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## Intellectual property rights

### 12.1. General provisions

The law of Ukraine defines an intellectual property right as a right of a person to a result of intellectual, creative activity or to another object of intellectual property. Intellectual property comprises the results of intellectual and creative activity of a person, such as computer programs, inventions, utility models, trademarks, trade names, literary, artistic or scientific works, etc.

The protection of intellectual property rights is carried out both at the national legislative level and in accordance with the international agreements and treaties, ratified by Ukraine, that are an integral part of the Ukrainian law.

In the field of the intellectual property right protection Ukraine has ratified several international treaties and agreements, including:

- 1) the Convention Establishing the World Intellectual Property Organization;
- 2) the Universal Copyright Convention;
- 3) the Berne Convention for the Protection of Literary and Artistic Works;
- 4) the Paris Convention for the Protection of Industrial Property;
- 5) the Patent Cooperation Treaty;
- 6) the Madrid Agreement Concerning the International Registration of Marks;
- 7) the Protocol to the Madrid Agreement Concerning the International Registration of Marks;

- 8) the Trademark Law Treaty;
- 9) the Nice Agreement Concerning the International Classification of Goods and Services for the Registration of Marks;
- 10) the International Convention for the Protection of New Varieties of Plants;
- 11) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

According to Article 41 of the Constitution of Ukraine, everyone has the right to own, use and dispose of his/her property, the results of his/her intellectual and creative activity.

The author of the object of intellectual property (the performer, the inventor, etc.) and others possessing personal non-property or proprietary rights under the legislation or the agreement are considered the subject of the intellectual property right.

According to Article 29 of the Law of Ukraine "On Copyright and Related Rights", property rights of authors and other persons, having the exclusive copyright, are inheritable. Personal non-property rights are not inheritable. However, the successors have the right to protect the authorship of the work and to resist distortion, corruption or other modification of the work, as well as any other offence against the work that may inflict harm to the author's honour and reputation.

## 12.2. Subject of intellectual property right

The results of a person's intellectual and creative activity are the subject of the intellectual property right. Thus, the results of this activity (regardless of the form, purpose, value and method of display) include the inventions, utility models, as well as scientific, literary and artistic works.

Subjects of intellectual property right are divided into four groups:

- 1) copyright and related rights, which include, in particular, literary and artistic works, audio-visual works, works of painting, architecture, sculpture and graphic arts, photographic works, translations, computer programs, databases if, according to the selection or arrangement of their components, they are the result of an intellectual activity;
- 2) objects of the industrial property right (inventions, utility models, industrial designs);
- 3) plant varieties and animal breeds;
- 4) the brand identity of products and economic turnover participants, such as domain names, trademarks for goods and services, trade names, geographical indications and trade secrets.



## USE OF IMAGE FOR COMMERCIAL PURPOSES IN UKRAINE

### Use of image for commercial purposes in Ukraine

The publication discusses legal basis of use of images for commercial purposes, including use of images from photobanks and fair use for commercial purposes. In addition, the issue of liability for breach of intellectual property rights is also covered.

View [Use of image for commercial purposes in Ukraine](#).

#### 12.2.1. Copyright and related rights

The copyright arises at the moment of the work creation. The Copyright does not cover ideas, processes, business methods or mathematical concepts as such.

The author of the work is the primary subject of copyright. Unless the contrary is proved, the individual, mentioned on the original or copy of the work (presumption of authorship) in the ordinary manner is considered to be the author of the work. Other individuals and legal entities, having acquired rights to the work under the agreement or law, are also subjects of copyright.

The Copyright also covers the protection of related rights. The objects of related rights are: literary, musical, theatrical works, phonograms, video grams, programs of broadcasting organizations, etc.

#### 12.2.2. Industrial property

Industrial property covers rights and objects of intellectual property, such as inventions, utility models, industrial designs.

The invention is considered suitable for the acquisition of intellectual property right, if, under the law it is new, involves an inventive level and is suitable for industrial use. A product (a device, a substance, etc.) or process in any field of technology can be the object of the invention.

The utility model is considered allowable for the acquisition of the intellectual property right if under the law, it is new and suitable for industrial use. As for the industrial design, it is considered appropriate for the acquisition of the intellectual property right, if according to the law, it is new.

The scope of legal protection is defined by the claims, a utility model, and a set of essential features of the industrial design.

Compared to the copyright, the acquisition of the intellectual property right to an invention, a utility model or an industrial design is certified by a patent.

### 12.2.3. Intellectual property right to a trademark

Any designation or any combination of signs suitable for distinguishing goods (services) produced (provided) by one person from goods (services) produced (provided) by others can be a trademark. In particular, these designations may be: words, letters, numerals, figurative elements, combinations of colours.

Acquisition of the intellectual property right to the trademark needs to be certified. The scope of legal protection of a trademark is defined by its image and by the goods and services listed in a certificate, unless otherwise provided by law.

Acquisition of the intellectual property right to the trademark, which has the international registration or is recognized, in the manner prescribed by the law, as well known, does not require certification.

A proprietary right to a trademark is the right to use the trademark, the exclusive right of authorizing to use the trademark, the exclusive right to prevent unauthorized use of the trademark, including prohibition of such use, and other proprietary rights established by the law.

Proprietary rights to the trademark belong to the holder of a relevant certificate, to the holder of an international registration, to a person, whose trademark is recognized, in the manner prescribed by the law as well known, unless otherwise provided by an agreement.



#### Trademark protection in Ukraine

In this brochure, general guidance on legal protection of trademark in Ukraine is provided, incl. with regard to the process and requirements for proper registration, possible court actions for protection, fair use conditions, criminal, antimonopoly, and customs aspects of trademark usage.

View [Trademark protection in Ukraine](#).

### 12.2.4. IP rights to the objects created in connection with employment agreement performance

Personal non-property rights to the object created in connection with performance of an employment agreement belong to the employee, having created such an object. In the cases provided by the law, certain personal non-property rights to that object may belong to a legal entity or a private entrepreneur, where the employee works/is hired by.

Proprietary rights to an object created in connection with the performance of an employment agreement belong to the employee, having created this object, and to a legal entity

or a private entrepreneur, where the employee works/is hired by, jointly, unless otherwise provided by the agreement.

Features of realization of proprietary rights to the object created in connection with the performance of an employment agreement may be prescribed by the law.

### 12.3. Personal non-property rights of intellectual property

Intellectual property rights comprise a personal non-property right and a proprietary right.

Personal non-property rights are:

- 1) the right to recognize a person as a creator (author, artist, inventor, etc.) of an object of the intellectual property right;
- 2) the right to prevent any offence against the intellectual property right that may inflict harm to the honour and reputation of the holder of the intellectual property right;
- 3) other personal non-property rights established by the law.

Personal non-property rights belong to the creator of the object of the intellectual property right. In the cases provided by the law, personal non-property rights may belong to others.

Personal non-property rights remain in force without time limit, unless otherwise provided by the law.

Proprietary rights are:

- 1) the right to use the object of intellectual property right;
- 2) the exclusive right to authorize the use of the object of intellectual property right;
- 3) the exclusive right to prevent unauthorized use of the object of intellectual property right, including prohibition of such use;
- 4) other proprietary rights established by the law.

The law may establish exceptions and limitations to proprietary rights, provided that such limitations and exceptions do not create significant difficulties for the normal implementation of proprietary rights of intellectual property and implementation of interests of the holders of those rights.

Proprietary rights, under the law, can be a contribution to the authorized capital of a legal entity, subject of the pledge agreement and other obligations, etc.

Proprietary rights are valid within the time limits prescribed by the law or an agreement.

## 12.4. Use and transfer of the object of intellectual property right

The person, who has the exclusive right to authorize the use of the object of intellectual property right, can use this object at his/her own convenience, in compliance with the rights of others.

The use of the object of intellectual property right by another person is carried out with the permission of the person, who has the exclusive right to authorize the use of intellectual property right, except in cases of the legitimate use without the authorization provided by the law.

Terms of permission issue (license issue) for the use of the object of the intellectual property right can be defined by a license agreement.

Proprietary rights may be transferred in whole or in part to another person. The terms of the intellectual property rights transfer may be determined by an agreement.

Disposal of proprietary rights is carried out on the basis of the following agreements:

- 1) an operating license for objects of intellectual property rights;
- 2) a license agreement;
- 3) an agreement on use of objects of intellectual property right;
- 4) an agreement on the exclusive intellectual property rights transfer;
- 5) another agreement on disposition of intellectual property rights.

An agreement on disposal of proprietary rights is concluded in writing. In the event of non-compliance with the written form of the disposal agreement of the intellectual property rights, such an agreement is void. However, the law may establish cases, in which the agreement on disposal of proprietary rights may be concluded verbally.

The person, who has the exclusive right to authorize the use of the object of intellectual property, can provide a written commission to another person, which gives the right to use this object in a certain limited area. An operating license for the object of intellectual property right may be issued as a separate document or can be a part of a license agreement.

The license agreement determines the type of a license, operating area of the object of intellectual property right (the specific rights granted under the agreement, application of an object, the area and period for which the rights are granted, etc.), size, procedure and terms of fee payment for disposal of the intellectual property right, as well as other conditions, which the parties consider to be included into the agreement. If no term regarding the intellectual property rights disposal is included in the license agreement, the license agreement is deemed to be applicable on the territory of Ukraine.

The license agreement is concluded for the period established by the agreement, which must expire no later than the expiry of the validity period of the exclusive proprietary right to the object of intellectual property, specified in the agreement. If the term about the agree-

ment validity is absent in the license agreement, it is considered to be concluded for the period remaining until the expiry of the validity period of the exclusive proprietary right to the object of intellectual property, specified in the agreement, but not more than for five years.

An operating license for the object of intellectual property right and license agreements are not subject to the mandatory state registration. Their state registration is carried out at the request of the licensor or licensee.

The absence of state registration does not affect the validity of the rights granted under a license or another agreement, and other rights to the appropriate object of intellectual property right, including the right of the licensee to apply to court for his/her rights protection.

## 12.5. Appeal to the Antimonopoly Committee of Ukraine

Persons, whose rights have been violated as a result of acts of unfair competition (e.g. an abuse of a trade mark or a trade name and unlawful collection, publication and use of trade secrets), are entitled to file an application to the Antimonopoly Committee of Ukraine for their rights protection.

The Antimonopoly Committee of Ukraine is entitled, in addition to acknowledgement of an unfair competition or prohibition of an unfair competition, to take a decision on imposing a fine.

## 12.6. Protection of intellectual property rights by court

Every person is entitled to apply to court to protect his/her intellectual property. The court, in cases and according to the procedure prescribed by the law, may decide, in particular, to:

- 1) take immediate measures to prevent infringement of intellectual property rights and preservation of evidence;
- 2) suspend customs clearance of goods, imports or exports of which are carried out with the violation of intellectual property rights, across the customs border of Ukraine;
- 3) withdraw the goods, manufactured or put in public circulation with the violation of intellectual property rights, from civil circulation and to destroy such goods;
- 4) withdraw the materials and tools, used primarily for the manufacture of goods with the violation of intellectual property rights, from civil circulation or remove and destroy such materials and tools;
- 5) impose single money penalties instead of the compensation of losses for the unauthorized use of intellectual property rights. The size of the penalty is determined in accordance with the law on the basis of guilt and other circumstances, which are essential;
- 6) publish information about violations of intellectual property rights and content of the court decision for such violations in the media.

Also, in some cases of such violations, administrative or criminal liability for the intellectual property rights violation can be applied.