

COPYRIGHT IN TIMES OF WAR: CHALLENGES AND STRATEGIES FOR АВТОРСЬКЕ ПРАВО В УМОВАХ ВІЙНИ: ВИКЛИКИ ТА СТРАТЕГІЇ ЗАХИСТУ

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The article is devoted to the problems arising in the field of intellectual property under martial law in Ukraine. Military actions create favourable conditions for infringement of intellectual property rights, such as distribution of counterfeit goods, piracy and illegal use of copyright. Law enforcement agencies are often focused on more important issues related to the security of the country, which leads to a loss of control over the illegal distribution of copyrighted works. Military conflict leads to losses in the music, film and literature industries, as well as to a large number of cyberattacks on information systems that are copyrighted and contain trade secrets, resulting in leakage of confidential information or loss of control over it.

A number of solutions are proposed to address these problems, including the creation of free or reduced-cost programmes to support and protect authors, and the development of effective procedures and mechanisms to ensure prompt and proper consideration of cases in court. To reduce the costs associated with the loss of property, it is proposed to increase public awareness of copyright, which should lead to a reduction in piracy and counterfeiting.

In the article, the authors call for united cooperation between government agencies, the public, international organisations and the private sector to achieve effective development and protection against copyright infringement even in times of war. In particular, the authors propose to develop protection of information systems and databases containing copyrighted materials through the use of state-of-the-art cybersecurity and encryption technologies, as well as to raise legal awareness of authors and users regarding digital security and personal data protection.

Key words: copyright, intellectual property, martial law, development of legislation in the field of intellectual property, problematic issues in the field of copyright protection.

Стаття присвячена розгляду проблем, що виникають в сфері інтелектуальної власності в умовах воєнного стану в Україні. Військові дії створюють сприятливі умови для порушення прав інтелектуальної власності, таких як поширення підроблених товарів, піратство та незаконне використання авторського права. Правоохоронні органи часто зосереджені на більш важливих питаннях, пов'язаних з безпекою країни, що призводить до втрати контролю за нелегальним розповсюдженням об'єктів авторського права. Військовий конфлікт призводить до втрати в індустрії музики, кіно та літератури, до великої кількості кібератак на інформаційні системи, що є об'єктами авторського права і зберігають комерційну таємницю, внаслідок чого відбувається витік конфіденційної інформації або втрата контролю за нею.

Запропоновано ряд рішень для вирішення цих проблем, включаючи створення безкоштовних або пільгових програм для підтримки та захисту авторів, розробку ефективних процедур та механізмів для забезпечення швидкого та належного розгляду справ у суді. Для зменшення витрат, пов'язаних з втратою майна, пропонується збільшити свідомість суспільства про авторські права, що має призвести до зменшення піратства та підробок.

В статті автори закликають до об'єднаної співпраці між урядовими органами, громадськістю, міжнародними організаціями та приватним сектором для досягнення ефективного розвитку та захисту від порушень авторського права навіть в умовах війни. Зокрема, запропоновано розробку захисту інформаційних систем та баз даних, що містять авторські матеріали, шляхом використання найсучасніших технологій кібербезпеки та шифрування, а також підвищення правової обізнаності авторів та користувачів щодо цифрової безпеки та захисту персональних даних.

Ключові слова: авторське право, інтелектуальна власність, воєнний стан, розвиток законодавства у сфері інтелектуальної власності, проблемні питання в сфері правового захисту авторського права.

Consideration of copyright issues under martial law is caused by a large number of intellectual property problems faced by Ukraine. In the context of military conflicts, when law enforcement agencies are focused on national security, intellectual property rights are often infringed, which contributes to the distribution of counterfeit goods, pirated products and illegal use of copyright.

There is also a loss of control over the illegal distribution of copyright objects caused by evacuation, destruction of property or inability to access property due to hostilities. In the music, film and literature industries, copyright infringement is known to require significant financial costs for authors and owners of intellectual property. Military conflicts lead to a large number of cyberattacks on information systems that are subject to copyright and store trade secrets, resulting in the leakage of confidential information or loss of control over it [1; 2; 3; 4]. Despite the challenges of today, research and development of regulations have not stopped. On the contrary, they have intensified to protect copyright, even during martial law.

In the second half of the 20th century, copyright became a fundamental right, which was recognised and enshrined in Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Economic,

Social and Cultural Rights. [5; 6]. In connection with the active development of intellectual property worldwide, as well as the need to address the wartime problems in the field of copyright faced by Ukraine, this issue was studied in the works of such scholars as V. Korshenko, M. Mordvintsev, D. Pashnev [7], L. Galupova [8], V. Mushenok [9], G. Prokhorova and D. Stefanovych [10], etc.

Article 54 of the Constitution of Ukraine guarantees citizens the freedom of literary, artistic, scientific and technical creativity, as well as the protection of intellectual property, their copyrights, moral and material interests arising from various types of intellectual property [11].

However, the war has posed its own challenges to our country, and since the beginning of the full-scale war, the Verkhovna Rada of Ukraine and the Government have been working on adapting the legal acts regulating relations in the field of intellectual property. On 1 April 2022, the Verkhovna Rada adopted the Law of Ukraine "On Protection of Intellectual Property Interests during Martial Law Imposed in Connection with the Armed Aggression of the Russian Federation against Ukraine", according to which, from the first day of the introduction of martial law in Ukraine, the time limits for actions related to the protection of intellectual property rights and the time limits related to the procedure for acquiring

such rights are suspended [12]. On 28 October 2022, the Cabinet of Ministers of Ukraine issued a decree “Some Issues of the National Intellectual Property Authority”, in connection with which the State Enterprise “Ukrainian Institute of Intellectual Property” ceased to perform the functions of the National Intellectual Property Authority and was replaced by the State Organisation “Ukrainian National Office of Intellectual Property and Innovations” (UNOPI) [13].

It should be noted that the next step in the regulation of relations in the field of intellectual property during the war was the Resolution of the Cabinet of Ministers of Ukraine “On Amendments to the Procedure for Payment of Fees for Actions Related to the Protection of Intellectual Property Rights”, which introduced new types of fees, clarified the old wording in accordance with the new, and increased certain benefits [14].

The Law of Ukraine “On Copyright and Related Rights” of 01 December 2022 (hereinafter – the Law) deserves special attention, which is based on the norms of European legislation, and also fulfils the obligations undertaken by Ukraine under the Association Agreement, it contains new provisions that meet modern requirements, clarifies terminology and excludes norms that are outdated and irrelevant today [15; 16]. With the active development of artificial intelligence, Ukraine is adapting its legislation to new conditions, and this Law contains a provision on non-original objects generated by a computer program and protected by sui generis law. The legislator also established and updated the cases of free use of works, as well as specified the right to fair compensation.

The next step in the regulation of legal relations in the field of copyright was the Order of the Ministry of Economy of Ukraine “On Approval of the Procedure for State Registration of Copyright and Agreements Concerning Property Rights to a Work”, which established only two forms of applications, one for state registration of copyright to a work and the other for state registration of an agreement concerning property rights to a work [17].

It is also worth paying attention to the court practice of resolving disputes in the field of intellectual property. For example, Prokhorova G. and Stefanovych D. note in their article that “during the first months of the full-scale invasion, the courts mainly considered cases related to criminal proceedings and national security issues. However, since May 2022, the situation has begun to change, so today most courts operate as usual, open new proceedings and consider cases in the field of intellectual property in the usual manner. In addition, the restoration of access to the online register of court decisions allows intellectual property rights holders and their representatives to monitor and analyse court practice without restrictions” [9].

The most interesting decisions of the Supreme Court on copyright issues during the war include:

– Resolution of 06 July 2022 in case No. 757/49265/19-ц, which states “that a claim for invalidation of state registration of copyright is not an appropriate way to protect rights, since the right to a work arises from the moment of its creation, therefore it is subject to rejection on this ground” [18];

– Resolution of 22 May 2023 in case No. 760/16961/19, which refers to “the attachment to the case file of a fragment of the source code of a computer program and the failure to provide the original work, which was the basis for dismissing the claim for the establishment of authorship” [19];

– Resolution of 10 May 2023 in case No. 348/1532/19-ц, which states “that the editor-compiler is not the author of the book, because the primary subject to whom the copyright belongs is the author of the work, in this case, it is a colonel of the Army of the Ukrainian People's Republic” [20].

Even during the war, Ukraine is actively working to improve and develop its intellectual property legislation. In our opinion, among the possible solutions to the problematic issues of copyright are: – increasing control and supervision by law enforcement agencies, even in times of war; – conducting educational campaigns among the population about copyright and its protection against infringement; – establishing tough sanctions for copyright infringers, including in wartime; – creating mechanisms and programmes for the protection of intellectual property rights; – developing improvised evacuation plans for copyright objects and their owners to preserve property.

Problematic issues in the field of copyright protection can be resolved by: – creating free or preferential programmes to support and protect authors; developing effective procedures and mechanisms to ensure prompt and proper consideration of cases in court.

In order to minimise losses from the loss of intellectual property, it is recommended, first, to raise public awareness of copyright, which will help fight piracy and counterfeiting; second, to create and apply technologies for copyright protection, such as digital signatures and Digital Rights Management (DRM) systems. In turn, reducing the risk of cyber-attacks will be positively facilitated by both the development of protection for information systems and databases containing copyrighted materials through the use of state-of-the-art cybersecurity and encryption technologies, and raising legal awareness of authors and users regarding digital security and personal data protection. Effective development and protection of copyright, especially in times of war, is possible only through joint efforts of the government, the public, international institutions and business.

REFERENCES

1. Gurzhii T. Freedom of thought vs. national security interests: the issues of hybrid warfare in Ukraine. *Polityka i Społeczeństwo*. 2019. №1 (17). P. 94-102.
2. Gurzhii T. Information law: challenges of hybrid warfare. *Foreign trade: economics, finance, law*. 2018. №4 (99). P. 16-27. (in Ukrainian)
3. Gurzhii T. Personal data protection in modern Ukraine: actual issues of delict prevention. *Práva a slobody človeka a občana: mechanizmus ich implementácie a ochrany rôznych oblastiach práva : zborník príspevkov z medzinárodnej vedeckej konferencie (Bratislava, 19-20 septembra 2014)*. P. 20-23.
4. Gurzhii T.O., Petrytskiy A.L. Legal protection of personal data: monograph. K.: KNTEU, 2020. P. 272 (in Ukrainian) URL: https://zakon.rada.gov.ua/laws/show/995_015#Text
5. Universal Declaration of Human Rights. Adopted and proclaimed by UN General Assembly resolution 217 A (III) of December 10, 1948. (in Ukrainian) URL: https://zakon.rada.gov.ua/laws/show/995_015#Text
6. International Covenant on Economic, Social and Cultural Rights. Adopted by the UN General Assembly on December 16, 1966. The International Covenant was ratified by the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR No. 2148-VIII (2148-08) of 19.10.73. (in Ukrainian) URL: https://zakon.rada.gov.ua/laws/show/995_042#Text
7. Korshenko V.A., Mordvintsev M.V., Pashnev D.V. International and domestic experience of legal protection of intellectual property in the Internet and some ways of disclosure of crimes in this area by the police / Information law; intellectual property law. ISSN 1999-5717 (Print), ISSN 2617-278X (Online). *Bulletin of KhNUA-Bulletin of KhNUA*. 2022. № 3(98). (in Ukrainian) URL: <https://dspace.univd.edu.ua/server/api/core/bitstreams/6690b8fc-7ca2-4b54-8816-200f9c1a793d/content>
8. Galupova L. I. Protection of intellectual property rights under martial law / L. I. Galupova // Ukraine's European choice, development of science and national security in the realities of large-scale military aggression and global challenges of the XXI century (to the 25th anniversary of the National University "Odesa Law Academy" and the 175th anniversary of the Odesa School of Law): in 2 volumes: materials of the International Scientific and Practical Conference (Odesa, June 17, 2022) / edited by S. V. Kivalov: Helvetica Publishing House, 2022. VOL. 2. P. 745-749. (in Ukrainian)

9. Mushenok V. V., Administrative responsibility in the system of state protection of intellectual property rights of a person / T. O. Gurzhiy, V. V. Mushenok, A. V. Gurzhiy, O. M. Sytnichenko. *Scientific Bulletin of Uzhhorod University. Series: Law*. 2023. Issue 79. T.2. P.49-54. (in Ukrainian).
10. Ganna Prokhorova, Dmytro Stefanovych. IP in Ukraine during Wartime: General Overview. 2023. URL: https://mamunya-ip.com/posts/ip-in-ukraine-during-wartime-general-overview?utm_source=mondaq&utm_medium=syndication&utm_term=Intellectual-Property&utm_content=articleoriginal&utm_campaign=article
11. Constitution of Ukraine of June 18, 1996. Vidomosti Verkhovnoi Rady Ukrayiny (VVR), 1996, No. 30, art. 141. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
12. On the Protection of Intellectual Property Interests during Martial Law Imposed in Connection with the Armed Aggression of the Russian Federation against Ukraine: Law of Ukraine of April 1, 2022, No. 2174-IX. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/2174-20#Text>
13. Property Authority: Order of the Cabinet of Ministers of Ukraine dated October 28, 2022 № 943-p. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/943-2022-%D1%80#Text>
14. On Amendments to the Procedure for Payment of Fees for Actions Related to the Protection of Intellectual Property Rights: CMU Resolution № 859. of August 15, 2023. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/859-2023-%D0%BF#Text>
15. Ukraine and the Association Agreement / Monitoring of Implementation 2014-2022. URL: <https://www.kas.de/documents/270026/22934445/UA+2023+UCEP+Ukraine+and+the+Association+Agreement.+Implementation+Monitoring+2014-2022.pdf/6c8e5702-ab17-c8cf-a2da-c11dacc6b66b?version=1.0&t=1685631554159>
16. On copyright and related rights: Law of Ukraine № 2811-IX of December 1, 2022. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/2811-20#n702>
17. On Approval of the Procedure for State Registration of Copyright and Agreements Concerning Property Rights to a Work: Order of the Ministry of Economy of Ukraine № 11319 August 16, 2023. (in Ukrainian) URL: <https://zakon.rada.gov.ua/laws/show/z1760-23#Text>
18. Decision of the Supreme Court composed of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation dated July 06, 2022 in the case e № 757/49265/19-ц. (in Ukrainian) URL: <https://reyestr.court.gov.ua/Review/105139782>
19. Resolution of the Supreme Court composed of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation of May 22, 2023 in the case № 760/16961/19. (in Ukrainian) URL: <https://reyestr.court.gov.ua/Review/111125576>
20. Ruling of the Supreme Court composed of the panel of judges of the First Judicial Chamber of the Civil Court of Cassation of May 10, 2023 in the case. (in Ukrainian) URL: <https://reyestr.court.gov.ua/Review/111192385>