

## **ADDRESSING THE EXPERIENCE OF INTELLECTUAL PROPERTY RIGHT LEGAL SUPPORT AND IT'S NECESSITY OF RECOGNITION IN UKRAINE**

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### **ABSTRACT**

Considering and researching the content and essence of the main issues of this article through the prism of the current state of affairs in the domestic and global legal field, it is stated that such a legal phenomenon as intellectual property law is constantly increasing the importance and presence in jurisprudence and everyday life. Examples of the most successful experience of developed and democratic foreign countries in the field of legal support of intellectual property rights are considered. The potential of future introduction of one or another successful foreign example or the approach on which it is based into the Ukrainian social and legal realities is analyzed. The author's definitions of the concepts "intellectual property", "intellectual property right" and "enforcement of intellectual property rights" are offered. Emphasis is placed on the fact that in order to properly ensure intellectual property rights in Ukraine, it is first necessary to create and implement clear and effective legal regulation in this area. It is emphasized that not all methods and means of ensuring intellectual property

rights, which have demonstrated success in certain countries, will be suitable for use in Ukraine. Therefore, the main focus of this article was not only to highlight successful examples of the functioning of intellectual property rights in developed countries, but also to select those that could be successfully adopted in the domestic legal field.

**Keywords:** Intellectual property; Legal support; International cooperation; Legal regulation.

## 1 INTRODUCTION

The regime of Intellectual Property Rights was born as the effect of the free trade that adopts the equality. All the parties are the gladiator that needs to be survives in the battle (survival for the fittest). On the contrary, the traditional society doesn't pay attention on the economic values of the culture. However, they are forced to compete in the Intellectual Property Rights battle, especially the Property Rights. Law and justice is a synthesis therefore inseparable (FATHONI, 2014, p. 289).

According to the Constitution of Ukraine, every citizen is guaranteed freedom of artistic, scientific and technical creativity. Since the consolidation of such a constitutional requirement, the government of our state has consistently created its own legal mechanisms for the protection of intellectual property, copyright, moral and material interests posed by various types of intellectual activity. In the world today, this direction of state activity plays a very important role. First of all, this can be explained by the fact that the effective functioning of the institution of intellectual property rights support plays a positive role in strengthening the general state of democracy and the rule of law in the state. In general, the essence and content of the issue of intellectual property rights are extremely closely related to the issue of the rule of law. After all, it is known that only the existence of "real", i. e. the true rule of law, will be able to create all the necessary conditions for the full functioning of intellectual property rights. First of all, it consists in the functioning of an independent justice system, as well as in the high legal awareness of citizens and their understanding of how they are able to legally protect their rights and legitimate interests.

The experience of the developed democracies of Western Europe and North America clearly demonstrates that the rule of law, as well as intellectual property rights as one of its elements, is such a socio-political phenomenon without which the well-being and prosperity of the state is impossible. Undoubtedly, the fact that the rule of law helps citizens of the state, as subjects of public legal relations, to implement in practice public and private requests to achieve justice and equality of all citizens before the law, is fundamentally important for the establishment of democratic foundations.

## **2 PLACING AND ESTABLISHING A POTENTIAL OBJECTIVE AND METHODS OF APPLICABILITY**

The methodological basis of the work is a set of modern methods of scientific knowledge, the application of which is based on dialectics and a systematic approach. The systematic approach was used in the process of studying the theoretical and legal principles of administrative and legal regulation of intellectual property rights. Methods of scientific cognition, which characterize legal researches, are used: dogmatic - for analysis and deepening of the conceptual apparatus; historical and legal - to analyze the history of formation and development of intellectual property legislation; comparative legal method used to study international law which regulates the legal support of intellectual property rights.

The purpose of this article is to highlight the successful experience of foreign countries in the field of intellectual property rights legal support, as well as to identify those that could be introduced into the domestic socio-political space.

The essence of every work is not just in examining the existence of intellectual property legal support in matters of relevant recognition. The prism is in placing whether the legal support of intellectual property propose by the international community are applicable or recognized in Ukraine. The issue is not just in providing these legal support of intellectual property in relevant provisions and legal disposition in which Ukraine is a member, the essence is in determining whether truly these legal support are really implemented by those in charge for implementation. Stating that instrument of legal support is one thing, ensuring the enforcement and implementation of this support is the other. The problem we need in established is in questioning whether Ukraine has put in place all parameters in ensuring that matters of legal support of intellectual property are being enforced. There is always that need in matching theory with practice. One can be relaxing and claiming that the legal support as to intellectual property are effectively being managed when we are still experiencing some difficulties in protecting the right of works involved in intellectual property. The question we should be asking at this level is at the level of trying to demonstrate the outcome of legal regulations in matters related to intellectual property right? Whether the do called legislation or regulations put on place by the state of Ukraine are efficient and effective enough in handling issues of intellectual property rights?

## **3 ANALYSING THE IMPLICATIONS AND OUTCOME OF THE RELEVANT**

## DISCUSSIONS AND FINDINGS

The concept of intellectual property appeared in the legal field only at the end of the XIX century, when the Paris Convention for the Protection of Industrial Property (1883), the Berne Convention for the Protection of Literary and Artistic Works (1886) and the Madrid Agreement Concerning the International Registration of Marks were adopted (1891). In the era of scientific and technological progress, the range of objects that needed legislative protection of intellectual property was expanding. In the twentieth century, conventions, agreements, treaties on the legal protection of creative products did not have the same approaches, interpretations and means of implementation. This necessitated the emergence of new forms of international legal protection (FESENKO, 2016). Thus, we can come to the preliminary conclusion that the concept of "intellectual property" arose in the process of long-term practice of legal consolidation of certain persons' rights to the results of intellectual activity in the field of science, production, art and literature. As confirmed by the historical experience of a number of developed countries, the existence and proper functioning of intellectual property rights has been a key factor in their success and progressive growth. This is mainly due to the fact that the high-quality functioning of the right of individuals to certain intellectual property guarantees their safe work on potential inventions, utility models and industrial designs.

The main international conventions that protect copyright works are the Berne Convention and the TRIPs Agreement. Countries acceding to the WTO must comply with the TRIPs Agreement as well as the Berne Convention. However, the TRIPs Agreement does not recognize moral rights of copyrighted works. Moreover, the TRIPs Agreement addresses aspects of copyright related to new technologies such as computer programs. In addition, the Universal Copyright Convention of 1952 (Geneva), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961 (Rome Convention), the Convention establishing the World Intellectual Property Organization of 1967, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of 1971 (Geneva), the Agreement on Cooperation in the Field of Protection of Copyright and Related Rights of 1993, etc. were an important international legal basis for the protection of copyright and related rights (MALKAWI; ABLAMSKYI, 2020, p. 22-23).

At present, the role of intellectual property in economic development is growing worldwide, outpacing the importance of means of production and natural resources.

According to the World Bank, physical capital in the modern economy forms 16% of the total wealth of each country, natural - 20%, and human creative capital - 64%. In countries such as the United States, Japan and Germany, the share of intellectual capital is up to 80% of national wealth. Today, material values are created through the introduction of new technologies and the use of innovations, i. e. the application of creative knowledge in practice. The volume of trade of intellectual property rights and licenses for the exercise of these rights in the world is developing very dynamically and is estimated at hundreds of billions of dollars a year. The share of new or improved technologies, goods, equipment that contain intellectual achievements in developed countries is up 70-85% of GDP growth (LONG, 2017).

As we can see, examples from world history can clearly demonstrate that the development of the institution of protection of intellectual property and rights to it plays a positive role. For example, in Great Britain and the United States of America, certain legal means of protecting the products and results of intellectual work of individuals already existed in the seventeenth and eighteenth centuries. Later, in 1845, Massachusetts District Court Judge Charles Woodbury first used the term "intellectual property." The following year, this term was first used in Europe by Alfred Nyon in his treatise *«Droits civils des auteurs, artistes et inventeurs»* (Civil Rights of Authors, Artists and Inventors).

The real development of intellectual property rights began in the XIX century and continues to this day. The founding in 1967 of the World Intellectual Property Organization was the completion of the development of the institute of intellectual property law. This was done in Stockholm, when a number of states signed the Convention Establishing the World Intellectual Property Organization (Civil Code of Ukraine).

It should be noted that such a social and legal phenomenon as intellectual property law was formed as a result of the natural evolution of both societies itself and each individual sphere of social relations. Considering the above historical context in more detail, we can say that in order to gradually cease to represent the right to a particular object of public relations only as a set of rights exclusively to property, it took a lot of time for the participants (subjects) of public legal relations. It follows that the representatives of modern domestic society are no longer satisfied with the current state of affairs in the field of legal support (regulation) of intellectual property rights. That is why the activities of some domestic researchers, as well as a number of legislators in the field of improving the current national legislation of Ukraine in the part that provides legal regulation of intellectual property rights, its functioning, use and protection, is extremely timely and has serious support.

Until recently, it was true to say that the domestic branch of legal research had a fairly small theoretical foundation for understanding the nature and characteristics of intellectual property law. For example, it should be emphasized that, unfortunately, most of the scientific works and publications that were written and published by domestic experts in the field of law and law enforcement, were mostly formed on the basis of scientific works of Western scholars. This is not surprising, because it is in the countries of Western Europe and North America that such a legal phenomenon as intellectual property law began to receive its greatest development. First of all, in this context, the countries of the Anglo-Saxon legal system are distinguished (RYMARCHUK, 2012, p. 187-192; RYMARCHUK, 2013). States such as the United States, the United Kingdom and Canada have made significant contributions to the establishment of intellectual property rights. Because they created and maintained such legal regulation, under which individuals had considerable freedom in their actions, including in business, it was possible to constantly develop and increase their own efficiency, without any resistance from the state. For example, researchers were able to make inventions and scientific discoveries precisely because of a system that valued the freedom and independence of each of the subjects of public relations and protected him. At the same time, proper legal regulation did not create various artificial obstacles to the natural progress of the subjects and did not try to hinder their scientific and technical activities. Moreover, in addition to the above facts about the functioning of the legal system in developed Western countries, it should be noted that positive assistance was provided by the system of inviolability of private property, respect for it from other subjects of legal relations, which has long existed in the above countries.

Thanks to the harmonious influence of legal traditions of developed western countries, which protect the rights, freedoms and interests of individuals, together with rational and unambiguous legislation, the conditions were created thanks to which a number of talented inventors, creators and scientists were able to present their products, literature and artistic works, to open up new prospects of humanitarian and scientific and technical thought for decades to come.

Thus, the freedom of individuals in their own activities, together with the proper policy of legal regulation pursued by public authorities, are key components for the effective functioning of intellectual property rights in the state.

Developed Western countries have become the first to achieve such a state of affairs, and therefore they should be a model for all other states that prefer to introduce an appropriate level of enforcement and regulation of intellectual property rights. The developed level of the

economy allows these countries to dominate in world science. The independent activities of the judiciary play an equally important role as clear and unambiguous legal regulation. Nowadays, only the transparency of the judiciary, their impartiality, and the low level of corruption can be a powerful mechanism for protecting and enforcing intellectual property rights. Having a good understanding that he will be able at any time to successfully protect his rights and interests, in case they have been violated, the subject of legal relations will act freely and confidently, which, in turn, increases the success and efficiency of their work.

#### **4 UKRAINE AND ITS IMPLEMENTING MECHANISMS IN CONFORMITY WITH INTERNATIONAL STANDARD**

The next fundamentally qualitative step towards improving the effectiveness of the domestic mechanism of protection and enforcement of intellectual property rights is the introduction in the domestic political and legal sphere of specific state-controlled bodies, which main task is to provide professional and independent monitoring of compliance with intellectual property rights by subjects of legal relations, as well as the adoption in relation to persons who violate the rules established by the state, penalties and other measures of administrative responsibility, clearly defined by domestic legislation.

The existence and independent functioning of such bodies (institutions and departments) is now urgently needed. Scientists note that today such state bodies, the essence of which is to properly ensure the general observance by the subjects of legal relations of all norms and regulations regarding intellectual property rights, are the best option for maintaining the high efficiency of this area (BOSHYTSKYI, 2017, p. 164–170). We tend to agree with such statements and scientific views of specialists, because we believe that the most expressive and vivid confirmation of the above is the extremely successful experience of the daily functioning of independent professional government bodies and commissions in the developed Western countries, which have proven their high efficiency, regularly demonstrating the impressive results of their work for decades.

In general, it should be noted that in some developed western countries, such as the United States, such independent professional commissions, institutions and organizations have existed continuously since the beginning of the last century. World-famous are the US Federal Trade Commission, which regulates legal relations between individuals and legal entities-entrepreneurs in the US, as well as the gambling supervision commissions, which exist separately and independently at the level of each state (ZOLOTA, 2019, p. 64; ZOLOTA, 2019). As for the policy of ensuring the proper functioning of intellectual property

rights, it is noted that in the United States, the problems and issues that are involved in intellectual property law at the federal level are mainly dealt with by two structures. Namely, we are talking about the US Patent and Trademark Office (USPTO), which specializes in the registration of trademarks and intellectual property objects, as well as issuing patents to inventors and development companies of certain products. Another organization is the U.S. Copyright Office, which is the officially authorized body of the U.S. government that records and registers copyrights in the United States. Also, this body regularly publishes and updates the "Copyright Catalog", which provides a complete list of rights of individuals to this or that work and other objects of copyright since 1891.

Both departments were able to prove themselves on the best side. This is clearly evidenced by the positive reaction to the activities of the above government agencies, obtained in the course of a survey of ordinary citizens. Moreover, the concrete results achieved by these organizations are positively assessed. Namely, the effective and unhindered functioning of the institute of intellectual property law in the United States, timely registration of patents and trademarks, transparent and clear work system.

We believe that such principles and methods of supervision over the state of protection and enforcement of intellectual property rights of individuals and legal entities are an extremely effective model of the state system functioning, and therefore it should be adopted as part of the domestic mechanism of government. High efficiency is also demonstrated by some non-governmental organizations that operate in the public sphere, but have a private form of ownership. These are institutions that deal with the current state of affairs in the field of protection and enforcement of intellectual property rights, their observance by all, without exception, the subjects of public relations. These organizations operate in the form of professional journals that are regularly published and focus on existing problems and unresolved issues in the field of intellectual property. It should be noted that the operation of such institutions is popular in almost all developed Western countries, regardless of their affiliation to a particular legal system (Anglo-American or Romano-German).

We agree with scholars that such journals and organizations can be confidently called "analytical," because analytics, oversight, and suggestions for possible improvements are common to these journals and organizations. In some countries, such as the United States, some professional journals are so authoritative that they influence legislative and even judicial policies on issues related to the field of intellectual property law.

In 1967, the Convention Establishing the World Intellectual Property Organization (WIPO) was signed in Stockholm, Art. 2 of which stipulates that intellectual property

includes the rights to: literary, artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Among the international standards for the protection of intellectual property, a special role is played by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the administration of which is entrusted to the WTO. The TRIPS Agreement establishes norms agreed by WTO members as minimum requirements for the legal protection of intellectual property. All WTO members must adhere to these norms. Ukraine has been a member of the WTO since May 16, 2008. In this regard, the peculiarity of improving and further harmonizing national legislation in the field of intellectual property in the context of our country's integration into the international community is taking into account all the requirements of the TRIPS Agreement. Thus, Art. 41 of this international agreement stipulates that the legislation of each country must have rules that would allow effective action to be taken against any violation of intellectual property rights, including urgent measures to prevent violations and legal sanctions in case of further violations (IDRIS, 2006).

When developing the national legislation of Ukraine in the field of intellectual property, the task was set - to make the most of the legal norms recognized by all civilized countries of the world. To date, the Government of Ukraine has carried out a large amount of work on the formation of the regulatory framework in this area of relations. Legislative acts such as the Laws of Ukraine "On Copyright and Related Rights" of 23.12.1993, "On protection of rights to marks for goods and services" of 15.12.1993, "On protection of rights to industrial designs" of 15.12.1993, "On protection of rights to inventions and utility models" of 15.12.1993, etc. are in force. Norms on the regulation of intellectual property relations are also contained in other laws

The general part of the law of obligations should also be applied to legal relations in the field of intellectual property, unless special norms of legislation in the field of intellectual property do not make adjustments to it or if the need for such adjustments does not follow from the specifics of these legal relations. It should also be noted that the existing rules of intellectual property law are also contained in the Criminal and Customs Codes of Ukraine, the Code of Ukraine on Administrative Offenses and the Commercial Code (PALADIY, 2011).

Scholars in the field of jurisprudence and law enforcement emphasize the indisputable fact that in order to create and further ensure the proper sphere of intellectual property rights in Ukraine, first of all, it is necessary to gradually implement the reforms that began after the Revolution of Dignity 2013-2014, including reforms related to intellectual property. It is known that the success of such reforms is directly dependent on the quality of relations between Ukraine and developed Western countries, especially the EU, as well as Canada and the United States.

## **5 EUROPEAN UNION, A NECESSARY AND UNIQUE STANDARD IN ENSURING RESPECT OF INTELLECTUAL PROPERTY RIGHTS**

The European Union has set a clear condition for Ukraine's political leadership, which is that the level of seriousness and intensity of relations with the EU depends on domestic success in combating corruption, as well as in developing a competitive market environment in the national economy. With regard to anti-corruption activities and their manifestations, scientists emphasize that the priority in this area should be the creation and further active support of agencies, organizations and institutions, which together form the so-called "anti-corruption infrastructure" (MAZUR, 2006, p. 281-315). They are defined by domestic and foreign experts as a kind of "backbone" of the state, which allows it to hold on and successfully resist corruption threats, while protecting and supporting key areas of its own economy. It is clear that such processes are extremely useful for the field of intellectual property law, because they eliminate the real and potential risks of corruption, while contributing to positive and beneficial changes in this area. Thus, we can state that the reform of the domestic branch of intellectual property rights should take place side by side with the improvement of anti-corruption activities.

Unfortunately, despite the fact that Ukraine has already formed a regulatory framework in the field of intellectual property, there is a large number of unresolved issues. Among the problems of protection of intellectual property rights the most acute are the release of pirated products, including the creation of websites solely for the distribution of pirated materials, uncontrolled use of counterfeit goods, which cause great damage to the budget and to the country's image, issuing of a patent or a trademark, protection of computer programs and databases, protection of audiovisual producers, protection of marks for goods and services (trademarks), lack of proper information support for activities in the field of intellectual property protection, etc. But despite the above, today in Ukraine, measures are being taken to

comply with the constitutional rights of citizens to protect intellectual property, to provide favorable conditions for the creation of intellectual property objects. Work is continuing to improve the quality of legislation, remove contradictions and gaps. In addition to the improvement of national legislation, control over the observance by the subjects of intellectual property of the current regulatory legal acts is being strengthened. Attention is paid to improving the interaction of state bodies and business entities in carrying out their intellectual activity (Kostyuchenko).

Thus, the need for law-making to improve the regulatory framework of intellectual property and improve protection mechanisms in this area is related to the need to reform the management of intellectual property, due to the need to adapt national legislation to the legislation of the European Union. In this context, the legislation on intellectual property must be brought into line with the Civil Code of Ukraine, including in accordance with established international standards in the field of intellectual property. It is necessary to harmonize the acts of national legislation with each other and with the general legislation of Ukraine and to ensure liberalization, simplification, acceleration, and maximum convenience for applicants of procedures for acquiring intellectual property rights. It is also necessary to strengthen the legislative responsibility for violation of intellectual property rights, improve the legal regulation of economic aspects of intellectual property, including the system of payment of fees and duties for actions related to the protection of intellectual property rights, improvement of legal regulation of mechanisms for economic stimulation of creativity, etc (BOSHYTSKYI, 2013).

For example, the Ukrainian legislator should try to spread the experience of Jordan. In particular, Jordan's Copyright Law of 2001 includes software within the ambit of copyright protection. As a result, foreign software developers would rely on explicit provisions for protection before licensing their best technologies. Article 3.d of the Copyright Law also mandates protection for encyclopedias, an area not previously covered, which by reason of selection or arrangement of contents constitute intellectual creations as such. The list in Copyright Law of 2001 is not intended to be inclusive. It is only meant to illustrate the nature of literary, scientific, and artistic works (MALKAWI; ABLAMSKYI, 2020, p. 23).

## **6 CONCLUSIONS**

For the establishment and further effective functioning of the institution of intellectual property in Ukraine, the following steps should be taken.

*First*, it is necessary to create a set of clear and unambiguous legislative and regulatory acts that would properly regulate the field of intellectual property, as well as all aspects related to it.

*Secondly*, the successful experience of some developed foreign countries in ensuring the intellectual property rights of individuals should be adopted. In particular, it is about the creation in Ukraine similar to Western commissions, institutions and organizations, which should have a sufficiently high degree of their own independence in their actions and which main task would be to supervise and control the general state of intellectual property in the state, protection of each of its subjects, as well as the punishment of offenders by imposing fines, sanctions and other measures of administrative responsibility

*Thirdly*, another, but no less important component, is to support the activities of non-governmental journals, departments and organizations that are engaged in analytical work and highlight the current state of affairs in the field of intellectual property rights in the state. It is interesting that, in addition to the general characteristics, such organizations try to clearly describe specific examples of successes or failures of the state in ensuring intellectual property rights, as well as their specific reasons. Of course, the state will not be able to effectively ensure the proper level of quality of intellectual property rights without a clear operation of the entire anti-corruption mechanism.

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