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

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

Keywords: *subjects of the support of intellectual property rights, intellectual property, government.*

Ensuring of the intellectual property rights resides in dynamic – it is improving legal support in this field on the basis of scientific research, the new types of intellectual property appear, as well as their rights are determined, etc. Moreover, in an era of the rapid development of science and technology, production, creation of new technologies and materials, including the development of electronic equipment and software, the security and protection of intellectual property acquires the special significance. The ensuring of intellectual property rights brings significant economic benefit for the owner and for the development of the particular country. We know that thanks to the implementation of high-tech industries are successfully developing in the economies of such countries as Japan, Germany, the United States and others.

Therefore, the definition of administrative-legal support of intellectual property rights is important in terms of ensuring coherence in the field of intellectual property and related fields, such as: scientific and scientific-technical activity, industry, information, etc. The relevance of the research consists in the necessity of improving the domestic legal situation regarding legal ensuring of scientific activity and the rights to objects of intellectual property. Research in the field of a legal support of scientific activities and protection created during this activity, intellectual property rights, is represented in the writings of the domestic

scientists: in the sphere of civil (A. Pastukhov, A. Podoprigora, O. Podoprigora) and information rights (I. Aristova, K. Bielyakov, R. Kalyuzhny, O. Kopan, V. Tsymbalyuk), public administration (V. Shamray), scientists and administrative (O. Germanova, and G. Zaporozhets, P. Krainev, O. M. Melnyk, O. Orlyuk, A. Svyatotsky, A. Comachashvili, A. Chukayeva) and others; as well as in the works of foreign (Russian) scientists: A. Andryushina, S. Majburd, V. Pisachkina, N. Myagkova and others. Meanwhile, research in this area is far not exhausted and needs a further systematic scientific analysis. The purpose of paper is to obtain new scientific knowledge in the field of legal rights on objects of intellectual property. The reason is the consideration of the system of rights to the objects of intellectual property, that needs to clarify several issues. Business structure of these social relations is varied, because in the process of providing intellectual property rights are involved primarily the owners of copyright and property rights, authorities, organizations, etc. Furthermore, these public relations are multi-faceted by nature and content, have a different scope.

Administrative law is a set of legal norms regulating social relations that are formed during the provision of bodies of executive power and bodies of local self-government of the implementation and protection of the rights, freedoms and lawful interests of individuals and legal entities, as well as in the process of State and self-governing administration in the spheres of socio-economic and administrative-political development and the protection of public order [1, p. 5]. In the administrative and legal science, the most common is the notion of Government as an independent kind of State activity that has organizational, by-law character, as well as a special group of public bodies (officials) regarding the practical implementation of the functions and tasks of the State in the process of the everyday and the direct leadership of economic, socio-cultural and administrative-political construction. Despite some differences, the authors note organizational, executive nature of managerial activities aimed at the implementation of tasks and functions of the State [2, p. 8]. Therefore, considering

the administrative and legal rights to the objects of intellectual property, and taking into account the above mentioned, it is considered to be appropriate to review the subjects of the State management in the field, as well as other entities that carry out a direct impact on the public administration

So, I. Vashchuk – representative in matters of intellectual property rights to its official website provides a list of State management system of intellectual property in Ukraine, which includes: the Supreme Council Committee on science and education; the Ministry of Education and Science of Ukraine, the State Department of Intellectual Property (now the State Office of Intellectual Property of Ukraine), state inspectors of intellectual property issues in the regions, the State Enterprise "Ukrainian Institute of Industrial Property" (Ukrpatent), the State Enterprise "Ukrainian Agency of Copyright and Related Rights", the inspectors of the Ukrainian Agency of Copyright and Related Rights in the Regions, the Institute of Intellectual Property and Law; The Appeal Chamber of the State Department of Intellectual Property, the State Enterprise «Intelzakhyst», Ukrainian Center for innovatics and patent information services property Institute; The Antimonopoly Committee of Ukraine, patent documentation Fund public use, public organizations: all-Ukrainian public organization "Union of Ukraine", an Antipiracy Agency Rights, Copyright Rights Society, Ukrainian Trademark Association, Ukrainian Association of Patent Attorneys, creative associations, collective management organizations of the proprietary rights to copyright or of the related rights: the State Enterprise "Ukrainian Agency of Copyright and Related Rights", All-Ukrainian Union of the Subjects of Copyright and Related Rights «Oberig», Public Organization "Association of "Pravovolodari" in the field of fine art and architectural activities" status, Ukrainian Association of Enterprises of the Music Alliance, Association of the Enterprises of the Ukrainian League of Musical Rights, public organization "Agency of the Protection of Performers' rights", all-Ukrainian public organization of Guild directors, Association "House of the Authors Music in Ukraine", public organization "Union of Writers of Ukraine", the

all-Ukrainian public organization "The Author", the Guild of Producers of Videograms and Phonograms, and even the institutions of forensic expertise [5].

As you can see, the list is long. But, in our opinion, the structure needs to be approached quite critical, moreover, as declared the author of "bodies of State governance system", i.e. the structures with the functions of management, that is a fair question. In connection with the administrative reform of the system of bodies changed, missing classification criteria, and, consequently, the list needs significant clarification and correction. Examining questions concerning subjects of administrative-legal regulation of the protection of rights to industrial designs, a. sh. Čomahašvili remarks, the latest are: the Parliament of Ukraine; the President Of Ukraine; the Cabinet Of Ministers Of Ukraine; the central executive body – the Ministry of education and science of Ukraine, which participates in within its competence in ensuring implementation of State policy in the field of intellectual property; State Department of intellectual property (now State Office of intellectual property of Ukraine), which participates in within its competence in ensuring implementation of State policy in the field of intellectual property; State Enterprise "Ukrainian Institute of industrial property", which performs the functions of body examination of the objects of industrial property, in particular the examination of industrial designs for the compliance with conditions of the protection ability; State Enterprise "Ukrainian Agency of Copyrighting and Related rights", which administers the rights of authors, in particular provides cumulative protection of the rights to industrial design; the State Institute of Intellectual Property and Law School, which train the specialists in the field of intellectual property, including the experts from the Patent Office; employers; non-governmental organizations; legal persons; citizens [6, p. 62–63].

If you treat the subjects of administrative-legal regulation of the protection of rights on the objects of intellectual property, including industrial designs, then listed subjects are really the part of the overall system of intellectual property rights, but many of them are not included in the list (for example, law enforcement

entities, controlling, etc.). Probably, the most successful is the classification of the subjects offered and G. Zaporozhets [7, p. 37]. The author divides the business management in three groups:

1. The subjects included in the body of the legislature, the Verkhovna Rada of Ukraine (the Committee on Science and Education and Sub-Committee on Innovation and Intellectual Property Protection).

2. The subjects included in the system of executive bodies: the subjects of general competence (the Cabinet of Ministers of Ukraine and the Ministry of Justice); subjects of sectoral skills (MES and the State Service for the protection of Rights to Plant Varieties of the Ministry of Agrarian Policy of Ukraine); subjects of the special competence, which the author considers to be law enforcement bodies (organs of Internal Affairs of Ukraine, sat, the Tax Police of Ukraine) and regulators (Antimonopoly Committee of Ukraine, the State Tax Service of Ukraine, the State Customs Service), as well as public enterprises, institutions and organizations, which under certain conditions can be attributed to the subjects of management activity; subjects that are included in the system of organs of the judiciary (courts of general and specialized competencies); subjects that are included in the system of organs of the Prosecutor's Office.

3. Non-State subjects of public administration (National Union of Writers of Ukraine, etc.) and other non-governmental organizations (the Antipiracy Union of Ukraine, etc.). In general, if you treat the subjects as the State system of intellectual property in its broadest sense, i.e. as the activities of the entire population of government agencies and non-governmental structures, organizing the influence of the special subjects of rights on public relations that arise in this field, we can agree with the author. But because of the limits of our study, and above mentioned that the public administration is an activity of special group of public bodies (officials), which has an organizational, reliable character [2, p. 8], we focus our attention on the activities of the executive bodies in the field of intellectual activity, as well as on the subjects, who delegated the authorities to

perform certain administrative functions and subjects that directly affect the process of public administration in this field. On the basis of the foregoing, it seems possible to offer their vision of the structure of subjects of rights on the objects of intellectual property, and to consider their competence. Considering the fact that the scope of rights on objects of intellectual property affects almost all the spheres of human activity as legal, economic, investment and innovative, private sector property and business, etc., and the scale of the system of executive bodies, the Group of the specified scope is the most widespread. Thus, subjects specified groups depending on the competence can be divided into:

1. Subjects of general competence. This qualifying subgroup must include, first, the Cabinet of Ministers of Ukraine, as the supreme organ of executive power. As notes G. Zaporozhets [7, p. 39], to the subjects of this subgroup should refer also the Ministry of Justice of Ukraine, which in accordance with the dispositions, participates in drafting legislative acts on the issues of intellectual property, coordinates the lawmaking in this sphere, carries out legal examination of the prepared projects of normative acts, is responsible for the adaptation of domestic legislation to the legislation of the European Union"[8].

2. Subjects of industry competence. This qualifying subgroup of subjects includes the authorities that are created specifically to perform functions related to the Organization of Rights on the Objects of Intellectual Property, or the way they carry a considerable amount of functions in relation to the specified scope. The central body of the Executive power in the sphere of intellectual property acts as the Ministry of Education and Science of Ukraine [9, p. 94], which is the primary body in the system of central executive bodies to ensure the formulation and implementation of the State Policy in the spheres of education and science, intellectual property, scientific, scientific-technical, and innovation activity, informatization, formation and use of national electronic information resources, creation of conditions for the development of the information societies as well as

in the sphere of State supervision (control) over the activities of educational institutions, regardless of their subordination and forms of ownership"[10].

According to the regulations of the MES of Ukraine: "Defines prospects and priority directions of the development of ... intellectual property ...; ensures the development of ... intellectual self ...; provides integration ... intellectual property ... with strict observance of the principles of conservation and protection of national interests; provides implementation of the 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"[10]. But the immediacy of the coordination and management of the intellectual property sector is engaged in public service of intellectual property of Ukraine (hereinafter – State Office), which defined the central body of the Executive Power, which are directed and coordinated by the Cabinet of Ministers through the Ministry of Education and Science of Ukraine [10, par. 10 PE 3]. The State Service is included in the system of organs of executive power and ensures the implementation of state policy in the field of intellectual property [11]. Yet one of the subjects of the control that you want to include in the specified qualifying subgroup, is the State Service for the protection of rights to plant varieties of the Ministry of Agrarian Policy of Ukraine [12]. Service according to the Bill of Ukraine "About the Protection of Rights to Plant Varieties" [13] implements the State policy in the sphere of the protection of rights to plant varieties and is a government body of the public administration.

So, we have defined the subjects of general and sectoral competences, but in relation to the subjects of a special competence it should be noted. A number of scientists, including G. Zaporozhets, defines this category as the subjects of special competence which typically includes law enforcement agencies and regulators. But, in our view, the word "special" is uncertain and does not set specific or appropriate competences, which would have defined this term. So, for example, in drafting and filing for invention and utility model applications [14] it is stated that in preparing the application for an invention or utility model it should be avoided

indefinite words the meaning of which can be interpreted differently depending on the circumstances. Therefore, in our opinion, the definition of the "subjects of special competence" is, in our view, inappropriate, except of the cases when law enforcement and regulators have different functions and tasks. So now we consider the following subset of subjects – law enforcement authorities.

3. The subjects which are included in the system of law enforcement bodies. Termination of violations, along with the restoration of rights on objects of an intellectual property is a part of the intellectual property rights securing. Therefore, law enforcement authorities as the of protection of intellectual property objects occupy a prominent place. Also, along with performing their basic functions, they are also a part of organizational securing of rights on the objects of intellectual property. I.e., we draw a conclusion, considering the subject matter of our research that raises an urgent need to investigate and fully explore the subjects and install that same bodies fall under the concept of "law enforcement". Ukrainian legislation does not contain a clear list of the public bodies that have law enforcement. Bill of Ukraine "About State Protection of Court Employees and Law Enforcement" [15] gives a partial list of bodies for the purposes of this Bill, which are considered to be law enforcement one [16]. According to the Bill of Ukraine "About State Protection of Court employees and law enforcement to enforcement include: organs of the Prosecutor's Office, internal affairs, security service, military service law in the Ukrainian armed forces, customs authorities, border agencies, organs of the State Tax Service (customs authorities and organs of the State Tax Service now – Ministry of revenue and fees), the organs and institutions of the penitentiary, investigative isolators, organs of the State Financial Control, fisheries, State Forest Protection, other bodies that carry out law enforcement activities.

The Bills of Ukraine "About Fundamentals of the National Security of Ukraine", [17] and "About Democratic Civil Control over the Military Organization and the Law Enforcement Authorities of the State" [18] are only the main features of enforcement. A number of implementing regulations contain inexhaustible lists

of such bodies [16]. So, for example, the reform of scientific and scientific-technical activities in the system of law enforcement, which was developed in the Concept of reforming of scientific and scientific-technical activity in the system of law enforcement [19], was approved by joint order of the Ministry of Internal Affairs, the security service of Ukraine, the State Committee for the protection of the state border of Ukraine, the State Customs Service of Ukraine and the State Tax Administration (now the Department of Revenue and Charges of Ukraine) № 185/78/122/102/138 of February, 28, 2003 [20]. Therefore, the document specifies that the law enforcement system includes the above mentioned organs. But, of course, this list is not exhaustive.

Exploring the types of law enforcement bodies of Ukraine, O. Sokolenko claims [21, p. 700] that as a law enforcement can be determined, first of all, only the Security Service of Ukraine, management of public and military service law in the armed forces of Ukraine. Yes, their formal legal status as law enforcement directly confirmed by art. 1 of the Bill of Ukraine "About Service Safety of Ukraine" [22], art. 11 of the Bill of Ukraine "About the State Protection of the Bodies of State Power of Ukraine and Officials" [23] and Art. 1 of the Bill about military service law in the armed forces of Ukraine[24]. According to several scholars, in addition to the above mentioned bodies to the list of law enforcement agencies is included the national security and Defense Council of Ukraine, bodies and institutions of justice, advocacy, vigilance committees, etc. But such an idea other scientists contradict arguments which are also research are. For example, V. Pivnenko notes that referring to law enforcement authorities, which only incompletely perform law enforcement functions are not included into the basic functions of the authority, is wrong. Furthermore, the author denies the inclusion into the list of law enforcement agencies of non-governmental organizations, emphasizing that "in Ukraine in accordance with the current legislation is only possible state law enforcement activity" [7, p. 43, 25].

With this position agrees and V. Malyarenko, which notes that when law enforcement agency understand the state institution (or state entity) that operates in the system of organs of power and performs on the basis of the Bill of State functions (power, organizational regulations, testing, etc.) in different spheres of internal and external activities of the Ukrainian State [26]. We fully share this opinion. Considering the diversity of law enforcement, we can state that the issue of direct law enforcement system in science is quite ambiguous. This is caused by the lack of a coherent understanding of the fact that the theoretical systems and types of law enforcement and legislative regulation of the criteria of belonging of those or other law enforcement institutions to law enforcement [21, p. 699].

Considering the above mentioned, you agree to comply with G. Zaporozhets, which law enforcement bodies offers include only those bodies that were created by the State to perform a certain set law enforcement function and this function is dominant in the body [7, p. 46]. Therefore, in our view, the system of law enforcement bodies of Ukraine may resemble the following: organs of the Prosecutor's Office, internal affairs, the security service and tax police, administration of the State of Ukraine, military service law in the armed forces of Ukraine, bodies and institutions of the penitentiary, the internal troops of the Ministry of Internal Affairs organs guarding the State border and other law enforcement agencies. A number of law enforcement agencies is actively involved in the field of rights on the objects of intellectual property, namely in the exercise of the functions of protection, protection and regulation. This is evidenced by normative acts, which is fixed at the State level function to such subjects. The main law enforcement agencies involved in the process of providing intellectual property rights include the organs of Internal Affairs, the Security Service of Ukraine, Ukrainian Tax Police [7, p. 46].

Of course, the involvement of law enforcement officers to enforce intellectual property rights is caused by numerous violations of the legislation in this field and the need to take measures on the restoration of rights on the objects

of intellectual property. Protection is, of course, the latest form of the activity in the recovery of the lost rights. In our opinion, the dominant form of the activities in the field of intellectual property should be the prevention of violations of the rights of authors and copyright holders. It is the fact that the violations in this field are caused by the necessity of the creation in the structure of these bodies the subdivisions, with the functions of law in this field for the support of the Intellectual Property Department to commit economic crime, Office to commit cybercrime in unit criminal police of the Ministry of Internal Affairs, Department of counterintelligence protection of the economy of the State Security Service of Ukraine and the operational control of the Chief Tax Mille

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