Yakushev I. Working Time as an Aspect of Labour Standards. The article is devoted to the analysis of the category of working time in Labor law. The Ukrainian science in the field of labor law defines working time as an obligation of an employee to perform certain work or functional duties, stipulated by an employment contract. The analysis of the norms of the Labor Code of Ukraine shows that the category of working time is used to determine the regime of work, duration of work, norms of work (measures of labor). It involves also a guarantee of labor, privileges for certain categories of workers, the duration of rest time standards, an element of social protection of workers, such as the amount of wages, the category of occupational safety and the legal provision for punishment and the protection of labor rights. This definition gives grounds to distinguish two components of the working time category in labor legislation – duration and mode of work. The article highlights the peculiar features of both components. The key findings of the study and analysis of legal norms allows to argue that there exists discrepancy between the time periods used to determine the standards of work and those to determine the rate of payment. The conclusions justify the need to establish at the legislative level identical periods for labor standards and their payment. The author proposes to stipulate in the legislation the provision that an irregular working day can be allowed only to the employees, who fully comply with their labor duties during the working time set for them.

Key words: working time, standard of working time, working time mode.

УДК [343.533+347.78]:044 (477)

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Some Issues of Intellectual Piracy’s Modern Legal Comprehension

The article deals with the theoretical and legal aspects of the concept of intellectual piracy in accordance with the national legislation of Ukraine, international standards in this area and the legal doctrine on intellectual property rights. The notion of intellectual piracy as a form of copyright infringement has been defined; its types is characterized; conclusions and concrete proposals that will ensure keeping within property rights of subjects’ copyright and related rights have been formulated.

Key words: intellectual piracy, counterfeiting, falsification, subjects of copyright, related rights, property rights, violation of rights.

Formulation of scientific problem and its meaning. In conditions of economic development of the state, inobservance non-property and property subjects’ rights of copyright and related rights not only damage their reputation, but also affects the socio-economic development of the state as a result of economic and moral and political failures.

Intellectual piracy as a form of copyright infringement is the stealing of the results of intellectual activity through the illegal use of the exclusive property rights of the authors’ intellectual activity results.

In fact, intellectual piracy is deprived of authors’ right to remuneration as one of the property rights of copyright and related rights subjects.

Therefore, it is important to develop conceptual approaches to the definition of the concept of intellectual piracy and to clarify its essence, and it will promote the protection of the rights and interests of the copyright and related rights subjects.

This problem predetermines the urgency and necessity of a comprehensive research as it is the fundamental in the development of copyright and related rights and the protection of property rights subjects.

The purpose of the article is a study of the theoretical and legal aspects of the legislative and theoretical definition of the concept of intellectual piracy and its essence and the development of proposals to overcome this negative phenomenon in the intellectual property right.

To achieve this goal it is necessary to solve the following *targets*:

– to define the concept and essence of intellectual piracy according to international standards, national legislation and legal doctrine;

– to outline the classification criteria of intellectual piracy division and find out its types;

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– to formulate conclusions and concrete proposals as for overcoming intellectual piracy of intellectual property right.

Analysis of research and publications. The problem of legal regulation of protecting intellectual property rights against intellectual piracy is the subject of research in the materials of native and foreign specialists in the field of private and public law: B. S. Antimonov, V. A. Vasil'eva, E. P. Gavrilov, V. A. Dostortseva, O. S. Joffe, T. S. Kivalova, V. M. Kossak, M. Ya. Kirillova, A. Koval, T. E. Krisan', V. V. Luts', D. Lyptsyk, M. M. Maleina, M. Melnikova, O. A. Pidoprygora, O. O. Pidoprygora, O. M. Pitsan, O. V. Ryshkova, O. D. Sviatotsky, A. P. Sergeyev, V. I. Serebrovsky, R. O. Stefanchuk, O. I. Kharitonova, Ye. O. Kharitonov, Ye. A. Fleishyts, G.F. Shershenevych, R. B. Shishka, A. O. Shtefan, V. Chebotarev and others.

The presentation of the main material and justification of the results of the study. What is the intellectual piracy and how is this concept defined by international and domestic law and legal doctrine in the field of intellectual property. International legal regulation fighting for intellectual piracy is carried out on the basis of the recommendations of the Council of Europe in this area, namely: Recommendations on anti-piracy measures in the field of copyright and related rights 1988; Recommendations on measures against sound and audiovisual piracy of 1995, Recommendations on measures for the protection of copyright and related rights and the fight against piracy, in particular in the field of the digital environment of 2001, etc.

In the WIPO Model Provisional Project, «piracy» is an act where copies of materials are made on a commercial scale without the permission of the owners the copyright or related rights to the work or its performance, to the protected phonogram or to the broadcasting organization, depending on the particular circumstances. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) describes the infringing goods as «any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation».

According to national legislation in the field of intellectual activity, namely the Law of Ukraine «On Amendments to the Law of Ukraine On Copyright and Related Rights» 2001 [1] piracy in the field of copyright – publication, reproduction, that are imported into the customs territory of Ukraine, exported from the customs territory of Ukraine and the distribution of counterfeit copies (including computer programs and databases), phonograms, videograms, broadcasting programs.

This definition V.D. Gulkevich denies and emphasizes that the legislator's attempt to define the concept of «piracy» within the limits of the Law of Ukraine «On Copyright and Related Rights» is unsuccessful, he stresses according to international legal acts this phenomenon means the violation subjects' of property rights of copyright and related rights, the circulation of counterfeit copies of works, performances, phonograms, videograms and broadcast programs. It was confirmed by the provisions of jurisprudence in which the actions of persons who illegally reproduced and distributed copyright objects were not classified as piracy [2, p. 115].

In addition, it should be noted that the disadvantage of legal definition of the concept of «piracy» is that the legislator defines it through the category of «counterfeit» although in Art.1.,Law of Ukraine «On Copyright and Related Rights» establishes the notion «counterfeit copies of the work», and in «b» of Part 1 Art. 50 – «piracy» [1].

In the legal doctrine there isn't a single conceptual approach to the relation between the concepts of «piracy» and «counterfeiting». The term «piracy» in English means the violation of intellectual property rights. In the Great Explanatory Dictionary of Modern Ukrainian, counterfeiting is the illegal distribution or reproduction of a work without the author's permission [3, p. 568].

According to this law, a counterfeit specimen of a work is a work reproduced, published or distributed with a violation of copyright and related rights, including a copy protected works in Ukraine, phonograms and videograms that are imported into the customs territory of Ukraine without author's contract or another subject of copyright or related rights, in particular from countries in which these works, phonograms, videograms have never been protected or ceased to be protected [1].

On the one hand, scientists who identify the categories above propose, with a view to unifying the terms «piracy activities» and «counterfeit activities», to use the term «illegal activity», and it will be related to the manufacture and distribution of products in violation of the exclusive property rights of copyright and related rights subjects.

O. Kochyna, points out the identity of the concepts above, and observes that counterfeiting is an illegally manufactured product, reproduced or distributed, and piracy is the direct publication, reproduction, distribution of such counterfeit specimens [4, p. 20].

O. Shtefan, denies the identification of the concepts of «piracy» and «counterfeit» and points out that piracy is a broader concept, than counterfeit activity as to the production of copyright objects that it is an element of piracy [5, p. 7].

Counterfeiting activity, the author stresses that it is an illegal act, and consists in reproduction of the published work, phonogram, audiovisual work, computer program and other objects by means of illegal use of the name, company name or the mark of the legitimate manufacturer, the owner of the license, etc.

The concepts «piracy» and «counterfeit» relate to each other as a general and unitary concept, and it points out that one of the elements of piracy is counterfeit activity concerning the manufacture of copyright and related rights.

In the scientific literature most scientists as to the definition of the concept of «piracy» appeal to the consequences of making actions for the commercial effect of copies of works without the permission of the person who owns copyright or related rights.

Thus, M. D. Ginzburg, L. M. Dunaevsky, I. O. Trebuliev define piracy as actions aimed at the illegal use of objects of intellectual property right belonging to other persons intentionally committed by a person who understands the illegal nature of these actions, in order to obtain material benefits [6].

S. Shcherba notes that piracy is a large-scale violation of copyright and related rights committed on the purpose to get income [71, p. 66].

M. Melnikova defines piracy as a way of existence at the expense of the creativity of others [8, p. 72].

Y. V. Truntsevsky observes that the concept of «piracy in the audiovisual sphere» is a set of criminal encroachment that harms the law protected by the economic interests of citizens, society and the state as a result of the illegal use of objects of copyright and related rights committed to commercial purposes in large sizes [9, p. 117].

For the first time, the concept of «intellectual piracy» was proposed in 2004 by O.G. Morozov in his dissertation «Crimes in the field of copyright and related rights: social dangers and rules of qualification». The author points out that the phenomenon associated with the illegal use of objects of copyright and related rights for commercial purposes should be marked by the term «intellectual piracy» in order to distinguish it from other forms of copyright infringement [10, p. 21].

O. Yara observes intellectual piracy as an act that manifests itself in the intentional actions of an individual in the way of reproduction, distribution, replication, acquisition, storage, transportation, sale and other illegal use of objects of copyright and related rights in order to get profit [11, p. 102].

Thus in the legal doctrine, intellectual piracy is predominantly defined as an unlawful conduct that infringes on the author's property rights with respect to the use of the work. Such a conceptual approach to the definition of «intellectual piracy» is evidence that, firstly, the unlawful nature of piracy activity is taken into account; secondly, commercial profit as a result of infringement of property rights of subjects of copyright and related rights.

On the basis of the analysis of the legislation and the conceptual provisions of the legal doctrine in the field of intellectual activity, we'll identify the features of intellectual piracy.

One of the features of intellectual piracy is the illegal use of copyright and related rights without the permission of the subjects of these rights and without payment of remuneration to them.

The above-mentioned feature concerning objects of related rights N. P. Baadji defines more accurately [12, p. 338], he points out that the feature of intellectual piracy is not only the lack of permission to use published works or phonograms, but also their reproduction in any way for public distribution.

Reproduction of published works or phonograms in any way for public distribution without permission as a feature of piracy is reflected in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Yu. V. Logvynov highlights the following features of intellectual piracy: 1) the combination of hierarchical and linear principles of construction (coordination of united organized groups); 2) engaging in piracy as a profession that gives one or the main source of profit; 3) coordination of «pirate» activities at the local, regional, interregional, national and international levels; 4) shadow turnover compared to the budget of the social sector; 5) use about 20-25% of profits from intellectual piracy for bribery of officials (first of all, control and law enforcement agencies); 6) excess profits (up to 400-500%); 7) possession of a developed system of corrupt connections in law enforcement agencies that provide a high degree of invulnerability of prosecution; 8) use of the lobby in the legislative, executive and judicial authorities to «promote» beneficial decisions; 9) intensive pirate money laundering through the international system of banks and other credit organizations [13, p. 68–69].

Analyzing the essence and features of intellectual piracy, one can define this concept of objective and subjective importance. On the objective legal standard, intellectual piracy is the illegal production and putting into circulation of counterfeit copies of works, phonograms, videograms, broadcasting programs; and subjective meaning is the violation of the property rights of the subjects of copyright and related rights by using their published works without permission for the purpose of commercial gain.

Intellectual piracy in the area of infringement of copyright and related rights is the subject of certain classification and is carried out in the following way: illicit reproduction, replication, distribution, acquisition, storage, transportation, sale, performance of phonograms, videograms and broadcasting programs; illegal public display, public performance, phonograms, videograms, broadcasting programs; falsification of performances, phonograms, videograms, broadcast programs; illegal actions related to disks for laser reading systems with records of subjects of copyright and related rights that may be combined with illegal reproduction; illegal actions related to unauthorized recording, video capture for public display, public performance, etc.; illegal activities related to computer piracy; displaying pirate products in public places, as well as through a cable network.

Piracy's varieties with the exception of publishing and reproducing, the legislator recognizes the import of counterfeit copies of objects of copyright and related rights and (or) their export to the customs territory of Ukraine.

Except indicated, piracy actions in accordance with the WIPO Model Provisions Project are: making of packaging or packaging; export, import and transportation; offer for sale, lease, loan, or any other form of distribution; sale, lease, loan or any other form of distribution; possession on the purpose of carrying out the acts specified above with respect to pirate copies, if such actions are committed on a commercial scale and without the permission of a person who owns copyright and related rights to literary or artistic works, their performance, phonograms or broadcasting organizations, Depending on specific cases.

In the scientific jurisprudence you could find different approaches to the classification of pirates. Thus, V.V. Belov, G.V. Vitaliev, G. M. Denisov divided piracy in the field of copyright into:

1) «clean» piracy, that connected with the semi-legal disclosure of copyright objects;
2) piracy connected the forgery of copyright objects;
3) piracy that manifests in the illegal reproduction of copies of copyright objects [14, p. 119].

I. S. Volkov combines intellectual piracy with the objects of copyright and distinguishes the following types of intellectual piracy: video piracy, piracy in the field of interactive rights, audio piracy, telepracy [15, p. 118].

E. I. Khodakivsky, V. P. Yakobchuk, I. L. Litvinchuk distinguish the following kinds of piracy: audio piracy; video piracy (CAMRip, TeleSync, TeleCine, TV-rip, WorkPrint, DVD-Screener, DVD-rip), piracy of literary works – illegal distribution of copyrights; piracy of computer games, software piracy [16, p. 134–136].

Unfortunately, the modern legal doctrine has not succeeded in developing of the unified approach to criteria defining division of intellectual piracy. Despite the scientists' intention to propose intellectual piracy classification, one can state that their views do not have significant changes, although they offer different criteria for its division, but all goes to the identical list of types of illegal pirate actions.

Summary. Having analyzed the legal and doctrinal definition of the intellectual piracy concept we propose to mean illegal actions concerning the use of published literary works, computer programs and databases, performances, phonograms (videograms), broadcast programs, as well as import and (or) export to the customs territory of Ukraine their copies or renting them.

Intellectual piracy features are: the illegal nature of piracy; illegal use of published literary works, computer programs and databases, phonograms (videograms), broadcasting programs and their reproduction by any means for public distribution without the permission of the subjects of these rights; commercial benefit as a result of infringement of property rights of subjects of copyright and related rights.

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Старчук О., Яциняк О. Деякі питання сучасного праворозуміння інтелектуального піратства. Інтелектуальне піратство як форма порушення авторських прав є крадіжкою результатів інтелектуальної діяльності шляхом незаконного використання виключних майнових прав авторів результатів інтелектуальної діяльності. Фактично, інтелектуальне піратство позбавляє авторів права на винагороду як одного з майнових прав суб’єктів авторського права та суміжних прав. У статті досліджено теоретико-правові аспекти поняття інтелектуального піратства відповідно до національного законодавства України, міжнародних стандартів у цій сфері та правової доктрини з права інтелектуальної власності. Визначено поняття інтелектуального піратства як форми порушення авторських прав; охарактеризовано його види; сформульовано висновки й конкретні пропозиції відповідно до яких забезпечуватиметься дотримання майнових прав суб’єктів авторського права та суміжних прав. У науковій літературі, переважно, інтелектуальне піратство визначається як протиправна поведінка, яка посягає на майнові права автора щодо використання твору. Такий концептуальний підхід до визначення поняття «інтелектуальне піратство» є свідченням того, що по-перше, враховується протиправний характер піратської діяльності; до-друге, комерційна вигода внаслідок порушення майнових прав суб’єктів авторського права та суміжних прав. Сучасна правова доктрина так і не спромоглася виробити єдиного підходу до визначення критеріїв поділу інтелектуального піратства. Запропоновано під інтелектуальним піратством розуміти виготовлення, продаж і будь-яке інше комерційне поширення незаконних екземплярів (книг і взагалі друкарських матеріалів, дисків, касет і т. д.) літературних, художніх, аудіовізуальних, музичних творів або їх виконань, комп’ютерних програм і бази даних, а також надання в прокат їх примірників із порушенням майнових прав авторів.

Ключові слова: інтелектуальне піратство, контрафакт, підробка, майнові права, порушення прав, суб'єкти авторського права, суміжні права.

Старчук О., Яциняк О. Некоторые вопросы современного правопонимания интеллектуального пиратства. Интеллектуальное пиратство как форма нарушения авторских прав является кражей результатов интеллектуальной деятельности путем незаконного использования исключительных имущественных прав авторов результатов интеллектуальной деятельности. Фактически, интеллектуальное пиратство лишает авторов права на вознаграждение как одного из имущественных прав субъектов авторского права и смежных прав. В статье исследованы теоретико-правовые аспекты понятия интеллектуального пиратства в соответствии с национальным законодательством Украины, международными стандартами в этой сфере и правовой доктриной права интеллектуальной собственности. Определено понятие интеллектуального пиратства как формы нарушения авторских прав; охарактеризованы его виды; сформулированы выводы и конкретные предложения в соответствии с которыми будет обеспечиваться соблюдение имущественных прав субъектов авторского права и смежных прав. В научной литературе преимущественно интеллектуальное пиратство определяется как противоправное поведение, которое посягает на имущественные права автора по использованию произведения. Такой концептуальный подход к определению понятия «интеллектуальное пиратство» является свидетельством того, что, во-первых, учитывается противоправный характер пиратской деятельности; во-вторых, коммерческая выгода вследствие нарушения имущественных прав субъектов авторского права и смежных прав. Современная правовая доктрина так и не смогла выработать единого подхода к определению критериев разделения интеллектуального пиратства. Предложено под интеллектуальным пиратством понимать изготовление, продажу и любое другое коммерческое распространение незаконных экземпляров (книг и вообще печатных материалов, дисков, кассет и т. д.) литературных, художественных, аудиовизуальных, музыкальных произведений или их исполнений, компьютерных программ и баз данных, а также предоставление в прокат их экземпляров с нарушением имущественных прав авторов.

Ключевые слова: интеллектуальное пиратство, контрафакт, подделка, имущественные права, нарушение прав, субъекты авторского права, смежные права.