



## **BASE-LINE ASSESSMENT OF THE CURRENT NATIONAL COPYRIGHT FRAMEWORK IN ARMENIA**

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## 1. History of Copyright Law and Intellectual Property Rights in Armenia

### 1.1. Intellectual Property Rights (IPR) in Soviet Armenia

After the collapse of USSR, as a successor of Communist regime, the Republic of Armenia (RA) retained Armenian Soviet Socialistic Republic's Civil Code from 1964 regulating inter alia intellectual property relations. It remained in force till 1996. Back to 1964-65, each Soviet republic enacted the new Civil Codes, including the copyright provisions of chapter IV. All these republics' laws were very similar, with only minor differences.

Throughout the various revisions of the Soviet law (Civil Code), some characteristics were driven by the provisions envisaged by Universal Copyright Convention (UCC) of UNESCO. The accession of the USSR to the Universal Copyright Convention of 1952 version, which became effective on May 27, 1973, was a major turning point. Copyright was extended to also cover works of foreign authors that had been first published abroad after that date, and the right to free translation of copyrighted works had been abolished. Eventually, Soviet works first published after this date also became copyrighted in other UCC member countries.

Under Civil Code of 1964, only creative works expressed in some objective form were subject to copyright. The duration of copyright was much shorter than customary in the West but in compliance with UCC, extending protection for the whole life of the author and for 25 years after author's death (Article 498, Civil Code of 1964). On the other hand, the duration of organizations' copyright protection was not restricted and should run without time limit (Article 501, Civil Code 1964). The economic rights of authors were limited by a long list of uses that did not constitute copyright infringements, and mandatory official royalty rates, established by Council of Ministers of Soviet Armenia, in some cases by Supreme Council of USSR (Article 481 (3) Civil Code of 1964) limited the income of authors. The main Soviet attitude toward ownership was "art belongs to nations", therefore state had an opportunity of compulsory acquisition of economic rights to work by the special decision made by Supreme Council of USSR, thus being able to nationalize the works without any restrictions, without the consent of the lawful owner (author) of the particular work.

During "Perestroika", the law and the administrative procedures were changed piece by piece, relaxing the governmental control<sup>1</sup> over authors' exercises of their copyright. The official royalty rates were dropped, and the state monopoly on foreign trade on copyright was abolished. Authors, for the first time, could legally negotiate publication contracts with foreign publishers themselves. Moreover, related rights were introduced for the first time in Soviet legislation. A new, profoundly revised Soviet copyright law was passed in 1991, but the Soviet Union was dissolved before it could enter in force.

### 1.2. Development of IPR in Modern Armenia

Indeed, history of Armenian Copyright law development could be divided into four phases since first years of Armenian independence (1991).

The first period, starting from 1991 to 1996, is a time of Soviet time's Civil Code operation adopted in 1964. During this period, Armenia joined World Intellectual Property Organization (WIPO<sup>2</sup>) on April 22, 1993, became a member of the Eurasian Patent Office (EAPO<sup>3</sup>) on February

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<sup>1</sup> A union-wide collecting society called the All-Union Administration for the Protection of Copyrights", (VUOAP – Vsesoiuznoe upravlenie po ochrane avtorskich prav; Всесоюзное управление по охране авторских прав, ВУОАП) was founded in the 1930s to centralize all collection and payments of royalties. The VUOAP was replaced by a new agency "All-Union Agency on Copyrights" (VAAP – Vsesoiuznoe agentstvo po avtorskim pravam; Всесоюзное агентство по авторским правам, ВААП) the collecting society, but additionally held the state monopoly on foreign trade in copyrights. All licensing contracts with foreign publishers had to be concluded through VAAP; authors and Soviet publishers were forbidden to negotiate directly with foreign publishers. The monopoly of the VAAP was abolished in 1989.

<sup>2</sup> World Intellectual Property Organization- <http://www.wipo.int/>

<sup>3</sup> Eurasian Patent Office - [http://www.eapo.org/index\\_eng.html](http://www.eapo.org/index_eng.html)

27, 1996, and European Patent Organization (EPO<sup>4</sup>) on February 27, 1996. Armenia also ratified, inter alia, the Paris Convention (May 17, 1994), Berne Convention (May 3, 2000), the Madrid Convention on Trademarks (April 5, 2000), more details are given below.

The second phase is identified by 1996 when the first Law on Copyright and Related Rights of RA was adopted. However, due to the inconsistencies and shortcomings of that law, again there was a pressing need for further improvement of legislation.

Moreover, parallel to the third phase of Copyright development in 1999, Armenia had already ratified a number of international treaties and joined core international organizations, consequently undertaking obligations requiring the legal review and further approximation of national legislation with international standards. During this period, firstly, the long-expected Civil Code of the Republic of Armenia was enacted. Secondly, completely new draft of second Law on Copyright and Related Rights was adopted by the Parliament on December 8, 1999. It is worth mentioning that during the third phase, in 2000, Armenia joined the Berne Convention for the Protection of Written and Artistic Works and, in 2002, the Rome Convention for the Protection of the Rights of Performers, Audio Record Producers and Broadcasting Organizations.

Finally, the fourth phase was marked by the adoption of the currently operating, third in sequence, Law on Copyright and Related Rights that came into force in 2006 after Armenia's accession to the World Trade Organisation on February 5, 2003. In fact, the Law of 2006 can be considered as a step forward toward harmonization of national legislation with international standards binding for Armenia. Particularly, Article 22 of the Law includes "Berne three-step test"<sup>5</sup> that imposes constraints on the possible limitations and exceptions to exclusive rights under national copyright law. Besides, the Law of 2006 provides protection for rights not only on literary, scientific and artistic works but also on computer programs and databases.

Parallel to the development of the national system of copyright legislation in the Republic of Armenia, the other components of intellectual property legislation have been developed and advanced, too. In August 1993 the Law on Patents was adopted, regulating such issues as legal protection of inventions. Under this Law, in order to register utility models and industrial designs, an applicant not a national of Armenia and not domiciled in Armenia should conduct his affairs through a patent attorney registered with the Armenian Patent Office. Initially, issues concerning patents and other rights of inventions, industrial design, know-how, trade secrets, trademarks, and service marks were regulated by different laws such as Laws on Joint Stock Companies, Non-for-profit Companies, Entrepreneurs and Entrepreneurship, Individual Entrepreneurship and Family Business Undertakings that were gradually repealed after the adoption of more specific legal acts: Law on the Legal Protection of Topographies of Integrated Circuits (February 3, 1998), Law on Trade Names (January 7, 2000), Law on Trademarks, Service Marks and Appellations of Origin (April 15, 2000), Law on Patents (December 29, 2004). Since December 1992 it has been possible to file applications for patents in respect of inventions. However, the reception of trademark applications for registration began after the issue of Resolution No. 4 of 19 August 1995, "On Confirmation of the Temporary Regulations for Trademarks and Service Marks" and the Patent Office Order of 24 October 1995, "On re-registration of former Soviet Union valid certificates for trade and service marks."

In June 2008, two Laws were adopted at once: first, Law on Trade Names (N114) repealing the previous analogous Law of 1999 and second, Law on Inventions, Utility Models and Industrial

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<sup>4</sup> European Patent Organization - <http://www.epo.org/index.html>

<sup>5</sup> The test is described in Article 13 of TRIPs. It reads,

"Members shall confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights holder."

The 'three-step' test can also be found in Article 10 of the WIPO Copyright Treaty, Article 6(3) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, Article 6(3) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases and Article 5(5) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

Samples repealing the Law on Patents of 2004 (N175). Nevertheless, newly adopted Laws shall come into force in January 1, 2009 hence prior to their enforcement the previous ones shall be in force.

The new Law on Trade Names of 2008 makes easier the process of trade name registration, eliminates unjustified grounds for registration denial so excluding the obstacles for registration of legal entities, which in turn, as a positive result, will favourably affect the business and investment indicators. As for the new Law on Inventions, Utility Models and Industrial Samples, according to the official Justification for the Law adoption, due to the inconsistency of title of the Law on Patent with current aims of the Law, and due to the extensive changes made, it was considered reasonable to develop a completely new Law. It aims at improvement of the legal protection in the field of IPR (inventions, utility models and industrial samples excluding technical innovations regarding new varieties of plants, biological, chemical and pharmaceutical substances), rendering it more effective and reliable as well as simplifying the procedure of protection enforcement.

Besides, the new Laws show better correlation with the legislation of EU countries, particularly, as regards registration of introduced model, terms of protection and accrual of rights by a single application.

## **2. Regulation of IPR Sector (State intervention)**

It is deemed that practically the national system of intellectual property protection mechanism in Armenia was launched by the establishment of the Patent Office under the Government of the Republic of Armenia (Government) in January 1992 and the National Agency of Copyright in December 1993. Later, in 2002, the Armenian Intellectual Property Agency<sup>6</sup> (AIPA) was established by merger of these two organizations<sup>7</sup>, having the status of separate division acting within the Ministry of Economy of the Republic of Armenia. In the same year the Government approved the statute and the structure<sup>8</sup> of the Agency.

It shall be noted that in 2005 the Government adopted the Conception on State Regulation in the Field of Intellectual Property that was communicated to public as an abstract from the Government meeting protocol and available in Official Gazette (in Armenian).

Policy formulation and implementation in this field is the responsibility of the AIPA. This agency is responsible for approving industrial property rights applications, registration of license agreements on use of industrial property and integral microcircuit topologies, registration of open licenses, authorization of patent attorneys, maintaining the State Register of industrial property rights, as well as issuing an official bulletin reflecting its decisions, and cooperating with foreign institutions and international organizations.

In January 2005, the Government created an IPR Enforcement Unit in the Department against Organized Crime (6<sup>th</sup> Dep.) of the Armenian Police. In July 2005, the Unit took significant action against three companies allegedly marketing unlicensed cassettes, CDs and DVDs. Nevertheless, while Armenia has made some progress on IPR issues, strengthening enforcement mechanisms remains a priority.

## **3. Development of Collective Administration of Copyright in Armenia**

According to the legal doctrine of civil law countries, the system of collective administration (or management) of copyright is part of the comprehensive system of copyright protection in its broad sense. The system of collective administration of rights is specific for copyright law and does not exist in other fields of IP protection, such as in patent and trademark law.

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<sup>6</sup> Armenian Intellectual Property Agency <http://www.aipa.am/en/>.

<sup>7</sup> Republic of Armenia Government Decree № 197 from 6 March 2002.

<sup>8</sup> Government Decision on Approving the Statute and Structure of Armenian Intellectual Property Agency, N1231, 2002. [http://www.aipa.am/upload/File/akter/Gorcakal\\_canonadrutyun%281%29.pdf](http://www.aipa.am/upload/File/akter/Gorcakal_canonadrutyun%281%29.pdf) (in Armenian).

In Armenia, the system of collective administration of copyright started relatively late and developed slowly. Since 2001 only one organization for collective administration of copyright has been established in Armenia, namely the Armauthor NGO<sup>9</sup> dealing with collective administration of copyrights in musical works, literary works and audio-visual products. It shall be noted that it is actually in the phase of maturing.

From the legal point of view, in July 2006, the enacted Copyright Law set forth special provisions on collective administration of copyright, the significance of which lies in the following aspects: first, collective administration of copyright is recognized as part of the legislative system of copyright protection; second, the establishment of organizations for collective administration of copyright is based directly on the law; and third, it is shown that the Armenian legislation on collective administration of copyright is more closely modelled on the copyright legislation of civil law countries since only that legislation has incorporated the relevant part of collective administration of copyright, while the copyright laws of the common law countries are not concerned with that matter (except for the mechanism of dispute settlement concerning the copyright licensing fees).

#### **4. “Armauthor” Authors’ Rights Protection NGO (Resume)**

Article 63 of the revised Copyright Law of 2006 (the Law) reads as follows: For the provision of administration of economic rights of holders of copyright and related rights, where the exercise of economic rights in personal order is practically difficult or impossible, non-commercial, non-profit organizations for collective administration of economic rights shall be established

As it was noted above, only one organization for collective administration of IPR has been established in Armenia, namely the Armauthor NGO (society) dealing only with copyright collective administration. This Society was set up on January 19, 2001 when Ministry of Justice approved Charter of society by its decision N119.

Its administration field, according to the Law, Article 64, mainly covers the collection and distribution of royalties to right holders or authors for use of their copyrighted works under statutory licenses, as well as for the communication through information networks, digital reproduction, performance, rental rights etc. as far as specially authorized by the right owners. At present, the main task of the Society is to develop its membership and, in the meantime, to redistribute the remuneration to the right holders.

Since 2001, when the preparation work for collective administration of copyright started, more than 1500 authors (rights holders) have signed agreements with the Society authorizing it to undertake its administration business. Membership mainly consists of domestic copyright owners of various copyright works.

To date, it has signed reciprocal agreements with 22 foreign sister societies. Moreover, Armauthor is a member of CISAC<sup>10</sup>. The reciprocal agreements signed between Armauthor and the other sister societies, members of CISAC, give under their terms the fullest right to Armauthor to collect on behalf of the foreign right holders - lyricists, composers and music publishers - the royalties due for the use of their respective works in the territory of Armenia.

In conclusion, the presence of Armauthor NGO has a direct bearing on whether or not the authors can effectively realize their copyright. For that matter, it is deemed as an integral part of the copyright system of Armenia.

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<sup>9</sup> “Armauthor” Authors’ Rights Protection NGO (Collecting society) <http://www.armauthor.am>.

<sup>10</sup> CISAC-International Confederation of Societies of Authors and Composers, registered in France (1926). At present the members of CISAC are 210 authors’ societies from 109 countries.

## 5. Challenges and Shortcomings/ International Perspective

There are a number of challenges remaining both on the legislative and the enforcement sides to fully meet the provisions of the TRIPS agreement and Partnership and Cooperation Agreement (PCA)<sup>11</sup>: Armenia has not yet adopted the relevant legislation on the retroactive protection of foreign works and sound recording. Furthermore, the Criminal Code has not yet been modified to increase sanctions for violation and infringement of IPR. Armenia still needs to significantly intensify its efforts on effective implementation and enforcement of the Intellectual Property Rights legislation as piracy and counterfeits remain a major issue of concern (piracy rate comprises 95%)<sup>12</sup>. This requires a substantial increase of the administrative capacity of the different enforcement bodies, including the designation of a coordination body, as well as a deterrent and functional legal framework<sup>13</sup>. In this regard, as it is mentioned above, Government took measures to strengthen IPR enforcement mechanism by creation of IPR Enforcement Unit in the Department against Organized Crime of Armenian Police in January 2005. On the other hand, the judicial system is still recovering from underdevelopment and corruption, legacies of the Soviet era that substantially impede the enforcement effectiveness.

According to Global Competitiveness Index 2007-2008<sup>14</sup>, Armenia's economy rank is 93 out of 131 countries and one of the mentioned notable competitive disadvantages is an Intellectual property protection.

## 6. Data on Top Internet Sites, Data on Downloads

Although there is no official data concerning the top Armenian or foreign internet sites from Armenian Statistical Service, "Top.AM" Internet Resource Statistics<sup>15</sup> (internet periodical) and Armenian Web Resources Rating System "CIRCLE.AM"<sup>16</sup> provide data on the abovementioned. Particularly, one can find archives and up-to-date statistics on Top Sites, Top Visited, Top Clicked, Top Hosts, Top Referrers, Top Search Engines, Top Key Words, Top Browsers, Top Op. Systems, and Top Providers as well as other information by categories depending on type of content.

Data on downloads is not available.

## 7. Enforcement

### 7.1. Civil judicial procedures and remedies

Civil court procedures are available to deal with legal matters relating to intellectual property protection. The courts are empowered to order the payment of damages and court expenses. Other remedies envisioned in the TRIPS Agreement are also within the decision-making authority of

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<sup>11</sup> The Partnership and Cooperation Agreement (PCA) which entered into force in 1999, gives the framework of EU Armenia relations, providing for close political relations as well as economic, social, financial and cultural cooperation. The European Neighbourhood Policy (ENP) builds and further extends the PCA.

<sup>12</sup> Armenian ICT Industry Association, Annual review 2007. Retrieved August 13, 2008 from [http://uite.org/cms/index.php?option=com\\_content&task=blogcategory&id=55&Itemid=76&lang=en](http://uite.org/cms/index.php?option=com_content&task=blogcategory&id=55&Itemid=76&lang=en)

<sup>13</sup> "Implementation of the European Neighbourhood Policy in 2007" Progress Report published on 10 April 2008. Retrieved August 13, 2008 from [http://www.delarm.ec.europa.eu/en/press/10\\_04\\_2008.htm](http://www.delarm.ec.europa.eu/en/press/10_04_2008.htm).

<sup>14</sup> The Global Competitiveness Report is a yearly report published by the [World Economic Forum](http://www.weforum.org). The Global Competitiveness Report series has evolved over the last three decades into the world's most comprehensive and respected assessment of countries' competitiveness, offering invaluable insights into the policies, institutions, and factors driving productivity and, thus, enabling sustained economic growth and long-term prosperity. The World Economic Forum (WEF) is a [Geneva](http://www.weforum.org)-based foundation whose annual meeting of top business leaders, national political leaders (presidents, prime ministers and others), and selected intellectuals and journalists is usually held in [Davos, Switzerland](http://www.weforum.org). Retrieved August 8, 2008 from <http://www.gcr.weforum.org/>.

<sup>15</sup> "Top.AM" Internet resource Statistics, <http://www.top.am/>

<sup>16</sup> Armenian Web Resources Rating System <http://www.circle.am/>

Armenian courts. The civil courts in Armenia are fully empowered to provide the remedies referred to in Articles 42 to 49 of the TRIPS Agreement. Civil remedies cannot be ordered as a result of administrative procedures.

Furthermore, foreigners enjoy the same rights as Armenian nationals. Remedies against criminal behaviour are available under Armenia's courts and penal system. Foreigners have the same access to those remedies as Armenian nationals. Additional provisions are included in the Civil Procedure and Criminal Procedure Codes, which were adopted on June 17, 1998 and July 1, 1998 respectively, entering into force on January 12, 1999. The judicial authorities have the power to order injunctions or provisional measures.

## **7.2. Criminal procedures**

Under the Criminal Code of the Republic of Armenia that was adopted on April 18, 2003 and entered into force on August 1, 2003, the remedies are established for Infringement of Copyright and Related Rights (Article 158), Infringement of Patent Rights (Article 159) and Illegal Use of Trademarks (Article 197) that entails fine approximately in the amount of 650 to 1700 USD (USD 1=AMD 300) as well as imprisonment for a maximum term of two years.

## **8. Successful Cases**

It shall be noted that in the judicial proceedings, copyright infringement actions are mainly brought by Armauthor NGO, organization for collective administration of copyright. Armauthor is playing its crucial role in restoration of authors' rights that eventually for authors are hard to protect individually. To date, there were several successful cases given below, where the court judgement imposed an obligation on copyright infringers (mainly TV, Radio and entertainment Companies) to sign "license agreements" with Armauthor NGO who acts on behalf of the authors that transferred administration of their exclusive rights to Armauthor on the contractual basis.

First and at the same time benchmark case was successfully filed against Armenian Public TV and Radio Company in 1996. Today, Armenian Public TV and Radio Company one of the companies in the field of electronic Mass Media who promptly pay annual license fee along with all private counterparts. Successful cases were brought against "Erkir Media" and "DAR 21" private TV Companies. With respect to "DAR 21" TV Company, when complaint of Armauthor appeared in the court, consultations were conducted between parties, and after taking into account the legal requirements and recent successful cases settled in favour of complainant (Armauthor), the parties of dispute came to the amicable agreement. Next case worth mentioning was lodged against "Santa" LLC that operates one of the well-known "Sayat Nova" Restaurant Complex, again resulting in a compulsory conclusion of license agreement, in favour of Armauthor. Besides, yet unsolved case of Armauthor versus "Gianni Club" dba "Focus Govazd Studio" LLC is pending court judgement.

To sum up, it is well recognized that one of most effective ways to eliminate copyright infringements is just to apply for legal protection. The latter helps better identify the protected content, and provide a basis for both the copyright users and even judges to acquire knowledge and raise public awareness concerning copyright issues.

## **9. Legal Regulatory Framework Affecting IPR in Armenia**

In the area of intellectual property rights basic legal acts guaranteeing and regulating that rights in Armenia are as follows:

### **9.1. Primary Legislation**

**1. Constitution of the Republic of Armenia**<sup>17</sup>, (5 July 1995, amended in Nov. 2005). The main

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<sup>17</sup> According to the Law on Legal Acts, Article 8 (1): "...the Constitution defines the principles of legal regulation...and is the base for the legislation".

- provision directly mentioning IPR is Article 31 and reads as follows: The intellectual property shall be protected by the law. <http://www.parliament.am/parliament.php?id=constitution>
2. **Civil Code** (5 May 1998)<sup>18</sup>. Section 10 of the Civil Code is entirely devoted to the whole spectrum of IPR and regulates specific issues concerning copyright, related rights, invention, utility model, and industrial design, rights to new varieties of plants and new breeds of animals, topology of integrated microcircuits, right to protection of undisclosed information from illegal use, means of individualization of participants in civil commerce, of goods, and of services.  
<http://www.parliament.am/legislation.php?sel=show&ID=1556&lang=eng>
  3. **Law on Copyright and Related Rights** (15 June 2006). This is the main legal act regulating the relations connected with creation and use of works of science, literature and arts, performances, phonograms, audio-visual products, the rights of performers, producers and the rights of broadcasting organizations. <http://www.aipa.am/en/legislation/15/#pin>
  4. **Criminal Code** (18 April 2000) The objectives of the Criminal Code are to protect from criminal encroachment human and citizens' rights and freedoms, the rights of legal entities, property, the environment, public order and security, constitutional order, as well as to prevent crime. This legal act criminalizes the actions such as breach of copyright and adjacent rights (Article 158), breach of patent law (Article 159), illegal use of trademarks (Article 197) and in general, crimes against property, economy and implementation of economic activity.  
<http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>
  5. **Customs Code** (6 July 2000). Provides and defines procedures of protection of the intellectual property rights of the persons (Section 14, Chapter 39), through the functions granted to Customs Authorities. <http://www.parliament.am/legislation.php?sel=show&ID=1208&lang=eng>
  6. **Law on the Legal Protection of Topographies of Integrated Circuits** (3 February 1998). This Law governs the relations concerning the creation, legal protection and use of topographies. <http://www.parliament.am/legislation.php?sel=show&ID=2514&lang=eng>
  7. **Law on Trademarks, Service Marks and Appellations of Origin** (20 March 2000). This Law regulates relations connected with the registration, legal protection and use of trademarks, service marks and appellations of origin.  
<http://www.parliament.am/legislation.php?sel=show&ID=1444&lang=eng>
  8. **Law on Patents** (23 November 1999, enforceable till 1 January 2009). As it is stipulated in Article 1, the objective of the Law is to regulate the property and non-property personal relationships connected with the creation, legal protection and utilization of invention, utility model and industrial design. Shall be in force till 1 January 2009 when new Law on Inventions, Utility Models and Industrial Samples adopted in June 2008 will become effective.  
<http://www.aipa.am/en/legislation/11/#pin>
  9. **Law on Inventions, Utility Models and Industrial Samples** (10 June 2008). The Article 80 of this Law revokes Law on Patents of 1999 that shall be in force till January 1 2009. This law provides legal protection for property and non-property rights (moral right) in the field of IPR (inventions, utility models and industrial samples excluding technical innovations regarding new varieties of plants, biological, chemical and pharmaceutical substances). Moreover, under this law, protection mechanisms are improved in comparison with the previous law, the procedure of protection enforcement are more effective and reliable as well as simplified. This law shall come into force on January 1, 2009.  
<http://www.parliament.am/legislation.php?sel=show&ID=3324&lang=arm> (in Armenian)
  10. **Law on Trade Names** (23 November 1999, enforceable till 1 January 2009) Registration, legal protection and use of trade names of legal entities are regulated through this Law. The application

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<sup>18</sup> According to the Law on Legal Acts, Article 9 (4, 5): "...a Code is a law laying out all or the fundamental norms, ... and all other Laws shall comply with the Codes".

of this law shall be valid in law till 1 January of 2009 as Law on Trade Names (N114, June 10, 2008) will come into force.  
<http://www.parliament.am/legislation.php?sel=show&ID=1473&lang=eng>

11. **Law on Trade Names** (10 June 2008). The new Law on Trade Names revokes Law on Trade Names of 1999, making easier the process of trade name registration, eliminating unjustified grounds for registration denial, thus excluding the obstacles for registration of legal entities, which will positively affect business and investment indicators. This law shall come into force on January 1, 2009. <http://www.parliament.am/legislation.php?sel=show&ID=3330&lang=arm> (in Armenian)
12. **Law on the Protection of Selection Achievements of Armenia** (23 November 1999). This Law regulates the economic relationships and the non-economic personal relationships associated with the creation, legal protection and exploitation or use of both the plant variety and new breeds of animal's selection achievements.  
<http://www.parliament.am/legislation.php?sel=show&ID=1484&lang=eng>
13. **Law on Protection of Economic Competition** (6 November 2000). The purpose of this Law is to protect and promote the economic competition, to ensure an appropriate environment for fair competition, the development of businesses and protection of consumer rights in the Republic of Armenia. However, it is not applicable to the relations associated with the protection of IPR, except where these rights are enforced with a view of restricting the economic competition (Article 2 (2) of this Law). Appropriate measures to prevent or control abuse of intellectual property rights are contained in the Law "On Protection of Economic Competition"  
<http://www.parliament.am/legislation.php?sel=show&ID=1484&lang=eng>

## 9.2. International Legal Instruments ratified by Republic of Armenia.

It is worth mentioning that according to the Constitution (Article 6(4)) and Law on Legal Acts of Armenia (Article 21) International treaties and agreements ratified by the Republic of Armenia are a constituent part of the legal system and if ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

Today the Republic of Armenia has acceded to the following international agreements and international organizations that have their effect on regulation of IPR in Armenia:

Treaty	Status	Entry into Force	
1. Paris Convention for the Protection of Industrial Property (1883)	In Force	December 25, 1991	<a href="#">Details</a>
2. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods	In Force	December 25, 1991	<a href="#">Details</a>
3. Madrid Agreement on the International Registration of Marks	In Force	December 25, 1991	
4. PCT- Patent Cooperation Treaty (1970)	In Force	December 25, 1991	<a href="#">Details</a>
5. WIPO Convention (Convention Establishing the World Intellectual Property Organization, 1967)	In Force	April 22, 1993	<a href="#">Details</a>

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6. Brussels Convention (Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974))	In Force	December 13, 1993	<a href="#">Details</a>
7. Berne Convention for the Protection of Literary and Artistic Works (1886)	In Force	October 19, 2000	<a href="#">Details</a>
8. Madrid Protocol	In Force	October 19, 2000	<a href="#">Details</a>
9. Phonograms Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971)	In Force	January 31, 2003	<a href="#">Details</a>
10. Rome Convention for the Protection of Performers, Producers, of Phonograms and Broadcasting Organizations	In Force	January 31, 2003	<a href="#">Details</a>
11. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)	In Force	February 5, 2003	<a href="#">Details</a>
12. Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure	In Force	March 6, 2005	<a href="#">Details</a>
13. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	In Force	March 6, 2005	<a href="#">Details</a>
14. Strasbourg Agreement Concerning the International Patent Classification	In Force	December 6, 2005	<a href="#">Details</a>
15. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	In Force	March 6, 2005	<a href="#">Details</a>
16. WCT - WIPO Copyright Treaty, (Geneva) 1996	In Force	March 6, 2005	<a href="#">Details</a>
17. WPPT - WIPO Performances and Phonograms Treaty (Geneva) 1996	In Force	March 6, 2005	<a href="#">Details</a>
18. Hague Agreement Concerning the International Deposit of Industrial Designs	In Force	July 13, 2007	<a href="#">Details</a>
19. Locarno Agreement Establishing an International Classification for Industrial Designs	In Force	July 13, 2007	<a href="#">Details</a>

### 9.3. Membership in International Organizations

1. World Intellectual Property Organization	In Force	April 22, 1993
2. CIS Intergovernmental Council on Industrial Property Protection Issues	In Force	March 12, 1992
3. European Patent Organization	In Force	February 27, 1996
4. The Eurasian Patent Organization	In Force	February 27, 1996

### 9.4. By-laws/Subordinate Legislation<sup>19</sup>

1. Order for Formulation, Filing and Discussion of Applications for Trade and Service Marks.
2. Order for Registration of Agreements on Concession of Trade Marks and License Agreements.
3. Order for Recognition a Trade Mark Popular in the Republic of Armenia
4. Order to Draw, Submit and Consider Applications for Registration of Appellation of Origin and/or the Right to Use of Goods.
5. Order to Draw, Submit and Consider Application for Receiving License for Industrial Model.
6. Order for Providing Preservation Documents and Keeping Registers of Industrial Property Objects, Topographies of Integrated Circuits and Patent Attorneys
7. Order for Consideration of Applications on Licensing the Industrial Property Objects in Foreign Countries.
8. Statute/Charter on Patent Attorneys.
9. Order for Qualification and Register of Patent Attorneys
10. Order to Draw, Submit, Elaborate, Preliminary Examine and Draw Remarks, Submit and Consider the Applications for Receiving Inventions License.
11. Order for Inventions' Examination on the merits.
12. Instruction on Preparation and Submission of Corrected Description of Inventions (Utility Model).
13. Order for Denunciation of USSR Intellectual Certificates on Inventions, USSR Certificates on Industrial Models and USSR Licenses in the Territory of the Republic of Armenia Given by USSR Inventions' State Stocks and for Submission and Consideration the Applications for Obtaining Republic of Armenia Licenses for the Remained Period.
14. Order to Draw, Submit and Consider the Applications for Receiving Utility Model License.
15. Order to Prolong the Effect of RA License for Invention on Pharmaceutical Substances, Constituent Parts or Structures, which have Character of Preventive or Medical Influence on Human or Animal, on Chemical or Biological Materials for Plants' Protection, on the Ways of their Obtaining, as well as on Materials Necessary for Production of that Substances, Materials or Ingredients and on the Ways of their Obtaining
16. Order for Protection of Trade Marks Handed by the Sale Agreement of Yerevan Cognac Factory.

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<sup>19</sup> By-laws are available only in Armenian on the site of Intellectual Property Agency- <http://www.aipa.am/am/le/>

17. Order for Submission and Consideration of Complaints and Applications in the Intellectual Property Agency's Appellate Council of the Republic of Armenia
18. Statute of the Appellate Council of the Intellectual Property Agency at the Ministry of Trade and Economic Development of the Republic of Armenia
19. Order for Search in Data Base of Trade and Service Marks Obtained Legal Protection and Submitted for Registration in the Republic of Armenia
20. Order for Collection and Keeping an Account of State Duties prescribed for Legal Protection of Industrial Property Objects and Topographies of Integrated Circuits by the Republic of Armenia Government's Licensing Department.
21. Order for Rectification of Obvious Mistakes Made in the Official Information of the Republic of Armenia Government's Licensing Department.
22. List of Data on Publications of the Official Gazette of Intellectual Property Agency at the Ministry of Trade and Economic Development of the Republic of Armenia
23. Order to Draw, Submit and Consider the Applications for Registration of Trade Name.
24. RA Government Decision on Approval of Orders for Use of Names and Titles in the Trade Names Requiring Authorization and Use of Names, Portraits and Facsimiles in the Trade Marks Requiring Authorization.

## **10. Current Usage of Open Source.**

Armenia is one of the countries that do not enjoy localized licensed software and it apparently does not have sufficient public funding for the purchase of licensed software for the public institutions' needs. Existence of open source products potentially available for the use of governmental and educational institutions, however, is slowed down due to the absence of public policy aimed at promotion and popularization of free open source software products. Moreover, absence of relevant policy prevents for effective development of new open source software (OSS) and its application in different areas including e-governance and e-business.

There are few organizations that promote Open Source Software in Armenia. One of them is Internews' Center for Information Law and Policy (CILP)<sup>20</sup>. Until 2007, there has also been an international group of enthusiasts that intended to help develop the Armenian IT industry and initiated the website [www.opensourcearmenia.com](http://www.opensourcearmenia.com) (OSA). It was supported by a pool of international, private, public and academic institutions and run by the Union of IT Enterprises<sup>21</sup>. During its activity, the OSA team had localized Open Office, Mozilla Firefox browser and Thunderbird Email client into Armenian.

Unfortunately, there is no accurate data on usage of OSS among public, however, the study mentioned below provides statistics on utilization of OSS in public institutions. So, according to Taguhi Tumanyan, author of study report, the survey has covered 14 public sector representative organizations among which there were state universities and the academy of science, private universities, state ministries and the government staff. The referees were the heads of the staff, system administrators, directors, project managers, the heads of the appropriate divisions involved in IT sector facilitation within the organizations (such as heads of IT departments). The last has introduced the opportunity to have the relatively full picture presenting both the policy and the technical aspects of the study.

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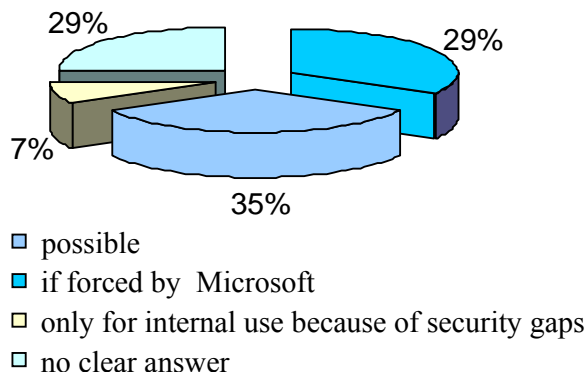
<sup>20</sup> Internews' Center for Information Law and Policy (CILP)-[www.gipi.am](http://www.gipi.am)

<sup>21</sup> Union of IT Enterprises - <http://www.uite.org/>

The study of the Free Open Source software (FOSS)<sup>22</sup> shows that the vast majority, that is about 79% of the interviewees, is familiar with the open source in general in the face of Linux/Unix solutions used on the mail/web servers, whereas the 21% has stated that OSS products are not being used at all. The last do not use the solutions even at server level because the computers were purchased with licensed solutions onboard.

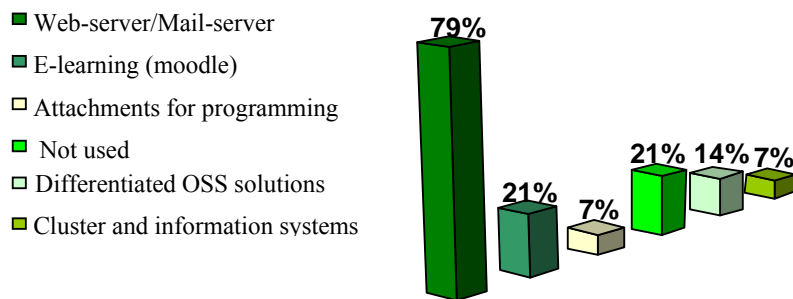
The logical continuation was the question about the future opportunities or plans to switch to FOSS/OSS solution. As it is shown in the chart 1, for the 35% of recipients it is not inconceivable to switch, while for 29%, correspondingly, it is a matter of Microsoft license pressure, and for the second, it is unclear yet. In the interim, the government staff finds that, because of the security gaps and possible vulnerabilities, FOSS/OSS can be used only for the internal use of the Governmental organizations, such as Ministries (see Chart 1).

**Chart 1. Will your organization switch to FOSS/OSS?**



Data on basic areas of FOSS/OSS Utilization in Armenia are shown in the Chart 2.

**Chart 2. Where is FOSS/OSS being used?**



## 11. Who are the Major Stakeholders at the National Level?

Historically, much of the speculations have been trying to differentiate between organizations representing "creators" and organizations representing "users". Unfortunately, the latter creates

<sup>22</sup> "Inventory Study of the FOSS/OSS Utilisation in Armenia" Study conducted for Internews' Center for Information Law and Policy by Taguhi Tumanyan, Yerevan 2006

confusion, as most creators are also users of the works of others, given that creativity always builds on the past. Moreover, in spite of the fact that one is an advocate, and another is an opponent of OSS principles, both are stakeholders.

Thus, I divided the stakeholders into three main groups: creators, intermediaries, and users.

**Creators:**

- All authors and copyright holders that possess unique outcome of a creative activity in the domain of science, literature and art.

**Intermediaries**

On the national level, two institutions can be identified as direct stakeholders:

- National Agency of Intellectual Property
- “Armauthor” Authors' Rights Protection NGO. (Organization for collective administration of copyright).

There are other copyright-holding intermediaries, such as music recording labels that may think of themselves as "representing" musicians, but all too often like employers, so they also can be listed as stakeholders.

Furthermore, there are a number of Libraries, Archives and Educational sector organizations that are seen to represent the doctrine of public interests, even if they have their own interests.

It is noteworthy that this group shall be supplemented by several professional unions, such as Union of Composers, Writers, Theater Workers, Painters, Architects, and Cinematography Workers. Although these organizations, of course, do not execute their mission in IPR protection today, they have strong potential, in a long-term perspective, to take functions of intermediary and become effective players in this field.

**Users**

Frankly, some users really do want to get something for nothing, and have no long-term interest in protecting the rights of creators as an incentive for creativity. While some people believe that this group is a minority, in practice, 98% of piracy rate in Armenian market proves the contrary.

**State Bodies**

In principle, State bodies (the executive) are the key guarantors and implementers of the state policy aiming at the Public benefit. Today, public benefit needs an accurate balance between “all rights reserved” and “CopyLeft”, so the role of the state bodies is much more important, especially in a long-term perspective.