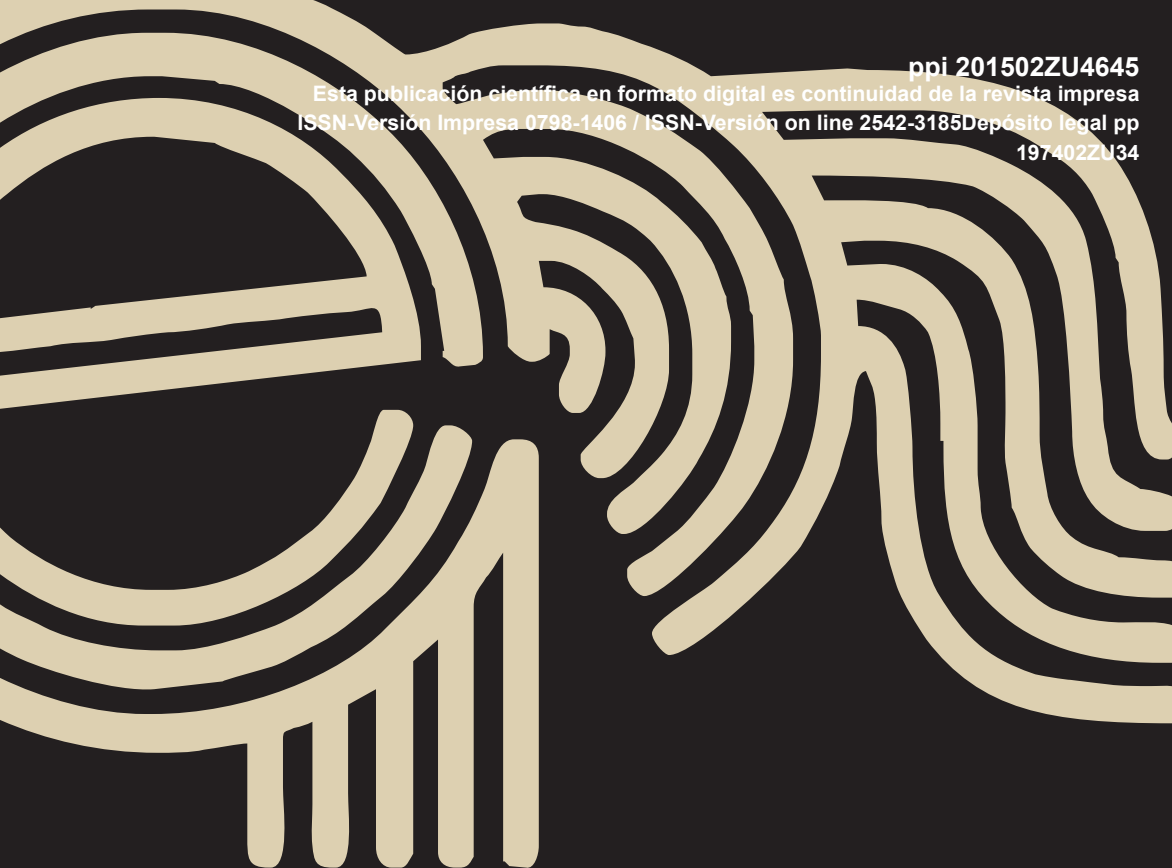


ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34



CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.41

Nº 77

Abril

Junio

2023

Peculiarities of state regulation of intellectual property rights protection

DOI: <https://doi.org/10.46398/cuestpol.4177.06>

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Abstract

The relevance of the study lies in the fact that in Ukraine under martial law the system of protection of intellectual property rights and mechanisms of its public administration is continuously transformed, which implies a scientific search to identify the problems that exist in this area and the development of effective practical solutions to overcome them. The purpose of the study was to identify the main features and obstacles arising in the implementation of public administration in the field of intellectual property and the implementation of protection of its objects under martial law in Ukraine. The research methods used were general and special legal methods of knowledge. Everything allows to conclude that there is an urgent need to develop new mechanisms of digital security of copyrights and to push forward the creation of blockchain accounting of copyright objects. Similarly, a revision of the approach to the evaluation of objects of intellectual property rights and the determination of the inventive level is needed, as a condition of possibility to adapt the legislation governing the matter to the needs of today's society.

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Keywords: intellectual activity; legal regulation; property and personal non-property rights; innovative activity; objects of intellectual property rights.

Peculiaridades de la regulación estatal de la protección de los derechos de propiedad intelectual

Resumen

La relevancia del estudio radica en el hecho de que en Ucrania bajo la ley marcial el sistema de protección de los derechos de propiedad intelectual y los mecanismos de su administración pública se transforma continuamente, lo que implica una búsqueda científica para identificar los problemas que existen en esta área y el desarrollo de soluciones prácticas eficaces para superarlos. El propósito del estudio fue identificar las principales características y los obstáculos que surgen en la aplicación de la administración pública en el ámbito de la propiedad intelectual y la aplicación de la protección de sus objetos bajo la ley marcial en Ucrania. Los métodos de investigación empleados fueron los jurídicos generales y especiales del conocimiento. Todo permite concluir que urge la necesidad de desarrollar nuevos mecanismos de seguridad digital de los derechos de autor e impulsar la creación de una contabilidad blockchain de los objetos de derechos de autor. Del mismo modo, se necesita una revisión del enfoque de la evaluación de los objetos de derechos de propiedad intelectual y la determinación del nivel inventivo, como condición de posibilidad para adecuar la legislación que rige la materia a las necesidades de la sociedad actual.

Palabras clave: actividad intelectual; regulación jurídica; derechos de propiedad y personales no patrimoniales; actividad innovadora; objetos de derechos de propiedad intelectual.

Introduction

Problems of protection of intellectual property rights are the subject of scientific research of domestic and foreign scientists. Relevance is confirmed by the fact that the effective development of the state requires the coordinated functioning of all elements of its system.

For the effective functioning of the economy is a prerequisite for the introduction of digital information and communication technologies and innovative methods of management and organization of society. The system of innovation can be effective only in creating favorable conditions for its creators, one of which is the introduction and implementation of an effective system of intellectual property rights protection.

Analysis of the specifics of state regulation of intellectual property in Ukraine shows that certain problems contribute to a decrease in the effectiveness of state regulation of intellectual property. Therefore, the state system of intellectual property protection in Ukraine faces new challenges aimed at further dissemination of international standards, optimization of legal protection and enforcement of intellectual property rights, dissemination of relevant knowledge in the field of intellectual property among different segments of the population.

The armed aggression against Ukraine has slowed down the transformation in the field of intellectual property and the protection of rights to its objects, in particular, we are talking about a significant reduction in the funding of budgetary scientific institutions and a pause in the implementation of a significant number of planned innovative projects. But alongside the difficulties, the military actions pushed the development of technologies in Ukraine, especially biotechnology, the medical sector and the food industry.

After the end of combat actions, it will be relevant to restore the energy sector and to develop the mining and processing industry. But along with the difficulties, the military actions pushed the development of technologies in Ukraine, especially biotechnology, the medical sector and the food industry, and after the end of hostilities, the restoration of the energy sector, the development of the mining and processing industry will be relevant.

An important role in the development of an economically independent state, the formation of a culture and respect for intellectual property rights should be played by public authorities, as well as their implementation of various activities both within the state and at the international level.

Improvement of legislation in the field of intellectual property, elimination of certain gaps in the law will contribute to the prevention of offenses in general, will strengthen the economic sphere of influence in international cooperation, and will allow the state to develop confidently in the field of innovation activity.

1. Research Methodology

During the study to achieve its goal and solve its problems were used general scientific methods of induction, deduction, analysis, generalization, special methods of prediction and modeling, other methods of scientific knowledge. General scientific methods were used to study the theoretical foundations of the system of protection of intellectual property rights in Ukraine. Special methods were used to comprehend the content of external and internal factors affecting the system of protection of intellectual property rights in Ukraine, as well as the development of practical recommendations for improving the mechanism of its functioning in Ukraine.

In order to achieve the goals and objectives of the study better and effectively, its implementation was divided into three independent stages, namely: study of the theoretical framework, analytical study, and development of practical recommendations and proposals based on the study.

2. Research Results

State regulation in the field of intellectual property in Ukraine under martial law is necessary for its effective recovery on the completion of the armed conflict, development, and use of inventive and rationalization achievements, attracting investment in the economy, development, and preservation of national scientific and technological and intellectual potential of the Ukrainian state. Effective state regulation in the field of intellectual property also contributes to the stabilization of the economic situation since both investors and the authors of intellectual property rights obtain the protection of their rights.

The main ways of protection of intellectual property rights in Ukraine can be defined as the following:

Table 1: Ways to protect the results of intellectual activity in Ukraine.

Name of the method of intellectual property protection in Ukraine	Content of the method of intellectual property protection in Ukraine
Administrative	It is provided only for public demonstration, violation of the conditions of public demonstration and duplication of films and videos without a rental certificate; unlawful introduction of brand names, trademarks.

Civil	Provides for the filing of a lawsuit in court for the recognition of the owner's rights; for the restoration of the situation that existed before the violation of the right; for the termination of actions that violate the right or threaten to violate it; for compensation for damage and lost profits.
Criminal	There is criminal liability for violation of copyright and related rights; violation of rights to an invention, utility model, industrial design, topography of an integrated circuit, plant variety, rationalization proposal; for illegal encroachment on trade secrets.

Source: Author's development.

In Ukraine, we can also distinguish two levels of state regulation of intellectual property rights:

Table 2: Levels of state regulation of intellectual property rights.

Name of the type of state regulation of intellectual property rights	The content of the type of state regulation of intellectual property rights
Individual	Regulation of relations with individuals who create and use objects of intellectual property rights
Collective/Group	Regulation of relations with legal entities that develop or use objects of intellectual property rights

Source: Author's development.

The system of protection of intellectual property in Ukraine can be defined as a totality of measures developed and implemented by the state competent authorities or individuals and legal entities without recourse to them, aimed at the establishment and recognition of intellectual property rights in case of their violation, denial or non-recognition (jurisdictional and non-jurisdictional) forms).

The state provides protection of intellectual property by means of the adoption of corresponding normative-legal acts in a certain sphere, the provision of carrying out of scientific research. The state is interested in the protection of intellectual rights because these rights are an integral part of those rights and freedoms that are guaranteed by the Constitution

of Ukraine, and also for the reason that this protection simultaneously contributes to the development of culture, education, improvement of production technologies, creates favorable conditions for investment, international trade of goods and services

Under the conditions of the problematic transition of Ukraine to a market economy, which is complicated by the introduction of martial law in our country, the system of intellectual property rights protection faces a number of external and internal obstacles for the implementation of its tasks. Among them, the following can be highlighted as the main:

1. obsolete traditional methods of protecting intellectual property rights, caused by the intensive development of digital information and communication technologies, as well as the emergence of opportunities to reproduce, store and distribute large amounts of information, occurs simultaneously with a decrease in the probability of locating an infringer and bringing him to justice;
2. the problem of the “exhaustion” of creativity associated with the active use of elements of artificial intelligence in scientific research and intelligence;
3. increase in the complexity and volume of the examination of applications for intellectual property, which entails a process of deterioration of its quality, as expert judgments on the inventive step become less objective and reliable;
4. insufficient quantity and availability of information on current developments in the intellectual property rights protection system for internal and external users;
5. lack of understanding of new norms and rules for certain goods and services due to the presence of restrictions under the provisions of martial law in Ukraine;
6. combating unfair competition; spread of counterfeit products and services on the territory of Ukraine, which are difficult to detect under wartime restrictions and to bring offenders to justice;
7. there is a lack of opportunities for full financial support from of budgetary organizations and institutions.

3. Discussion

“Promotion of innovations is vital for economic and social development of every democratic society” (Kodynetz and Maidanyk, 2019: 56). However, not only the introduction of innovative information and communication

technologies in the economic and social life of society is important, also one of the important conditions for the successful development of culture, science, and industry is the recognition of property and personal non-property rights for the authors of intellectual property objects and persons who have obtained rights to these objects, as well as ensuring their reliable protection.

At the present stage in Ukraine under martial law, there is an inevitable transformation of the national system of protection of intellectual property rights, which actualizes the scientific tasks of identifying problems in this area and developing effective solutions to overcome them. The process of formation of the system of state regulation of intellectual property in Ukraine continues, and the process of completing its formation at this stage is complicated by the armed aggression against our state, but the foundations of legal regulation of this system have already been created.

Ukraine has adopted and implemented a set of measures aimed at maintaining the full functioning of the intellectual property rights system, reducing the negative manifestations of illegal use of its objects, minimizing the harmful effects caused by it, as well as ensuring free access to certain types of intellectual product for the general public (e.g., artistic and literary works).

Though intellectual and related human rights have common features with other rights, providing human activity, they also have their specific nature. The world is changing, new information and communication technologies are being introduced, many innovative ideas are being implemented, thus, “in the age of the fourth industrial revolution, the metaverse is creating new waves in the world of internet technology and is promising to provide even better and more immersive ways to interact with other people” (Uchida, 2020).

The system of intellectual activity in Ukraine, as well as the mechanism of protection of rights to its results, is changing due to external and internal reasons. The first can include the global phenomena of social, political, and economic nature that affect it in all countries of the world. For example, “globalization has led, inter alia, to the multiplication of flows of international trade of goods, including those covered by intellectual property rights” (Di Cataldo, 2018). Internal factors can include, for example, the unstable political situation in a particular country or social unrest in that country.

“Intellectual property (IP) protection is designed to maintain scarcity in intangibles, and cent of maintaining scope for price and thereby profit” (David, 2019). Accordingly, in any democratic legal country, state regulation of intellectual property law in order to improve the investment climate, commercialization, and integration of new information and communication technologies is a high-priority state task. “The mechanism of the terms

“defense” in IP law is not one of those underground in investment law” (Upreti, 2021). In terms of intellectual property law in Ukraine, it is about protecting individuals and legal entities by granting them such rights, the second group of which is called bachelors contracts or operating licenses (Mehdipour and Bagheri, 2021).

In fact, the named contracts provide for the elimination of others to use without permission of the authors of intellectual property rights. Protection of intellectual property rights in Ukraine in the aspect of investment law is used through the implementation of compensation to investors for breach of contractual obligations committed by a sovereign state.

Another topical problem of protection of intellectual property rights is the problem of manufacturing, marketing, as well as importation into Ukraine of counterfeit products under martial law and given the fact that “in a country with low IPR protection, firms have much incentive to imitate better technology” (Uchida, 2020). In contrast, effective government regulation of intellectual property rights has positive economic consequences for countries, ...“Miscellaneous legal phenomena are now nestled in the intersection between intellectual property rights and human rights” (Samaranayake, 2022). The basic principles of state regulation of intellectual property rights are determined by the Constitution of Ukraine, the Codes of Ukraine, and the special laws of Ukraine.

An alternative way to resolve disputes about the recognition of the rights of the owner; about the restoration of the situation that existed before the violation of the right; about the termination of actions that violate the right or create a threat of violation; about compensation for damage and lost profits, as well as others related to the protection of intellectual property rights in Ukraine, is seen as complemented by mediation since it “...is a dispute resolution method, which is in vogue” (Wechs Hatanaka, 2018). In the conditions of martial law in Ukraine, such an out-of-court dispute resolution method out of court seems appropriate and effective.

Conclusions and Implications

The results of the study lead to the conclusion that under martial law imposed in Ukraine, it is advisable to:

1. development of new mechanisms of digital security of authors’ rights and creation of blockchain accounting of copyright objects;
2. revision of the approach to the evaluation of intellectual property rights objects and the determination of the inventive level;
3. ensuring growth in the number of technological expert organizations and transparency of their activities;

4. conducting information events to explain the content of current changes in domestic legislation on the protection of intellectual property rights.

It is also important to continue further scientific research to solve the above problems, as well as the practical implementation of theoretical developments and developments in life, because, despite the martial law, which is introduced in Ukraine, the implementation of these measures will help to overcome the obstacles to the development of the intellectual property rights protection system, as well as the economic growth of our state.

Bibliographic References

- DAVID, Matthew. 2019. "Consumption and intellectual property" In: *The Blackwell Encyclopedia of Sociology*. Vol. 1, No. 4, pp. 1-4.
- DI CATALDO, Vincenzo. 2018. "Goods in transit and trademark law" (and intellectual property law?)" In: *IIC - International Review of Intellectual Property and Competition Law*. Vol. 49, No. 4, pp. 436-451.
- KODYNETZ, Anatoly; MAIDANYK, Liubov. 2019. "Commercialization of Intellectual Property Rights as Foundation for Innovation" In: *Nauka Ta Innovacii*. Vol. 15, No. 4, pp. 91-102.
- MEHDIPOUR, Mohammad; BAGHERI, Parviz. 2021. "The franchise agreement in International Trade: Its advantages and disadvantages" In: *Cuestiones Políticas*. Vol. 39, No. 69, pp. 296-316.
- SAMARANAYAKE, Wathsala. 2022. "A critical evaluation of the interface between Intellectual Property Rights and human rights with special emphasis on Indigenous Intellectual Property" In: *The Journal of World Intellectual Property*. Vol. 25, No. 2, pp. 412-431.
- UCHIDA, Hideaki. 2020. "The big push to a knowledge-based economy with Intellectual Property Rights Protection" In: *Review of Development Economics*. Vol. 24, No. 4, pp. 1551-1559.
- UPRETI, Pratyush. 2021. "The role of national and international intellectual property law and policy in reconceptualising the definition of investment" In: *International Review of Intellectual Property and Competition Law*. Vol. 52, No. 2, pp.103-136.
- WECHS HATANAKA, Asako. 2018. "Optimising mediation for intellectual property law Perspectives from EU, French and UK law" In: *IIC - International Review of Intellectual Property and Competition Law*. Vol. 49, No. 4, pp. 384-412.



UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.41 N° 77

*Esta revista fue editada en formato digital y publicada en abril de 2023, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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