

THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN THE FILM INDUSTRY IN UKRAINE

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In accordance with Article 54 of the Law of Ukraine «On Copyright and Related Rights», the protection of personal non-property rights and economic rights of authors' rights holders and/or holders of related rights is carried out in accordance with the procedure established by administrative, civil, and criminal legislation [1].

As O. Stefan points out, the means of protecting civil rights are usually divided into two types: those that are universal in nature (Article 16 of the Civil Code of Ukraine) and those that are special in nature (Articles 276, 277, 278, 280, 432 of the Civil Code of Ukraine, Article 55 of the Law of Ukraine «On Copyright and Related Rights» [2, p. 64].

According to the provisions of Article 16 of the Civil Code of Ukraine, the means of protecting rights and interests may be:

- 1) recognition of a right;
- 2) recognition of a transaction as invalid;
- 3) termination of an action that violates a right;
- 4) restoration of the situation that existed prior to the violation;
- 5) compulsory performance of an obligation in kind;
- 6) change of legal relationship;
- 7) termination of legal relationship;
- 8) compensation for losses and other means of compensation for property damage;
- 9) compensation for moral (non-property) damage;
- 10) recognition of the illegality of decisions, actions or inaction of a state authority, an authority of the Autonomous Republic of Crimea or a local government authority, their officials and civil servants [3].

The court may protect a civil right or interest in another manner established by contract or law or by the court in cases specified by law.

Article 55 of the Law of Ukraine «On Copyright and Related Rights» provides for the possibility of applying to the court for protection of authors' rights and/or related rights with any claims not prohibited by law, in particular regarding:

- 1) recognition of authors' rights or related rights;
- 2) restoration of the situation that existed prior to the infringement;
- 3) cessation and/or prohibition of actions that infringe authors' rights and/or related rights or create a threat of infringement;

- 4) recovery of remuneration provided for by the legislation on authors' rights and related rights;
- 5) compensation for moral damage;
- 6) compensation for losses caused by the infringement of authors' rights or related rights, including lost profits, or recovery of income received by the infringer as a result of the infringement of authors' rights or related rights, or recovery of compensation;
- 7) cessation of preparatory actions for the infringement of authors' rights and/or related rights, including by suspending customs procedures if there are grounds to believe that pirated copies of works, phonograms, videograms, means of circumventing technological measures for the protection of authors' rights and/or related rights, etc. may be allowed into or out of the customs territory of Ukraine;
- 8) publication at the expense of the infringer in the mass media of information about authors' rights and/or related rights infringements and court decisions regarding these infringements;
- 9) taking other measures provided for by law related to the protection of author's rights and/or related rights.

If the infringement is committed on the internet, then, according to Article 56 of the Law of Ukraine «On Copyright and Related Rights», the author's right holder or related rights holder has the right to apply to the owner of the website on which the relevant digital content is posted or otherwise used, with a request to stop the infringement of authors' rights and/or related rights [1].

Various organisations in Ukraine work to identify, register and stop infringements of authors' rights and related rights in relation to audiovisual works, in particular, in order to actively combat piracy.

Among the most active organisations are the Clear Sky («Чисте небо») and the Ukrainian Anti-Piracy Assembly for the Protection of Rights to Musical, Audiovisual Works and Computer Programs.

The Clear Sky initiative has been operating since the summer of 2013, intending to develop legal audiovisual products and combat resources that distribute content in violation of intellectual property rights. In particular, the Cyber Police Department of the National Police of Ukraine has signed a Memorandum of Cooperation with this Initiative to combat piracy in the field of media content. In addition, the Clear Sky and the Ukrainian Anti-Piracy Association have created and continue to moderate the "blacklists.org.ua" service, which provides information about resources that were subject to complaints from rights holders regarding intellectual property rights violations [4].

For instance, following an initiative of Clear Sky, in March 2025, the National Council of Ukraine on Television and Radio Broadcasting added 217 domains to the List of Media Services of the Aggressor State, which, among other things, illegally transmitted films and television series.

The main objective of the Ukrainian Anti-Piracy Assembly is to protect the authors' rights of its owners with whom it has concluded relevant agreements, promote the protection of authors' rights, and create conditions for strengthening the protection of authors' rights and related rights in Ukraine. This is achieved, in particular, by

assisting state authorities in detecting violations, monitoring cinemas and the internet, providing advice to law enforcement agencies, analysing court practice, representing the interests of persons whose rights have been violated, etc [5].

An important initiative of the Ukrainian Anti-Piracy Assembly is the introduction of monitoring of advertising on websites that host pirated content and advertising in illegal players. This monitoring is available on the website <http://blacklists.org.ua/monitoring>.

In addition, the 1+1 Media Group has created Sudum, a technological service that helps to quickly block pirated content on the Internet. In order to facilitate it, the special software searches for and sends complaints to protect content in the internet. Sudum has been operating since 2016 [6].

It is also worth noting that in order to protect the rights holders of audiovisual works from camcording, changes were made to Ukrainian legislation in 2017 to define the concept of camcording at the national level, in particular as a criminal offence, liability for which is provided for in Article 176 of the Criminal Code of Ukraine.

The Law of Ukraine «On Copyright and Related Rights» states that camcording is the recording of an audiovisual work during a public screening of an audiovisual work in cinemas or other film-viewing establishments by persons who are in the same room where such public screening is taking place, for any purpose without the permission of the authors' rights holders or holders of related rights, whose objects constitute the audiovisual work. However, part 2 of Article 53 of the said Law contains the concept of camcording in the definition of piracy in the field of authors' rights and (or) related rights.

This position of the national legislator is not supported completely. For example, A. Stefan believes that including camcording in the definition of piracy seems erroneous, since camcording is recognised as a separate type of copyright and related rights infringement, and the law does not specify the difference between piracy in the form of camcording and camcording (card sharing) itself [7, p. 16].

In 2019 a resident of Kryvyi Rih was convicted of camcording for the first time in Ukraine. The person was found guilty of committing a criminal offence under part 1 of Article 176 of the Criminal Code of Ukraine and was sentenced to a fine of UAH 5,100.00, payable to the State. In addition, the phone used to make the recording was confiscated as state revenue [8].

The Ukrainian Anti-Piracy Assembly has developed Recommendations on ensuring efficiency in preventing and stopping unauthorised video recording (camcording).

Among other things, it was proposed to place posters and signs prohibiting the use of audio and video recording equipment, as well as warnings about the possibility of random checks of personal belongings for such equipment.

In addition, cinema staff are advised to conduct checks to detect cases of audio/video recording during the first and last 15-20 minutes of the film, especially in the central part of the auditorium. For this purpose, it is advisable to use night vision devices.

If camcording is detected, cinema staff should immediately inform the cinema administration. The cinema administration or persons responsible for security should stop the unauthorised video recording.

If the offender refuses to comply, the administration should call the police. In addition, the Recommendations suggest calling the Ukrainian Anti-Piracy Assembly and reporting the case of unauthorised audio/video recording [9].

Another common problem is the illegal public screening of films in non-networked cinemas, small cinemas, restaurants and cafes, as well as open-air cinemas.

Such illegal distribution of audiovisual works violates the property rights of holders of the authors' rights. Most often, owners of non-networked cinemas, small movie theatres, restaurants and cafes, and open-air cinemas receive notices from authors' rights holders and/or their representatives about violations and cease such activities. However, in some cases, the authors' rights holder is forced to contact the law enforcement authorities of Ukraine to bring the authors' rights infringer to justice for the illegal screening of the film [10].

Previously, the law required an additional special permit to be obtained, which was a State certificate for the right to distribute and screen films.

However, in order to implement European standards in the field of audiovisual advertising, amendments were made to the Law of Ukraine «On Cinematography», according to which entrepreneurs in the field of cinematography have the right to distribute, and cinemas and media can show films provided they are included in the State Register of Films, according to a statement from the Ministry of Economy of Ukraine [11].

It should also be noted that methods of protecting rights to audiovisual works are changing rapidly due to the dynamic development of the industry. For instance, the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Abolition of Control Marking of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, and Databases» signed by the President of Ukraine on 15 December 2021, is an example of the said dynamics. In accordance with this Law, the Law of Ukraine «On the Distribution of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases» is recognised as the one that has lost its force. The above demonstrates that the use of control marks as a mechanism to counteract the illegal distribution of copies of audiovisual works, phonograms, videograms, computer programs, and databases is no longer considered to be relevant [12].

In addition, all persons under the jurisdiction of Ukraine have the right to seek free legal assistance from the State Agency of Ukraine for Cinema as the central executive body responsible for the formation and implementation of state policy in the field of cinematography and as a provider of free primary legal assistance. The State Film Agency assists in accordance with the powers and competences defined by the Regulations on the State Film Agency of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of 17 July 2014.

These may include such types of legal services as, in particular, providing legal information in the field of cinematography, providing advice and explanations on legal

issues in the field of cinematography, drafting statements, complaints and other legal documents (except for procedural documents) in the field of cinematography and providing assistance in ensuring a person's access to secondary legal aid and mediation.

Thus, national legislation defines a number of legal mechanisms for the protection of authors' rights and related rights, which enable the individuals involved in the film industry to respond to violations of their rights and take the necessary action.

References

1. Про авторське право і суміжні права: Закон України від 01.12.2022 р. № 2811-IX. URL: <https://zakon.rada.gov.ua/laws/show/2811-20#Text>.
2. Штефан О. Цивільно-правові способи захисту авторського права і суміжних прав: новації законодавства. Теорія і практика інтелектуальної власності. 2023. № 1/2. С. 64–74. С. 64
3. Цивільний кодекс України: Кодекс України від 16.01.2003 р. № 435-IV: станом на 8 берез. 2024 р. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
4. Ініціатива Чисте небо - захист прав інтелектуальної власності. Ініціатива Чисте небо - захист прав інтелектуальної власності. URL: <https://legalcontentua.org/about>.
5. Загальна інформація, функції та задачі. Українська Антипіратська Асоціація. URL: <https://apo.kiev.ua/info.html>.
6. Сервіс, який допомагає блокувати піратський контент | Sudum. Sudum - Ваш контент під нашим захистом. URL: <https://sudum.net/about>.
7. Штефан А. С. Камкординг, кардшейрінг, піратство: законодавчі новели щодо видів порушень авторського права і суміжних прав / А. С. Штефан // Теорія і практика інтелектуальної власності. - 2017. - № 3. - С. 12-17. - URL: http://nbuv.gov.ua/UJRN/Triv_2017_3_3 С. 16
8. Вирок Держинського районного суду м. Кривого Рогу від 18.06.2019 р. у справі № 210/2266/19. URL: <https://reyestr.court.gov.ua/Review/82451774>.
9. Пам'ятка для персоналу кінотеатру. Українська Антипіратська Асоціація. URL: <https://apo.kiev.ua/manual.phtml>.
10. Незаконна демонстрація фільмів. Українська Антипіратська Асоціація. URL: <https://apo.kiev.ua/formia.phtml>.
11. Баранівська М. Уряд скасував для підприємців вимогу отримувати державне посвідчення на право розповсюдження та демонстрування фільмів. detector.media. URL: <https://detector.media/infospace/article/217954/2023-10-11-uryad-skasuvav-dlya-pidpryemtsiv-vymogu-otrymuvaty-derzhavne-posvidchennya-na-pravo-rozpovsyudzhennya-ta-demonstruvannya-filmiv/>.
12. Про внесення змін до деяких законодавчих актів України щодо скасування маркування контрольними марками примірників аудіовізуальних творів, фонограм, відеограм, комп'ютерних програм, баз даних: Закон України від 15.12.2021 р. № 1965-IX: станом на 1 січ. 2023 р. URL: <https://zakon.rada.gov.ua/laws/show/1965-20#Text>.