



THE LAW OF UKRAINE

On making changes to some legislative acts of Ukraine regarding strengthening the protection of intellectual property rights

The Verkhovna Rada of Ukraine **decrees** :

1. Make changes to the following legislative acts of Ukraine:

1) in the second part of Article 432 of the Civil Code of Ukraine (Annuals of the Verkhovna Rada of Ukraine, 2003, No. 40-44, Article 356):

Paragraphs 3 and 4 should be amended as follows:

"3) withdrawal from civil circulation of goods manufactured or introduced into civil circulation in violation of intellectual property rights, and destruction of such goods at the expense of the person who committed the violation;

4) removal from civil circulation of materials and tools that were used mainly for the manufacture of goods in violation of intellectual property rights, or removal and destruction of such materials and tools at the expense of the person who committed the violation";

add item 4¹ of the following content:

"4¹) application of a one-time monetary payment instead of the application of the methods of protection of intellectual property rights established by clauses 3 and/or 4 of this part. The application of a one-time monetary payment is carried out at the request of the defendant, provided that the intellectual property right was violated by the defendant unintentionally and without negligence and that the application of the methods of protection established by clauses 3 and 4 of this part is disproportionate to the damage caused to the plaintiff. The size of the one-time monetary payment is determined by the court as the amount of remuneration that would have been paid for granting the plaintiff permission to use the intellectual property right in respect of which the dispute arose, and is justified satisfies the plaintiff";

in paragraph 5, replace the words "one-time monetary penalty" and "penalty" with the word "compensation";

Paragraph 6 should be read as follows:

"6) publication at the claimant's request in the mass media or publicizing by another designated court by means of information on the violation of intellectual property rights and the content of the court decision regarding such violation at the expense of the person who committed the offense";

2) in the Economic Procedural Code of Ukraine (Vedomosti Verkhovna Rada of Ukraine, 2017, No. 48, Article 436):

to supplement Article 81¹ with the following content:

Article **81¹** **Demanding** of separate evidence in cases of infringement of intellectual property rights

1. Upon a reasoned petition of a party to the case, the court may issue a decision to demand evidence in the form of information on the origin and network of distribution of goods or provision of services that violate intellectual property rights or for which there are sufficient grounds to believe that the distribution of such goods or the provision of such services violates rights intellectual property:

1) from a person regarding whom there are sufficient grounds to believe that such a person violates intellectual property rights; and/or

2) from any other person regarding whom there are sufficient grounds to believe that such a person offered, received, owned and/or used goods or provided services that infringe intellectual property rights for commercial purposes; or

3) from any other person who was indicated by the person specified in Clause 2 of this part as being involved in the production, manufacture or distribution of goods or provision of services that infringe intellectual property rights.

2. The request for evidence submitted on the basis of the first part of this article should refer exclusively to information that is necessary to establish the origin and network of distribution of goods or provision of services that violate intellectual property rights or for which there are sufficient grounds to believe that the distribution of such goods or provision of such services violates intellectual property rights.

The specified information must contain:

1) full name (for legal entities) or first name (surname, first name, patronymic - for natural persons) and address of persons with respect to whom there are sufficient grounds to believe that they are manufacturers, distributors or other previous owners of such goods or providers of such services, including persons who carry out wholesale or retail trade in such goods or provide such services;

2) information on the quantity and value of manufactured, delivered, supplied, received or ordered goods or services.

3. The court may demand evidence also before the filing of a lawsuit as a measure to secure evidence in the manner established by Articles 110-112 of this Code, taking into account the features specified in parts one and two of this article."

in the fourth part of Article 143, after the words "suit for the collection of a sum of money", add the words "or a claim of a property nature for violation of intellectual property rights";

3) in the Civil Procedure Code of Ukraine (Vedomosti Verkhovna Rada of Ukraine, 2017, No. 48, Article 436):

to supplement Article 84¹ with the following content:

Article 84¹ **Demanding** of separate evidence in cases of infringement of intellectual property rights

1. Upon a reasoned petition of a party to the case, the court may issue a decision to demand evidence in the form of information on the origin and network of distribution of goods or provision of services that violate intellectual property rights or for which there are sufficient grounds to believe that the distribution of such goods or the provision of such services violates rights intellectual property:

1) from a person regarding whom there are sufficient grounds to believe that such a person violates intellectual property rights; and/or

2) from any other person regarding whom there are sufficient grounds to believe that such a person offered, received, owned and/or used goods or provided services that infringe intellectual property rights for commercial purposes; or

3) from any other person who was indicated by the person specified in Clause 2 of this part as being involved in the production, manufacture or distribution of goods or provision of services that infringe intellectual property rights.

2. The request for evidence submitted on the basis of the first part of this article should refer exclusively to information that is necessary to establish the origin and network of distribution of goods or provision of services that violate intellectual property rights or for which there are sufficient grounds to believe that the distribution of such goods or provision of such services violates intellectual property rights.

The specified information must contain:

1) full name (for legal entities) or first name (surname, first name, patronymic - for natural persons) and address of persons with respect to whom there are sufficient grounds to believe that they are manufacturers, distributors or other previous owners of such goods or providers of such services, including persons who carry out wholesale or retail trade in such goods or provide such services;

2) information on the quantity and value of manufactured, delivered, supplied, received or ordered goods or services.

3. The court may demand evidence also before the filing of a lawsuit as a measure to secure evidence in the manner established by Articles 116-118 of this Code, taking into account the features specified in parts one and two of this article."

in the fourth part of Article 156, after the words "suit for the collection of a sum of money", add the words "or a claim of a property nature for infringement of intellectual property rights";

4) in the Law of Ukraine "On Protection of Rights to Industrial Designs" (Reports of the Verkhovna Rada of Ukraine, 1994, No. 7, Article 34; 2003, No. 35, Article 271; 2020, No. 45, Article 387, No. 51, Article 481):

in Article 2¹ :

in point 7:

in the second paragraph, replace the words "fluent in the state language" with the words "knows the state language in accordance with the level determined by the National Commission for State Language Standards";

in the fifth paragraph, replace the word "two" with the word "five";

Paragraph six of Clause 8 should be amended as follows:

"one representative of the National Academy of Legal Sciences of Ukraine";

in paragraph 5 of Article 25, replace the words "damages to the person who was harmed" with the words "damages to the person who was harmed";

in Clause 2 of Article 26:

the first paragraph should read as follows:

"2. At the request of the owner of a registered or unregistered industrial design, such a violation must be stopped, and the violator must compensate the owner of the registered or unregistered industrial design for the property damage caused by indemnification or payment of compensation and/or caused non-property (moral) damage";

after the first paragraph, add three new paragraphs with the following content:

"The amount of damages is determined by the court taking into account the lost profit or income received by the violator as a result of his violation of the rights of the owner of a registered or unregistered industrial design.

The amount of compensation is determined by the court on the basis of the scope of the violation, the fault of the violator and other circumstances that are of significant importance. At the same time, the amount of compensation cannot be less than the amount of remuneration that would be paid for the granting of permission to use the rights to a registered or unregistered industrial design, in respect of which a dispute arose. In the event that the infringement of rights to a registered or unregistered industrial design occurred unintentionally and without negligence, the amount of compensation is equal to the amount of remuneration that would have been paid for granting such permission.

Recovery of compensation is applied by the court instead of compensation for damages at the discretion of the owner of the registered industrial design.

In this regard, the second paragraph shall be considered the fifth paragraph;

5) in the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" (Vedomosti Verkhovna Rada of Ukraine, 1994, No. 7, Article 36; 2001, No. 8, Article 37; 2003, No. 35, Article 271; 2020, No. 45, Article 387, No. 51, Article 481):

in Article 2¹ :

in point 7:

in the second paragraph, replace the words "fluent in the state language" with the words "knows the state language in accordance with the level determined by the National Commission for State Language Standards";

in the fifth paragraph, replace the word "two" with the word "five";

Paragraph six of Clause 8 should be amended as follows:

"one representative of the National Academy of Legal Sciences of Ukraine";

the second sentence of the seventh paragraph of paragraph 1 of Article 6 should be read as follows: "The competent body for granting permission to use the official name and international letter code of the state of Ukraine in a trademark and/or to include in the image of the trademark an imitation of the small State Coat of Arms of Ukraine is a collegial body, formed NOIP";

in paragraph 5 of Article 19, replace the words "damages to the person who was harmed" with the words "damages to the person who was harmed";

in Clause 2 of Article 20:

the first paragraph should read as follows:

"2. At the request of the owner of the certificate, such a violation must be stopped, and the violator is obliged to compensate the owner of the certificate for the property damage caused by indemnification or payment of compensation and/or caused non-property (moral) damage";

after the first paragraph, add three new paragraphs with the following content:

"The amount of damages is determined by the court taking into account the lost profit or income received by the violator as a result of his violation of the rights of the owner of the certificate.

The amount of compensation is determined by the court on the basis of the scope of the violation, the fault of the violator and other circumstances that are of significant importance. At the same time, the amount of compensation cannot be less than the amount of remuneration that would have been paid for the granting of permission to use the rights to the trademark in respect of which the dispute arose. In the event that the violation of the rights of the owner of the certificate occurred unintentionally and without negligence, the amount of compensation is equal to the amount of remuneration that would have been paid for granting such permission.

Recovery of compensation is applied by the court instead of compensation for damages at the discretion of the owner of the certificate."

In this regard, the second and third paragraphs shall be considered the fifth and sixth paragraphs, respectively;

6) in the Law of Ukraine "On the protection of rights to the composition of semiconductor products" (Vedomosti Verkhovna Rada of Ukraine, 1998, No. 8, Article 28 with the following amendments):

in Article 2² :

in point 7:

in the second paragraph, replace the words "fluent in the state language" with the words "knows the state language in accordance with the level determined by the National Commission for State Language Standards";

in the fifth paragraph, replace the word "two" with the word "five";

Paragraph six of Clause 8 should be amended as follows:

"one representative of the National Academy of Legal Sciences of Ukraine";

in Clause 2 of Article 21:

the first paragraph should read as follows:

"2. At the request of the owner of the rights to the registered composition, such a violation must be stopped, and the violator must compensate the owner of the rights for the property damage caused by indemnification or payment of compensation and/or caused non-property (moral) damage";

after the first paragraph, add three new paragraphs with the following content:

"The amount of damages is determined by the court taking into account the lost profit or income received by the violator as a result of his violation of the rights of the owner of the registered composition.

The amount of compensation is determined by the court on the basis of the scope of the violation, the fault of the violator and other circumstances that are of significant importance. At the same time, the amount of compensation cannot be less than the amount of remuneration that would have been paid for granting permission to use the rights to the certificate in respect of which a dispute arose. In the event that the violation of the rights to the registered composition occurred unintentionally and without negligence, the amount of compensation is equal to the amount of remuneration that would have been paid for granting such permission.

The recovery of compensation is applied by the court instead of compensation for damages at the discretion of the owner of the rights to the registered layout.

In this regard, the second paragraph shall be considered the fifth paragraph;

7) in Article 3¹ of the Law of Ukraine "On Legal Protection of Geographical Indications" (Vedomosti Verkhovna Rada of Ukraine, 1999, No. 32, Article 267 with the following amendments):

in part seven:

in the second paragraph, replace the words "fluent in the state language" with the words "knows the state language in accordance with the level determined by the National Commission for State Language Standards";

in the fifth paragraph, replace the word "two" with the word "five";

the sixth paragraph of part eight should be amended as follows:

"one representative of the National Academy of Legal Sciences of Ukraine";

8) in the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" (Annals of the Verkhovna Rada of Ukraine, 2000, No. 37, Article 307; 2003, No. 35, Article 271; 2020, No. 45, Article 387):

in Article 3¹:

in part seven:

in the second paragraph, replace the words "fluent in the state language" with the words "knows the state language in accordance with the level determined by the National Commission for State Language Standards";

in the fifth paragraph, replace the word "two" with the word "five";

the sixth paragraph of part eight should be amended as follows:

"one representative of the National Academy of Legal Sciences of Ukraine";

in part two of Article 34:

the first paragraph should read as follows:

"2. At the request of the patent owner, such violation must be stopped, and the infringer is obliged to compensate the patent owner for the property damage caused by indemnification or payment of compensation and/or caused non-property (moral) damage";

after the first paragraph, add three new paragraphs with the following content:

"The amount of damages is determined by the court taking into account the lost profit or income received by the infringer as a result of his violation of the rights of the patent owner.

The amount of compensation is determined by the court on the basis of the scope of the violation, the fault of the violator and other circumstances that are of significant importance. At the same time, the amount of compensation cannot be less than the amount of remuneration that would have been paid for the granting of permission to use the rights to the patent in respect of which a dispute arose. If the infringement of the patent owner's rights occurred unintentionally and without negligence, the amount of compensation is equal to the amount of remuneration that would have been paid for granting such permission.

Recovery of compensation is applied by the court instead of compensation for damages at the discretion of the patent holder."

In this regard, the second paragraph shall be considered the fifth paragraph;

9) in subsection 4 of clauses 3⁴ of chapter VI "Final and transitional provisions" of the Law of Ukraine "On effective management of property rights of right holders in the field of copyright and (or) related rights" (News of the Verkhovna Rada of Ukraine, 2018, No. 32, Article 242 with subsequent amendments) replace the words and number "to this sub-paragraph 3" with the words "to this sub-paragraph", and the words and number "defined by this sub-paragraph 3" with the words "defined by this sub-paragraph";

10) in the Law of Ukraine "On Copyright and Related Rights" dated December 1, 2022 No. 2811-IX:

in the first part of Article 1:

point 19, after the words "public performance", add the words "(except for the presentation of works and/or performances in live performance)", and replace the words "cable relay" with the words "retransmission, cable relay";

point 50 after the words "first alienation" add the words "originals or others";

in paragraph five of part eight of Article 4, replace the word "two" with the word "five";

in the second part of Article 15, replace the words "for the benefit of the customer" with the words "to the customer from the moment of creation of the work in its entirety";

in part seven of Article 21:

in the first paragraph, replace the words and figures "expires after 15 years on the last day of the calendar year in which the database was created" with the words and figures "expires after 15 years, counted from January 1 of the year following the year of creation of the database";

in the second paragraph, replace the words "on the last day of the calendar year in which the database was first made public" with the words and number "calculated from January 1 of the year following the year of such publication of the database";

in Article 22 :

Clause 10 of the second part shall be amended as follows:

"10) creation of images of works of architecture and fine arts, which are permanently located in places accessible to the public, and further use of such objects, provided that such actions do not have independent economic significance";

in the fifth part, replace the word and number "item 4" with the word and number "item 3";

in Article 33 :

in the second part, the words "there are persons" should be replaced by the words "there may be persons", and the word "others" should be deleted;

part six should be written as follows:

"6. The term of validity of the right of a special kind (sui generis) to a non-original object generated by a computer program expires after 25 years, calculated from January 1 of the year following the year in which the non-original object was generated";

in part ten, replace the word and numbers "Articles 22-29" with the word and numbers "Articles 22-28";

in Article 36 :

in part six:

in the first sentence, replace the words "official performance arise" with the words "official performance, official phonogram, official videogram arise";

in the second sentence, replace the words "use of official performance" with the words "use of official performance, official phonogram, official videogram";

in part seven, replace the words "by order, arise" with the words "by order, as well as property rights to a phonogram or videogram produced by order, arise";

in part eight:

the second paragraph should read as follows:

"Persons whose joint activity has made the performance, persons who have jointly produced a phonogram or videogram, exercise their rights to the corresponding performance, phonogram, videogram under the conditions and in the manner provided for in Article 13 of this Law";

in the third paragraph, replace the word "performance" with the words "performance, phonogram, videogram";

in Article 38 :

paragraph one of part one after the word "prohibit" add the word "use";

delete the second sentence of the third paragraph of the second part;

the third part should be written as follows:

"3. Regardless of the alienation of the property rights to performance specified in the first part of this article, the performer has the right to a fair remuneration for the appropriate methods of using the performance, defined by this Law and the Law of Ukraine "On the effective management of property rights of right holders in the field of copyright and (or) related rights".

Without the permission of the subject of related property rights to performance, but with the payment of a fair remuneration to the performers, the following use of phonograms, videograms containing the corresponding performance is possible:

- 1) public performance of the phonogram;
- 2) public notification of the phonogram;
- 3) public demonstration of the videogram;
- 4) public notification of the videogram.

The right to fair remuneration belongs only to the executor, passes only to the heirs of the executor and cannot be transferred (alienated) to other persons.

The fair remuneration of the performer is 50 percent of the income from the rights, which relates to the use of the corresponding phonogram or videogram and is determined in accordance with the Law of Ukraine "On the effective management of property rights of rights holders in the field of copyright and (or) related rights". The remaining 50 percent of the said income from the rights belongs to the producer of the phonogram or the producer of the videogram containing the relevant performance";

in Article 39 :

delete the second sentence of the third paragraph of the second part;

the third part should be written as follows:

"3. Regardless of the alienation of the property rights to the phonogram specified in the first part of this article, the producer of the phonogram has the right to a fair remuneration for the appropriate methods of using the phonogram, determined by this Law and the Law of Ukraine "On effective management of the property rights of right holders in the field of copyright and (or) related rights".

Without the permission of the subject of related property rights to the phonogram, but with the payment of a fair remuneration to the producer of the phonogram, the following use of phonograms is possible:

- 1) public performance of the phonogram;
- 2) public notification of the phonogram.

The right to the specified fair remuneration belongs to the producer of the phonogram, passes only to the heirs or legal successors of the producer of the phonogram and cannot be transferred (alienated) to other persons.

The share of the fair remuneration of the producer of the phonogram is determined in accordance with the fourth paragraph of the third part of Article 38 of this Law";

in Article 40 :

delete the fourth paragraph of the second part;

the third part should be written as follows:

"3. Regardless of the alienation of the property rights to the videogram specified in the first part of this article, the producer of the videogram has the right to a fair remuneration for the appropriate ways of using the videogram, determined by this Law and the Law of Ukraine "On the effective management of the property rights of right holders in the field of copyright and (or) related rights".

Without the permission of the subject of related property rights to the videogram, but with the payment of a fair remuneration to the producer of the videogram, the following use of the videogram is possible:

- 1) public demonstration of the videogram;
- 2) public notification of the videogram.

The right to the specified fair remuneration belongs to the producer of the videogram, passes only to the heirs or legal successors of the producer of the videogram and cannot be transferred (alienated) to other persons.

The share of the fair remuneration of the producer of the videogram is determined in accordance with the fourth paragraph of the third part of Article 38 of this Law";

in the first part of Article 47, replace the words "independently, through a representative" with the words "personally, through a representative or other authorized person";

in the second paragraph of the first part of Article 50, the words "in particular, the organization of collective management" should be deleted;

in the fifth paragraph of the third part of Article 53, replace the words "produced copy" with the words "produced copies", and the words "protection - copies" with the word "protection";

in the second paragraph of the second part of Article 57, the word and figures "Article 55" shall be replaced by the word and figures "Article 56".

2. This Law enters into force on the day following its publication.

President of Ukraine

V. ZELENSKY

**Kyiv,
March 20, 2023
No. 2974-IX**



On Amendments to Certain Legislative Acts of Ukraine Regarding Strengthening the Protection of Intellectual Property Rights
Law of Ukraine dated March 20, 2023 No. 2974-IX
Adoption dated **March 20, 2023**
Permanent address:
<https://zakon.rada.gov.ua/go/2974-20>

The legislation of Ukraine is valid
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Publications of the document

- **Voice of Ukraine** from April 14, 2023 — No. 1
- **Government Courier** dated April 18, 2023 — No. 77
- **Official Gazette of Ukraine** dated April 25, 2023 — 2023, No. 41, p. 55, article 2211, act code 117785/2023