
АДМІНІСТРАТИВНЕ ПРАВО І ПРОЦЕС

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**ENSURING OF HUMAN RIGHTS TO THE OBJECTS OF AN
INTELLECTUAL PROPERTY AND INFORMATION IN THE
SPHERE OF SCIENTIFIC ACTIVITIES**

Paper deals with the issue of rights to intellectual property and information in the field of both research and scientific and technical developments, as well as these rights in the context of universal human rights are studied. The relations between intellectual property and scientific information are set up. Regulations regarding the maintenance of the rights of intellectual property and the regulation of the information sphere are considered.

Keywords: *information, intellectual property, general human rights, scientific activity, scientific and technical activities.*

Intellectual property in today's world occupies an important place in the society and in the relations of both legal and physical entities of society. These objects are mostly created in the process of human creativity, i.e. in cultural and scientific activities, scientific and technological research and developments. It is also possible to argue that the information plays a key role in scientific and technical activities. After all, research is always based on the existing information about the results of previous studies and discoveries. These developments and the results of scientific research constitute intellectual property. That intellectual property is a part of scientific information, and such information as a whole. Given the above mentioned, the human rights of intellectual property and information is a hot topic of the research, including the field of science.

The Universal Declaration of Human Rights [1], adopted and proclaimed by the General Assembly resolution on December, 10, 1948 determines (Art. 19), that every person has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. In addition, according to Art. 27 of the Universal Declaration of Human Rights [1] everyone has the right to participate freely in the cultural life of the community, to enjoy the arts and to take part in scientific advancement and to use its benefits, as well as the protection of moral and material interests resulting from any scientific, literary or artistic production the author of which he is. Consequently, the Universal Declaration of Human Rights [1] establishes the right to information, research activities and the protection of the results of these activities, and that intellectual property created in the course of research and scientific and technical developments. Translated from Latin «information» (information) – this clarification, the idea [2, p. 717], that refers to the information (or combination) of objects, phenomena and processes of the world. Many authors in

studies use the definitions of information given in the encyclopedia «information is the data, transmitted by men by oral, written or otherwise way». And the more general system concept: information is a general scientific concept that includes the exchange of information between people, men and machines, machine and machine; exchange of signals in the animal and plant world; transmission of characteristics of cells from organism to organism” [3, p. 498]. In addition, it is noted that for these two definitions is only typical inner essence, which gives the reason to use them for different systems (social sectors, fields of activity) [4, p. 16].

The concept of “intellectual property” is understood in the sense declared in the Convention “About the Establishing of the World Intellectual Property Organization”, signed in Stockholm, on July, 14, 1967. Art. 2 of the Convention states that “the intellectual property” includes rights that relate to: 1) literary, artistic and scientific works; 2) executive activities of artists, sound recordings, radio and television; 3) inventions in all fields of human activity; 4) scientific discoveries; 5) industrial designs; 6) trademarks, service marks, trade names and commercial signs; 7) protection against unfair competition; 8) all other rights relating to intellectual activity in the industrial, scientific, literary and artistic fields [5, 8; 6, p. 2, pp. VIII]. In turn, the legislation of Ukraine the term “intellectual property” is defined as: “... the right of a person for the result of intellectual activities or other intellectual property rights object defined by this Code and other laws. Intellectual property rights are moral rights of intellectual property and (or) intellectual property rights, which contents for certain intellectual property rights is determined by this Code and other laws” [7, p. 418]. Therefore intellectual property objects are created by human intelligence in the process of intellectual activity, and taking into account the above mentioned, it can be argued that intellectual property is a part of a certain type of information to which the person has the appropriate rights: both property and non property. The intellectual property throughout the stages of human development, was side by side with the improvement of life, development of industry, trade and scientific knowledge. The evolution of a man is closely associated with the creation of an intellectual property. The first tools, the first industrial products were also the objects of intellectual property. But in the absence of the institutions of law and legal norms intellectual property does not have an adequate legal protection.

V.V. Pysachkyn considers the intellectual property as an institutional phenomenon, defining the social status of authors, inventors and other entities that create innovation. It regulates the processes of artistic, cultural, social, political and economic practices ensuring the protection of rights to the objects of creative activity [8, 3].

During the years of the development of the society the definition of intellectual property: “industrial property law”, “copyright” and “related rights” are formed. Copyright regulates the rights to literary, artistic and scientific works and related rights - the performances of artists, phonograms and broadcasting program [9, 9]. According to the Paris Convention for the Protection of Industrial Property, industrial property is the law related to inventions, utility models, industrial designs, trademarks for goods and services, trade names, appellations of origin and unfair competition. Industrial property also extends to the field of agricultural and extractive industries as well as to all, having manufactured or natural origin [10, 319].

Citizens’ rights to intellectual property (intellectual property rights) and information are an important part of universal human rights.

The right to information is established with the Art. 34 of the Constitution of Ukraine [11]. Everyone has the right to freedom of thought and speech, free expression

of opinions and beliefs. Also, everyone has the right to freely collect, store, use and disseminate information orally, in writing or otherwise – depending on choice.

The list of intellectual property, which is not exhaustive, is contained in international documents, the Constitution of Ukraine and national laws. So, the Constitution of Ukraine in Art. 41 defines the principles of providing intellectual property rights. Everyone has the right to possess, use and dispose of their property, results of his intellectual and creative activity. No one can use or distribute them without his consent, with the exceptions established by law. No one can be unlawfully deprived of property rights, including intellectual property rights [11]. Article 54 of the Constitution of Ukraine guarantees citizens freedom of literary, artistic, scientific, and technical creativity, protection of intellectual property, their copyrights, moral and material interests, arising in connection with various types of intellectual activity [11].

Legal bases of the development of science are defined by the Law of Ukraine “About scientific and technical activity” [12].

Regulatory basis that establish the relevant rules in the field of scientific and technical information is considered. The basic regulation in the field of information is the Law of Ukraine “About information” [13].

The main directions of the state information policy in accordance with Art. 3 of the Law [13] is “to ensure that everyone has an access to information; equal opportunities for creating, collecting, receiving, storage, use, distribution, security, information security; creating conditions for the formation of information society in Ukraine; openness and transparency of government entities ...”

The types of information according to the contents are set in Art. 10 of the Bill [13] is: information of a natural person; reference and encyclopedic information; information on the environment (environmental information); about goods (works, services); scientific and technical information; tax information; legal information; statistical information; sociological information; other types of information. As it can be seen from the analysis of the Art. 10 and Art. 15 of the Bill [13] only scientific and technical information can be defined as a kind of information. Information about the scientific activity in general is not installed. Therefore the information about research activities in the social, humanitarian and other spheres is not considered.

If we consider intellectual property as a certain type of information it should be noted that this type of a complex information can be attributed to several types of information such as – scientific and technical information; legal information; information about an individual; about goods (works, services) and others.

Summarizing the analysis of the Law of Ukraine “About Information” [13] it should be noted that the law establishes the necessary rules to ensure the development of a public information work, but the scientific activity in the law only defined the technical direction of ignoring other areas of science. So it is advisable to ensure the establishment of law [13] rules that apply to all research activities in the country. To do this, it’s necessary to substitute the concept of “scientific and technical information” with the notion of “scientific and technological information” according to the Law of Ukraine “About Scientific and Technical Activities” [12].

Now we’ll continue consideration of the current regulatory basis for information support of scientific and technical activities, namely the Law of Ukraine “About the Scientific and Technical Information” [14].

According to the Art. 2 of the Law [14] the object of the relations in the field of scientific and technical information is domestic and foreign scientific and technical information. Scientific and technical information covers research, experimental-design,

design and technology, industrial and public activity results recorded in a form that ensures their reproduction, use and distribution.

Analyzing Art. 2 of the Law [14] the question arises: why article and Law at all is generally applied only in scientific and technical information and scientific information and does not apply in other fields of science?

It should be noted, that as it's set out in Art. 1 of the Law [14] the definition of "scientific information activity" refers only to the scientific and technical information, though, in our opinion, the concept should relate to scientific and technical information. Indeed, according to the Art. 1 of the Law of Ukraine "About Scientific and Technical Activity" [12] research activities are the intellectual creative ones aimed at the obtaining and using of new knowledge. Its main forms are basic and applied research. Scientific and technical activity are intellectual creative kinds of an activity aimed at the obtaining and use of new knowledge in all areas of engineering and technology. Its main forms (species) are "scientific research, experimental design, design and engineering, search works ...". So, scientific information activity by its content can not refer only to the scientific and technological activities.

Art. 11 of the Law "About the Scientific and Technical Information" [14] defines the procedure for state registration, accounting and application of scientific and technological activities, stating that the results of research, experimental-design, design and technology and other scientific and technical business financing is wholly or partly carried by the state budget subject to mandatory registration and accounting. The works that are carried out by own funds of legal entities and individuals are their property and are recorded by them on a voluntary basis. A more appropriate, in our opinion, is to record all research and development work to create a better state of bank results of scientific activity. In addition, Art. 11 of the Act [14] states that the performed work is the property of those entities or persons. Of course, it is true, but it is necessary to limit the rate of the compliance with the rules on intellectual property, as can different cases created in the research of intellectual property can occur, both with the right to their property.

Analyzing the Law of Ukraine "About the Scientific and Technical Information" [14] it should be noted that in general the law creates the necessary foundation for building an information system in the field of scientific and technical activity, but unfortunately it is ignored the scientific activity in general. Therefore, in our opinion, it should be developed and implemented a regulatory document that would provide regulation not only in the field of scientific and technical information but in the field of scientific information as well. These changes will establish the necessary rules on information support of all sectors of scientific activity such as social, technical, humanitarian ones.

Legal (special) guarantees cover all legal means which ensure realization of rights, freedoms and duties of man and citizen. Thus, besides the internal ones, the Constitution of Ukraine also provides international legal guarantees of rights and freedoms of man and citizen [15].

In addition, the Universal Declaration of Human Rights [1] also defines (art. 7), that all men are equal before the law and are entitled without any discrimination to equal protection of the law. All people are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Art. 8 of the Declaration [1] will establish that every person has the right to an effective renewal by the competent national tribunals for the acts violating the fundamental rights granted by the Constitution or by law.

The activities of the State in relation to the rights and freedoms governed by administrative law because, as rightly notes AF Jumper, realization of the rights and freedoms is provided in the relations between citizens and the state, while the state is intended to express public and common interests, and therefore to act on the basis of the public law [16, 384]. A subject matter of administrative law, as we know, there is a public activity. As the S.V. Kivalov and L.P. Bila “constitutional requirement to the transition from the dominant ideology in the past to the domination of state “over a man to the new ideology” service state “man should become a basic principle of administrative law and go through all of its content.” Administrative law as a constitutional law, mediates the functioning of public authorities in the state that it is the right of the government which provides overbearing of the influence of the state, represented by state agencies and officials in various public relations [17, 11].

The main achievement of democracy in the world was the protection of rights and freedoms. Our country is also moving towards building a democratic society and a desire to join the leading pan-European democracies choosing the direction of the development, which involves the creation of new mechanisms to ensure human rights and freedoms, their development and improvement.

Researches define the approaches to the essence of the mechanism of the protection of rights and freedoms. Thus, O.F. Skakun notes that the implementation of constitutionally fixed rights and freedoms in Ukraine it is necessary to have established social and legal mechanism for ensuring human rights and freedoms – the system of means and factors that provide the necessary conditions of the respect to all human rights and fundamental freedoms, which are derived from its dignity. The concept “socio-legal support of human rights” emphasizes the fact that the legal mechanism is a part of social one and acts in unity with it. The task of social and legal mechanism for human rights is security, protection, redress and creation of a common legal culture and population. Main subsystems of the mechanism of social and legal protection of rights and freedoms are the mechanism of implementation; mechanism of protection; protection mechanism. The mechanism of realization of human rights includes activities able to create conditions for the realization of human rights and freedoms. The mechanism of protection of human rights includes the prevention of crime for the establishment of lawful behavior of an individual. Human rights protection mechanisms include measures leading to remedy unlawful actions and responsibilities of the person who committed these offenses [16]. So, O.F. Skakun defines as subsystems of a mechanism of social and legal protection of rights and freedoms : the mechanism of implementation; mechanism of protection; protection mechanism, which confirms our opinion that the general category when considering complex administrative and legal aspects of intellectual property, is the category “support”, where the category of “security”, “protection” and “regulation” are regarded as components.

Considering the administrative and legal support of intellectual property rights it should be noted that the sphere of intellectual property increasingly takes on the administrative and legal nature. Administrative and legal support must be seen as a part of the state system to ensure legal regulation of social relations in the state, which should not only prevent violations of the law in different sectors, but also take on the function of the organization and provision of specified spheres of society.

As the V.S. Tsimbalyuk, V.D. Havlovsky and V.V. Gritsenko contend relationship of science and law in the information society is manifested in several ways. First – as a branch of science. Informatics works out the methods that after appropriate adaptation make it possible to solve problems of legal science. Among these methods are the methods of forming of hipersystem, aggregation, computer modeling, algorithms and

so on. Second – as an area of social activity. The right determines the boundaries of permissible behavior, violations and accountability in information relations. The right may prohibit, restrain or stimulate information relations, their development, trends and so on. At the turn of computer science and social rights is arisen such a thing as the right to information [18].

The category “information law” can be seen in several ways: as a branch of public relations; as an institution in legal science; as an academic discipline. As public sector information law can be considered in two senses: objective and subjective. In the objective sense of information law is regulated by complex regulations of public relations, the object of which is information. In the subjective sense of information law it is a set of rights and duties of subjects of public relations for information [18].

An institution in legal science information law is a relatively autonomous institution of legal science research on the issues of public relations, the object of which is an information. As an academic discipline information law is a set of knowledge that helps to explore the theory and practice of social relations regulating, the object of which is an information [18].

So, you can determine the intellectual property institution as an interdisciplinary, comprehensive institution of public relations, including the field of information security, on the exclusive rights to own, use and disposal of intellectual property, as well as some others equal to them results of creative activity, based on the norms of civil, administrative, information, finance law and others.

In addition, considering the intellectual property in the context of universal human rights it should be noted that it also affects the intellectual property and other rights stipulated by the Universal Declaration of Human Rights [1]. In Art. 3 of the Universal Declaration of Human Rights [1] it is found out that every person has the right to life. But even in peaceful countries where hostilities are conducted, there are the cases when human lives are under threat because of the actions of terrorists or other criminals. In this aspect Ukraine is not an exception. [19] So, for example, means of primary localization explosion can save lives. Such intellectual property, embodied in the means of explosion localization, can guard and protect the right to life and is one of numerous examples when intellectual property helps to ensure human rights.

Summing up the issue of human rights to intellectual property and information in the field of research one can draw the following conclusions:

- an intellectual property is a part of scientific and technical information;
- the state establishes legal system providing the information about scientific and technical activities, governing the right for information in these areas;
- a clear legal mechanism is established to provide scientific and technical sphere;
- an improvement of legal documents should be directed at the improving of the legal mechanism for the support of public information in humanitarian and other fields;

Rights to intellectual property and information are an important part of universal human rights, and it can be argued that using the intellectual property rights provided;

Intellectual property is institutional in nature and involved in different sectors of society.

Ensuring of the rights to intellectual property is interdisciplinary in nature and is governed by civil, administrative, information, finance and others branches of law.

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