

# Criminal liability for Copyright and Related Rights Infringement: Albania Legislation Perspective

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**Abstract**—Copyright and related rights have been pivotal in driving the economic growth of nations worldwide and fostering culture and new forms of entertainment. The introduction of the internet and technological advancement has significantly expanded the opportunities for creators and rights holders to promote their works and boost their revenues. However, this digital era has also brought about complex challenges, leading to a more extensive range of copyright infringement, primarily due to the substantial surge in piracy and counterfeiting. Despite being reported internationally, the mechanisms to tackle and the responsibility for enforcing copyright infringements often remain rooted in national jurisdictions, resulting in a gap between the scale of the problem and the efficacy of enforcement measures. Thus, it is essential to ensure adequate legal protection, a vital safeguard for authors' economic and moral interests, information security, innovative development promotion, and intellectual creativity preservation. This paper describes Albanian criminal law-based copyright enforcement legislation, focusing on doctrinal guidance and practical judicial considerations. Lastly, the paper offers recommendations for enhancing copyright protection and related rights.

**Keywords**—Author, copyright infringement, copyright, criminal liability, intellectual property, piracy.

## I. INTRODUCTION

INTELLECTUAL Property (IP) rights are core pillars in driving global socio-economic progress. As commentators have highlighted, IP encompasses all legal rights over the creations of the mind [1]. However, to be effective, these rights must be enforced. Enforcement norms are crucial in every legal system. In practical terms, they determine the system's effectiveness. As an author outlines, rights are worthless without effective remedies to enforce them [2].

Copyright and related rights fall under the broader umbrella of IP, as defined by Article 2 (viii) of the Convention Establishing the World Intellectual Property Organization (WIPO), which includes industrial property rights alongside copyright and related rights. Copyright comprises the creator's rights to literary, artistic, and scientific works. As one commentator notes, copyright is a right that recognizes the creators of literary and other artistic works as the owners of rights over their expressions of these ideas, but not, however, of the ideas themselves [1, pp.13-20]. Additionally, other areas, such as performances by performing artists, phonograms, and broadcasts, are usually called "related rights" or "neighboring rights" [3], indicating rights that are closely related to or closely linked to copyright.

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Due to globalization and the rapid development of technology, piracy, and counterfeiting have significantly increased, resulting in the unauthorized use of IP rights on a large scale. This issue makes it crucial to have an effective framework for protecting and enforcing these rights to support thriving economies and a competitive marketplace.

The Republic of Albania faces similar challenges in addressing this global issue, making the adequate and efficient enforcement of IP rights, including copyright and related rights, a key objective of its National Strategy on Intellectual Property Rights 2022-2025. This paper explores the challenges and debates surrounding criminal liability for copyright infringement in Albania. It identifies areas for improvement in enforcement mechanisms and legal clarity to enhance the country's copyright protection and related rights. Through an extensive analysis of the current legal framework and its implementation, this paper provides theoretical insights and examines the practical application of copyright law in Albania.

## II. ASPECTS OF INTERNATIONAL LEGAL FRAMEWORK FOR COPYRIGHT AND RELATED RIGHTS PROTECTION AND ENFORCEMENT

Enforcement of IP is one of the main goals of policymakers. Several policy and legislative activities have been taken at the international, regional, and national levels, that focus on the adaptation of forceful and effective measures to ensure the enforcement of IP rights [4]. The World Trade Organization's (WTO) TRIPS Agreement has had a substantial impact on the international level, establishing responsibilities for domestic IP enforcement regimes, including copyright law. This agreement plays a crucial role in shaping international copyright laws and promoting their enforcement. As a commentator pointed out, before TRIPS, the extent of protection and enforcement of IP rights, not just copyright, varied greatly worldwide in an international context. This is because, before the TRIPS Agreement, international IP rules were to be mainly found in WIPO Treaties, such as the Paris and Berne Conventions. Although these had (and continue to have) considerable merits as harmonizing instruments, they were recognized to have significant shortcomings in terms of rights enforcement. Detailed rules providing for the enforcement of rights in national courts simply did not exist [5]. According to another commentator, the Berne Convention generally leaves "means of redress" to local legislation and imports a specific remedial requirement only in the provisions of Article 13 and Article 16 regarding the seizure of infringing copies [6].

The TRIPS Agreement added an entirely new element to international copyright and related rights (and other IP rights) through a detailed Part III of the Agreement containing minimum substantive requirements for national law regarding effective protection enforcement. This part is entitled "Enforcement of Intellectual Property Rights" [7]. It includes 20 provisions on procedures and remedies that should be accessible under WTO member countries' national enforcement regimes to ensure effective action against infringements. These include general obligations in Section I (Article 41 of TRIPs), civil and administrative procedures and remedies (Articles 42–19 of TRIPs), provisional measures (Article 50 of TRIPs), special requirements related to border measures (Articles 51–60 of TRIPs), and criminal procedures (Article 61 of TRIPs).

As an author has stated, the TRIPS Agreement attempts to bring IP enforcement under common international rules and, in doing so, establish minimum levels of protection [5, pp.17-18, 404]. Moreover, such enforcement procedures "shall be fair and equitable" and not be "unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays" [6, pp.396-397]. The provisions of the TRIPs Agreement formed the basis for other international treaties that followed, as well as the Directive 2004/48/EC, on the enforcement of IP rights [8].

This directive is important in harmonizing the minimal tools available to public bodies and rights holders to combat IP rights infringements, while insufficient and limited enforcement provisions were already included in the Computer Programs Directive 2009/24 and the Information Society Directive 2001/29. The Enforcement Directive, which came into force on May 20, 2004, also sets a comprehensive framework for administrative collaboration and information sharing between the national authorities and the Commission [9]. In general, the directive seeks to standardize regulations governing evidence (Article 6 and Article 7), information provision (Article 8), seizure and destruction of illegal goods and related materials (Article 10), injunctions (Article 11), damages (Article 13), legal costs (Article 14), and publication of court decision (Article 15). Although there is no harmonized framework at the EU level for the criminal sector, Article 16 of the Enforcement Directive provides that member states can refrain or introduce such sanctions within their national legal systems.

In this context, Albania has been a WTO member state since 2000 and is required to protect IP rights in accordance with the TRIPS Agreement. Albania has taken measures to safeguard subjective IP rights in line with its commitment. The country has also demonstrated its commitment to protecting copyright and related rights by harmonizing the Copyright and Related Rights Act provisions with the Enforcement Directive.

The domestic legal framework governing copyright and related rights has undergone ongoing changes necessitated by the dynamic nature of IP rights and the Republic of Albania's international legal commitments arising from various treaties it has ratified. These include obligations outlined in the Stabilization-Association Agreement, and other strategic partnership documents between the Albanian government and the European Union. These documents require the compatibility of Albanian legislation with the EU *acquis*,

ensuring an equivalent level of protection and observance of copyrights and related rights as that of EU member states. The recently amended organic law governing copyright and related rights has been fully aligned with seven of the European regulatory framework in such field, while four other directives have been partially transposed. Moreover, numerous sub-legal acts specify the law. Parts VIII and IX of the Copyright and Related Rights Act address the measures, procedures, and legal tools required while violating any of the rights guaranteed by the legislation. Copyright and related rights infringement may result in civil, administrative, or criminal liability to ensure a broader protection for such rights.

Moreover, with the approval of the National Strategy of Intellectual Property 2022-2025, the Albanian government has expressed its vision for a stronger IP system, aiming at its adequate protection and encouraging creativity and innovation in service of economic growth, cultural development, and scientific advancement.

### III. NATIONAL CRIMINAL LIABILITY FOR COPYRIGHT AND RELATED RIGHTS INFRINGEMENT

Criminal copyright infringement is a common crime worldwide, negatively affecting innovation, competition, investments, and economic opportunities. Recently, criminal law has become an essential tool for creators and rights holders seeking to protect their rights and prevent further violations [10]. While civil courts are essential in addressing copyright infringements, criminal law is an additional and effective tool. This approach is a strong deterrent by imposing criminal penalties on offenders, such as fines or imprisonment, preventing people and entities from engaging in unlawful actions that infringe on IP rights. Furthermore, criminal penalties discourage copyright violations and promote a culture of respect for creative works.

Regarding intellectual property rights (IPR) criminal protection, the Albanian Criminal Code outlines the legal responsibilities for IPR crimes in Article 147, Article 148, Article 149, Article 149/a, and Article 149/b, categorizing these offenses as crimes or criminal misdemeanors. However, these stipulations entail relatively lenient penalties, ranging from fines to imprisonment for up to one year, two, or four years. As a commentator has stated, the central sanctions for criminal copyright infringement are fines and terms of imprisonment, both of which were increased in many countries as part of the antipiracy initiative. Infringement is typically regarded as an economic crime, although disagreements exist across nations regarding whether a violation of an author's moral right should be included in the criminal consequence [6, pp.405].

Albania's Criminal Code addresses copyright and related rights infringements in the criminal context within Section II (Frauds), Chapter III (Criminal offenses against property and economic sphere) of the Special Part. This section contains two provisions, Article 148 and Article 149, which attempt to protect the authors' economic and moral rights. The first article governs the "Publishing of someone else's work under one's name," which states:

"The publication or use in whole or in part under one's

name of a literary, musical, artistic or scientific work belonging to another constitutes a criminal offense and is punishable by fine or up to two years of imprisonment" [11].

Professor Elezi interprets the elements of this provision, highlighting that the object of the criminal offense pertains to the protection of rights guaranteed by legal norms, particularly those safeguarded by the Criminal Code against unlawful actions or inaction. From an objective standpoint, copyright infringement may involve publishing or attributing another's work as one's own or unlawfully utilizing all or part of someone else's literary, musical, artistic, or scientific creation through illicit actions. Individuals who have reached the age of criminal responsibility and are deemed responsible may be held liable for such a criminal offense. While on the subjective side, the offense is committed deliberately to gain financial benefit, recognition, and so on. Motives and intentions hold no significance in the legal classification of the offense [12].

The second article provides for *Unlawful reproduction of another person's work* and establishes a broader definition of copyright infringement, stating that:

"The act of partly or fully reproducing, distributing, publicly communicating, selling, offering for sale, using, supplying, exporting, or importing for-profit intentions of the copyrighted work, without the author or right holder consent, when his personal or economic rights are violated, constitutes a criminal offense and is, punishable by fine or imprisonment of up to two years. If this offense is committed collaboratively or repeatedly, it is punishable by up to three years imprisonment" [11].

The last sentence of this provision acts as a qualifying condition and was recently added following amendments to the Criminal Code in 2019. This helps to strengthen legal grounds for protecting copyright and related rights by imposing harsher penalties. In Professor Elezi's interpretation of this provision, the object of the criminal offense is the same as the above contravention interpreted. Concerning the objective aspect of the offense, the initial act of infringement involves reproducing another's work, which can take place through various means such as photocopying, scanning, or manual copying. The forms of reproduction of literary, artistic, musical, or scientific works can vary, encompassing distribution, public communication, sale, offering for sale, personal use, or use by others without the author's consent, as well as supply, import, and export. Another essential condition is that the reproduction of another's work not only occurs without the author's consent but also violates their moral rights. Individuals who have reached the age of criminal responsibility and are deemed responsible can be held liable for this criminal offense. From the subjective aspect, the offense is committed intentionally for financial gain [12, pp.237-238].

Violations of this provision are more frequently encountered on a practical basis. For instance, in a court case, the injured accuser addressed the court with a request against various users, accusing them of committing the offense outlined in Article 149 of the Criminal Code regarding his "*Videogram, named February 20, the fall of the bust of Enver Hoxha*". As similar accusations were addressed against different users of this

videogram, in some cases, the court opted to dismiss the case, noting the absence of the accuser or the accuser's representative during the trial session without valid cause [13]. However, in other cases, after analyzing the elements of Article 149 as interpreted by Prof. Elezi, the court decided the accused party's innocence following the principle *nulla poena sine lege* [14]. The arguments were based on Article 149 of the Criminal Code, which protects only literary, musical, artistic, or scientific works; as videograms were not included in either of these categories (artistic works included), they should not be subject to criminal liability. They could be subject only to civil liability as the copyright law in force at the time provided for videogram protection in special provisions [15]. The latter has now been replaced by Law No. 35/2016 on copyright and related rights (as amended).

Furthermore, both the Criminal and the Criminal Procedural Codes have continuously emphasized protecting the injured party's rights, especially regarding IP. Recent changes in the Criminal Procedure Code (CPC) have influenced how offenses governed by Article 148 and Article 149 of the Criminal Code are pursued. Previously, victims could directly accuse offenders in court, and the burden of proof was on the accusing victim. In this context, in a specific case, the topic under discussion was whether a Collecting Administration Agency (CMA) could assume the role of the accusing victim in a legal case. The Tirana Court of Appeal upheld the decision of Tirana's first instance court to dismiss the criminal case due to procedural irregularities concerning the representation of the accusing victim. The court reasoned that AKDIE, a Collecting Administration Society (CMA), could only serve as a representative of the author, not as the accusing victim itself. Therefore, representation in criminal proceedings, in difference from the civil proceedings in the cases of application of Article 90 (2) of the Code of Civil Procedure, is seen as a particular obligation that requires the victim to delegate authority via a specific power of attorney, as provided in Article 60 of CPC. This right is seen as personal, emphasizing the significance of an appropriate proxy. Even though the copyright law in force at the time [15], Article 107 provided that collecting administration agencies (CMAs) had the right to legal representation in the administrative, civil, and criminal processes. The court correctly considers that the criminal procedure code should be implemented more precisely, according to the hierarchy of acts within the legal framework [16].

Under the latest revisions of the CPC there has been a significant shift; the criminal violations outlined in Article 148 and Article 149 of the Criminal Code are now pursued solely based on the victim's direct complaint to either the prosecutor or judicial police office, as stipulated in Article 284 of the CPC [17]. The prosecutor's role in the trial is mandatory. They are involved in the investigation and trial phases, leading the prosecution to develop an investigative process. The burden of proof rests on the prosecution body, which conducts the investigations based on the victim's request. We believe that this change in the Code of Criminal Procedure not only alters the legal process but also strengthens the protection of the

accusing victim. It introduces a preliminary investigation phase, establishing a regular legal process and a fair trial encompassing the investigation and trial phases.

#### IV. CONCLUSION

Copyright and related rights are facing significant infringements, particularly in the digital realm, due to the ease of online copying and distributing digital content. Thus, in Albania, the adequate and effective enforcement of IP (copyright and related rights included) is among the top priorities of the National Strategy on Intellectual Property Rights 2022-2025.

Albania's copyright legislation protects authors' economic and moral rights in literary, artistic, and scientific works. It guarantees artists' rights for their performances, phonogram producers for their recordings, producers of first fixation for their films, broadcasting organizations for their broadcasts, publishers for their publications, and database producers for their databases. It also protects the rights specified in particular provisions for computer programs and audiovisual works while ensuring "sui generis" protection of database authors' rights and enforcement concerns.

This legislation is recently improved, aligning it more closely with international and EU standards in light of the best practices and addressing several issues, like piracy and counterfeiting and safeguarding creators' rights. Efforts to protect copyright involve civil, administrative, and criminal measures, as well as technical measures where applicable.

In terms of criminal protection, amendments to criminal and criminal procedural laws have strengthened legal grounds for protecting IP by imposing harsher penalties and facilitating access to justice. However, to better implement this legislation in practice, further improvements in collaboration and coordination with international enforcement entities like EUROPOL and INTERPOL would be beneficial in the fight against criminality in intellectual and industrial property. Digitization and process standardization may also help law enforcement institutes with the tools and skills they need to prosecute crimes, especially those involving copyright in today's digital era. These methods may help to increase efficiency, cooperation, analysis, and adaptation, resulting in more effective results in pursuing justice.

Finally, current copyright and related rights legislation does not establish provisions regarding control and supervision in the digital field of copyright. Ongoing efforts should be considered to address these issues and further align Albanian laws with EU legislation, mainly focusing on transposing the CDSM and SatCab Directives to enhance protection on online platforms.

#### REFERENCES

- [1] Deli Yang, *Understanding and Profiting from Intellectual Property in International Business*, Springer Nature Switzerland AG, 2021, pp.13-20. <https://doi.org/10.1007/978-3-030-54034-0>.
- [2] Roger D. Blair, Thomas F. Cotter, *Intellectual property economic and legal dimensions of rights and remedies*, Cambridge University Press, (2005), pp.2.
- [3] Susan Isiko Štrba, *International copyright law and access to education in developing countries: exploring multilateral legal and quasi-legal*

- solutions. Koninklijke Brill NV, Leiden, The Netherlands, 2012, pp. 10.
- [4] Christophe Geiger, *The rise of criminal enforcement of intellectual property rights...and its failure in the context of copyright infringements on the Internet*, In *The Evolution and Equilibrium of Copyright in the Digital age*, edited by Susy Frankel, Daniel Gervais, Cambridge University Press, 2014 pp 113-114
- [5] Catherine Seville, *EU Intellectual Property Law and Policy*, Edward Elgar Publishing Limited 2009 pp 17-18, 404
- [6] Paul P Goldstein, Bernt Hugenholtz, *International Copyright Principles, Law, and Practice*, Oxford University Press, Inc 2010, pp 396-397
- [7] Jørgen Blomqvist, *Primer on International Copyright and Related Rights*, Edward Elgar Publishing Limited, 2014, pp 217-218.
- [8] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights OJ L 157, 30.4.2004.
- [9] Irini Stamatoudi, Olivier Vrins, "The Enforcement Directive", in the *EU Copyright Law, A commentary*, second edition edited by Irini Stamatoudi and Paul Torremans, Edward Elgar Publishing Limited, 2021, pp. 383-384.
- [10] Enea Sheqi, *E Drejta e autorit. Teori, raste dhe komente*. 2021, pp. 20-21.
- [11] Law No. 7895, dated January 27, 1995, Criminal Code of the Republic of Albania (as amended). <https://qbz.gov.al/publications/codes>
- [12] Ismet Elezi, *E Drejta Penale Pjesa e Posacme*, Botimet Kumi, 2021, pp. 237-238.
- [13] Decision No. 750, dated March 11, 2016, of the District Court of Tirana, and Decision No. 1488, dated May 09, 2016, of the District Court of Tirana.
- [14] Decision No. 799 dated March 16, 2016, of the District Court of Tirana; Decision No. 996 dated April 01, 2016, of the District Court of Tirana; Decision 1372 dated April 28, 2016, of the District Court of Tirana; Decision 2059 dated June 22, 2016, of the District Court of Tirana; Decision No. 2063 dated June 22, 2016, of the District Court of Tirana and Decision No. 3673 dated November 30, 2016, of the District Court of Tirana.
- [15] Law No. 9380 dated April 28, 2005 "On copyright and related rights" (as amended).
- [16] Decision no. 77, dated January 31, 2014 Tirana Court of Appeal.
- [17] Gentian Trenova, *Interpretime te Kodit te Procedures Penale*. Print AL, (2023), pp. 475-477.