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PRINCIPLES OF EFFECTIVE IP ENFORCEMENT IN CYBERSPACE: LESSONS FROM UKRAINE AND INTERNATIONAL PRACTICE

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Purpose: this paper is devoted to the study and analysis of the fundamental legal principles that underlie the protection and enforcement of intellectual property rights in cyberspace. The research focuses on identifying common approaches in Ukrainian legislation and international practice, particularly in the United States, Australia, and China, and on developing proposals for improving the regulatory framework for intellectual property enforcement in Ukraine. **The methodological basis of the study** includes general scientific methods (analysis, synthesis, deduction), comparative legal analysis, as well as formal-legal and systemic-structural methods. **Results:** the research reveals that a principle-based approach to IP regulation provides a stable foundation for effective enforcement in the digital environment. The author systematizes doctrinal views and international norms, offering a detailed overview of legal principles such as the rule of law, protection of ownership, balance of interests, good faith, national treatment, and minimum standards. The study emphasizes the need to harmonize national and international standards to ensure predictability, legal certainty, and stronger protection of IPRs online. Recommendations are provided for implementing these principles in Ukraine's legal and policy frameworks. **Discussion:** the internet's borderless nature exacerbates the challenges of enforcing IPRs in cyberspace, inconsistent national regulations, and the growing sophistication of infringement methods. Addressing these issues requires practical enforcement tools and a shared commitment to fundamental legal principles at both the national and international levels. Ukraine's alignment with global best practices in principle-based IP governance will foster innovation, support economic development, and contribute to stronger legal protection in the digital domain.

Key words: intellectual property; effective IP enforcement; intellectual property law; violation of intellectual property rights; cyberspace; protection of intellectual property rights in cyberspace; intellectual property in cyberspace.

Problem statement and its relevance. In the digital era, intellectual property (hereinafter - IP) faces a new dimension of vulnerability. While tangible property can be physically secured, IP requires sophisticated legal and technological safeguards, especially within cyberspace. The exponential rise in digital content creation, coupled with globalized access and distribution, has intensified the challenge of ensuring effective enforcement of IP rights. Existing enforcement models often fail to address cross-border violations, anonymous in-

fringement, and rapid online dissemination of unauthorized content.

The relevance of this issue is especially acute for developing countries like Ukraine, where the IP ecosystem is still evolving and must be harmonized with international standards. Despite legislative reforms and growing awareness, Ukraine continues to face difficulties enforcing IP rights in cyberspace. Studying legal principles underlying IP protection in national and international contexts offers valuable insights for developing effective strategies. Understanding these principles is essential not only for

legislators and enforcers but also for creators, innovators, and businesses who rely on IP protection to sustain innovation and economic growth.

Analysis of research and publications. Scientists from all over the world are working on the issue mentioned. Consequently, B. Schramm and M. Kohen consider the principles of IP law through their subordination to general principles of law. O. Svitlychny emphasizes the absence of a definition of the principles of IP law in the current legislation, but provides his own detailed list of them, as does P. Tsybulev. O. Kyyashko emphasizes the importance of applying the principles of intellectual property management. Furthermore, separate studies of such scientists as O. Klymenko, I. Komarnytska, A. Fitzgerald and D. Eliades, O. Vyyvanko, I. Berdnik, H. Mulyadi, and others are devoted to the issue mentioned.

Purpose of the article. This scientific research aims to identify, analyze, and compare key principles of intellectual property enforcement with a particular focus on cyberspace, drawing from Ukrainian law, international frameworks, and best practices from jurisdictions like the United States, Australia, and China. It seeks to bridge the gap between doctrinal understanding and practical implementation by emphasizing the importance of harmonization and principle-based regulation.

The presentation of the main material. Intellectual property (IP) has significant differences from material property. If a material object can be protected physically (for example, with a safe or a security guard), then IP, especially in cyberspace, requires other mechanisms. At the same time, it is no less in need of high-quality legal protection. Adequate IP protection and defense contribute to an increase in the number of innovations and intensification of scientific research and technological progress, which, in turn, stimulates investment.

The concepts of “defense” and “protection” of IP are often confused. Protection is acquiring rights, usually confirmed by registration documents (patent, certificate, license) granted by an authorized body. Defense is a reaction to a violation of rights carried out by administrative or judicial bodies. Both processes are based on a system of fundamental legal principles.

According to O. Skakun, principles are positive obligations, that is, fundamental requirements for participants’ behavior in legal relations. They form a coordinate system for the law’s functioning, establishing its content and structure.

Intellectual property law is subject to general legal principles [1, p. 221].

According to B. Schramm and M. Kohen, these are abstract but necessary rules that ensure the stability of the legal system, compensate for gaps in regulation, and are formed in the process of law enforcement. Their sources are national legal systems with subsequent application at the international level (Article 38 of the Statute of the International Court of Justice of the United Nations) [2].

Having analyzed a large number of approaches to classifying general principles of law, we can cautiously propose the following classification:

- fundamentals of international law, which, with repeated application, become part of national systems;
- norms that exist in national legal systems and are recognized by international law;
- rules that arise at the junction of domestic and international law.

That is, there is no specific list of general principles. However, one can find the corresponding general principles of law in our Fundamental Law - the Constitution of Ukraine. They are mandatory for compliance and concern all legal branches. Among the principles enshrined at the level of the Fundamental Law, we should name the following:

- Article 8 - the rule of law;
- Article 13 - ensuring the protection of the rights of all subjects of property and business rights and their equality;
- Article 22 - guarantees of human and civil rights and freedoms;
- Article 41 - the right to own, use, and dispose of the results of creative activity [3].

Therefore, compliance with IP must correlate with the general principles of law recognized by civilized states.

Nevertheless, according to O. Svitlychny, the special principles of IP remain insufficiently researched. They are not defined by law but are derived through the analysis of regulatory acts and doctrine.

These principles should be based on both general social laws of development and those specific to the intellectual sphere. They should consider the interests of society, the requirements of humanism and morality [4, p.18].

O. Sokolov and O. Danylova identify the following key principles in the mentioned sphere:

- protectability - the object must meet certain conditions (for example, novelty, inventive step);
- support of balance of interests - between the right holder and society (for example, the term of the patent);
- recognition of the exclusive right - it belongs to the right holder;
- respect for the rights of all parties - in particular, authors and inventors [5, p. 7].

According to P. Tsybulov, there are 4 principles of legal protection of IP, namely:

- the principle of protectability. It consists in the compliance of the object of legal protection with the requirements specified by law (such as the compliance of the invention with the three criteria of patentability);
- the principle of respecting the rights of both rightholders and actual developers, including, in particular, authors and inventors;
- the principle of recognizing the rightholder as having the exclusive right to an intellectual property object;
- the principle of maintaining a balance of interests between rightholders and society, which is embodied, in particular, in the necessity of limiting the monopoly on the object of IP law [6].

We also need to pay attention to the key principles of IP management proposed by O. Kiyashko, independent IP evaluator, patent attorney. These are, inter alia:

- recognition of the role of IP. Intellectual property should be viewed as a valuable intangible asset capable of generating real business value. Managers must distinguish between valuable and redundant IP assets and understand their role in competitiveness;
- identification and inventory of IP assets. Companies must identify all existing IP assets, determine ownership, assess legal validity, and understand how IP supports daily operations and risk management;

- monitoring of competitor IP landscape. Regularly assessing competitors' IP rights is essential to prevent infringement risks and avoid unnecessary investment in restricted technologies or markets.

- determination of required IP. Identifying the IP assets necessary for maintaining or enhancing product competitiveness throughout the product life cycle is crucial;

- creation or acquisition of necessary IP rights. Once the required IP is identified, firms must decide whether to develop it internally or acquire it via assignment or licensing agreements, considering time, cost, and risk;

- integration of IP into strategic business planning. Intellectual property management should be embedded into the strategic planning process from the earliest stages to anticipate the IP needed for future market competitiveness;

- preparedness to enforce IP rights. Businesses must be ready to defend their IP through clearly defined enforcement strategies, including litigation, negotiation, or alternative dispute resolution mechanisms [7].

Regarding approaches to the issue in other countries, it is worth mentioning one of the hegemonies in the area of innovation. The approach to the principles of IP protection in the United States Chamber of Commerce is distinguished by its locality; however, it shows a relatively strong position and insists on the following principles:

- the principle of ensuring proper protection of the country's global innovation leadership is proclaimed. Global competition, where the United States invents the most advanced technologies, with mandatory observance of freedom, democracy, and human rights, is indicated as an imperative of national security. With such a narrative, IP's stable and strong protection is inextricably linked. Intellectual property rights should be inseparable from high-quality research and economic benefits, and regulatory and legal support and policy in the field of IP should comply with an understanding of the potential impact on national security;

- global leadership in critical and emerging technologies must be maintained by promoting policies that facilitate essential innovations. It is imperative in this context to ensure global

leadership in the field of artificial intelligence and to confirm its support for respect for intellectual property across the globe in multilateral organizations and through fruitful cooperation with partners;

- actively promoting investing in the United States Patent and Trademark Office ("USPTO"), which is responsible, among other things, for expertise in the field of IP;

- promoting creativity in the country and providing "global inspiration." To this end, copyright legislation is designed to encourage the development of the individual, creative control and the creation of an environment that encourages and supports the creativity of citizens;

- unscrupulous individuals should be held accountable for IP violations;

- the country should contribute to the disclosure of the potential of American ingenuity among entrepreneurs because SMEs and independent creators are the basis of economic growth in the country.

Yes, the principles sound a bit "pompous," but there is a strong message to promote creativity and innovative development [8].

Another regional document, the Intellectual Property Principles for Commonwealth entities, is also worth considering, presented by the Australian Department of Communications and the Arts. This document provides a basic policy framework for intellectual property management by Commonwealth government entities, encouraging each of them to develop their own IP management systems based on their objectives and needs. In total, the document contains 15 key provisions that define the principles of IP management in the public sector, including:

- Commonwealth entities (organizations and the like) are responsible for effective and ethical intellectual property management. They must regularly evaluate the effectiveness of their approaches to managing and using IP, considering the benefits for Australian society and public policy in general;

- each organization should have its own IP management policy consistent with its strategic objectives and the Principles. An appropriate management plan, strategy and recommendations should support this policy. It sets out the approach to the

acquisition, management, public access, registration, and protection of rights to intellectual and creative works;

- entities should maintain registers or similar systems to identify IP, and implement procedures to reduce the risk of infringement of the rights of others (including through staff training, internal audits of IP use, maintaining appropriate documentation, and the like);

- organizations should apply a flexible approach when determining ownership, management, and use of IP objects. A separate point concerns contracts for the supply of software in the ICT sector - in such cases, organizations should generally recognize their developer's ownership of the software;

- state structures should facilitate public use and ensure access to materials that have been made public to inform the public about state policy and raise citizens' awareness of their rights to state support. Such information is usually licensed under the Creative Commons BY standard;

- commercialization of IP should not be the main activity of a state institution unless it is directly related to the implementation of its target tasks [9, p. 5-9].

These Australian principles could also be relevant in regulating the activities of commercial entities in the Ukrainian economic space, as their implementation would contribute to the development of creativity and innovative activity of the population.

The principles of international intellectual property protection, as outlined in China National Intellectual Property Administration material, deserve particular attention. These include:

- the principle of national treatment: Under this principle, a state must provide nationals of other countries the same level of legal protection for intellectual property as it grants to its own citizens. It is important to clarify that "other countries" refers specifically to those parties to international treaties, such as the Berne or Paris Conventions, rather than all countries globally;

- the most-favored-nation principle: Derived from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), this principle requires that any advantage, favor, or privilege

granted by one member country to the nationals of another must be extended immediately and unconditionally to the nationals of all other member countries. Though similar to national treatment, this principle seeks to harmonize the treatment of foreign nationals across jurisdictions;

- the principle of independence of protection: According to this principle, the acquisition and enforcement of rights in a specific country are determined exclusively by that country's laws, independently of legal decisions made in other jurisdictions. For example, invalidating a patent in the United States does not affect its validity in China. This principle reflects national sovereignty, as each state grants and defines intellectual property rights based on its internal conditions and national interests;

- the principle of minimum standards of protection: Under this principle, countries that are parties to an international agreement must adopt at least the minimum level of protection prescribed by that agreement. Domestic laws cannot offer a lower level of protection but may provide higher standards if, for instance, supported by economic or technological development;

- the principle of priority: A cornerstone of the application, patent, and trademark registration system, this principle is rooted in the Paris Convention. It addresses the practical challenge of filing IP applications simultaneously in multiple countries. A person who applies to one member country is granted a priority right to file for the same intellectual creation in other member countries within a specific time frame, preserving their original filing date;

- the principle of transparency: Also originating from the TRIPS Agreement, this principle requires that all normative legal acts, agreements, court decisions, and administrative rulings be made publicly available, provided such disclosure does not harm national interests, lawful business confidentiality, or the conduct of enforcement activities. Transparency supports a stable and predictable trade environment;

- the principle of public interest: This principle embodies the need to balance the rights and interests of intellectual property holders with those of the broader public, ensuring that IP protection

serves both innovation and societal well-being [10, p.19-21].

The most comprehensive and accurate list of modern principles of intellectual property (IP) law is provided by O. Svitlychnyi. He identifies the following key principles:

- The principle of state support for innovation-driven development of the intellectual sphere. The scholar refers to Part 2 of Article 3 of the Law of Ukraine "On Innovation Activity," listing the core tenets of the national innovation policy: the innovation-oriented development of Ukraine's economy; the creation of a legal framework for innovation; fostering the sustainable functioning of domestic scientific, technical, and innovative capacities; encouraging international scientific and technological cooperation and promoting Ukrainian products in foreign markets; and comprehensive support for innovation infrastructure development. According to the author, these goals can be achieved through special state science and technology programs.

- The principle of good faith on the applicant's part during IP registration. The applicant must act with honest intent when registering an IP object. If the registered object is not used within three years from the registration date without valid reasons, another party may apply for rights to that object.

- The principle of equality of rights and legitimate interests of all IP holders in business activities. Article 42 of the Constitution of Ukraine guarantees freedom of entrepreneurial activity, which implies equal rights for all IP subjects regardless of nationality, financial status, or other factors.

- The principle of accountability for customs officials. Suppose a rights holder suffers damage due to actions related to IP registration in the customs register. In that case, customs officials may bear responsibility, including personal financial liability, especially in cases of failure to meet the deadlines for updating registry data.

- The principle of urgent public necessity. Compulsory licensing of a patented IP object is permitted under Ukrainian law in cases of critical public need or the imposition of martial law or a state of emergency. The Cabinet of Ministers issues such licenses for up to four years and require compensation to the rights holders.

- The principle of IP asset valuation. Proprietary rights to IP objects are subject to expert valuation to determine their economic worth. Relevant legal and regulatory acts regulate this procedure [4, p.21-23].

Indeed, principles are the foundations of the formation of the legal framework, and developing their list in the field of intellectual property law should become the basis for the formation of a new and improvement of the existing regulatory and legal framework for the protection of intellectual property rights in Ukraine.

Conclusion. Summing up, intellectual property, despite often being intangible or “virtual,” can possess significant material value for businesses and economic actors. For this reason, IP objects and their associated rights require robust and reliable protection mechanisms. Each legal field operates based on fundamental principles, and IP law is no exception. While there is no universally codified list of IP principles, analysis of legal doctrine and practice suggests the existence of a set of general IP principles followed, to varying degrees, both in Ukraine and internationally.

Among these, the right of ownership—whether retained by the creator or transferred to another rights holder—stands out as a cornerstone. Equally important are principles such as compulsory licensing, fair conduct, and the balance between the rights of IP owners and the public interest.

Nonetheless, one principle consistently emerges as central to IP law, regardless of the category of protected objects or the legal mechanisms used: harmonization. Achieving alignment, consistency, and systemic coherence among laws, standards, and practices fosters stronger domestic and global IP protection. This, in turn, stimulates creative and innovative activity and contributes to the development of valuable, socially beneficial intellectual assets.

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Валерія Філінович

ПРИНЦИПИ ЕФЕКТИВНОГО ЗАХИСТУ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ У КІБЕРПРОСТОРІ: УРОКИ УКРАЇНИ ТА МІЖНАРОДНА ПРАКТИКА

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Мета: ця стаття присвячена вивченню та аналізу фундаментальних правових принципів, що лежать в основі захисту та забезпечення захисту прав інтелектуальної власності в кіберпросторі. Дослідження зосереджено на визначенні спільних підходів в українському законодавстві та міжнародній практиці, зокрема у Сполучених Штатах, Австралії та Китаї, а також на розробці пропозицій щодо вдосконалення нормативно-правової бази для захисту прав інтелектуальної власності в Україні. **Методологічна основа** дослідження включає загальнонаукові методи (аналіз, синтез, дедукцію), порівняльно-правовий аналіз, а також формально-правові та системно-структурні методи. **Результати:** дослідження показує, що принциповий підхід до регулювання інтелектуальної власності забезпечує стабільну основу для ефективного захисту в цифровому середовищі. Автор систематизує доктринальні погляди та міжнародні норми, пропонуючи детальний огляд правових принципів, таких як верховенство права, захист власності, баланс інтересів, добросовісність, національний режим та мінімальні стандарти. У дослідженні наголошується на необхідності гармонізації національних та міжнародних стандартів для забезпечення передбачуваності, правової визначеності та посилення захисту прав інтелектуальної власності в Інтернеті. Надаються рекомендації щодо впровадження цих принципів у правову та

політичну базу України. **Обговорення:** безкордонний характер Інтернету загострює проблеми захисту прав інтелектуальної власності в кіберпросторі, суперечливі національні правила та зростаючу складність методів порушення. Вирішення цих проблем вимагає практичних інструментів правозастосування та спільної відданості фундаментальним правовим принципам як на національному, так і на міжнародному рівнях. Узгодження Україною передових світових практик у сфері управління інтелектуальною власністю на основі принципів сприятиме інноваціям, підтримуватиме економічний розвиток та сприятиме посиленню правового захисту в цифровій сфері.

У цифрову епоху інтелектуальна власність стикається з новими вразливостями. Хоча матеріальна власність може бути фізично захищена, інтелектуальна власність вимагає складних правових та технологічних гарантій, особливо в кіберпросторі. Швидкісне зростання кількості цифрового контенту в поєднанні із глобалізованим доступом та розповсюдженням посилює проблему забезпечення ефективного захисту прав інтелектуальної власності. Існуючі моделі правозастосування часто не справляються з транскордонними порушеннями та швидким поширенням несанкціонованого контенту в Інтернеті.

Актуальність цього питання особливо гостро постала для країн, що розвиваються, таких як Україна, де екосистема інтелектуальної власності все ще формується та має пройти непростий процес гармонізації із міжнародними стандартами. Незважаючи на законодавчі реформи та зростаючу обізнаність, Україна продовжує стикатися з труднощами у забезпеченні захисту прав інтелектуальної власності в кіберпросторі. Вивчення правових принципів, що лежать в основі захисту інтелектуальної власності на національному та міжнародному рівнях, прагне надати цінні знання для розробки ефективних стратегій. Розуміння цих принципів є важливим не лише для законодавців та правоохоронців, але й для творців, новаторів та підприємств, які покладаються на захист інтелектуальної власності для підтримки інновацій та свого економічного зростання.

Ключові слова: інтелектуальна власність; ефективний захист прав інтелектуальної власності; законодавство про інтелектуальну власність; порушення прав інтелектуальної власності; кіберпростір; захист прав інтелектуальної власності в кіберпросторі; інтелектуальна власність у кіберпросторі.

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