ВРОЦЛАВСЬКО-ЛЬВІВСЬКИЙ ЮРИДИЧНИЙ ЗБІРНИК 12
WROCŁAWSKO-LWOWSKIE ZESZYTY PRAWNICZE 12
Львівський національний університет імені Івана Франка • Львів 2021

Oleksandra Yavorska

ORCID 0000-0002-4092-7690
Ivan Franko National University of Lviv
olyavorska@gmail.com

Type of the article: original scientific article

Legal issues of copyright and related rights protection under Ukrainian legislation

Keywords: copyright, sui generis, means of protection

Protection of intellectual property is granted by the provisions of Article 54 of the Constitution of Ukraine. Specific civil means of protection are determined both by the Civil Code of Ukraine and special legislation. Guaranteeing, determination, effectiveness, fairness of the subjective violated right protection are significant components of its value for the right holder and represent the general legal culture of the society. Specific character of the violations, calculation of the damage caused, means of proving influence the rights protection. Therefore, the legal specifics of the means of protection as well as the procedural aspects of hearing the corresponding category of disputes are of great importance.

Provisions of the Civil Code of Ukraine as well as the acts of special legislation are devoted to the intellectual rights protection. General provisions of the Article 432 of the Civil Code of Ukraine[1] – court protection of the intellectual

[1] Tsyvilnyi kodeks Ukrainy vid 16.01.2003. URL: https://zakon.rada.gov.ua/laws/show/435-15# Text (data zvernennia 10.03.2021).

property rights – do not determine the specific means of protection. According to the part 2 of this Article, the court may make judgment in cases and per the procedure established by the law, concerning: 1) application of immediate remedies to prevent violation of intellectual property right and to preserve respective remedies; 2) termination of the trespass through Ukraine custom borders of goods imported or exported with the violation of intellectual property right; 3) withdrawal from civil circulation the goods manufactured or brought into civil circulation with the violation of intellectual property right and destruction of such goods; 4) withdrawal from civil circulation of the materials and instruments used mainly to manufacture goods with violation of intellectual property right or withdrawal and destruction of such materials and instruments; 5) application of a single monetary penalty instead of reimbursement for losses due to unlawful use of the object of intellectual property right; 6) publishing in mass media the information about violation of intellectual property right and the contents of court judgment regarding such violation.

In fact no specific means of protection are indicated in the Article 432 of the Civil Code of Ukraine but there is a reference to the Article 16 of the Civil Code, provisions of which establish the general means of civil rights and interests protection. In the court practice provisions of the Article 432 of the Civil Code are not used as the provisions of direct force since it is objectively impossible to apply them. While protecting the violated rights of intellectual property by one or another means the court enforces the provisions of the special laws since both types of violation and means of protection vary depending on the type of intellectual property objects.

Provisions of the Article 16 of the Civil Code establish such general means of the protection of civil rights and interests as: 1) recognition of the right; 2) recognition of the transaction as invalid; 3) suppression of the action violating the right; 4) recovery of the state existing before violation; 5) forced discharge of duty in nature; 6) legal relationship change; 7) legal relationship termination; 8) indemnification and different ways of compensation of property damage; 9) compensation of moral (non-property) damage; 10) recognition of the decisions, actions or failure to act of public authority, authority of the Autonomous Republic of Crimea or local government body, their officials as illegal.

It is significant that the court may protect the civil right or interest by any other means established by the agreement or the law or by the court in the cases determined by law.

In case of copyright and related rights violation special means of protection foreseen by the Law of Ukraine "On copyright and related rights"[2] may be enforced.

Present edition of the Law "On copyright and related rights" includes Article 52, namely means of civil law protection of the copyright and related rights. However, literal and contextual interpretation of the provisions of this Article

[2] Pro avtorske pravo i sumizhni prava: Zakon Ukrainy vid 23.12.1993. URL: https://zakon.rada.gov.ua/laws/show/3792-12#Text (data zvernennia 10.03.2021).

allows to define specific means of protection via indirect pointing at them. So, in case of copyright and/or related right violation a person may demand the recognition and renewal of his/her rights, including suppression of the actions, which violate copyright and/or related rights or create a threat of its violation. Therefore, it stipulates such means of protection as recognition, renewal of the right. The clause b of part 1 of Article 52 of the Law indicates the right of a person to address the court with a claim, in which a person requires renewal of the infringed rights and (or) the termination of actions infringing copyright and (or) related rights or posing a threat of their violation. In return, clause c, d stresses the right to lodge claims to the court requiring reimbursement of moral (non-proprietary) losses and also requiring reimbursement of losses (material damage), including lost profit, or collection of the income derived by the infringer as a result of his violation of copyright and (or) related rights, or payment of compensation. "*Addressing to the court with a claim*" and "*lodging a claim*" are identical notions, however, they are formulated differently. Obviously, the mentioned provisions indicate such means of protection as recognition, renewal of the right, suppression of the actions violating the right, indemnification of the losses and moral damage, compensation payment.

The right to participate in the inspection of the production premises, storage facilities, technological processes and business operations relating to the production of specimens of works, phonograms and video grams with respect to which there are grounds to suspect violation or threat of violation of copyright and (or) related rights, in compliance with the procedure established by the Cabinet of Ministers of Ukraine looks problematic. First of all, there is no legislative act establishing such a procedure. Secondly, nowadays any inspection of the commercial (business) subjects, even by the authorized state bodies, is conducted rather cautiously under the exclusive conditions with the obedience of a number of restrictions concerning inspections. Sometimes such "cautiousness" harms the consumer rights. Inspection of the commercial (business) subject by the copyright subject with the aim of removal of the threat of his rights violation looks quite impossible.

Such an important prevention as the right of a person to address to the court with the claim to suppress the actions, which create a threat of violation does not have a providing mechanism for it, since it is quite problematically to prove the reality of the threat of right violation.

Therefore, specific means of protection are presented in the part 1 of the Article. 52 as the established rights of a subject in case of certain violations. In the part 2 of the Article 52. same means of protection are presented as a pointer on the right of the court to make a decision on enforcement of a certain means of protection. Such an approach does not seem to be successful, since the repetitions are made and the legal certainty concerning the means of protection is not provided. Special laws should not have included provisions on the right of the court to make certain decisions since the court is bound to consider a dispute and make a decision if a person addressed for protection.

In the draft Law "On copyright and related rights"[3] certain problems of the law enforcement are considered. Particularly, in the Article 57 of the draft individuals who will be entitled to address the court and other bodies, according to its competence, for copyright/related rights protection are specified. It means not subjects of copyright but people who were granted exclusive license for copyright and related rights objects usage; collective management organizations (CMO), considering the spheres of their activity according to the authorization of the subjects of corresponding rights; associations of subjects of copyright and related rights, the main aim of activity of which is violated rights protection.

According to the Article 12 of the Law of Ukraine "On effective management of the property rights of the right holders in the sphere of copyright and related rights",[4] CMO address the court on the behalf of the subjects for their property rights protection according to the statutory powers and authorization of such subjects, commit other actions, foreseen by the legislation and authorization, which are needed for the protection of the property rights of subjects with interests of which the organization is acting. Such an organization in case of filling a claim is not a plaintiff since it addresses the court for the protection of copyright and related rights of subjects and not its own rights protection. A corresponding subject for whose interests protection the organization addressed to the court will be a plaintiff in such a case.

It is proposed in the draft Law "On copyright and related rights" to foresee sui generis rights – rights of exclusive nature on the databases. In the draft it is established that individuals who belong to sui generis may address the court and other bodies, according to their competence, for the protection in the procedure established by the law. Therefore such rights are protected by means established for the copyright and related rights. Such approaches show the implementation of the provision of the 96/9/EC Directive "On the legal protection of the databases"[5].

According to the Article 8 of the Law "On copyright and related rights" databases are the object of copyright. It includes original databases which due to selection or arrangement of its components are the result of an intellectual creative activity of the author.

It is recommended for the member states in the Article 7 of the 96/9/EC Directive to provide a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the

[3] Proekt Zakonu "Pro avtorske pravo i sumizhni prava". URL: https://www.me.gov.ua/Documents/Detail?title=ProktZakonuUkrainiproAvtorskePravoISumizhniPrava: (data zvernennia 10.03.2021).

[4] Pro efektyvne upravlinnia mainovymy pravamy pravovlasnykiv u sferi avtorskoho i (abo) sumizhnykh prav: Zakon Ukrainy vid 15.05.2018. URL: https://zakon.rada.gov.ua/laws/show/2415-19#Text (data zvernennia10.03.2021).

[5] Dyrektyva 96/9/IeS Yevropeiskoho Parlamentu ta Rady "Pro pravovyi zakhyst baz danykh" vid 11.03.1996.URL: https://zakon.rada.gov.ua/laws/show/994_241#Text (data zvernennia 10.03.2021).

obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database. Such a right may be transferred, assigned or granted under contractual licence and shall apply irrespective of the eligibility of that database for protection by copyright or by other rights.

In fact the Directive proposes an ambiguous approach to databases legal protection: original databases are protected by copyright and/or sui generis right, non-original by rights of exclusive nature – sui generis.

It indicates the maker of a database in the Directive. There is no doubt that a database is the result of work by a certain person or group of people. However, database may be developed by a commercial subject-employer with the use of his material, financial, organizational resources. Therefore, in the national legislation it is important to determine to whom rights on database should belong and who will be empowered to address the court for violated rights protection. In case of creating a database during performing one's working duties or according to the employer's task, the question of sui generis right distribution could be handled on analogy with the property copyrights on the course-of-duty works. On the other hand, since developing the database demands certain investments, which shall be carried by the employer in case of emerging, it is reasonable to recognize the employer as the sui generis rights holder. Therefore, direct legislative pointer on the subjects of non-original database rights is vital.

It is of great importance to balance the sui generis rights, on the one hand, and inadmissibility of unfair competition on market, on the other. For the time being competition legislation does not include provisions concerning either unlawful usage of non-original databases or impossibility of sui generis rights trespassing.

In the draft Law "On copyright and related rights" it is proposed to establish sui generis rights for non-original objects generated by a computer program (programs) without the immediate participation of a physical person in the process of their creation. Subjects of sui generis rights to non-original objects generated by a computer program (programs) are people who have exclusive property right to this computer program (programs): authors of computer program (programs), their heirs or people whom property rights on computer program (programs) were transferred by the authors or their heirs. A subject of sui generis rights to non-original object generated by a computer program (programs), does not have personal non-property rights to such an object, which is logical. Such a subject has the same scope of property rights as the one provided for the copyright subjects. Therefore, such rights are protected by the means established for copyright and related rights protection.

The analysis of the court practice attests the prevalence of such means of violated rights protection as a demand for a compensation – clause d of the part 1, clause d of the part 2 of the Article 52 of the Law "On copyright and related rights". Such a means of protection is also foreseen by the draft Law. While applying such a means of protection a subject, whose right has been violated,

should prove the fact of violation only. The amount of the caused damage, causal connection between the unlawful behavior and damage caused, other conditions for establishing the liability do not matter. Of course, sometimes decided by the court the sums of compensations, which were to be paid, were quite incommensurable with the character of the violation, income amount which the offender received. However, after the amendment made by the Law on shift of the procedure of calculating compensations, 15 May, 2018 such claims are rarely filed.

Nowadays, compensation is determined by a court as lump sum on the basis of such elements as doubled (in case of intentional violation – tripled) amount of award or commission payments, which could have been paid, if the offender had addressed the application for granting a permission on disputed copyright or related right usage instead of remedy or income collection.

Taking into consideration such legal approaches, a number of issues concerning the calculation of the compensation arise. If a subject of copyright or related rights has concluded license (or any other) contracts with any users and provisions of such contracts determine the payments amount for property copyright and related rights usage, a court, while considering a case, may take into consideration such amount for determining the amount of compensation. In case when a subject hasn't concluded contracts, it is problematic to determine the amount, which the author could have received, if the property rights usage had been lawful. For clarification a court expertise may be designated.

It is indicated in the clause 4 of the part 3 of the Article 57 of the draft Law "On copyright and related rights" that collection of the compensation which is determined by the court instead of reimbursement of loses or income collection: a) at the rate up to 50000 subsistence minimums for a capable person (*what if an offender is incapable*?) or b) as a fixed doubled, in case of intentional violation – as a fixed tripled sum of the award, which could have been paid in case of permitting the usage of a disputed copyright or related rights object, instead of reimbursement of loses or income collection (*the problem of guilt form proving, award amount, which could have been paid*).

In fact it is proposed to preserve the approach to determining the amount of compensation, which was established in the clause d of the part 2 of the Article 52 of the Law "On copyright and related rights" after the amendments made by the Law, 15 May 2018. If a subject of copyright or related rights has concluded contacts on the work usage, according to the provisions of which he receives a certain amount of award, such an award will be taken into consideration while calculating the compensation amount. If such contracts have not been concluded, determining the amount of compensation on the grounds of the assumption about award amounts or commission payments, which could have been paid, if the usage of the object was carried out lawfully, is quite problematic.

It is indicated in the draft that the amount of the compensation should be effective, proportional and deterrent. What is more, it should be enforced in a way that avoids creating obstacles for carrying out legal activity and provides a pro-

tection against trespassing. While determining the amount of compensation, a court takes into consideration the following facts: duration and regularity of the violation, scope of the violation (particularly, with considering the territory of its distribution), the sphere of commercial activity and offenders intentions and other objective circumstances as well. Such approaches seem to be reasonable. However, it looks like the problems with the calculation of compensation amount will remain.

Thereby:

– a subject of copyright/related rights may use general means of protection;

– specific means of violated rights protection can be established by a contract on the usage of property copyright rights;

– a subject of copyright/related rights may use specific means of protection, established by the Law "On copyright and related rights";

– court may determine an effective means of protection of its choice.

Nowadays disputes concerning intellectual property rights are triable by different courts. Particularly, according to the Resolution of the Plenum of the Supreme Court of Ukraine "On application legislative provisions in the cases concerning the protection of copyright and related rights by courts"[6], 4 June 2010 all disputes concerning recognition of the authorship of the work shall be considered in the civil procedure, including cases of acquiring a right of a subject of intellectual property by a legal person on a work, which was created because of labour contract performance or was created on order. In addition, a dispute involving a physical person – a subject of entrepreneur activity shall be resolved by the civil procedure if such a dispute did not arise in connection with performing commercial activity by such a person.

At the same time, according to the Resolution of the Plenum of the Higher Commercial Court of Ukraine "On certain issues of resolving disputes practice, concerning intellectual property rights protection"[7], 17 October 2012 commercial courts consider disputes concerning the usage of intellectual property objects in the commercial circulation when the participants composition corresponds the provisions of the Commercial Code of Ukraine". To the scope of disputes considered by commercial courts belong disputes concerning the recognition of the documents certifying the right on the intellectual property objects (certificate, patent) invalid, disputes concerning issues of property right on corresponding objects and are civil or commercial by their nature and do not belong to public disputes.

Commercial Code of Ukraine in the edition of 3 October 2017 determined the jurisdiction of the Higher Court of intellectual property issues (HCIP). Such

[6] Pro zastosuvannia sudamynorm zakonodavstva u spravakh pro zakhyst avtorskoho prava i sumizhnykh prav: Postanova Plenumu Verkhovnoho sudu Ukrainy vid 04.06.2010. URL: https://zakon.rada.gov.ua/laws/show/v0005700-10#top (data zvernennia 10.03.2021).

[7] Pro deiaki pytannia praktyky vyrishennia sporiv, poviazanykh iz zakhystom prav intelektualnoi vlasnosti:Postanova Plenumu Vyshchoho hospodarskoho sudu Ukrainy vid 17.10.2012. URL: https://zakon.rada.gov.ua/laws/show/v0012600-12#Text (data zvernennia 10.03.2021).

court should have been considering cases concerning intellectual property rights, in particular: 1) cases in the disputes concerning rights on inventions, utility models, industrial sample, trade mark (a sign for goods and services), commercial name and other rights of intellectual property, including the right of prior usage; 2) cases in disputes concerning registration, accounting of intellectual property rights, recognition of the invalidity of patents, certificates, other acts, which certify the rights or on the basis of which such rights arise or violate such rights or related with them legal interests, their continuation and early termination; 3) cases concerning recognition of the trade mark as well known; 4) cases in disputes concerning copyright and related rights, including disputes concerning the collective management of the property copyright and related rights of an author; 5) cases in disputes concerning conclusion, shift, dissolution and performance of the contract concerning disposition of property rights of intellectual property, commercial concession; 6) cases in disputes, arising from the legal relations concerning the protection from unfair competition about: unlawful usage of the marking or another manufacturer's goods; duplication of the appearance of the product; collection, divulgation and usage of the commercial secret; appeal to the decisions of the Antimonopoly committee of Ukraine, concerning issues, determined by this clause.

However, HCIP has not been launched and the perspectives of its functioning are still undetermined. Though, consideration of the disputes concerning intellectual property by a specialized court would have been effective, it also could have provided legal certainty. Concentration of consideration of the cases concerning intellectual property rights protection in the specialized court, judges of which possess professional knowledge, would provide the quality of the corresponding categories of disputes solving.

World practice demonstrates different models of such court functioning, particularly, practice of the European countries (Austria, Great Britain, Germany, Sweden, Switzerland) and other states of the world (USA, Japan, South Korea).

Hence the effectiveness of the legal means of the violated intellectual property rights protection depends both on the sharpness, legal regulation orderliness and reliable, fair mechanisms of law enforcement.

Bibliography

Tsyvilnyi kodeks Ukrainy vid 16.01.2003. URL: https://zakon.rada.gov.ua/laws/show/435-15#Text (data zvernennia10.03.2021).

Pro avtorske pravo i sumizhni prava: Zakon Ukrainy vid 23.12.1993. URL: https://zakon.rada.gov.ua/laws/show/3792-12#Text (data zvernennia10.03.2021).

Proekt Zakonu "Pro avtorske pravo i sumizhni prava". URL: https://www.me.gov.ua/Documents/Detail?title=ProktZakonuUkrainiproAvtorskePravoISumizhniPrava (data zvernennia10.03.2021).

Pro efektyvne upravlinnia mainovymy pravamy pravovlasnykiv u sferi avtorskoho i (abo) sumizhnykh prav: Zakon Ukrainy vid 15.05.2018. URL: https://zakon. rada. gov.ua/laws/show/2415-19#Text (data zvernennia10.03.2021).

Dyrektyva 96/9/IeS Yevropeiskoho Parlamentu ta Rady "Pro pravovyi zakhyst baz danykh" vid 11.03.1996. URL: https://zakon.rada.gov.ua/laws/show/994_241#Text (data zvernennia10.03.2021).

Pro zastosuvannia sudamynorm zakonodavstva u spravakh pro zakhyst avtorskoho prava i sumizhnykh prav:Postanova Plenumu Verkhovnoho sudu Ukrainy vid 04.06.2010.URL: https://zakon.rada.gov.ua/laws/show/v0005700-10#top (data zvernennia10.03.2021).

Pro deiaki pytannia praktyky vyrishennia sporiv, poviazanykh iz zakhystom prav intelektualnoi vlasnosti:Postanova Plenumu Vyshchoho hospodarskoho sudu Ukrainy vid 17.10.2012. URL: https://zakon.rada.gov.ua/laws/show/v0012600-12#Text (data zvernennia 10.03.2021).

Hospodarskyi protsesualnyi kodeks Ukrainy vid 06.11.1991. URL: https://zakon.rada. gov.ua/ laws/show/1798-12#top (data zvernennia 10.03.2021).

Правові проблеми захисту авторських/суміжних прав за законодавством України

Анотація

На підставі аналізу чинного законодавства України досліджені способи захисту авторських/суміжних прав у разі їх порушення. Встановлено, що відповідний суб'єкт може скористатися загальними цивільно-правовими способами захисту; конкретні способи захисту порушених прав можуть бути встановлені договором; суб'єкт авторського/суміжного права може скористатися спеціальними способами захисту, визначеними Законом України "Про авторське право і суміжні права"; суд з власної ініціативи може обрати ефективний спосіб захисту порушеного права.

Аналіз судової практики засвідчує про поширеність такого способу захисту порушених прав як вимога про виплату компенсації. Застосовуючи такий спосіб захисту, суб'єкт, чиє право порушене, має довести лише сам факт порушення. На сьогодні порядок обчислення суми компенсації змінено, що породило низку проблем для обчислення її розміру. Відтак такий поширений спосіб захисту авторських/суміжних прав майже не застосовується.

За захистом порушених прав можуть звертатися суб'єкти авторського/суміжних прав; особи, яким надано виключну ліцензію на використання об'єктів авторського/суміжних прав; організації колективного управління (ОКУ) з урахуванням сфери їх діяльності, відповідно до доручення суб'єктів відповідних прав; об'єднання суб'єктів авторського/суміжних прав, основною метою діяльності яких є захист авторського/суміжних прав. ОКУ звертаються до суду від імені суб'єктів за захистом їхніх майнових прав відповідно до статутних повноважень та доручення цих суб'єктів, вчиняють інші дії, передбачені законодавством та дорученням, необхідні для захисту майнових прав суб'єктів, в інтересах яких діє орга-

нізація. Така організація, пред'явивши позов, не є позивачем, оскільки вона звертається до суду за захистом прав суб'єктів авторського/суміжних прав, а не своїх прав. Позивачем є відповідний суб'єкт, на захист інтересів якого звернулася ОКУ.

Досліджено новели проекту Закону "Про авторське право і суміжні права". З урахуванням Директиви 96/9/ЄС Європейського Парламенту та Ради "Про правовий захист баз даних" у проекті запропоновано закріпити права sui generis на неоригінальні бази даних та на неоригінальні об'єкти, згенеровані комп'ютерною програмою (програмами), без безпосередньої участі фізичної особи в їх утворенні. Права sui generis захищаються тими ж способами, що встановлені для захисту авторських/суміжних прав.

Досліджено підсудність спорів щодо захисту прав інтелектуальної власності. Такі категорії спорів наразі розглядаються різними судами, що є неефективним. Зосередження розгляду справ щодо захисту прав інтелектуальної власності у спеціалізованому суді, судді якого володіють фаховими знаннями, забезпечило би якість вирішення відповідної категорії спорів. Проте Вищий суд з питань інтелектуальної власності в Україні так і не запрацював і перспективи його функціонування доволі невизначені.

Ключові слова: авторські права, sui generis, способи захисту

Oleksandra Jaworska
Narodowy Uniwersytet im. Iwana Franki we Lwowie

Zagadnienia prawne ochrony praw autorskich/pokrewnych w ustawodawstwie Ukrainy

Streszczenie

Na podstawie analizy obowiązującego ustawodawstwa Ukrainy badano sposoby ochrony praw autorskich i pokrewnych w przypadku ich naruszenia. Ustalono, że dany podmiot może skorzystać z ogólnych środków prawa cywilnego; w umowie mogą być określone szczególne sposoby ochrony naruszonych praw, podmiot praw autorskich/pokrewnych może korzystać ze specjalnych metod ochrony określonych w Ustawie Ukrainy „O prawie autorskim i prawach pokrewnych"; sąd z własnej inicjatywy może wybrać skuteczny sposób ochrony naruszonego prawa.

Analiza orzecznictwa wskazuje na przewagę takiego sposobu ochrony naruszonych praw, jak roszczenie o odszkodowanie. Stosując tę metodę ochrony, podmiot, którego prawo zostało naruszone, musi udowodnić jedynie fakt naruszenia. Do tej pory zmieniła się procedura obliczania wysokości odszkodowania, co spowodowało problemy z obliczaniem jego wysokości. Dlatego taka powszechna metoda ochrony praw autorskich/praw pokrewnych prawie nie istnieje.

O ochronę naruszonych praw autorskich/pokrewnych mogą się ubiegać: osoby, którym przyznano wyłączną licencję na korzystanie z przedmiotów objętych prawem autorskim/prawami pokrewnymi; organizacje zbiorowego zarządzania (OZZ), biorąc pod

uwagę zakres ich działalności, zgodnie z instrukcjami podmiotów odpowiednich praw; stowarzyszenia podmiotów praw autorskich/pokrewnych, których głównym celem jest ochrona praw autorskich/praw pokrewnych. OZZ występują do sądu w imieniu podmiotów w celu ochrony ich praw majątkowych zgodnie z ustawowymi uprawnieniami i poleceniami tych podmiotów, wykonania innych czynności przewidzianych prawem oraz pełnomocnictw niezbędnych do ochrony praw majątkowych podmiotów, w których interesie organizacja działa. Taka organizacja, po wytoczeniu pozwu, nie jest powodem, ponieważ chodzi do sądu w celu ochrony praw innych osób, a nie swoich. Powodem jest właściwy podmiot, którego interesami zajęła się OZZ.

Przeanalizowano nowości projektu ustawy „O prawie autorskim i prawach pokrewnych". Uwzględniając dyrektywę 96/9/WE Parlamentu Europejskiego i Rady „O prawnej ochronie baz danych", w projekcie proponuje się konsolidację praw *sui generis* do nieoryginalnych baz danych i nieoryginalnych obiektów wygenerowanych przez program komputerowy (programy), bez bezpośredniego udziału osób fizycznych w ich formowaniu. Prawa *sui generis* są chronione w taki sam sposób, jak prawa autorskie/prawa pokrewne.

Zbadano jurysdykcję sporów dotyczących ochrony praw własności intelektualnej. Takie kategorie sporów są obecnie rozpatrywane przez różne sądy, co jest nieskuteczne. Koncentracja spraw z zakresu ochrony własności intelektualnej w sądzie wyspecjalizowanym, którego sędziowie posiadają wiedzę zawodową, zapewniłaby dobrą jakość rozstrzygania sporów w odpowiedniej kategorii. Jednak Najwyższy Sąd Własności Intelektualnej na Ukrainie jeszcze nie zaczął funkcjonować i perspektywy jego działania są dość niepewne.

Słowa kluczowe: prawo autorskie, prawa *sui generis*, metody ochrony