

TO THE QUESTION REFORM OF THE STATE SYSTEM OF LEGAL PROTECTION OF INTELLECTUAL PROPERTY IN UKRAINE

Svitlichnyy Olexander

DOI <https://doi.org/10.61345/1339-7915.2023.4.12>

Annotation. The article highlights the current state of intellectual property protection in Ukraine. It is emphasized that in accordance with the provisions of Art. 41 of the Constitution of Ukraine, everyone has the right to own, use and dispose of their property, the results of their intellectual and creative activities. Article 55 of the Constitution of Ukraine stipulates and guarantees everyone the use of all national types of legal protection, protection of rights and freedoms in court. According to the second part of Art. 124 of the Basic Law, the jurisdiction of the courts extends to any legal disputes and all legal relations arising in the state. In addition to the guaranteed constitutional right to judicial protection of intellectual property rights, the norms of special legislation in the field of intellectual property determine the legal basis for the protection of violated rights.

In connection with the reform of the state system of legal protection of intellectual property, the Concept of reforming the state system of legal protection of intellectual property in Ukraine, approved by the order of the Cabinet of Ministers of Ukraine dated June 1, 2016 No. 402-r, was analyzed, which states that the state system of legal protection of intellectual property property implements the state system of legal protection of intellectual property, and also draws attention to the imperfect and inert system of state management of intellectual property, which has led to the absence of significant changes in the adaptation of the legislative framework to modern economic and political conditions (the fight against patent trolling, Internet piracy, satisfaction needs of the IT industry, military industry), as well as the National Strategy for the Development of Intellectual Property in Ukraine for the period until 2020, where a two-level structure of the state system has been created instead of a three-level structure. Separate provisions of the legislation, the norms of which guarantee the protection of intellectual property rights, as well as special laws and by-laws defining the reformation and functioning of the state system of legal protection of intellectual property, are considered. Attention is drawn to the fact that today the state system of intellectual property protection in Ukraine has an extensive system of state authorities that ensure the protection and protection of the violated subjective rights of copyright holders. The existing problematic issues of intellectual property protection are analyzed and the author's proposals for improving the state of protection and protection of intellectual property rights in Ukraine are formulated.

Key words: legislation, system, court, legal protection, intellectual property.

1. Introduction.

Intellectual property is a multi-faceted legal phenomenon that requires the state to ensure proper protection of all rights holders of intellectual property rights, the interests of society and the state, without exception. However, as our research shows, the newly created structure of the legal state system of intellectual property protection is not yet able to solve the existing problematic issues of reliable and effective provision of legal relations in this important sphere of social relations.

2. Analysis of scientific publications.

Despite the fact that the issue of intellectual property protection is in the field of vision and is reflected in the works of scientists, in particular, H. Androschuk, Yu. Boshytskyi, V. Galunka, O. Korotun, O. Orlyuk, A. Hridochkina, O. Chomakhashvili and others, however, recent changes in domestic legislation indicate the need for scientific analysis of this issue.

3. The aim of the work.

The purpose of this article is to analyze certain aspects of the reform of the state system of legal protection of intellectual property and formulate the relevant author's conclusions.

4. Review and discussion.

State influence on the regulation of social relations in the studied sphere of social relations is carried out in accordance with the norms of law, rights and obligations, but modern trends in legal regulation do not always take into account the objective regularity of ensuring the proper protection of intellectual property rights, and rights related to certain legal regimes of objects of intellectual property rights, since the state-authorized bodies, which act as guarantors of the protection of intellectual property rights, do not always take into account the practical component. In this regard, attention was paid to the problematic issues of intellectual property protection in the Concept of reforming the state system of legal protection of intellectual property in Ukraine, approved by the order of the Cabinet of Ministers of Ukraine dated June 1, 2016 No. 402-r, which states that the state system of legal protection protection of intellectual property demonstrated low efficiency in solving key problems and the inability to ensure the development of intellectual property as an important element of the national innovation system and the basis of the innovative economy of the state. The imperfect and inert system of state management of intellectual property has led to a lack of significant progress in adapting the legislative framework to modern economic and political conditions (fighting patent trolling, Internet piracy, meeting the needs of the IT industry, the military-industrial complex). and agro-industrial complexes, etc.).

The problematic issues of the state system of intellectual property protection were discussed in the National Strategy for the Development of Intellectual Property in Ukraine for the period until 2020, where instead of a three-level structure, a two-level structure of the state system of intellectual property protection was introduced.

In accordance with the provisions of Art. 41 of the Constitution of Ukraine, everyone has the right to own, use and dispose of their property, the results of their intellectual and creative activities. In turn, Art. 55 of the Constitution of Ukraine provides and guarantees everyone the use of all national types of legal protection, protection of rights and freedoms in court. According to the second part of Art. 124 of the Basic Law, the jurisdiction of the courts extends to any legal disputes and all legal relations arising in the state. In addition to the guaranteed constitutional right to judicial protection of intellectual property rights, the norms of special legislation in the field of intellectual property determine the legal basis for the protection of violated rights. For example, Art. 54 of the Law of Ukraine «On Copyright and Related Rights» dated 01.12.2022 No. 2811-IX (new law) specifies that the protection of personal non-property and property rights of subjects of copyright and/or subjects of related rights is carried out in the procedure established by administrative, civil and criminal legislation. In particular, in recent years, the legislator has introduced new norms to legislative acts, the violation of which provides for civil and administrative liability.

The specificity of the protection of intellectual property lies in the fact that there can be different ways of protecting the violated subjective right at the choice of the right holder of the object of intellectual property rights. As a result, the violator may be held liable: disciplinary, civil, administrative, criminal.

The basis of legal responsibility is the existence of a legal norm that provides for the composition of an offense, the legal fact of committing an offense or an enforceable act that has entered into force. The norm of law (legal or legal norm) is understood as a universally binding rule of conduct established or sanctioned by a competent state body and provided by state coercion, for its violation legal responsibility is provided (Svitlichnyy, 2017:95).

Today, the state system of intellectual property protection in Ukraine has an extensive system of state authorities that ensure the protection and protection of violated intellectual property rights.

Without diminishing the role of each of the state authorities in ensuring the protection of intellectual property rights, it should be noted that in accordance with the Regulation on the Ministry of Economy of Ukraine, approved by Resolution No. 459 of the Cabinet of Ministers of Ukraine dated 20.08.2014 (as amended by the Resolution of the Cabinet of Ministers of Ukraine dated 17.02.2021 No. 124.) The Ministry of Economy is the main body in the system of central executive bodies that ensures the formation and implementation of state policy in the field of intellectual property. In particular, the Ministry of Economy ensures: execution of international programs and implementation of projects in the field of legal protection of intellectual property in accordance with international treaties; fulfillment of obligations arising from Ukraine's membership in international organizations in the field of legal protection of intellectual property; coordinates the activities of the National Intellectual Property Authority in the field of intellectual property and control over compliance by the National Intellectual Property Authority with legislation in the field of intellectual property property, using the proceeds from collecting fees for actions related to the protection of rights to intellectual property objects.

In accordance with the Law of Ukraine «On Amendments to Certain Laws of Ukraine Regarding the Formation of the National Intellectual Property Body» dated June 16. 2020 No. 703-IX (as amended by Law No. 2811-IX dated 01.12.2022) The National Intellectual Property Authority (NIPO) is a state organization that is part of the state system of legal protection of intellectual property, designated at the national level by the Cabinet of Ministers of Ukraine as such , which exercises powers in the field of intellectual property, defined by this Law, other laws in the field of intellectual property, acts of the central executive body that ensures the formation and implementation of state policy in the field of intellectual property, and the statute, and has the right to represent Ukraine in international and regional organizations In accordance with the order of the Cabinet of Ministers of Ukraine «Some issues of the National Intellectual Property Authority» dated October 28, 2022 No. 943, the state organization «Ukrainian National Office of Intellectual Property and Innovation» (UKRNOIVI) performs the functions of the National Intellectual Property Authority. UKRNOIVI is a new, state-of-the-art non-commercial organization, created by order of the Ministry of Economy of Ukraine dated 11.11.2022 No. 4535 and belongs to the sphere of its management. The creation of UKRNOIVI is one of the stages of the reform of the sphere of intellectual property protection.

Consequently, significant changes have taken place in the system of state protection of intellectual property rights. Despite the actions taken by the state, which are designed to ensure the proper state of protection of intellectual property rights, Ukraine has again entered the so-called «piracy list 301».

In confirmation of the expressed opinion, it is worth stating that today the domestic system of protection of intellectual property rights is not yet effective enough to ensure proper protection of the subjective rights of the right holders of intellectual property rights. This is indicated by the Office of the US Trade Representative (USTR), which on April 30, 2021 released its annual Special Report 301 on the adequacy and effectiveness of the protection of US trading partners and enforcement of intellectual property rights. In this year's report, trade partners included on the Priority Watch List express the most serious concerns about insufficient intellectual property protection, or enforcement, as well as actions that have otherwise limited market access for those relying on intellectual property protection. Nine countries – Argentina, Chile, China, India, Indonesia, Russia, Saudi Arabia, Ukraine and Venezuela – are on the Priority Watch List [Hennadiy, 2021].

We hope that the new Law of Ukraine «On Copyright and Related Rights» dated December 1, 2022 No. 2811-IX, which regulates relations regarding the acquisition, exercise and protection of personal non-property and property copyright and/or related rights, as well as the rights of special of the kind (sui generis), related to the sphere of copyright and/or related rights, as a result of which changes were

made to the norms of the Civil Code of Ukraine, Laws of Ukraine: «On Publishing Matters»; «About professional creative workers and creative unions», «About cinematography», «About the National Archive Fund and archival institutions», «About the legal status and commemoration of the fighters for the independence of Ukraine in the 20 th century», «About touring events in Ukraine», «About theaters and theatrical business», «About effective management of the property rights of right holders in the field of copyright and (or) related rights», will improve the protection of the subjective rights of right holders of intellectual property rights.

As a result of the judicial reform – the High Court on Intellectual Property Issues and the reform of the state intellectual property protection system must become operational – the state of intellectual property rights protection in Ukraine must meet the best international standards.

5. Conclusions.

The study of the state system of intellectual property protection and, in particular, the provisions on the National Intellectual Property Office showed that the status of «national» should provide for the protection by this intellectual property body of the rights to all objects of intellectual property law, including breeding, achievements in plant breeding (plant varieties) and animal husbandry (animal breeds). For this, it is necessary to determine the competence of each of the structural divisions of the Ministry of Economy of Ukraine, thanks to which a transparent two-level structure of the state system of intellectual property rights protection will be achieved, and «intermediate» state organizations should cease their activities. If the Ministry of Economy of Ukraine ensures the formation and implementation of state policy in the field of intellectual property, then the National Intellectual Property Authority must ensure the fulfillment of tasks in accordance with the set of separate powers in the field of intellectual property.

It is necessary for the High Court on Intellectual Property to become operational as soon as possible, as a permanent specialized court in the judicial system of Ukraine.

The creation of a new organizational and legal mechanism, the formation of management and managed systems, the formation of new subjects of state administration, the construction of new links in the management structure are necessary for the order and stability of the state system in accordance with international standards and principles of ensuring the proper protection of intellectual property rights in the state.

References:

1. Svitlichnyy, O.P. (2017). Intellectual property law: Textbook. Kind. 2, changes. and additional Kyiv, NUBiP of Ukraine, 355. [in Ukrainian].
2. Hennadiy, A. (2021). USTR publishes the annual Special Report 301 on the protection of intellectual property. Legal newspaper. May. URL: <https://yur-gazeta.com/golovna/ustr-publikue-richniy-specialniy-zvit-301-pro-zahist-intelektualnoyi-vlasnosti.html> [in Ukrainian].

Olexander Svitlichnyy,

Doctor of Law, Professor,

*Professor of the Department of Civil and Commercial Law,
National University of Life and Environmental Sciences of Ukraine*

E-mail: a.svetlichnyj@ukr.net

ORCID ID: 0000-0003-0485-3804