

Секція 3. Захист прав інтелектуальної власності: світовий та вітчизняний досвід

УДК 347.77 (477)

ЗАХИСТ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В ЄВРОПЕЙСЬКОМУ СОЮЗІ

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PROTECTION OF INTELLECTUAL PROPERTY LAW IN THE EUROPEAN UNION

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Анотація: *Проведено аналіз захисту прав інтелектуальної власності у ЄС з урахуванням положень Директиви ЄС 2004 р. Досліджено положення Директиви ЄС щодо процесуального права на позов, про докази, про запобіжні заходи, а також щодо санкції за порушення прав інтелектуальної власності.*

Ключові слова: *інтелектуальна власність, захист прав, відповідальність за порушення прав, ЄС.*

Annotation: *The thesis analyzes the protection of intellectual property rights in the EU with regard to the provisions of the EU Directive 2004 studied the provisions of the EU Directive on procedural right to bring suit on the law of evidence, interim measures and sanctions for violations of intellectual property rights.*

Keywords: *intellectual property law protection, liability for infringement, EU.*

The results of intellectual activity occupy a special place in the single common market of the European Union (EU), having a significant impact on the development of new technologies and innovations. However, without effective measures to ensure the protection of the rights of copyright holders, there is no need to talk about the

development of innovative activities and new technologies, as well as attracting investments in this area. In this regard, it is necessary that substantive intellectual property law, which is to a large extent an integral part of the *acquis communautaire*, be provided with effective measures of legal protection throughout the EU, which would be a sufficient tool for the successful development of the internal market, to ensure respect for rights to the results of intellectual property activities of all rights holders who would have effective mechanisms for legal protection of their rights.

As is known, EU member countries are parties to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which contains provisions on ensuring the protection of intellectual property rights (Part 3), which are generally recognized international standards for the protection of rights to the results of intellectual activity, applicable in EU member countries. In addition, EU member states are also parties to a number of international universal agreements in the field of legal protection of intellectual property, containing special provisions to ensure the protection of rights to intellectual property results. Meanwhile, significant differences continue to exist in the legislation of EU member states regarding measures to ensure the protection of intellectual property rights. These include, first of all, issues related to the application of temporary measures used to ensure the safety of evidence, issues of calculating damage caused, and the application of procedures to stop infringement of rights in relation to the results of intellectual activity. These discrepancies in national legislation have a negative impact on the functioning of the EU single market and do not allow for the necessary uniformity of legal protection of intellectual property throughout the EU. This, in turn, leads to a weakening of substantive intellectual property rights and fragmentation of the EU internal market in this area. In turn, infringements of rights in relation to the results of intellectual activity are increasingly associated with organized crime, which is actively involved in the use of the global Internet in order to distribute pirated products around the world. This requires effective measures to bring together measures related to the protection of intellectual property rights across the EU.

In connection with the above, an important step towards the harmonization of the legal protection of intellectual property in the EU is the adoption of Directive 2004/48/EC of April 29, 2004 on the enforcement of intellectual property rights. The significance of the adoption of the Directive on the Protection of Intellectual Property Rights is enormous, since for the first time at the EU level the question of harmonization of the rules of procedural law of EU member states regarding the application of measures to ensure the protection of rights to the results of intellectual activity is being raised. The main objective of the Directive on the Enforcement of Intellectual Property Rights is to bring closer together the legislative provisions of EU Member States concerning measures, procedures and means aimed at ensuring the protection of intellectual property rights.

It must be emphasized that the measures, procedures and intellectual property remedies provided for in the 2004 Directive apply to any infringement of intellectual property rights under both supranational law and the law of the relevant Member State. At the same time, the provisions of the Directive on the protection of intellectual property rights do not exclude the application of special provisions of a number of EU directives relating to the protection of rights to specific objects of intellectual property. Also, the provisions of the Directive on the protection of intellectual property rights do not affect the provisions of other EU acts relating to the legal protection of individuals with regard to access to personal data and the free circulation of this data, electronic digital signature, electronic commerce, etc., as well as the international obligations of states - EU members, including criminal procedures and applicable sanctions arising from the TRIPS Agreement. Member States must provide in their national legislation the measures, procedures and means necessary to ensure the protection of intellectual property rights as provided for in the Intellectual Property Rights Directive.

These measures, procedures and means must be accessible and uniform, must not be overly complex or costly, and must not impose excessive time limits or cause undue delays and delays. In addition, measures, procedures and means must also be effective, proportionate and enforceable and applied in such a way as to avoid creating obstacles

to legitimate trade and provide remedies against possible abuse of these measures (Article 3(2) of the Directive). The legislation of Member States should make provision for the determination of the persons entitled to apply the measures, procedures and remedies for the protection of intellectual property rights provided for in the Intellectual Property Rights Directive, which include, in particular, the following categories persons: 1) copyright holders of intellectual property; 2) any other persons who have received permission to use these rights, in particular licensees, within the limits and under the conditions provided for by applicable law; 3) organizations for the collective management of rights in relation to intellectual property, traditionally recognized as representatives of copyright holders to intellectual property within the limits and under the conditions provided for by applicable law; 4) professional defense organizations traditionally recognized as representatives of copyright holders of intellectual property within the limits and under the conditions provided for by applicable law.

A special presumption of the right to apply measures, procedures and remedies in relation to intellectual property is established, according to which, in order to apply measures, procedures and remedies, the author or the holder of related rights does not have to present evidence of his authorship or the existence of exclusive rights. It will be considered as such if the name of the author or copyright holder is indicated on the work in the usual way, until the contrary is proven (Article 5 of the Directive). Member States shall ensure that, at the request of a party that has provided reasonable and sufficient evidence in support of its claims and has identified evidence in support of its claims that is within the control of the opposing party, the competent judicial authorities may obtain the necessary evidence from the opposing party, subject to security safety of confidential information. In this case, a sufficient number of copies of a work or a protected object of related rights may be considered reasonable and sufficient evidence. Where infringement of intellectual property rights occurs on a commercial scale, Member States shall take the necessary measures to enable the competent judicial authorities, on the basis of an application by the party concerned, to

order the production by the adverse party of banking, financial or commercial documents held by that party subject to ensuring the safety of confidential information.

A special obligation is provided for EU Member States, according to which they must provide in their national legislation that, even before the commencement of consideration of the case on the merits, the competent judicial authorities, at the request of a party that has provided the necessary and reasonable evidence that its rights to intellectual property violated or are likely to be violated, could take prompt and effective interim measures to ensure that the necessary evidence is preserved. Such measures may include detailed descriptions, with or without the seizure of samples of counterfeit goods, seizure of the goods in question, and, where appropriate, the materials and tools used to produce and distribute those goods, as well as related documents.

These measures, if necessary, can be taken without hearing the opposing party if any delay could cause irreparable damage to the copyright holder or there is an obvious risk of destruction of evidence. In the event that measures to preserve evidence were taken without hearing the opposing party, that party must be promptly notified of such measures immediately after their implementation. At the request of the interested party subject to the above interim measures, within a reasonable time after such notification of the applied measures, the said interim measures may be reviewed, canceled or confirmed at a meeting where the party can be heard (clause 1 of Article 7 of the Directive). Preservation measures may be subject to the posting by the applicant of a bond or other equivalent adequate security designed to guarantee compensation for any damages suffered by the defendant as a result of the interim measures.

Member States must provide in their domestic law that measures to preserve evidence must be revoked or otherwise ceased to have effect at the request of the defendant. However, this limits the rights of the defendant to demand compensation for damage if the applicant who requested interim measures did not, within a reasonable period of time, apply to the competent judicial authorities with claims to consider the case on the merits and make a decision on the merits. The time limit for presenting the

above claims may be determined by the competent judicial authority that decided on interim measures, if this is permitted by the law of the relevant Member State. Otherwise, this period should not exceed 20 working days or 31 calendar days (if this period is longer). In the event that interim measures are canceled or no longer apply due to any act or omission of the applicant, and if it is subsequently determined that there has been no violation of the intellectual property right or threat of such violation, the court has the right to order the plaintiff, at the request of the defendant, to provide appropriate compensation for any damage caused by interim measures (clause 4 of article 7 of the Directive). It should also be noted that Member States may take the necessary measures to protect witnesses in cases involving the provision of evidence.

Thus, based on the above, it should be noted that efforts aimed at the effective implementation of EU law have led to the fact that EU legislation increasingly regulates issues of civil procedural law. The 2004 EU Intellectual Property Rights Directive contains detailed provisions on the procedural right of action, the law of evidence, interim measures, and sanctions in cases of infringement of intellectual property rights.

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