

Serbia and Montenegro  
Ministry for Internal Economic Relations  
Intellectual Property Office

**DEVELOPMENT PLAN OF THE INTELLECTUAL PROPERTY OFFICE  
OF SERBIA AND MONTENEGRO**

Belgrade, September 2004

## **1. General purposes of the Development Plan**

The target of all development related activities of the Office is an increase of efficiency and quality of the Office's work.

The efficiency is manifested as: (a) a speed of completion of cases in administrative proceeding, as well as other activities within the competence of the Office, and (b) measurable productivity of each employee, i.e. of each organizational unit. The standards aimed at for that purpose will be taken over from other European offices of comparable size, level of equipment and organization.

The quality is manifested in a form of: (a) legality of decisions issued in an administrative proceeding, (b) modernization and uniformity of administrative practice of the Office, (c) reliability of information services rendered by the Office and (d) total perception of the public about the Office's work and significance.

## **2. An overview of the Office's functions and their development**

Basically, the Office has four functions which are intertwined. These are:

- a) a function of a state body that handles an administrative proceeding in connection with constituting industrial property rights, their publishing, maintenance and revocation, as well as in connection with administrative supervision over a system of collective management of copyright and related rights;
- b) a function of a professional body that keeps abreast with foreign and international regulations in the field of legal protection of intellectual property, proposes introduction of domestic regulations and monitors their realization, maintains operational links with international and foreign organizations, organizes and administers international conventions;
- c) a function of cooperation with the economy, predominantly in a form of giving information to economic subjects on legal status of specific intellectual goods, on the technical state of the art in the world, as well as on the economic importance of protection of intellectual property;
- d) an informational and educational function, manifested mostly in the activities aimed at raising the awareness of public at large on the existence and the social importance of intellectual property and its legal protection, as well as on the role of the Office in the system of legal protection of intellectual property.

In view of the level of engagement of personnel, material and all other resources of the Office for the performance of each of the enumerated functions, today is dominant the function of the Office as a state body handling administrative proceedings, followed by its function of a professional body; then comes the function of cooperation with the economy (which is constant, but very limited in scale, so that results also are not satisfactory); at the last place is the informational-and-educational function, that is in a rudimentary stage of development.

Looking mid-term, the mentioned four functions of the Office will remain basic, but changes will take place in their relative importance, which will be visible through redistribution of total resources to be engaged by the Office for the performance of each one of them. In a relative sense, the function of the Office as a state body handling administrative proceedings will be reduced, the function of the Office as a professional body will remain on the same level, while the other two functions will be enlarged so that they will be in balance with the first two functions.

Within the total aim of the Office to increase the efficiency and the quality of work, in each of the Office's functions certain changes and novelties will take place. The following are among the most important ones:

a) The Office's function of a body that handles an administrative proceeding: It is most probable that the Office will be given the competence of handing administrative proceedings relating to the intellectual property rights on new plant varieties in Serbia and Montenegro. Among other things, it will require extension of personnel, as well as certain organizational adjustments within the Office.

The practice has shown that it is necessary to introduce two levels of decision making in administrative proceeding for the registration of trade marks, in order to increase the quality of the Office's decisions and to achieve a certain unification of the Office's practice. Speaking in principle, the same reasons are in favour of the introduction of a two-level decision making in the proceeding for registration of all industrial property rights. However, in view of the practical aspects of realization of this idea (legal, personnel and organizational preconditions, as well as the frequency of requests for checking of legality of the Office's decisions), realistic planning should be limited to the proceeding for registration of trade marks (for the beginning) and the proceeding for registration of patent (somewhat later).

b) The Office function as a professional body: Owing to a planned personnel renewal of the Office, this function should be promoted by a more intensive and better quality of participation of the Office in professional preparations for the introduction and amendments of international regulations in the field of intellectual property, as well as in intensifying regional international cooperation.

c) The function of cooperation with the economy: A gradual increase in reliability and speed of information services rendered by the Office to interested economic subjects

should, in the ultimate effect, lead to development of such an information system of the Office, which would enable a free-of-charge Internet accessibility of all data bases on industrial property rights registered and applied for in Serbia and Montenegro.

Parallel with the achievement of the above mentioned target, »technical« decentralization of the Office should take place, i.e. sub-offices of the Office should be opened in larger cities of Serbia and Montenegro. The purpose of these sub-offices would be to render or to mediate in rendering to interested economic subjects in a relevant region, complex information services, such as reporting on the technical state of the art in the world, as well as providing preliminary assessments on protectability of certain forms of intellectual property for the specific non-material goods.

Since the real purpose of legal protection of intellectual property is to be valorized through a specific economic activity, so as to bring profit to its title holder and to the society as a whole, the Office must take a more active role in mediation between creative subjects on one side, and the capital on the other. It means first of all urging the economy to invest in creation and implementation of new technologies, domestic if possible. In the world there are models of organizing and operation of the so called innovation centers, as institutions for development and marketing of innovations, financed at the beginning by the state, but switching later to partial or complete self-financing. Using the support, knowledge and experience of the World Intellectual Property Organisation in Geneva, the Office should be instrumental in creation of one or more innovation centers in Serbia and Montenegro.

d) Informational-and-educational function: This Office's function overlaps partly with the function of cooperation with the economy. The segment in which these functions do not overlap should be the one where propaganda activity of the Office should be developed, serving as a promoter of the protection of intellectual property among public at large. This activity would have to be permanent and directed to different target groups, encompassing children, associations of entrepreneurs, academic circles, media etc.

In the performance of its educational function, the Office should carry out professional training courses for engineers and jurists in the field of protection of intellectual property, as well as render services of innovating the knowledge in the field of intellectual property rights to judges, prosecutors, the police, customs' and inspectorates' staff. Both of these activities should be done on a continual basis.

### **3. Prerequisites for development aimed at increase of efficiency and quality of work of the Office**

The basic prerequisites for development of the Office may be described as: building of an adequate modern information infrastructure, reorganization, renewal of personnel capacities, and financial autonomy of the Office. The order in which these prerequisites are enumerated here does not necessarily mean the optimal order of their realization. Practically speaking, a certain measure of synchronization of realization of these prerequisites would be optimal.

#### **a) Building of the Office's information infrastructure**

The Office' function as a body handling the administrative proceedings, as well as its function of cooperation with the economy are based on collecting and using a great number of information contained in applications for the protection of industrial property rights, as well as in documents on registered rights, not only in Serbia and Montenegro, but in the world in general. In that domain, the efficiency and quality of work of the Office directly depend on the Office's capability to manage such information in terms of their permanent classification, updating and dissemination. Modern intellectual property offices in the world are already handling information in electronic format, using computer technology. In this respect the Intellectual Property Office of Serbia and Montenegro is considerably lagging behind, which is a fact that may result in a collapse of its basic functions.

The creation of the Office's information infrastructure implies the completion of the Office's hardware equipment (computers, printers, scanners, digitalized printing facility etc.) and the introduction of adequate software to be used for the majority of work, starting from receipt and processing of applications, through preparation and issuing of the Intellectual Property Gazette, to monitoring of the maintenance of registered intellectual property rights.

Also, digitalization of the Office's work implies creation of high quality digital data bases on domestic industrial property rights, which calls for an additional working engagement in scanning of the existing paper documentation.

Finally, in collecting, processing and disseminating the information in digital form, the Office is vitally dependent on the Internet, whose functioning is currently jeopardized by inadmissibly poor telecommunication links. Therefore the reconstruction of telecommunication lines of the Office is one of the elements for the creation of information infrastructure.

The real basis for building of information infrastructure of the Office is the formally confirmed readiness of the European Union to invest a considerable amount of

money into the Office, through the European Agency for Reconstruction, and within the framework of the CARDS program for strengthening of the intellectual property protection in Serbia and Montenegro. The executive agency for the realization of the whole program is the European Patent Office with which the Intellectual Property Office of Serbia and Montenegro is beginning a formal cooperation in the implementation of the European patents' system in the territory of Serbia and Montenegro.

The time frame for building of the Office's information infrastructure is 1.5 to 2 years, starting from October 2004.

b) Reorganization of the Office

The current organizational structure of the Office and systematization of jobs are a result of a compromise between the inheritance from previous times and an attempt to react to contemporary challenges, within a narrow and rigid framework of current regulations applied to the bodies of the State Union of Serbia and Montenegro. In the time to come it is essential to introduce innovations into the Office's organization for the purpose of increasing the efficiency and quality of work, in line with, first of all, the projected change in a relative relationship between the basic functions of the Office, as well as with the requirements of a future information infrastructure of the Office.

A special question in this context is the system of managing the Office. Today the top management consists of the director and four assistant directors (who are in charge of individual Office departments). The underside of this system is the fact that all those persons are state officials who are appointed on the basis of a political decision. As there is no guarantee that political will is always governed by the criteria based on professional qualifications of candidates for the highest management positions, any change of power in the state, or termination of mandate of an official brings uncertainties and crises in the Office management. As the Office is primarily an administrative-professional body, it is necessary for the management system to be changed, by reducing the number of managerial staff appointed on the basis of a political decision, and at the same time making it possible for other top officials to be recruited from among the Office's employees, or on the basis of a public announcement of a free position.

c) Renewal of the Office's personnel capacities

A perpetual problem of the Office concerns a number of employees and their professional abilities. Namely, in terms of quality and quantity, the personnel situation at the Office is unsatisfactory. The problems behind it are getting momentum, threatening to jeopardize the existing level of the Office's functioning.

Specifically, although the analyses and comparisons (some of which were made also by foreign experts) show that the optimal capacity of the Office should be between 200 and 300 employees, presently about 120 people are employed with the Office. The educational structure of employees is increasingly incompatible with modern requirements of an efficient and good quality work at the Office, as there is an excessive

number of employees with high school education only (even less than that), and there is a shortage of employees with a university degree. Also, a relatively small number of employees speak at least one of the world languages (English, if possible), and the level of that knowledge is unsatisfactory on the average. Additionally, the level of computer literacy of the employees is low. Such a situation also puts at risk the performance of the Office's functions and is one of the largest obstacles for its development as projected. Namely, some of the key highly professional jobs that must be done in continuity and must be of good quality, are done by one person only; some responsibilities at the Patents' Department are left with not one person employed; most of organizational units of the Office work with a shortage of employees with a required degree of professional training; there is no good personnel basis for the improvement of an effective international cooperation; the implementation of new information technologies at the Office is made difficult.

The reason for such situation with personnel lies in the restrictive policy of financing of the Office's operation from the state budget. Therefore the Office may not employ a required number of people; a number of employees with highest positions in the system of state administration is determined in advance and is destimulating; salaries of the employees are on an inadmissibly low level. In such an environment the highest professional staff leaves the Office, it is very difficult or impossible to find some new cadre of that level (quality engineers in informatics and electrical engineering practically never answer the publicly announced job openings), and the employees are little motivated and have a feeling of no prospects ahead.

The enlargement and a meaningful renewal of the personnel basis of the Office, as one of the key conditions for its development, are closely connected with an adequate solution to the problem of financing the Office's operation. At the time of renewal of the personnel capacities of the Office, it has to be remembered that the most professional staff of the Office (engineers and jurists – examiners at the Patents' Department and at the Distinctive Marks Department, as well as the most of the personnel with university education), in order to become fully qualified for the work, have to pass a specific training in the Office and abroad, that may take years. So, the Office, by its nature, is an establishment without any staff flexibility, so the staff policy must be stable, set at long-term and based on stable an long-term organizational and financial prerequisites.

#### d) Financial autonomy of the Office

Insufficient budget appropriations, and also the rigid framework set for the use of the appropriated budget resources are, in essence, the source of the largest number of problems in the work of the Office, and consequently are the largest obstacle for its development. The lack of money is a direct cause of the personnel crisis at the Office, it makes normal functioning of the Office in the matters of international cooperation almost impossible, it compromises functioning of the Office in the field of information and education etc. Serbia and Montenegro certainly is not among those countries in which it is realistic to expect a significant, i.e. sufficient increase of budget appropriations for the Office's operation, so the only realistic possibility for a solution to this problem is a

certain form of the Office's self-financing. It is an option applied at a certain number of national intellectual property offices in the world (particularly in Europe, e.g. Great Britain, Switzerland, Hungary, the Czech Republic, Romania, Albania, Macedonia), and it enjoys a support of the most relevant international organizations in this field - the World Intellectual Property Organisation and the European Patent Organization.

The basis of the concept of self-financing and, consequently, of a certain financial autonomy of the Office, is in the fact that the Office is not a state body that only spends money, but it generates revenues as well. The revenue comes from legally regulated administrative fees that parties in an administrative proceeding pay for certain activities of the Office, as well as for the maintenance of the registered industrial property rights; also from the international fees that the Office collects on the basis of its work in implementation of the international conventions in the field of the protection of industrial property, and finally from compensation of costs for rendering information services to interested persons.

Overall review of revenues (expressed in Euros) realized by the Office's work in 2003 is as follows:

International fees	-	455,000
Domestic fees	-	714,000
Total:	-	<u>1,169,000</u>

Compared to that, appropriations from the budget for the Office's operation in 2003 amounted to Eur 643,000.

Prospects-wise, the safest and largest revenue that the Office realizes comes from international fees. In connection thereto, one of the paradoxes of present budgetary financing of the Office is that because it may not employ an adequate number of professional staff, the Office does not carry out substantive examination of international applications of industrial designs, which leads it loses in revenues amounting to about Eur 200,000 per year. Apart from that, the Office's activities within the European patent system (for which legal preconditions were finally created in July of 2004) are expected to create additional revenues from international fees, amounting to about Eur 400,000 per year.

A potential for a legitimate increase of revenues lies in an at least approximate adjustment of the amounts of domestic administrative fees and compensations of costs with a real labour rate in Serbia and Montenegro and with real costs the Office has in its work.

In view of all the data given here, it is clear that the idea of a gradual switching to self-financing of the Office is not economically ungrounded. The key rationale in thinking about this matter is the following: the Office's self-financing would affect the public revenues in a minimal way, but it would enable a real and speedy development of this important social institution.

#### **4. The final look at the preconditions and targets of the Office's development – the prospects and restraints**

As any other resource exploited without current and investment maintenance is doomed to fail, the Office finds itself between the legitimate expectations of domestic and foreign subjects to perform and promote its significant social function, on one hand, and the real (im)possibilities for doing it, on the other hand. To continue this situation would definitely lead the Office to the lowest point in its 84-year-long history, and to compromising the country in the field of intellectual property protection.

The basis for an optimistic prognosis regarding the further development of events lies in an increasing domestic awareness of the importance of protection of intellectual property, as well as in a great pressure by international community for this matter to be taken into a most serious consideration in Serbia and Montenegro. Along with that, the international community shows also a readiness to help in strengthening the protection of intellectual property in Serbia and Montenegro, and so to contribute to the strengthening of the Office itself. Speaking in favour of that is also the fact that Serbia and Montenegro is included in the regional CARDS project for strengthening of the protection of intellectual property in the countries of the Western Balkans (and the Office itself is the center of the regional coordination of that project).

The factor that, however, significantly reduces the prospects of a substantial improvement of conditions for the Office's work is its position within the system of bodies of the State Union of Serbia and Montenegro, whereby, as all other bodies of Serbia and Montenegro, it is aside of real political power and distanced from the public funds from which its operations are financed. Sensitive political processes regarding the future of the State Union of Serbia and Montenegro have a negative impact on the work of the Office, and make any efforts to promote the position of the Office almost without any prospects.

Weighing the positive and the negative prerequisites for an improvement of the position of the Office, one comes to the conclusion that it is impossible to give any reliable prognosis of the course of events. It is particularly difficult to predict a time frame within which the positive changes could happen. For now, the only positive changes that look certain concern the creation of an information infrastructure of the Office, as, in the financial and organizational sense, the European Union stands behind it, through the CARDS program. It is certain also that the implementation of the program of creation of the Office's information infrastructure will be faced with great difficulties if, parallel with that, personnel and organizational problems at the Offices do not get solved, which, on the other hand, cannot be done without the solution to the problem of financing of the Office. Therefore, the time frame for the realization of the program of creation of

the information infrastructure of the Office (1.5 to 2 years starting from October 2004) is an essential framework for the realization of other preconditions for the development. Otherwise, the process of further erosion of the Office's capacities cannot be escaped.

In an approach to the complete subject matter in the existing political context, the guiding idea would have to be the following one: Any internationally recognized country has an international obligation to provide an efficient legal protection of intellectual property. Therefore, quite independently from the political surroundings within which it functions, the Office, as an establishment (with its office building, employees, equipment, data bases, knowledge and experience) must not only endure but develop in accordance with the increasingly higher international standards in the field of the protection of intellectual property. Therefore the most harmful and the most costly to the social community would be to allow the passing difficulties in the country's political life to be an ultimate limiting factor for the development of the Office. So it seems that the time has come for the political decision makers to recognize the seriousness and importance of this subject matter and, as soon as possible, to open a way for a relatively autonomous position of the Office within the system of state agencies.