innovations and transformation of research and development results to new technologies depend on the manner of organizing and managing available resources, conditioned by interaction of three key sectors: industry, scientific community and the Government, as a mediator.

The basis of the Croatian innovation system (CIS) can be found on the first National Program for Strategic Development of Science and Technology of 1996. The Program has established:

- the role of science and technology in the future of Croatia,
- criteria for public sector investments in science and technology,
- development of a strategy for sustainable development and application of new technologies,
- stimulation of scientific and technological development,
- international cooperation in the field of science and technology.

The main components of the Program are building of institutional technology infrastructure and adoption of measures and a program for technological development. Building of the national network of technological centers constituted by: business and innovation centers, centers for technology transfer, financial institutions, institutions for planning and control,

innovation and engineering associations, and other centers of technological excellence have been planned to be established.

The key problems of low innovativeness of the Croatian enterprises are<sup>9</sup>:

- low demand for innovations and technologies (as a result of passive reconstruction)
- extremely low investment rates in R&D by business sector (0,43% GDP (RC) comparing to 1,2 % EU)
- poor orientation of R&D towards business sector
- undeveloped system of technology transfer
- undeveloped statistical system inappropriate for knowledge-based economy.

Opinion pools carried out during 2001-2003 showed that we have engaged in the 21<sup>st</sup> century with insufficiently developed innovation culture, and that the launch of HITRA Program, which will encourage the release of academic knowledge and innovation for economic development is of extreme importance. A Program of the Croatian Innovation Technology Development (HITRA) was adopted by the Government of RC in April 2001, and implemented by MSES.

The basic components of HITRA Program are TEST (Technology Research and Development Projects) and RAZUM (Development of Knowledge-Based Enterprises) subprograms. TEST is designed to support pre-commercial research activities in the development of new technologies in the form of products, processes or services, up to the design of the original solution. The main goal to be achieved is cooperation between research and economic sectors. RAZUM is designed to support entrepreneurial projects based on new technologies and higher value-added products.

The Croatian enterprises consider the sources within enterprises, clients or consumers and providers of equipment, materials, components or computer programs to be the most important sources of information for forming new and implementing the existing investment projects.

Rarely used sources of information are research and development enterprises and faculties, higher schools and research centers. Only 6% of big production enterprises derive sources of information for innovation from cooperation with science<sup>10</sup>.

Results of the opinion pool clearly show that not the national neither the world intellectual property system have been mentioned as a source of information about innovations. If we know that all the valuable world innovations and technologies are contained in their entirety in the patent information and documentation as arranged, classified, searchable and available, and that more than 80% of such information has never been published

<sup>9</sup> NCC - Recommendations for Raising Competitiveness – Development of Innovativeness and Technology

<sup>10</sup> Innovations in the Croatian Enterprises 2001 – 2003 EIZ and MSES – opinion pool in accordance with CIS3

anywhere else (for understandable reasons), then it is clear that the Croatian innovation corpus is completely out of the world technology trends and information.

All the published patent information (approx. 55 millions of documents) is free to be used as the starting point for research and development activity. All of them for which the protection has not been applied in Croatia (more than 99% patented technologies in the world) are free to be manufactured and sold, as well as exported to all the parts of the world in which they have not been protected. All such technology, and, first of all, business information, fall within the most valuable information ever.

### **3.5 Management of Copyright and Related Rights**

Copyright and related rights (CRR) are managed individually and collectively.

#### ***Individual Management of Rights***

The management of the rights that relates to individual use of a particular copyright work or of particular subject matter of related rights respectively, according to a corresponding contract between the right holder and the user of the subject matter of protection, is carried out by the right holder himself or through a representative. The tasks to be performed by an authorized representative may be performed by an attorney-at-law, a legal person specialized for the management of copyright and related rights (the Croatian Authors' Agency), and collective management associations, on the basis of individual powers of attorney.

A small number of attorneys-at-law dealing with CRR represent in principle a particular interest group i.e. a particular category of right holders, as associated in one of the collective management associations. It has been observed that there is a need for a higher level of education concerning the rights concerned as in the framework of the graduation study of law so by establishing a post-graduation study of CRR, as well as by the education within the Judicial Academy of the Ministry of Justice, in cooperation with the CARDS Programme, and by organizing seminars and workshops within SIPO.

#### ***Collective Management of Rights***

In the territory of the Republic of Croatia, collective management of CRR may be performed only by the association of right holders, having the authorization for performing such an activity, granted by SIPO. The authorization concerned is granted by SIPO, according to the prescribed criteria, to one association only for a particular category of rights. It shall be presumed that the association has powers of attorney given by all the domestic and foreign right holders of respective rights, except for such right holder who has explicitly notified the association in writing not to manage his rights.

In Croatia, collective management of CRR has been performed by: the Croatian Composers' Society (CCS), as the association of authors, the Croatian Association for the Protection of Performers' Rights (CAPPR), as the association of performers, the Croatian Phonographic Association (CPA), as the association of the producers of phonograms, and the Croatian Film Director's Guild (CFDG), as the association of film directors, screenwriters, cameramen and film producers.

For the purpose of protecting musical works in Croatia, a system of collective protection, which forms part of the world system of collective protection of musical works has been designed and organized. A system in which the associations manage the rights not only of national but also of all foreign right holders has been established on the legislative and factual level. The subject matter of protection with respect to the users is not individually specified works, but the entire world repertoire.

CCS, CAPPR and CPA collect in a common system a single remuneration from users for the rights of authors, rights of performers and rights of the producers of phonograms. The collected amount of remunerations is distributed according to the distribution rules and in compliance with the data stored in the international database to domestic and foreign right holders in the works, which have been, according to the reported programs of the radio and TV stations, broadcasted publicly.

DHFR has established a system of collective management of remunerations for the use of the rights of communication of audiovisual works to the public in cable retransmission (cable re-broadcasting), but it has not yet finished negotiations with users – cable operators on the amount of remunerations and other terms of use of copyright works and subject matters of related rights in cable retransmission, so the collecting and distribution of remunerations for film directors, screenwriters, cameramen and film producers has not yet started.

A system of collective management of rights for the reproduction of copyright works and subject matters of related rights has been established on the legal level, while the establishment of the system on the factual level is in progress, and is assisted by the CARDS Programme.

DEVELOPMENT OF LEGISLATION  
FRAMEWORK

#### IV. DEVELOPMENT OF LEGISLATION FRAMEWORK

A legislation framework harmonized with the EU acquis and other international legal regulations in this field is the basis for the NIPS adaptation, and the first step towards it. A substantial effort has been engaged in the harmonization of laws and pertaining regulations in the field of intellectual property. International team of experts has stated that **in principle, the intellectual property legislation can be considered harmonized and complete.**

Particular non-harmonized matters and shortcomings, which have been identified in an analysis, will be remedied through the amendments of the legislation in the appropriate time in future.

In the meantime, some of them have been remedied by the adoption of the following acts:

1. Nairobi Treaty on the Protection of the Olympic Symbol, OG IT 7/04 of 4 August 2004
2. Trademark Law Treaty – TLT, OG IT 9/04 of 1 October 2004
3. Patent Law Treaty – PLT, OG IT 10/04 of 27 October 2004
4. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, OG IT 9/04 of 1 October 2004
5. Law on Representation in the Area of Industrial Property Rights, OG 54/05 of 27 April 2005
6. Law Amending the Patent Law, OG 87/05 of 1 July 2005
7. Law Amending the Law on Drugs and Medicinal Products, OG 177/04 of 15 December 2004.

Besides, based on the proposal as studied and prepared by SIPO, MSES has ensured acquisition of the observer status in the European Patent Organization for the Republic of Croatia to be able to observe directly the development and application of the European patent legislation.

Other shortcomings will be remedied with the following dynamics:

##### ***Short-Term Measures:***

1. On the basis of the proposal as studied and prepared by SIPO, MSES will prepare and adopt the Regulations on Professional Examinations for Authorized Representatives in the Area of Industrial Property Rights.
2. On the basis of the proposal as studied and prepared by SIPO, MSES will ensure the maintenance of all the measures necessary for the acquisition of the observer status in the EU trademark system (CTM – Community Trademark) and the EU design system (CID – Community Industrial Design) within OHIM for Croatia to observe directly the development and application of the European legislation in the fields of trademarks and industrial designs.



3. MFIN will propose and get adopted a new Government Regulation on Customs Measures Against Goods Infringing Intellectual Property Rights (replacing a Government Regulation of 26 June 2003 Implementing Customs Measures for Goods Infringing Intellectual Property Rights), which will implement the Council Regulation (EC) No 1383/2003 of 22 July on Customs Measures.
4. MELE will propose and get adopted amendments of the Trade Law in the part relating to unfair competition, by introducing provisions concerning the possibility of ordering provisional measures by commercial courts at a request of interested parties. The parties authorized for filing such a request will be clearly defined and limited (including associations for the protection of consumers, the Agency for the Protection of Market Competition, and the like) in order to avoid possible improper use of disputes.

***Medium-Term Measures:***

1. On the basis of the proposal studied and prepared by SIPO, MSES will propose and get adopted:
  - a. Amendments of the Copyright and Related Rights Law with regard to the adoption of the Rules of Procedure of the Council of Experts referred to in Article 164 paragraph (7) and Article 205 paragraphs (1) and (2).
  - b. Amendments of the Patent Law for the purpose of harmonization of the term of the entry into force of the Supplementary Protection Certificate (SPC) in accordance with the course of negotiations on the accession to the EU.
2. MSES and SIPO will study a proposal comprising the matter of commercial courts and of giving them a possibility to decide on the validity of the granted intellectual property rights, as on the preliminary question in the procedure concerning the infringement of rights. To that end, admissibility of the amendments of the Trademark Law, Patent Law and the Law on the Protection of Topographies of Semiconductor Products (provisions concerning civil protection) following the EU model (e.g. Articles 95 and 96 of the Regulation on the Community Trademark) will be considered.
3. MSES and SIPO in cooperation with MELE and the State Inspectorate will study a proposal for the amendments of special laws in the field of intellectual property rights for the purpose of giving the State Inspectorate the authorization to take measures comprising temporary seizure of objects (confiscation of counterfeited and pirated products);
4. SIPO will assist collective management associations (CMAs) to jointly evaluate the below possibilities of implementation of the blank tape provisions to obtain the information required for collecting remunerations for the use of such media (blank tape levy), and will get adopted the corresponding amendments of the Copyright and Related Rights Law (CRRL) by intermediary of MSES:
  - a) Amendment of the provisions laid down in Articles 161 and 168 of CRRL comprising specific obligations of competent bodies (e.g. CU) to provide information to CMAs, making a legal basis for such obligation harmonized with Article 16 of the Customs Law and the Law on Data Protection; and/or
  - b) Correction of Article 32 of CRRL comprising introduction of additional persons liable to collect remunerations and a system already implemented in the legislation of

certain countries<sup>11</sup>.

5. SIPO and MAFWM will study harmonization of the Law on Geographical Indications and Designations of Origin of Products and Services with the Food Law and the Wine Law, and will propose adoption of possible amendments of the mentioned legal regulations.
6. MSES and MJ will study and effect harmonization with Directive 2004/48/EC of 29 April 2004 on the Enforcement of Intellectual Property Rights. Since these measures are of horizontal nature, it will be carefully studied to what extent the existing basic laws (the Law on Obligatory Relations, the Law on Civil Proceedings, the Law on Execution) and/or special laws in the field of intellectual property rights should be amended.
7. Within general reform of the judiciary, MJ will propose and get adopted the amendments to the Courts Law and the Courts' Seat Law by introducing the concentration of the disputes relating to intellectual property rights to fewer courts, as explained hereinafter in the Strategy.
8. SIPO will propose and get adopted amendments to the relevant legal regulations to provide relevant measures for cable operators who have not, within an appropriate time limit, obtained authorizations from authorized collective management associations for the use of copyright works and subject matters of related rights in cable retransmission.
9. MSES, SIPO and MJ will study and observe the developments in the field of patentability of computer implemented inventions in the EU, and will apply in an appropriate manner the European approach to this matter;
10. On the basis of the proposals studied and prepared by SIPO, MSES will ensure the implementation of all the measures necessary for the accession of the Republic of Croatia to the European Patent Convention (EPC), namely, to the text adopted on the Diplomatic Conference held in November 2000, as well as to full membership of the European Patent Organization (EPO).

### ***Long-Term Measures:***

1. On the basis of the proposals studied and prepared by SIPO, MSES will ensure the implementation of all the measures necessary for the accession to full membership of the EU system of trademarks (CTM);
2. On the basis of the proposals studied and prepared by SIPO, MSES will ensure the implementation of all the measures necessary for the accession to full membership of the EU system of industrial designs (CID);
3. The developments of the *acquis communautaire* and of international legal order in the field of intellectual property, as well as of enforcement methods and techniques will be permanently followed up, in particular in the framework of the activities initiated by WIPO and WTO. The main factor to follow-up, analyze and give proposals for the implementation of new institutes in the Republic of Croatia is SIPO.

<sup>11</sup> For instance in Article 20 and in other corresponding provisions of the Hungarian CRRL.

IMPROVEMENT OF  
INSTITUTIONAL FRAMEWORK

## V. IMPROVEMENT OF INSTITUTIONAL FRAMEWORK

The institutional framework is a necessary prerequisite for successful protection of intellectual property, and is primarily the responsibility of the Government of the Republic of Croatia. The Government adopts the following strategic measures to support preferably established trends and remedy the found deficiencies, as mentioned in the section relating to the initial state as found.

### 5.1 State Intellectual Property Office (SIPO)

SIPO is a pivotal institution of NIPS, and its institutional connection with the international intellectual property system, in particular with the corresponding European (EPO and OHIM) and world (WIPO and WTO) institutions, as well as national offices of the Member Countries of the mentioned intergovernmental organizations. SIPO is responsible for the implementation of the majority of the provisions as laid down in 25 multilateral international conventions and treaties, and of all the provisions as laid down in 15 bilateral agreements on cooperation in the field of intellectual property (see Attachment 1).

MSES will decide on the strategic development of SIPO by adopting a 5-year plan of activities and development, and will support such a development by approving in turn proposals for the relevant policy changes, organizational adaptation, and necessary resources, as well as by amending the relevant legal regulations concerning SIPO.

SIPO will be developed according to the following strategic guidelines:

1. Having in mind that the information generated in the world intellectual property system is an inexhaustible source of valuable business, technological, marketing, scientific, artistic and cultural subject matters, as hardly ever used in the Republic of Croatia, SIPO will play an increasingly important role in collecting, processing, keeping, explaining and providing information to the public and other elements of NIPS. This role will be maximized in line with the identified needs, the recommendations contained in EC Directive (Doc. 7159/03), and the experience gained in other national offices for intellectual property.
2. SIPO will ensure a high quality, reliable, timely and cost effective procedure for granting industrial property rights. To achieve this, it will follow the best practices of national offices to determine the content, scope and structure of specialized tasks to be carried out in their entirety in SIPO, using its own resources, in relation to the content and scope of use of the results of expertise carried out in the centers of excellence within the international intellectual property system.
3. The above guideline is particularly important for substantive examination procedures in the field of patents, where the strategic optimum for the acquisition of search reports and/or preliminary examination reports from the best world specialized centers and from own substantive examination capacity in chosen technical fields has to be carefully planned and defined. The optimum level is to be defined taking

account not only of the estimated number of patents to be granted or the structure of applications, but also the involvement of patent engineers of SIPO in the enforcement of rights, described in other parts of this document, as well as involvement of the examiners in the realization of the information strategy of SIPO.

4. Since the features of goods and services, as exposed to the most possible extent to their buyers/end users, are sublimated in their appearance and presence of a trade or a service mark on the market, and since a modern buyer/consumer is more and more guided by preference and not by utility, trade and service marks as well as industrial designs have become extremely significant, and, in certain branches, decisively important elements of business. SIPO will develop its resources, organizational framework and procedures in the manner to be able to achieve the highest standards in the protection of these forms of intellectual property, or intangible assets respectively.
5. SIPO will participate in the enforcement of copyright and related rights, by actively performing all the tasks comprising the application of law (with respect to CMAs), thus contributing to the public image of CMAs. By strengthening and optimizing its role in the information about copyright and related rights, SIPO will additionally support public acceptance of such rights as legitimate rights. SIPO is a focal point for identifying problems in the enforcement of copyright and related rights, and it will, by a more proactive role with respect to CMAs and associations of users, provide assistance, as a neutral party, by giving advice or introducing working groups on multilateral basis.
6. SIPO will pay a special attention to further improvement of its capacity and equipment for the implementation of the most modern information technologies, as the key factor of support to its strategic development. In this pursuit, SIPO will entirely follow the strategic line of E-Croatia, on the one hand, and IT development trends in the field of intellectual property, on the other hand. SIPO will thereby ensure full compatibility of its IT system with the relevant national systems and the systems of WIPO, EPO, OHIM etc.

### ***Short-Term Measures:***

1. SIPO will prepare a 5-year information plan, including an information product development plan, a plan for channels of distribution of information, a development of the improved web site, elaboration of information, staff and time plans. The plan will be based on detailed and comprehensive analyses of the needs of the overall interested public and the availability of resources.
2. SIPO will prepare a 5-year development plan for the Patent Sector and will define optimum level of substantive examination in the patent granting procedure using its own resources, taking into account the number of applications per IPC class, the use of the examining staff for information and for examination and granting procedures, improved internal procedures to efficiently and effectively organize and control the work, and to ensure the highest quality of the work. In this context, the existing bilateral agreements on cooperation in the field of substantive examination will be

revised while the need for conclusion of the new ones will be analyzed. This plan will particularly take into consideration the development related to the accession to the EPC and trends in the PCT system.

3. SIPO will prepare a 5-year development plan for the Distinctive Signs Sector putting special emphasis on the improved internal procedures, change of unfavorable qualification structure of staff, improvement of the organizational structure and culture, and changes occurring in the world system of protection of all forms of intellectual property.
4. SIPO will prepare a 5-year development plan for Copyright and Related Rights Sector according to the guidelines used in other parts of this Strategy.
5. SIPO will prepare a 5-year development plan for IT and Documentation Sector, as well as for General Affairs and Resources Management Sector, as general affairs support to the strategic development of SIPO.
6. SIPO will employ the most urgently needed employees to initiate activities in the defined direction, exclusively guided by the predetermined qualification and evaluation employment criteria, and promotion prospects based on the performance, experience and education.
7. SIPO will prepare and carry out training and education programs in line with the above requirements. This measure represents at the same time a medium-term measure, in terms of achieving full employment capacity, and a long-term and permanent measure, in terms of maintaining the number and structure of employees needed for the performance of the SIPO tasks.

### ***Medium-Term Measures:***

1. Establishment of an appeal procedure and the Board of Appeals in SIPO, for appeals and revisions of decisions taken by SIPO in the first instance.
2. Elaboration of feasibility study and assessment related to the transformation of SIPO into a self-financing public organization, which can attract and keep qualified staff in competition with private sector<sup>12</sup>.
3. A transformation of vertically functional organizational structure, appropriate to stationary systems, into a combined and adaptable project functional organization.
4. Implementation of measures to ensure high standards and consistency in applying, developing and implementing of laws and regulations and relevant international agreements.
5. Implementation of measures to ensure adequate representation in international institutions.

The implementation of the above Strategy, step by step, is paying due attention to the development of the second line of management (head of department level) of sufficient

<sup>12</sup> A solution applied by the most developed countries (of comparable size), such as Switzerland, Denmark, Singapore, over big European countries (Great Britain), to the EU candidate countries that recently adopted their own strategies, such as Rumania.

strength and competence, to consistent implementation of policies comprising full employment, and to continuous development of the staff.

***Long-Term Measures:***

1. To ensure premises in a detached (its own) facility as a necessary precondition for, on the one hand, complying with the obligation to keep secret and unaccessible information in the course of procedure, and, on the other hand, optimal use of the already existing resources, and acquisition of new ones, to put them effectively into utilization by the economy, scientific institutions and general public.
2. Transfer to (predominantly) self-financing and market operating.
3. Continuous maintenance of excellence in the procedures:
  - a) for the grant and maintenance of intellectual property rights
  - b) of collection, processing and dissemination of intellectual property information and knowledge.

**5.2 Customs Administration**

The Customs Administration (CA) within the Ministry of Finance (MFIN) is in the process of being reorganized to meet the complex requirements of new regime under the EU, and the World Customs Union. In this reorganization it has been supported by a twinning project with the Austrian Customs Authority. Customs Administration will fully implement and enforce measures relating to intellectual property rights by 2007.

With respect to intellectual property rights, MFIN will deal with the following strategy factors:

***Short-term measures:***

MFIN will see to it that:

1. CA establishes on its home page a special sub-page describing the new regime of customs measures against infringements of intellectual property rights;
2. Customs offices at border crossings be equipped with digital cameras to make photos of the goods allegedly infringing intellectual property rights, and forward them timely to the respective right holders;
3. CA acquires the capacity to contact holders of intellectual property rights, and establish in cooperation with the Police and the State Inspectorate a register of right holders or of their representatives, possibly at, and in cooperation with SIPO.

***Medium-term measures:***

MFIN will see to:

1. The development and implementation of mechanisms for cooperation with economic operators in the enforcement of intellectual property rights by the Customs Administration;
2. The development and implementation of mechanisms for cooperation with other enforcement bodies (the Police, the State Inspectorate) in sharing training (development of contents and sharing of facilities and programs);
3. The definition of requirements and the development and implementation of mechanisms for cooperation with other enforcement bodies in collecting, exchanging or providing information (data base containing information on intellectual property rights, a register of commercial representatives of holders of intellectual property rights in SIPO);
4. The definition of requirements and the development and provision of statistics about enforcement successes to the public, to support awareness of the values of intellectual property rights;
5. The development and implementation of mechanisms for the exchange of information with other enforcement bodies about the new types of infringements of the rights identified at the border, or about particular infringements;
6. The general improvement of the functioning, equipment, training and infrastructure of Customs Administration in order to fulfill the obligations under the Interim Agreement relating to the level of protection of intellectual property rights as soon as possible.

### **5.3 State Attorneys Office (SAO)**

Since the State Attorney's Office is closely related to the judicial bodies, the strategies related to the judicial system of the Republic of Croatia referred to in Chapter VI are applicable to it *mutatis mutandis*.

#### ***Medium-Term Measures:***

1. MJ will propose, within the general reform of the judicial system, the concentration of the prosecution of criminal offences concerning the infringement of intellectual property rights to the State Attorneys' Offices competent for four respective Municipal Courts - Zagreb, Rijeka, Split and Osijek, similar to the concentration of the civil procedures regarding intellectual property rights to the Commercial Courts in Zagreb, Rijeka, Split and Osijek.
2. MJ will see to the inclusion of State Attorneys in:
  - a) the training programmes provided for in the Strategy,
  - b) collection, evaluation and provision (to other NIPS participants and to the public) of useful statistical data, and
  - c) permanent cooperation with other NIPS participants.



## 5.4 State Inspectorate (SI)

Due to the amendments included in the Copyright and Related Rights Law, the State Inspectorate has ceased to control public performance of the works protected by copyright. The new practice is consistent with the current Croatian system of enforcement of intellectual property rights. However, the control provided in the past contributed to a better enforcement of the rights, and made work easier for the CMAs.

In the meantime, up to the adoption of this Strategy, the State Inspectorate has established, within the trading operation inspection service, a specialized Department for Intellectual Property.

### ***Short-Term Measures:***

1. The State Inspectorate will be granted sufficient facilities for the storage of seized counterfeited and pirated goods in cooperation with Customs Administration and the Police.

### ***Medium-Term Measures:***

1. Since the SI activities have been performed by the inspectors specialized in relevant fields, their training is needed (possibly together with the police and custom officers) with respect to the enforcement of measures against the infringement of intellectual property rights; SI will continue (specialized) trainings (i.e. product specific and target oriented trainings, including courses, organized by the industry, on its main products, its technological protection measures, identification of pirated and counterfeited goods, and on other issues).
2. SI will see to the development of mechanisms for cooperation with other bodies of NIPS in sharing training (development of contents, and sharing of facilities and programs);
3. SI will see to the definition of requirements and the development of mechanisms for cooperation with other enforcement bodies in collecting, exchanging or providing information (data base containing information on intellectual property rights, a register of commercial representatives of right holders in SIPO, and the exchange of such type of information with the Customs Administration, the Police, etc);
5. SI will see to the definition of requirements, and the development and provision of statistics about enforcement successes to the public, to support awareness of the value of intellectual property rights.

## 5.5 Police

The Croatian Government has supported additional adequate training and procurement of equipment, which is at present insufficient, particularly as regards IT equipment and infrastructure, for the Police to be able to fully enforce intellectual property rights in the scope of its activities.

***Medium-Term Measures:***

MI will see to:

1. The definition of the priority and the importance to be given to the enforcement of intellectual property rights, based on this Strategy, in relation to other police measures within the scope of its regular activities;
2. The appropriate enlargement/improvement of the organizational unit specialized for intellectual property within the system of prevention of economic crime;
3. The training and education of police officers with respect to the enforcement of measures against the sale of pirated or counterfeited products in the streets, and against unauthorized performances of protected works.
4. A sufficient facilities for the storage of seized counterfeited and pirated goods in cooperation with CA and SI.

IMPROVEMENT OF THE  
ENFORCEMENT/EXERCISE OF  
INTELLECTUAL PROPERTY RIGHTS

## **VI. IMPROVEMENT OF THE ENFORCEMENT/EXERCISE OF INTELLECTUAL PROPERTY RIGHTS**

This Chapter defines the measures relating primarily to the judicial system of the Republic of Croatia, and to the Government bodies, while the measures for the improvement of enforcement/exercise of intellectual property rights in the context of joint action with other NIPS participants have been dealt with in Chapter VIII. Interest Groups.

Croatia has made great progress in the field of civil, criminal and administrative enforcement of intellectual property. The majority of measures provided for by the relevant laws have been implemented in practice, and intellectual property rights enforcement bodies are generally aware of the importance of this field. On the initiative of CMAs or economic associations, and in cooperation with them, the State Inspectorate, the Police and others have carried out comprehensive and successful campaigns relating to the criminal enforcement. As regards civil measures, Croatia has a good solution, comprising concentration of intellectual property disputes, which enables the specialization of judges and special treatment of such cases.

The problems relating to long-lasting judicial procedures, insufficiently effective use of provisional measures and criminal procedures, insufficient action by the Police etc., remain.

### ***Medium-Term Activities:***

1. MJ and MSES, in cooperation with SIPO, will:
  - 1.1 Propose and implement, within the general reform of the judicial system, a reduced role of the Administrative Court in all intellectual property matters, by transferring its jurisdiction to the High Commercial Court;
  - 1.2 Establish a Board of Appeal within SIPO, and confer to it competence to carry out appeal procedures against the decisions made by SIPO in intellectual property acquisition procedures;
  - 1.3 Appoint the Commercial Court in Zagreb to adjudicate on the decisions taken by the Board of Appeal;
  - 1.4 Transfer all intellectual property matters, including revocation, nullity and invalidity under the full jurisdiction of commercial courts.
2. MJ and MSES in cooperation with SIPO will propose and implement, within the general reform of the judiciary, the concentration of patent litigation only with the Commercial Court in Zagreb (because of its low frequency, and required experience);
3. MJ in cooperation with SIPO will create and maintain links with EPO and OHIM to allow participation of judges dealing with intellectual property rights in seminars and meetings, regularly organized by those institutions for patent and trademark judges;
4. MJ will study, prepare and propose, within the general reform of the judicial system, the concentration of criminal cases concerning the infringement of intellectual property

rights to fewer municipal courts in the country (similar to the concentration of civil proceedings concerning the cases of intellectual property rights). The same will be applied with respect to concentration of misdemeanor procedures;

5. MJ will see to it that the Courts have sufficient facilities for the preliminary storage of seized counterfeited and pirated goods (in co-operation with the Police, CA and SI);
6. MJ will take measures to collect and publish rendered final judgments, thereby indirectly contributing to the harmonized interpretation of relevant laws in the field of intellectual property rights. MJ will, in an adequate manner, make available the data on initiated and concluded procedures for the protection of intellectual property to interested participants of the national intellectual property system.
7. MJ will support the Judicial Academy, in particular by assuring extensive training by means of mock trials and similar training instruments, and will enable judges of the commercial courts to participate in training and information events organized under the auspices of the MJ;
8. MJ will see to full utilization of the Judicial Academy in the development of human resources in the field of intellectual property rights;
9. MJ will see to the participation of judges of commercial courts and the High Commercial Court in the regular trainings and meetings of patent judges, organized by the EPO in cooperation with the leading scientific institutions;
10. Ministries competent for the State Inspectorate, the Customs Administration and the Police will see to the compatibility of computer programs and networks for the exchange of information concerning identification of representatives of the right holders, and to the on-line information points. This activity includes regular meetings concerning exchange of information about suspicious goods, and new developments in the field of infringements of intellectual property rights;
11. In order to harmonize the Croatian legislation with Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights, the relevant laws will be thoroughly checked.

### ***Long-Term Measures:***

The Ministries responsible for the State Inspectorate, the State Attorney's Office, the Customs Administration, the Police, misdemeanor courts, municipal courts, commercial courts will see to:

1. The collection, evaluation and maintenance by these organizations, of special statistical data on the infringements of intellectual property rights, and making available of annual publications containing such data;
2. The maintenance of cooperation with international enforcement institutions to exchange experiences in and methods of fighting against infringements;
3. The maintenance of bilateral cooperation with the relevant enforcement institutions of the European countries to exchange experiences in and methods of fighting against the infringements of intellectual property rights;
4. The drafting of the amendments of the relevant laws taking into consideration provisions

on the enforcement of intellectual property rights to achieve full harmonization with the provisions of Directive 2004/48/EC of 29 April 2004;

5. Making of analyses of the final court decisions taken in the procedures relating to intellectual property rights and publication of case law in specialized editions.

IMPROVEMENT OF THE USE/  
EXPLOITATION OF INTELLECTUAL  
PROPERTY AS A DEVELOPMENT  
RESOURCE

## **VII. IMPROVEMENT OF THE USE/EXPLOITATION OF INTELLECTUAL PROPERTY AS A DEVELOPMENT RESOURCE**

In the period under observation, the Government of the Republic of Croatia will give the most important incentive to the improvement of exploitation of all the forms of intellectual property as a development resource through SIPO, by the implementation of the strategies described in item 5.1.

This Chapter defines the measures, with exception of the institutional ones, by which the Government of the Republic of Croatia will stimulate economic exploitation of intellectual property, primarily in the field of technology and marketing, as factors of economic competitiveness.

“Science and its application as well as technology are of essential importance for the development of a modern society, and make a direct impact on innovative power of a country and its competitiveness. They support and contribute to the development of other fields of public policy, education, health, environment etc. and are important for the improvement of welfare and quality of life of citizens, as the primary aim of the public policy.

Development of the Croatian innovation system (CIS) and support to innovation culture is one of the main activities of MSES. The creation of CIS creates the basis for increasing competitiveness and knowledge-based competition capacities for the Croatian enterprises. In this sense, full attention will be paid to connection between and complementarity of private and public sectors.»<sup>13</sup>

In the meantime, up to the adoption of this Strategy, the following measures have been implemented with the purpose of improving CIS:

1. MSES and MELE have signed a cooperation agreement on programmatic and institutional implementation of CIS.
2. MSES and MELE have established a CIS Council.
3. During last two years MELE runs “Innovation” Project within the Incentive Program for Small and Medium-Sized Enterprises intended for innovators, legal and natural persons. The project budget has been used for the state of the art searches, the protection of intellectual property on the national and international level, development of prototypes, display at specialized fairs, licensing. The Commission consisting of the representatives of MELE, SIPO and innovators have decided on incentive allowances.

Other measures aiming at the improvement of exploitation of intellectual property as a development resource are planned to be implemented with the following dynamics:

<sup>13</sup> D. Primorac, PHD, Minister of Science, Education and Sports



**Medium – Term Measures:**

1. SIPO will prepare a translation of the Eight Edition of the International Patent Classification (IPC), as an extremely complex classification system, which enables effective and wide-range application of patent information, and will publish it in the form of books and in the electronic form.
2. CIS Council as a common body will see to emergency provision of the appropriate institutional support to CIS and stimulation of the HITRA Program implementation.
3. In cooperation with the State Office for Metrology (SOM), the Croatian Standards Institute (CSI) and the Croatian Accreditation Agency (CAA), SIPO will organize, equip and run a common multimedia information center intended for the users of all the fields of technology and industry.
4. SIPO and CIS Council will, in cooperation with WIPO, establish a National Award for Innovation, as a promotion and incentive measure for serious and targeted inventiveness of higher technological level.
5. SIPO, in cooperation with WIPO and WTO, will prepare a Workshop Program, and a Guide for Negotiating Licenses and Technology Transfer intended for all the relevant subjects, whether licensors or licensees i.e. technology providers or acquirers.
6. SIPO, in cooperation with WIPO and EPO, will organize an initial seminar on intellectual property for the University in Zagreb, and within an appropriate period, an advanced form of the same seminar.
7. SIPO, in cooperation with MELE and CCE will make a comprehensive study on small and medium sized enterprises and industrial property.
8. SIPO, in cooperation with MELE, will develop a public service program, which will assist economic subjects to increase competitiveness in connection with intellectual property. The Program will run on the principle of "enterprises which learn" how to improve business by:
  - preventing competitors to copy or illicitly imitate goods or services of enterprises
  - avoiding dissipation of investment funds in research, development and marketing
  - creating corporative identity through active strategies of marks of a product or a service
  - negotiating licenses ("in or out"), franchising or other contractual transactions based on intellectual property
  - increasing the market value of a company through the increase of the value of intangible assets
  - acquiring a "venture" capital, and facilitated and improved access to information sources
  - facilitating the entry to new markets
  - avoiding unintended infringements of somebody else's intellectual property rights, avoiding thereby legal disputes, compensation for damages and loss of profits
  - lawful and legitimate free of charge use of all the most valuable world technologies, the protection of which does not extend to Croatia and/or other relevant markets.
9. In successive annual periods, MELE will implement and continue to develop "Innovation" Project, intended for innovators and enterprises to finance the state of the art searches,

industrial property applications, construction of prototypes, displays at expositions and fairs, licensing and other forms of exploitation of intellectual property.

10. SIPO will initiate and support the organization of specialized agencies for evaluation, mediation and other modern and developed services in the industrial property management.
11. SIPO will initiate, and in cooperation with the Central Bureau of Statistics (CBS), develop the content and structure of statistical data on intellectual property, the method of their collection, processing and publication, as the basis for reliable macroeconomic monitoring of and decision-making on intellectual property in the Croatian economy.
12. SIPO will initiate, and in cooperation with MFIN will make a comprehensive study of the tax system, proposing the parts of it, the extent to which, and how, Croatia may use them as an incentive to active entrepreneurial use of intellectual property on national and international level.
13. SIPO will initiate, and participate with MELE in the preparation of a study on the influence of management and exploitation of copyright and other rights of intellectual property to the economy, with the engagement of domestic and foreign experts. The study will show their real effect as reflected in the share of industry based on these rights in the gross national product, in the employment rate in those industries, and their share in foreign trade.
14. SIPO will initiate, and in cooperation with MFIN and economic experts, will develop financial and bookkeeping methods of keeping business records, capitalization and evaluation of intellectual property value as a intangible asset. Consequently it will propose and get adopted amendments to the relevant legal regulations (for instance Accountancy Law). This will create a basis for reliable managerial decision making in relation to intellectual property in Croatia.
15. SIPO will establish a bilateral contractual cooperation with relevant national institutions of the Scandinavian countries including Denmark, Finland and Sweden for the purpose of having a direct insight into and appropriate application of the best world experience in the use of intellectual property, as a factor of economic growth.

### ***Long-Term Measures:***

1. Development of specialized human resources in the field of intellectual property by adequate training programs.
2. The Government of RC will support cooperation between SIPO and CMAs, on the one hand, and associations of users of the protected works, on the other hand, for the purpose of their joint action in the improvement of the lawful use of the works protected by copyright and related rights.
3. The Government of the Republic of Croatia will support cooperation among SIPO, CCE and CCTC and their joint preparation of information products and services in the field of intellectual property.

INTEREST GROUPS

## VIII. INTEREST GROUPS

### 8.1. Collective Management Associations

In the Republic of Croatia, collective management associations (CMAs) cover a significant part of the exercise of intellectual property rights. In spite of their good results there are tasks which have not been accomplished, and which relate primarily to full coverage of the rights to be managed.

#### ***Short-Term Measures:***

1. MSES will, with SIPO's assistance, carry out the appointment procedure for the Council of Experts in the field of copyright and related rights;
2. SIPO will be proactive in informing and stimulating right holders to establish a CMA for visual rights (the right of reproduction, the right of public lending, and the resale right) and a CMA of authors and of publishers (the right of reproduction and the right of public lending);
3. SIPO will actively carry out inspection of CMAs, and will enact internal rules for carrying out inspection of CMAs.

#### ***Medium-Term Measures:***

1. CMAs will start collecting remunerations for private reproduction of protected works pursuant to Article 32 of the Copyright and Related Rights Law (CRRL). For that purpose a common action by CMAs is needed. Furthermore, CMAs and Customs Administration will clear and agree upon the legal manners and channels for the CA to provide data on imported blank tape media and new appliances, respecting business secrets of importers;
2. CMAs will start collecting remunerations for public lending of the copyright works provided for in Article 33 of the CRRL. The Ministry of Culture (MC) will study the possibility of solving this matter, not with the individual libraries, but directly (in the form of a general collective agreement) with the National and University Library (NUL), as a central institution of the Croatian library system. SIPO will assist CMAs and NUL in the negotiation process and clearance of the legal issues of such an agreement.

### 8.2. Other Participants Of The Intellectual Property System

Associations of holders of industrial property rights, associations of users of the works protected by copyright and subject matters of related rights, associations of economic operators and consumers, authorized representatives in the field of industrial property, the State Attorney's Office, universities and professional consultants have an important role in the enforcement of intellectual property rights.

The government will foster the participants of the system to deliberate inclusion in this process. The inclusion of right holders depends on their own interest in the participation. The fostering comprises ad hoc, or regular meetings also participated by the representatives of the relevant ministries.

### ***Short-Term Activities:***

1. SIPO will establish, in agreement with and in a format suitable for the respective enforcement bodies, a register, or a database of holders or of representatives of holders of intellectual property rights (trademark owners, industrial design holders, major phonogram producers, producers of audio-visual works, major publishers, etc) accessible to the enforcement bodies and legitimately interested parties (the Customs Administration, the State Inspectorate, the Police, courts, representatives, etc). The register will be based on the public invitation, and the expected co-operation of all the parties genuinely interested in the protection of their rights in Croatia;
2. SIPO will stimulate authorized representatives in the field of intellectual property rights to associate in a Chamber and to adopt Codes of Conduct and Rules on Tariffs;
3. SIPO will organize and carry out professional examinations for representatives in the field of intellectual property as provided for by law, with the possible preliminary preparation of candidates through specially adapted seminars;
4. SIPO will encourage and assist MJ and MSES to stimulate development of a network of court experts for disputes in the field of intellectual property rights, intellectual property consultants and managers, and the professional association thereof;
5. SIPO will encourage cooperation with the Croatian Competition Agency in particular with respect to CMAs, and assist the Agency to get acquainted with the relevant activities and practice in the field of intellectual property at the European level.

### ***Long-Term Activities:***

1. When making strategic decisions in the field of intellectual property, the competent ministries and SIPO will involve more intensively other participants of NIPS, and will give them more time for reaction with respect to the amendments of legislation, the preparation of relevant educational programs, training programs for state officials in the field of intellectual property, or review of national programs for the enforcement of intellectual property;
2. The competent ministries will encourage the enforcement bodies (the State Inspectorate, the State Attorney's Office, the Customs Administration, the Police) to collaborate with the right holders' associations (BSA, IFPI, MPA etc.) on a regular basis (e.g. annual briefing meetings);
3. MSES and SIPO will, in cooperation with other relevant participants in the implementation of this Strategy, raise awareness of the general public and, in particular, of economic operators, about the intellectual property rights, which will lead to a climate for introducing elective/obligatory subjects in the field of intellectual property rights in certain faculties for pre- and post-graduate students;

4. SIPO will encourage the operation of international non-governmental professional associations in the field of intellectual property (AIPPI, LESI) and the establishment of the Croatian national associations of right holders;
5. SIPO will continually cooperate with associations of innovators/inventors (in particular with the Croatian Union for Technical Culture (CUTC), the Croatian Inventors' Association (CIA), Association for Inventive Work (AIW) within the Sector for Industry of CCE), participating in an appropriate manner in their regular and periodical activities.

RAISING AWARENESS ABOUT  
INTELLECTUAL PROPERTY RIGHTS,  
TRAINING AND EDUCATION

## **IX. RAISING AWARENESS ABOUT INTELLECTUAL PROPERTY RIGHTS, TRAINING AND EDUCATION**

### **9.1 Government's Measures For Raising Awareness About Intellectual Property Rights**

The Government will contribute to raising the awareness about intellectual property directly, on its own initiative, suitably communicated to the public and the parties concerned, and indirectly, by fostering activities of state bodies and interest groups.

A direct contribution will be realized through:

1. Regular reporting about the enforcement activities and successes by the state administration bodies in different fields of the enforcement of intellectual property rights, with appropriate media coverage;
2. Special mention of incidental significant successes with appropriate media coverage;
3. Strict policies for the state administration bodies to use only legally procured computer programs observing intellectual property rights, and to pay a special attention when purchasing to identify possibly counterfeited products or products and services unlawfully designated by somebody else's trademark or protected geographical indication, or products infringing industrial designs rights, copyright etc.;
4. Specific inclusion of intellectual property rights in the regular training and education of staff of relevant state administration bodies;
5. Promotion of the protection of intellectual property in the educational system, or through economic policy initiatives.

Indirect contributions are sponsoring or initiation of events related to raising the awareness about intellectual property, and participation of high-ranking government officials in the events organized by interest groups and economic operators.

#### ***Medium- and Long-Term Measures in Training Under the Auspices of Ministries:***

1. MJ will encourage and support training activities for judges:
  - 1.1 By demanding that judges dealing with cases related to intellectual property rights attend such training within the framework of the Judicial Academy;
  - 1.2 By providing a specialized library with legal literature, latest commentaries, reference books, and the like, and by using already existing SIPO resources;
  - 1.3 By providing specialized training including mock trials for judges of commercial courts at specialized courts in EU countries;
2. The competent ministries will recommend to the Police, to the Customs Administration and to the State Inspectorate to establish cooperation in training related to intellectual property rights, utilizing outside speakers from SIPO, the universities and the judiciary



for general items, and speakers from the Ministry of Justice, the Police and the Customs Administration for specific issues.

3. For the purpose of continuous training related to all the aspects of intellectual property, in particular of its employees, and of all the participants of NIPS as well as of other interested groups and individuals, SIPO will establish an internal Academy for Intellectual Property.

### ***Long-Term Measures in Education Under the Auspices of Ministries:***

1. MSES will provide the possibility for the creation of a Department for Intellectual Property at universities, and will ensure that all the relevant faculties can provide to their students a basic insight into major aspects of intellectual property.
2. MSES will recommend that lectures on intellectual property, its use and misuse be included in the curriculum of secondary and higher schools in one of the last years.
3. The government will establish the Academy for Senior Civil Servants, which will include training in the field of intellectual property.

## **9.2. Measures of other Operators:**

### ***Medium- and Long-Term Measures:***

The competent ministries will support the activities of economic operators, primarily by cooperation and participation in the events organized by the economic operators.

CMAs are generally interested in the promotion of awareness about copyright and related rights and in their effective management, and are consequently interested in the participation in the provision of training to the enforcement bodies. The competent bodies will actively participate in this cooperation.

CCE will provide its members with the information on the need of protection of intellectual property created in enterprises, and on the need of getting acquainted with their active use in the business decision-making. CCE will actively use its infrastructure as a channel for dissemination of all the important information, generated in the national intellectual property system, first of all in SIPO.

The competent ministries and SIPO will encourage and support authorized patent and trademark representatives and members of the bar specialized in the litigation and enforcement of intellectual property rights to establish links with the European Patent Institute and chambers of patent and trademark representatives.

FINAL PROVISIONS

## **X. FINAL PROVISIONS**

All the factors of the system referred to in this document, rules for the participants of the system (legal regulations), plans as instruments of the Strategy implementation, and the relevant corrective mechanism are necessary for the proper functioning and sustainability of NIPS.

Since institutions and legal regulations already exist, and measures for improving the legislation and institutional framework have been completely defined by this document, the remaining two factors are decisive for a successful implementation of this Strategy.

The basic instruments for the realization of this Strategy are long-term/medium-term plans of operation and development of competent institutions of NIPS, first of all a Long-Term Plan of Operation and Development of the State Intellectual Property Office for 2005 – 2010.

The Government shall obligate all competent bodies to plan in an appropriate manner the implementation of the measures referred to in this Strategy in their long/medium term plans.

The Government shall obligate all the bodies competent for the implementation of this Strategy to submit regularly the reports on the realization of the measures.

The reports shall be submitted according to the dynamics of the implementation of measures, and at least once a year. The reports shall be submitted to the Government of the Republic of Croatia by intermediary of the State Intellectual Property Office, which shall submit the integral annual report to the Government, and communicate the same to all the participants of NIPS.

A basic corrective mechanism shall be constituted by the users of the system, who shall make complaints relating to the deficiencies of the system during the implementation of the measures referred to in this Strategy. The Government shall encourage associations, chambers and other associations of users of NIPS to file regularly such complaints to the bodies competent for relevant aspects of the system, and shall oblige the competent bodies to:

- study the complaint as received
- take measures to eliminate the found deficiencies
- inform accordingly the person filing a complaint and all interested parts of the public
- inform accordingly the Government by intermediary of the competent ministry in regular reports on the implementation of the Strategy.

ATTACHMENT

## **CONVENTIONS AND AGREEMENTS IN THE FIELD OF INTELLECTUAL PROPERTY**

### **1. International Conventions and Agreements Related to all the Intellectual Property Rights**

- 1.1. Convention Establishing the World Intellectual Property Organization (WIPO Convention, 1967, as amended 1979)
- 1.2. Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement)

### **2. International Conventions and Agreements Relating to Copyright and Related Rights**

- 2.1. Berne Convention for the Protection of Literary and Artistic Works of 1886 (Paris Act 1971)
- 2.2. Universal Copyright Convention (Geneva Text, 1952)
- 2.3. Universal Copyright Convention (Paris Text 1971)
- 2.4. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention, 1961)
- 2.5. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonogram Convention, Geneva 1971)
- 2.6. Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention, Brussels, 1974)
- 2.7. WIPO Copyright Treaty (Geneva, 1996)
- 2.8. WIPO Performances and Phonograms Treaty (Geneva, 1996)

### **3. International Conventions and Agreements Related to Industrial Property Rights**

- 3.1. Paris Convention for the Protection of Industrial Property (1883)
- 3.2. Madrid Agreement Concerning the International Registration of Marks (1891)
- 3.3. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957)
- 3.4. Locarno Agreement Establishing an International Classification for Industrial Designs (1968)
- 3.5. Strasbourg Agreement Concerning the International Patent Classification (1971)
- 3.6. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks

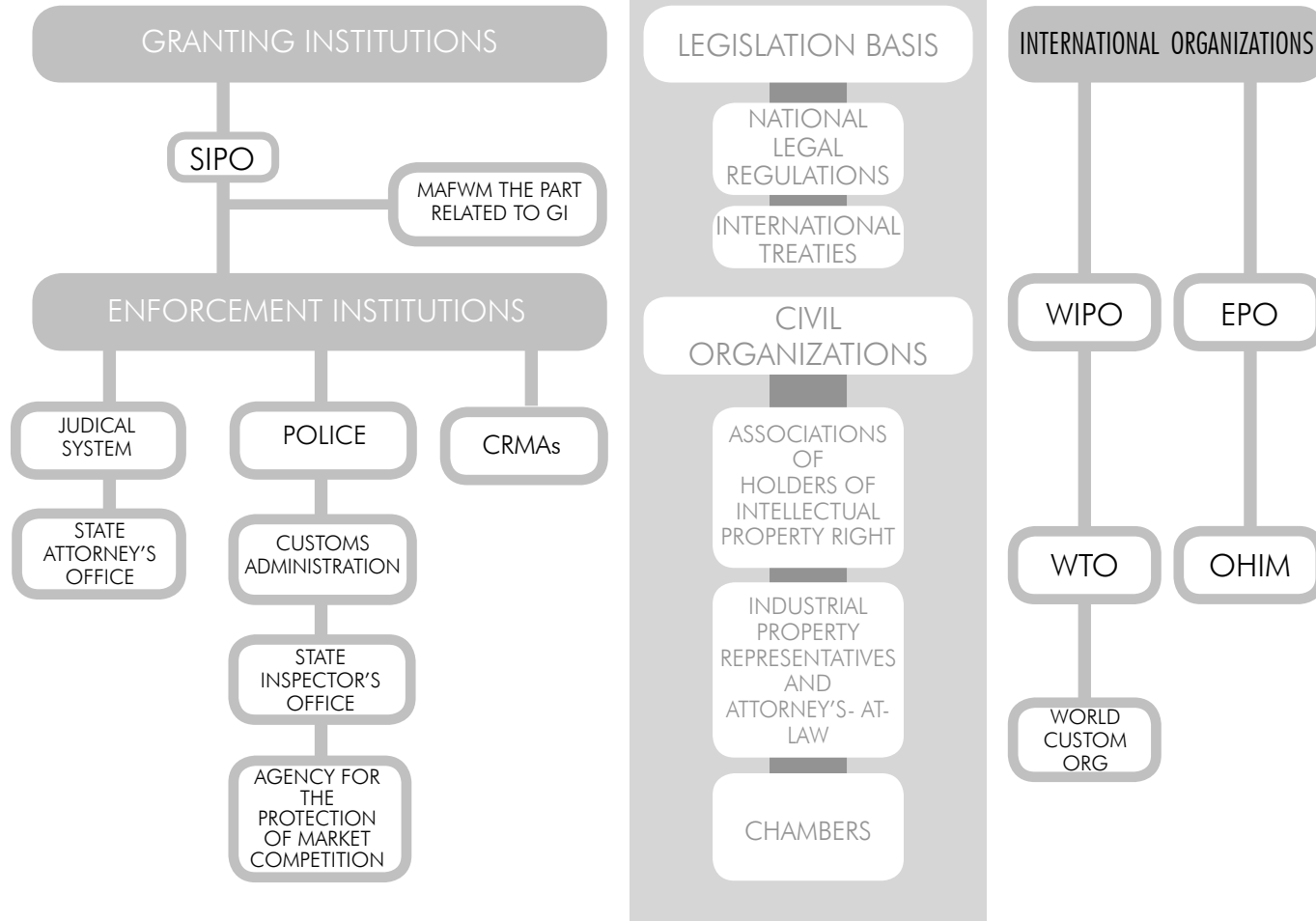
- 3.7. Patent Cooperation Treaty (PCT, Washington, 1970)
- 3.8. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977)
- 3.9. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol, 1989)
- 3.10. Hague Agreement on the International Deposit of Industrial Designs, of November 6, 1925, as revised in the Hague on November 28, 1960 (the Hague Act, 1960), and amended in Stockholm, on July 14, 1967, with the amendments of September 28, 1979 (Stockholm Complementary Act, 1967)
- 3.11. Geneva Act of the Hague Agreement on the International Registration of Industrial Designs, as adopted in Geneva on July 2, 1999
- 3.12. Patent Law Treaty (PLT)
- 3.13. Trademark Law Treaty (TLT)
- 3.14. Nairobi Treaty on the Protection of the Olympic Symbol

#### **4. BILATERAL AGREEMENTS**

- 4.1. Cooperation Agreement between IP Australia and the State Intellectual Property Office of the Republic of Croatia in regard to the use of examination results (signed on March 28, 2001)
- 4.2. Cooperation Agreement between the Austrian Patent Office and the State Patent Office of the Republic of Croatia (signed on October 31, 1995)
- 4.3. Protocol of Understanding between the Austrian Patent Office and the State Patent Office of the Republic of Croatia (signed on January 20, 1995)
- 4.4. Agreement between the Government of the Republic of Croatia and the European Patent Organisation on Cooperation in the Field of Patents ("Cooperation and Extension Agreement") (signed on June 16, 2003)
- 4.5. Joint Memorandum concerning the Use of Examination Results between the State Intellectual Property Office of the Republic of Croatia and the Japan Patent Office (signed on June 28, 2001)
- 4.6. Cooperation Agreement between the State Intellectual Property Office of the People's Republic of China and the State Intellectual Property Office of the Republic of Croatia in regard to the Use of Examination Results
- 4.7. Protocol of Understanding between the National Office of Inventions of the Republic of Hungary and the State Patent Office of the Republic of Croatia (signed on March 21, 1995)
- 4.8. Joint Protocol between the German Patent Office and the State Patent Office of the Republic of Croatia (signed on December 2, 1992)
- 4.9. Joint Protocol between the German Patent Office and the State Patent Office of the Republic of Croatia (signed on November 30, 1995)

- 4.10. Memorandum of Understanding between the State Intellectual Property Office of the Republic of Croatia and the German Patent and Trademark Office (signed on November 15, 1999)
- 4.11. Agreement on Patent Documentation Exchange between the State Intellectual Property Office of the Republic of Croatia and the Federal Institute of Industrial Property of Rospatent (signed on November 29, 2000)
- 4.12. Cooperation Agreement between the State Intellectual Property Office of the Republic of Croatia and the Federal Institute of Industrial Property of the Russian Agency for Patent and Trademarks in the field of examination of patent applications (signed on March 22, 2001)
- 4.13. Memorandum about the good cooperation between the Industrial Property Office of the Slovak Republic and the State Intellectual Property Office of the Republic of Croatia (signed on January 13, 1998)
- 4.14. Cooperation Agreement between the Swedish Patent and Registration Office and the State Intellectual Property Office of the Republic of Croatia in regard to the use of examination results (signed on October 16, 2000)

# COMPONENTS OF THE NATIONAL INTELLECTUAL PROPERTY SYSTEM





## INTELLECTUAL PROPERTY RIGHTS REGISTERED IN THE REPUBLIC OF CROATIA

TRADEMARKS	Domestic	Foreign	<b>TOTAL</b>
			<b>104180</b>
Domestic register	5963	12454	18417
According to the Madrid Agreement			85763

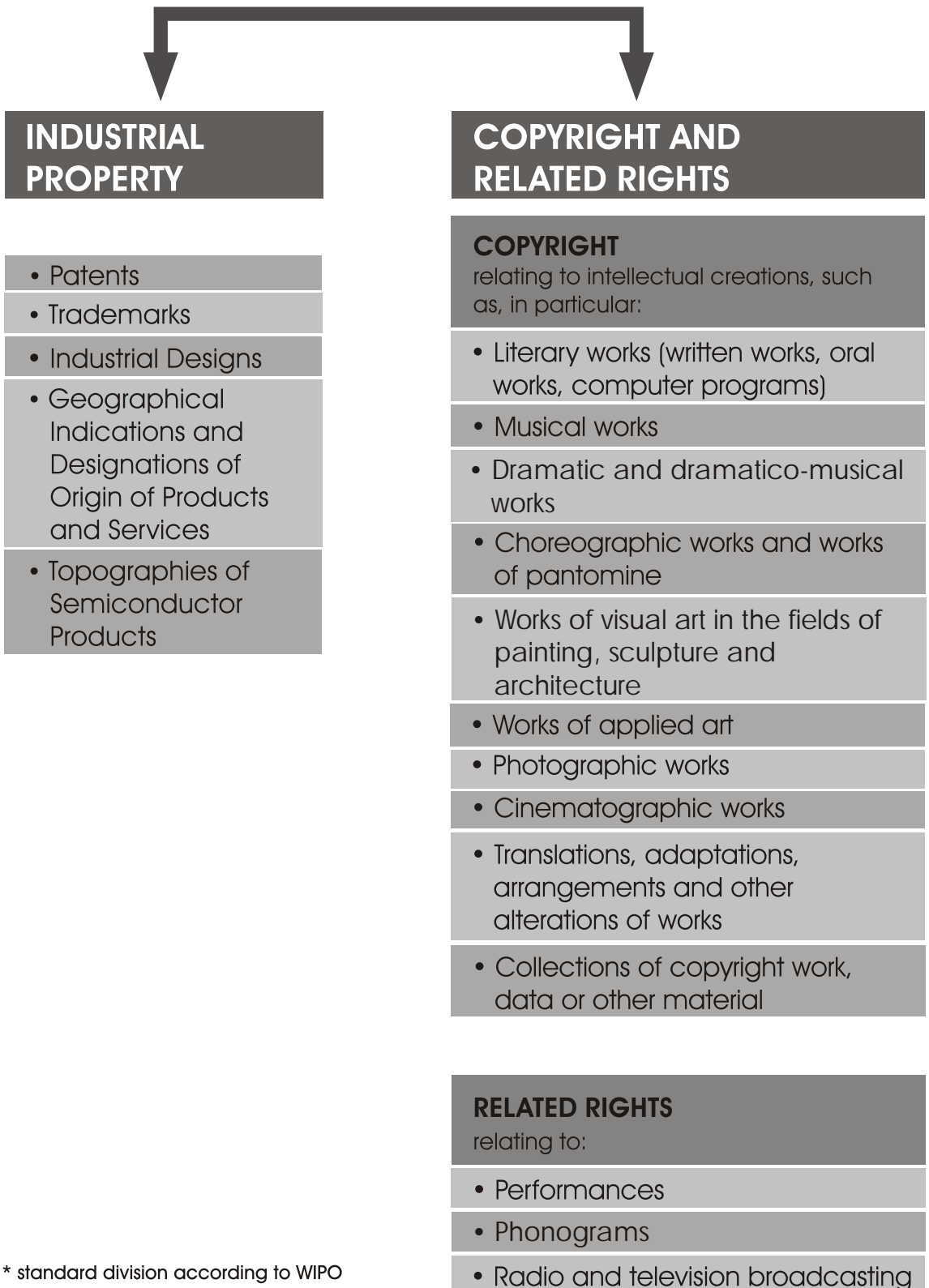
INDUSTRIAL DESIGNS	Domestic	Foreign	<b>TOTAL</b>
			<b>1357</b>
Domestic register	974	377	1351
According to the Hague Agreement			6

PATENTS	Domestic	Foreign	<b>TOTAL</b>
			<b>1335</b>
Domestic register - patents	266	866	1132
Domestic register - Consensual patents	160	43	203

<b>TOTAL</b>			<b>106872</b>
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In force on: 01. 01. 2005.

# INTELLECTUAL PROPERTY\*



\* standard division according to WIPO

