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## INTELLECTUAL PROPERTY RIGHTS PROTECTIONS IN THE CONDITIONS OF MARTIAL LAW IN UKRAINE

**Introduction.** The Ukrainian consumer market is systematically replenished by counterfeit products that evidences of low-effective protection system in the sphere of intellectual property, including at the criminal and legal level. However, social danger of criminal offences related to the intellectual property is of no doubt. The intellectual property rights protection is an important component to success in the market for many companies and trademarks. The security of the intellectual property rights requires continuous market control and monitoring, tracking and identification of violations, working on collection of actual evidences, preparation of documents and their transfer to court bodies, working with courts and control over execution of court decisions. The results of the judicial reform commenced in 2016 in Ukraine, along with amendments to the Constitution, provided for establishing several new institutions, among which was a specialized court – the Intellectual Property High Court. In the fight against counterfeit, one of the main factors is timely harmonization of the regulatory and legal framework to ensure proper protection of copyrights and industrial property rights, as well as its agreement with the related general European imperatives. The quality judicial protection is one of the mechanisms of balanced comprehensive and efficient dispute settlement in terms of intellectual property rights protection. However, the legally provided martial law in Ukraine has somewhat changed the vector of the intellectual property rights protection system by orienting it not only towards internal but also external threats. The martial law in Ukraine provides for certain restrictions of constitutional rights and freedoms of a human and a citizen on a temporary basis during the period of the material law. Temporary

restrictions of rights and legal interests of legal entities can be also introduced within the scope and to the extent necessary to enable introduction and implementation of measures of the martial law. There appears a necessity in creating legal mechanisms for protection of intellectual property interests of persons in order to prevent infringements of intellectual property rights during the period of the martial law. The obligation of the state is to minimize the impact of negative factors and consequences of the martial law on citizens. Thus, in the existing circumstances, both jurisdictional and non-jurisdictional forms of the intellectual property rights protection for Ukraine should be reconsidered and adapted for counteracting new threats. Along with opposition to the military aggression, Ukraine faces an important task of strengthening and supporting the European integration processes that also requires improvement of the intellectual property rights protection, compliance with the money laundering laws according to the standards of the Financial Action Task Force on Money Laundering, adoption of a complex strategic plan for reforming the right protection sector.

**Analysis of latest researches and publications.** The important issues of the intellectual property rights protection and peculiarities of legal confirmation of certain rules for use of the intellectual activity results were subject matters of research of leading scientists. Today, the sphere of intellectual property represents an environment with its internal unity, where a whole variety of creative and intellectual activities of a man covering different fields of economic and social life is implemented. In particular, certain issues of criminal and legal protection of the mentioned rights in the context of the European integration are studied

in research works of V. B. Kharchenko [1], who demonstrated social conditions of criminal offences related to the sphere of intellectual property, substantiated author's vision of the system of such offences, highlighted historical experience in criminal and legal protection of the mentioned rights. O. O. Dudorov [2] emphasized the necessity to strengthen sanctions for criminal offences related to the intellectual property rights protection and, in general, the need to optimize the legislative description of composition of criminal offences in the Criminal Code of Ukraine that are related to the sphere of intellectual property and the reasonability to involve intellectual property experts in this process. I. B. Lavrovska [3] noted the absence of proper procedure for expert assessment of the amount of material damage caused by infringement of the intellectual property right. A. O. Boyar [4] studied metamorphosis of institutional and legal regulation of the intellectual property in the EU as one of the leaders implementing reforms in this sphere to be a reference for Ukraine in its way to the European integration and implementation of the Association Agreement between Ukraine and the EU. Jessica C. Lai and Janine L. Williams provided research as to identity characteristics and personality traits of trade marks, which can result in consumer-brand relationships [5]. R. Ostergard [6] provided the research which improved upon empirical studies that examine the measurement of intellectual property rights protection. Mercedes Campiab MarcoDueñas [7] provided the study of the effect of intellectual property rights on agricultural trade in the frames of the signing of the agreement on Trade-Related Aspects on Intellectual Property Rights. Researches carried out by the international institutions, such as the World Intellectual Property Organization, are important for assessing the protection of the IP sphere. In general, the topic of the intellectual property rights protection is constantly studied by researchers of different states at the international level in order to develop unified and innovative strategies and action plan to ensure high protection level of the IP sphere. But the previous researches did not offer either procedure or mechanisms for protection of the sphere of intellectual property for states at war. That is why, taking Ukraine as an example, we will try to draw up action plan and provide offers aimed at comprehensive protection of interests of all subjects of the intellectual property rights, minimizing the negative impact on the economic development of Ukraine in the condition of the legally provided martial law.

**The research objective** is to analyse the security of the sphere of the intellectual property in Ukraine as a strategic resource in the system of formation of the national wealth and restoration of competitiveness of the economy of the state after the war, as well as for ensuring conformity to the unified intellectual property policy of the European Union in connection of the status of Ukraine as a candidate for EU membership.

**Presentation of the main material.** The relevance and importance of counteraction to all kinds of offences related to the intellectual property rights are due to the widespread distribution of counterfeit products, negative impact of these processes on business, science, health protection and safety of consumers. *On April 13, 2022, the Law of Ukraine "On Protection of Interests of Persons in the Sphere of Intellectual Property during action of Martial Law Introduced in Connection with Military Aggression of the Russian federation against Ukraine" was put into effect* (hereinafter – the Law [8].

The adoption of the relevant Law became necessary due to extreme necessity in development of legal mechanisms for protection of intellectual property interests of persons in order to prevent loss of intellectual property rights during the period of the martial law. According to the Law, starting from the date of introduction of the martial law in Ukraine, that is from February 24, 2022, the time periods of actions related to the intellectual property rights protection, as well as the time periods of the procedures for acquiring these rights as set forth by the Laws of Ukraine "On Protection of Rights to Industrial Samples" [9], "On Protection of Rights to Signs for Goods and Services" [10], "On Protection of Rights to Completing Semiconducting Items" [11], "On Protection of Rights to Inventions and Utility Models" [12], "On Legal Protection of Geographical Indicators" [13], "On Copyright and Adjacent Rights" [14] and "On Protection of Rights to Plant Species" [15] shall be suspended. These time periods shall resume the next day after the termination or cancellation of the martial law, considering the period that had passed before being suspended. At this, it should be considered that the periods for taking actions related to the intellectual property rights protection, as well as the procedures for acquiring these rights are determined not only by the aforementioned laws of Ukraine but also international treaties and agreements, which have been agreed by the Verkhovna Rada of Ukraine as binding. According to Article 9 of the Constitution of Ukraine

[16], the current international treaties which have been agreed by the Verkhovna Rada of Ukraine as binding, constitute a part of the national legislation of Ukraine. Part 2, Article 19, of the Law of Ukraine “On International Treaties of Ukraine” [17] sets forth that if an international treaty of Ukraine that has been duly entered into force provides for rules other than those in a relevant legislative act of Ukraine, the rules of the international treaty shall apply. In this connection, for each particular case of making a decision regarding the time period for taking any actions related to protection or acquisition of the intellectual property rights, it is necessary to consider what a specific regulatory document establishes the relevant time periods. The review of novel provisions of the Law aimed at protection of the sphere of intellectual property is given below.

### Graphic materials.

The provisions regarding termination of time periods for the intellectual property rights are of particular importance for intellectual property subjects since their compliance is related to acquisition of rights, their effectiveness and potential considerable financial losses. Along with the mentioned Law, the following regulatory documents play an important role in strengthening the protection of interests of persons in the sphere of intellectual property during the martial law: the Decree of the President of Ukraine No. 64/2022 “On Introduction of Martial Law in Ukraine” [18]; the Decree of the President of Ukraine No. 133/2022 dated March 14, 2022 “On Prolongation of Martial Law in Ukraine” [19]; the Law of Ukraine “On Legally Provided Martial Law” [20]; the Law of Ukraine “On Basic Principles of Forced Expropriation in Ukraine of Property Right Items of the Russian Federation and its Residents” [21]. The importance of timeliness of the adopted legislation is of no doubt as the prevention of unfavourable consequences is always more reasonable than remedies.

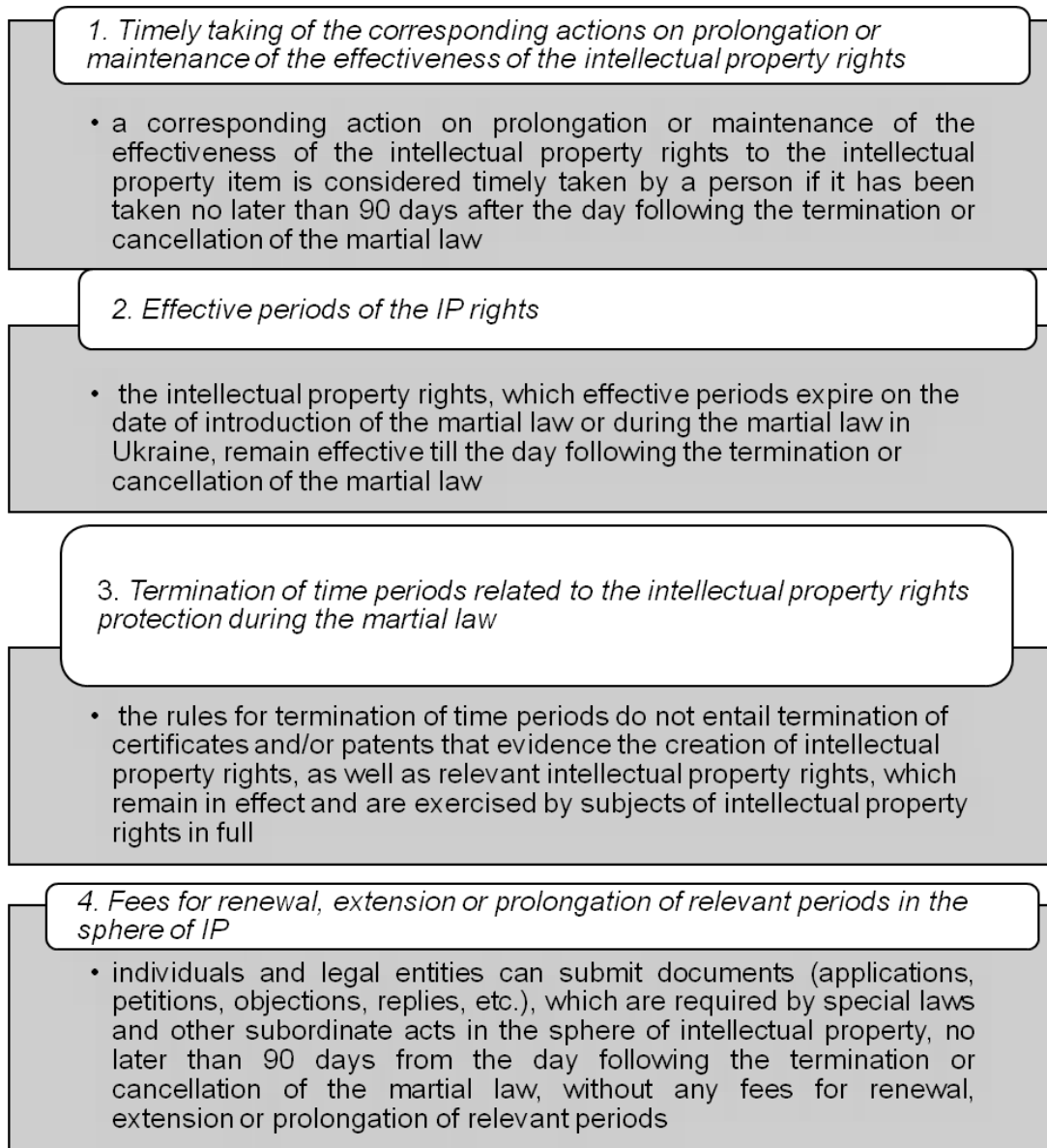
In the conditions of the legal regime of martial law, organizational activity aimed at highlighting and discussing by both practitioners and scientists relevant information and changes in the current legislation of Ukraine is of significant importance. For example, the organization of international scientific and practical conferences in online formats using Zoom, Webex and other platforms promotes the exchange of relevant information, including with foreign partners, scientists and practitioners of Ukraine, who were forced to temporarily leave Ukraine in connection with military events. Work

in foreign grant projects of Ukrainian scientists also contributes to the development of directions and strategies for the protection of intellectual property, which can be implemented in Ukraine in the future.

Prevention of criminal offences in the sphere of intellectual property in Ukraine is provided by the *relevant criminal and legal prohibitions*. Criminal offences in the sphere of intellectual property mean all infringements of the established order of ownership, use and disposal of the intellectual property items that result in significant damage to intellectual property subjects. Offences in the sphere of intellectual property, which commitment entails criminal liability, are provided for in the current Criminal Code of Ukraine [22] (hereinafter – the CC of Ukraine) under the relevant criminal and legal norms, in particular: Art. 176 of the CC of Ukraine “Infringement of Copyright and Adjacent Rights”; Art. 177 of the CC of Ukraine “Infringement of Rights to Innovation, Utility Model, Industrial Sample, Integrated Microcircuit Topography, Plant Species, Efficiency Proposal”; Art. 229 of the CC of Ukraine “Illegal Use of Sign for Goods and Services, Brand Name, Qualified Indication of Goods Origin”; Art. 231 of the CC of Ukraine “Illegal Collection for the Purpose of Using or Use of Information Constituting Trade or Bank Secret”; Art. 232 of the CC of Ukraine “Disclosure of Trade, Bank or Professional Secret in the Capital Market or Organized Commodity Markets”. It is necessary to note that the Special Part of the current CC of Ukraine includes no separate section devoted to relevant criminal offences. The above mentioned criminal and legal norms are contained in Section V “Criminal offences against elective, labour and other personal rights and freedoms of a human and a citizen” and Section VII “Criminal offences in the sphere of business”. Sample statistic data on criminal offences in the sphere of intellectual property in Ukraine is given in Table 1<sup>1</sup>.

The corresponding indicators are characterized by a certain heterogeneity. It should be noted that in this table we are talking only about recorded acts, however, the existence of a certain percentage of latent crime should always be taken into account. In particular, according to Article 176 of the Criminal Code of Ukraine, 126 criminal offenses were registered in 2018 and 147 in 2019, respectively.

<sup>1</sup> On registered criminal offences and results of their pretrial investigation. Official web site of the General Prosecutor’s Office. URL: <https://gp.gov.ua/ua/posts/pro-zareystrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>



**Fig. 1. Basic provisions aimed at ensuring rights of intellectual property subjects in the conditions of the martial law in Ukraine**

The largest number of recorded criminal offenses provided for in Art. 177 of the Criminal Code of Ukraine is recorded in 2021, however, the fluctuations of the corresponding indicators in other years do not significantly differ from the last ones, that is, we consider them not indicative. According to Article 229 of the Criminal Code of Ukraine “Illegal Use of Sign for Goods and Services, Brand Name, Qualified Indication of Goods Origin” in 2000, 107 criminal offenses were registered, after which there was a tendency to decrease the commission of these acts in the last two years. However, in 2021, 95 criminal offenses under Art. 229 of the Criminal Code of Ukraine. According to Art. 231 of the Criminal Code of Ukraine “Illegal Collection for the Purpose of Using or Use of In-

formation Constituting Trade or Bank Secret” in 2000 recorded 269 criminal offenses. It should be noted that the relevant criminal law contains two subjects: commercial and banking secrecy. Therefore, it is problematic to determine, in certain cases, on which subject the act stipulated by Article 231 of the Criminal Code of Ukraine was committed. The same applies to the act provided for in Art. 232 of the Criminal Code of Ukraine. At the same time, we take into account that the content of the dispositions of individual investigated criminal law norms was subject to transformation. In particular, in Art. 232 of the Criminal Code of Ukraine, such a subject of a criminal offense as “professional secret in the capital market or organized commodity markets” appeared.

**Data on criminal offences in the field of intellectual property rights protection in Ukraine  
for the period from 2020 till 2022**

No. and title of the article CC of Ukraine (CCU)	Criminal offences have been recorded in the reporting year				
	2018	2019	2020	2021	2022(as of July )
Art. 176 CCU «Infringement of Copyright and Adjacent Rights»	126	147	118	82	24
Art. 177 CCU «Infringement of Rights to Innovation, Utility Model, Industrial Sample, Integrated Microcircuit Topography, Plant Species, Efficiency Proposal»	15	12	19	23	2
Art. 229 CCU «Illegal Use of Sign for Goods and Services, Brand Name, Qualified Indication of Goods Origin»	107	58	16	95	15
Art. 231 CCU «Illegal Collection for the Purpose of Using or Use of Information Constituting Trade or Bank Secret»	269	7	16	9	1
Art. 232 CCU «Disclosure of Trade, Bank or Professional Secret in the Capital Market or Organized Commodity Markets»	10	5	3	7	1

We hold an opinion that according to Articles 231 and 232 of the CC of Ukraine, bank secret does not constitute an intellectual property item. That is why, it would be more reasonable to distinguish individual compositions of criminal offences from the mentioned criminal and legal norms, namely: “Illegal Collection for the Purpose of Using or Use of Information Constituting Trade or Bank Secret” and “Disclosure of Trade or Professional Secret in the Capital Market or Organized Commodity Markets”. This is due to increased value of social relationships being formed in the sphere of intellectual property in the today’s society. So, the intellectual property is gaining a particular importance in the value hierarchy of the criminal and legal protection since the intellectual property right ensures competitive advantage of goods and services in the market. The dangerous nature of consequences of these criminal offences for the state economy consists in that, on the one hand, the intellectual property is considered as a means to increase production performance, and on the other hand, it is a part of economy that provides for considerable volume of gross domestic product in highly developed countries. For each state, the intellectual property rights protection at the national level is aimed at ensuring economic development of society. This process is implemented through active creativity of members of the society and stimulated by creating opportunities for efficient commercialization of the intellectual property items. Criminal infringements of intellectual property rights cause damage not only to the intellectual property subjects but also to economic relation-

ships. As a rule, relevant criminal offences are committed with interested motives and for gaining certain economic benefit. In the context of reform of the criminal legislation of Ukraine, it is reasonable to pay particular attention to the intellectual property as an object of criminal and legal protection and make in the Special Part of the Criminal Code of Ukraine a separate section “Criminal offences in the sphere of intellectual property” with differentiation by criminal offences and criminal infractions. It should be noted that such initiative has been partially reflected in the new draft Criminal Code of Ukraine [23] (hereinafter – the Draft). In particular, Book 7 of the Draft CC of Ukraine “Crimes and infractions against property, finances, economic activity and natural resources” contains Section 7.2 “Crimes and infractions against intellectual property”. The relevant section contains a crime provided for by Art. 7.2.3: “Infringement of intellectual property rights” for considerable material damage. Also, Section 7.2 provides for such infractions against intellectual property: Art. 7.2.4 “Infringement of personal intellectual non-property rights” and Art. 7.2.5 “Infringement of intellectual property rights causing inconsiderable damage”. Such a model of the system of criminal offenses in the field of intellectual property in the draft of the new Criminal Code of Ukraine allows us to state positive trends in this direction regarding the determination of the place of these acts in the system of the Criminal Code of Ukraine in the near future. However, the relevant processes, including those related to adoption of the new CC of Ukraine, will be possible after termination

and cancellation of the martial law in the territory of Ukraine.

The latest amendments to the current CC of Ukraine provide for strengthening liability for particular criminal offences caused during the martial law. Strengthening the criminal liability refers to crimes against the fundamentals of the national security, for example, Art. 111 of the Criminal Code of Ukraine “Treason against the State”, Art. 111 of the Criminal Code of Ukraine “Sabotage”, as well as for military crimes, such as: P. 3 of Art. 403 of the Criminal Code of Ukraine “Failure to execute an order”, or P. 4 of Art. 408 of the Criminal Code of Ukraine “Desertion” and others.

In September 2015, in the frameworks of the 70th session of the UN General Assembly in New York, the UN Sustainable Development Summit was convened and the Agenda for Sustainable Development after 2015 was adopted to approve new development benchmarks. By the outcome document of the UN Summit “A World to Transform: The 2030 Agenda for Sustainable Development”, 17 goals of sustainable development and 169 objectives were approved. Ukraine, like other UN member states, joined the global process to ensure sustainable development. The objective on ensuring protection and security of intellectual property results from Goal No. 9 – industry, innovations and infrastructure, as well as concurs with other goals since the intellectual property and its results permeate practically each life sphere. Until then, on June 23, 2022, the European Parliament adopted a resolution regarding the immediate granting of candidate status to Ukraine for EU membership. As a result of this, the European Council granted Ukraine the status of a candidate for EU accession [25]. As of the beginning of 2022, Ukraine has achieved stable macroeconomic indicators and progress towards building a full-fledged market econ-

omy, but many processes and implementation of reforms have been suspended due to the introduction of martial law. Sectoral legislation has been adapted, including in the field of intellectual property and consumer rights protection. Nevertheless, society still has a strong demand for further reform of the sphere of intellectual property and the introduction of the activities of the High Court on Intellectual Property, the creation of which was initiated in 2019 as a result of the judicial reform, but the court has not yet started its practical activities.

The Supreme Court on Intellectual Property Matters belongs to the circle of subjects of combating offenses in the field of intellectual property. Among other subjects, we can highlight: bodies of executive power, state bodies with special status, bodies of judicial power. Some of the relevant entities for combating offenses in the field of intellectual property are listed in Table. 2.

**Conclusions.** The reform of the legal protection and security of intellectual property in Ukraine provides for certain stages of its introduction that are primarily aimed at adaptation of the intellectual property legislation of Ukraine to the legislation of the European Union. The stages shall be implemented by making changes to the intellectual property legislation of Ukraine in order to meet the requirements of the Association Agreement between Ukraine and the EU. On June 23, 2022, the European Parliament adopted a resolution calling for the immediate granting of candidate status for EU membership to Ukraine. On the same day, the European Council granted Ukraine the status of a candidate for accession to the EU. This means that optimization of the intellectual property legislation of Ukraine requires considering the development of the EU legislation. The protection of the sphere of intellectual property in the existing legal conditions in Ukraine is satisfactory.

Table 2

**Subjects of combating offenses in the field of intellectual property in Ukraine**

<i>Executive bodies</i>	<i>State bodies with special status</i>	<i>Bodies of judicial power</i>
Ministry of Economy of Ukraine; State Intellectual Property Service of Ukraine; Ministry of Internal Affairs of Ukraine; State Fiscal Service of Ukraine; Ministry of Agrarian Policy and Food of Ukraine; State Veterinary and Phytosanitary Service of Ukraine; State Service of Ukraine for geodesy, cartography and cadastre; Ministry of Health of Ukraine; Ministry of Culture and Information Policy of Ukraine; State Agency of Ukraine on Cinema Issues; Ministry of Environmental Protection and Natural Resources of Ukraine; State Property Fund of Ukraine	National Security and Defence Council of Ukraine; Office of the Prosecutor General; Security Service of Ukraine; Antimonopoly Committee of Ukraine	the Supreme Court of Ukraine; the Supreme Court on Intellectual Property; appellate and local courts.

A number of immediate actions were taken to create mechanisms of counteraction to intellectual property offences. These mechanisms are reflected through the components of the system of counteraction and ensured by subjects in counteraction to intellectual property offences. It is found out that such components include: criminal and legal protection and counteraction; judicial protection as a mechanism of balanced comprehensive and efficient dispute settlement in terms of intellectual property (setting up the Intellectual Property High Court); organization of educational events and conferences for scientists and practitioners to discuss relevant issues of protection of the sphere of intellectual property in the martial law; development of agreed algorithms of interaction of subjects in counteraction to intellectual property offences, activation of international cooperation, also aimed at further European integration of Ukraine.

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**Klochko A.M., Kaliuzhna S.V. INTELLECTUAL PROPERTY RIGHTS PROTECTIONS IN THE CONDITIONS OF MARTIAL LAW IN UKRAINE**

The article gives a review of the implemented measures and ways of modelling activities of subjects in counteraction to intellectual property offences in Ukraine in the condition of the legally provided martial law. It is found out that high level of criminal and legal protection, timely adoption of the relevant laws in the intellectual property right protection driven by threats of the martial law caused by both internal and external threats during martial law. Selected statistical indicators of criminal offenses in the field of intellectual property in Ukraine were analyzed. Emphasis is placed on positive trends in determining the place of criminal offenses in the field of intellectual property in the draft of the new Criminal Code of Ukraine. At the same time, it is noted that the activities of individual subjects in combating these criminal offenses are not effective or not effective enough. This concerns the disorderly activities of the High Court on Intellectual Property, the creation of which was initiated in 2019 as a result of the judicial reform. Emphasis was placed on the expediency of intensifying work with foreign partners, in particular in the field of scientific grant activity, which will allow for the development of mechanisms for the protection of intellectual property necessary for Ukraine. The relevance of such a vector of cooperation is due to the fact of the temporary stay of a significant number of Ukrainian scientists outside the state and the growth of opportunities to implement relevant projects aimed at the development of individual legal institutions. It is noted that, considering Ukraine's acquisition of the status of a candidate for the European Union, the need to adapt and optimize sectoral legislation, including in the field of intellectual property, to EU requirements is increasing.

**Key words:** intellectual property, protection, martial law, criminal law, system, international cooperation.

**Клочко А.М., Калюжна С.В. ЗАХИСТ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В УМОВАХ ВОЄННОГО СТАНУ В УКРАЇНІ**

У статті представлено огляд запроваджених заходів та напрямки моделювання діяльності суб'єктів протидії правопорушенням у сфері інтелектуальної власності в Україні в умовах правового режиму воєнного стану. Встановлено, в структурі системи протидії правопорушенням у сфері інтелектуальної власності важливе значення має високий рівень кримінально-правової охорони, своєчасне прийняття актуального законодавства у сфері захисту прав інтелектуальної власності, обумовленого як внутрішніми так і зовнішніми загрозами під час дії воєнного стану. Проаналізовані вибіркові статистичні показники вчинення кримінальних правопорушень у сфері інтелектуальної власності в Україні. Акцентовано на позитивних тенденціях щодо визначення місця кримінальних правопорушень у сфері інтелектуальної власності у проекті нового КК України. При цьому зазначається, що діяльність окремих суб'єктів протидії цим кримінальним правопорушенням є не ефективною або не достатньо ефективною. Це стосується невідповідної діяльності Вищого суду з питань інтелектуальної власності, створення якого було започатковано у 2019 році в результаті проведеної судової реформи. Наголошено на доцільності активізації роботи із зарубіжними партнерами, зокрема у сфері наукової грантової діяльності, що дозволить розробити необхідні для України механізми захисту сфери інтелектуальної власності. Актуальність такого вертору співпраці обумовлена фактом тимчасового перебуванням значної кількості українських вчених за межами держави та зростанням можливостей реалізації відповідних проектів, спрямованих на розвиток окремих правових інститутів. Зазначено, що з урахуванням набуття Україною статусу кандидата до Європейського Союзу зростає необхідність адаптації та оптимізації секторального законодавства, в тому числі й у сфері інтелектуальної власності до вимог ЄС.

**Ключові слова:** інтелектуальна власність, захист, воєнний стан, кримінальне право, система, міжнародне співробітництво.