

TO THE ISSUE OF IMPROVING THE SYSTEM OF ADMINISTRATIVE AND LEGAL PROTECTION OF THE OBJECTS OF INTELLECTUAL PROPERTY RIGHT

ЩОДО ПИТАННЯ ВДОСКОНАЛЕННЯ СИСТЕМИ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ ОБ'ЄКТІВ ПРАВА ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

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The article is devoted to highlighting the topical issue and the main provisions for the development of administrative and legal protection of intellectual property. Administrative and legal protection takes a significant sector among the ways to counter infringements of intellectual property rights due to specific legal relationships between the parties. The coherent system of intellectual property protection created in Ukraine. It includes the legislation as well as appropriate infrastructure and mechanisms for its implementation. This system is generally in accordance with international standards in the field of intellectual property. Administrative and legal security support for intellectual property rights is based on the laws and standard regulations of Ukraine in intellectual property. Literature data analysis determined the government departments that have powers in intellectual property and realise state administrative function of intellectual property protection: authorities of the Ministry of Internal Affairs, customs authorities, the Department of Investigation of Unfair Competition of the Antimonopoly Committee of Ukraine and state inspectors in matters related to intellectual property. Also, established the main causes that hinder full implementation of public administration at the level of organisational and functional mechanism: imperfect differentiation, vaguely definition and, in some cases, duplication of powers for authorities engaged in the protection of intellectual property.

The pending problem is coordination of activities and administrative legal support for subjects of the administrative right of intellectual property. The new laws and standard regulations of Ukraine can be of service: they may compensate the liquidation factor of the State Intellectual Property Service in order to improve conditions, dynamics and material resources for the process of intellectual property rights protection in Ukraine.

It's important to determine the strategy of combating infringements of intellectual property rights, and in accordance with it to develop the legal rules, which would have intensified opposition to these violations from law enforcement at the regional and local levels. For this purpose, it is necessary to conduct structural and organisational changes in the apparatus of local law enforcement with separation of structural units that specialise in preventing and combating infringements of intellectual property rights.

It was established that training and improving skills of specialists in intellectual property is one of the key directions of system improvement for administrative and legal protection against violations of intellectual property rights and capacity building of law enforcement officers.

Key words: intellectual property, objects of intellectual property right, forms, methods of protection of intellectual property rights, administrative and legal protection.

Стаття присвячена висвітленню актуальної проблеми та основних положень щодо розвитку адміністративно-правового захисту інтелектуальної власності. Адміністративно-правовий захист займає значний сектор серед способів протидії порушенням прав інтелектуальної власності за рахунок специфічних правовідносин сторін. Очікує на вирішення проблема координації діяльності й правового забезпечення суб'єктів адміністративного права інтелектуальної власності. У нагоді можуть бути нові законодавчі та нормативні акти України, які б компенсували фактор ліквідації Державної служби інтелектуальної власності, з метою покращення умов, динаміки й матеріальних ресурсів процесу захисту інтелектуальної власності в Україні.

Ключові слова: інтелектуальна власність, об'єкти права інтелектуальної власності, форми, способи захисту прав інтелектуальної власності, адміністративно-правовий захист.

Статья посвящена актуальной проблеме и анализу основных положений развития административно-правовой защиты интеллектуальной собственности. Административно-правовая защита занимает значительный сектор среди способов противодействия нарушениям прав интеллектуальной собственности за счет специфических правоотношений сторон. Ожидает на решение проблема координации деятельности и правового обеспечения субъектов административного права интеллектуальной собственности. Помочь решению этой проблемы могут новые законодательные и нормативные акты Украины, которые бы компенсировали в том числе и фактор ликвидации Государственной службы интеллектуальной собственности, с целью улучшения условий динамики и материальных ресурсов процесса защиты интеллектуальной собственности.

Ключевые слова: интеллектуальная собственность, объекты права интеллектуальной собственности, формы, способы защиты прав интеллектуальной собственности, административно-правовая защита.

One of the important human rights is the right to the results of the intellectual creative activity. The effectiveness of the protection of intellectual property depends on many factors, the most important of which is the existence of perfect legislation and effective mechanisms for its implementation, including protection of rights. The issues of improving the legal framework in the area of intellectual property received especially attention in the last few years, especially in the context of European integration and Ukraine's accession to the WTO (World Trade Organization). Public authorities competent to protect intellectual property rights

gradually improve legislation. However, its practical application reveals a lot of problems. And this is about both: legislative contradictions and conflicts of laws; ambiguous, and sometimes incorrect interpretation of certain norms [1, p. 311]. This leads to the loss of the effective mechanism for protection of intellectual property rights in the courts. For copyright holders, this causes low guarantees of full protection for their rights. There is a coherent system of intellectual property protection created in Ukraine. The system includes the legislation as well as appropriate infrastructure and mechanisms for its implementation. This sys-

tem is generally in accordance with international standards in the field of intellectual property.

Protection of intellectual property rights is a legal support of the inviolability of these rights and their stability, and in the case of violation – application of coercive measures aimed to restore these rights. The owner of intellectual property rights has the right to protection only during violation or contesting his rights and legal interests, and implements the right under the civil, criminal and administrative legal relations raised from this [2, p. 51].

Administrative and legal security support for intellectual property rights is based on the next laws and standard regulations: The Decree of the President of Ukraine “On Approval of the Regulation on the State Service of Intellectual Property of Ukraine” No. 436 of 8 April 2011; the Decree of the President of Ukraine “On Measures Concerning the Protection of Intellectual Property in Ukraine” No. 285 of 27 April 2001; the Resolution of the Verkhovna Rada of Ukraine “On Recommendations of Parliamentary Hearings “Protection of Intellectual Property Rights in Ukraine: Issues of Legislative Support and Law Enforcement” No. 1243-16 of 27 June 2007; the Law of Ukraine “On Protection of Rights to Industrial Designs” No. 3688-XII of 15 December 1993 (current edition of 05.12.2012 No. 5460-17); the Law of Ukraine “On Protection of Rights to Inventions and Utility Models” No. 3687-XII of 15 December 1993 (current edition of 05.12.2012 No. 5460-17); the Law of Ukraine “On Protection of Rights to Trademarks for Goods and Services” No. 3689-XII of 15 December 1993 (current edition of 21.05.2015 No. 317-19); the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Regulation On the State Inspector on Intellectual Property of the State Service of Intellectual Property” No. 674 of 17 May 2002 (current edition of 09.01.2014 p. No. 933-2013-n); the Law of Ukraine “On Information” No. 2657-XII of 2 October 1992 (current edition of 25.06.2016, No. 1405-19); the Law of Ukraine “On Copyright and Related Rights” No. 3792-XII of 23.12.1993 (current edition of 27.10.2016, No. 1651-19); the Order of the Ministry of Internal Affairs of Ukraine “On the Organization of the Departments of State Service on Economic Crime Prevention of the Ministry of Internal Affairs of Ukraine” No. 769 of 3 September 2012 (current edition of 17.12.2012, No. 1165); the Code of Ukraine on Administrative Offences No. 8073-X of 7 December 1984 (current edition of 30.11.2016, No. 1723-19; 1727-19); the Code of Administrative Procedure of Ukraine of 06.07.2005, No. 2747-IV (current edition of 30.11.2016, No. 1727-19); the Civil Code of Ukraine of 16.01.2003 No. 435-IV (current edition of 02.11.2016, No. 1666-19), etc.

As one of the agencies of law enforcement activity, the departments of the Ministry of Internal Affairs of Ukraine play important role in the implementation of administrative and legal procedure in protecting intellectual property rights. Thus, according to the National Strategy of the development of intellectual property in Ukraine for the period until 2020, the Ministry of Internal Affairs of Ukraine in the manner and in the ways prescribed by law protects the objects of intellectual property from illegal encroachments. The Ministry takes system-based measures, particularly aimed to intensify opposition to illegal import, copying and distribution within state territory of counterfeit audio and video products, computer software, exposing the production and sale of counterfeit products using trademarks of known domestic and foreign producers. In the Ministry the tasks to detect and prevent violations of intellectual property rights are vested in the Department of State Service on Economic Crime Prevention. In turn, according to the Convention on cybercrime, within the Ministry, the departments combating cybercrime are responsible for protection from infringements of copyright and related rights on the Internet.

The Ministry regularly organises operational and preventive events, such as operation “Intelligence”, operation “Pirates”, etc., practising with subjects of the intellectual property

market. The most of the priorities have the next directions: combating sales and manufacturing of counterfeit products with trademarks of famous Ukrainian and foreign manufacturers/service suppliers, as well as the fight against Internet piracy [3].

In the study [4, p. 188], the author notes that law enforcement on combating infringement of intellectual property rights isn't active enough. The reason is they aren't supported by relevant rules of law on the local and regional levels. And they require the definition of the strategy against infringements of intellectual property rights. In practice, the activation of combating violations of intellectual property rights from law enforcement can appear only through the development strategy, which currently didn't find its definition in Ukraine as well as at the regional and local levels yet.

Also the problems of intellectual property protection includes preventive law enforcement activities to strengthen the system of ensuring intellectual property rights by developing the regulatory framework, cooperation of public authorities on the state of law and order while individuals implement intellectual property rights and structural, and introduction of structural and organizational changes to the apparatuses of local law enforcement [5, p. 196–199].

An important issue of intellectual property rights protection is the level of competence of law enforcement officers in this area. For today here works less than one percent of workers with higher education in the field of intellectual property. This confirms the need to strengthen state influence on the training of specialists in the field of intellectual property [6, p. 41–42].

The protection of intellectual property rights is the set of measures aimed to identify and restore intellectual property rights in case of violations [7, p. 401].

Legislation of Ukraine provides a solution in the administrative procedure of wide range of issues concerning the protection of intellectual property rights. Administrative responsibility for violations occurs, if these offences by nature don't entail the criminal responsibility in accordance with law [2, p. 59].

The administrative law appears as one of the most significant and important factors influencing the development of public administration in general, and the regulation of intellectual property in particular. Stressing the specificity of administrative and legal relations of any kind, it should be noted that in the modern science of administrative law it's a custom to highlight their characteristic properties, such as [8, p. 49]: rights and obligations of these relations associated with the activity of the executive bodies; one of the parties of this relations is always the subject of administrative authority; administrative and law relationships almost always occur from the initiative of one of the parties; dispute resolutions between the parties of administrative and legal relations may be found not only in legal but also in administrative procedure; there is no equality of the parties in these relations, so they find their direct expression in the legal inequality of members; they may arise against the wishes or consent of the other party of relations.

We must accept the author's view [9, p. 284], that the notes that law enforcement on combating infringement of intellectual property rights isn't active enough. The reason is they aren't supported by relevant rules of law on the local and regional levels. And they require the definition of the strategy against infringements of intellectual property rights.

The study [10, p.12] determines the government departments that have powers in intellectual property and realize state administrative function of intellectual property protection: authorities of the Ministry of Internal Affairs, customs authorities, the Department of Investigation of Unfair Competition of the Antimonopoly Committee of Ukraine and state inspectors in matters related to intellectual property. Also, established the main causes that hinder full implementation of public administration at the level of organisational and functional mechanism: imperfect differentiation, vaguely defini-

tion and, in some cases, duplication of powers for authorities engaged in the protection of intellectual property.

In view of the above, we consider to summarize the main points concerning development of administrative and legal protection of intellectual property: Administrative protection occupies a significant sector of infringements of intellectual property rights because of specific legal regulations between the parties; pending problem of activity coordination and legal support for the subjects of intellectual property rights; the new laws and standard regulations of Ukraine can be of service: they may compensate the liquidation factor of the State Intellectual Property Service in order to improve conditions, dynamics and material resources for the process of intellectual property rights protection in Ukraine.

It's important to determine the strategy of combating infringements of intellectual property rights, and in accordance with it to develop the legal rules, which would have intensified opposition to these violations from law enforcement at the regional and local levels. For this purpose, it is necessary to conduct structural and organisational changes in the apparatus of local law enforcement with separation of structural units that specialise in preventing and combating infringements of intellectual property rights.

It was established that training and improving skills of specialists in intellectual property is one of the key directions of system improvement for administrative and legal protection against violations of intellectual property rights and capacity building of law enforcement officers.

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