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ДОГОВІР У МЕХАНІЗМІ ПРАВОВОГО РЕГУЛЮВАННЯ ВІДНОСИН ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

Анотація. Актуальність дослідженої у статті проблематики обумовлена посиленням ролі договірної регуляції відносин інтелектуальної власності в умовах інформаційного суспільства та переходу до інноваційного типу розвитку національної економіки. Ціль даного дослідження полягає у виявленні особливостей дії договору як правового засобу у механізмі правового регулювання відносин у сфері інтелектуальної власності на різних його стадіях. В контексті аналізу договору як засобу регулювання відносин у сфері інтелектуальної власності наголошено на доцільності розмежування двох груп правовідносин: які опосередковують статичку, тобто належність об'єктів права інтелектуальної власності відповідним суб'єктам, і тих, які опосередковують динаміку, тобто перехід майнових прав інтелектуальної власності від одних суб'єктів до інших. Зазначено, що договір є чи не найважливішим правовим засобом комерціалізації прав інтелектуальної власності, забезпечуючи ефективне впровадження результатів творчої діяльності у виробництво та інші ділянки суспільного життя для задоволення як приватних інтересів їх творців, осіб, які інвестували кошти у їх створення, так і загальносуспільних інтересів. Відзначено тенденцію до все більш широкого використання договору, як правового засобу на стадії захисту прав інтелектуальної власності. Сторони можуть закріпити у договорі щодо розпоряджання майновими правами інтелектуальної власності способи захисту їх прав, які не передбачені у законі, врегулювати порядок вирішення спорів тощо. Отже, договір є ефективним правовим засобом на усіх стадіях правового регулювання відносин інтелектуальної власності – при юридичній регламентації означених відносин, набутті прав інтелектуальної власності, здійсненні цих прав, а також при їх захисті. Проведений в межах даної статті аналіз та його результати можуть використовуватися у подальших наукових дослідженнях проблем договірної регуляції відносин у сфері інтелектуальної власності, а також у правотворчій діяльності для удосконалення національного законодавства про інтелектуальну власність, що набуває особливого значення у контексті рекодифікації цивільного законодавства України.

Ключові слова: майнові права, комерціалізація, об'єкт цивільного права, регулювання суспільних відносин, авторське право.

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CONTRACT IN LEGAL REGULATION OF INTELLECTUAL PROPERTY RELATIONS

Abstract. The relevance of the study is conditioned by the strengthening role of contractual regulation of intellectual property relations in the information society and the transition to an

innovative development of the national economy. The purpose of this study is to identify the features of the contract as a legal tool in the mechanism of legal regulation of intellectual property relations at different stages. In the context of the analysis of the contract as a means of regulating relations in intellectual property, emphasis is placed on the expediency of distinguishing two groups of legal relations: those that mediate statics, i.e. ownership of rights to intellectual property, and those that mediate the dynamics, i.e. transfer of rights to intellectual property from one subject to another. It is noted that the contract is perhaps the most important legal means of commercialisation of rights to intellectual property, ensuring the effective implementation of creative activities in production and other areas of public life to meet the private interests of their creators, those who invested in their creation, and public interests. A rising tendency is noted to use the contract as a remedy at the stage of protection of rights to intellectual property. The parties may stipulate ways to protect their rights in the contract on the disposal of rights to intellectual property, which are not stipulated by law, regulate the procedure for resolving disputes, etc. Thus, the contract is an effective remedy at all stages of governing intellectual property relations – in the legal regulation of these relations, the acquisition of rights to intellectual property, the exercise of these rights, as well as their protection. The results of the analysis conducted in this study can be used in further research on contractual regulation of intellectual property relations, as well as in law-making to improve national legislation on intellectual property, which is especially important in the context of recodification of civil legislation of Ukraine.

Keywords: property rights, commercialisation, object of civil law, regulation of public relations, copyright.

INTRODUCTION

Recent decades have seen an increase in interaction between countries, especially through trade and foreign direct investment. This has been shaped since the 1990s by means of reducing trade and investment barriers, reinforced by the signing of bilateral, regional, and multilateral trade and investment agreements. Intellectual property refers to any original work of human intellect, such as a work of art, literature, technology, or science. Intellectual property rights refer to legal rights granted to an inventor or creator to protect their invention or creation over a period of time. These legal rights provide the exclusive right to the inventor/creator or their successor to fully use their invention/creation for a certain period of time. It was determined that rights to intellectual property play an important role in the modern economy. It was also finally established that intellectual work related to innovation should be given due importance for the public good to come out of it. There has been a quantum leap in research and development spending with the associated leap in investment required to bring new technology to market [1-3].

During this period, there has been an increase in the number of trade agreements containing chapters on intellectual property, as well as the number of countries that have signed this programme, thereby helping to strengthen and harmonise intellectual property systems outside the process initiated by TRIPS. TRIPS, which stands for "Agreement on Trade-Related Aspects of Intellectual Property Rights", is an international agreement included in the package of documents establishing the World Trade Organisation. The agreement sets minimum standards for the recognition and protection of major intellectual property. In this context, countries requiring intellectual property are usually developed countries, while developing countries are in need of reform. [4] Despite the growing relevance of intellectual property trade agreements and their possible implications, this

issue has been marginally addressed in empirical analysis, with the exception of a recent 2016 study that examined the impact of trade agreements on intellectual property chapters on overall trade [5; 6].

Intellectual property law and contract law belong to those civil law institutions that play a crucial role in the information society and the transition to an innovative type of development of the national economy. Due to intellectual property rights, the results of human intellectual activity in various fields become objects of civil rights, and the relations regarding such results are embodied in legal form. However, the ownership of personal non-proprietary and proprietary rights to intellectual property is not capable of satisfying the interests of the author, performer, inventor, breeder, or other creator – for this there must be an effective legal mechanism for exercising these rights, especially their property component. And in this aspect the most important legal remedy is a civil contract. Therefore, it is no coincidence that in the literature on intellectual property, the contract is often interpreted as a form (means) of fulfilment (exercise) of rights to intellectual property. But to consider the contract only from such a position would be too narrow an approach. After all, in the modern doctrine of private law, the contract is quite fairly considered as a remedy, the effect of which is manifested at all stages of legal regulation, starting with the regulation of public relations and ending with the stage of law enforcement [7]. In domestic civil science there is an increased interest in the category of "mechanism of legal regulation" both at the level of general civil law issues and in terms of individual institutions of civil law. In terms of rights to intellectual property in this aspect, the scientific articles by R.B. Shyshka deserve particular attention [8; 9].

The mechanism of legal regulation of relations in the field of intellectual property, on the one hand, is designed to ensure the settlement of public relations. For this, at the level of legal provisions, the range of objects of intellectual property rights, the conditions for granting them legal protection, the subjects, the grounds for acquisition and the content of rights to the relevant objects, etc. are determined. Thus, the legal provisions determine to which object, to whom, and what rights belong. On the other hand, legal regulation should ultimately ensure the satisfaction of the interests of the subjects of relevant relations, related in a certain way to the use of rights to intellectual property, and in case of violation of subjective rights of authors, performers and other rights holders – their effective protection [10].

This applies entirely to the field of intellectual property. Therefore, the purpose of this study is to identify the features of the contract at different stages of legal regulation of intellectual property relations.

1. MATERIALS AND METHODS

The theoretical framework of the study comprises the articles of leading Ukrainian scholars in civil law, covering the general issues of legal regulation of public relations of private law and the place of the contract therein, and issues of contractual regulation of relations emerging in the field of intellectual property. The statutory framework of the study comprises the Civil Code of Ukraine, as well as other acts of civil legislation, in particular, special laws in the field of intellectual property. The paper also uses some materials of judicial practice of consideration and resolution of disputes related to the protection of rights to intellectual property.

Philosophical, general scientific, and special legal methods and means of cognition were used in the study. The dialectical method of cognition formed the basis of the study and allowed to analyse legal regulation of intellectual property relations as a developing phenomenon, to identify its main trends. In particular, the use of this method of cognition allowed to emphasise the importance of the contract as a legal instrument in regulation of intellectual property relations in modern conditions, which makes it appropriate to consider it not only as a basis for acquiring relevant rights or their form, but also as an effective means of legal regulation of such relations. Logical methods (analysis, synthesis, induction, deduction, generalisation, etc.) accompanied the entire research process. Thus, the application of the method of analysis allowed to consider the effect of the contract at all stages of legal regulation of intellectual property relations, namely the legal regulation of these relations, acquisition of rights to intellectual property, exercise of these rights, as well as their protection in case of violation, challenge, or non-recognition. The method of analysis was also used to distinguish two groups of relations in the field of intellectual property: those that mediate the ownership of rights to intellectual property to the relevant entities, and those within which the rights to intellectual property are transferred from one subject to another. This allowed to identify different possibilities of contractual regulation of these two groups of relations. The use of the method of generalisation allowed to reach the general conclusion that the contract as a legal instrument permeates the entire process of legal regulation of these relations, showing its effect at all stages. The system-structural method allowed to consider legal regulation of intellectual property relations as a system of interconnected elements – legal remedies, and to determine the place of the contract as one of such legal means at different stages of legal regulation of the studied relations. The formal legal method is used in the analysis of legal provisions governing intellectual property relations and the practice of their application. Thus, the analysis of the provisions of Article 429 of the Civil Code of Ukraine¹ and Article 16 of the Law “On Copyright and Related Rights”² allowed to identify the conflict between them and address the feasibility of contractual regulation of the legal regime of works made for hire. Also, this method is used in the processing of acts of generalisation of judicial practice, as well as court decisions in specific cases relating to the protection of rights to intellectual property.

The hermeneutic legal method was used in the process of interpreting the provisions of intellectual property law. In particular, the interpretation of the provisions of Part 2 Article 425 of the Civil Code of Ukraine³ in its systemic interrelation with Article 1110 of the Civil Code of Ukraine allowed to distinguish between the terms of validity of rights to intellectual property and the terms in contracts on the disposal of such rights. Similarly, a systematic interpretation of the provisions of Articles 11 and 422 of the Civil Code of Ukraine allowed to conclude that in the context of the acquisition of rights to intellectual property, it is precisely the contract that should be considered as a legal fact (or element of legal composition) that serves as the basis for the acquisition of such rights.

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

² Law of Ukraine No 3792-XII “On Copyright and Related Rights”. (2012, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3792-12/ed19931223#Text>

³ Civil Code of Ukraine, op. cit.

2. RESULTS AND DISCUSSION

The specific feature of the legal regulation of relations in the field of intellectual property is manifested in the fact that it must ensure a reasonable balance of interests of creators, right holders, and public interests. Neglecting at least one of them, or, conversely, unjustifiably exaggerating the importance of any of them, will reduce the effectiveness of legal regulation of relations in this area. Legal regulation as a dynamic process of the influence of law on public relations involves a certain occurrence in stages. Despite the existence of different opinions on the stages of legal regulation in the civilistic literature, the authors consider it appropriate to take as a basis the position of N.S. Kuznetsova, V.L. Yarotskyi, who distinguish the following stages: 1) legal regulation of social relations; 2) the emergence of subjective rights and obligations; 3) fulfilment of subjective rights and performance of obligations; 4) enforcement of law [7; 11]. Therefore, below is an attempt to showcase the effect of the contract at each of the said stages of legal regulation of intellectual property relations.

The first stage of legal regulation of relations in the field of intellectual property is their prescription, which lies in the ideal model of behaviour for participants in such relations being consolidated in civil law provisions. Therefore, the dominant element of the mechanism of civil law regulation at this stage is the provision of civil law. To perform the function of regulating public relations, the latter must be objectively expressed in certain external forms – sources of law. Sources of intellectual property law include, first of all, acts of civil legislation. Historically, the emergence and development of legal protection of the results of creative activity is associated with the adoption of relevant special legislation in the field of copyright, patents, trademarks, etc. in national legal systems. Even in the countries of Anglo-Saxon law, where the main source of law is traditionally considered to be the judicial precedent, there are corresponding laws in the field of intellectual property.

In the context of this study, the question of the place of the contract in the regulation of relations in the field of intellectual property is of interest. Modern civil law doctrine has repeatedly drawn attention to the fact that the contract is a means of governing the behaviour of the parties in civil law relations [12] and is at the level of sources of law [5]. S.O. Pohribnyi believes that in cases where a civil contract is used by entities for self-regulation of their civil relations (Article 6 of the Civil Code of Ukraine¹), it particularly constitutes a form of expression of the civil law provisions [13]. With regard to the field of intellectual property, the issue of the role of the contract as a regulator of these relations has not yet received adequate coverage. In this aspect, the articles of O.V. Basai, O.V. Zhylinkova can be noted, which consider the contract to a greater extent as a basis for the acquisition of rights to intellectual property or a form of disposal of such rights, but at the same time paid attention to the regulatory function of the contract in intellectual property relations [14; 15]. Generally supporting the idea of contractual regulation of intellectual property relations, it is necessary to emphasise the expediency of distinguishing between two groups of legal relations in this area: first, it is legal relations that mediate the statics, i.e. the belonging of rights to intellectual property to the relevant subjects; secondly, these

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

are legal relations that mediate the dynamics, i.e. the transfer of rights to intellectual property from one subject to another.

Legal relations belonging to the first group are governed mainly by the provisions contained in the law. This is conditioned not only by the historical features of the becoming and development of intellectual property rights, but largely by the fact that such legal relations are absolute, where the range of obligated entities is predetermined (impersonal). The agreement provides for certainty regarding the subjects concluding it (parties), and is aimed at settling relations between the latter. Therefore, several issues related to intellectual property rights lie outside the scope of contractual regulation. For example, the types of rights to intellectual property and the conditions for granting them legal protection are determined by the national legislation of each state, considering its obligations under the corresponding international treaties. Pursuant to Articles 199, 418 of the Civil Code of Ukraine, the objects of intellectual property rights are only objects defined by law. Under such conditions, the contract cannot stipulate "new" categories of rights to intellectual property, which are not stipulated by law, or contain other conditions for granting them legal protection than ensured by law. This applies even to those institutions of intellectual property law where the law stipulates an inexhaustible list of types of relevant objects. For example, copyright law does not contain a closed list of types of works. But in any case, the emergence of copyright in a work requires that it be the result of creative activity, expressed in an objective form. Similarly, the law does not contain an exhaustive list of information that may constitute a trade secret, but if the information does not meet the conditions specified in the law for granting it legal protection (Article 505 of the Civil Code of Ukraine), it cannot be considered a trade secret.

In the context of the issue of contractual regulation of intellectual property relations and its limits, Part 2 Article 425 of the Civil Code of Ukraine¹, which among the sources of establishing the validity of rights to intellectual property, lists the Civil Code of Ukraine, another law, and the contract. The authors believe that such a legislative position is not entirely correct, as the terms and conditions of intellectual property rights traditionally belong to the scope of regulation of the law. In this aspect, it is advisable to distinguish between the validity of rights to intellectual property in absolute legal relations and the validity of agreements on the disposal of these rights. This is confirmed by the provisions of Article 1110 of the Civil Code of Ukraine, according to which the license agreement is concluded for a period established by the agreement, which must expire no later than the expiration of the exclusive property right to the object of intellectual property rights specified in the agreement. Thus, the term of the license agreement does not belong to the term of validity of rights to intellectual property, which are referred to in Article 425 of the Civil Code of Ukraine. Thus, the validity of rights to intellectual property is determined by the Civil Code of Ukraine and the relevant special laws.

The fuller regulatory function of the contract is manifested in relation to binding legal relations that mediate the turnover of rights to intellectual property. Thus, only the agreement determines the scope of rights to use the object of intellectual property rights, which are granted to the licensee under the license agreement or transferred to the purchaser under the agreement on the transfer of rights to intellectual property. The

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

contractual procedure determines the permissible ways of the use of the object by the licensee, circulation, territory of use, etc. In creative contracts, the parties specify the requirements for the work that the author undertakes to create (type of work, theme, genre, volume, etc.), the timing of its creation, the procedure for transferring the original or copy of the work to the customer, the customer's rights to use the work. Furthermore, in relation to licensing agreements, commercial concession agreements, agreements on the transfer of rights to intellectual property, etc., concluded with the participation of a foreign entity, the parties have the right to determine which country's law will be applicable to the agreement on the basis of the principle of autonomy (Articles 5, 43 of the Law "On International Private Law"¹).

The regulatory function of the contract is especially relevant in cases where the legislation either does not contain legal regulation of certain relations, or the legislative regulation is imperfect, in particular, due to the existence of conflict of laws. An example in this regard is the definition of the legal regime of works for hire. As is known, there is a conflict of laws between Article 429 of the Civil Code of Ukraine² and Article 16 of the Law of Ukraine "On Copyright and Related Rights"³. At one time, the Supreme Court of Ukraine outlined a position on the application of the provision of Article 429 of the Civil Code of Ukraine in this case, which presumes the ownership of rights to intellectual property to the object created by the employee in connection with the performance of work for hire to the employee and the employer together. But this option is rather problematic from the standpoint of further exercise of such property rights. Therefore, it is considered appropriate to apply the contractual regulation of this issue here, which is especially relevant for IT companies, film studios, research institutions, etc. The second stage of legal regulation of intellectual property relations is the emergence (acquisition) of rights to intellectual property. At this stage, due to the occurrence of specific circumstances (legal facts, legal structures), a certain subject(s) acquire(s) moral and (or) intellectual property rights to a particular object. In this aspect, it should be noted that the contract may form the basis for the acquisition of exclusively intellectual property rights. According to Article 422 of the Civil Code of Ukraine⁴, intellectual property rights emerge (acquire) on the grounds established by this Code, other law, or contract.

This raises the question of the place of the contract in the mechanism of acquisition of intellectual property rights. After all, in accordance with Article 11 of the Civil Code of Ukraine, the contract itself, in fact, is a legal fact that forms the basis for the emergence of subjective civil rights. And under Article 422 of the Civil Code of Ukraine, the role of the contract is reduced to the fact that it defines the circumstances that serve as the basis for the emergence (acquisition) of intellectual property rights. It is precisely the contract that should be considered as the legal fact (or an element of legal structure) that forms the basis of acquisition of rights to intellectual property. In this aspect, the provisions of Article 422 of the Civil Code of Ukraine require revision in part that the grounds for the emergence

¹ Law of Ukraine No 2709-IV "On Private International Law". (2005, June). URL: <https://zakon.rada.gov.ua/laws/show/2709-15/ed20050623#Text>

² Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

³ Law of Ukraine No 3792-XII "On Copyright and Related Rights". (2012, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3792-12/ed19931223#Text>

⁴ Civil Code of Ukraine, op. cit.

(acquisition) of rights to intellectual property may be determined by contract. The contract can act as an independent basis for the acquisition of rights to intellectual property, and be an element of the legal structure. For example, under a contract for the transfer of property rights to a work, the contract constitutes a legal fact, the occurrence of which is associated with the transfer of property rights to the work to the acquirer. However, in case of commissioning contract, the authors agree with O.I. Kharytonova's opinion that the basis for the relevant rights to the work is the legal composition ("legal body"), formed by this contract and the fact of creation of the work [16]. With regard to contracts on the disposal of property rights to industrial property that shall be subject to state registration by law (inventions, utility models, industrial designs, trademarks, etc.), the relevant rights pass to the purchaser from the moment of the respective state registration. Therefore, the basis for the acquisition of rights to intellectual property in this case is the legal composition, the elements of which are the contract on the transfer of property rights to the object of industrial property and the state registration of such rights by the acquirer.

Contracts under which the acquisition of rights to intellectual property should include a contract on the transfer of rights to intellectual property, license agreements on the granting of exclusive or single licenses. The basis for the acquisition of these rights may be a commissioning contract, if its terms and conditions stipulate the transfer of intellectual property rights to the object created by the creator to the customer. As for non-exclusive license contracts and commercial concession contracts, succession of rights to intellectual property does not occur thereunder – there is only a binding relationship between parties thereto and neither the licensee nor the user acquires any absolute rights in this case. The third stage of legal regulation of intellectual property relations is the exercise of rights to intellectual property. At this stage, by means of specific acts of conduct of the authorised entity, those legal opportunities are fulfilled, which are determined by the content of the moral and (or) proprietary rights to intellectual property of the said entity. As a result, the interests of the latter are satisfied. In this aspect, the contract is one of the important forms of exercising intellectual property rights, namely their property component. In general, the exercise of intellectual property rights can be understood as the commission of actions to use the object of intellectual property rights by the right holder(s) or authorised person at its discretion and/or dispose of property rights to satisfy the property interests of the right holder(s) [17].

In this regard, it should be emphasised that the use of the object of rights to intellectual property, as a rule, requires the subject to have the appropriate equipment, materials, financial resources, etc. The author, inventor, or other creator in most cases does not have such means and resources, and therefore mainly exercises their property rights to the created object by disposing of these rights, as a rule, by entering into contractual relations with relevant entities (publishers, film studios, producers, etc.). Under such conditions, the contract constitutes the legal means that allows to ensure the satisfaction of property interests of the creator, as the latter receives a fee (royalty) for the use of the results of creative activity. Therewith, the contract ensures the satisfaction of property interests and the subject with whom the creator enters into it, because under the contract such a subject is given the right to use the work, invention, etc. or the latter acquires intellectual property rights to the object. Ultimately, this also satisfies the interests of society, whose members have access to works of modern art, high-tech devices, quality

medicine, etc. In general, the contract is perhaps the most important legal means of commercialising intellectual property rights, as it ensures effective implementation of results of creative activity in production and other areas of public life so as to meet both the private interests of their creators, those who invested in such creation, and public interests [18-20].

Intellectual property law is an independent institution of civil law, which is covered by one of the six books of the Civil Code of Ukraine¹. Objects of intellectual property rights constitute a separate type of objects of civil rights (Articles 177, 199 of the Civil Code of Ukraine), in respect of which there are *sui generis* rights – moral and (or) proprietary rights to intellectual property (Article 418 of the Civil Code of Ukraine) that differ from other categories of subjective civil rights. All this necessitates the separation of independent contractual structures that mediate the dynamics of rights to intellectual property. Therefore, contracts on the disposal of rights to intellectual property constitute an independent group in the system of contract law. On the other hand, the nature of rights to intellectual property, which act as an original "basis" for contractual relations in this area, is unique to the various objects of rights to intellectual property – works, performances, inventions, trademarks, etc. This, in turn, allows to enshrine unified contractual structures in civil legislation, in order to mediate relations on the disposal of rights to intellectual property, the scope of which covers various sub-institutions of rights to intellectual property (copyright, related rights, patent law, etc.). This trend has been implemented in the Civil Code of Ukraine, which in Chapter 75 stipulates contracts on the disposal of rights to intellectual property applicable to various objects of rights to intellectual property.

Based on content, contracts on the right to use the object in the area specified in the contract (license contract, commercial concession contract) and contracts on the transfer (alienation) of rights to intellectual property can be distinguished within this group of contracts. Furthermore, such contracts may be concluded that stipulate the order for creation of an object of intellectual property rights, where the constitutive element of the relations is the disposal of property rights to the created object. Along with contracts where the disposal of rights to intellectual property is their ultimate purpose, there are also other contracts containing elements of the disposal of rights to intellectual property. These include, in particular, contracts concluded between collective management organisations and subjects of copyright and (or) related rights, contracts on the pledge of rights to intellectual property, contracts between co-authors on the distribution of property rights to the objects created by them, production contracts, etc. [21-23]. The next (fourth) stage of legal regulation of intellectual property relations is the protection of rights to intellectual property in case of infringement, non-recognition, or challenge. In modern conditions, there is a rising tendency to use the contract as a legal remedy at the stage of protection of rights to intellectual property.

In accordance with Part 2 Article 16 of the Civil Code of Ukraine², the parties may stipulate means of protecting their rights in the contract for the disposal of rights to intellectual property, which are not stipulated by law. In this regard, it should be noted that

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

² *Ibidem*, 2003.

the possibility of determining ways to protect rights to intellectual property by the contract is limited due to the fact that such rights exist in absolute legal relations, where the scope of obligated entities is predetermined. As a rule, the right holder is not in contractual relations with potential infringers; therefore, the methods of their protection are predominantly determined by law. However, in some cases, ways to protect rights to intellectual property may still be determined by contract. For example, in one case it was found that according to paragraph 6 of the contract on alienation of rights to intellectual property, in case of alienator's non-performance of paragraphs 1-4 of the contract in terms of infringement of the exclusive right of the acquirer to use all known methods of protection without restriction of the territory of the exclusive right to permission or prohibition of use of the official work of the author N. "Publishing project of the newspaper "Soroka"" by other persons the alienator shall pay the purchaser a fine of twenty thousand percent of monetary compensation for transferred property rights. In this case, the commercial courts concluded that such terms and conditions of the contract are in conformity with the requirements of the legislation [24]. When concluding a contract on the disposal of rights to intellectual property, the parties may use the provisions of Article 259 of the Civil Code of Ukraine¹ on the possibility of changing the duration of the statute of limitations, stipulating in such a contract a statute of limitations of longer duration than that established by law. However, it should be emphasised that the contract may not change the procedure for calculating the statute of limitations (Article 260 of the Civil Code of Ukraine). Contractual settlement of the procedure for resolving disputes between the parties to agreements on the disposal of rights to intellectual property is becoming increasingly important. This refers to, for example, terms and conditions that stipulate the transfer of disputes arising from the contractual relations to the consideration of the court of arbitration, the use of mediation procedures, etc.

Ultimately, a contract can serve as an effective legal remedy for the settlement of a dispute arising from an infringement on a right to intellectual property. Thus, in practice, cases occur when the subject of rights to intellectual property (right holder) and the infringer reach an agreement on out-of-court settlement of the dispute. The legal form of such an agreement is a contract, which may contain, inter alia, the terms and conditions for the infringer's payment of the appropriate amount of money as compensation in favour of the right holder for property losses incurred in connection with the infringement of rights to intellectual property. This ensures the protection of rights to intellectual property, but the parties to the dispute do not bear the costs associated with the consideration of the case in court, further execution of the court decision, etc. Furthermore, this option saves a lot of time, considering that there is usually a fairly long period of time between filing a claim and the enforcement a court decision,

CONCLUSIONS

The mechanism of legal regulation of intellectual property relations can be considered as a system of legal means that ensure the orderliness of public relations in the field of intellectual property in order to satisfy the interests of creators, right holders, and public interests. The contract plays an important role among the elements of the legal regulation

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

of intellectual property relations. In modern conditions, the contract constitutes the legal tool that has its effect at all stages of legal regulation of intellectual property relations.

At the stage of legal regulation of intellectual property relations, the contract is one of the means of the said regulation. Therewith, it is advisable to distinguish between two groups of contractual regulation of such relations: those that mediate statics, i.e. the ownership of intellectual property rights to the relevant entities, and those that mediate the dynamics, i.e. the transfer of rights to intellectual property from one subject to others. The legal relations included in the first group are predominantly regulated by the legal provisions (types of rights to intellectual property and the conditions for granting them legal protection, the validity of rights to intellectual property, cases of free use of objects, etc.). The possibilities of contractual regulation of legal relations of the second group are much wider. There, the contract determines the scope of rights to use the object of intellectual property rights granted or transferred under the contract, methods of use, circulation, territory of use, requirements for the work that the author undertakes to create, the term of its creation, etc. At the stage of acquisition of rights to intellectual property, the contract performs the function of a legal fact (or element of legal composition), which serves as the basis for the acquisition of such rights. In this aspect, the provisions of Article 422 of the Civil Code of Ukraine require revision in part that the grounds for the emergence (acquisition) of rights to intellectual property may be determined by contract. Considering this, the authors propose to amend the wording of Article 422 of the Civil Code of Ukraine as follows:

“1. Rights to intellectual property arise (acquire) on the grounds established by this Code or other law, in particular from contracts”.

In the exercise of rights to intellectual property, the contract constitutes a legal form of disposal of these rights, thereby ensuring the effective implementation of creative activities in production and other areas of public life so as to meet the private interests of creators, those who invested in such creation, and public interests. Considering that rights to intellectual property constitute an independent institution of civil law, as well as the fact that its objects are a separate type of objects of civil rights, in respect of which exist *sui generis* rights – moral and (or) proprietary rights to intellectual property, contracts on disposal of rights to intellectual property constitute an independent group in the system of contract law.

The importance of the contract at the stage of protection of rights to intellectual property from infringement, challenge, or non-recognition is key. A contract can serve as an effective means of out-of-court settlement of a dispute that has emerged as a result of an infringement of rights to intellectual property. Also, certain issues concerning the methods of protection of violated rights, the duration of the statute of limitations, the use of mediation procedures, etc. may be determined by contract.

In general, considering the development of modern private law, further study of the place of the contract in the mechanism of legal regulation of intellectual property, especially its regulatory function, appears to be rather promising; therefore, the authors hope that this study contributes to further theoretical investigation of this important issue and development of proposals to improve the legislation of Ukraine on intellectual property.

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