

УДК 339.1

JEL Classification M30, M31, K11

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THE PROBLEM OF USING THE INTELLECTUAL PROPERTY LAW IN PUBLIC RELATIONS

The article examines the problem of using the law on intellectual property in public relations. The problem on the territory of Ukraine and examples from other countries are considered. The Law of Ukraine "On Copyright and Related Rights" and the possibilities of its use in the field of public relations were reviewed. The main problems of Ukrainian society in the field of application of this right in their activities were highlighted. Several options for improving compliance with the law during the development of the campaign were proposed and the main aspects to be considered when conducting marketing activities both online and offline were identified. The classification of subjects and objects of legal relations in the field of PR is made. Anti-crisis measures are proposed in case of a critical situation.

Key words: public relations, plagiarism, legislation, intellectual property, copyright.

DOI: 10.15276/mdt.5.4.2021.5

Statement of the problem in general form and it's connection with important scientific or practical tasks. The problem of using the law on intellectual property is one of the main not only of the state but also of society as a whole. Despite the improvement of the situation since 2014, the problem of copyright infringement is relevant, harming Ukrainian and foreign rights holders. Because of the scale of violations, Ukraine in 2013 was included in the list of countries with serious violations of the legal protection of intellectual property by The Office of the United States Trade Representative (USTR) on the recommendation of the International Intellectual Property Alliance, the so-called "List 301" [1]. The sanctions were not adopted and, according to USTR, as of 2021 the situation is improving: «Ukraine continued to take positive steps in 2020 toward a transparent, fair, and predictable system for the collective management of copyright royalties. In particular, pursuant to 2018 legislation that fundamentally reformed its collective management organization (CMO) system, Ukraine held open competitions and made progress toward completing accreditation of two additional CMOs in 2020» [12]. Thus, in some aspects, there has been made the progress and effort to meet international norms and standards. This can be evidenced by the fact that after 2014, 8 changes were made in the copyright law, the last of which fall on 15.07.2021, which indicates a constant modernization and updating of the law.

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But, unfortunately, there are still such serious problems in Ukraine related to intellectual property, which are related not only to the incompleteness of the law, but also to the level of responsibility of persons involved in legal relations. Krivolapko B. and Teslenko N. identify the following main offenses [1]:

- piracy (prevalence of sites with the ability to download works of video, audio, game art, by the way refers to a criminal offense);
- plagiarism;
- use of works without the permission of the author;
- usage of the works of international authors;
- scientific plagiarism.

These problems, as well as legislation, are closely related to the process of creating a PR campaign. That is why it is necessary to know all the shortcomings and obligations that the law imposes on the subject to avoid possible issues with the legislation. Any creative activity is connected with the Law of Ukraine "On Copyright and Related Rights", because in marketing activities you can act from any side - as using the object of legal relations (in our case, works of any origin) and thus know how to work with the product and be able to cooperate with the author, and act there as an author or subject of legal relations, and be able to clearly define their rights and responsibilities as a creator and owner of the result of creative activity. Thus, any creative activity is part of the legal relationship, which should be regulated by both public services and private enterprises (of any form of ownership).

The article considers the connection of an intellectual property law with the creation, development and conduct of PR campaigns, considers possible areas of application of the Law of Ukraine and international norms and rules. It should be borne in mind that PR activities are not limited to one country, and especially in crisis situations, due to close cooperation and the presence of the media, information becomes public property and is widely disseminated outside the country.

Analysis of the latest research and publications, which initiated the solution of this problem and on which the author relies. The problem of using intellectual property in the process of marketing activities, and, in particular, in public relations, directly or indirectly analyzed in the works of scientists and researchers in international and state law, marketing and PR, journalism: Krivolapov B.M., Teslenko N.V., Korotenko O.L., Bruteničová L.K., Lisovska Y.P., Semkiv V.O., Shandra R.S., Myers C., Hoff C.B., Griffiths S., Fitzpatrick R.K., Kirnosova M.V., Oklander M.A., Kirilyuk A.V., Mitchell C., Zherzh N.A., Gelemei N.O.

Highlighting the previously unresolved parts of the general problem to which the article is devoted. The main material on marketing processes and tools is provided in the field of law enforcement in advertising. And this is understandable, as creative materials are widely used in this area. In public relations in particular, the combination of the law and creativity is very important, but unfortunately this topic is not sufficiently covered. There are no practical recommendations for conducting and developing a campaign, the possible consequences of violating the law are not researched and presented, and it is not just a matter of responsibility before the law, but also responsibility to the consumer. What image consequences can there be for the company in case of such a crisis situation.

Formulation of the purpose of the article (statement of the problem). The purpose of the article is to reveal the problem of using intellectual property law in PR activities and provide practical recommendations for developing a fair program, as well as to reveal the possible consequences for the entrepreneur in case of violation of the law: both before the law and before the consumer.

Statement of the main material of the research with full justification of the scientific results obtained. Public relations is the creation and maintenance of an image, brand reputation, and in today's society, where the public is very carefully controlling and analyzing the behavior of almost every company in the market, thus, in a world of competition the company can not afford to ignore the law. Based on the statistics of paid subscriptions to streaming platforms with music and movies (Apple music, Spotifu, Netflix), you can see a significant increase in the number of purchases made on these applications. For example, the number of subscribers to the service with movies and series Netflix from 2016 to 2021 increased from 70 million to 200 million people [14], Apple Music from 10 to 70 million people [13] – this indicates an increase in public responsibility for integrity Ukraine also participates in these statistics, which is why any legal entity that has to deal with public relations in its activities must know and comply with the law, because as well as administrative (or in the case of piracy – criminal) liability can cause significant damage and inconvenience, so you can lose the trust of your audience, which will lead to future losses of potential customers.

The main organisation that controls, grants the right, registers and takes measures in case of violation of the law is the National Intellectual Property Authority.

"National Intellectual Property Authority (hereinafter – NIPO) – a state organization that is part of the state system of legal protection of intellectual property, defined at the national level by the Cabinet of Ministers of Ukraine as exercising powers in the field of intellectual property, defined by this Law, other laws intellectual property, acts of the central executive body that ensures the formation and implementation of state policy in the field of intellectual property, and the statute, and has the right to represent Ukraine in international and regional organizations" [5].

"2020 was characterized by changes in the structure of the state system of legal protection of intellectual property. The Law of Ukraine “On Amendments to Certain Laws of Ukraine Concerning the Establishment of a National Intellectual Property Authority” of June 16, 2020 № 703-IX (hereinafter – the Law) established the National Intellectual Property Authority (NIPO) [2].

NIPO is the main body of intellectual property, it performs the function of protection of copyright objects and provides authors with 13 services in the field of authorship and registration of objects. From the point of view of PR department it is necessary to allocate only such [2]:

- acceptance of applications, their examination, decision-making on them;
- state registration of objects of intellectual property rights and issuance of security documents (patents and certificates);
- invalidation of rights to inventions, utility models and industrial designs;
- implementation of international cooperation;
- providing explanations on the implementation of state policy in the field of protection of intellectual property rights;
- information and publishing activities in this area;
- generalization of national and international practice of application of the legislation in this sphere, development of offers on improvement of the legislation.

The fact of unique authorship is a key aspect of public activity. This allows you to create and conduct extraordinary and special publishing activities, provide unique information about your product, become trendsetters and have the upper hand. In addition, it provides the opportunity to make a profit in the form of royalty payments, sale of licenses or subscriptions. That is why it is important to know and understand the process of cooperation with the

governmental organisations working in the field of copyright that can act as consultants and auditors during the development of the campaign [9].

Also, the PR department should be able to control and monitor the registration process of all copyrighted and marketable works of the company to guide them in the further development of the public promotion campaign. In addition, in any cooperation with the media, it should always be stated that the company is the author and has the right to use its works in the manner specified in the contracts and in the law. Be able to cooperate with state regulatory services and lawyers both inside and outside the company. Because the PR service is responsible for the company's image and must be able to properly cover events related to the company. Therefore, we can highlight the following accents that can be indicated during presentations and public speeches, and when working with journalists [11]: unique copyright, the company has such a right, the company owns a unique product; legal regulation of the issue of authorship in the company, the formality of all documents; legal liability to public services; responsibility to partners and clients.

The main components of public relations are sponsorship, crisis management and publicity. Publicity and crisis management will be relevant components for consideration.

Publicity is just a field of cooperation between the subject and the object of legal relations in the context of the Law of Ukraine "On Copyright and Related Rights". Works (audiovisual, printed, musical, artistic and others) are most often used by means and principles of PR. It is important to clarify that the essence lies precisely in the objects of copyright and related rights, from the structure of intellectual property, where the objects of copyright include the results of spiritual and intellectual creativity of man. This also includes objects of industrial property, namely commercial designations (trademarks, names, marks, indications) [4].

Crisis management is a method and recommendations for restoring the image in case of a critical situation related to copyright infringement by the company. The area where the objects of copyright in public relations participate is the PR toolkit, namely the means and measures. Combining them into one list, you can get a diagram of which tools will be attributed to the objects of copyright, and which to related rights (table 1).

Table 1 – Objects of copyright and related rights

Object of copyright	Object of related law
1) release (press release); 2) participation in writing articles, reports and other information materials; writing nominal, review and analytical articles; order an article; creation of background, fact sheets, case stories, newsletters, position documents, etc.; 3) participation in the production of film, video, television products; 4) publicity with the help of special products: – publication of annual reports; – publication of company brochures, catalogs, booklets; – publication of a branded magazine, newspaper, corporate bulletin; – publication of leaflets; – preparation of souvenirs and other branded paraphernalia.	1) organization and holding of press conferences, briefings; 2) organization of the press club; 3) organization of speeches, interviews with management, company speakers in the media; 4) organization of special PR-events (promotions): – organization of seminars, "round tables" for clients; – organization of presentations, opening ceremonies; – organization of "open days", anniversaries of the company, demonstrations of novelties and other special actions.

It is possible to trace the regularity that the objects belong to the copyright, and their further use belongs to the related rights [10].

Consider a situation where the company is the author of the object. In this case, the subject will be interested in Section 2 of the Law "On Copyright and Related Rights", which lists all the rights of the author to the created work. Article 13 Co-authorship should be mentioned separately. According to the specifics of the PR service, the company works closely with the media and speaking in an interview, the company becomes a co-author of the results of this process, so this point should be noted that in case of crisis, incompetence of a journalist or disagreement with the finished text. refuse to publish under the law, namely Article 13.

This section fully covers all aspects of copyright, methods of reproduction of the work, the possibilities of its reproduction and the consequences and liability in case of breach of copyright (in the form of compensation). If disputes arise over this, they are referred to court.

Objects of related law are [4]:

- a) performance of literary, dramatic, musical, musical-dramatic, choreographic, folklore and other works;
- b) phonograms, videograms;
- c) transfers (programs) of broadcasting organizations.

That is, the implementation of copyright objects, their public demonstration, method and right to such demonstration. Related rights are described in Section 3 of the Law on Copyright and Related Rights, which describes the use, rights of subjects, restrictions and validity.

Therefore, acting as an author, the company must know the content of Sections 2 and 3 of the Law "On Copyright and Related Rights", clearly understand what its right applies as an author and where the legal entity will be considered the creator and where the consumer of the work. The main document will be the authorship agreement, which will regulate the relationship and liability in case of breach of contract.

What should be noted is Article 11, paragraph 2, which states: "Copyright in a work arises as a result of its creation. The creation and exercise of copyright does not require registration of the work or any other special design, as well as the performance of any other formalities" [4]. The fact of creation and gives a unique right to own the object and ways to dispose of it.

If the company is a consumer of copyright objects, then Sections 2,3 and 5 will be relevant for the person. But we must take into account Article 32, paragraph 1, which states: permission to use the work in any one or all known ways on the basis of the copyright agreement [4]. That is, the main legal document in this case will be the copyright agreement, concluded on the mutual origin of both parties, the general introduction of the right and the arrival of the common result (Civil Code of Ukraine). But not all works are subject to restrictions imposed on them by the author, such objects are listed in Article 10 of the Law, which defines works that are not subject to protection by copyright law [4].

It is also necessary to determine whether the company enters the international market or is already a participant in the international market. Depending on this, it is necessary to determine on the basis of the legislation of which country the PR campaign will work. To simplify procedures, for example, on May 17, 2019, the European Union issued a directive on copyright and related rights, which consists of 5 sections, which set out measures to adapt the development and achieve a functioning copyright marketplace [15]. The Directive serves as a recommendation for Member States as well as for businesses and individuals involved in PR and participating in creative activities in the EU.

The General provision in the Title 1 of the Directive states: “This Directive lays down rules which aim to harmonise further Union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licences, as well as rules which aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter” [15].

This first point should clarify the aim of the further titles that are provided in the Directive. This document could be visioned as a list of ethical and responsible recommendations for companies which conduct their activity in the frames of EU, so PR departments should take this as a ground rules to complementate the PR strategy aimed towards the EU especially in the field of usage of author materials of different origin [3].

The translation of the texts or other materials also should be taken in consideration by the PR departments during the development of PR campaign. As C. Mitchell states: “A translation copyright is a legal instrument, codified in many nations' laws, that extends copyright protection to the translation of any published work. Copyright laws protect authors' rights in all written or recorded works, from songs and their lyrics to poems, books, and manuscripts. So long as the work exists in some tangible form, copyright protections automatically attach. When a copyrighted work is translated into another language, a new work emerges that carries with it its own set of copyright privileges, known as translation copyright. Copyright protection for translations is automatic, just as it is for original works” [8].

So the translated materials are equally protected as originals, so prospecting the campaign should include the possibility or necessity of the usage of translated materials or the it should be discussed with the owner of the product in which way the media organisations or other pr authorities should translate the original materials. All translation conditions must be documented in order to avoid conflict situations [8].

Based on this, we can highlight some recommendations for the two sides of the relationship:

If the company is the author of intellectual property:

- expedient study of sections 2,3 of the Law of the Law "On Copyright and Related Rights", which describes copyright and related rights;
 - the volume of author's works: what the company will create independently, on which works the company will be the author;
 - calculation of the prospects of use of the work, approximate income, costs of creation and losses in case of violation by the other party (consumer) of this right;
 - is the company a participant in the international market, how wide is the range of countries in which the company operates;
 - careful elaboration of the copyright agreement. It can be developed both independently and with a lawyer. It is necessary to indicate all possible ways of using the work that the company allows (Section 2 of the Law). By the way, such a guide can be a brand book, which indicates how to use the attributes of the company;
 - inclusion in the contract of methods of reproduction of the work;
 - indication of consequences, the amount of compensation, sanctions against the consumer in case of breach of contract;
 - development of an anti-crisis program if the contract was violated and the company suffered property and non-property losses;
 - the way to compensate for damages;
 - possibility of further cooperation with the customer, the consumer.
-

If the company is a consumer of copyright:

- the volume of the order, the amount of necessary author's materials for use during the campaign, the calculation of purchase costs;
- study of sections 2, 3 and 5 of the Law "On Copyright and Related Rights";
- necessary ways to use the object of copyright or the object of commercial law (in the case of cooperation);
- determining the type of cooperation, whether the company will act as a co-author in some works;
- methods and ways of reproduction of works, the need to involve the author in the reproduction of the work;
- drawing up an agreement with the author, defining fundamentally important aspects, highlighting wishes;
- calculation of losses in case of breach of contract, crisis situation, the amount of compensation paid to the author;
- anti-crisis policy in case of breach of contract and wide publicity of this situation in the media, possible losses of consumers and partners;
- possibilities of further cooperation with the author, conditions.

As you can see, a significant part of the points is assigned to the anti-crisis PR in case of breach of contract. The law does not specify clear consequences and measures in case of copyright infringement. In the event of such a dispute, the author applies to the court and the court decides the method of liability within the limits set by Article 52 of the Law "On Copyright and Related Rights" and specified in the copyright agreement. That is, legally everything is determined by the contract.

Of course, it is necessary to take into account the damage to reputation and image, the possible loss of partners and customers. The best recommendation in this case is to develop your own authorship in the areas of offline PR and online PR. Thus, acting as an author, the company will have a wider range of opportunities to use its own works and not be limited to the authorship agreement and without involving third parties. Employees of the company that will create works automatically transfer the right of authorship to the company, this is due to the employment contract or contract [11].

Of course, the development of a system of own authorship can be a significant amount, but considering the situation from the PR side, the company will have more prestige and trust among customers using copyrighted works of its own production.

Since intellectual property rights are a person's right to the result of intellectual, creative activity or other intangible object, even a written and documented strategy, campaign plan, especially in the case of promoting a unique product, can be registered as intellectual property and become a producer of promotion. a unique type of product, which will additionally lead to the mention of the company's name in various sources.

Many public relations professionals may be placing themselves and client organizations at risk of legal liability because they have little or no familiarity with important legal issues that affect public relations activities, according to this study. Which means the work between law department and PR department should be close enough so the both could cooperate in activities which consider the participation of the both parties and be ready to create the PR strategy and strategy of managing the crisis situations that may occur during the PR or other activities.

The PR department has to be reckoned as a mass media of the company, the voice of it, so the close work between departments should be taken as a serious actions.

Conclusions from this research and prospects for further developments in this area. Thus, first, the prospect of development in this area is the constant changes and modifications of the law, both nationally and internationally. Secondly, the responsibility of the population for the purchase and use of works is growing, respect for authors is growing, and responsible and virtuous consumption is being promoted. Any manifestations of plagiarism, corporate theft, and copyright infringement are widely condemned.

Also, the speed of information dissemination, the level of media penetration into public life and the amount of news coverage require constant monitoring of the information that the company publishes online.

The prospects are a deeper study of the law and its adaptation in various aspects of the PR campaign process.

The proliferation of the Internet also leads to the need to learn the law. More and more copyrighted works are being distributed on the Internet and are becoming useful to many users, and we must be sure that using the material the company has the right to do so.

In addition, if the company acts as an author and is able to manage its unique product in the field of public relations and legislation - this can be a strong basis for creating a powerful image campaign, where the main emphasis can be on what the company has a unique product and information.

Also, the importance of linking the PR service with the legal sphere is obvious, because the staff of this service must be able to properly cooperate with the media and legal literacy plays a significant role here.

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Проблема використання інтелектуальної власності в паблік рилейнз.

В статті досліджено проблему використання закону про інтелектуальну власність у паблік рилейнз в Україні та інших країнах світу. Розглянуто вплив та можливості використання Закону України «Про авторське право і суміжні права» у сфері звязків із громадськістю. Виділені основні проблеми українського суспільства у сфері застосування права інтелектуальної власності у своїй діяльності. Запропоновано декілька варіантів покращення ситуації із дотриманням закону під час розробки кампанії паблік рилейнз та виділені основні аспекти, на які треба звернути увагу під час проведення маркетингових заходів як у мережі інтернет, так і поза ним. Зроблено класифікація суб'єктів та об'єктів правовідносин у сфері паблік рилейнз. Запропоновані антикризові заходи у разі виникнення критичної ситуації внаслідок пррблем використання інтелектуальної власності.

Ключові слова: паблік рилейнз, плагіат, законодавство, інтелектуальна власність, авторське право.

Received to the editor 7 March, 2021.