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# MODERN TECHNOLOGY AND THE INTERNATIONAL COPYRIGHT PROTECTION SYSTEM: KEEPING A BARRIER BETWEEN THE FREEDOM OF KNOWLEDGE AND THE FREEDOM OF PRIVACY

**Summary.** This article focuses on the international copyright protection system and how it interacts with intellectual property. The unresolved problems of modern jurisprudence, the question of a fair balance between the right to freedom of information and protection of intellectual property rights is one of the most pressing issues in international policy. This is why it is such a big issue in the scientific community. It talks about keeping a steady balance between freedom of privacy and freedom of information. Internet, allowing to create and share information from anywhere in the world. It has radically changed relations, making material the product of its creator, publisher, and distributor. An effective system of intellectual property protection helps to create a civilized environment where entrepreneurs, and consumers would be protected from unauthorized use of intellectual property. Balancing the interests of rights holders and the rest of society is recognized as a fundamental aspect in the field of intellectual property. This meeting was set up to formally introduce Ukrainian judges to copyright information and to produce recommendations for future cases. Modern jurisprudence's unresolved problems are also discussed in relation to Ukraine and the changes that are being made to make these copyright laws to be more effective.

**Key words:** copyright protection system, modern jurisprudence, intellectual property rights, digital rights management systems.

**Setting the problem.** Modern technology, allowing anyone with a computer to create information and share from anywhere in the world has radically changed the nature of relations, making material the product of its creator, publisher, and distributor. This is extended and enhanced by the opportunities these technologies create to implement information and freedom of every person and the democratic potential of the whole society, and at the same time accompanied by a worsening of legal problems due to the delay in development of regulatory and legal doctrine.

Along with this are the unresolved problems of modern jurisprudence, the question of a fair balance between the right to freedom of information and protection of intellectual property rights is one of the most pressing issues in international policy. This is why it is such a big issue in the scientific community.

This topic is very relevant in our world today because it ensures the protection of intellectual property and that is a key component in the development of any nation.

**Latest researches and publications analysis that have begun to solve the problem.** An effective system of intellectual property protection helps to create a civilized market environment in which entrepreneurs, and consumers would be protected from unfair competition associated with the unauthorized use of intellectual property. Balancing the competing interests of rights holders and the rest of society is recognized as a fundamental aspect in the field of intellectual property. For example, The World Copyright Convention in 1952 (with the Soviet Union joining in 1973) declares that the copyright regimes ensure respect for human rights and it promotes science, literature, and art.

Provisions that allow the free use of works for educational and informational purposes only, are contained in the Berne Convention for the Protection of Literary and Artistic Works of 1971.

In Ukraine, the legislative framework of copyright consists wholly in the Constitution. The Constitution guarantees a freedom of literary, artistic, scientific, and technical work (Article 54) along with the right to own, use, and dispose of the property and the results of their intellectual and creative activity (Article 41). In the Laws of Ukraine "On Copyright and Related Works", the propagation discusses copies of audiovisual works, phonograms, data bases, "The Civil Code of Ukraine".

On a clearer note, the goal of establishing a fair balance between the rights of performers and producers of phonograms and the larger public interest is formulated into the two more modern treaties of the WIPO (World Intellectual Property Organization): "Copyright" and "On the Performances and Phonograms Treaty" [1]. This was adopted by the Diplomatic Conference in Geneva in 1996.

**The article purpose.** Solving the problem of creating an effective system of intellectual property protectionism dependent on a strong foundation for an innovative model of development in Ukraine, its modernization and competitiveness in the global socio-economic system.

**Basic material presentation.** Specified contracts are called "Internet treaties" because the purpose of adoption, which is embodied in the basic provisions of the treaty, is the adaptation of existing international agreements, particularly the Rome of 1961 and the Berne Convention in 1971. Both documents can be viewed as a reaction to the transnational media industry towards the existing problems of combating piracy and loss of revenue due to the uncontrolled proliferation of all kinds of products, be it text, images, sounds, movies and software from the Internet.

Under each agreement, they not provide the possibility of using techniques to control the use of products by consumers, including the so-called "digital rights management systems", but the responsibility for trying to circumvent the technical (Julian, 11 and 12 of the Treaty on copyright, art. art. 18 and 19 of the Treaty on Performances and Phonograms Treaty).

These provisions have met with strong criticism from both human rights and consumer organizations, and organizations that are directly involved "service" of the public domain, such as those that provide educational and/or library services. This is caused by the fact that these provisions virtually limit the ability to bypass technical protection for fair use, for example, to copy a text for personal use. In addition, the control of users actions, carried out with the help of technical means of protection but does not comply with the legal provisions on the protection of information of a personal nature (protection of privacy).

The fear is that a product can be so protected that it is no longer a source of innovation and although the principle of complement and works created by predecessors, it is the key to any creation. Similar provisions for the protection of intellectual property include the Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization (TRIPS), adopted at the 1994 Summit of Uruguay. The concept of balancing clearly appears in the text of this Agreement, in Article 7, defining its purpose – "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation, transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge and in a manner leading to social and economic well-being and balance of rights and obligations".

Despite such a frank admission as a social value of the free transfer of information and technology, TRIPS agreement is essentially a tool used to promote and safeguard the interests of the media industry in emerging markets. It is subject to the WTO dispute settlement procedure, which makes it quite a powerful tool of world trade policies and leverages the individual countries in which the interests of transnational media industry are prejudiced. In this regard, what is revealing is the policy of the United States in relation to the country, which became its member states, as well as of the party's Internet treaties, "World Intellectual Property Organization", for economic or political pressure from the lobby of the American media industry. A confirmation of the above is an example of the application of the strategy of the U.S. in relation to Ukraine.

Researchers note unequal treatment in relation to developing countries, for which the use of a strict regime of intellectual property rights to protect the in-

terests of owners of developed countries not only requires significant investment, but also blocks access to "pirate", but cheap software, pharmaceuticals, technology and innovation etc., making it difficult to overcome underdevelopment.

The specified circumstances are an essential basis for the criticism of the World Intellectual Property Organization, which has been part of the UN since 1974, and, according to the defenders of the public domain, does not have the moral and political right to give priority to the intellectual property rights. In this case, there is a need to more clearly assess the social and economic consequences of today's policy tightening intellectual property regime, both at the national and international level [2]. Drastic measures have taken by the media industry to prevent the free flow of intellectual property in the Internet, in particular, music in the MP3 format, often bordering on violation of human rights, which meets resistance of human rights organizations.

The Recording Industry Association of America (RIAA) in 2003 sent thousands of notifications to users that download and send each other music files to the Internet, and has filed hundreds of applications to the court for violation of intellectual property rights. In this case, RIAA invoked the provisions of section 512(h) of the Act on Copyright in the Digital Millennium (DMCA), allows transferring without user notification, Internet providers on the use of digital products.

The researchers note that it was premature military solutions to restore weakness in the digital environment of the intellectual property regime, and offers to work to find new business models for the distribution of digital products, which would represent an evolutionary alternative to physical methods of dissemination of their material owners. Although recent economic forecasts suggest that downloading files via the Internet is unlikely to displace sales as the dominant method in the near future.

In this regard, it is a progressive idea to meet the material requirements of owners without technical control over the actions of users. At a conference in Berlin in June 2004 by a group of researchers and activists in the scheme of compensation to copyright holders for the actual use of products online with the assistance of collecting societies, which will raise funds from sources such as a voluntary subscription fee for related goods and services and other alternative systems.

Based on an analysis of current trends to solve the problem of establishing a balance between the interests of rights holders and users internationally, clearly traced vectors in the direction of strengthening the regime of intellectual property could have a negative impact on the freedom of information in the internet. This would be welcomed at the international level of policy instruments that could back a shaky balance.

A modern chronology of events regarding copyright laws is as follows. In May 2000, signed by the Ukrainian-American joint program of action to combat the illegal production of optical storage media. In September 2001, Ukraine acceded to both the, "Internet treaties", World Intellectual Property Organization (Acts of 20.09.2001№ 2732-III, № 2733-III). And in 2002, were applied trade

sanctions, including restrictions on exports that were due to insufficiencies, according to the U. S. Trade Representative, to protect the rights of software producers in Ukraine. In this case, to cooperate actively in the development and adoption by the Verkhovna Rada, changes to the legislation on the protection of intellectual property, as well as in the fight against piracy were made. In the short time they had prepared and approved amendments to the legislation on the protection of intellectual property in order to bring it into full compliance with the requirements of the Agreement TRIPS (Act of 22.05.2003 № 850-IV).

As an example, the Treaty copyright law in 1996, as of April 2004 contained 11 developed countries (Burkina Faso, Georgia, Guatemala, Guinea, Honduras, Kyrgyzstan, Mali, Mongolia, Nicaragua, Senegal, Togo), 31 middle-income countries (Argentina, Belarus, Bulgaria, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Ecuador, El Salvador, Gabon, Hungary, Indonesia, Jamaica, Jordan, Latvia, Lithuania, Mexico, Panama, Paraguay, Peru , Philippines, Poland, Moldova, Romania, Saint Lucia, Serbia and Montenegro, Slovakia, Macedonia, Ukraine), and only 5 developed countries (Japan, Korea, Slovenia, United Arab Emirates, United States) [3].

**Findings from research and prospects for further development in this direction.** On January 24th 2013, Ukraine met in Yalta to discuss Intellectual Property Rights. The school of judges gave Ukrainian skills they need to discern the differences between creation and copying.

CLDP, in cooperation with the National School of Judges and the Higher Commercial Court of Ukraine, will organize six days of consultations for 10 judges from commercial courts and appeals courts throughout Ukraine as well as experts from the National School of Judges. The judges will meet with USPTO, US judges from district courts and the Court of Appeals for the Federal Circuit, IP lawyers and professors. In addition, the judges will engage in interactive discussions utilizing country-specific case studies on topics such as trade dress and product packaging and design, trademark conflicts, remedies in IPR litigation, copyright infringement including collective copyright management organizations, trade secrets, and internet issues in IPR cases.

This meeting was set up to formally introduce Ukrainian judges to copyright information and to produce recommendations for future cases. The results of this meeting at this point in time have yet to be released, however, the skills they built will hopefully be able to be used as standards and will set Ukraine on a path to a more just copyright protection system.

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**Козін О. Б., Задерейко О. В., Бегматова Ф. М. Сучасні технології та системи міжнародного захисту авторських прав: дотримуючись дистанції між інформаційною свободою та її захистом**

**Анотація.** Статтю присвячено взаємодії міжнародної системи захисту авторських прав із інтелектуальної власності, проблемі збереження стійкого балансу між інформаційною свободою та її належної захистом, питанню світової, зокрема української, юриспруденції в контексті сучасності.

**Ключові слова:** система захисту авторських прав, сучасна юриспруденція, права інтелектуальної власності, цифрові системи правового регулювання.

**Козин О. Б., Задерейко О. В., Бегматова Ф. М. Современные технологии и системы международной защиты авторских прав: соблюдая дистанцию между информационной свободой и её защитой**

**Аннотация.** Эта статья посвящена взаимодействию международной системы защиты авторских прав с интеллектуальной собственностью, проблеме сохранения устойчивого баланса между информационной свободой и её должной защитой, вопросу мировой, в частности украинской, юриспруденции в контексте современности.

**Ключевые слова:** система защиты авторских прав, современная юриспруденция, права интеллектуальной собственности, цифровых систем правового регулирования.