

**SUBJECTS OF AN ADMINISTRATIVE AND LEGAL ENSURING OF
INCORPOREAL RIGHTS ***

Paper describes the subjects of administrative and legal support of intellectual property in Ukraine.

***Keywords:** subjects of the support of intellectual property, objects of intellectual property, authorities.*

We'll continue the consideration of the administrative and legal rights on objects of intellectual property. In the first part of the article we covered the subjects of general competencies, subjects of sectoral competence and subjects that are included in the system of law enforcement. The next (fourth) subgroup is the subjects of the system of regulatory authorities. The subjects included in the system of controlling bodies. Regulators are acting in close cooperation with law enforcement authorities in the field of rule of law in a particular sphere, including in the field of intellectual property. And although this feature seems like is secondary in relation to law enforcement functions, it occupies a prominent place in the system of protection and protection of relevant rights, as is litmus paper, which first responds to violations of rights and gives a signal to law enforcement authorities who directly carry the functions of protection and defence of human rights. Regulators, as well as law enforcement, acting on behalf of the State and the State system of intellectual property rights and they also, as law enforcement authorities along with the performance of its main functions is to take a part in organizational securing of rights on objects of intellectual property.

To the regulatory agencies, which are endowed with the functions of management in the field of intellectual property, include the Antimonopoly Committee of Ukraine, the Ministry of revenue and charges Ukraine, Ministry of

* continuation

economic development and trade (with functions in the field of standardisation, certification and quality) and the Ministry of Finance of Ukraine (with the functions of ensuring implementation of State, financial, budgetary, tax, customs policy, policy in the field of public financial control). Antimonopoly Committee of Ukraine provides protection from unfair competition, misappropriation of intellectual property. The bodies of the Committee considering the case on violation of antitrust and competition laws, accept the required for the execution of the decision about the termination of violations, impose fines in cases stipulated by law, send law enforcement authorities about violations of legislation containing signs of crime, and recommendations concerning measures to prevent the committing of crimes [1, 105].

The Ministry of revenue and charges of Ukraine, as successor of the State Tax Service of Ukraine and State Customs Service of Ukraine, which was reorganized in accordance with Presidential Decree No 141/2013 from 18.03.2013 [2], exercises control over the timeliness, accuracy, completeness of accrual and payment of taxes and duties (compulsory payments). This feature applies to taxes when imported or manufactured with the use of objects of intellectual property. In addition, it provides the registration move through the customs border of Ukraine goods containing items of intellectual property, and carries out complex legislation measures transported through the customs border of Ukraine goods manufactured in violation of intellectual property rights. Procedure for the submission and consideration of the representations, the procedure for keeping a register are determined by the Cabinet of Ministers of Ukraine. After the registration of the corresponding goods in the specifically authorized central body of the executive power in the sphere of Customs Customs authorities of Ukraine take steps to prevent the uncontrolled movement across the customs border of Ukraine of counterfeit goods [1, p. 105].

Ministry of Ukraine belongs to the system of organs of executive power and is the main body in the system of central executive bodies of the forming and

ensuring of realization of the State policy of economic and social development, pricing, industrial, investment, economic policy, State policy in the sphere of trade, State regional policy, State policy on the development of entrepreneurship, technical regulation and consumer protection, as well as inter-agency coordination on issues of economic and social cooperation between Ukraine and the European Union. Ministry of Economy of Ukraine is the specifically authorized body in the sphere of public procurement, metrology, on public-private partnership, defense orders. In addition, the Ministry of Economic Development and Trade of Ukraine is a successor: the Ministry of Economy of Ukraine; The Ministry of Industrial Policy of Ukraine in the formation and implementation of industrial policy; State Committee of Ukraine for regulatory policy and entrepreneurship in the formulation and implementation of the State Regulatory Policy, government policy on the development of entrepreneurship, licensing and permitting system in the sphere of economic activity; civil service regulation of Ukraine in the formation and implementation of state policy in the sphere of technical regulation (standardization, metrology, certification, assessment (confirmation) of conformity of quality management), as well as the formulation and implementation of state policy in the field of consumer protection (except functions to implement a State policy of State control in the sphere of consumer protection; functions with the formulation and implementation of the state policy on the safety of food products [3].

Ministry of Economic Development and Trade, and more precisely the regulatory Department of the Ministry, which today performs the functions of the State Committee of Ukraine for technical regulation and consumer policy, which eliminated, performance of works in the field of standardisation, certification and quality ensures the protection of rights of consumers, and also controls the advertising in this area. Department operating units on standardization, conformity assessment, implementing quality management system, the registry of the State system of certification, etc. The Ministry of Finance of Ukraine is the main body

in the system of central executive bodies of the forming and ensuring of realization of State financial, budgetary, tax, customs policy, policy in the sphere of State financial control, Treasury maintenance budget, accounting, issue and conducting lotteries, organizing and controlling the manufacturing of securities, documents of strict, extraction, production, use and storage of precious metals and precious stones [3]. Considering the definition of public administration in the field of administrative-legal maintenance of intellectual property rights and including the financial and economic subjects of executive bodies, need to consider the ratio of administrative and financial law.

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The subjects included in the system of organs of the judiciary. This qualifying subgroup of subjects must be attributed to the courts of specialized jurisdiction and general jurisdiction. The offences in the field of intellectual

property, in accordance with the Code of Ukraine on administrative offences [5], include those provided for in articles: 512 (object of the infringement of intellectual property rights), 1071 (violation of legislation about the tribal deal in cattle breeding), 1643 (unfair competition), 1646 (displaying and distributing films without a state license for the right to distribute and show films), 1647 (violation of conditions of distribution and display films, provided by a public identity for the right to distribute and show films), 1649 (illegal distribution of copies of audiovisual works, phonograms, videograms, computer programs, databases) 16413 (violation of legislation regulating the manufacture, export, import of disks for laser reading systems, exporting, importing equipment and raw materials for their production).

In the structure of the judiciary in the composition of the Supreme Economic Court of Ukraine in 2001 created the Judicial Chamber of the review cases in commercial disputes relating to the protection of rights on objects of intellectual property. Specializing in the field of intellectual property rights and individual judges of the commercial courts of the Autonomous Republic of Crimea, regions, cities of Kyiv and Sevastopol, as well as appellate jurisdiction. It should be noted that the majority of judges who carry out professional activity in this plane, received, in addition to the professional, as well as higher education in the field of intellectual property, allowing them to more high professional level to solve litigation [1, 94]. The creation of the judicial Chamber for consideration of cases concerning intellectual property protection and to increasing awareness of judges in the field of intellectual property is a significant step to improve the provision of rights to objects of intellectual property. Because only knowledgeable judges in this field may be qualified to understand the case and render a verdict only – correct. But the problems in this sphere are still enough. Disputes of infringement of intellectual property rights are also the courts of general jurisdiction and administrative courts. But the shortage of judges with expertise in the field of intellectual property. As D. Pritika, "Unfortunately, experience and practice cases

of this category we still not enough. In conditions of insufficient growth of production, the presence of other crisis phenomena in the economy of intellectual, scientific and technical potential and creative activity that relates to the humanitarian sphere of human life, suffered considerable losses. 3 for this reason, the number of court cases for the protection of rights to intellectual property objects is negligible” [6, 53–54; 7, 63].

And it's not even so. More likely the problem arises in the general illiteracy of citizens of the State in the sphere of intellectual property rights. Many who do not see sense in the protection of their rights to the created object of intellectual property, arguing that it is still pocuplât'. Therefore, in our opinion, in the first place, you need to raise the General level of literacy and culture in this area, the privivati that created the intellectual property necessary to appropriately protect and use. Only through the prism of total literacy in this area we will be able to come to the established legal relations. The subjects included in the system of organs of the Prosecutor's Office. The main functions of the Prosecutor's Office also applies and representing the interests of the citizen or the State in court that found in the Bill of Ukraine "About Prosecutor's Office" [8.5]. A. Mikhailenko says that such representation is complex legal, where the Prosecutor, in exercise of its authority to implement the constitutional representative functions, commits in the Court on behalf of the State the procedural steps in order to protect the legitimate interests of the citizen [6, 54; 9, 27]. Despite the fact that the above mentioned the notion of the term "protection" as the restoration of violated rights on objects of intellectual property, including in court, to conclude that the organs of the Procurator's Office also may participate in the defense of rights on objects of intellectual property.

The subjects included in the system of State regulation in the sphere of technology transfer. This is a subgroup of subjects, which is involved in State regulation of rights on objects of intellectual property. It is defined by the law of Ukraine "About State Regulation of the Activities in the Field of Technology

Transfer", which establishes the legal, economic, organizational and financial principles of State regulation of activities in the field of technology transfer and aims at ensuring the effective use of scientific-technical and intellectual potential of Ukraine, ensuring production, protection of property rights on domestic technology and/or their components on the territory of Member States, where the planned or carried out their use, expansion of international scientific and technical cooperation in this field [10].

To public authorities to secure the rights to intellectual property objects should include the authorized body for the development and implementation of State policy in the sphere of technology transfer, the representative body for the implementation of the State policy in the sphere of technology transfer, other central and local executive authorities, local self-government bodies, as well as the National Academy of Sciences of Ukraine and Industry Academy of Sciences. Today functions to ensure the realization of state policy in the field of transfer (transfer) of technologies and intellectual property that are fully or partially at the expense of the State Budget, include, as it's noted above, the competence of the Ministry of Education and Science of Ukraine [11], but a clear determination as to the authorized body for the development and implementation of State policy in the sphere of technology transfer and of the authorized body on the implementation of State policy in the sphere of technology transfer. National Academy of Sciences of Ukraine and the Industry Academy of Sciences unquestionably engaged in specified and the sphere of state management feature, because according to art. 1 of the Law of Ukraine "About the Peculiarities of the Legal Regime of National Academy of Sciences of Ukraine, Academy of Science and the Status of their Property Complex" [12]:

As a separate group, you must select the state institutions, organizations and enterprises as another kind of subjects involved in securing the rights to objects of intellectual property. Of course, they can participate in the protection, protection or legal regulation of intellectual property, only if, when the executive authorities

delegated by them of their powers to control the scope of intellectual property. The subjects of the subgroup, which we defined above, should include: the Ukrainian Institute of Industrial Property (Ukrpatent), Ukrainian Center of Innovations and patent information services, the Ukrainian Agency of Copyright and Related Rights, State Enterprise «Intelzakhyst». Ukrainian Institute of industrial property (Ukrpatent) is a state enterprise, which was established on the basis of the State Patent Office of Ukraine and the State Enterprise "Institute of Industrial Property. At this time the Ukrpatent subordinates civil service of intellectual property of Ukraine and belongs to the sphere of the Ministry of education and science of Ukraine. Ukrpatent is the only in Ukraine by the authority that conducts the examination of applications for industrial property objects (inventions, utility models, industrial designs, trademarks for goods and services, the topography of integrated circuits, the indication of the origin of goods, etc.) in compliance with the terms of the legal protection, makes the decisions regarding the issuance of security documents, provides implementation of State registration of industrial property and the official publication of the information about them. In order to facilitate patent search in the system created by patent-information base examination (PIB) and patent documentation Fund for Public Use [1, 98–100].

Summing up the assessment and definition of the subjects, one could argue that they create the corresponding coherent subsystem of rights on the objects of intellectual property. This system represents the activity of all State bodies regarding the management of the above subjects on social relations in the sphere of security, defense and legal regulation of intellectual property rights. Identifying the subjects of administrative and legal maintenance of intellectual property rights and making an attempt to their classification should be borne in mind that some actors can belong to different groups, having multiple functions with respect to intellectual property. This is clearly evident from the analysis. Therefore, in our opinion, the classification of subjects necessary to carry out not only by functional activity, which is enshrined in the legal regulations. Because the law is constantly

evolving and emerging as the other actors, and changing functions of already existing entities. Therefore, in our opinion, the classification of administrative-legal maintenance of rights on objects of intellectual property at this time could have the following form: the subjects of general competence; business sector competence; the subjects included in the system of law enforcement; the subjects included in the system of controlling bodies; the subjects included in the system of organs of the judiciary; the subjects included in the system of prosecution; the subjects included in the system of State regulation in the sphere of technology transfer; Government agencies, organizations and businesses, which authorities delegate part of its powers to control the scope of intellectual property. In addition, indirectly you can select a group of subjects that directly affect state management to ensure intellectual property rights, it is a scientific institution, whose activities are directly linked with the legal research of the problems of intellectual property rights and non-State actors (public) administration. Of course, over time, the composition of the subjects may vary, with the development of the Institute of intellectual property, their composition will grow, and the classification to become more challenging and complex, that can be identified by new actors (the normative defined) that are included in the respective scope (normative defined) to ensure the rights of intellectual property, such as in the field of technology transfer.

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