ESTABLISHING AND DEVELOPING THE SYSTEM OF COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS IN UKRAINE (1991-ONGOING)

KHORENZHENKO Oksana - PhD student of the Department of International Private Law, Educational and Scientific Institute of International Relations of Taras Shevchenko National University of Kyiv
ORCID ID: https://orcid.org/0009-0005-7186-7730
УДК 347.238.3:347.77/.78](477):341.17(4-672ЄС)
DOI: https://doi.org/10.32782/NP.2024.3.20

The article is devoted to developing the system of collective management of copyright and related rights in Ukraine since the proclamation of the country's independence to the present. The author identifies several stages of the formation of the institute of collective management of copyright and related rights during the period of Ukraine's independence.

The study presents a comprehensive analysis of the legal regulation of the system of collective management organisations of copyright and related rights at each stage of its formation. The article investigates the main issues affecting the functioning of collective management organisations (hereinafter referred to as CMOs) of copyright and related rights. It analyses institutional reforms in the field of intellectual property in the context of aligning Ukrainian legislation with the EU acquis. It also examines the concept of the draft National Strategy for the Development of Intellectual Property until 2030 in the field of collective management of copyright and related rights.

The author analyses the impact of the full-scale invasion of russia on the collective management of copyright and related rights in Ukraine. Furthermore, the strategic directions for the development of the system of collective management of copyright and related rights in Ukraine in the post-war recovery period are determined.

It is concluded that an investigation into the formation and evolution of the collective management system is of significant importance, as it enables the identification of the primary challenges and opportunities for its enhancement. One of Ukraine's strategic priorities should be the modernisation of this system, ensuring full harmonisation of Ukrainian legislation with the EU acquis in the field of copyright. This will help to strengthen the protection of copyright and related rights, increase transparency and efficiency in collective management organisations, and introduce the best international practices. Implementing improvements to the collective management system will not only enhance the protection of the interests of authors and performers but also position Ukraine as a more appealing destination for foreign investors, particularly during the post-war recovery period. Furthermore, it will facilitate the development of creative industries, which constitute a vital component of the country's economic growth and cultural diversity.

Keywords: copyright, related rights, collective management of copyright and related rights, alignment with the EU acquis, collective management organisations, intellectual property.

Introduction

Since the proclamation of Ukraine's independence, the system of collective management of copyright and related rights has undergone a series of transformations and improvements. By adopting the European vector of development, Ukraine has undertaken to align its national legislation with the EU *acquis* and implement institutional reforms, including in the field of collective management of copyright and related rights. Despite the challenges of the war, the institution of collective management of copyright and related rights in Ukraine completed its institutional reform with the launching

of the state organisation "Ukrainian National Office of Intellectual Property and Innovation" (hereinafter referred to as the IP Office) in October 2022, marking the process with a positive report on Ukraine's progress under the European Commission's Ukraine 2023 Report on Enlargement Package Policy in intellectual property.

At the same time, the system of collective management organisations of copyright and related rights faces several limitations, sparking ongoing debate among scholars. Consequently, there is an urgent need for a comprehensive analysis of these issues, particularly in light of Ukraine's European integration efforts and the challenges posed by the war and post-war recovery.

Purpose of the article

The objective of this article is to provide a comprehensive analysis of the evolution of the system of collective management of copyright and related rights in Ukraine from the proclamation of Ukraine's independence to the present day. In addition, it intends to identify the problematic issues and prospects for further development of collective management organisations in the post-war recovery period.

Literature review

The current state of scientific development reflects a significant gap in research efforts. The issue of developing the system of collective management of copyright and related rights in Ukraine has been the subject of scientific research by numerous Ukrainian scholars, among whom it is worth noting Kapitsa Yu., Orliuk O., Shcherba L., Maidanyk L. and Stefan A. In particular, Yu. Kapitsa examined some aspects of collective management of copyright and related rights in Ukraine in the context of forming collective management organisations worldwide [Kapitsa, 2022: 311-313]. In her monograph, L. Maidanyk described the development of collective management of copyright and related rights in Ukraine up to 2013. A. Stefan drew attention to some aspects of the issue of collective management of proprietary copyright in Ukraine in the context of improving Ukrainian copyright legislation, with due consideration of the experience of EU Member States [Schtefan, 2022:8-9]. Nevertheless, in light of Ukraine's ongoing European integration reforms, the recent enactment of the new 2022 Law "On Copyright and Related Rights" and the ongoing challenges posed by the war, a comprehensive and detailed examination of the further development of the institution of collective management of copyright and related rights in Ukraine has not been a subject of in-depth analysis, making this study relevant.

Main results of the research

The development of collective management in Ukraine is inextricably linked to the evolution of copyright in the USSR. During the Soviet era, the collective management of copyright rights was conducted by duly authorised state institutions. In the 1930s, creative unions were established in the USSR, which proceeded to establish their own copyright offices. In 1932, the Management of Copyright Protection (hereinafter referred to as the MCP) was established and subsequently renamed the All-Union Management of Copyright Protection (hereinafter referred to as the AUMCP) in 1938. In general, during the Soviet period, copyright was characterised by several features, including the non-transferability of copyright, strict legal regulation of contracts, the amount of royalties payable, and a fairly wide range of cases of free or semi-free use of works. In such circumstances, the operation of dedicated organisations to collect remuneration was not a priority. However, the Soviet Union's accession to the Universal Copyright Convention resulted in the protection of the rights of Soviet authors abroad and those of foreign authors in the USSR. This prompted the development of collective management of copyright and related rights, which was reflected in establishing the All-Union Copyright Agency (hereinafter referred to as the AUCA) in August 1973. The AUCA was created as a mandatory intermediary for transferring copyright from the Soviet Union abroad and vice versa. The activities of this organisation were regulated by Decree of the Council of Ministers No. 588 of 16 August 1973, which was not published in full in the public domain, as it contained a 'not for publication' clause. The AUCA was the only or-

ganisation to which authors could entrust their rights. Despite its status as a public organisation, the AUCA was entrusted with several state functions.

Ukraine established its MCP, which became part of the AUMCP. Following the USSR dissolution, the AUCA was initially transformed into a state-owned enterprise, the russian Intellectual Property Agency, and subsequently into a public organisation, the russian Copyright Society. Similar processes occurred in other CIS countries, whereby the republican branches of the AUCA underwent the reorganisation into national agencies, departments, or committees on copyright and related rights or intellectual property. All organisations of the Soviet period were exclusively copyright organisations, as only this category of intellectual property rights holders in the artistic sphere was legally recognised (copyright and related rights in Europe).

Since the proclamation of Ukraine's independence, the institute of collective management of copyright and related rights has undergone continuous refinement. The implementation of the EU-Ukraine Partnership and Cooperation Agreement for the period 1996-2014 and the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the one hand, and Ukraine, on the other hand, in 2014 has had a significant impact on EU intellectual property law on Ukrainian legislation on copyright and related rights, including collective management of copyright and related rights. The evolution of this phenomenon can be traced through several distinct historical stages.

The first stage, from 1991 to 1999, saw establishing a system for the collective management of property rights for right holders in Ukraine. The foundational document that sought to establish a state system of intellectual property protection, including copyright, was Decree of the President of Ukraine No. 75 of 6 February 1992, entitled "On Urgent Measures for Social Protection of Literary and Artistic Figures in the Transition to Market Relations" [12].

In accordance with the aforementioned decree, a resolution of the Cabinet of Ministers of Ukraine was passed on 25 April 1992, establishing a new state body, the State Agency of Copyright and Related Rights of Ukraine (hereinafter referred to as the SACRR of Ukraine), under the Cabinet of Ministers of Ukraine. This entity effectively constituted the legal successor of the Ukrainian branch of the AUCA [13]. The agency was tasked with the development and adoption of legislative and regulatory instruments, the implementation of copyright policy, the protection of the rights and legitimate interests of authors of works of science, literature and art, the protection of the interests of performers and creators of sound and video recordings, the promotion of broadcasting organisations, Ukraine's participation in the international copyright protection system, and the state's accession and integration into international organisations. Furthermore, the SACRR of Ukraine was responsible for managing its rights in Ukraine and abroad in accordance with contractual agreements with copyright and related rights owners. Between the 1990s and its dissolution in 1999, the SACRR of Ukraine was, in fact, the sole entity responsible for administering the property rights of rights holders within Ukraine.

In Ukraine, collective management organisations were first legally recognised in the Law on Copyright and Related Rights of Ukraine, enacted on 23 December 1993. Upon its enactment, Section IV of the Law permitted the collective management of rights by organisations not authorised to engage in commercial activities. Article 45 delineates the avenues through which copyright and related rights holders may exercise control over their rights, including direct management, through legal representation, or through a collective management organisation [4].

It can be concluded that the legal preconditions for establishing non-state CMOs emerged in our country. The system of collective management of copyright and related rights was defined by two key aspects. Firstly, the functions of granting users permits to use copyright and/or related rights objects, as well as collection, distribution and payment of remuneration for such use, were within the powers of the State Agency of Ukraine on Copyright and Related Rights. This was explicitly stated in the relevant bylaw. Secondly, the possibility of establishing

separate special bodies was provided for. In addition to copyright, national legislation has also extended to related rights, including intellectual property rights pertaining to performances, phonograms, videograms, and broadcasting programmes.

However, it is evident that the legislation in question is not without its shortcomings. A detailed examination of the provisions set forth in Article 46 of the "Law of Ukraine "On Copyright and Related Rights", along with Articles 47 and 48, which were rendered invalid following the enactment of the Law of Ukraine of May 15, 2018 "On Efficient Management of Property Rights of Right Holders in the Sphere of Copyright and (or) Related Rights" reveals that the legal status of collective management organisations was not sufficiently clear and fragmented in the legislation.

This pertains to the definition of the rights and obligations of such organisations and their interaction with copyright and related rights holders. One of the principal issues that emerged from the fragmented regulatory framework was the absence of transparent guidelines governing the modalities of interaction between collective management organisations and rights holders. Another significant challenge was the lack of consistency in legal provisions pertaining to accounting and reporting by collective management organisations. While the legislation mandated specific accounting and reporting procedures to be adhered to, in practice, these obligations were frequently disregarded or formalised in a manner that made it challenging for rights holders to monitor the distribution of remuneration.

The second stage, spanning the period from 1999 to 2011, was characterised by a notable enhancement of the collective management system that was in place at the time, accompanied by the segregation of functions for its operationalisation. In accordance with the order of the Ministry of Education and Science of Ukraine, the State Enterprise 'Ukrainian Agency of Copyright and Related Rights' (hereinafter referred to as the SE UACRR) was established based on the State Agency of Copyright and Related Rights (hereinafter referred to as the SACRR). It became the legal successor of the SACRR in terms of collective management of the economic rights of authors and related rights holders. The SE UACRR operates under the supervision of the Ministry of Education of Ukraine and is accountable to the State Department of Intellectual Property. The SE UACRR has been a continuous member of CISAC (Confederación Internacional de Sociedades de Autores y Compositores) since December 2005 [Maidanyk, 2013: 51-54].

On 11 July 2001, a new version of the Law of Ukraine, "On Copyright and Related Rights", was adopted. In this version of the law, the section 'Management of Property Rights of Copyright and Related Rights Holders' underwent significant changes and was significantly expanded. In particular, it describes in detail the mechanisms through which the property rights of authors and other copyright and related rights holders may be managed, one of which was named 'through the collective management organisation'.

As in the previous version of the aforementioned legal act, the authority to collectively manage property rights was transferred to collective management organisations representing authors and other copyright and related rights holders based on written agreements. At the same time, the act provides for the right of copyright and related rights holders to entrust the management of their property rights on a collective basis to the relevant state organisations.

It is a prerequisite that such organisations possess constituent documents that permit the collective management of property rights. Furthermore, Articles 48 and 49 of the Law on Copyright and Related Rights of Ukraine clearly defined the activities and organisations of collective management in its then version. These articles constituted the legal basis for the activities of such organisations, defining their pivotal role in the management of property rights for copyright and related rights holders [7].

In February 2002, the Ministry of Education and Science of Ukraine published Order No. 81, "On Approval of the Procedure for Accounting of Collective Management Organisations" [1]. The responsibility for carrying out these accounting functions was assigned to the State Department of Intellectual Prop-

erty of the Ministry of Education and Science of Ukraine. In light of the aforementioned details, it can be concluded that Ukraine has established a suitable foundation for developing an effective system for the collective management of property rights belonging to right holders. The system permitted copyright and/or related rights holders to elect the entity to which they would entrust the management of their rights on a voluntary basis.

The option of voluntary choice would permit authors and other rights holders to be more flexible in determining how their works or related rights objects are utilised. This, in turn, should ensure more effective control by rights holders over their property rights, greater transparency and greater trust in the collective management system. Furthermore, such a system could facilitate the development of collective management organisations by encouraging them to enhance their efficiency and transparency in the distribution of remuneration and the provision of quality services to authors.

However, in practice, this system encountered a multitude of challenges. Notwithstanding the possibility of voluntary management of rights, right holders frequently encountered difficulties in selecting an organisation due to the dearth of such organisations or the lack of transparency regarding their activities. The question remained unresolved as to the basis on which collective management organisations could collect remuneration for the use of works in respect of which they had not been delegated the authority to manage. Furthermore, it was unclear how they could issue permits for the use of such works without the knowledge of their right holders. This was directly related to the content of part 2 of Article 49 of the Law on Copyright and Related Rights of Ukraine, as amended on 16 August 2001.

Furthermore, the issues of control over the activities of collective management organisations, their responsibility to right holders, and ensuring equal access to collective management for all copyright and related rights holders remained unresolved. This suggests that, despite the legislation establishing the foundations for establishing such a system, in practice, it has not yet reached the level of efficiency initially envisaged by the regulations.

In accordance with the stipulations set forth in Articles 42 (5) and (6) and Article 43 (2) of the Law on Copyright and Related Rights of Ukraine, as amended on August 16, 2001, the legislation established a distinct framework for the collection and distribution of income in the realms of private copying and the utilisation of phonograms and videograms published for commercial purposes. To fulfil this function, specific collective management organisations were to be designated as authorised to carry out such activities, with exclusive rights to do so.

This meant that the right to collect and distribute royalties for the use of such works was not granted to any collective management organisation but only to those officially designated as 'authorised' by the state authorities. This approach was intended to streamline the collection and distribution of remuneration, ensuring transparency and efficiency of collective management organisations in these specific areas.

In particular, the legislator sought to establish transparent mechanisms to guarantee the equitable distribution of royalties derived from private copying and commercial utilisation of phonograms and videograms among the respective right holders. Nevertheless, the practical implementation of this mechanism encountered certain delays. The procedures defining the selection process for authorised collective management organisations were only approved in 2003. In particular, Order of the Ministry of Education and Science of Ukraine No. 81 of 18 February 2003 approved the "Procedure for Determining Authorised Collective Management Organisations that will Collect and Distribute Remuneration (Royalties) for the Use of Phonograms and Videograms Published for Commercial Purposes." [10].

It can be argued that the introduction of the revised Law on Copyright and Related Rights of Ukraine in 2001 marked a pivotal moment in the evolution of the collective management system for the economic rights of copyright and/or related rights holders. This shift undoubtedly contributed to the enhancement and optimisation of the system efficacy. First and foremost, the legislation explicitly delineated the roles and responsibilities of collective

management organisations, a crucial step in guaranteeing transparency and legal oversight of these operations.

Collective management organisations were granted specific powers to collect, distribute and pay remuneration for the use of works, phonograms and videograms, as well as other objects of copyright and related rights. An important innovation was that the legislator assigned to such organisations the right to perform these functions based on agreements with right holders, which provided a legal basis for relations between right holders and organisations. However, there were still many gaps and contradictions in the law that needed to be addressed. Among them were issues related to the collection of remuneration for the use of works to which the rights had not been transferred to collective management organisations, as well as the granting of permits to use such works without the knowledge of the rights holders.

The third stage is defined by the period between 2011 and 2018. The principal characteristics of this phase were the reforms of the state authorities responsible for implementing state policy in the field of collective management of property rights of right holders and intellectual property in general.

Decree of the President of Ukraine No. 436/2011 of 8 April 2011 approved the "Regulations on the State Intellectual Property Service of Ukraine." This decree established the State Intellectual Property Service of Ukraine as the central executive body, whose principal objective was to implement and enforce the state policy in the field of intellectual property. [9].

In regard to the system of collective management of proprietary rights of copyright and/or related rights holders, the aforementioned body was tasked with ensuring the registration of collective management organisations, identifying authorised collective management organisations, analysing their activities, deregistering collective management organisations, excluding them from the registers of collective management organisations and authorised collective management organisations, and cancelling the relevant certificates.

Since its establishment, the activities of the State Intellectual Property Service of Ukraine have been coordinated by the Cabinet of Ministers of Ukraine through the Minister of Education and Science. Further reforms of the system of collective management of property rights of right holders commenced with the issuance of Order "On Liquidation of the State Enterprise Ukrainian Agency of Copyright and Related Rights" No. 277-n dated 22 December 2011. However, the issuance of the aforementioned order by the State Service could have resulted in unforeseen consequences for the collective management system. Consequently, on 20 January 2012, the Head of the State Intellectual Property Service of Ukraine issued Order No. 46, entitled "On Cancellation of the Order on Liquidation of the SE UACRR." This order effectively terminated the liquidation of the SE UACRR. In accordance with Order No. 392-N of the State Intellectual Property Service of Ukraine, dated 25 July 2013, entitled "On Termination of Activities of the State Enterprise Ukrainian Agency of Copyright and Related Rights", the SE UACRR was reorganised into the State Organisation "Ukrainian Agency of Copyright and Related Rights" [Repeshko (2013): 70-75].

The Cabinet of Ministers of Ukraine, by its Resolution of 23 August 2016 No. 585, "Some Issues of Optimisation of Activities of Central Executive Authorities of the State System of Intellectual Property Legal Protection", dissolved the State Intellectual Property Service. The tasks and functions of implementing the state policy in the field of intellectual property were assigned to the Ministry of Economic Development and Trade of Ukraine [3].

The **fourth stage** is from 2018 until nowadays. The most significant step in transforming the collective management system of copyright and related rights in Ukraine occurred in 2018 with the enactment of the Law of Ukraine "On the Effective Management of the Property Rights of Rights Holders in the Field of Copyright and (or) Related Rights." The legislation above stipulates that the collective management of copyright and related rights shall be conducted by non-profit organisations with the legal form of a public association, established exclusively by right holders, whose sole activity is to perform the tasks and functions of collective management organisations (hereinaf-

ter referred to as CMOs). During discharging their duties, CMOs are empowered to enter into agreements with users on behalf of copyright and related rights holders, determine the amount of remuneration (royalties), and collect, distribute and disburse the collected remuneration [8].

The enactment of this legislation constituted a significant milestone in the evolution of Ukrainian copyright and related rights legislation, marking a pivotal shift towards alignment with EU standards on the activities of CMOs. This enabled the primary stipulations of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on the collective management of copyright and related rights and the multi-territorial licensing of rights in musical works for online use in the internal market to be primarily incorporated into Ukrainian legislation. The directive establishes common rules for the collective management of copyright and related rights in the EU, thereby promoting better access to cultural products and services. The Directive establishes the minimum requirements for CMOs with regard to their statutes, operations and licensing. It also sets forth the procedures for interaction between CMOs and users of works and between different CMOs. Furthermore, the Directive outlines the requirements for reporting and distributing funds derived from the use of works. Additionally, it provides for establishing a central register of CMOs within the EU internal market [11].

The next significant step in developing the collective management of copyright and related rights was enacting the new Ukrainian law, "On Copyright and Related Rights," in December 2022. This legislation came into force on 1 January 2023.

The recently enacted legislation aimed to modernise Ukrainian copyright and related rights regulations in alignment with EU legal standards. The new law incorporates the stipulations of the Association Agreement between Ukraine and the European Union and the EU Directives on the protection of copyright and related rights into the country's domestic legal framework [6].

Another crucial step in the implementation of European integration reforms, not only with regard to the institution of collective management of copyright and related rights but also with respect to the entire intellectual property industry, was the institutional reform. The Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Establishment of the National Intellectual Property Authority" (No. 703-IX dated 16 June 2020) enshrined the two-tier system of legal protection of intellectual property, as set out in the relevant National Strategy for the Development of the Intellectual Property Sphere for the period 2020-2025. This strategy was developed with the support of the World Intellectual Property Organisation (hereinafter referred to as the WIPO).

The legislation in question established a legal structure according to which the National Intellectual Property Authority (hereinafter referred to as the NIPA) was defined as a comprehensive functional status rather than merely a legal entity. The legislation delineated the distinction between the legal institutions established in this domain. The central executive body was identified as the entity responsible for ensuring the formulation and implementation of state policy on intellectual property. This body was designated as the Ministry of Economy of Ukraine. The NIPA, on the other hand, was established as a legal entity under public law [7].

The Cabinet of Ministers of Ukraine determined the specific details regarding the NIPA's functions based on the proposal of the Ministry of Economy of Ukraine. In accordance with Order of the Cabinet of Ministers of Ukraine No. 943-r "Some Issues of the National Intellectual Property Authority" dated 28 October 2022, the state organisation "Ukrainian National Office of Intellectual Property and Innovation" (hereinafter referred to as the UIPI or IP Office) was established on 8 November 2022. This entity is responsible for performing the functions of the NIPA. The establishment and launch of the IP Office in Ukraine marked the conclusion of a six-year institutional reform process to modernise the state system of intellectual property legal protection. The IP Office has since evolved into a cutting-edge, technologically advanced, transparent hub [2].

The launch of the IP Office enabled Ukraine to advance to a new level of collaboration with

the WIPO and professionally represent its interests in this organisation. Furthermore, it facilitated the intensification of cooperation with the European Intellectual Property Office (hereinafter referred to as the EIPO). As a consequence of the efforts of the National Intellectual Property Authority and the enactment of the Law of Ukraine "On Copyright and Related Rights", Ukraine made considerable headway in the field of intellectual property during the period under review. This is evidenced in the European Commission's seminal report on Ukraine's advancement in accordance with the Enlargement Package, which was published in November 2023. In particular, the report states that the recently adopted Ukrainian law, entitled "On Copyright and Related Rights," is designed to align the country's national legislation with the European Union's copyright *acquis*. Nevertheless, shortcomings remain in the fight against piracy and counterfeiting, as Ukraine continues to serve as one of the four primary transit points for counterfeit goods destined for the EU [14].

At present, Ukraine is taking efficacious measures to streamline issues pertaining to intellectual property and to address the aforementioned problems. A significant step towards enhancing Ukraine's intellectual property sector was the introduction of the National Strategy for the Development of the Intellectual Property Sector of Ukraine until 2030, unveiled on 26 April 2024 on World Intellectual Property Day during IP-Week 2024. The draft Strategy for Intellectual Property Development was developed with the participation of international and national experts and WIPO representatives. According to O. Orliuk, the main priorities for the development of the National Strategy of Intellectual Property Development until 2030 are the following: firstly, the European integration of the IP sphere; secondly, the effects of war; thirdly, the support and development of innovations; fourthly, the development of innovation infrastructure; and finally, the development of creative industries and the digital transformation of the IP system. The National IP Strategy will be prepared in three stages. The first stage will entail a diagnostic assessment of national legislation. The second stage will involve consultations with national stakeholders and document drafting. The final stage will comprise finalising the National Strategy and presenting it to the Government of Ukraine for approval [19].

The strategic directions for the development of the institution of collective management of copyright and related rights within the framework of this Strategy are as follows: firstly, full alignment with the EU *acquis*, specifically Directive 2014/26/EU on the collective management of copyright and related rights and the multi-territorial licensing of rights in musical works for online use in the internal market; secondly, the establishment of an effective system of collective management of copyright and related rights.

The primary objectives of establishing such a system are twofold: first, to guarantee the efficacy of collective management of copyright and related rights during a period of martial law, and second, to enhance the streamlined administration of copyright and related rights in the context of Ukraine's post-war reconstruction. As of 7 August 2024, 19 CMOs have been officially registered in Ukraine [20].

In light of the tasks mentioned above, scientists are confronted with queries pertaining to the viability and methodologies for restoring accreditation and reporting by CMOs during martial law.

The full-scale invasion of russia has had a detrimental impact on the field of collective management of property rights. In 2022, all accreditations were suspended, resulting in the Verkhovna Rada's (Parliament of Ukraine) adoption of a series of legislative amendments to mitigate potential risks while enabling authors and rights holders to continue receiving royalties.

In the post-war period, the urgent issue for researchers will be to improve the CMOs accreditation procedure considering the shortcomings identified by 2022. These include the criteria for CMOs to participate in the competition and the accreditation commission, as well as improving CMOs' reporting and approaches to setting tariffs and the procedure for their approval. Furthermore, there is a need to digitalise interaction processes between CMOs, users, and rights holders.

It is evident that the process of Ukraine's European integration reforms in the collective

management of copyright and related rights is highly sophisticated and fundamental and plays a crucial role in addressing challenges related to intellectual property.

Improving the collective management of copyright and related rights can serve as a crucial instrument in establishing a conducive environment for innovation, investment, invention, and the advancement of creative industries. Consequently, the aforementioned deficiencies in the sphere of collective management of copyright and related rights, the complete harmonisation of national copyright legislation with the EU *acquis* represents a vital and indispensable prerequisite for its continued evolution, enabling this legal institution to respond more effectively to the challenges of the present era and safeguard the interests of creators and rights holders.

Conclusions

The process of establishing and developing a system of collective management of copyright and related rights in Ukraine is complex and multifaceted. This process encompasses not only the establishment of legal frameworks but also the adaptation of national legislation to international standards in the field of intellectual property.

With the development of the legislative framework, in particular, the adoption of new regulations, Ukraine has initiated the implementation of contemporary mechanisms for the collective management of copyright and related rights. This has resulted in enhanced transparency and accountability of such organisations. The enhancement of this system represents a significant stride towards establishing an efficacious infrastructure that enables rights holders to safeguard their interests, receive equitable remuneration for the utilisation of their works, and foster the advancement of the cultural and creative industry in Ukraine. In 2022, Ukraine demonstrated one of the highest levels of compliance with the provisions of the EU-Ukraine Association Agreement in the field of intellectual property, with a rate of 98%. Notwithstanding the full-scale invasion, Ukraine was able to complete the institutional reform, adopt a new law on copyright and related rights, and continue to effect qualitative change and development in the intellectual property sector, including the institution of collective management of copyright and related rights.

In the context of post-war reconstruction, the importance of this process is further highlighted, as an enhanced system of collective management can facilitate investment, reinforce economic stability and foster the country's innovation potential.

In light of the aforementioned considerations, the prospective trajectory of our research entails a more profound and comprehensive examination of the system of collective management of copyright and related rights in Ukraine. This endeavour will be conducted in accordance with the EU *acquis*, particularly Directive 2014/26/EU on the collective management of copyright and related rights and the multi-territorial licensing of rights in musical works for online use in the internal market. Additionally, it will take into account the post-war recovery of Ukraine. This will entail an analysis of the legal approaches, institutional structure and practices of leading European countries, as well as the identification of potential avenues for adapting the most effective of these to the national conditions of Ukraine in the context of its integration into the European legal space. (Дата звернення: 14.08.2024).

References

1. Про затвердження Порядку обліку організацій колективного управління : наказ Міністерства освіти і науки України № 81 від 08.02.2002 року. Офіційний вісник України. 2002. № 12. С. 239.

2. Деякі питання Національного органу інтелектуальної власності : розпорядження Каб.Мін.України від 28.10.2022 р. № 943-р., *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/943-2022-%D1%80#Text> (Дата звернення: 20.09.2024).

3. Деякі питання оптимізації діяльності центральних органів виконавчої влади державної системи правової охорони інтелектуальної власності : по- станова Кабінету Міністрів України від 23.08.2016 р. № 585., *Законодавство України :* база даних / Верхов. Рада України. URL: < https://zakon.rada.gov.ua/laws/show/585-

2016-%D0%BF#Text > (Дата звернення: 20.09.2024).

4. Про авторське право і суміжні права : Закон України від 23.12.1993 № 3792- XII в ред. від 23.12.1993 р., *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/3792-12/ed19931223#Text > (Дата звернення: 20.09.2024).

5. Про авторське право і суміжні права : Закон України від 23.12.1993 № 3792-XII в ред. від 16.08.2001., *Законодавство України :* база даних / Верхов. Рада України. URL: https://zakon.rada.gov.ua/laws/show/3792-12/ed20010816#Text (Дата звернення: 20.09.2024).

6. Про авторське право і суміжні права : Закон України від 01.12.2022 р. № 2811-IX., *Законодавство України :* база даних / Верхов. Рада України. URL: < https://zakon.rada.gov.ua/laws/show/2811-20#n855> (Дата звернення: 20.09.2024).

7. Про внесення змін до деяких законів України щодо створення національного органу інтелектуальної власності : Закон України від 16.06.2020 р. № 703-IX. 12., *Законодавство України :* база даних / Верхов. Рада України. URL: < https://zakon.rada.gov.ua/laws/show/703-ix#Text> (Дата звернення: 20.09.2024).

8. Про ефективне управління майновими правами правовласників у сфері авторського права і (або) суміжних прав : Закон України від 15.05.2018 р. № 2415-VIII., *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/2415-19#Text > (Дата звернення: 20.09.2024).

9. Про затвердження Положення про Державну службу інтелектуальної власності України : Указ Президента України від 08.04.2011 р. № 436/2011. *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/436/2011/ed20110408#Text> (Дата звернення: 20.09.2024).

10. Про затвердження Порядку визначення уповноважених організацій колективного управління : наказ Міністерства освіти і науки України № 81 18.02.2003 р., *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/z0186-03#Text> (Дата звернення: 20.09.2024).

11. Про колективне управління авторським правом і суміжними правами та мультитериторіальне ліцензування прав на музичні твори для онлайн використання на внутрішньому ринку : Директива Європейського Парламенту і Ради 2014/26/ЄС від 26.02.2014 р., *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/984_002-14#n418> (Дата звернення: 20.09.2024).

12. Про невідкладні заходи щодо соціального захисту діячів літератури і мистецтва в умовах переходу до ринкових відносин»:Указ Президента України від 6 лютого 1992 року №75 в ред. від 06.02.1992 р., *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/75/92/ed19920206#Text> (Дата звернення: 20.09.2024).

13. Про створення Державного агентства України з авторських і суміжних прав: Постанова Кабінету Міністрів України від 25 березня 1992 р. № 154 в ред. від 25.03.1992 р., *Законодавство України :* база даних / Верхов. Рада України. URL: <https://zakon.rada.gov.ua/laws/show/154-92-%D0%BF/ed19920325#Text> (Дата звернення: 20.09.2024).

14. Commission Saff Working Document, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Communication on EU Enlargement policy Communication on EU Enlargement policy, 2023* <https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf> p.97

15. Капіца Ю. Сучасні тенденції розвитку права інтелектуальної власності в Євразійському Союзі в контексті інтеграції України та ЄС. *Теорія і практика інтелектуальної власності.* 2022. № 5, С. 311-313.

16. Майданик Л. Колективне управління майновим авторськими та суміжними правами за цивільним законодавством України. 2013 Київ: Алерта. С.52-54

17. Репешко П. Система державних органів та установ у сфері захисту прав інтелектуальної власності в Україні. *Наукові праці. Державне управління*. 2013 № 214. Том. 226, С.70-75.

18. Штефан А. Удосконалення законодавства України про авторське право у контексті досвіду держав-членів ЄС. *Теорія і практика інтелектуальної власності*, 2022 С 8-9.

19. Національні та міжнародні експерти обговорили роботу над Національною стратегією розвитку сфери інтелектуальної власності. *Український національний офіс інтелектуальної власності та інновацій (IP офіс)* : офіц. веб-сайт. URL : https://nipo.gov.ua/natsionalna-stratehiia-rozvytku-sfery-iv-obhovoreno-robotu/ (Дата звернення : 20.09.2024).

20. Реєстр організацій колективного управління. Єдиний державний веб-портал відкритих даних. : офіц. веб-сайт. URL : https://data.gov.ua/dataset/4fae326f-c5b6-4f45-a3df-f71002b14848/resource/9b14b5f3-dccc-4f23-81d9-d16bfa216d83 (Дата звернення: 20.09.2024).

Хоренженко О.А.,
***а**спірантка кафедри міжнародного приватного права, Навчально-науковий інститут міжнародних відносин Київського національного університету імені Тараса Шевченка*
ORCID ID: https://orcid.org/0009-0005-7186-7730
E-mail: okhorenzhenko@gmail.com

СТАНОВЛЕННЯ ТА РОЗВИТОК СИСТЕМИ КОЛЕКТИВНОГО УПРАВЛІННЯ МАЙНОВИМИ АВТОРСЬКИМИ ТА СУМІЖНИМИ ПРАВАМИ В УКРАЇНІ (1991 – ПО ТЕПЕРІШНІЙ ЧАС)

Статтю присвячено питанню еволюції системи колективного управління майновими авторськими та суміжними правами в Україні, починаючи з проголошення незалежності держави до сьогодення. Автор виділяє декілька етапів становлення інституту колективного управління майновими авторськими та суміжними правами за часів незалежності України.

Стаття аналізує правове регулювання системи організацій колективного управління майновими авторськими та суміжними правами на кожному етапі її становлення. Досліджено основні проблеми функціонування організацій колективного управління майновими авторськими і суміжними правами. Проаналізовано інституційні реформи у сфері інтелектуальної власності у зв'язку з наближенням законодавства України до acquis ЄС. Досліджено концепцію проєкту Національної стратегії розвитку сфери інтелектуальної власності до 2030 року у сфері колективного управління майновими авторськими і суміжними правами.

Розглянуто вплив повномасштабного вторгнення рф на сферу колективного управління майновими авторськими і суміжними правами в Україні. Визначено стратегічні напрями розвитку системи колективного управління майновими авторськими та суміжними правами в Україні в період повоєнного відновлення.

Зроблено висновок, що дослідження процесу становлення та еволюції системи колективного управління має ключове значення, оскільки дозволяє зрозуміти основні виклики та можливості її вдосконалення. Одним із стратегічних пріоритетів України має стати модернізація цієї системи, повне узгодження законодавства України із acquis ЄС у сфері авторського права, що сприятимуть зміцненню захисту авторських і суміжних прав, підвищенню прозорості й ефективності діяльності організацій колективного управління, а також запровадженню кращих міжнародних практик. Удосконалення системи колективного управління не тільки покращить захист інтересів авторів та виконавців, але й зробить Україну більш привабливою для іноземних інвесторів, особливо в період повоєнного відновлення. Це також сприятиме розвитку креативних індустрій, що є важливою складовою економічного зростання та культурного розмаїття країни.

Ключові слова: *авторське право, суміжні права, колективне управління майновими авторськими і суміжними правами, гармонізація з acquis ЄС, організації колективного управління майновими авторськими і суміжними правами, інтелектуальна власність.*