

ONE-TIME MONETARY PAYMENT AND COMPENSATION AS WAYS TO ENFORCE INTELLECTUAL PROPERTY RIGHTS

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Annotation. The authors determine that the growing role and importance of intellectual property require an increase in the efficiency of its legal enforcement. The enforcement of the rights and legitimate interests of intellectual property rights holders is carried out through an enforcement mechanism that includes a system of forms, methods, and means used by the relevant jurisdictional authorities and stakeholders to ensure proper enforcement of the rights and interests of intellectual property rights holders. It is noted that international legal regulation plays a vital role in the enforcement of intellectual property rights, given its national character.

The article analyses the compliance of the national legislation of Ukraine in the field of intellectual property rights enforcement with the provisions of the *Acquis Communautaire* and the legislation of the European Community. This is because intellectual property rights are national. Although there are international agreements governing this area, they cannot always resolve all differences. The creation of the EU as a new legal space required a revision of approaches to intellectual property regulation and the development of supranational legal instruments to ensure the effective functioning of the common market.

The article is devoted to defining the legal nature of one-time financial assistance and compensation as forms of compensation for property damage for infringement of intellectual property rights. The article emphasises the key role of ensuring fair and effective enforcement of intellectual property rights to stimulate innovation, technology development, and economic growth. The importance of knowledge and a conscious attitude to the enforcement of these rights lies in their impact on the progressive development of society. The enforcement of intellectual property rights facilitates the exchange of technology and knowledge between countries and organisations, which in turn supports scientific and technological progress on a global scale.

The main form of compensation for material damage caused to the victim is compensation for damages, which includes actual damages and lost profits. When claiming damages, the right holder must prove the existence and amount of damages, as well as their causal relationship to the infringer's actions. Usually, when exclusive rights are infringed, damages are expressed in the form of lost profits – the amount that the right holder could have received if the infringer had entered into an agreement with him/her and used the intellectual property for a fee. Lost profits should be considered at least as much as illegally obtained profit. The application of a one-time monetary penalty instead of compensation for damages for the misuse of an intellectual property right implies that the amount of this penalty is determined by the law, taking into account the person's fault and other essential circumstances.

It is the responsibility of the victim to prove the amount of damages suffered, which also requires proving that the exclusive right has been infringed. This method of restoring the infringed right is complex for the subject of the exclusive right, as it requires submission to the court of evidence of the losses, documents confirming their amount, and proof that the actions of a particular infringer caused the losses. The amount of compensation depends on the intent of the infringer. If the infringement was intentional, the amount of compensation may be tripled, and in the absence of intent, doubled. This means that liability for violation of rights arises even without intent.

Key words: intellectual property, adaptation of legislation, *acquis communautaire*, right to enforce, compensation, damages.

1. Introduction.

The modern world is primarily characterised by the speed of change, technological development, and globalisation. Intellectual property is inherently linked to all aspects of human existence: the sociocultural environment, economic activity, and even the inner world of each individual. Scientific progress contributes to the transformation of technologies from simple means into essential tools for innovative development. The issues of enforcement of intellectual property rights have long been relevant for creating an effective system of their enforcement. The main threats to intellectual property rights include piracy, plagiarism, the unfair use of artificial intelligence, counterfeiting, and imitation. National legislation in the field of intellectual property should respond to modern challenges and adapt legal norms to the latest achievements of technological progress.

Any regulatory legal act in the field of intellectual property includes provisions aimed at enforcing the rights arising therefrom. Right holders should be able to act against persons who violate their rights to prevent further violations and compensate for damages. Accordingly, the system of intellectual property rights enforcement should include an effective enforcement mechanism backed by an appropriate regulatory framework. Without proper enforcement of rights and prevention of their infringement by others, the intellectual property enforcement system loses its value.

2. Analysis of recent scientific research.

The issue of intellectual property rights enforcement remains relevant and requires constant improvement and adaptation to changes in the information and technological environment. This issue was considered in their scientific works by such researchers as Y.V. Bilousov, Y.L. Boshytskyi, I.V. Venediktova, V.V. Drobyako, O.P. Orliuk, O.A. Podopryhora, T.L. Postrygan, O.I. Kharytonova, and others.

At the same time, this topic remains relevant in connection with the ongoing process of harmonisation in the field of intellectual property law, as provided for in the Association Agreement with the EU of 2014, particularly the implementation of several EU directives and regulations.

3. The purpose of the article is to examine the legal nature of one-time financial payment and compensation as forms of compensation for property damage for infringement of intellectual property rights; to analyze the provisions of Article 55 of the Law of Ukraine "On Copyright and Related Rights" regarding civil remedies, as well as the amendments made to Article 432 of the Civil Code of Ukraine, and to study the relevant provisions of the legislation of the EU Member States to provide proposals for improving the current procedure for payment of one-time financial assistance or compensation.

4. Summary of the material.

It is worth noting that intellectual property enforcement is one of the priority areas of legal support for intellectual activity. This aspect plays a key role in the EU-Ukraine Association Agreement, as evidenced by Chapter 9 on intellectual property [1]. The provisions of this chapter cover about a fifth of the main text of the Association Agreement, which emphasises the importance of this issue. Such attention to the enforcement of intellectual property rights is explained by its significance for the country's innovative development and international competitiveness.

From the very beginning, intellectual property law became an integral part of the *Acquis Communautaire*, as several EU directives and regulations were issued to develop a common policy in the field of intellectual property. As for the enforcement of intellectual property rights in the EU, the main document is Directive 2004/48/EC of April 29, 2004, laying down the requirements for the enforcement of intellectual property rights (hereinafter - Directive 2004/48/EC). This directive emphasises the importance of protecting intellectual property rights as a key element for the formation of the internal market, in particular by promoting innovation, stimulating investment,

developing employment, and increasing competitiveness. Directive 2004/48/EC, without interfering with procedural issues and competition rules, provides conditions for the implementation of a “high, equivalent, and uniform level of enforcement in the internal market” [2]. The main aspects of Directive 2004/48/EC include the definition of persons entitled to enforcement, the provision of evidence, the right to receive information, and other essential elements aimed at effective enforcement of intellectual property rights, taking into account the specifics of this area.

Intellectual property rights require enforcement from unlawful infringements by the state. The enforcement of intellectual property rights should be viewed as a set of legal and organisational measures aimed at ensuring appropriate conditions for the free use and disposal of objects resulting from the intellectual activity of a person.

It is necessary to identify the main ways that can be used in the course of judicial enforcement of intellectual property rights and to distinguish them as general provisions that ensure a unified approach to civil enforcement of infringed rights to intellectual property results. Under Articles 16 and 432 of the Civil Code of Ukraine, judicial enforcement of intellectual property rights is carried out in the manner prescribed by the Civil Code, taking into account the significance of the violated right and the consequences of its violation [3,46]. In particular, Article 432 of the Civil Code of Ukraine provides for the enforcement of the author’s property rights through recognition of the right, restoration of the state that existed before the violation, cessation of actions that violate the right or create a threat of violation, compensation for moral damage, and publication of a court decision on the violation, the use of compensation instead of damages for the unlawful use of intellectual property. The amount of compensation is determined by the law, taking into account the fault of the person and other circumstances of significant importance [4, 418]. Moreover, in 2023, Ukrainian legislation introduced a new special way of enforcing intellectual property rights, namely: application of a one-time monetary payment instead of applying the methods of intellectual property enforcement established by paragraphs three and/or four of part 2 of Article 432 of the Civil Code of Ukraine. A one-time monetary payment shall be applied at the request of the defendant, provided that the intellectual property right was infringed by the defendant unintentionally and without negligence and that the application of the means of protection established by paragraphs 3 and 4 of part 2 of Article 432 of the Civil Code of Ukraine is disproportionate to the damage caused to the plaintiff. The court shall determine the amount of the one-time monetary payment as the amount of remuneration that would have been paid for the plaintiff’s permission to use the intellectual property right in dispute and that reasonably satisfies the plaintiff [5].

With a view to its future membership in the EU, Ukraine is actively working to bring its national legislation into line with the *Acquis Communautaire*. In the context of intellectual property rights enforcement, special attention should be paid to the special provisions contained in the Commercial Procedure Code of Ukraine, Civil Procedure Code of Ukraine and the Civil Code of Ukraine. It is important to note that after the adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Enforcement of Intellectual Property Rights” on March 20, 2023 [5], significant changes in the regulation of intellectual property rights enforcement took place. The primary purpose of this law was to implement the provisions of the EU-Ukraine Association Agreement into national legislation. The law also implements the requirements of part three of Chapter 9 of Title IV of the Agreement and Directive 2004/48/EC of 29.04.2004 on the enforcement of intellectual property rights.

However, the provisions of Section 4 “Intellectual Property” of the Association Agreement do not contain direct obligations to harmonise Ukrainian legislation with the European one in this area. However, unlike other chapters, it contains EU directives and regulations covering various aspects of intellectual property enforcement, including copyrights, geographical indications, trademarks, etc. [6]. Thus, European regulations are integrated into the legal system of Ukraine, as international treaties take precedence over national legislation. This requires specific reforms and improvements of the institutional mechanism for the enforcement of intellectual property rights, which, in turn, leads to changes in the organisational and regulatory support of this area.

The enforcement of intellectual property rights was significantly strengthened in several key areas. Stricter penalties for infringement were introduced for trademarks and industrial designs, as well as provisions to prevent the abuse of intellectual property rights. In particular, the possibility of pre-trial invalidation of industrial design registrations in the Appeals Chamber of the NIPO was introduced

(Law of Ukraine No. 815-IX dated 21.07.2020). Regarding inventions and utility models, the regulatory changes are aimed at preventing abuse of rights by enabling any person to object to applications for inventions after their publication. The possibility of invalidating the rights to inventions and utility models administratively in the Appeals Chamber was introduced (Law of Ukraine No. 816-IX dated 21.07.2020). With regard to geographical indications, new requirements for application documents for registration of geographical indications have been established, and the conditions for granting enforcement and the grounds for refusal of enforcement have been clarified. The procedure for examination of applications has been changed, including the procedures for negotiations between the applicant and the person challenging the application, as well as the requirements for product specifications and control elements (Law of Ukraine No. 123-IX dated 20.09.2019). About semiconductor product layouts, a new definition of terms was introduced, the term of validity of rights was clarified, the requirements for a registration application were revised, the examination procedure was improved, and the list of rights and obligations arising from registration was clarified (Law of Ukraine No. 111-IX dated 19.09.2019). Concerning copyright and related rights, the relations regarding the acquisition, exercise, and enforcement of personal non-property and property copyrights, as well as rights of a special kind (*sui generis*), have been regulated. Administrative and criminal liability for the illegal use of copyright and related rights has been strengthened (Laws of Ukraine No. 2811-IX and No. 2803-IX dated December 1, 2022)[7].

The Ministry of Economy of Ukraine, together with the Ukrainian National Office of Intellectual Property and Innovation, is currently developing approaches for further implementation of EU intellectual property law. This involves amending the current legislation, in particular the Law of Ukraine "On Copyright and Related Rights". One of the priority tasks is the implementation of the Directive on Copyright and Related Rights in the Digital Single Market 2019/790 of April 17, 2019 (DSM Directive). It provides for several innovations, including the introduction of out-of-commerce works, a mechanism for revising contracts in terms of remuneration, extending the enforcement periods for particular related rights objects, expanding the possibilities of using orphan works, and regulating the exception for in-depth analysis of text and data (text and data mining).

In addition to compensation for damages as a general remedy for infringed civil rights, an alternative type of civil liability, namely payment of monetary compensation, has become established in the field of copyright and related rights. Due to the difficulty of accurately determining the amount of damages in cases of copyright infringement, this remedy has gained popularity both in Ukraine and in foreign countries, although approaches to its application remain different. Significant legislative changes in the field of intellectual property marked the beginning of 2023. In particular, on January 1, 2023, the updated Law "On Copyright and Related Rights" came into force. When preparing this document, the provisions of European legislation were considered to fulfil obligations under the Association Agreement, new modern clauses that did not exist before were introduced, existing terminology was clarified, and provisions that were no longer relevant were removed.

Ukraine has taken another step towards harmonising its intellectual property rights legislation with European standards by adopting the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Enforcement of Intellectual Property Rights" on March 20, 2023 [5]. The Law, in particular, provides for: 1) the possibility of withdrawal from civil circulation of goods manufactured or put into circulation in violation of intellectual property rights, as well as materials and tools mainly used for the manufacture of such goods, at the expense of the person who committed the violation (i.e., this provision of clause 3 of part 2 of Article 432 of the Civil Code specifies that destruction is carried out at the expense of the violator, similarly, clause four states that destruction is carried out at the expense of the violator); 2) additional powers to apply a one-time cash payment instead of other methods of protecting intellectual property rights. It is determined that the court determines the amount of a one-time monetary payment as the amount of remuneration that the claimant could receive for granting permission to use the intellectual property right in dispute, which is reasonable and satisfactory to the claimant.

The Commercial Procedure Code has a new Article 81-1 "Discovery of Certain Evidence in Cases of Infringement of Intellectual Property Rights", according to which the court may, based on a substantiated request by a party to the case, issue a ruling on discovery of evidence in the form of information on the origin and distribution network of goods or services that infringe intellectual property rights or in respect of which there are reasonable grounds to believe that their distribution or provision infringes such rights. Thus, the request may be made from: 1) persons in respect of

whom there are reasonable grounds to believe that they infringe intellectual property rights; 2) any other persons in respect of whom there are reasonable grounds to believe that they offered, received, possessed, or used goods or services infringing intellectual property rights for commercial purposes; 3) any other persons referred to in clause two who were listed as participants in the production, manufacture, or distribution of goods or services infringing intellectual property rights [8].

A request for evidence should be aimed solely at obtaining information necessary to establish the origin and distribution network of goods or services that infringe intellectual property rights or in respect of which there are reasonable grounds to believe that their distribution or provision infringes such rights. The purpose of this Law is to implement the provisions of the EU-Ukraine Association Agreement and Directive 2004/48/EC on the enforcement of intellectual property rights into national legislation.

It is worth noting that Directive 2004/48/EC, as well as the Association Agreement, defines only minimum standards for the enforcement of intellectual property rights, but does not prohibit the introduction of a higher level of enforcement (as stated in the decision of the Court of Justice of the European Union (CJEU) in case C-481/14). Countries are also entitled to a higher level of enforcement under Article 19 of the Berne Convention and Article 1 of the TRIPS Agreement [6]. This leads to the conclusion that international treaties do not prohibit the use of “punitive” compensation (a fixed range of amounts) in national legislation. At the same time, according to Article 3(2) of Directive 2004/48/EC (Article 230(2) of the Association Agreement), compensation, like any other method of copyright enforcement must be effective, proportionate, and dissuasive and applied in such a way as not to create obstacles to legitimate trade and to ensure enforcement against abuse. The amount of compensation depends on the intent of the infringer. If the infringement was intentional, the amount of compensation may be tripled, and in the absence of intent, doubled. This means that liability for copyright infringement arises even without intent.

Compensation is calculated based on the remuneration or commission payments that would have been paid if the infringer had formally applied for permission to use the disputed copyright or related rights, instead of compensation for damages or recovery of income. The compensation provides for doubling the amount in case of infringement and tripling the amount in case of willful infringement. It is quite reasonable to question whether this approach of national legislation is consistent with its obligations under the Association Agreement. Thus, the question arises whether the application of a doubled or tripled amount of compensation may exceed the damages caused and lead to abuses prohibited by Part 2 of Article 230 of the Association Agreement.

On January 25, 2017, the Court of Justice of the European Union (CJEU) considered case C-367/15 (*Stowarzyszenie ‘Oławska Telewizja Kablowa’ v. Stowarzyszenie Filmowców Polskich*). The issue considered by the CJEU was whether Article 79(1)(3)(b) of the Polish Law on Copyright and Related Rights is compatible with Article 13 of Directive 2004/48. Article 79(1)(b) of the Act provides for the possibility of paying double or triple compensation in case of culpable infringement, which would correspond to the amount of remuneration that would have been paid if the right holder had authorised the use of the work.

In answering the question, the CJEU noted that Article 13 of Directive 2004/48/EC does not exclude the possibility of national legislation according to which an intellectual property right holder whose rights have been infringed may claim either actual damages, taking into account all aspects of the particular case, or, without proving actual damages, payment of an amount corresponding to double the remuneration that would have been paid had the authorization to use the work in question been granted [9].

In continental Europe, in both tort and contract disputes, only compensatory damages are usually awarded. Moreover, in some countries, such as Germany, punitive damages are considered to be contrary to public policy. Therefore, court decisions in the United States that award punitive damages are not recognised or enforced in these countries. For example, compensation for copyright infringement in the form of punitive damages - a fixed range of amounts - is typical for the legal system of the United States and about 25 other countries. Under § 504(c) of Title 17 of the U.S. Code, a court may order statutory damages instead of compensatory damages for direct losses or unjustified profits in the amount of USD 200 to 150,000, depending on the nature of the infringement [10].

According to Article 45(2) of the TRIPS Agreement, Member States may authorise their judicial authorities to seek recovery of profits and/or pre-established damages, even if the infringer acted unknowingly or did not have sufficient reason to know of the infringement [6]. This is a right, not an obligation of states, but it has been implemented in national legislation since the first version of the Law of Ukraine "On Copyright and Related Rights" dated December 23, 1993, No. 3792-XIIr. It's gone through a few stages of development and practical application. Before the Law "On Effective Management of Property Rights of Right Holders in the Field of Copyright and (or) Related Rights" came into force (July 2018), Ukraine used a punitive approach to compensation, which allowed for the collection of amounts ranging from 10 to 50,000 minimum wages. However, the national legislation at that time did not contain safeguards: it did not take into account the presence or absence of damage, the number of objects or their components used, and did not set limits on the effectiveness and proportionality of compensation. In many cases, even minimal compensation could be disproportionate to the damage caused, violating the principles of fairness, good faith, and reasonableness enshrined in Article 3 of the Civil Code of Ukraine.

This practice was unacceptable, as the function of civil liability is to compensate for fair property losses caused by the offence, not to enrich the right holder. Compensation must be adequate to the offence, which is manifested in the equivalence of the damages recovered to the damage caused. The amount of damages, including lost profits, is based on the usual payment for the use of works and objects of related rights (paragraph 50 of the Resolution of the HCCU Plenum No. 12 of 17.10.2012). Under Article 22(2)(2) of the Civil Code of Ukraine, lost profits are a form of damages. Thus, by substantiating the amount of remuneration to be paid by the infringer, the plaintiff proves the amount of its losses in terms of lost profits.

At the same time, the court applies the presumption of guilt of the person who caused the damage: such a person is presumed guilty until proven otherwise (paragraph 3 of Resolution of the HCCU Plenum No. 12 of 17.10.2012). The defendant is obliged to refute this presumption established by the civil law, which provides for culpable damage (para. 29 of the Resolution of the HCCU Plenum No. 12 of 17.10.2012). In such circumstances, a plaintiff who asks the court to apply compensation instead of damages must justify why the court should choose compensation rather than damages. At the same time, the defendant must not only compensate for the damages proved by the plaintiff, but also be fined in his favour. Thus, the plaintiff is obliged to argue why he or she deserves to receive an amount that exceeds the compensation for his or her losses from the violation. When making a decision, the court must indicate the reasons for applying the relevant legal provisions (Article 238(4)(5) of the Code of Civil Procedure). The court must explain why it has decided to depart from the principle of compensatory damages and impose penalties on the violator [11].

Thus, in the period from July 22, 2018, to December 31, 2022, compensation was determined by the court as a "lump sum based on elements such as double, and in the case of intentional infringement, as triple the amount of remuneration or commission payments that would have been paid if the infringer had applied for permission to use the disputed copyright or related rights instead of compensation for damages or recovery of income".

Compensation for the victim's losses is carried out within the framework of tort legal relations, while the recovery of income received by the violator is carried out within the framework of legal conditional ties. The rules of general tort are regulated by Chapter 82 "Compensation for Damage" of the Civil Code of Ukraine, and the rules of conditionality are regulated by Chapter 83 "Acquisition, Retention of Property Without a Sufficient Legal Basis" of the Civil Code of Ukraine. For compensation for damages (tort), the fault of the violator is a prerequisite (Article 1166(2) of the Civil Code), while for recovery of the income received (condition), the fault is irrelevant (Article 1212(2) of the Civil Code). Thus, if compensation is applied instead of damages or recovery of income, given that damages require fault, while recovery of income does not, it is wrong to require fault in both cases.

In the current environment, no EU legal act provides for the mandatory use of compensation as a form of compensation for property damage for copyright and related rights infringement. Under Article 3 of Directive 2004/48/EC, Member States must ensure that measures, procedures, and remedies are in place to enforce intellectual property rights. At the same time, under Article 13(1)(b) of the Directive, Member States may, in some instances, determine damages in the form of a fixed amount based on elements such as the minimum amount of remuneration or fee that would have been paid if the infringer had applied for permission to use the intellectual property rights. However, this rule is not

mandatory, so the issue of the possibility of paying compensation for copyright and related rights infringement is decided by the EU Member States at their discretion.

During the preparation of the Law of Ukraine "On Copyright and Related Rights" dated December 1, 2022, No. 2811-IX, the norms of European legislation were taken into account to fulfill the obligations under the Association Agreement, new modern provisions that did not exist before were introduced, the existing terminology was clarified, and provisions that had lost their relevance were removed.

According to the provisions of the current version of the Law of Ukraine "On Copyright and Related Rights" of 2022, in addition to compensation for damages as a general means of protecting violated rights, under paragraph 4 of part 3 of Article 55 of the Law, only the copyright holder may demand compensation (a one-time monetary penalty) determined by the court instead of compensation for damages or recovery of income at its discretion in the amount of 2 to 200 subsistence minimums for able-bodied persons or as a fixed double amount (in the case of an unintentional copyright infringement), and in the case of an intentional violation - a triple amount of the remuneration that would have been paid for granting permission to use the object of copyright or related rights, in respect of which the dispute arose[7].

Ukraine took another step toward harmonising its intellectual property rights legislation with European standards by adopting the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Strengthening of Intellectual Property Rights Protection" on March 20, 2023. The law, in particular, provides for significant changes to special means of copyright protection. These include:

Thus, according to the provisions of this law, two separate "monetary" special methods of protecting intellectual property rights have been added to the Civil Code of Ukraine:

4¹) the application of a one-time monetary payment instead of the methods of protecting intellectual property rights established by paragraphs three and/or 4 of Part 2 of Article 432 of the Civil Code of Ukraine. A one-time monetary payment is made at the request of the defendant (and not at the request of the plaintiff), provided that the intellectual property right was infringed by the defendant unintentionally and without negligence and that the application of the methods of protection established in paragraphs 3 and 4 of this part is disproportionate to the damage caused to the plaintiff. The court determines the amount of the one-time monetary payment as the amount of remuneration that would have been paid by the plaintiff for granting permission to use the intellectual property right in dispute, and that reasonably satisfies the plaintiff, and

5) The application of compensation instead of damages for the unlawful use of an intellectual property right. The amount of compensation shall be determined under the law, taking into account the fault of the person and other circumstances of significant importance.

In this regard, it is essential to note that these special remedies are not alternative or interchangeable. The peculiarity of the application of copyright remedies lies in the possibility of simultaneous application of several civil law remedies for copyright protection, including in the course of different court proceedings. Therefore, the possibility of simultaneously applying a one-time monetary payment and compensation instead of damages seems entirely possible, although it has not yet been tested at the level of law enforcement. In addition, as a rule, the method of protection (specific claims) in copyright disputes is chosen by the plaintiff. At the same time, if the plaintiff claims the removal from civil circulation of counterfeit goods and/or materials and tools used primarily for the manufacture of counterfeit goods and there is a simultaneous combination of the following conditions: the claims are disproportionate to the damage caused to the plaintiff and the copyright infringement was committed unintentionally and without negligence, and other means of protection are disproportionate to the damage caused, the infringer (defendant) may file a claim for the application of an alternative means of protection in the form of a one-time monetary payment[12].

5. Conclusions.

The growing importance of intellectual property requires an increase in the efficiency of its legal enforcement. The enforcement of the rights and legitimate interests of intellectual property rights holders is carried out through a system of legal mechanisms, which includes forms, methods, and

means of activity of jurisdictional authorities and stakeholders aimed at ensuring the enforcement of the rights and interests of these entities. Ukraine's desire for gradual integration into the EU required the adaptation of national legislation to the standards of the *Acquis Communautaire*.

Ensuring an adequate level of enforcement of intellectual property rights is a key condition for the functioning of modern business based on innovation and technology transfer. However, legal regulation in this area still requires further improvement. At the same time, there is no question of complete unification of the legislation of the EU member states in the field of intellectual property enforcement. Such approximation is limited to the level sufficient to ensure the functioning of the EU single market. Issues related to the registration of intellectual property rights, invalidation of certificates or patents, etc., remain within the competence of national legislation. Similarly, this applies to procedural issues, including the provision of judicial enforcement.

Thus, the main form of compensation for material damage caused to the victim is compensation for damages, including actual damages and lost profits. When claiming damages, the right holder must prove the existence and amount of damages, as well as their causal relationship to the infringer's actions. Usually, when exclusive rights are infringed, damages are expressed in the form of lost profits - the amount that the right holder could have received if the infringer had entered into an agreement with him/her and used the intellectual property for a fee. Lost profits should be considered at least as much as illegally obtained profit. The application of a one-time monetary penalty instead of compensation for damages for the misuse of an intellectual property right implies that the amount of this penalty is determined by the law, taking into account the person's fault and other essential circumstances.

It is the responsibility of the victim to prove the amount of damages suffered, which also requires proving that the exclusive right has been infringed. This method of restoring the infringed right is complex for the subject of the exclusive right, as it requires submission to the court of evidence of the damages, documents confirming their amount, and proof that the actions of a particular infringer caused the damages. The amount of compensation depends on the intent of the infringer. If the infringement was intentional, the amount of compensation may be tripled, and in the absence of intent, doubled. This means that liability for violation of rights arises even without intent.

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