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Ulitina O. Directive 2001/84/EC (on the resale right): foreign experience

P. 5-10

The article is dedicated to the analysis of the Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art provisions. The resale right for the benefit of the author of an original work of art still remains one of the most current issues in the sphere of copyright commercialization.

The process of implementation of the provisions of the Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art in European countries is analyzed. The experience of the harmonizing the norms of the national legislation and the Directive 2001/84/EC provisions in countries such as the United Kingdom, Austria, Spain, the Netherlands has been researched.

The relevance of the study lies in the need for European integration processes for Ukraine. Euro integration processes today are one of the most priority directions of Ukraine's development. Harmonization of the national legislation with the legislation of the European Union is a priority task. Harmonization of Ukraine's intellectual property legislation in this regard is an important part of the current reforms. The article 190 «Resale right» of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part is correlated with the provisions of Directive 2001/84 of the European Parliament and

of the Council of 27 September 2001 on the on the resale right for the benefit of the author of an original work of art.

Taking into account modern reforms in intellectual property, it is reasonable to study the experience of foreign countries on the implementation of provisions of Directive 2001/84/EC, since the resale right is quite controversial and current issue.

Key words: copyright, resale right, Directive on the resale right, Directive 2001/84/EC, EU

Fedorova N. Teleformat as a component of the market of information resources. Broadcasting and relaying programs

P. 11-17

The article considers teleformat as a component of the information resources market. The analysis of broadcast and retransmission in accordance with the teleformat is carried out.

The EU experience in the field of broadcasting and relaying programs is studied and prospects for Ukraine are considered. Proposals for improving legislation are made, namely, additions to terminology such as «translation» and «reproduction».

The influence of technological progress on the activities of broadcasting organizations is not considered legislatively. Therefore, with the aim of ensuring the protection of the rights of broadcasting organizations in the era of convergence, when the activity related to broadcasting, when it is no longer limited to traditional platforms, author proposes to formulate a new definition of the term «broadcasting» in such a way that it is technologically neutral and adapted to new technologies.

Consequently, the broadcast is the initial transmission of programs (broadcasts) of broadcasting organizations (television or broadcast), carried out in coded or open form, using any technical means and platforms for reception by viewers / listeners.

«Reproduction is the recording of an audiovisual work, sound work, videogram, phonogram for the purpose of making one or more copies of the work in any material form and recording any transmission, or part thereof (directly or indirectly, temporarily or permanently) in material, electronic form or other form that the computer can read».

In other words, any way of making copies of the television format (as an object of copyright), programs (programs in any form) by broadcasters will be recognized as the term «reproduction». Instead, this right will only apply if the original (primary) record of the transfer was made without the consent of the broadcast organization. If the broadcasting organization has given another person the right to record their transmission, then it loses the ability to control the rewrite, that is, it is deprived of the right to reproduce the recording.

Key words: teleformat, broadcast, retransmission, reproduction, fixation of the program on the material carrier, fixation of the content in electronic form

Trotska V. Digital museums and limitation of authors' propertyrights: legislation and practice EU

P. 18-29

The author in the article analyzes the content of such a phenomenon as «digital museums». Digital museums are conventionally divided into the following types: «brochure museums» which provide advisory information for museum; and

there are «content museums», which are databases of museum collections; and there are «virtual museums» or «museums without walls», which offer a variety of online content. The article describes the features of the last of the listed types of digital museums in details.

The definitions of «museum» and «digital museum» are analyzed. The author determined the difference between them.

The author particularly analyses the EU legislation on exceptions and limitation of copyright for museums (Directive 2001/29/EC on the harmonisationof certain aspects of copyright and related rights in the information society; Directive 2012/28/EU on certain permitted uses of orphan works).

It is determined that the conditions for the free use of works, are:

1. the activities of museums regarding the use of works should not include direct or indirect economic or commercial advantage;
2. access to works is permitted for the purpose of research or personal study;
3. access to works should be provided through dedicated terminals in the museum’s building.

The author gives practical examples of the activities of digital museums.

The article also describes the norms of the laws of European countries regarding the free use of works by museums.

It is concluded that in the legislation of European countries the norms concerning the limitation of property rights of authors may be tentatively divided into free reproduction (digitization) of works for: internal-museum purposes (for example, to save a work, or replace a damaged work); external-museum purposes (for example, reproduction (digitization) and provision of access to works by visitors at the museum

premises for the purpose of research or private study). It is also determined that the free use of works from a museum collection for the latter purposes, which raises a number of practical issues in the implementation of the EU legislation rules. The author in the articte analyses the problems of application of the legislation in the sphere of copyright, gives examples from European judicial practices.At the end of the article the author draws conclusions.

Key words: museums, digital museums, the Internet, free use of works, limitation of property rights of authors, reproduction (digitization) of works

Diduk A. Features of the conclusion of the contract on the transfer of know-how

P. 30-38

The article is sanctified to the problem questions of concept of agreement on the transmission of now-how. Legalnature of agreement on the transmission of now-how remains properly not certain and investigational not enough. It is conditioned by almost complete absence of legalbinding overs in relation to the order of conclusion, use and dissolution of such agreements, by their varieties, specific of maintenance and some other terms. For this reason legalnature of agreement on the transmission of now-how remains properly not certain and investigational not enoughro. Also it is conditioned by the specific of such offtype object of civil law as now-how that is passed by agreement.

It should be noted that an agreement on the transmission of now-how is a agreement in the system of civillegal agreements. It be possible to say, that he is the unmentioned civil legal agreement that has the specific and features and differs from other agreements in a civil law. Coming from it, expediently, that parties of agreement on the transmission of now-how had the proper name, but not adopted it from other agreements.

Agreements on the transmission of now-how in literature usually examined as of the same type with license contracts. Thus the first are named the agreements of unlicensed license, other by a patent license, and if the question is simultaneously about the grant of right on the transmission of now-how, then such agreements are named the agreements of the mixed license. In with it is there a question, or it is possible to name an agreement on the transmission of now-how a license contract? It is imagined, that no, taking into account substantial differences between a license contract and agreement on the transmission of now-how. Doubtful also there is the use in him of term «proprietor» scientific and technical knowledge and terms «licensor» and «licensee». The subject of agreement can be not only scientific and technical but also other knowledge and not only knowledge. Payment of reward is obligatory not in all cases, also a grant of technical help however is obligatory. Organization products that's licensed is not an only aim.

Thus, the name of agreement on the transmission of now-how is not very successful, and more faithful not quite exact. However, such name of this agreement already with stands in international and national contractual practice, that is why, not to create a mess with terminology, in future it will be used a term «agreement on the transmission of now-how» exactly.

An agreement on the transmission of now-how in spite of vague similarity with other civil legal agreements (as, for example, with a license contract, and also aught and with the agreements of purchase-sale, contract, property найму, lease, about joint activity and other) must take the separate place in the system of social compacts. As such generallines quite not enough for his qualification from the point of view of legal nature as none of them, nor as their variety. Accordingly, an agreement on the transmission now-how is fully an independent agreement in the system of other civil legal

agreements, different from them, that needs the independent fixing and mechanism of the legal adjusting.

Keywords: now-how, agreement about the transmission of now-how, license, license contract, licenziar, licensee, cesiya, cedent, cessionary

Zaykivskyi O., Onistrat O. State policy improvement towards responsibility for violation of intellectual property rights in the defense sphere

P. 39-47

The legislation of Ukraine regulating activities related to the development of armaments and military equipment, as well as the implementation of international military-technical cooperation, concerning the responsibility provided for violation of intellectual property rights in the sphere of defense is considered. The importance of improving the legislation on the settlement of issues of responsibility for violations of intellectual property in the defense sector and the proposals for improving it are elaborated.

Ukraine as an independent state is undergoing a rather difficult stage of its formation, overcoming many problems on its way. However, in general, they are associated with one problem – the lack of responsibility for their actions or inaction, the decisions taken or vice versa has not been taken, and at all levels – from a citizen to the president. This is what generates corruption and theft of the budget, even in the war, repairing roads in the rain or snow, and all our other disadvantages. Therefore, as long as we are not responsible for the violations committed, regardless of party affiliation or family and other ties, radical changes in the public life of our state will not occur. This also applies to violations of intellectual property rights.

During the years of independence, Ukraine has not really formed a state policy on intellectual property, nor has developed strategies for the development of this important segment of public life. At the beginning, we laid the foundation and built our own structure, and for more than 10 years we reformed what was not completed. There is no strategic vision of what we want to achieve, so all changes and reforms take place in a haphazard and chaotic way. And because of this, the number of violations only increases, so our state can never completely get rid of the stigma of one of the biggest violators of intellectual property rights.

The problem of responsibility for violating intellectual property rights is particularly important in the defense sector, although not everyone understands it. Indeed, when developing of armaments and military equipment and its subsequent using, especially when exported to other countries, significant financial losses for authors and producers, as well as image losses for the whole state are possible. And with the transition of our military-industrial complex from the repair and modernization of armaments and military equipment of Soviet standards, to the development of the latest models of own samples of armaments and military equipment or in cooperation with foreign partners, the issue of responsibility for the violation of intellectual property rights has become even more acute.

The current state of intellectual property protection in the defense sector indicates the need to improve the regulation of issues of the formation and implementation of state policy, the principles of state control in this area, as well as the powers and responsibilities of all actors involved in the defense sector.

The imperfection of the legal framework gives the legal possibility of unauthorized use of objects of intellectual property rights created during the execution of the state de-fense order, including (especially) the implementation of the

military-technical cooperation. This is facilitated by the lack of responsibility for actions that create a threat of violation of intellectual property rights or contribute to the violation.

The great amount of all violations can be prevented by state contractors with proper work on a contractual basis in the event of a responsible attitude towards ensuring national interests and proper performance of their functions by public officials. At the moment, possible actions or inaction of state-owned customers that directly violate the norms of intellectual property rights, or indirectly, the commission of which seems to have no direct relation, but leads in the future to serious violations of intellectual property rights.

For solution of this problem is necessary to systematically and comprehensively approach the improvement of intellectual property legislation, especially regarding the definition of liability for violations in this area in the development and use of armaments and military equipment.

Key words: national security and defense, intellectual property, defense sphere, objects of intellectual property rights, armament and military equipment, military-technical cooperation

Nyznhyi A. Some issues of improvement of judicial methods of protection of intellectual property rights to inventions (utility models)

P. 48-56

The article is devoted to the analysis of actual proposals for the improvement of legislation in the field of protection of intellectual property rights to inventions (utility models). The conclusion is drawn on the lack of development of such a

method of protection as «the recognition of intellectual property rights as invalid» and the premature inclusion of it in the Law of Ukraine «On the protection of rights to inventions and utility models». The expediency of preserving the possibility of the recognition of a patent as invalid in court is substantiated. Proposals for the improvement of the current legislation in terms of regulation at the level of law of the consequences of invalidation of patents for inventions (utility models) are expressed. It is proposed to fix in Art. 33 of the Law of Ukraine «On protection of rights to inventions and utility models» that in the case of recognition of a patent as invalid the decision of the Institution shall be deemed to have not entered into force from the moment of its adoption, and the Institution is obliged to enter in the relevant register a record of recognition of the patent as invalid as well as to inform about it in the Bulletin.

Keywords: recognition of rights invalid, recognition of a patent invalid, state registration of rights to inventions (utility models)

Semchyk V. Formation of the property of Ukrzaliznytsia (Ukrainian railway): intellectual property issues

P. 57-62

The article is devoted to the issue of the place of intellectual property in the process of forming the property of the public joint-stock company «Ukrzaliznytsia» («Ukrainian Railway»). The article analyzes the current norms of Ukrainian legislation which regulate the assignment of intellectual property to the formation of the property of Ukrzaliznytsia.

The reorganization of Ukrainian railways raised important issues on the place of the intellectual property of Ukrzaliznytsia, as well as the determination of the legal

status and effects of intellectual property rights transactions on intellectual property objects which are owned by Ukrzaliznytsia.

The intellectual property rights can be considered as intangible assets only after passing the procedure for state registration of such rights, and for the realization of any operations with intangible assets that are proprietary intellectual property rights; they should acquire appropriate legal protection and obtain the estimated value. This procedure guarantees such rights to be placed on the balance of Ukrzaliznytsia.

The importance of protecting intellectual property rights in this area is underlined. The experience of China in this area is analyzed, which indicates the necessity and urgency of developing this issue in Ukraine.

Key words: intellectual property rights, Ukrzaliznytsia, intangible assets

Orlyuk O. On the issue of the improvement of regulatory and legal support of the patent attorneys' activities in Ukraine

P. 63-74

This article is dedicated to the improving the legal and regulatory issues of the work of patent attorneys in Ukraine. Taking into account selected by Ukraine European direction of the development, it is necessary to create a civilized intellectual property market, there is also a need to resolve issues that arise in connection with the work of patent attorneys in Ukraine at the legislative level. The article emphasizes the need to borrow European experience in this field. On the basis of the analysis of the norms of European legislation and the legislation of some European countries in the field of regulation of the work of patent attorneys, a

number of proposals have been developed to improve the norms of the national legislation. The article's approach to the regulation of the work of patent attorneys in Ukraine will allow taking into account European standards and best international practices in this area. The analysis also gives grounds to say that as a result of the development of European integration processes, there appeared two new specialties: European Patent Attorney and European Trademark Attorney. The high requirements for both professions should be taken into account as a model to which Ukraine should join, developing its own approaches in the field of carrying out professional activities by patent attorneys. In the article it is claimed that national legislation must include the model and qualification requirements to be met by a candidate for the profession of a patent attorney. It is necessary to provide the obligatory periodic reporting, provide certain information about the activity of the patent attorney, confirming the level of qualification.

Key words: patent attorneys, European Trademark Attorney, national intellectual property protection system, professional ethics

Dehtiarenko Y. Current and problem issues of Ukrainian legislation in the field of protection of a variety of plants in the context of the agreement on association with the EU

P. 75-82

The article analyzes Ukrainian legislation in the field of plant variety protection in the rapport with the entry into force of the Agreement on the Association of Ukraine with the EU. Identified problems that require an urgent solution and suggested approaches to their decision, as currently is the

adaptation of Ukrainian legislation in the field of intellectual property to the European Union legislation is at the same time with the legal reform in Ukraine, as well as one of the most important indicators of a developed and progressive state of law is an efficiently organized, high-quality legal system for the protection of intellectual property and a modern legal framework guaranteeing its protection, covering all public life spheres and clearly regulating legal relations in it and also provides appropriate methods and means of influencing the state administration and protection of intellectual property rights.

Key words: intellectual property, legal regulation, protection of intellectual property rights, Agreement on Association of Ukraine with the EU, adaptation of legislation, protection of plant varieties

Blazhivska N. General characteristics of protection of the intellectual property rights under the case law of the European court of human rights

P. 83-92

The purpose of our research is to provide a general description of the intellectual property rights protection under the case law of the European Court of Human Rights. To achieve this goal, the following tasks have been set: to establish the articles of the European Convention on Human Rights which, by their content, cover intellectual property rights; find out the conditions of protection of intellectual property rights under the case law of the European Court of Human Rights.

At a result of the research, we arrive at the following conclusions. The protection undercase law of the European Court of Human Rights covers valuable interest of intellectual

property (within the Article 1 of the First Protocol) and the personal non-property rights of the creator (in accordance with the Article 8 of the European Convention on Human Rights), as well as freedom of literary, artistic, scientific and technical creativity (according to the Article 10 the European Convention on Human Rights).

The analysis of the case law of the European Court of Human Rights shows at least two conditions for the protection of intellectual property rights. First, the existence of the right itself (in this case, the right to intellectual property is not recognized in cases where there is a «dispute over the interpretation and application of national legislation», at the same time, the refusal to provide legal protection for results intellectual creative activity may be considered an interference with the right of intellectual property). Second, intellectual property rights should be exercised within the scales and scopespre-scribed by law (for example, the issuance of a compulsory license aimed at preventing the abuse of a monopoly position).

Key words: intellectual property rights, case law of the European court of human rights

For infomation

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