

Guidelines for the National IP Strategy of the Republic of Macedonia (2013 – 2016)

Version 2

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Part I: General issues in IP strategy development and implementation

1. General information on IP strategy

Innovation and entrepreneurship supported by intellectual property (IP) is an important tool for economic and cultural growth of a country. The differences that exist in the legal, economic, political, cultural etc. set up of a country, as well as the variety of opportunities that emerge from the IP, provide for differences in the approaches to using IP as a policy for strategic development. A number of countries may see in IP simply a bargaining tool for gaining access to foreign markets. But other countries may be interested in using the appropriate IP tools for promoting dissemination and transfer of technology. Other countries may prefer to focus on maintaining an economic free competitive environment. Developing and developed countries alike may concentrate on addressing the problem of the high costs of health care and would seek mechanisms that reduce the impact of IP, if any, on those costs. A number of Members have also expressed the view that IP should serve the promotion of tourism or the preservation of cultural heritage¹. Any combination of the above approaches may also be used when appropriate.

What Is An Intellectual Property Strategy?

An IP Strategy is a set of measures formulated and implemented by a government to encourage and facilitate effective creation, development, management, and commercial exploitation of intellectual property. It outlines how to develop infrastructures and capacities to support inventors of IP to protect, develop and exploit their inventions.

An IP Strategy may be defined in a comprehensive national document which outlines how all the policy developments and implementation take place in a coordinated manner within a national framework.

It therefore spells out how best to develop the talent base for an innovation system that attracts foreign direct investment, and help in building an inclusive economy².

Why Is An IP Strategy Useful?

IP, as said is seen as a tool for the economic growth of a country. An IP Strategy is useful because it strengthens a nation's ability to generate economically valuable IP assets. All nations have rich human capital, universities, research institutions and entrepreneurial businesses. The goal of IP strategy is to provide a plan over time whereby all national stakeholders can work together to create, own, and exploit research results, innovations, new technologies, and works of creativity.

¹ http://www.wipo.int/ip-development/en/policy/ip_policy.html

² http://www.wipo.int/ip-development/en/strategies/national_ip_strategies.html

2. Development of a IP Strategy

The officials of the Republic of Macedonia have experience in the development and implementation of an IP strategy. The process that was undertaken for the development of the IP Strategy 2009 – 2012 included the necessary steps to provide for the active participation of all relevant stakeholders - institutions and organizations that participate and influence but at the same time are affected by the IP development processes in the country. The formulation of that strategy provided for meeting the current needs of the Macedonian society.

In general the process of formulation of the Strategy should include the steps as recommended by WIPO and illustrated below.

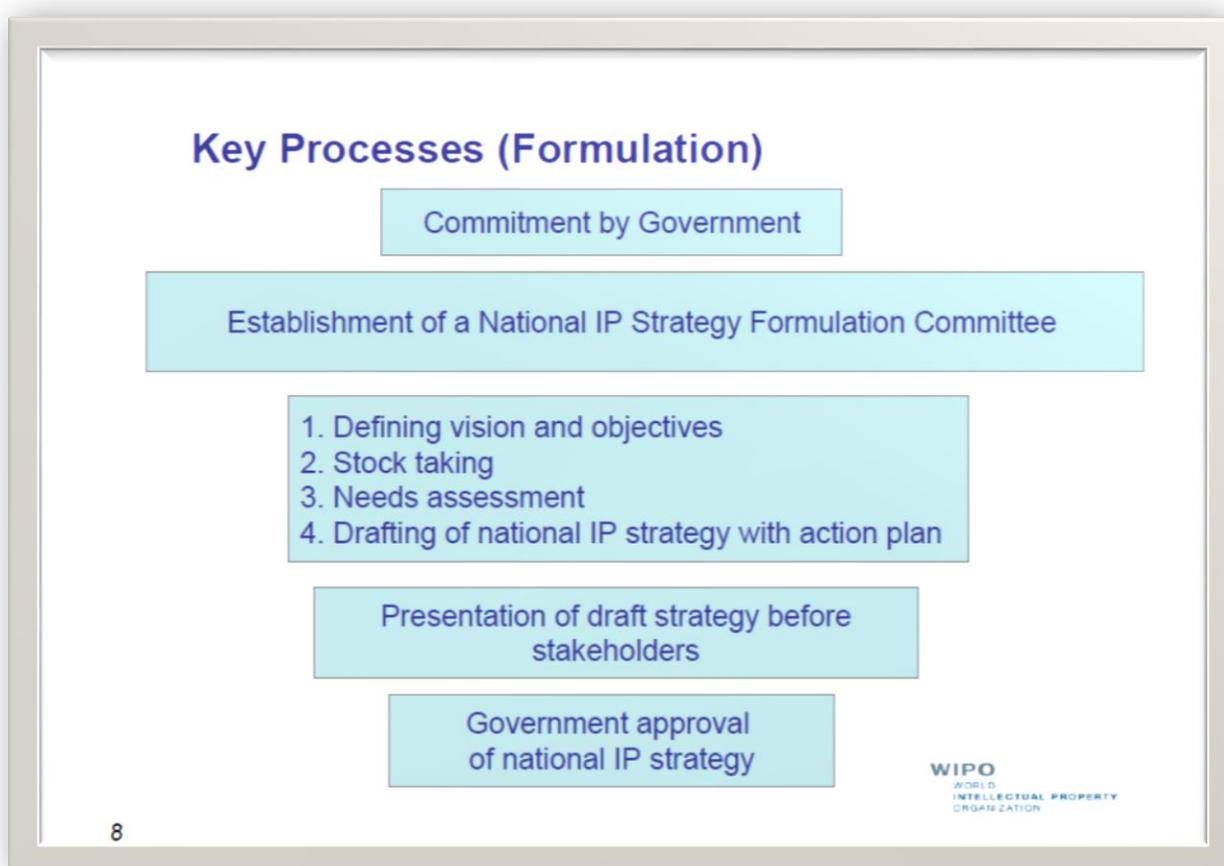


Illustration 1: National Intellectual Property Strategy for Innovation: Objectives, Processes and the Role of WIPO, presentation by Ye Min Than, Tokyo, 2012³

³ http://www.wipo.int/edocs/mdocs/aspac/en/wipo_inn_tyo_12/wipo_inn_tyo_12_ref_t1than.pdf

Detailed description of the formulation phase i.e. the steps involved in developing a national IP strategy is provided in WIPO's document Methodology for the Development of National Intellectual Property Strategies- Tool 1: The Process⁴.

For the process of the formulation of the new IP Strategy in the in the Republic of Macedonia it is recommended these steps to be followed again.

IP Strategy Development Committee and its tasks

The IP Strategy Development Committee should not be a body comprised of too many members. It is a functional unit that should include experts and representatives of the most relevant bodies in the field of IP. This unit should collect the relevant data on the state of affairs in the field of the Intellectual Property in the country (make the background assessment) and draft the text of the strategy and the accompanying action plan. This does not mean that the other institutions and organizations are to be excluded in the process of the development of the strategy, quite contrary. Once the text of the Strategy is drafted the Development Committee should present it and obtain opinions upon it, which will be discussed below in these Guidelines.

The tasks of this Committee would be to define the purpose of the strategy and the goals that are to be achieved as well to undertake the activities of drafting the text of the strategy and to do so in consultation with all stakeholders, and its finalization before it is presented for adoption to the Government.

Defining the purpose of the Strategy

As stated above the IP Strategy is a tool which enables to encourage and facilitate effective creation, development and management of intellectual property. In the same time the intellectual property itself is a tool for development of the knowledge-based economy and promotion of the culture of a country. These processes are complex ones with many aspects to be taken into consideration and many parties participate in their implementation.

In this sense the reasons why a national IP strategy is adopted may be varied. They are not exclusive - in fact they are complementary and support each other. A comprehensive IP strategy includes and tackles in fact the whole process of the creation, protection, commercialization and enforcement of the IP rights, including the institutions, bodies, organizations and individuals that participate in them.

The development of an IP strategy could also be motivated from different reasons. They vary from rather simple one – such as for example the modernization of the IP administration structures in a country, to very complex ones which are related to development of the national IP standards and practices so as they are aligned with the standards and practices of an international organization or institutions (WIPO, WTO, EU etc.)

⁴ http://www.wipo.int/export/sites/www/ipstrategies/en/pdf/methodology_templates.pdf

Once the purpose of the Strategy is set, the Development Committee should define or set the goals that are to be achieved. The goals⁵ should be expressed clearly and most important they should be achievable in the given time period. When setting the goal of the strategy it is important to establish what is the state of the development of the IP system in the country and where this system should be once the implementation of the actions foreseen with the strategy is finalized. In these terms, the strategy should be seen as a road map how to get where one wants to be.

Background assessment

The background assessment is very important step in the formulation of the national IP strategy and one of the major tasks of the Development Committee. Only a proper and full assessment of all circumstances will provide for a clear picture of where the matters are, so as to know how to achieve the set goals. The assessment should be carried out in order to have an understanding of the context in which the strategy is developed and it is going to be implemented. When the assessment is made the Development Committee should not look only in the immediate IP field, but also in the wider area of the national development policies and strategies, including financial and business regulation structures.

The background assessment includes several important categories of information that should be collected and analyzed. They will, to a certain extent depend on the scope of the strategy. In general the data collection should provide information on the overall development policy of the country and how the IP system could be utilized towards the achievement of the development mission. WIPO recommends that this should include analysis of the existing documents in order to obtain a comprehensive assessment of the country's national development objectives, strategies and policies, and determine how these can be linked to the national IP strategy. The assessment should also include the information of the legislative framework governing the creation, protection, commercialization and enforcement of the IP rights as well as the institutions involved in this. This will include a number of institutions and organizations (they will actually compose the body of stakeholders). In first instance, here are the institutions involved in the administration, protection and the enforcing of these rights, including their set-up and competencies. The IP administration offices involved will be the Industrial Property Office, the office dealing with the copyright and related rights and well as that (those) dealing with the plant variety. The business sector and its understating and utilization of the IP system is an important issue in the functioning of the IP system, the assessment should for sure include the data on the practices and the experience of the various chambers of commerce and the associations of manufacturers including crafts and the units within. Closely related is the system of the creation of the protectable mater where the universities and the R&D organizations play the most crucial role which should be examined. One of the most important parts of the systems, upon which, usually the whole trust in the systems rests, is the part related to the enforcement of the IP rights. It includes the institutions that deal with the policing of the IP related crimes within the country and on the borders, their prosecution and the judicial protection, as well as the representation of the parties in the

⁵ In the literature this is also defied as the strategic mission. Usually this is used when it comes to long terms strategies or plans. Considering the fact that the Macedonian IP strategy is a three year strategy and it should be focused on rather shorter-term deliverables.

courts. It is the most complex part of the system with specificities of the roles and the jurisdiction, thus the functions of each organization. It is also to involve business intermediaries such as patent attorneys.

There are different mechanisms on how to collect the relevant information. They can include the assessment of the legislation and the publicly available data, but also structured surveys through questionnaires and interviews, together with focused discussion groups.⁶

Drafting the IP Strategy

The process of the drafting of the strategy is usually responsibility of the Development committee. As said previously this unit should not be a big one and should include representatives the most important institutions in the system. It may also include national (and international) experts in the field. In some countries a body is set-up that oversees and gives directions in the process of the drafting of the strategy and to whom the Development Committee reports on the progress. However this is done it is important that the Committee has clear leadership and is accountable to senior policy makers.

The first task in the drafting is to set the vision and the mission of the strategy, and as explored before, in the case of the Republic of Macedonia, to set the goal(s) to be achieved by the strategy. Considering the fact that the Strategy is a comprehensive and complex one and the preliminary idea is to tackle several fields the goals should be set in such manner that all the fields are united through one common thread. At the same time the goals should be aligned with the overall development policies/strategies in the country.,

Once the goal(s) is(are) defined the specific objectives in the various fields that will be dealt within the strategy are set. The role of the objectives is to articulate the policy on a particular issue, whereas the strategy will indicate how the objective is to be realized. This is done by defining a specific set of measures or actions that will be undertaken for the realization of a particular objective, and identify the outcomes to be delivered.

Once this is defined it is strongly recommended that it is complemented by a detailed work plan or action plan that identifies specific projects/activities and uses a project-based approach to implement and realize the strategy's objectives. Prioritization of these projects/activities should be undertaken, and should be based on available resources and their potential impact on the IP system. For each of the identified projects/activities an implementation work plan should be developed, identifying the institutions /organizations involved in the implementation of the action including their responsibilities; the time period for the implementation and the needed resources.

Preparing the national strategy in this way should provide for clear directions on the management of the IP strategy, the monitoring of its implementation, as well as evaluation of the outcomes and the impact.

⁶ See further Chapter 3 of Methodology for the Development of National Intellectual Property Strategies- Tool 1: The Process and related annexes
http://www.wipo.int/export/sites/www/ipstrategies/en/pdf/methodology_templates.pdf

3. Management, Monitoring and Evaluation of the IP Strategy

The authorities that manage IP Strategies differ from country to country.

The implementation of a national IP strategy will require the involvement of a number of collaborators and participants from both the public and private sectors and, therefore, a framework for the effective implementation, coordination and monitoring of the strategy is required.

The differences that exist are usually related to the level of authority of the managing body. The WIPO practice shows that usually here are four levels of authority, as follows:

- High-level bodies consisting of government departments (interministerial body) involved in the process;
- A steering committee;
- Implementation unit: This is an office which functions as a secretariat, and provides day-to-day support to the institution/group that is mainly responsible for the implementation of the strategy.
- Implementing agencies: This includes the government departments or agencies that hold responsibility for the implementation of given projects. For example, the national IP office may be responsible for developing new IP laws, whereas the government body in charge of science and technology may be responsible for ensuring that universities have an IP policy.

Whatever model is chosen it is important that the managing body hold the control over the implementation of the strategy and has the authority to request the involved parties to collaborate and provide information on the specific activities they undertake.

The monitoring includes systematic monitoring and documentation of the activities that are undertaken. It is a process of continuous collection of information on all aspects of the everyday work towards the implementation of the Strategy. It provides for a toll for regular check-up of the progress of the activities. It should be continuous and focused. Its role is to provide that all interested parties recognize the quality, quantity and the timeliness in the progress towards the delivery of the foreseen results.

On given periods, an evaluation of the achieved results should be carried out. The evaluation is a periodical in-depth analysis of the implementation of the activities. It is a systematic and objective assessment of the realization of the project activities and by that the specific objectives and goals. It provides for a tool to compare the planned achievements with what is actually achieved. It also provides answers why and how the results have been achieved. More importantly the evaluation provides for opportunity to develop strategies and make decisions for the improvement of the situation in the future – where and how to improve performance in order to achieve objectives.

The monitoring and evaluation are also important to for reinforcing the accountability for all parties involved in the implementation process, and also for ensuring that decisions are capable being assessed in terms of whether the use of resources is in accordance with the implementation plan and the timely achievement of the intended deliverables.

Therefore for the purposes of monitoring and evaluation it is very important for each of the activities within the strategy an indicator of the success of specific project/activities to be set.

It is recommendable that monitoring and evaluation plan are created with the strategy indicating the reporting process and its requirements.

Part II: IP Strategy of the Republic of Macedonia (2013-2016)

4. Specific guidelines for the national IP strategy of the Republic of Macedonia

In the period of the ending of the implementation of the IP Strategy of the Republic of Macedonia (2009-2012) an evaluation mission, under the auspices of WIPO, was carried out aiming to assess the level of achievements of that strategy and to provide recommendations for the future actions to be undertaken in order to develop the national IP system.

The evaluation showed that most of the activities have been completed with success. It also provided for certain fields where the forthcoming 2013 – 2016 Strategy should focus. In a very real sense the starting point for this strategy is the situation delivered by the 2009-2013 strategy.

4.1. Continuous Development of the National IP Legislation

The development of the international and EU standards in the field of Intellectual Property is an ongoing reality. The Republic of Macedonia, considering its obligations that arise from the membership in the WIPO and the WTO, as well as from the Stabilization and Association agreement and as a candidate country must follow the development of the IP standards and approximate its national legislation accordingly. Therefore, all institutions involved in the process of the development of the national legislation should constantly monitor the new legislative initiatives at international and EU level and undertake the activities within the national legislation enactment process. Such activities should not only be limited to the core IP legislation (Law on Industrial Property and Law on Copyright and Related Rights) but also to legislation related to enforcement.

For the purpose of defining the activities to be undertaken in this field an assessment of the level of harmonization of the current legislation with the EU and international legislation and the court-practice (where of relevance, such as for example for the EU law) is to be carried out. Beside the so-called vertical harmonization and assessment of the horizontal approximation of the IP and IP related legislation could be made. Based on such assessment it will be assessed where and to which extent amendments to the laws are needed. The activities to be carried out in this field could include:

- set-up of an expert team for the assessment of the legislation
- carrying out analysis of the horizontal approximation of the national legislation with the EU and International legislation, identifying areas of mandatory compliance and areas of national flexibility and reporting thereof
- carrying out analysis of the horizontal approximation of the national legislation and reporting thereof
- review of the expert team's reports and setting a working plan for the amendments of the legislation
- drafting proposal for amendments of the legislation and their communication to the relevant expert public for comments and suggestions
- adoption of the draft by the Government and their proposing to the Assembly
- adoption of the amendments of the legislation

The similar approach is to be undertaken in the case when a new legislative act is adopted at the level of the EU.

4.2. Development of the Capacities of the Relevant Offices for the Protection of the Rights

The State Office of Industrial Property, the Sector for Copyright and Related Rights of the Ministry of Culture and the Sector within the Ministry of Agriculture, Forestry and Water Management as the bodies that are directly connected with the administration of intellectual property rights in their respective domains, should continue their development. Their main efforts should be directed towards service orientation and as such all needed structural changes and adequate equipping with human resources and IT equipment should be identified and steps taken to ensure that they are provided. Areas of potential overlap of responsibilities should be identified and institutional changes considered ensuring the most effective delivery of a coherent IP system.

- a) The first step towards the strengthening of the capacities for the relevant offices for the protection of the IPRs is the assessment of their tasks and responsibilities, as well as capacities and identification of the possible overlaps. The activities to be undertaken for this purpose could include:
 - Assessment of the legislation governing the respective institutions
 - Assessment of the functions and capacities of the institutions
 - Drafting relevant report and providing for recommendations
 - Implementation of the recommendations on the position and the jurisdiction of the different institutions in the system
 - Consideration of the status and delegated authority, on business and financial matters, of these institutions
- b) Regardless of the status of the IP administration institutions activities should be undertaken towards strengthening their institutional and administrative capacities, so as to provide for service orientation of the offices. They could include, for example:

- Development to service orientation plans including
 - o Type of service to be provided to various target groups
 - o Mechanisms for the provision of services
 - o Models of information to be made available to interested parties and the public⁷
 - o Mechanisms for obtaining customer feedback and assessing the quality of services
- Development of plans of the structure of the offices, thus assessing the need for new jobs and ensuring the new employments
- Development of a specific operation plans
- Preparation of a continuous training program for the staff and implementation thereof
- Technical equipping of the offices and provision of software applications so as to ensure a contemporary database and exchange of information and e-based working processes.

It is also clear that steps must be taken to improve the effectiveness of the Commission for Administrative Decisions in relation to IP. As currently functioning it is a barrier to the use of IP by SMEs.

4.3. Continuous Development of the Capacities of the Law Enforcement Agencies

Continuous development of the knowledge and skills of the law enforcement agencies will contribute to the overall improvement of the system of enforcement of the IP rights in the country. This meets not only the expectation of the EU, the international treaties, and international investors but also gives confidence to Macedonian entrepreneurs that their innovations will be safely protected.

In the relation to the judiciary such training activities should include all levels of the judiciary (judges from Basic Courts, Appellate Courts and Supreme Court). The training should be tailored made based on the specific needs of each segment. The education should include the contemporary developments and the effects of the IT technologies on the IP rights. Study visits to relevant judicial institutions in the EU are recommended.

The same approach could be taken in regard to the prosecution of the crimes. The amendments on the Law of criminal Procedure and their application will affect the prosecution of the crimes related to IP violation. Continuous education should be provided to all levels of the prosecutors' office (Basic Prosecutors' Offices, Higher Prosecutors' Offices and Prosecutors' Office of Macedonia).

The activities of the Police in the field of the education should be in particular focused on recognizing on the market the products by which IP infringements are done and undertaking the appropriate activities. Same approach should be taken for the market Inspectorates and Customs Administration.

⁷ For the minimum content of the web pages of the IP offices see for example <http://www.wipo.int/export/sites/www/standards/en/pdf/06-01-01.pdf>

Special attention should be paid on the development of the capacities of the Coordinative Body for Intellectual Property which in this moment acts as facilitator of the activities of the law enforcement agencies.

The development of skills and knowledge of legal intermediaries and advisers is an important component to ensure that the system operates effectively and transparency.

The specific activities could include, with modalities in accordance with the specificities of each institution, the following:

- Assessment of the training needs. In carrying out such assessment an expertise should be made having in mind the specificities of the set-up, competencies and modes of operation of the enforcement agencies. In particular one should take into consideration that the different levels within the agencies actually have different competencies and the level of their IP related knowledge varies
- Development of training programs and plans. Due to the specific position of these agencies the development of their knowledge and skills should not be focused only on classic lectures, seminars and workshops. Exchange of experience with foreign agencies with similar competencies, study visits, individual researches as one of the modes that could be taken into consideration.
- Implementation of the training programs and plans

In addition to the development of the capacities of the institutions, opportunities should be made available for exchange of information and experience between the relevant actors in the enforcement of the IP rights. For this purpose, the following could be undertaken

- Assessment of the possibilities for development of web-based mechanism for exchange of information and if such exit development and implementation of the model. This will also include strengthening of the IT infrastructure of the agencies and proper training for the use of the system
- Provision of relevant forums for discussions and exchange of experience in the enforcement of specific right or implementation of specific legislative provision

4.4. IP for Business

Activities should be undertaken for the development of the awareness and understanding of enterprises, especially the small and medium enterprises, regarding the creation, identification, evaluation and use of intellectual property rights and the benefits of their protection and enforcement. In cooperation with the business community training activities should be carried out tailored made as per the specific needs of certain industries and regions. The activities in this regard could include:

- developing short-term plans and programs for general training of small and medium enterprises and associations under chambers of commerce and implementation thereof

- short-term plans and programs for training for creation and use of certified marks and geographical indications for small and medium enterprises and agricultural associations and implementation thereof
- development of simple IT-based transaction interfaces between the IP Office and its users.

In addition, the SMEs in particular, should be educated and technical assistance should be offered for the valuation of their intangible assets in order to stimulate innovation. The activities should also include technical assistance and advising and mentoring for the management of the IP assets and technology transfer.

The education of the SMEs on the valuation and the utilization of their intangible assets could include the following activities:

- preparation of training programs and plans and their delivery so as to raise the knowledge on the options and procedures for the protection of IP, development and management of company's IP portfolio, evaluation of the different approaches to IP commercialization and negotiations and implementation of IP transactions. In specific this will include preparation of training modules and their printing, origination of training events and delivery of the training by previously selected trainers
- Preparation and delivery of advising sessions. There are variety of different approaches for the implementation of this activity and they could include, for example: - selection of experts for the delivery of the advising, - identification of interested SMEs, development of specific programs for the targeted SME, implementation of the program.

Research, development, innovation and technological development projects within the SMEs with a technological vocation, and absorption of new technologies should be stimulated. Investments in new technologies and infrastructures within the SMEs could also be supported and assisted by the state and effective and affordable measures should be considered.

In the field of the development and transfer of the technology the specific role of the universities as carriers of the research and development (R&D) activities should be recognized and utilized. In this regard the Universities should receive assistance in their efforts for the development of IP policies and strengthening their links with the business community. In particular universities and research institutions should be assisted to develop mechanisms for identifying IP, securing ownership, assessing potential value, getting commercial returns (including licensing), and devising appropriate rewards systems. Skills in these areas must be developed in or for universities.

4.5. IP for Society

Efforts for providing information about intellectual property protection and the benefits thereof should be reinforced and continued.

Efforts should begin at junior schools at a general level so that students understand the role of IP in society and in the creation of wealth and employment. For the purpose of raising the awareness of the intellectual property rights through the system of primary and secondary education, the following activities could be undertaken:

- Amendments and revisions of the primary and secondary school curricula and programs that will incorporate intellectual property rights (workshops, elective subjects, etc.);
- Massive celebration of the Intellectual Property Day in the schools, especially by encouraging innovation based exercises such as competitions;
- Development and distribution of printed materials for students.

In higher education more detailed education is required within science and technology as well as business education to prepare students as potential holders of IP. Similarly in Law faculties specialized education is needed to prepare students for careers as IP specialists in enforcement or other aspects of the legal use of IP. For the purpose of the development of the knowledge-base, skills and awareness of the potential individual IPR holders as well as the potential IP Law specialist, the following activities could be undertaken:

- Promotion of the inclusion of IP education in the curricula of the undergraduate and master studies, in particular education in Industrial Property for the in science, technology and medical studies and education in Copyright and Related Rights in arts and computers (programming) fields
- Supporting the participation in postgraduate and doctoral study programs in the area of intellectual property
- Development and implementation of short-term training programs (seminars, workshops, conferences) and events for promotion of the IP

The public in general need to be given a good understanding of the value and importance of IP in improving the competitiveness of the Macedonian economy with the resulting improvement in employment and social welfare. The full significance and implications of counterfeiting and piracy activities should be spelled out clearly as a public good. For the purpose of raising the awareness for intellectual property rights with the general public the following activities could be undertaken:

- Development of marketing programs that will inform and educate the public of the copyright and the related rights
- Conducting activities for informing and educating the customers of the perils from pirated and counterfeited items
- Developing and implementing mechanisms for continuous publicity about successful innovative businesses using IP and the negative impact on society of counterfeiting and piracy.