

## TOPICAL ISSUES OF PROTECTION OF INTELLECTUAL PROPERTY IN THE CIS

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TÍTULO: *Cuestiones de actualidad en la protección de la propiedad intelectual en el territorio de la CEI*

ABSTRACT: *The implementation of methods for protecting intellectual property rights on the Internet in the territory of the CIS countries, as well as the introduction of preventive measures, is a very multifaceted issue, the solution of which on the territory of the studied states has not yet been found. It is proposed and justified the feasibility of forming a transboundary group of experts of the CIS countries, the main vector of which would be the identification of problematic issues in the field of protection of intellectual property rights, as well as the creation of a single conceptual approach with an effective mechanism for testing it in the field of intellectual property protection, followed by its legalisation at national levels. The protection of intellectual property in civil proceedings is a new and theoretically undeveloped issue for the science of civil law, and therefore needs further scientific research and reform of the legal regulation of relations in the field of intellectual property in the context of modern realities.*

RESUMEN: La puesta en marcha de mecanismos de protección y de medidas preventivas para la protección de los derechos de propiedad intelectual en Internet en los países de la CEI plantea problemas desde muchas perspectivas, que no han hallado soluciones en estos países. Ante esta situación, se propone y justifica la posibilidad de formar un grupo transfronterizo de expertos de los países de la CEI, cuyo principal objetivo sería identificar cuestiones problemáticas en el campo de la protección de los derechos de propiedad intelectual, así como la creación de un enfoque conceptual único con un mecanismo efectivo para probarlo en el campo de la protección de la propiedad intelectual, con su posterior legalización a nivel nacional. La protección de la propiedad intelectual en los procedimientos civiles es un tema nuevo y teóricamente no desarrollado por la ciencia iuscivilista, y por lo tanto, necesitada de más investigación y de reformas legales.

KEY WORDS: *CIS, intellectual property, protection of rights, intellectual property on the Internet, the post-Soviet space, preventive measures of protection, civil proceedings.*

PALABRAS CLAVE: *CEI, propiedad intelectual, protección de derechos, propiedad intelectual en Internet, espacio postsoviético, medidas de protección preventiva, procesos civiles.*

SUMMARY: 1. INTRODUCTION. 2. MATERIAL AND METHODS. 3. RESULTS. 4. DISCUSSION. 5. CONCLUSION. BIBLIOGRAPHY.

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### 1. INTRODUCTION

Along with material, economic activity in any cultural society, spiritual activity develops, which is aimed at the creation of intangible benefits. Many of the results of such spiritual activities receive public recognition, and subsequently become objective,

public goods and even acquire a certain economic, material value<sup>1</sup>. It is difficult to disagree with such a significance of intellectual activity for the development of society, emphasised by the outstanding Russian civilist I. A. POKROVSKY. This position is shared by most Ukrainian specialists. In particular, N. KUZNETSOVA and A. KOKHANOVSKAYA believe that the success of solving many important political, economic and social problems depends on how significant the intellectual potential of society is and the level of its cultural development<sup>2</sup>. A. ORLYUK emphasizes that intellectual property is one of the largest human capitals<sup>3</sup>.

It is important to note that the global economy of the XXI century is characterised by qualitative transformations in determining the vectors of further development of economic progress. One of the brightest signs of the «new economy», «knowledge economy», «intellectual economy»<sup>4</sup> is the transition from the prevalence of material production and the development of the service sector to the intensive emergence of multifunctional information technologies, as well as the integration of information benefits in almost all sectors of the economy<sup>5</sup>. The fundamental principle of a knowledge-based economy is that knowledge and information are regarded as commercial assets and can be used for profit. Obviously, the «intelligent economy» is becoming more important for countries in today's realities. In the modern world, the importance of intellectual property is growing – the results of human mental and creative activity<sup>6</sup>. The creation of innovative technologies and cultural achievements, investments in intellectually intensive industries lose their economic sense if the rights to intellectual property are insecurely protected. All this determines the exceptional importance of protecting intellectual property, both for each individual person and for the state as a whole. Moreover, counteraction to violations of intellectual property rights in states will affect their investment attractiveness, their place in the global trading system, and the competitiveness of intellectual resources.

<sup>1</sup> POKROVSKY, I. A., *The main problems of civil law. (classic of Russian civil law)*, Statute, Moscow, 2009, p. 95.

<sup>2</sup> KUZNETSOVA, N. and KOKHANOVSKAYA, O., «Problems of intellectual property rights protection in Ukraine», *Law of Ukraine* (2011) no. 3, p. 23.

<sup>3</sup> ORLYUK, O., «Intellectual property in Ukraine: experience, legislation, problems, prospects», *Law of Ukraine*, (2011), no. 3, p. 10.

<sup>4</sup> VERDUGO-PERONA, J. J., SOLAZ-PORTOLÉS, J. J. and SANJOSÉ, V., «Assessment of pre-service primary teachers' pedagogical knowledge in elementary science: effects from science education training», *Periodico Tche Quimica*, vol. 15, (2018) no. 29, p. 175.

<sup>5</sup> KAPITSA, Y., «Features of harmonisation of the legislation of the CIS countries with the legislation of the European Union in the field of intellectual property protection», *Law of Ukraine*, (2011), no. 3, p. 94.

<sup>6</sup> KOKHANOVSKAYA, O. V., «The civil law norm as a universally binding rule of conduct, as information and the result of creativity», *Journal of the National Academy of Legal Sciences of Ukraine*, 25 (2) (2018), p. 145.

Unfortunately, violations of intellectual property rights have covered almost all spheres of public relations, which greatly complicates the quick response to them. The prevalence of such unlawful acts and their complexity is determined by the fact that they fall under the regulation of civil, administrative, criminal and economic law, significantly complicating their proper qualifications and the application of the necessary protection mechanism. In the CIS, the level of protection of intellectual property rights remains low today, the number of violations of the rights of intellectual property is growing. According to the World Intellectual Property Organisation (WIPO) and World Intellectual Property Indicators 2018 report<sup>7</sup>, CIS member states are among the twenty countries in the world with the highest levels of copyright and related rights violations<sup>8</sup>. In order to change this negative situation for the better, it is necessary to take measures to strengthen the protection of intellectual property at the level of public administration mechanisms<sup>9</sup>. In this aspect the scientific justification of public administration mechanisms in this area, theoretical developments to improve the effectiveness of such mechanisms, the formation of a list of the most pressing problems and vectors for solving them are of the great importance.

Scientists everywhere focus on the fact that the legislation in the field of counteraction to offences in the field of intellectual property is not devoid of individual shortcomings, gaps, contradictory provisions throughout the territory of the post-Soviet space. The norms of the constitutions of the CIS countries proclaimed the creation of new democratic values, which, in turn, was a powerful impetus for the development of statehood in these countries. Today they are increasingly adopting the Western development model, which, of course, is a positive factor. However, the reforming the state as a whole and its individual elements requires an effective mechanism to counter offences in certain areas of society activities, an example of which is the intellectual property industry<sup>10</sup>. Thus, for the CIS countries, the establishment and improvement of mechanisms for protecting intellectual property is a prerequisite for their integration

<sup>7</sup> World Intellectual Property Indicators 2018: World Intellectual Property Organization (WIPO). In: <https://www.wipo.int/publications/en/details.jsp?id=4369&plang=EN> (Accessed 28/06/2019).

<sup>8</sup> PANKEVYCH, O. Z., «The nature of collective human rights and their relationship with individual rights (in the light of the universal declaration of human rights)», *Journal of the National Academy of Legal Sciences of Ukraine*, (2018), no. 25 (3), p. 66.

<sup>9</sup> LUNYACHEK, V. and RUBAN, N., «Managing intellectual property rights protection in the system of comprehensive secondary education», *Public Policy and Administration*, vol. 17, (2018) no. 1, p. 116.

<sup>10</sup> PATYUKOVA, R. V., MINSKAYA, A. N., SERGIENKO, V. A. and TARASENKO, E. V., «System of technologies for building the information space: Coverage tools», *Media Watch*, vol. 9, (2018) no. 3, p. 421.

into international structures and maintaining a common positive image in the international arena, but, in turn, this process is tied with various kinds of problems<sup>11</sup>.

Based on the foregoing, it is possible to determine the main purpose of the article, which implies a comparative analysis of urgent problems of protecting intellectual property rights in Ukraine and the CIS. To achieve the most effective results, the following tasks have been set:

- 1) to analyse the basics of the legal regulation of relations in the field of intellectual property in the territory of the CIS countries, to disclose ways to protect them;
- 2) to reveal the problems of protection of the investigated rights in civil proceedings in the post-Soviet space;
- 3) to analyse the features of the protection of intellectual property rights on the Internet;
- 4) to outline other relevant problems and debatable issues in the field under study.

## 2. MATERIAL AND METHODS

Given the purposes, the study uses a combination of general scientific and special scientific methods. The general scientific dialectical method of cognition was the main one in this system and allowed fulfilling the scientific tasks defined in the article in the unity of their social content and legal form. In particular, the dialectical method of cognition of reality made it possible to analyse the sources of intellectual property law and national legislation in this area, in which Western European basic civilisational values were reflected, as well as to study the influence of the European doctrine of intellectual property law and European policy aimed, based on the common economic space between the EU and neighbouring countries at national intellectual property law and CIS countries.

The use of methods of analysis and synthesis contributed to the study of problems in the field of intellectual property protection and directions for improving the relevant legislation. The historical method contributed to determine the role of interstate cooperation in the development of the economic space covering the territories of the CIS countries. The formal legal method allowed revealing the peculiarities of law

<sup>11</sup> SOLAZ-PORTOLÉS, J. J., DEL CAMPO, Ó. J. and SANJOSÉ, V., «An exploratory study on secondary education students' preferences regarding science teaching methods: The case of a high school», *Periodico Tche Quimica*, vol. 13, (2016) no. 26, p. 38.

enforcement of the provisions of the national legislation of the studied countries in the field of intellectual property protection. The comparative legal method provided an opportunity to conduct a deep analysis of the problems of protecting intellectual property and outline the prospects for overcoming them. In addition, this method was used to identify similar and fundamentally opposite norms in the legal regulation of judicial protection of copyrights in the civil procedural legislation of the CIS countries, as well as when comparing scientific views on these problematics.

The method of induction and deduction provided the definition of intellectual property law as a priority area for adapting the civil legislation of the countries of the former Soviet Union to world standards and requirements. Systemic and structural-functional analysis was used to comprehensively characterise the sources of intellectual property law, to determine and study the structure of civil law governing relations in this area. The method of system analysis provided an opportunity to highlight the relationship between the substantive nature of copyright and the specificity of the procedural procedure for their protection. The formal dogmatic method was used in the interpretation of legal categories, as a result of which the conceptual and categorical apparatus of copyright protection in civil proceedings was deepened and refined. The logical method was used as a universal means of argumentation of scientific conclusions in the field of intellectual property in the context of the indicated problems.

### 3. RESULTS

The protection of intellectual property today is a priority in the politics of many states of the world, and the provision of effective mechanisms for its implementation increasingly testifies to the innovative development of modern society and the legal field. Reform of national legal systems and improvement of legislation is everywhere, even being intensified under the influence of various factors, among which a special place belongs to world standards in the field of ensuring intellectual property rights. That is why, first of all, within the framework of the study, it is necessary to address the legal regulation of the protection of intellectual property in the post-Soviet space. So, in the opinion of A. A. ANDROSHCHUK, the analysis of the legislative acts of the CIS countries governing the protection of intellectual property allows concluding that they are largely harmonised. This phenomenon is explained by the commonality in the definition of concepts and categories, the scope of legal protection, the species diversity of intellectual property, as well as their protectability<sup>12</sup>. A. BASAI emphasises

<sup>12</sup> ANDROSHCHUK, G. O., «Legal protection of trademarks in the CIS countries: status and trends», *Problems of Science*, (2002) no. 10, p. 37.

that «in the field of intellectual property law, two categories of rights arise: civil rights (the right to own a thing, the right to appoint a representative, the right to inherit, etc.) and intellectual property rights. The content of the rights granted to intellectual property subjects directly depends on the category of objects of intellectual property rights»<sup>13</sup>. In addition to special, object laws in the field of intellectual property, civil codes have been adopted and are functioning in the territory of all CIS countries, which regulate the protection of intellectual property in detail. In turn, academician N. S. KUZNETSOVA believes that «the civil code of any country reflects the values of a competitive society, makes it possible to determine the ideological and property basis on which this society plans to build its development and future»<sup>14</sup>. Thus, it can be stated that such a foundation exists in the studied states.

A study of legislation in the field of intellectual property of the CIS member states provided an opportunity to formulate general signs of legal regulation, as follows.

1. The presence of their own sphere, aims and objectives of legal regulation specified by constitutions, laws, by-laws legal acts and regulations.
2. The use of both imperative and dispositive methods of legal regulation in the field of public relations of intellectual property.
3. Separation of legal acts regulating the sphere of intellectual property on the subject of legal regulation and their systematisation in a certain sequence by legal force.
4. The direct connection of legislation in the field of intellectual property with the regulation of the status of intellectual property objects, intellectual property, copyright and related rights.
5. The complexity of the nature of the general system of the branch of legislation, which implies the availability of sources of both public and private law.

Thus, among the main features of the CIS legislation in the field of intellectual property, it is possible to distinguish the following: a plurality of acts of legal regulation, an imperative-dispositive effect on public relations, the complexity of legal norms, the consistency of legal acts regulating intellectual and creative activity. In turn, the reality of the legislative regulation of the investigated legal relations is ensured by the mechanism for protecting intellectual property rights. The increasing role and importance of intellectual activity and, as a consequence, property predetermines the

<sup>13</sup> KALYATIN, V. O., *Intellectual property (exclusive rights)*, Norma, Moscow, 2000, p. 215.

<sup>14</sup> KUZNETSOVA, N., «Civil society and personal non-property rights», *Law of Ukraine*, (2015), no. 4, p. 11.

need to strengthen the effectiveness of their legal defence and protection, which are implemented through a certain mechanism. The latter is understood as a system of forms, methods and means of activity of the relevant jurisdictional bodies and interested parties aimed at protecting the rights and interests of intellectual property subjects<sup>15</sup>.

Legal protection of the results of intellectual activity is provided subject to the requirements of the law. The norms of the current national legislation of the CIS countries contain a number of important features characterising legal relations related to the protection of intellectual property. In particular, these are such as: equal protection of the subject of the property right regardless of the form of ownership; owner's right to compensation for both property and moral damage; protection of property rights by national judicial authorities or arbitration tribunal; protection of property rights at the level and standards of protection of property rights. Scientists note that civil protection of property rights is a system of active measures applied by an owner, competent state or other bodies aimed at eliminating violations of property rights and assigning the obligation to restore a violated right to a violator<sup>16</sup>. In turn, the protection of the rights and legitimate interests of intellectual property should be understood as measures prescribed by law aimed at recognising and restoring them, ending their violation, applying legal liability measures to violators<sup>17</sup>. The most significant component of the protection mechanism, which finds its corresponding fixing in the norms of the national legislation of the CIS countries, is the ways of protecting intellectual property, namely: a set of measures carried out independently (voluntarily) by a violator or forced by state bodies aimed at stopping the violation or restoration (recognition) of violated subjective rights<sup>18</sup>. Special legislation also specifies how to protect the rights to individual objects of intellectual property rights, taking into account their specifics.

In this context, it should be noted that the protection of unrecognised, disputed or violated intellectual property rights is carried out in the manner of different types of legal proceedings. At the same time, the problem of protecting the relevant rights in civil proceedings is of particular scientific and practical interest, which provides not only

<sup>15</sup> TARASENKO, L. L., «Copyright protection: procedural aspects», *Journal of the Kyiv University of Law*, (2015) no. 2, p. 249.

<sup>16</sup> SERGEEV, A. P., *Intellectual property law in the Russian Federation*, Prospect, Moscow, 2003, p. 71.

<sup>17</sup> MIRONENKO, N., «Trademark rights protection: Ukrainian practice and European experience», *Law of Ukraine*, (2011) no. 3, p. 36.

<sup>18</sup> TASHNAZAROV, S. A., *Preparation of civil cases for trial*, Moscow State University, Moscow, 1988, p. 19.

the restoration of violated rights, but also compensation for harm caused<sup>19</sup>. A comparative analysis of the peculiarities of legal proceedings in the CIS countries and generalised case-law provided an opportunity to classify claims for the protection of intellectual property in civil proceedings by the following criteria:

1) *Depending on the method of protection:*

a) Recognition claims – by means of which an authorized person claims to protect his rights by confirming that he has or does not have the pre-emptive copyright (for example, a claim to recognise and restore rights of an author, including by prohibiting the commission of actions that violate copyright or create threat of violation);

b) claims for award – aimed at restoring the violated rights of an author and eliminating the consequences of such a violation (for example, a claim for compensation for moral (non-property) harm, a claim for compensation for losses (material damage), including lost profits, or recovery of income received by a violator as a result of a copyright violation, or payment of compensation, etc.);

c) conversion lawsuits – aimed at changing or terminating legal relations (for example, a lawsuit to terminate or amend the terms of an art order agreement).

2) *Depending on the nature of the relationship arising as a result of violation, non-recognition or contesting of rights of an author:*

a) Claims for the protection of personal non-property rights of an author (for example, a claim for recognition of authorship);

b) claims for the protection of the property rights of an author (for example, a lawsuit to terminate the contract on the transfer of exclusive property rights of an author).

3) *Depending on the fact of registration of violated, unrecognised or contested rights of the author:*

a) Claims relating to unregistered copyrights (for example, a claim for recognition of the right of authorship to a work of painting for which there is no certificate of registration of copyright);

b) claims filed in connection with the violation, non-recognition or contestation of registered rights of an author (for example, a claim for the withdrawal from civil

<sup>19</sup> LITVIN, S. I., «Legal principles of compensation for moral damage caused by misuse of copyright», *Law and security*, no. 2 (57) (2015), p. 168.



circulation of all copies of a literary work made without the consent of an author if the latter has a certificate of registration of copyright in the corresponding work).

4) *By the number of persons who created a work in respect of which the right is violated, not recognised or contested:*

a) Claims aimed at protecting rights of an author who single-handedly created the work (for example, the claim of an author to recover copyright compensation for using of a work);

b) claims brought by one of the co-authors (co-authors) (for example, a claim on the division of remuneration between co-authors for using of a work they created).

5) *Depending on whether a claim is related to primary or derivative copyrights:*

a) Claims arising from the fact of creation of an object of copyright (for example, a claim to secure the right of access to a work of fine art);

b) claims arising from the protection of derivative copyrights (for example, a claim for the protection of the rights of successors of an author to whom the rights of the latter have passed by inheritance).

6) *Depending on the type of relationship from which the dispute over copyright protection arose:*

a) Claims arising from contractual relations (for example, a claim for compensation for harm caused by failure to fulfil the terms of a contract for a creation of an order and using of a sculpture);

b) claims arising from non-contractual relations (for example, a claim about publication in the media of an announcement of a violation of copyright by releasing a scientific work under the name of a person who is not its author).

It should also be noted that the court can protect the intellectual property right or interests in another way provided by the contract or law. At the same time, when protecting intellectual property rights, traditional methods of protection of property rights – vindication or negative claims – cannot be applied<sup>20</sup>. This is due to the significant specificity that distinguishes objects of intellectual property rights from objects of property rights in general. The evidence base is of particular importance, in

<sup>20</sup> ROMASHCHENKO, I. O., *Change and termination of civil legal relations as ways of protection of civil rights*, Taras Shevchenko National University of Kyiv, Kyiv, 2014, p. 17.

which more and more the leading place is occupied by electronic evidence – web pages. The provisions of the national legislation of the CIS countries provide that web pages are electronic documents that cannot be brought to court, but they may contain information about circumstances relevant to the case (for example, if they are objects of copyright or related rights). Therefore, the court, taking into account the specific circumstances of a case, is not deprived of the right to conduct an examination and investigation of this evidence at their location with fixing the relevant procedural actions in the protocol.

In the context of the issue under study, it should be noted that the protection of intellectual property rights from violations on the Internet is one of the most topical problems of modern society. In turn, the restoration of the corresponding violated right has its own specifics and features, especially if such a fact took place on the Internet<sup>21</sup>. The search for effective mechanisms to counteract such violations does not stop; moreover, a clear algorithm for proving the fact of violation of intellectual property rights and a standard way of identifying a violator have not yet been identified. Under such circumstances, there is a practical need to identify the best ways to protect the objects of creative activity on the worldwide Internet, based on the scientific and practical research of legal experts.

It should be noted that the national legislation of the CIS countries does not define the specifics of regulation and protection of copyright in the Internet, which also complicates the implementation of protective mechanisms. Also, outside the legal regulation there are features of evidence of violation of rights in the «virtual network» and no new adapted features of legal relations arising in the sphere of its functioning have been introduced. Today, scientists see the need to strengthen the legal protection of authors' rights on the Internet at the national level, first of all, by defining the legal regime of the Internet site in civil codified acts of the CIS countries and special legislative acts, as well as through the development and implementation of standard contracts for the creation of the Internet site and hosting<sup>22</sup>. In addition, standards that establish the specifics of the legal protection of the copyright of the Internet site, as well as the application of the recovery of pecuniary compensation and non-pecuniary damage in case of violations of intellectual property rights, require improvement<sup>23</sup>.

<sup>21</sup> ATAMANOVA, YU. E., «Protecting intellectual property rights in the Internet: world experience and domestic perspectives», *Law and Innovation*, (2014), no. 3 (7), p. 10.

<sup>22</sup> MAKAROVA, E. M., *Issues of legal regulation of the use of the Internet in entrepreneurial activity*, Moscow State Law Academy, Moscow, 2007, p. 20.

<sup>23</sup> RASSOLOV, I. M., *Law and the Internet: theoretical problems*, Norma, Moscow, 2009, p. 211.

In the context of the outlined problematics, it should be noted that the presumption of authorship is legalised in the territory of the CIS countries, according to which: in the absence of evidence, the author of the work is the person indicated as the author on the original or copy of the work<sup>24</sup>. However, despite the general rules, the most important confirmation of property rights remains – the receipt of an appropriate protective, authorisation document on registration of rights to an intellectual property (obtaining a certificate, patent). The procedure for issuing a permit document is regulated at the national level for each individual type of intellectual property object, taking into account their specifics, adapting the general procedure to the characteristics of each of them.

The registration procedure is carried out with the participation of the relevant state policy body in the field of intellectual property. From the moment of registration of an object is endowed with special state protection, and an author (developer) is officially recognised by law<sup>25</sup>. The presence of documents established by the state simplifies the procedure for proving authorship in resolving a copyright infringement dispute. It is also necessary to follow preventive measures to protect intellectual property on the Internet. Such preventive measures always precede violations, the main function of which is to predict them. At the same time, these measures in no way eliminate violations as such, but only reduce the risk of their occurrence. The leading task in such methods is to create conditions to complicate the illegal use of other people's developments. On the Internet, such a tool may be restricting access to websites, approving a regime of limited functionality. However, such methods directly affect the pragmatism of coverage of electronic information data that should be taken into account and correlated with the protection of intellectual property rights and the interests of the ultimate Internet audience.

A rather interesting method is the cryptographic conversion of materials. That is about the introduction of encryption during copying, or generally about the technical exclusion of the possibility of copying. For example, a system such as SCMS allows making only one copy, completely eliminating further copying. The indicated methods are quite interesting, but their direct application requires special developments in the field of informatisation and computerisation, and, therefore, always requires additional funding. The simplest and least costly preventive measure of violations of intellectual property rights is the use of a digital signature, the use of the copyright icon (©), digital

<sup>24</sup> GLUSHKOV, A. V., *Problems of legal regulation of Internet relations*, Saint Petersburg State University of Engineering and Economics, Saint Petersburg, 2007, p. 121.

<sup>25</sup> MALAKHOV, S. V., *Civil regulation of relations in the global computer network Internet*, Moscow Open Social Academy, Moscow, 2001, p. 51, 52.

stamps, and «digital watermarks»<sup>26</sup>. These designations are a direct identifier of the present owner.

It is also necessary to address the problem of protecting intellectual property if there is already a violation of it. In this situation, the methods of protection can be divided into two groups: those that are used in pre-trial procedure, and those that are used by exercising the constitutional right to a court. The pre-trial method of protection provides for the sending of relevant reports of violations of copyright and related rights. Claims may also be accompanied by a proposal to conclude a licence agreement turning the violations into a profitable commercial offer. Such actions are both an independent means of eliminating violations, and a preparatory way when applying to the court. The pre-trial method is also the sending of appropriate complaints, appeals, messages on the fact of violations of intellectual property rights to the competent state authorities.

The judicial procedure for protecting intellectual property rights requires strict regulation of the procedural legislation of the CIS countries, derogation from which is unacceptable. So, a plaintiff has the task of proving in court:

- 1) the fact of non-compliance with legislation in the field of intellectual property;
- 2) violation of intellectual property rights by a respondent person;
- 3) evidence of damage;
- 4) a causal relationship between non-compliance with legislation in the field of intellectual property and the damage caused;
- 5) as well as evidence of guilt of a person<sup>27</sup>.

If to consider violations of intellectual property rights on the Internet, the most difficult tasks for a plaintiff are: establishing the identity of a violator and proving the fact of violation with appropriate and admissible evidence. When considering this category of cases, the court is obliged to establish whether the site and the information posted on it are at the disposal of a person who is presented with a claim, as well as confirming

<sup>26</sup> SEREDA, M. YU., «Consolidation of the right to access the Internet in international legal acts and the legislation of foreign countries», *International Public and Private Law*, (2013), no. 5, p. 46.

<sup>27</sup> ULYANOVA, G. A., «Objects of intellectual property law that ensure the functioning of the Internet: problems of legal protection», in *Problems of piracy in the Russian Federation. Features of Internet piracy: materials of International scientific-practical conference, RSAIP, Moscow, 2011*, p. 95.

the fact of violation of copyright and/or related rights<sup>28</sup>. For the placement of objects of intellectual property rights in violation of the rights of their respective owners on the Internet, the responsibility lies with a person who made such a placement<sup>29</sup>. However, in most cases, posting on web pages is anonymous. The difficulty in establishing a subject of violation of intellectual property rights is a causal consequence of the lack of a legal procedure for recording a person who places information in a network space. If it is impossible to establish such a person, a site owner bears responsibility, since it is he or she who forms the content of a site, has the technical ability to fill a site with relevant graphic, textual materials, and draw up its appearance. This approach is now also confirmed by judicial practice, according to which a consumer of telecommunications services who disseminated illegal content or an owner of a website is responsible for copyright infringement on the network, which is a more frequent case. A similar position was taken by the Ukrainian and Russian courts, which was reflected in the relevant decisions of the plenums of the highest judicial instances. In fact, under such conditions, a presumption of guilt of a site owner is formed, the legalisation of which at the legislative level is increasingly required by some authors<sup>30</sup>. It should also be noted that the range of evidence of violation of intellectual property rights on the Internet provided to the court is multifaceted. The evidence is carried out: by initiating a personal search of the web pages by the court; video recording of website research; obtaining an expert opinion; receiving enquiries from providers and network search services; the presentation of the «screenshot» and other evidence, the collection of which, in fact, also has a very «creative character»<sup>31</sup>.

#### 4. DISCUSSION

The digital revolution, on the one hand, has provided the basis for a technological breakthrough, opened up many new opportunities, but on the other hand, online technology allows quick distribution of pirated content. This problem is fully recognised both by the governments of the CIS countries, and directly by specialists from various fields of knowledge. Increasingly, disputes over the violation of intellectual property rights caused by the digital revolution are becoming the subject of legal proceedings not only at the regional, but also at the national or supranational level. Scientists also

<sup>28</sup> KASENOVA, M. B., «2015: prospects for transboundary management», *Eurasian Law Journal*, (2013), no. 11, p. 19.

<sup>29</sup> TANIMOV O. V., «On the legal nature and possibilities of legal regulation of relations on the Internet», *Information Law*, (2012), no. 2, p. 21.

<sup>30</sup> KONDRASHOV, M., «Intellectual property protection when using file-sharing networks», *Economy and Law*, (2010), no. 9, p. 51.

<sup>31</sup> ENNAN, R., «Concepts, features, essence, specificity and types of relationships on the Internet», *The Theory and Practice of Intellectual Property*, (2013), no. 3, p. 17.

agree with the controversy of the approach regarding the need to limit intellectual property rights on the Internet.

In this context, A. A. KODINETS, in his study on the civil-law nature of obligatory information relations, draws attention to the fact that «in modern conditions there is a contradiction between the system of intellectual property law and the information capabilities of a person regarding the free collection, storage, distribution and use of information. In the conditions of the information society, the development of scientific and scientific-technical activities, the monopoly of a subject of intellectual property requires significant restrictions in the temporal spatial and semantic dimensions»<sup>32</sup>.

So, various scholars suggest differentiated approaches to restricting the rights of intellectual property subjects. According to the first approach, it is planned to restrict access to materials posted on the Internet<sup>33</sup>. For example, databases of commercial sites and some electronic libraries and archives are available only after payment for the use of resources. Another approach provides limited functionality. With this approach, a copyright holder provides a user with a copy of a work that has functional limitations<sup>34</sup>. The defined position is one of the ways to implement such business models as «Try before you buy» and «sell improved versions». The third approach is called the «time bomb», according to which a copyright owner distributes a functionally fully fledged intellectual property object, but sets a date after which access to it will be impossible<sup>35</sup>. One of the options for this approach involves a seller closing access to a work after a certain number of uses (for example, after viewing a computer file 10 times it will be impossible to see it anymore). Such methods of preventing violations in the field of defence and protection of intellectual property rights on the Internet are promising limitations, and some have already proven their effectiveness. However, they cannot be fully applied to all intellectual property objects, and therefore it is necessary to make every effort to close the gaps in the legislation in order to better regulate the sphere of defence and protection of intellectual property.

Moreover, not all scholars are inclined to adhere to the position of the need to limit the law under study. Opinions are increasingly being expressed that restricting rights on the Internet will not lead to the desired result, and the proper level of protection of

<sup>32</sup> KODINETS, A. O., *Civil law regulation of obligatory information relationships*, Alerta, Kyiv, 2017, p. 71.

<sup>33</sup> HUMENIUK, O. and ARDANOV, O., «Plagiarism and other topical problems of copyright implementation in the activity of mass media», *Intellectual Property*, (2009), no. 5, p. 18.

<sup>34</sup> IVASHCHENKO, V. A., *Development of legislation in the field of intellectual property in Ukraine (19th-early 21st centuries)*, Publisher YU. A. CHABANENKO, Cherkasy, 2017, p. 415, 421.

<sup>35</sup> MELNIKOV, M., «Piracy as a crime in the field of copyright and related rights: a look at the problem», *Law of Ukraine*, (2003) no. 4, p. 74.

intellectual property will not be achieved<sup>36</sup>. Supporting this position, I. O. KHARITONOVA points out that such restrictions will lead only to massive violations of prohibitive norms and the search for ways to overcome all kinds of restrictions in order to gain access to the global network or specific sites and resources<sup>37</sup>.

Thus, it can be stated that despite the progressive approaches to limiting the rights of intellectual property subjects, these actions can be perceived as violations of constitutional rights. Therefore, the concepts, approaches and proposals proposed by scientists should be qualitatively refined taking into account the legal field of a particular state and the realities of modern globalised technocratic legal relations.

## 5. CONCLUSION

Each civilised state assigns certain rights and obligations to its citizens, thereby creating favourable conditions for their implementation. Therefore, one of the main tasks of any state is not only the proclamation, but also the protection of the legitimate rights of citizens. Moreover, at the present stage of development of society, one of the priority areas of state policy in the CIS countries is the protection of intellectual property rights. The provision by the state of the appropriate level of legal protection of the results of intellectual activity, the high standards of protection of intellectual property rights that are adhered to and which society can use, together indicate that the state, at least in the field of intellectual property law, can be characterised as legal. The protection of intellectual property in civil proceedings is a new and theoretically undeveloped issue for the science of civil law, and therefore needs further scientific research and reform of the legal regulation of relations in the field of intellectual property in the context of modern realities. The need for such actions is due to the lack of comprehensive monographic studies on the features of the protection of intellectual property in the courts in the face of intensification of scientific and technological progress and economic globalisation.

It must be noted that the implementation of the protection of intellectual property rights on the Internet, as well as the implementation of preventive measures, is a very multifaceted problem, a solution to which has not yet been found in the CIS. The current state of legal culture in society and active anti-plagiarism propaganda throughout the CIS have provided a clear understanding that posting a copyright object on a website without the consent of an author and/or without indicating his name is a violation of copyright. However, another related question, to which there is no single

<sup>36</sup> PASTUKHOV, O. M., *Copyright on the Internet*, Shkola, Kyiv, 2004, p. 107.

<sup>37</sup> KHARITONOVA, O. I., «Comparative legal studies of piracy, counterfeiting and plagiarism under the legislation of Ukraine and Poland», *Journal of Civil Studies*, (2014), no. 16, p. 225.

solution in different countries and that does not have a clear, unambiguous answer, is who is a person responsible for violating the rights of third parties on the Internet and will directly repair and compensate for the damage caused. The case-law of the judicial authorities of the CIS countries remains highly variable and does not add specificity to the formation of a single position. Thus, particular difficulties are associated with the identification of a violator and with the procedure for proving the fact of violation. However, the lack of a unified solution to this problem is not an indication of the inability to exercise the right to protect intellectual property in the context of the modern realities of the CIS countries and the intensification of globalisation.

As a result of a comparative study, it was proposed and justified the expediency of forming a transboundary group of experts sent by representatives from each CIS member country. The main vector of activity of such a working group would be the identification of problematic issues in the field of protection of intellectual property rights, as well as the creation of a single conceptual approach with an effective mechanism for testing it in the field of intellectual property protection, with its subsequent legalisation at national levels.

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