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### **PROTECTION OF INTELLECTUAL PROPERTY IN UKRAINE: PROSPECTS AND CHALLENGES OF IMPLEMENTATION**

**Ольга Круглова. ЗАХИСТ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В УКРАЇНІ: ПЕРСПЕКТИВИ ТА СКЛАДНОЩІ РЕАЛІЗАЦІЇ.** У статті досліджено сучасний стан правової охорони права інтелектуальної власності в Україні. Автором визначаються проблеми у вітчизняному законодавстві, що заважають дієвому правовому захисту права інтелектуальної власності, та з'ясовуються перспективи його вдосконалення.

Проаналізовані заходи цивільної, адміністративної і кримінальної відповідальності. Однак, зауважується, що такі заходи не можуть дати позитивних наслідків без врахування дії економічних законів, без державного реагування на процеси, що відбуваються на ринку, та в економіці цілому.

Основною ідеєю статті є те, що законодавство у сфері інтелектуальної власності повинно мати комплексний характер для регулювання режиму того чи іншого об'єкта інтелектуальної власності.

Також наголошується на низьких стандартах правового захисту права інтелектуальної власності в нашій країні. Багато в чому вони викликані значним дефіцитом кваліфікованих фахівців у цій сфері. Акцентується увага на необхідності фахової освіти.

У статті надається аналіз позитивних законодавчих змін останніх років. Зокрема аналізується роль національного органу інтелектуальної власності, який забезпечить належний міжнародний імідж нашої країни у сфері інтелектуальної власності.

Серед основних складнощів реалізації належного захисту інтелектуальної власності називаються також відсутність налагодженого, ефективного ринку авторського права та суміжних прав, а також неналежне фінансування заходів у сфері запровадження сучасних технологій, організації управління та розвитку інфраструктури у сфері правової охорони інтелектуальної власності.

Процеси, що відбуваються у сфері охорони права інтелектуальної власності, розглядаються також з огляду на ситуацію яка створена світовою пандемією та активним використанням цифрових технологій.

**Ключові слова:** інтелектуальна власність, захист права, охорона права, авторське та суміжні права, право промислової власності.

**Relevance of the study.** The law recognizes that every person entitled to the results of his intellectual and creative activity or another object of intellectual property at the same time establishing a direct prohibition of the use or distribution of these results without the author's consent, with the exceptions established by law. However, complex financial living conditions of recent years and the lack of effective legal mechanisms to promote violations of these rights. This situation must be corrected when it comes to the development of our country and its focus on high European legal standards. Analysis of the implementation issues of intellectual property protection in the country devoted to this article.

The urgency of the problem, clarify the importance of the national level of intellectual property because in the modern world intellectual, creative activity rapidly growing and gaining importance in nearly all areas of civil relations. These processes contribute to the development of society. Modern protection of intellectual property rights, including protection should meet high standards and requirements that would ensure their accessibility, democracy and transparency. Laws aimed at such protection must effectively ensure the private rights of authors and owners to the results of intellectual activity. They have to provide and enhance human creative activity, and taking into account the public interest - rightly use its results to en-

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courage fair trade following results.

Due to changes in the organization of life, education, leisure, which were caused by the global pandemic, and the transition to digital active involvement in these areas, active use of the Internet, the issue of intellectual property rights and their protection are particularly relevant. Modernity challenges existing protection mechanisms. There is a need to adapt the existing system of legal regulation of this area to the digital space and social distance conditions.

**Recent publications review.** The works of such researchers as Yu. Artemov, O. Boykova, N. Vitushko, G. Hutsol, T. Kryvoshiya, S. Kruhovykh, R. Polishchuk, etc. were dedicated to the study of the issues of legal protection of intellectual property rights.

**The article's objective** is the study aims to identify the problems in the national legislation that hamper the effective legal protection of intellectual property rights, and determine the prospects for improvement.

The scientific novelty of the research is the analytical approach to identify ways to improve the system of legal means of protecting intellectual property rights through the analysis of the specific national practices and identify difficulties in the implementation of a legal algorithm.

**Discussion.** According to Art. 54 of the Constitution of Ukraine, citizens of our country are guaranteed the freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyrights, moral and material interests that arise from various types of intellectual activity.

Clarification of the concept of "intellectual property" is provided in the Convention establishing the World Intellectual Property Organization, signed in Stockholm in 1967. Art. 2 of this Convention recognizes that intellectual property includes rights related to literary, artistic and scientific works; performing activities of artists, sound recording, radio and television programs; inventions in all spheres of human activity; scientific discoveries; industrial designs; trademarks, brand names and commercial designations; protection against unfair competition, as well as with other rights that are the result of intellectual activity in the industrial, scientific, literary and artistic spheres [1].

An almost similar definition of the concept of intellectual property rights is provided in Art. 418 of the Civil Code of Ukraine (the Civil Code of Ukraine). Intellectual property right is a citizen's right to the result of intellectual, creative activity or other object of intellectual property right, defined by current legislation [2]. In total intellectual property rights can be divided into: copyright and related rights; industrial property rights; means of individualization of goods, works and services and their manufacturers. This right may be provided on the basis of the Civil Code of Ukraine and other intellectual property laws.

The existence of a modern system of intellectual property protection recognized by the international community is a guarantee of achieving high rate of both economic and social development of any country. Proper protection of intellectual property encourages the use and further development of the inventive and creative achievements, development of relevant skills and talents, maintains and develops the national creativity intellectual activity and ensure the involvement of investment in this area in the national economy as a whole, stabilizing the market, the financial situation in which investors will be confident that their rights will be provided. Creating such a system is the protection of intellectual property rights should be a priority for the development of Ukraine - a country which has scientific, technical and intellectual potential.

According to Art. 432 of the Civil Code of Ukraine, each person has the right of protection intellectual property by the court.

In particular, the Law of Ukraine "On Copyright and Related Rights" [3] Civil Code of Ukraine and some other legislative acts provide for the settlement of disputes concerning infringement of intellectual property rights in two forms:

- 1) Actions with involvement of legal authorities, filing claims to control civil law or corporate bodies, courts;
- 2) a set of actions that a person can perform independently, usually without the involvement of a specialist or consultant on intellectual property rights protection.

The Criminal Code of Ukraine (the Criminal Code of Ukraine) protection of intellectual property dedicated to articles 176, 177, 203-1, 216, 229, 231, 232. Specifically, p. 176 of the Criminal Code of Ukraine regulates the conditions of prosecution of the guilty person for infringement of copyright and related rights, and Article 232 - for the disclosure of commercial or banking secrets [4].

Thus, the country has determined which intellectual property rights are protected by national legislation, emphasizing the importance by establishing criminal liability for their violation.

The majority of violations of intellectual property rights are characterized by economic reasons and relevant factors. For example, violators of intellectual property rights, making the sale of pirated, counterfeit goods, trying to get more profits as a result of dumping price policy. This is an effective method used to displace competitors and used to gain market share and gain economic benefits, reduce taxes and get future financial growth.

Measures of civil, administrative and criminal legal liability can not give positive consequences without taking into account the effect of economic laws without government response to the processes occurring in the market and the economy as a whole.

Legislation of intellectual property should be comprehensive to regulate the regime of a particular object of intellectual property. Including the provision of civil, financial, administrative, constitutional, procedural law etc. Intellectual property as a whole and each of its facilities with particular manifestation in different areas of law, carrying out a mutual influence.

In addition, challenges which associated with interdisciplinary ways of ensuring the protection of intellectual property rights, added another - low standards of such protection in our country. In many ways they caused a significant shortage of qualified professionals in the field. Today the possibility of professional education system is inadequate and can not meet the demand for specialized professionals.

In order to optimize the intellectual development of the country, it is necessary to improve the legal framework of intellectual property rights and protection mechanisms in this field. The need for law-making in this area is related to the need to reform the management of intellectual property, caused by the need to adapt national legislation to the legislation of the European Union. Also necessary legislative strengthening accountability for violations of intellectual property rights, improving the legal regulation of economic aspects of IPR, including the system of payment of duties and taxes for actions related to the protection of intellectual property, improvement of legal regulation mechanisms of economic incentives creativity, etc. If we talk about lawmaking, it should be emphasized that in this direction it is necessary to ensure effective national control and coordination of actions of law enforcement and controlling financial authorities to combat infringements of intellectual property rights. Necessary to improve current legislation on copyright and related rights in the promotion of legitimate businesses to legitimization of the services market; legalization of software used in the executive branch and the introduction of open access to the state register of registered copyright through the Internet etc

Directions of national work to improve standards of intellectual property rights is also of financing of introduction of modern technologies of management and infrastructure development in the field of intellectual property protection. There is a need for specialists in all regions of Ukraine in special structures such as the State Customs Service of Ukraine and others, introduction functioning of the State Patent Library etc.

Another challenge in Ukraine is the lack of an established, efficient market of copyright and related rights. This is due to the lack of a system for collecting and paying remuneration to authors, performers, producers of phonograms, etc.

Commercialization of intellectual property in Ukraine is very appropriate. This has been repeatedly emphasized by scientists. The problem is that most of the national scientific product is not patented. However, the national retains ownership of all intellectual products, it creates grounds for restraining the development of any business. There is a need to improve the scientific and methodological approaches to determine the right of the owner, the consolidation of rights as the results of intellectual work and their commercialization [5].

It is important to create a high international image of Ukraine in the development of intellectual property. This will make possible to influence international processes in this area to ensure national interests. In particular, it will make possible the participation of our country in the governing organs of the World Intellectual Property Organization in international projects are aimed at the development of small and medium enterprises in the areas of intellectual property, etc. Despite the fact that Ukraine has a system of protection of intellectual property rights, it is necessary to ensure its approximation to EU legislation in the field of industrial property protection in particular areas: prevention of violations of indirectly use of inventions, licensing, cross-licensing, introduction of tax benefits not only for inventors, but also for businesses that will use the invention [6].

Recently, on 06.16.2020 the Parliament of Ukraine adopted the Law "On amendments

to some laws of Ukraine to establish a national body of intellectual property" [7]. The National Intellectual Property Authority is a national organization that is part of the state system of legal protection of intellectual property, which ensures the formation and implementation of state policy in the area of intellectual property, and has the right to represent Ukraine in international and regional organizations. For this present organ endowed with special powers of the central executive body.

These innovations in the executive authorities is a positive step in forming the image of our country in the international space. It is essential to facilitate the integration of Ukraine into the international legal system, which provides a modern model of building relationships in the field of intellectual property and the formation of the mechanism of protection and security.

Article 2, part 1 of the above law, the powers of the National Intellectual Property Authority include the implementation of such important functions for the development of this area in Ukraine as the conclusion of international agreements on cooperation in the field of intellectual property protection under national law; ensuring the implementation of international programs and projects in the field of legal protection of intellectual property in accordance with international agreements, as well as ensuring the implementation of obligations arising from Ukraine's membership in international organizations in the field of legal protection of intellectual property, etc. This is a positive trend in the development of national intellectual property rights. In any case, the approach of the international community will adopt a positive experience more advanced and developed countries and implement legal technology that has been tested in other countries and can be analyzed in terms of their effectiveness and suitability for national needs.

Given the market reforms that have been stimulated global pandemic in 2020, quite sharply in recent years raises the question of protection of intellectual property rights on the Internet. This issue is currently devoted to multiple draft laws submitted to the Parliament of Ukraine. Ukraine is close to the adaptation of Notice-And-Takedown into national law in respect of which the bill has already been registered. [8] The dynamics of the national intellectual property rights is evident in this area.

**Conclusions.** Ukraine has its own system of intellectual property protection that meets international standards much has been done, but the system needs to be improved to bring it to the highest European counterparts. However, many issues remain only declared. Law-making in this area should have taken a comprehensive, involving legal, administrative and economic areas. Such a national process should be based on the interests of the society. Among the difficulties of implementing proper protection of intellectual property are the following:

- as part of providing adequate protection, the state responds to violations in this area only establishing legal responsibility, and must also implement comprehensive programs for market regulation, economic and financial processes;
- no adequate and sufficient human resources, professional education system that would ensure qualified regional experts and created the conditions for targeted regulation of protection;
- there is no effective state control and coordination of law enforcement and financial regulatory agencies to combat infringements of intellectual property rights;
- inadequate funding measures in implementation of modern technologies of management and infrastructure development in the field of intellectual property protection;
- lack of a well-established, efficient market of copyright and related rights, which is caused by the lack of a system of collection and payment of remuneration to authors, performers, producers of phonograms, etc.

The solution of all the above challenges that Ukraine has in the implementation of protection in intellectual property rights is the direction of long-term development of this area, which should be chosen by the leadership of our country.

Significant creative and intellectual potential possessed by our country should be provided with adequate conditions for their disclosure of which would inevitably lead to higher rates in the various fields of private, social and political life.

Optimization of law-making in the field of intellectual property in Ukraine effectively contribute the development of scientific and intellectual potential of Ukrainian nation will solve the problem of staff shortages in the relevant field, provides the use of high technology and innovation effectively market of copyright and related rights etc. Such changes will allow Ukraine to become one of the economically developed countries. Improving legislation in the field of intellectual property, eliminating certain gaps and increasing accountability in this area

will help prevent crime. The above transformations will contribute not only to the proper legal protection of intellectual property, the development of market relations, but also to enhancing the international image and economic prosperity of our country.

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#### Abstract

The article examines the current state of legal protection of intellectual property rights in Ukraine. The author identifies problems in domestic legislation that hinder the effective legal protection of intellectual property rights, and clarifies the prospects for its improvement. It is noted that it is necessary to take into account the actions of economic laws, the state response to processes occurring in the market and in the economy. The article provides an analysis of positive legislative changes in recent years. The processes taking place in the field of protection of intellectual property rights are also considered in view of the situation created by the global pandemic and the active use of digital technologies.

**Keywords:** *intellectual property, protection of rights, protection of rights, copyright and related rights, industrial property rights.*