

# CONTRACTS IN THE FIELD OF DISPOSAL OF PROPERTY RIGHTS TO OBJECTS OF RELATED RIGHTS UNDER THE LEGISLATION OF UKRAINE: CONSTITUTIONAL AND CIVIL LAW ASPECTS

Pecherova N. H.

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**Annotation.** What is this work devoted to? The purpose of this work is to highlight the gaps studied by the author, which are common to the entire system of contracts in the field of disposal of property rights to objects of related rights under the legislation of Ukraine in terms of their consistency with the guarantees provided by the Constitution of Ukraine. This work was carried out thanks to the dialectical approach, logical techniques, as well as hermeneutic-legal and comparative-legal methods.

Based on the research conducted, the author of the article achieved the following results. Thus, the existence of such gaps was established as: the absence of the person of the creator of objects of related rights, despite the fact that in some forms of disposal of property rights, including objects of related rights, the legislator speaks indirectly about the creator and about granting him personal non-property rights; the absence of a clearly prescribed moment of transfer of property rights from the person of the creator to other subjects under a number of contracts. These gaps are fundamental, while others that the author draws attention to are derived from them, but are also very important. The reason for these gaps, in the author's opinion, is a truncated understanding of intellectual property rights in relation to creators and an exaggeration of the technical component in the creation of objects of related rights. What do these gaps affect? These gaps make it impossible for the creators who created them to dispose of property rights to objects of related rights, and also deprive them of the opportunity to protect the related right belonging to them, which for some reason is not recognized. The author of the article concludes that the proposal to attribute creators to subjects of related rights without changing the existing structure of the Civil Code of Ukraine and the relevant Law of Ukraine "On Copyright and Related Rights", as well as unifying objects of copyright and related rights into a single group of objects and also without changing the existing legislation mentioned above, is appropriate. In the opinion of the author of the work, in the future it will be advisable to affix both copyright and related rights protection marks on related rights objects, taking into account the proposed changes.

All proposed changes will be aimed at harmonizing the relevant legislation of Ukraine in the field of intellectual property law on the above issues with the guarantees provided by the Constitution of Ukraine, and accordingly ensuring the functioning of legal regulation on these issues as a holistic system.

**Key words:** constitutional and legal guarantees in the field of intellectual property rights, intellectual property rights, the content of intellectual property rights, the creator of objects of related rights, a truncated understanding of intellectual property rights, personal non-property rights, property rights, methods of using objects of related rights, disposal of property rights to objects of related rights, recognition and protection of related rights.

## 1. Introduction.

Working on each individual type of agreement in the field of property rights management, including related rights objects, the author of the article identified common problematic issues that are inherent in each form of property rights management for related rights objects. The main gap in the current Ukrainian legislation, in the author's opinion, is the lack of attribution of the creator of related rights objects to the primary subjects of related rights, and accordingly the inability to be a party to the relevant agreements, to manage the property rights actually belonging to them, and accordingly the deprivation of the opportunity to protect the violated right, since such a right "as if" does not exist. Today, the composition of related rights subjects looks as follows according to Part 2 of Article 35 of the Law of Ukraine "On Copyright and Related Rights" (hereinafter referred to as the Law) "2. The subjects of related rights are: 1) the performer (the primary subject of related rights to the performance), the performer's heirs and other individuals or legal entities who have acquired property rights to the performance on the basis of a contract or law; 2) the phonogram producer (the primary subject of related rights to the phonogram), the heirs (successors) of the phonogram producer and other individuals or legal entities who have acquired property rights to the phonogram on the basis of a contract or law; 3) the videogram producer (the primary subject of related rights to the videogram), the heirs (successors) of the videogram producer and other individuals or legal entities who have acquired property rights to the videogram on the basis of a contract or law; 4) the broadcasting organization (the primary subject of related rights to the broadcasting organization's program), the successors of the broadcasting organization and other individuals or legal entities that have acquired property rights to the broadcasting organization's program on the basis of a contract or law" [1].

The next problematic aspect, related to the first, is the lack of regulation in the norms of the relevant Ukrainian legislation of the moment of transfer of property rights from creators as primary subjects of related rights. An example of this is Article 15 of the Law "1. Personal non-property copyrights to a work created to order belong to the author. 2. Property rights to a work created to order are transferred to the customer from the moment of creation of the work in its entirety, unless otherwise provided for by the order contract. Property rights of intellectual property to a work of fine art created to order (except for a work specially created as an element of a computer program) belong to its author, unless otherwise established by contract or law. 3. If property rights to a work are transferred to the customer, the author has the right to remuneration. 4. The customer has the right to make changes to the work created on order, to accompany it with illustrations, prefaces, afterwords, etc., unless otherwise provided for in the order agreement" [1].

Both of the highlighted aspects, representing scientific novelty for Ukrainian legal thought in the field of intellectual property law, do not have the most important thing - coordination with the guarantees provided by the Constitution of Ukraine according to Art. 41, 54. Thus, according to Art. 41 of the Constitution of Ukraine "Everyone has the right to own, use and dispose of their property, the results of their intellectual, creative activity. The right to private property is acquired in accordance with the procedure established by law. Citizens may use objects of state and municipal property law in accordance with the law to meet their needs. No one may be unlawfully deprived of the right to property. The right to private property is inviolable. Forced alienation of objects of private property law may be applied only as an exception for reasons of public necessity, on the grounds and in the manner established by law, and subject to prior and full compensation for their value. The forced alienation of such objects with subsequent full compensation for their value is allowed only in conditions of war or a state of emergency. Confiscation of property may be applied exclusively by court decision in cases, to the extent and in the manner established by law. The use of property may not harm the rights, freedoms and dignity of citizens, the interests of society, or worsen the ecological situation and natural qualities of the land" [2].

According to Article 54 of the Constitution of Ukraine, "Citizens are guaranteed freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyrights, moral and material interests arising in connection with various types of intellectual activity. Every citizen has the right to the results of his intellectual and creative activity; no one may use or distribute them without his consent, with the exceptions established by law. The state promotes the development of science, the establishment of scientific ties between Ukraine and the world community. Cultural heritage is protected by law. The state ensures the preservation of historical monuments and other objects of cultural value, takes measures to return to Ukraine the cultural values of the people that are outside its borders" [2].

## 2. Analysis of recent research and publications.

Issues related to those considered in this work were addressed by such scholars as Kapitsa Yu. M., Kodinets A. O., Shimon S. I., Stefan A. S., Yakubovsky I. E. Thus, Yakubovsky I. E. in his work "Agreements on the Disposal of Intellectual Property Rights: Main Directions of Recodification" considers the issue of the expediency of placing a license among the list of agreements in Chapter 75 of the Civil Code of Ukraine, as well as the expediency of the existence of a provision on a standard license agreement in the same chapter. On these issues, the scholar notes the following position: "Taking into account the last caveat, another option for solving the problem seems more optimal: to exclude the provisions relating to the license for the use of an intellectual property right from Chapter 75 of the Civil Code of Ukraine and transfer them to Chapter 35 of the Civil Code of Ukraine. In this case, the license could be considered as a general concept that encompasses various legal forms of granting permission to use an object of intellectual property rights, including public licenses. This option would allow preserving the concept of Chapter 75 of the Civil Code of Ukraine as one that covers specifically contractual forms of disposal of intellectual property rights, which would correspond to the structural placement of this chapter in Subsection 1 of Section III of Book 5, which is entitled "Contractual Obligations" [3]. Kodinets A.O. in his work "Disposal of Intellectual Property Rights: Problems and Prospects of Legislative Regulation" considers in his work, in particular, the novelties of the adopted Law of Ukraine "On Copyright and Related Rights". Among other things, in this work, the scientist notes the following point of view: "Therefore, we state that such a public license should be issued not simply by publishing its terms together with providing an unlimited number of persons with the objects of copyright or related rights, but by using electronic signature or electronic digital signature, as required by the legislation on electronic document flow" [4], which one cannot but agree with. However, the question of the presence of gaps identified by the author of the work in the aspect of the consistency of the civil law aspect with the constitutional law aspect was not considered, for some reason, and the indicated gaps were not investigated directly, and therefore the study presented by the author is one of the first in this direction.

**3. The purpose of this work** is to study all currently existing forms of disposal of property rights to objects of related rights from the point of view of highlighting such existing gaps as the absence of the creator as the primary subject of related rights, as well as the absence of the moment of transfer of property rights from the creator of objects of related rights to other subjects for the purpose of compliance with the guarantees provided by the Constitution of Ukraine. The objectives of this work are to highlight the above-mentioned gaps for their consistency with the guarantees provided by the Constitution of Ukraine and to develop proposals for the current relevant legislation of Ukraine.

**The methodological basis of the study** was the dialectical approach and logical techniques, as well as hermeneutic-legal and comparative-legal methods.

## 4. Presentation of the main material.

According to Part 1 of Article 1107 of the Civil Code of Ukraine (hereinafter referred to as the Code) "1. Disposal of intellectual property rights is carried out on the basis of the following transactions: 1) a license to use an object of intellectual property rights; 2) a license agreement; 3) an agreement on the creation to order and use of an object of intellectual property rights; 4) an agreement on the transfer of exclusive intellectual property rights; 5) another transaction on the disposal of intellectual property rights" [5]. According to Part 1 of Article 48 of the Law "1. Disposal of property rights to copyright objects or objects of related rights may be carried out on the basis of: 1) an employment contract (contract) - in terms of the conditions for the distribution of property rights to a service work or service performance, service phonogram, service videogram; 2) an agreement on the creation to order and use of a copyright object or object of related rights; 3) an agreement on the transfer (alienation) of property rights to a copyright object or object of related rights; 4) a license agreement for the use of a copyright object or object of related rights; 5) a public license for the use of a copyright object or object of related rights; 6) another transaction for the disposal of property rights to a copyright object or object of related rights. The terms of transactions regarding the disposal of property rights to objects of copyright or objects of related rights

regarding the transfer (alienation) or granting of permission to use (license) regarding the property right for fair remuneration, provided for in Part Three of Article 12, Part Three of Article 38, Part Three of Article 39, Part Three of Article 40 of this Law, are null and void" [1].

Moving directly to the issues raised in the problem statement, we will demonstrate the existing gaps using the example of the following forms of disposal of property rights to objects of related rights.

Let's start by considering the employment contract (contract) in terms of the distribution of property rights to an official object of related rights. So, looking ahead, the differences between the Code and the Law in terms of regulating relations under this form of disposal are interesting. According to Art. 429 of the Code "1. Personal non-property intellectual property rights to an object created in connection with the execution of an employment contract belong to the employee who created this object. In cases provided for by law, individual personal non-property intellectual property rights to such an object may belong to a legal entity or individual where or for whom the employee works. 2. Intellectual property rights to an object created in connection with the performance of an employment contract (contract) belong to the employee who created this object and the legal entity or individual where or for whom he works, jointly, unless otherwise established by this Code or the contract. 3. The specifics of the exercise of intellectual property rights to an object created in connection with the performance of an employment contract may be established by law" [5]. According to Part 1, 2 of Article 14 of the Law, "1. Personal non-property copyrights to a service work belong to the employee whose creative work created such a work. 2. Property rights to a service work shall be transferred to the employer from the moment of the creation of the service work in its entirety, unless otherwise provided for by this Law, an employment contract (contract) or another agreement on property rights to a service work concluded between the employee (author) and the employer. If property rights to the work are transferred to the employer, the employee who is the author of the service work shall have the right to remuneration. If the employee's job duties directly involve the creation of service works of the relevant types, the author's remuneration for the creation and use of such works, as well as for the transfer of rights to them, may be included in the employee's salary in accordance with the agreement between the employee and the employer" [1]. Thus, the situation arises that, having secured personal non-property rights both under the Code and the Law, the employee does not have secured property rights, as a general rule, according to the Law. According to the Code, he owns such property rights together with the employer. At the same time, the employer is not recognized as a co-author according to the current provisions of the relevant Ukrainian legislation. We believe that property rights cannot automatically belong to the employer for whom the creator works, either in terms of their securing both for the employee and the employer, and even more so transfer completely as defined, as a general rule, according to the relevant Law. Let's ask ourselves the question, why? Let's answer it simply, can the creator change jobs throughout his life? And what are the terms of validity of related rights? Yes, according to Part 2 of Article 45 of the Law "2. The intellectual property right to a phonogram is valid from the moment of production of the phonogram. The term of validity of intellectual property rights in a phonogram shall expire after 50 years, calculated from January 1 of the year following the year of production of the phonogram. If the phonogram is lawfully published during this term, the term of validity of intellectual property rights in a phonogram shall expire after 50 years, calculated from January 1 of the year following the year of publication" [1]. That is, in practice, a situation arises where an employee can change his place of work, and the property rights to the service work created by him, as a general rule, according to the Law, will be transferred to the employer and will have a term of validity, in the case of such an object of related rights as a phonogram, given by us, of 50 years. At the same time, the creator of the service object of related rights is deprived of the opportunity to be a party to agreements on the disposal of property rights to objects of related rights, since he is not a subject of related rights according to the current Ukrainian legislation. There is also a dissonance in the fact that the personal non-property rights of the employee, as noted above, are assigned to him, but at the same time, according to the content of Art. 37 of the Law, such personal non-property rights are not assigned in any part "1. Personal non-property rights of the performer mean the right to demand: 1) recognition that he is the performer of the relevant performance; 2) to indicate or communicate his name (pseudonym) in connection with each use of the performance (if this is practically possible); 3) to ensure the proper quality of the recording of his performance and to counteract any distortion, distortion or other significant change of the performance, recording of the performance that may harm his honor and reputation; 2. The producer of a phonogram and the producer of a videogram have the right to demand: 1) to indicate his name (name) in the original and each copy of the phonogram, videogram or on its (their) packaging along with the title

of the work, the name (names) of the author (authors), the performer (performers); 2) to mention his name (name) in the process of using the phonogram, videogram (if this is practically possible). 3. A broadcasting organization has the right to indicate its name in connection with the use of the program of the broadcasting organization. 4. Personal non-property rights of a performer, phonogram producer, videogram producer, broadcasting organization cannot be transferred (alienated) to other persons and are not inherited" [1].

Thus, according to Art. 1112 of the Code "1. Under an agreement on the creation and use of an object of intellectual property rights, one party (the creator - a writer, artist, etc.) undertakes to create an object of intellectual property rights in accordance with the requirements of the other party (the customer) and within the established period. 2. An agreement on the creation to order and the use of an object of intellectual property rights must determine the methods and conditions of use of this object by the customer. 3. The original work of fine art created to order shall become the property of the customer. In this case, the intellectual property rights to such a work shall remain with its author, unless otherwise established by the agreement or law. 4. The terms of the agreement on the creation to order and the use of an object of intellectual property rights that restrict the right of the creator of this object to create other objects shall be null and void" [5].

According to Art. 15 of the Law "1. Personal non-property copyrights to a work created to order belong to the author. 2. Property rights to a work created to order are transferred to the customer from the moment of creation of the work in its entirety, unless otherwise provided for by the order contract. Intellectual property rights to a work of fine art created to order (except for a work specially created as an element of a computer program) belong to its author, unless otherwise established by contract or law. 3. If property rights to a work are transferred to the customer, the author has the right to remuneration. 4. The customer has the right to make changes to the work created to order, to accompany it with illustrations, prefaces, afterwords, etc., unless otherwise provided for by the order contract" [1]. If we analyze the above-mentioned provisions of the Code regarding this form of contract, we can assume that the contract between the parties must agree on the methods and conditions of using the object, including the object of related rights, that the property rights to the created object of related rights remain with the creator of such an object, and in addition, in our opinion, this construction implies that the property rights to such a commissioned object of related rights may be transferred not in full, but in part. As for the provisions on this type of contract under the relevant Law, property rights, as a general rule, are transferred to the customer from the moment of creation of the work. So, as we can see, there is a gap in the understanding of the ownership and the moment of transfer of property rights to the object of related rights created to order. In our opinion, the indication of the ownership of personal non-property rights actually to the creator both under the Code and the relevant Law indicates that the creator still exists, but his personal non-property rights are not reflected in the corresponding norm of the relevant Law on the personal non-property rights of subjects of related rights. As for the moment of transition, we believe that it should be more clearly spelled out in the future and its essence should be that property rights primarily belong to the creator of a particular object of related rights, and only then is the transition to the customer carried out.

Thus, according to Part 1 of Article 1113 of the Code, "1. Under an agreement on the transfer of intellectual property rights, one party (a person who is the subject of property rights to an object of intellectual property rights) transfers these rights to the other party in part or in full in accordance with the law and on the terms specified in the agreement. The subject of an agreement on the transfer of property rights cannot be objects and property rights that did not exist at the time of the conclusion of the agreement" [5].

According to Part 1 of Article 49 of the Law "1. The subject of copyright or related rights may transfer (alienate) his property rights to the object of copyright or related rights, provided for in accordance with Part One of Article 12, Part One of Article 38, Part One of Article 39, Part One of Article 40 of this Law, to any other person in full on the territory of all states of the world or partially for certain methods of use on the territory of certain states of the world, or for all methods of use on the territory of certain states of the world. In the event of transfer (alienation) of property rights to the object of copyright or related rights, property rights in part to the extent not provided for in the contract shall be deemed not to have been transferred (alienated). The subject of an agreement on the transfer (alienation) of property rights to copyright objects and objects of related rights cannot be objects and property rights that did not exist at the time of conclusion of the agreement" [1].

Summarizing both the above-mentioned norms of both the Code and the relevant Law on this form of disposal of property rights to objects of related rights, we note that the actual creators of such objects cannot be a party to this agreement, since they are not subjects of related rights according to the understanding of the relevant Ukrainian legislation on this issue. That is, a paradoxical situation arises when, for example, personal non-property rights actually belong to the creator as per the employment contract (contract) in terms of the distribution of property rights to the created object of related rights, and the creator cannot actually dispose of them. The same situation applies to the agreement on the creation to order and use of the object of related rights, since personal non-property rights belong to the creator, but he is not recognized as such. And what about in practice such a hypothetical situation when a contract was concluded between the creator of the object of related rights and the customer, but the customer did not make, for example, a calculation, which then means that the creator cannot fully exercise his powers regarding his property right in the future, for example, conclude a license agreement, public license, etc., since he is impersonal?

Thus, according to Part 1 of Article 1109 of the Code "1. Under a license agreement, one party (licensor) grants the other party (licensee) permission to use an object of intellectual property rights in a certain way (ways) for a certain period of time in a certain territory, and the licensee undertakes to pay a fee for the use of the object, unless otherwise established by the agreement" [5].

According to Part 1 of Article 50 of the Law, "1. Under a license agreement, one party (licensor) grants the other party (licensee) permission to use the object of copyright or the object of related rights in a certain way (ways) for a certain period of time in a certain territory, and the licensee undertakes to pay a fee for the use of the object, unless otherwise established by the agreement. The licensor may be the subject of property copyright or related rights, and in cases provided for by the agreement or law, another authorized person. The licensee does not have the right to use the object of copyright or the object of related rights in ways not directly provided for by the license agreement" [1].

Summing up this form of disposal, we note that the creator of the object of related rights is deprived of the opportunity to be a party to this form of disposal as well.

The key to solving, in particular, the issue highlighted above under the license agreement is also the clear prescription of the moment of transition from the creator to the employer under the employment contract (contract) in terms of the distribution of property rights to the created service object of related rights. Since, if property rights do not have an automatic transition, as a general rule, then there is a creator who created this or that service object of related rights, and accordingly he should have the opportunity to dispose of the property rights belonging to him by concluding license agreements as well.

Regarding such a form of disposal of property rights as a public license, we note the following. Thus, according to Art. 455 of the Code "1. The subject of related rights may grant permission for the use of the relevant object by any person on the terms specified by him (public license). 2. A person who uses the object of related rights on the basis of a public license is obliged to comply with the terms specified by the subject of related rights, on which it was issued" [5].

According to Part 1 of Article 51 of the Law, "1. A copyright holder or a related rights holder may grant permission for the use of an object of copyright or related rights by any person on the terms and conditions specified by him (public license). A public license is issued by publishing its terms together with providing the possibility of remote familiarization with the relevant object of copyright or related rights to an unlimited number of persons using information and telecommunication systems" [1]. As with the previous form of the contract, unfortunately, creators of related rights are deprived of the opportunity to be a party to this type of contract, and accordingly, to dispose of it.

Creators of objects of related rights cannot appeal to international conventions in the field of copyright, since, as an example, the conventions cited by the author of the work do not currently include objects of related rights in the scope of copyright. But does this mean that this will not happen one day? So, let us ask ourselves whether a computer program was immediately an object of copyright?

In connection with the above, we will consider additional examples of appeals to international conventions on copyright that may take place in the future, but for now from the point of view of demonstrating the essence of intellectual property rights, which can be split due to a wide range of ways of its use.

Thus, according to Art. 11ter of the Berne Convention for the Protection of Literary and Artistic Works, Paris Act of 1971 “(1) Authors of literary works enjoy the exclusive right of authorizing: (i) the public reading of their works, including such public reading carried out by any means or methods; (ii) the communication by any means of reading their works for the public. (2) The same rights shall be granted to authors of literary works in respect of the translation of their works during the entire term of their rights in the original works” [6]. This provision is an example of the illustration of the implementation of the order to grant one’s property right for use in a certain manner.

According to Part 1, Article 5 of the Universal Copyright Convention, “1. Copyright shall include the exclusive right of the author to translate, to publish translations and to authorize the translation and publication of translations of works protected under this Convention” [7].

According to Part 1, Article 6 of the World Intellectual Property Organization Copyright Treaty, adopted by the Diplomatic Conference on December 20, 1996, “(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the distribution to the general public of the original and copies of their works by sale or other transfer of ownership” [8].

That is, the ways of using property rights are quite diverse, broad and not exhaustive. Let us illustrate this with the example of Part 1 of Article 39 of the Law “1. The subject of related rights to a phonogram has the right to use the phonogram in any way (ways) and the exclusive right to authorize or prohibit the use of the phonogram in other ways. The ways of using a phonogram are, in particular: 1) reproduction in any form and by any means; 2) inclusion in an audiovisual work, videogram, or other phonogram; 3) distribution of copies of the phonogram; 4) rental or lending of copies of the phonogram; 5) interactive provision of access; 6) any modification; 7) public notification; 8) import of copies of the phonogram. This list is not exhaustive” [1].

We will illustrate the “splitting” of property rights using the example of Part 2 of Article 39 of the Law “2. Property rights to a phonogram specified in Part 1 of this Article may be granted or transferred (alienated) to another person on the basis of a law or a transaction in full (for all methods of using a phonogram in the territory of all states in the world) or in part (for individual methods of using a phonogram in the territory of all states in the world or for individual methods of using a phonogram in the territory of individual states in the world, or for all methods of using a phonogram in the territory of individual states in the world). A person who has acquired property rights to a phonogram in full or in part is a subject of related rights within the limits of the acquired rights. The subject of related rights to a phonogram has the right to grant permission for use and dispose of property rights to a phonogram in another manner that does not contradict the law” [1].

In the future, in connection with the proposed changes below, it is considered appropriate to affix the copyright protection sign together with the sign of protection of objects of related rights. Today, the relevant norms under the current profile Law are reflected as follows. Thus, according to Part 3 of Article 9 “3. For the emergence and exercise of copyright, registration of copyright or any other special registration thereof, as well as the fulfillment of any other formalities, is not required. The copyright holder may use the copyright protection sign to notify about his property rights, consisting of the Latin letter “C” circled – C, next to which the name (name) of the subject of property rights to the work and the year of the first publication of the work are indicated” [1].

According to Part 4 of Article 36 of the Law, “4. The subject of related rights to a performance or a phonogram or a videogram to notify about his property rights to the relevant object of related rights has the right to use a special sign of related rights protection, consisting of the Latin letter “P” surrounded by a circle – P, next to which are indicated the name (name) of the subject of property rights, the year of the first publication of the object of related rights. The sign of related rights protection is indicated in the phonogram, videogram, in each copy thereof or on the packaging containing a copy of the phonogram or videogram” [1].

Turning to the issue of international conventions in the field of related objects, we note the following. Thus, according to Art. 13 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 26.10.1961, "Broadcasting organizations shall enjoy the right to authorize or prohibit: (a) the retransmission of their television and radio broadcasts; (b) the fixation of their television and radio broadcasts; (c) the reproduction of: (i) fixations of their television and radio broadcasts made without their consent; (ii) fixations of their television and radio broadcasts made in accordance with the provisions of Article 15, if the reproduction was made for purposes other than those specified in these provisions; (d) the public communication of their television broadcasts, if it is made in places accessible to the public for a fee; the conditions for the implementation of broadcasting are regulated by the national legislation of the state in which protection of this right is requested" [9].

According to Article 3 of the Convention for the Protection of the Interests of Producers of Phonograms against Unauthorized Reproduction of Their Phonograms of 29.10.1971, "Each State Party shall retain the right to determine under its national law the legal measures by which this Convention shall be applied, which shall include one or more of the following measures: protection by means of the grant of copyright or other special right; protection by means of legislation on unfair competition; protection by means of criminal sanctions" [10].

According to Article 11 of the World Intellectual Property Organization Performances and Phonograms Treaty, adopted by the Diplomatic Conference on December 20, 1996, "Producers of phonograms shall have the exclusive right to authorize the direct or indirect reproduction of their phonograms by any means and in any form" [11].

Thus, the list of methods of using property rights to objects of related rights is also quite wide, which was illustrated above by the example of international conventions in the field of protection and enforcement of related rights, but so far the interests of direct creators of related rights remain not covered by the content of the latter.

## 5. Conclusions.

In connection with the issues discussed above, it is considered appropriate to answer the question of why the creators of related rights objects are impersonal, why the creators of related rights cannot dispose of their property rights, because such rights "supposedly" do not exist, although the author of the article demonstrated the assignment of personal non-property rights to the creators of related rights objects (for example, an employment contract (contract) in terms of the distribution of property rights to service related rights objects, an agreement on the creation to order and use of the related rights object), and accordingly why the creators of related rights objects are deprived of the opportunity to recognize and protect their rights. The answer is, in our opinion, the truncated granting of the actual creators of related rights to the possession, use and disposal of intellectual property rights. In fact, intellectual property rights are two-component, consisting of personal non-property rights and property rights. However, for some reason this concept does not work in the case of actual creators of related rights.

Thus, according to the content of Art. 418 of the Code "1. Intellectual property right is the right of a person to the result of intellectual, creative activity or to another object of intellectual property rights, defined by this Code and other law. 2. Intellectual property right consists of personal non-property rights of intellectual property and (or) property rights of intellectual property, the content of which in relation to certain objects of intellectual property rights is defined by this Code and other law. 3. Intellectual property right is inviolable. No one may be deprived of intellectual property rights or restricted in its exercise, except in cases provided for by law" [5].

Why does this concept not work? It does not work, in the author's opinion, due to some exaggeration of the technical component in the creation of such objects, due to the approach that when creating copyright objects there is an author, while when creating objects of related rights there is "as if" no creator. Although, according to Part 1 of Article 421 of the Code "1. Subjects of intellectual property rights are: the creator (creators) of the object of intellectual property rights (author, performer, inventor, etc.) and other persons

who own personal non-property and (or) property rights to intellectual property in accordance with this Code, another law or agreement” [5].

What is necessary, from the point of view of the author of the article, to correct the highlighted situation around creators of related rights?

The necessary steps are to introduce the creator into the composition of subjects of related rights, indicating him as the first subject according to the content of the relevant articles of both the Code and the relevant Law. By combining copyright objects and objects of related rights into one large group of objects, while maintaining the structure of the current profile Law in terms of allocating objects of related rights to a separate section. This will ensure a fair balance between creators of objects of related rights and other subjects of related rights.

Thus, creators of objects of related rights will be able to own, use and dispose of their rights, and accordingly act as a party to agreements on the disposal of property rights to objects of related rights, and accordingly use the guarantees provided by the Constitution of Ukraine.

In conclusion, we note that in the opinion of the author of the work, the proposed changes are intended to eliminate such gaps as the recognition of the creator of related rights as the subject of related rights, as well as a clear prescription of the moment of transfer of property rights, as well as the absence of automatic transfer of property rights from the creator under a number of contracts, and will not only be aimed at harmonizing with the guarantees provided by the Constitution of Ukraine, namely Art. 41, Art. 54, and will also be fully consistent with the understanding of the content of intellectual property rights under the Civil Code of Ukraine, which consists of personal non-property and property rights. Why is this necessary? In our opinion, this is necessary for a consistent understanding of intellectual property rights, the content of intellectual property rights, the disposal of property rights to objects of intellectual property rights (and in the case of this scientific work, property rights to objects of related rights) and the protection of intellectual property rights.

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**N. H. Pecherova,**

*Candidate of Juridical Sciences*

*E-mail: [mrs.pecherova@gmail.com](mailto:mrs.pecherova@gmail.com)*

*ORCID: 0000-0001-9750-1693*