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Institutional and Legal Mechanism for Supervision (Control) Over Compliance with IP-legislation: National Problems Observed in Ukraine and Foreign Experience

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Abstract

In the context of European integration and acquiring the status of a country with an appropriate, internationally recognised level of IP integrity, this area and foreign experiences relating to it are extremely important and relevant for Ukraine.

The main problems related to the formation of a state system of IP controlling bodies are: lack of a scientifically based vision of the content of the concept of "state IP supervision (control)"; insufficient consideration of foreign experience of institutional and legal mechanisms of control (supervision) over compliance with IP legislation; and a critical lack of a systematic approach to determining the form, features and content of the powers of IP controlling bodies.

This article provides a theoretical and applied analysis of the concept and composition of control and supervisory relations in the IP sphere. A review of the existing institutional and legal mechanisms for monitoring compliance with legislation in the field of IP protection in foreign countries is carried out. The authors also formulate proposals for improving the institutional and legal framework for control and supervision activities in the IP sphere of Ukraine specifically.

A definition for the concept of "state IP supervision (control)" is proposed, the necessity of distinguishing between the categories "object of state IP supervision (control)" and "object of control and supervisory IP relations" is substantiated, and the subjects of control and supervisory IP relations are differentiated. The authors also identify the blocks of acts regulating substantive and procedural control and supervisory IP relations.

Keywords

intellectual property, state supervision (control), control and supervisory relations, objects, subjects

1 Introduction

The Government of Ukraine's approval of the Conception of Reforming the State System of Intellectual Property (hereinafter the IP) Legal Protection in Ukraine (Cabinet of Ministers of Ukraine, 2016) arguably marked the beginning of the modern era of development of the national IP sphere, the legal framework for which is the Association Agreement (hereinafter the AA) between Ukraine and the EU, the action plan for its implementation (Cabinet of Ministers of Ukraine, 2017a), and the Sustainable Development Strategy Ukraine-2020 (President of Ukraine, 2015), which together provide for the reform of IP protection (security vector) with the aim of achieving European standards of living in Ukraine and lifting Ukraine to a higher level globally.

However, in terms of improving institutional and legal mechanisms for control (supervision) over compliance with IP legislation, the Concept's guidelines were too limited and superficially expressed by several provisions in which the term control was used in connection with:

- Control marking: certification of compliance with copyright and (or) related rights (CRR);

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- Internal institutional control: control of the work of a collective management organisation (CMO) of the property rights of rights holders in the CRR;
- State CRR control: performance of functions related to monitoring compliance with the requirements of the legislation in the CRR.

The term *supervision* was generally used only in relation to the establishment of a supervisory board as one of the elements of the institutional and legal mechanism for ensuring transparency of the activities of the national intellectual property authority (the NIPA), i.e., not in relation to supervision of IP activities of business entities, but in relation to supervision of the activities of the IP control body.

Instead, the March 2023 report on the implementation of the EU-Ukraine AA shows the greatest progress in the area of intellectual property, which currently stands at 94% completion, of which 33% was added in 2022 (European Integration Portal, 2023). In particular, the following measures have been taken in the last year to implement the AA and align national legislation with EU law (European Integration Portal, 2023):

1. Copyright and related rights: the laws of Ukraine were adopted on:
   - CRR (Verkhovna Rada of Ukraine, 2023a);
   - Amendments to the Ukrainian Code on Administrative Offenses (CAO) and the Criminal Code of Ukraine (CCU) regarding liability for copyright and/or related rights infringement (Verkhovna Rada of Ukraine, 2022a);
2. IP Rights Protection: the Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Strengthening IP Rights Protection was adopted (Verkhovna Rada of Ukraine, 2023b);
3. Geographical Indications: the Law of Ukraine on Geographical Indications of Alcoholic Beverages was adopted (Verkhovna Rada of Ukraine, 2022b).

At the same time, against the backdrop of significant achievements in European integration, Ukraine's position in terms of IPR infringement remains problematic. Here, we are referring to the Special 301 Report compiled by the Office of the U.S. Trade Representative based on data from the International IP Alliance (IIPA), which is the basis for the U.S. to impose economic sanctions on countries with the highest level of IP piracy.

While in the "IIPA 2023 Special 301 Report" research on Ukraine was suspended due to the deliberate and unprovoked armed invasion of Ukraine by the Russian Federation (United States Trade Representative by the International Intellectual Property Alliance, 2023), the 2022 Report placed Ukraine on the Priority Watch List, noting that weak criminal, civil and administrative enforcement remained the most significant obstacle to the development of the copyright industry in the Ukrainian market. The Ukrainian government should therefore address the problem of rampant online piracy as part of its efforts to enforce the rule of law. Both peer-to-peer services and illegal streaming sites hosted in Ukraine remain a very serious problem. Some Internet pirates have deliberately moved their servers and operations to Ukraine in recent years to take advantage of weaknesses in law enforcement and legislation (United States Trade Representative by the International Intellectual Property Alliance, 2022). On April 29, 2025, the Office of the U.S. Trade Representative (USTR) released its annual IIPA 2025 Special 301 Report (United States Trade Representative by the International Intellectual Property Alliance, 2025), which assesses the state of intellectual property rights enforcement around the world. Despite the ongoing large-scale aggression by the Russian Federation, the United States noted that Ukraine continues to demonstrate meaningful cooperation with the American side on long-term IP sphere.

Therefore, the study of the supervision (control) of the compliance of business entities with the requirements of IP legislation is an extremely important and relevant area in terms of European integration and the acquisition of the status of a country with an appropriate, internationally recognised level of IP integrity.

2 Literature review

Among the Ukrainian researchers who have addressed the problems of institutional and legal support for supervision (control) over compliance with IP legislation to varying degrees, we note some of them:

- Kovaliv believes (Kovaliv, 2020) that the sanctions under Articles 51-2, 164-9, 164-13 of the Code of Administrative Offences (Verkhovna Rada of the Ukrainian SSR, 1984) need to be revised to increase administrative influence on the perpetrators. The norms should be supplemented by clear and direct references in the said articles to the application of such measures as suspension of a legal entity, liquidation by court order;
- Ivashova et al. (2022) provide a chronology of institutional changes in the field of IP protection by the State Patent Office of the Committee on Scientific and Technical Progress under the CMU) (from the State Patent Office of Ukraine, established in accordance

with the Cabinet of Ministers of Ukraine (1992)) to the NIPA, the functions of which are performed by the state organisation Ukrainian National Office of Intellectual Property and Innovation (Cabinet of Ministers of Ukraine, 2022; Ivashova et al., 2022);
- Dehtiar (2022) emphasises that the reforms in the sphere of intellectual property cannot be called completely perfect. In the current conditions of martial law, Ukraine, which continues to defend its independence, is doing everything possible to join the European family; therefore, an important task now is not only to continue implementing the planned reforms, but also to avoid the risks of losing what has already been achieved (Dehtiar, 2022);
- Huts (2019) drew attention to the fact that CMO accounting was carried out in accordance with the Procedure for Accounting for CMOs and Supervising Their Activities, approved by Ministry of Education and Science of Ukraine (2003). However, the Cabinet of Ministers of Ukraine (2017b) cancelled this Procedure as inconsistent with the Law of Ukraine "On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity" (Verkhovna Rada of Ukraine, 2007). (hereinafter theLaw of Ukraine "On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity" (Verkhovna Rada of Ukraine, 2007)). As a result, a legal vacuum has been created in the regulation of this issue as of the date of entry into force of the Order, i.e., 21 May 2017 (Huts, 2019);
- The publication by Sivash and Sherstiuk (2023) emphasises that at the parliamentary hearings held in 2019 (Verkhovna Rada of Ukraine, 2019), a number of tasks for the period from 2020 to 2025 were named, relating to various areas, including:
  - Institutional sphere: within this area, it was planned to complete the competition for the selection of candidates to the IP Court and to launch the activities of the Specialised Court on IP Issues;
  - Legislative sphere: adoption of the draft law on institutional reform in the IP sphere (Sivash and Sherstiuk, 2023).

In a previous publication, the authors also thoroughly considered one of the ways to improve the institutional and legal support of control and supervision activities in the IP sphere, namely consideration of the issue of the State IP Inspectorate as an institution of the national IP system, rather than the institution of state IP inspectors (Kirin et al., 2022).

Such attention to the issues of institutional and legal mechanisms of supervision (control) of compliance with IP legislation clearly indicates that this area of research is extremely important. At the same time, the content of the available publications suggests that there are sufficient opportunities for further scientific research in this segment of the IP sphere.

3 Methodology and research methods

The study's methodology is based on a set of general scientific and specialised legal methods that offer a thorough approach to studying legal phenomena in the field of intellectual property.

The following methods were used in particular:
- The dialectical method was used to analyse the development and interconnection of legal phenomena in the field of control (supervision) over compliance with intellectual property legislation.
- The formal-legal method was used to interpret the provisions of current national and foreign legislation.
- The comparative legal method was used to study foreign experience with institutional and legal control mechanisms in the field of IP.
- The systemic-structural method was used to identify the elements of the control and supervision mechanism in the field of IP and their interrelationships.
- The method of analysis and synthesis was used to develop the author's recommendations for improving national legislation.

This article aims to study the foreign experience with institutional and legal control (supervision) mechanisms for compliance with intellectual property legislation as well as to assess the feasibility of implementing them in Ukraine within the context of European integration and post-war reconstruction.

The study includes the following tasks:
- Conducting a theoretical and applied analysis of the concept and composition of control and supervision relations in the field of IP;
- A review of institutional and legal mechanisms for monitoring compliance with IP legislation in other countries;
- Developing proposals to improve the national model of institutional and legal support for control and supervision in the field of intellectual property.

The study's sequence mirrors the logic of the research tasks and is based on an analysis of current legislative

norms in Ukraine and other countries, their practical implementation, and the application of scientific research findings in the field of legal regulation.

4 Results

4.1 Theoretical and applied analysis of the concept and composition of control and supervisory relations in the IP sphere

The theoretical component of the study ought to begin with the formation of an understanding of the concepts of IP surveillance and IP control, which are still not disclosed in the current Ukrainian legislation. For example, the term control itself, as well as the concepts that include it in relation to certain objects, subjects and subjects (over, on, with, for, for the purpose of, in relation to, in the field of, some, something, someone) are mentioned in the legal acts of Ukraine in more than 100 combinations. The term supervision is defined directly and in conjunction with another word or phrase (in the field, in relation to, something, with, for) in 24 legislative and regulatory acts. In addition, there are numerous definitions of state control and state supervision.

According to the current regulation (Cabinet of Ministers of Ukraine, 2014), the main body in the system of central executive bodies (CEBs), which ensures, among other things, the formation and implementation of the state IP policy, is the Ministry of Economy of Ukraine (MoE) – a CEB, whose activities are directed and coordinated by the CMU. In addition, the MoE, in accordance with its duties, carries out a number of measures for certain groups of IP relations, among which it is necessary to distinguish control and supervision IP relations, in particular:

- Control over compliance by NIPAs with IP legislation, use of revenues from fees for actions related to protection of rights to IP objects;
- State supervision (control) over compliance by business entities, regardless of their form of ownership, with the requirements of the CRR laws, "On Distribution of Copies of Audiovisual Works, Phonograms, Visible Records, Computer Programs, Databases" (Verkhovna Rada of Ukraine, 2002) and "On Peculiarities of State Regulation of Business Entities' Activities Related to Production, Export, Import of Disks for Laser Reading Systems" (the "On Distribution of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases" law (Verkhovna Rada of Ukraine, 2000), repealed by "On the Introduction of Changes to Some Legislative Acts of Ukraine Regarding the Cancellation of Marking with Control Stamps of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases" law (Verkhovna Rada of Ukraine, 2023c));
- Supervising the activities of the CMOs.

However, the expiry of the DAW Law at the beginning of 2022 has to some extent limited the control powers of the MoE and, as a result, those of state inspectors in IP matters, but at the same time it should be recognised that the use of control marks as a mechanism to counteract the illegal distribution of this type of IP objects has exhausted itself and is already considered rather as a hindrance to the activities of their *bona fide* producers and distributors. Since then, rights holders have been able to choose the latest, more modern, individual (exclusive) methods of copy protection distributed on tangible media.

In addition, the law (Verkhovna Rada of Ukraine, 2023c) also decriminalised the illegal manufacture, counterfeiting, use or sale of illegally manufactured, obtained or counterfeit control marks for marking the relevant IP objects by removing "The Criminal Code of Ukraine" (Verkhovna Rada of Ukraine, 2001). Verkhovna Rada of the Ukrainian SSR (1984) provided for liability for the distribution of certain goods whose packages do not bear control marks, was also repealed.

Thus, the Ministry of Economy is currently the CEB responsible for state supervision (control) over compliance with the requirements of the CRR and the LRS Law by business entities regardless of their form of ownership.

The latter, in particular, enshrines extremely important provisions of state IP supervision (control):

1. The list of CEBs that carry out measures in the field of control over the production and export/import of disks for LRS and matrices, whose powers and procedure of activity are determined in accordance with the Constitution of Ukraine (Verkhovna Rada of Ukraine, 2000; 2011));
2. The state control over the compliance with the requirements of the LRS Law for the production of disks for LRS and matrices is exercised by the CEB, which ensures the formation and implementation of the state policy in the sphere of intellectual property (now the MoE) by conducting routine and non-routine inspections in the cases provided for by law;
3. State control over compliance with the requirements of the LRS law regarding the export/import of disks for LRS and matrices is exercised by the MoA and the CEB, which implements the state customs policy (now the State Customs Service of Ukraine), by ensuring monthly monitoring of shipment volumes;

4. State control over the observance of intellectual property rights by business entities, including in the field of production, export/import of disks for LRS and matrices, is exercised by State Inspectors on Intellectual Property.

The latter have the right to involve representatives of the control bodies specified in the LRS Law in carrying out inspections, and their powers and the procedure for carrying out inspections are determined by the CMU ("Resolution No. 674, On the Approval of the Regulation on the State Inspector for Intellectual Property of the Ministry of Economic Development, Trade and Agriculture" (Cabinet of Ministers of Ukraine, 2002), as amended by "Resolution No. 369, On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine" (Cabinet of Ministers of Ukraine, 2004)).

However, as evidenced by the provisions, first of all, of the Regulations on IP, the activities related to the state supervision (control) over the fulfilment of the requirements of the IP legislation by business entities, regardless of their form of ownership, are carried out in accordance with the provisions of the Law of Ukraine "On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity" (Verkhovna Rada of Ukraine, 2007). This conclusion is based on the current set of legal acts regulating substantive and procedural control and supervision of IP relations, in particular:

1. Preparation of an act based on the results of routine (non-routine) state supervision (control) of compliance by a business entity with the requirements of IP legislation;
2. Elaboration of guidelines for the elimination of violations detected during routine (non-routine) state supervision (control) measures to ensure compliance with the requirements of intellectual property legislation by a business entity (Ministry of Economic Development and Trade of Ukraine, 2019a);
3. Assessment of the degree of risk from conducting business activities in the IP sphere;
4. Determining the frequency of scheduled activities of state IP supervision (control) of the MoE (Cabinet of Ministers of Ukraine, 2018);
5. Preparation of materials on administrative violations by state inspectors of the MoE in the field of intellectual property (Ministry of Economic Development and Trade of Ukraine, 2019b).

Therefore, the approach to forming the concept of *state IP supervision (control)* based on the existing term *state supervision (control)*, which is used and disclosed in the Law of Ukraine "On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity" (Verkhovna Rada of Ukraine, 2007), seems quite justified.

Its analysis allows to distinguish the following main features and components of this concept:

1. Objective side: state supervision (control) is an activity;
2. Controlling entities: state supervision (control) bodies;
3. Controlled entities: business entities;
4. Subjective side (reasons of the controlling entity): activity within the limits of the powers provided by law;
5. Subjective side (the goal of the controlling entity): detection and prevention of violations of law and ensuring the interests of society.

In addition, relations in the field of IP security are an important component for both the state and society.

Thus, the author's idea in defining the concept of *state supervision (control) of intellectual property* is, first of all, to consider state supervision (control) as a legal activity which has its own specific content of its traditional composition – a system of objective (object, objective side) and subjective (subject, subjective side) features.

Secondly, within the framework of the research topic it is proposed to understand lawful activity as socially useful legal acts of the subjects of control and supervision IP relations (activity or inactivity) in the relevant forms of implementation of legal norms – observance, execution, and use by controlled entities, plus law enforcement by controlling entities, which comply with the prescriptions of legal norms and are protected by the state.

Thirdly, the subjects of control and supervision of IP relations are divided into the following types:

1. Controlling entities: entities that carry out state IP supervision (control);
2. Controlled entities: business entities subject to state IP supervision (control);
3. Third parties: legal entities and individuals (lawyers, auditors, public associations represented by their authorised representatives, etc.) involved by controlling and/or controlled entities in the course of IP state supervision (control) activities.

Fourthly, the authors propose to distinguish between the categories *object of state IP supervision (control)* and

object of control and supervision IP relations. The objects of state IP supervision (control) are divided into:

1. Common object: a set of all control and supervision IP relations that arise, and are carried out and terminated in relation to all types of IP objects protected by law;
2. Generic object: a separate group of homogeneous or identical IP control and supervisory relations in relation to certain groups of IP objects protected by a single set of interrelated legal provisions;
3. Immediate object: specific control and supervision IP relations in relation to a particular IP object, which are protected by a certain legal provision and which are or may be harmed by IP infringement.

In turn, the object of control and supervision IP relations is an IP object and/or IP business activities of a controlled entity (business entity) in respect of which IP state supervision (control) measures are carried out. The concept of the *object of control and supervision of IP relations* is identical to the concept of the *subject of state IP supervision (control)*.

We would also like to note the impossibility of agreeing with the approach used in the Law of Ukraine "On the Fundamental Principles of State Financial Control in Ukraine" (Verkhovna Rada of Ukraine, 1993a), according to which such concepts as *controlled institutions, business entities, economic entities* are used as identical to the concept of *controlled objects*, since, according to the author's position, the controlled object is not the controlled institution itself, but the control relations in which this institution, together with the controlling bodies (the CBs), is the subject, and the object is the state, activities of the institution and/or its results or consequences.

In addition, according to the author's concept, the subjects of control and supervision IP relations are also proposed to be differentiated into the following levels:

1. The general controlling entity – the CEB vested with control and supervisory IP powers;
2. Generic controlling entity – an internal structural unit of the CEB or an external CEB subordinate to it, whose activities are directed and coordinated by the CMU through the relevant Minister, or its territorial bodies to which control and supervision IP powers are delegated;
3. Direct controlling entity – an official of general or generic level entities (chief state inspector, senior state inspector, state inspector) who directly conducts inspections, examinations and other control and supervisory activities *ex officio*.

A similar approach can be used to distinguish between controlled entities and third parties.

Thus, it is proposed that state supervision (control) of intellectual property rights be understood as the activities of authorised controlling bodies, with the possible participation of third parties, within the limits of the powers provided by law, in order to detect, prevent and terminate infringements of intellectual property rights by controlled entities and to ensure the interests of the state and society, in particular, the proper state of protection, defence and security of IP rights.

4.2 An overview of existing institutional and legal mechanisms for monitoring compliance with intellectual property laws in other countries

Recently, legal support for the control of compliance with legislation on the protection of intellectual property in foreign countries has developed quite actively, especially in the EU, which has made use of its legal experience in the field of IP protection.

According to Ennan (2010), the study of the latter's peculiarities makes it possible to identify and outline the immediate prospects for further development of domestic legislation in this area. At the same time, it is important that the best achievements of European jurisprudence, successful and universal legal categories and constructions in the field of IP protection, which would take into account both the peculiarities of the national legal tradition and the interests of the main subject of creative activity – the human individual, who is the source of all achievements of civilisation, be accepted as models and possible models for further reform of national IP law (Ennan, 2010).

In his monographic study, Kapitsa (2017) provided an up-to-date analysis of the EU legislation on the protection of intellectual property rights, including, *inter alia*, the legislation on civil and customs remedies for the protection of intellectual property rights in the EU and the practice of their application (Kapitsa, 2017).

Kostyuk (2019) reviewed the experience of European countries in preventing crime in the IP sphere, in particular, analysed the legislation of France, Switzerland, Poland, Italy. In the institutional and legal aspect, the results of his research, which took into account similar but earlier separate information from another source (Voloshchuk et al., 2013), can be presented as follows:

1. *Switzerland*: the Swiss Federal Institute of Intellectual Property, a national centre that is structurally part of the Swiss Federal Department of Justice and Police, has been established to deal with

all issues related to intellectual property, including trademarks, patents, attribution, creation and enforcement of copyrights;
2. *France*: the High Authority for the Distribution of Works and the Protection of Rights on the Internet (*Haute Autorité pour la Diffusion des Œuvres et la Protection des droits d'auteur sur Internet*), a federal agency, has been established to send warnings to suspected IP infringers and to disconnect citizens from the network after three such warnings;
3. *Poland*: crimes related to intellectual property are fought by police officers, public prosecutors, customs officers, and tax inspectors;
4. *Italy*: a special unit has been established – the Postal and Other Communications Police (*Polizia Postale e delle Comunicazioni*), which is part of the State Police and performs functions to combat copyright infringement and protect intellectual property (the unit operates throughout Italy through 19 regional offices and 77 stations; in addition, the Financial Police, which includes a cybercrime unit, fights counterfeit trademarks and intellectual piracy).

At the same time, attention should be paid to the conclusion of Bocharova (2020), according to which IP provisions were included in the text of (European Union, 2004). Although the EU Constitution did not become a valid legal document, the provisions of "Treaty establishing a Constitution for Europe - PREAMBLE" (European Union, 2004) on European intellectual property rights and the competence of the Union to adopt relevant laws "to provide uniform intellectual-property rights protection throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision" were of great methodological and ideological importance (Bocharova, 2020).

From the point of view of European integration processes, the experience gained in the *Czech Republic* with the reform of the Institute of Intellectual Property Inspectors seems to be relevant (Novák et al., 2007). In particular, the Czech Trade Inspection Authority (Česká obchodní inspekce, CTIA) is an administrative state institution under the jurisdiction of the Ministry of Industry and Trade of the Czech Republic, whose Director General is appointed by the Minister of Industry and Trade. The CTIA was established by the "Act on the Czech Trade Inspection Authority" (Czech National Council, 1986) on the Czech Commercial Inspectorate and is the successor to the former State Commercial Inspectorate. It is composed of the Central Inspectorate and Regional Sectoral Inspectorates, which are headquartered in major regional cities. The CTIA monitors and inspects companies and individuals that supply or sell goods to the Czech market, provide services or perform similar activities on the domestic market, grant consumer loans and operate markets, unless these activities are subject to special legislation and are supervised by another administrative institution. The law also establishes the obligations of persons inspected by an IP inspector. These include the following:

- The inspected persons are obliged to allow inspectors and experts invited to participate in the inspection to perform their tasks related to the inspection;
- The inspected persons are obliged to eliminate the identified deficiencies, causes of such deficiencies and harmful effects within a specified period of time or take immediate measures necessary to eliminate them and submit a report on them and their results to the CTIA within a specified period (Kirin et al., 2023).

In 2022, *Canada* proposed two bills to amend the Copyright Act (Parliament of Canada, 2022; 2023). The proposed changes include extending the term of copyright protection to 70 years, regulating artificial intelligence and the Internet of Things, as well as online intermediaries. With regard to geographical indications, rights holders are concerned about the lack of a proper administrative procedure to ensure the enforcement of their rights. EU stakeholders argue that the capabilities of the Canadian Food Inspection Agency (CFIA) are very limited and do not cover most infringements. This means that, *de facto*, the only effective way to protect the rights of right holders is through litigation, with all the costs that this entails. Another problem is the lack of a list of previous users of certain names protected by the EU-Canada Comprehensive Economic and Trade Agreement (CETA). The lack of direct remedies for damage to the reputation/image of a geographical indication is also a concern for stakeholders, making it difficult for GI right holders to protect their rights (Commission Staff Working Document, 2023).

Voloshchuk et al. (2013) having studied foreign experience in combating IP infringements, concluded that in most countries, especially in the EU, there are almost identical directions for improving legislation and combating IP infringements in particular:

1. Legislative changes should be based on experience and consultations with large enterprises and consumers in the industry (i.e., on the basis of cooperation);
2. Increase the powers of customs authorities in the fight against counterfeiting;

3. In addition to the creation of special police units to combat these crimes, the assignment of prosecutors and special courts that will specialise in, among other things, IP-related crimes;
4. Creation of initiative groups, information centres and others for the purpose of special training of law enforcement officers and prosecutors;
5. Proper coordination of activities and international cooperation.

In previous publications, the authors examined institutional and legal support for supervision (control) in the field of intellectual property (IP) in countries such as the United States, Serbia, the Philippines, Croatia, Mongolia, and Bangladesh (Kirin and Khomenko, 2019; Kirin et al., 2020).

These countries were chosen because they represent various models of legal regulation and institutional support for intellectual property rights protection. Some have developed systems (the US and Croatia), some are candidates for EU membership or have experience with European integration (Serbia and Croatia), and some are implementing international IP standards despite limited resources (Mongolia, Bangladesh, and the Philippines). This approach allows for the analysis of both established and innovative control mechanisms that may be relevant for Ukraine in the context of European integration and post-war reconstruction:

- *USA*: functions similar to those of the state IP inspection are performed by the Computer Crime and Intellectual Property Section (CCIPS). The CCIPS is responsible for implementing the Department's national strategies to combat crimes against IT and IP property worldwide. Similar functions are also performed by the Office of the Intellectual Property Enforcement Coordinator (IPEC). It was created in 2008 to advise the President and coordinate with federal departments and agencies to develop overall U.S. intellectual property policy and strategy, foster innovation and creativity, and ensure effective protection and enforcement of intellectual property rights at home and abroad. It is part of the Executive Office of the President.
- *Serbia*: the Market Inspection Sector (*Сектор тржишне инспекције*) of the Ministry of Agriculture, Trade, Forestry and Water Management supervises the production and transfer of goods infringing intellectual property rights (trademarks, designs, patents, small patents, geographical indications, chip topography, CRR), as well as the production and marketing of goods protected by CRR.
- *Philippines*: the Intellectual Property Rights Enforcement Office (IEO) implements the administrative and executive function of the Intellectual Property Office of the Philippines (IPOPHL) in accordance with the IP Code of the Philippines.
- *Croatia*: was one of the first European countries to centralise inspection powers by establishing the State Inspectorate (Državni inspektorat) in 1997. The State Inspectorate Act, adopted in 1999, expanded and enshrined its powers. As part of the 2018 National Reform Programme, the unification of inspection services was initiated to restore the Državni inspektorat's leading role as the coordinating centre for inspection activities. One of the reform's key objectives was to eliminate the fragmentation of powers among individual inspection bodies, which, according to the European Commission, hindered the effective implementation of the *acquis communautaire*.

The State Inspectorate is the central executive body of state authority. It ensures a centralised and coordinated approach to implementing inspection policy, especially with regard to protecting intellectual property rights. The Chief State Inspector heads the organisation and is appointed by the Government of the Republic of Croatia upon the Prime Minister's recommendation. The Chief State Inspector reports directly to government structures. Unlike most other European Union countries, where inspection functions remain dispersed among several institutions, Croatia's organisational model distinguishes itself by centralising these functions under the State Inspectorate.

The importance of a centralised inspection system is also confirmed in scientific literature. Croatian researcher Frane Staničić (2019) notes that "inspection supervision is a form of control over the legality of the activities of individuals and legal entities, and it has numerous manifestations. It is crucial for ensuring the legality of activities and the proper provision of services in the marketplace" (Staničić, 2019):

- *Mongolia*: the Intellectual Property Office of Mongolia (IPOM) is a government agency under the Ministry of Justice and Home Affairs (MOJHA). One of the functions of the IPOM is to grant patents, utility models and trademarks. The IPOM also has a dispute resolution committee for IP cases. The Draft Patent Law contains provisions regulating the role of state inspectors working for the IPOM. These state inspectors are required to conduct IP inspections and IP supervision in accordance with the IP laws, the

Law on State Inspection, the Law on Infringement and other relevant laws and regulations of Mongolia.

- *Bangladesh*: the government recognises the importance of IP rights and has established several institutions to promote and protect these rights. The Department of Patents, Designs, and Trademarks (DPDT) issues and registers patents, designs, and trademarks in Bangladesh. The Copyright Office is responsible for registration and protection of intellectual property rights. The government has also established the Intellectual Property Rights Tribunal to hear cases involving intellectual property rights and is taking steps to educate citizens and business owners about intellectual property rights. The DPDT frequently conducts seminars and training sessions to inform the public about their IP rights. In addition, the government has launched a nationwide education and advocacy campaign to protect IP rights.

Hungary's intellectual property system operates within the framework of harmonised European Union legislation but has certain organisational and legal features. The central authority in this area is the Hungarian Intellectual Property Office (HIPO), which reports to the Ministry of Justice and is responsible for registration, law enforcement, and IP policy. A distinctive feature of the Hungarian model is its centralised IP management structure, unlike other European countries that distribute these functions among several institutions.

In 2003, Hungary acceded to the European Patent Convention, leading to amendments in national patent legislation. The Act CII of 2003 (Hungarian Parliament, 2003) amended the Hungarian Copyright and Industrial Design Acts to align with EU legal norms. HIPO played an active role in implementing the EU Directive on Copyright in the Information Society and in implementing customs measures in accordance with Council Regulation (EC) No 1383/2003 (Council of the European Union, 2003). These steps were accompanied by the strengthening of administrative mechanisms for protecting IP rights, particularly through creating specialised units within HIPO.

The importance of this institutional model is also confirmed in the scientific literature. For instance, Péter Munkácsi, a European researcher, emphasises the uniqueness of the Hungarian intellectual property model, particularly its alignment with contemporary European IP protection standards and its consideration of the cultural and legal characteristics of the national system (Munkácsi, 2019).

In China, supervision over compliance with intellectual property legislation is based on a multi-level system combining administrative, civil, criminal, and customs enforcement. The State Administration for Market Regulation and its local Market Supervision Bureaus (formerly Administration for Market Regulation or AMRs) are the primary administrative bodies responsible for trademark and routine patent enforcement, carrying out inspections, market raids, and imposing fines. The China National Intellectual Property Administration may intervene in significant patent cases, while the National Copyright Administration and local copyright authorities supervise the use of protected works and conduct administrative seizures of infringing copies. Administrative measures are often used as a first step, as they are relatively fast and inexpensive (Lee et al., 2016; Ma et al., 2023).

Judicial enforcement plays an increasingly important role. China has established specialised IP courts and tribunals that hear a growing number of cases each year, providing injunctions, destruction of infringing goods, and monetary compensation, including punitive damages for wilful violations. Criminal enforcement is applied to serious infringements such as large-scale counterfeiting, piracy, or trade secret theft, with investigations conducted by the public security authorities and prosecutions by the procuratorate. Convictions may result in significant fines and prison sentences, which serve as a deterrent.

Customs authorities are empowered to detain and seize infringing goods at the border, acting either on rights-holder requests or on their own initiative. Rights-holders can record their IP rights with customs to facilitate timely action. In the digital sphere, enforcement mechanisms include notice-and-takedown procedures obligating e-commerce platforms and online service providers to remove infringing content promptly.

In recent years, China has strengthened its IP enforcement framework by raising statutory and punitive damages, expanding the network of specialised IP courts, and coordinating large-scale campaigns against counterfeiting and piracy (Cheng, 2019; Reynolds and Sell, 2017). These efforts reflect a policy focus on improving compliance supervision and building a more effective deterrent system for IP infringement.

Colombia's system for supervising compliance with IP legislation relies on a network of administrative, customs, police, and judicial bodies. The Superintendencia de Industria y Comercio (SIC) (in English: Superintendency of Industry and Commerce) acts as the main authority for patents, trademarks, and designs, combining regulatory and quasi-judicial powers to issue cease-and-desist orders, fines, and damages. Rights-holders may bring infringement

actions before its Jurisdictional Affairs unit for swift remedies. Copyright compliance is overseen by the Dirección Nacional de Derecho de Autor (DNDA) (in English: National Directorate for Copyright), which coordinates with collective management societies and the National Police to combat piracy and secure royalty payments.

Border enforcement is handled by the customs authority Dirección de Impuestos y Aduanas Nacionales (DIAN) (in English: National Directorate of Taxes and Customs), which can suspend shipments of infringing goods and acts *ex officio* under national regulations. The National Police, especially the fiscal and customs unit Policia Fiscal y Aduanera (POLFA) (in English: Fiscal and Customs Police), conduct raids and seize counterfeit products, while the Fiscalía General prosecutes criminal IP cases, including piracy and counterfeiting, with penalties ranging from fines and destruction of goods to imprisonment (Muñoz, 2024). Civil courts remain available for damages and injunctions but many disputes are resolved administratively. Recent reforms have enhanced penalties, expanded *ex officio* powers, and improved inter-agency cooperation, strengthening oversight and deterrence.

Thus, a brief review of the existing institutional and legal mechanisms for monitoring compliance with IP protection legislation in certain foreign countries reveals the following features of their existence:

- A state body designated as the main body in the CEB system to ensure the formation and implementation of state policy in the IP sphere, which at the same time interacts and coordinates with the CEB and other state authorities in order to strengthen the protection of IP rights and IP supervision (control);
- Specialised control and supervisory IP bodies, both within the structure of the main CEB and within the structures of law enforcement (police, customs, tax), judicial and prosecutorial authorities;
- Regional (territorial) offices of the main state IP body;
- Professional and public IP bodies whose activities are aimed at assisting and interacting with state IP bodies in the field of IP supervision (control);
- Requirements for persons directly performing control and supervision of IP functions in terms of relevant experience and education;
- Regulations governing the rights and obligations of the entity exercising control and the entity subject to control;
- Powers covering:
  - Prevention, detection, investigation and prosecution of IT and IP crime in cooperation with government agencies, the private sector, academic institutions and foreign colleagues;
  - Support to prosecutors in court proceedings;
  - Training of law enforcement officers in IP;
  - Providing comments and suggestions to IP legislation;
  - Inspection supervision over the entire range of IP, etc.

4.3 Formulation of proposals for the improvement of the institutional and legal support for the control and supervision activities in the IP sphere

The Law of Ukraine "On the Main Principles of State Supervision (Oversight) in the Area of Commercial Activity" defines two fundamental provisions, which are established exclusively by laws (Verkhovna Rada of Ukraine, 2007):

1. Bodies authorised to exercise state supervision (control) in the field of economic activity;
2. Types of economic activity that are subject to state supervision (control).

Therefore, the current situation with the IP integrity of Ukraine in general, complicated by the multiplicity of subjects of state IP supervision (control), has actualised the need to formulate proposals for improving the institutional and legal support for control and supervision activities in the IP sphere. Their main task, according to the authors, is to determine the most appropriate, possibly optimal model of the structure and status of the CEB, which would perform the functions of the CB regarding the control and supervision of IP relations with maximum efficiency and effectiveness. This area of current IP reforms is directly or indirectly related to the existing and/or prospective subject matter of IP legislation, represented by the blocks of relations concerning:

- Implementation of international legal IP norms;
- Programmatic and conceptual development of the IP sphere;
- State supervision (control) in the field of economic IP activities;
- Control over the production, export/import of disks for LRS;
- Establishment of the legal status of subjects of the state system of legal IP protection;
- Procedure for participation in control and supervision of IP activities, etc.

This is confirmed by the main results of the 19th meeting of the EU-Ukraine Dialogue on IP Law (gov.ua, 2022), held in the format of a Kyiv-Brussels videoconference:

- Reforms in the IP sphere;
- Development of IP legislation;
- Creation of a specialised court on IP issues;
- Combating IP infringements, especially in physical and online markets;
- Activities of collective management organisations of IP rights.

Instead, the amendments to some laws of Ukraine on the establishment of the NIPA do not include control functions in the field of CRR or in any other area of intellectual property rights among its powers. In addition, the aforementioned definition of the *state system of legal IP protection* was introduced into a number of IP laws, albeit in a somewhat controversial wording, in particular, the CEB, which ensures the formation and implementation of state policy in the IP sphere, NIPA and a set of scientific, educational, information and other relevant specialisation state enterprises, institutions, organisations belonging to the CEB, which ensures the formation and implementation of state policy in the IP sphere (Verkhovna Rada of Ukraine, 2020). In other words, it is not a system of legal protection, but a system of entities vested by law with the relevant legal protection powers. Moreover, two concepts are currently used in national legislation: the *state system of legal protection of intellectual property* and the above-mentioned "state system of legal protection of intellectual property", the content of which differs only in the scope of the object of legal protection, that is, CRR and IP in general. At the same time, the list of IP management bodies is the same in both definitions.

Therefore, the concept of "legal IP protection" should be considered as a component of a broader concept, which is "IP protection". The latter is understood as a system of various measures to ensure the actual protection of IP rights. In turn, legal IP protection is realised through the organisational and support activities of a set of entities listed in the concept of *state system of legal IP protection*, and it is proposed to define legal IP protection as a set of legal means (guarantees) that ensure the implementation of IP rules and compliance with the IP law.

If we turn to the control and supervisory relations indirectly related to the NIPA, we should note the powers of the Appeals Commission, which is a collegial body of the NIPA, to control the compliance of patent agents with the requirements of the law, as well as the powers of the Supervisory Board, which is a body of the NIPA, to supervise the financial and economic activities of the NIPA. Thus, in the first case, the supervised entity is a third party – an IP representative (patent agent), and in the second case, the supervised entity is the NIPA itself.

In addition, in the process of IP reforms, it is important to take into account the position of the USTR, which in IIPA 2022 Special 301 Report (United States Trade Representative by the International Intellectual Property Alliance, 2022) proposed, among other things:

- To amend the Criminal Procedure Code to provide law enforcement agencies of Ukraine with ex officio (ex officio) powers;
- To provide the MoE with strong powers to enforce legislation on the Internet and resources to increase the number of state IP inspectors (United States Trade Representative by the International Intellectual Property Alliance, 2022).

Currently in Ukraine there are two CEBs authorised to carry out state supervision (control) in the field of economic IP activities, namely:

- The Ministry of Economy (CEB-1);
- The State Service of Ukraine for Food Safety and Consumer Protection (hereinafter referred to as the State Service of Ukraine for Food Safety and Consumer Protection) (CEB-2) (Verkhovna Rada of Ukraine, 1993b).

The analysis of their structures and powers conducted in the previous publication (Kirin, 2023) makes it possible to identify similar and distinctive features of these CEBs:

1. Identical features:
   - The activities of the CEB are directed and coordinated by the CMU;
   - The CEB has an independent structural unit within its internal structure to which control and supervisory powers are delegated (Department of Investment, Innovation and Intellectual Property (CEB-1) and Department of Control in the areas of seed and nursery production, quarantine and plant protection, and grain quality (CEB-2)).
2. Distinctive features:
   - CEB-2 has territorial bodies (head offices) in its external structure, CEB-1 does not;
   - CEB-1 – control and supervision activities are carried out by its officials (state inspectors), CEB-2 – control and supervision activities are carried out by officials (state inspectors) of its territorial bodies;

- CEB-1 monitors compliance with the requirements of the law, CEB-2 organises and carries out state supervision (control) in the field of IP rights protection;
- The subject of state supervision (control) of CEB-1 is compliance by business entities, regardless of ownership, with the requirements of the laws on CRR and LRS, the subject of state supervision (control) of CEB-2 is the protection of plant variety rights (PVR).

Therefore, when determining the optimal organisational and legal form of the IP control body (ministry, service, agency, inspection, commission, bureau), it is necessary to take into account the fact that, despite the existing legal condition, according to which most of the functions of the CEB are control and supervisory functions over the observance of laws by state bodies, local self-government bodies, their officials, legal entities and individuals, the CEB is established as an inspection (Verkhovna Rada of Ukraine, 2011). However, an analysis of the existing tasks and functions of the existing CEBs in Ukraine has shown that the latter may have different competence content with the same form and vice versa – different forms with the same content. Currently, there are:

- 1 supervisory inspection;
- 3 inspections;
- 2 control services.

In addition, both ministries and services have control and supervisory functions.

Therefore, from the point of view of the authors, the key features of the IP control body in this case are as follows:

- The activities of the CBs are directed and coordinated by the CMU;
- The CB exercises its powers throughout Ukraine both directly and through its established territorial (regional) subdivisions (bodies) (headquarters);
- The territorial bodies of the CB have a sufficient number of IP inspectors (correlated with the number of IP subjects and IP objects in the region);
- IP inspectors exercise their powers in respect of the entire (maximum acceptable) number of objects of control and supervision of IP relations (subjects of state IP supervision (control)) (Butnik-Siverskyi et al., 2024).

It is also proposed to include within the scope of state supervision (control) of intellectual property, in addition to the CRR, LRS and PVR which are recognised as such, a set of geographical indications, the legal protection regime of which is currently quite contradictory both in relation to the specially authorised CB and in relation to the scope of state supervision (control) (Verkhovna Rada of Ukraine, 1999; 2022c).

5 Conclusion

The following key findings can be identified as a result of this study:

1. The author's idea in defining the concept of *state IP supervision (control)* is proposed, based on the consideration of state supervision (control) as a lawful activity which has its own special content of their traditional composition – a system of objective (object, objective side) and subjective (subject, subjective side) features.
2. The author substantiates the need to distinguish between the categories object of *state IP supervision (control)* and *object of control and supervisory IP relations* and their levels. The author differentiates the subjects of control and supervision IP relations. The author proposes a definition of *state IP supervision (control)* and defines the correlation between the concepts of *IP legal protection* and *IP protection*. The author identifies the blocks of legal acts regulating substantive and procedural control and supervision of IP relations.
3. A review of the existing institutional and legal mechanisms for monitoring compliance with the legislation on the protection of intellectual property in certain foreign countries (Bangladesh, Canada, China, Colombia, Croatia, Czech Republic, France, Hungary, Italy, Mongolia, Philippines, Poland, Serbia, Switzerland and USA), which allowed to identify the peculiarities of the legal status of subjects, types and composition of the control and supervisory process.
4. The author proposes to recognise the key features of an IP control body as the form of its dependence on the government, the presence of territorial (regional) divisions (bodies, departments), the correlation between the number of IP subjects and IP objects in the region and the number of IP inspectors, and the maximum coverage of the subjects of state IP supervision (control) protected by law.

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