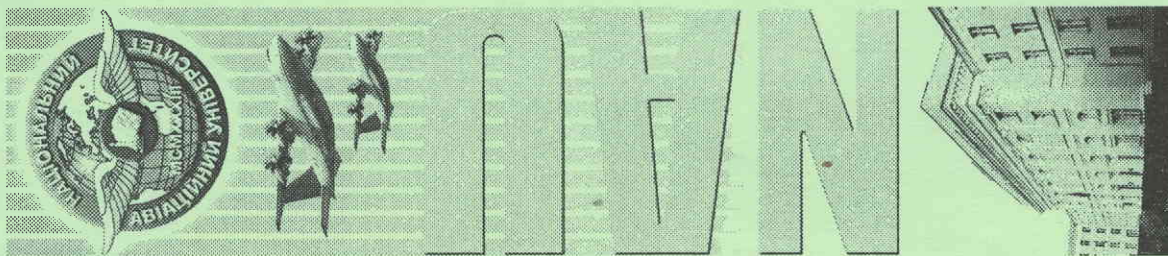


MINISTRY OF EDUCATION AND SCIENCE,  
YOUTH AND SPORT OF UKRAINE  
National Aviation University



VIVERE!  
VINCERE!  
CREARE!

# INTELLECTUAL PROPERTY

Coursebook

Kyiv 2011

MINISTRY OF EDUCATION AND SCIENCE,  
YOUTH AND SPORT OF UKRAINE  
National Aviation University

# INTELLECTUAL PROPERTY

Coursebook

Kyiv  
National Aviation University  
«NAU-druk» Publishing House  
2011

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У навчальному посібнику стисло викладено основні положення охорони і захисту прав на об'єкти інтелектуальної власності. На основі норм Конституції України, чинного Цивільного Кодексу України та основних міжнародних і національних нормативно-правових актів розглянуто загальні положення і структуру права інтелектуальної власності.  
Для студентів напрямку 0708 «Екологія».

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The coursebook states general principles of protection of rights to the intellectual property objects. The intellectual property general principles and structure are analyzed on the basis of the norms of the Constitution of Ukraine, the Civil Code of Ukraine and international and national legislations.  
For the students of speciality 0708 "Ecology".

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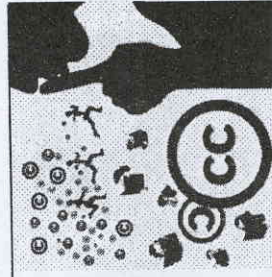
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## INTRODUCTION



In modern legal systems the phenomenon of "intellectual property" is widespread in various spheres of social relationships, so legal regulation of intellectual (creative) activity is a matter of different fields of law, in particular: civil, administrative, customs, fiscal, economic, international and others.

The problem of legal regulation of intellectual property became urgent at the end of XX and at the beginning of XXI centuries and gathered momentum due to appearance of new digital technologies, fast duplication, reproduction and use of intellectual property, change of its carrier and means of distribution (cable distribution, satellite broadcasting etc.), new program means of protection of rights, new objects of intellectual property and change of emphasis from industrial property to copyright and especially related rights.

In Ukraine protection system of the objects of intellectual property is being formed, so the protection of intellectual property is far from being perfect. However, we can not underestimate the role of intellectual property nowadays, as in the nearest future the production will become the means of implementation of intellectual property achievements.

The current legislation on intellectual property contains a lot of gaps and contradictions. Therefore, it is necessary to bring this legislation to conformity with both national and international laws.



## Unit 1

# INTELLECTUAL PROPERTY. GENERAL PRINCIPLES

**Key words:** intellectual property, copyright, patent law, related rights, industrial property right, material rights of intellectual property, intangible rights of intellectual property, subjects of intellectual property.

### 1.1. The definition of intellectual property, its legal protection

In recent years the accent of social and economic development of the countries all over the world has moved from production to intellectual activities. The experience of the developed countries shows a firm and purposeful tendency to the priority of such social activities as science, technique, culture, creative work. The new priorities of generally useful activities have necessitated due legal protection of all types of creative work. Therefore, at the end of the last century many countries started to revise and update intellectual property legislation, especially the issue of its legal protection. The new laws on intellectual property protection were adopted and international organizations revived their activities concerning legal protection of creative results in many countries.

The conclusion of the Parliamentary deliberation on the issue "Protection of intellectual property rights in Ukraine: problems of legal protection" was the following: nowadays the system of legal protection of intellectual property in Ukraine is at its final stage. In 1990<sup>s</sup> the basis of national regulation of this important sphere was formed. At the same time there arose serious drawbacks resulting in stagnation of the development of national scientific and creative activities and innovation model of the country. This situation complicated relations of Ukraine with the leading countries of the world, so it was necessary to seek new

forms of cooperation and interaction in the sphere of intellectual property protection.

It is really difficult to solve the above-mentioned problems as intellectual property relations are highly dynamic and versatile. The meaning of the term "intellectual property" and its structure is constantly extended and revised.

The problem of intellectual property protection in the modern world is solved under circumstances when the system of regulation of intellectual property protection has already been formed. The World Intellectual Property Organization plays a leading role in this process. For the first time the term "intellectual property" was used in the Convention 1967 under which the World Intellectual Property Organization was established.

There was no intellectual property legislation in Ukraine; however, having applied international experience Ukrainian lawmakers succeeded to create legislative basis for protection of intellectual property in the early 90s of the last century.

In the Soviet legislation the term "intellectual property" appeared in the early 90s of the XX century. The Law of the USSR of the 6 of March 1990 "On property in the USSR" stated that relations regulating creation and use of intellectual property are governed by the special legislation of the USSR, republics and autonomies of the USSR and other acts.

However, the final definition of intellectual property was given in the Constitution of Ukraine of the 28 of June 1996. Article 41 defines that each person has the right to possess, use and dispose of his property, the results of his intellectual and creative activities. Later some other legislative acts and the Civil code of Ukraine were adopted in order to regulate legal regime of intellectual property objects in a new way. Special laws regulating intellectual property in Ukraine are the following: the Civil code of Ukraine, the Law of Ukraine "On copyright and related rights", the Law of Ukraine "On cinematography", "On television and broadcasting", "On distribution of copies of audio works and phonograms", "On publishing", "On peculiarities of state regulation of economic agents' activities connected with production, export and import of laser disks".

The basic laws regulating industrial property in Ukraine are the following: "On the protection of rights to inventions and utility models",

"On the protection of rights to industrial models", "On the protection of rights to trade and service marks", "On the protection of rights to plant breeds", "On protection of rights to the topography of integrated circuit", "On protection of economic competition" and others.

Ukraine is a member of the majority of the multilateral international **conventions and treaties** in the spheres that regulate the process of **creation and use of intellectual property**. It is also a member of 18 multilateral international treaties that are the part of national legislation. However, Ukraine does not take an active part in the intellectual property protection, not all results of intellectual activities have necessary legal protection in our legislation, and especially this concerns **commercial secret, topography of integrated circuit, discoveries and innovations**.

In modern legal systems the phenomenon "intellectual property" covers different spheres of social relations and is regulated by various fields of legislation - civil, criminal, and administrative. Intellectual property investigations within the frameworks of any scientific branch are characterized by the specific number of features of this legal phenomenon.

Appearance of the term "intellectual property" had a great importance not only in political and economic, but also in legal life of the society:

- firstly, the category "intellectual property" consolidated the number of separate legal phenomena in order to systematize legislation. It allowed to examine intellectual results and to consider the means of individualization as independent objects of legal relations;

- secondly, the creators of intellectual products have exclusive and absolute right to results of intellectual activities and individualization means. The functions of this right were similar to the functions of property right to material objects;

- thirdly, social importance of the results of intellectual activities and individualization means, commercial and other interests of their creators and rightholders were officially recognized.

Thus, appearance of the category "intellectual property" provided a new attitude of the state and law to intellectual activities and their results based on respect to creative persons and their interests.

There are different ways of understanding the phenomenon "intellectual property" in jurisprudence.

A number of legislators and the current legislation of Ukraine sometimes identify intellectual property and intellectual property right. But the others distinguish these two institutions. O.A. Pidprygora says that the term "intellectual property" has two basic meanings: civil and legal institution and a set of subjective rights of creators to the result of their creative work.

The last approach restricts the meaning of intellectual property to subjective rights of intellectual property and that is why it is not correct. In our opinion, the approach according to which intellectual property is considered to be relations of intellectual property subjects with the results of intellectual activities and means of individualization recognized and protected by the state is more appropriate. Intellectual property law is a body of legal norms that regulate intellectual property relations, or a set of subjective rights of the creator to the results of his creative work.

Article 418 of the Civil code of Ukraine defines that "intellectual property is a right of a person to the results of intellectual, creative work or other object of intellectual property".

Intellectual property right covers personal material and intangible rights of intellectual property, in contrast to the right of ownership where a person possesses, uses and disposes of the property of his own. Intellectual property right is inviolable. Nobody can be deprived of intellectual property right or restricted of its implementation, unless the intellectual property right or restricted of its implementation, unless the law provided for otherwise.

Legal protection of intellectual property is impossible without the state protection system of intellectual property that has two components: current regulatory and legal base in the sphere of intellectual property and appropriate infrastructure to implement the above-mentioned laws.

Traditionally the structure of intellectual property is divided into: copyright and related rights, industrial property right. This division is specified in two conventions: Paris Convention for the protection of industrial property and Bern Convention for the protection of literary and artistic works.

Copyright law is a body of law that gives the authors exclusive right for reproduction, distribution or performance of their creative works. The Law of Ukraine "On copyright and related rights" is a legal protection basis for works of many important industries including book printing, creation of art works, music recording and software.

Copyright protects works which are the result of the creative work of the author. They are traditionally divided into: literary and art works. According to Article 433 of the Civil code of Ukraine the objects of the copyright are: literary and art works, software, database if they are the result of intellectual activities. This protection does not cover data or material used for creation of the mentioned objects.

According to the current legislation the works are the objects of copyright without any formalities and regardless of their completeness, purpose and value, the way and form of expression.

The objects of related rights are very important part in the system of intellectual property objects. They include reproduction, performance of works. The related rights are similar to copyright that are legally protected.

Related rights objects include: performance, phonograms, video grams, broadcasting.

The objects of industrial property right are the second group of intellectual property objects.

Industrial property right is the institution of civil law that regulates relations connected with technical creation. In contrast to copyright, industrial property right is used in the other sphere of creative work dealing with natural laws of the material world. They do not reveal the individuality of their creators as copyright objects do. That is why objects of technical creation are reproducible. They may be created separately, by different persons, so they must be officially registered. Moreover, the results of technical creation are intended to solve practical tasks and have practical significance.

In the legal literature there are two approaches to the industrial property objects: wide and narrow.

Paris Convention for the protection of industrial property of the 1883 March 1883 includes the following objects of the industrial property: inventions, industrial models, trade marks, commercial (brand) and geographical names and also repression of unfair competition.

Ukrainian researchers refer to the objects of industrial property only those specified by the current legislation: inventions, utility and industrial models, topography of integrated circuit, innovations, plant and animal breeds, commercial and geographical names, trade marks (for goods and services), commercial secrets, scientific discoveries.

Patent law objects which are the results of technical creation are essential in the group of industrial property objects. They include inventions, utility models and industrial designs. First of all, patent legislation should promote the development of scientific and technical creation and use its achievement in the national economy of Ukraine. Patent legislation is developing actively as such form of protection of creative results meets the requirements of market economy, though it is not perfect.

The second group of industrial property objects includes the means of individualization of goods and services: trade marks, commercial and geographical names.

The other group includes non-traditional objects of intellectual property. They are: commercial secrets, innovations, topography of integrated circuit, plant and animal breeds, scientific discoveries.

International legal protection of intellectual property originated in 1873 in Austro-Hungary where the first international exhibition of inventions took place. That year the Viennese Congress on patent reform took place where the leading principles of patenting were adopted. The next step in this direction was the Diplomatic conference which was held in Paris in 1880. There was agreed the project of international covenant which later became the basis of international covenant – Paris Convention for the protection of industrial property which was adopted in 1883.

Another very important step in the creation of the world system of intellectual property protection was the signing of Berne convention for the protection of literary and artistic works. The above-mentioned conventions provided for the establishment of separate secretariats known as "International bureau". In 1893 these bodies were united and continued their work up to 1970, when the World Intellectual Property Organization began its activity.

International protection of copyright and related rights promotes the development of literature, art, science and use of literary and music works, works of art, phonograph works, software, performances etc. But it is impossible to establish modern system of intellectual property recognized by international community without harmonization of national legislation with international law norms. Ukraine does its best to coordinate the legislation with these norms. International exchange of scientific, technical, patent information and technologies promotes the development of scientific and technical potential in Ukraine.

International protection of industrial property is intended to create the single method for maintaining legal protection of industrial property objects (inventions, utility models, industrial designs).

In August 1991 Independent Ukraine declared prolongation of Paris Convention for the protection of industrial property, Patent Law Treaty, Madrid Convention concerning international registration of marks, WIPO Copyright Treaty etc. in its territory.

International cooperation in the sphere of intellectual property protection influences deeply the development of foreign trade, business activity, investment and innovation processes in Ukraine.

### 1.2. Objects and subjects of intellectual property

The current legislation of Ukraine provides for two ways of interpreting the term "an object of intellectual property": the object of intellectual property and the result of creative activity: the object of I. Yakubivsky says that the matter is about different legal categories, as the correlation between the above-mentioned notions is defined by the article 418 of the Civil code of Ukraine which states that intellectual property right is the right of the person to the results of intellectual creative activity or another object of intellectual property.

Article 199 of the Civil code of intellectual property and Article 199 of the Civil code of Ukraine provides for the similar provision. So, we can conclude that the object of intellectual property is a general notion that includes the results of intellectual, creative activity and other objects of intellectual property specified by the law.

According to Articles 199 and 418 of the Civil code of Ukraine not all objects of intellectual property are the results of intellectual, creative activity. Such approach of the legislator was subjected to criticism by O. Pidopygora who noted that neither the Civil code nor other laws specified the object which was not the result of intellectual, creative activity.

A. Sergeev says that according to the legislation of Russia intellectual property is the whole range of exclusive rights to the results of intellectual activity and other objects, in particular, individualization facilities of civil circulation participants and their manufactured products (work, services).

Other objects of intellectual property include, first of all, individualization facilities of civil circulation participants, goods and services. According to the legislation of Ukraine the services include trade (brand) name, trade marks (label for goods and services), and

geographic names. Certainly, these objects are products of human intelligence and often contain creative elements, especially as regards to trade marks which are connected with some creative efforts. However, they are the objects of civil rights because they give opportunity to individualize the participant of civil circulation or his manufactured products (work, service), but not because they are the results of intellectual activity. Moreover, in some cases the subject of intellectual property bears no relation to the appearance of some names. First of all, this concerns geographic names that are used by the subject of intellectual property.

The objects of intellectual property which are not the results of intellectual, creative activity include not only individualization facilities of civil circulation participants, goods and services. They also include audio records (video records) and broadcasting programs. A. Sergeev thinks that program-makers do not create any new works, in contrast to performers engaged in creative activity.

When specifying the essence of the object of intellectual property it is important to take into account that this object of civil rights is intangible (Article 199, Chapter 15 of the Civil code of Ukraine "Intangible property"). Therefore, the important feature of the objects of intellectual property is their intangibility that differs them from the objects of property - res (lat.) which are specified as material objects by Article 179 of the Civil code of Ukraine. This fact is a forcible argument against the property theory whose adherents apply the legal regime of property to the objects of intellectual property.

The Civil code of Ukraine specifies the following list of the objects of intellectual property: literary and art works, computer programs, compilation of data (data bases), performance, audio records, video records, broadcasting programs, scientific discoveries, inventions, utility models, industrial designs, topography of integrated circuits, innovations, plant and animal breeds, trade (brand) names, trade marks ((label for goods and services), geographic names, trade secrets).

According to the general rule, the subject of intellectual property is a person, company or another social institution having subjective rights and legal duties, and so able to enter in legal relationships.

The subject of intellectual property is a person possessing the intellectual property right after the claimed proposal has been recognized as the object of intellectual property according to the



established legal procedure. The subject of intellectual property does not exist until the claimed proposal or scientific, literary and art works have been recognized as the objects of intellectual property.

In the opinion of R. Shishka, the problem of the subject of law, particular the subject of intellectual property is one of the most complicated problems of philosophy, art and jurisprudence. It is difficult to determine the limits of freedom of the creator, to assure protection of the created work and determine the interests of the state, society and other persons. The interests of other persons grow if the object of intellectual property considerably influences the development of productive forces, it is the masterpiece (hit), enjoys wide popularity, it is sold quickly and highly paid, leads to the labor productivity and market competitiveness.

The current legislation on intellectual property recognizes the creator (the author) of the object as the primary subject. If the work is created by two or more persons it is considered a joint work of co-authors. The work is considered to be joint if it is created by two or more natural persons. Therefore, in order to be recognized as a co-author it is necessary to make contribution to the creation of the work. For example, the authors of audiovisual work are the authors of screen versions, dialogues, musical works specially created for this audiovisual work, as well as production directors, camera operators etc. unless otherwise agreed by the contract. The author of the audiovisual work that was created earlier and modified, or it was partly included in this audiovisual work is also considered as the co-author.

The subjects of intellectual property are divided into two main categories according to their participation in the creation or to the disposal of rights to the object of intellectual property. First of all, they are the creators of intellectual property. Only natural persons may be the creators of intellectual property. Therefore, the subject of intellectual property is any natural person regardless of citizenship, permanent residence, occupation and other factors – the citizen of Ukraine, another state or stateless person.

The authors are any persons or a group of persons who create their works in any field with the purpose of profit earning or other purposes. The users are any persons or a group of persons who use the results of the creative work in any field with the purpose of profit earning or other purposes.

Generally speaking, according to the legislation of Ukraine on intellectual property the subjects of intellectual property are, first of all, the authors of scientific, literary and art works, as well as the authors of scientific and technical inventions, applicants, employers and legal successors.

The International Declaration on intellectual property specifies two categories of persons in the field of intellectual property: the authors and subjects.

Legal status of subjects and protection of their rights in civil law have been thoroughly studied by R. Shishka. In his opinion, "taking into account the acquisition of rights and duties by the subject of intellectual property, the subjects of legal rights should be separated from infringers of intellectual property rights." The owners of material rights are: the author (co-authors), employer, legal successor, the owner who has acquired the rights on the agreement basis, by the decision of the court or competent state authority, on the legal ground and his unilateral legal action when using material rights.

The infringers become subjects of intellectual property owing to infringement of the rights of above-mentioned subjects. Regardless of nature and classification of committed offense they are called debtors in civil law. According to committed offenses they may be called: plagiarists, pirates, hackers, imitators, smugglers.

Under the current legislation of Ukraine (Article 421 of the Civil code) the subjects of intellectual property are: creators of the objects of intellectual property (the author, performer, inventor etc.) and other persons possessing intangible and (or) material rights of intellectual property according to the law or the agreement.

If the object of intellectual property lost its legal force (for example, the period of validity expired, or the legal owner failed to pay on time in order that the title of protection be valid), this object may be used by any natural or legal person, that is, it becomes public property.

The Constitution of Ukraine (Article 54) guarantees freedom of literary, art, scientific and technical activity, protection of intellectual property, copyright, moral and material interests that arise in connection with different kinds of intellectual activity. Every citizen has the right to the results of his intellectual activity. Nobody has the right to use these results without the consent of the author or his legal successors.

The author is a person who consciously creates one or another object of intellectual property. The common criterion of the right of authorship is creative nature of the work.

However, some objects of intellectual property may be created as a result of co-authorship. Thus, O.Yurchenko says that co-authorship has the following criteria: joint work; this work is creative; the achieved joint result is the result of creative activity of each participant.

According to the civil theory there are two categories of co-authorship: (a) joint co-authorship – when it is impossible to separate the work of co-authors. Joint co-authorship is widespread in copyright, but mostly – in scientific and technical activity.

(b) separate co-authorship – when the components of the work are clearly determined and it is known who created one or another part of the work. Such cooperation provides for the agreement of cooperation. This agreement is concluded in writing or orally. Co-authorship should be voluntary.

In case of joint co-authorship the object of joint work may be used only by mutual consent of all the co-authors. However, the right of publishing or using the work, the right of applying for the object of industrial property belongs to all the co-authors unless otherwise agreed. The composition of the co-authors may be revised at the request of persons specified in the application as co-authors. The fee for using the object of intellectual property is divided equally between all co-authors unless otherwise agreed.

In jurisprudence the issue of co-authorship of the completed work is still controversial.

V. Serebrovsky says that there is no co-authorship if a new work is created on the basis of the completed work; however, it is possible in some cases. He gives examples of co-authorship of the author of the novel and the dramatist who remakes the novel into the play, the composer and the author of the text, the photographer and the artist who paints the picture from the photograph. In these cases the first work was the basis for the other.

The issue of co-authorship of the writer and painter is rather ambiguous. The text and pictures may be considered as separate objects of copyright. V. Serebrovsky suggests that the writer and painter should be considered as co-authors only in cases when the text and pictures are integrated (for example, books-pictures for children).

The co-authorship differs from cooperation when several authors take part in creative activity at the request of a certain organization (client). Such collective object belongs to the legal person – client.

N. Khalilum thinks that not only authors, but the other persons who possess the legal right to the object of intellectual property may be the subjects of copyright – for example, an employer. As a general rule, these are legal persons, but sometimes also natural persons. The matter is about the employers. This term is new for our legislation in form, but not in essence, as the matter is about the so-called company results of creative activity. An employer is not a legal successor, as the right of intellectual property is not transferred by the author. In certain circumstances the employer is considered to be the subject of this right regardless of the author's will.

Social and commercial value of the objects of intellectual property necessitates consolidation of interests of the owner (legal owner), other members of society and the state in order to establish the term of validity of intellectual property right, to impose restrictions on using the objects of intellectual property and to control them by the state. According to the legislation of Ukraine such restrictions are the following:

– according to the term of validity of intellectual property right: the rights to the object of intellectual property terminate when the term of validity expires, and the object of intellectual property becomes public property. As a general rule, the copyright is valid during the life of the author and 70 years after his death, the right to patented inventions and utility models – 20 years, the right to patented industrial designs – 10 years, to trade marks – 10 years after obtaining the certificate;

– according to particular territory: the protection of intellectual property is in most cases restricted by the territory of the state where the object of intellectual property is registered (except well-known trade marks).

The only reason when the intellectual product may lose its value is its moral depreciation – the situation when this product is not of interest anymore, that is the product goes on keeping its “appearance”, but loses the qualities of the goods and drops out of circulation. Nevertheless, such a product belongs to the result of intellectual activity.

### 1.3. Legal regime of intellectual property rights

The peculiarity of intellectual property right is that the subjects of intellectual property possess both property and non-property rights.

Personal non-property rights are legally specified opportunities of a natural person to conduct his private life at his own discretion according to Article 269 of the Civil code of Ukraine (personal non-property rights belong to each natural person since birthday (or under the law) till death. These rights do not have economical content and are closely linked to the natural person. Nobody can deprive the person of these rights; however, there may be restrictions of personal non-property rights in cases specified by the national legislation).

Personal non-property rights of a natural person are specified in the Constitution of Ukraine, the Civil code of Ukraine and other legislative acts. However, the list of these rights is not complete and may be supplemented by the Civil code of Ukraine or other laws.

Personal non-property rights of intellectual property are the type of personal non-property rights that belong exclusively to the creators of intellectual property objects.

As a general rule, personal non-property rights of intellectual property belong only to the creator. They do not depend on property rights; they are inalienable, protected permanently and not transferred to other persons except the cases specified by the law. At the same time other persons (heirs, legal successors) have the right to protect the authorship of the work, to prevent it from falsification or another modification that may damage honor and reputation of the author (Article 29 of the Law "On copyright and related rights").

Personal non-property author's rights do not have economical content, they are "deprived of negotiability" – this is their essential difference from property rights.

In general, personal non-property rights of intellectual property include:

- the right to recognize the person as the creator of the object of intellectual property;
- the right to prevent from encroachments on the intellectual property rights that may damage honor and reputation of the creator of intellectual property object;
- other personal non-property rights of intellectual property.

Property rights are subjective rights of the participants of legal relations connected with possession, use and disposal of property, as well as with those material requirements that arise during the division or exchange of property.

Material rights of intellectual property are the following:

- the right to use the object of intellectual property;
- the exclusive right to allow use of intellectual property object;
- the exclusive right to prevent from illegal use of intellectual property object.

Material rights of intellectual property have the term of validity specified by the Civil code of Ukraine and special laws.

Material rights of intellectual property may be transferred fully or partly to another person according to the terms of the license agreement. Articles 429 and 430 of the Civil code of Ukraine contain general provisions concerning the objects of intellectual property created under labor agreement or by order. In such cases material rights belong to both the creator and employer.



#### Discussion points

1. Describe the objects of intellectual property.
2. Specify the terms of validity of property rights of intellectual property objects.
3. Describe the structure of intellectual property.
4. Give legal characteristics of the subjects of intellectual property.
5. Analyze the legal protection of intellectual property objects.



#### Checking test

1. Choose the right variant. The objects of intellectual property do not include:
  - (a) plant breeds;
  - (b) state symbols;
  - (c) animal breeds;
  - (d) res.
2. Choose the right variant. The objects of copyright are:
  - (a) laws;

- (b) court decisions;  
 (c) literary works;  
 (d) regulations of the Cabinet of Ministers.
3. Choose the right variant. The objects of copyright do not include;  
 (a) folk arts;  
 (b) music compositions;  
 (c) dramatic works;  
 (d) scenario.
4. Choose the right variant. The term "intellectual property" appeared the first time in the legislation of Ukraine:  
 (a) the Constitution of Ukraine;  
 (b) the Law of Ukraine "On companies";  
 (c) the Law of Ukraine "On property";  
 (d) the Civil code of Ukraine.
5. Choose the right variant. The rights to the objects of intellectual property are regulated by:  
 (a) the Criminal code of Ukraine;  
 (b) the Civil code of Ukraine;  
 (c) the Code of civil procedure of Ukraine;  
 (d) the Family code of Ukraine.
6. Choose the right variant. The term "intellectual property" appeared for the first time in the following international acts:  
 (a) the Convention on the establishment of the World Intellectual Property Organization of 14.07.1967;  
 (b) Paris Convention for the protection of industrial property of 20.03.1883;  
 (c) Madrid Convention concerning the international registration of trade marks of 14.04.1891;  
 (d) Trademark Law Treaty of 1994.
7. Choose the right variant. The objects of the exclusive rights are the following results of intellectual activity:  
 (a) folk arts;  
 (b) radio or newspaper reports about recent events;  
 (c) scientific, literary or art work;  
 (d) the translation of the Constitution of Yugoslavia.
8. Choose the right variant. The profit earned by one of the spouses – the author for the result of his/her creative activity is:  
 (a) property of one of spouses – the author;  
 (b) joint property of spouses;  
 (c) property of the author, his/her spouse and their children;  
 (d) joint property of all members of the author's family.

9. Choose the right variant. The main subject in the system of intellectual property protection is:

- (a) the State department of intellectual property;  
 (b) the Antimonopoly committee of Ukraine;  
 (c) the Ministry of Justice of Ukraine;  
 (d) the Ministry of Internal Affairs of Ukraine.

10. Choose the right variant. The co-authors of the work are the persons:  
 (a) who have provided technical assistance to the author;  
 (b) who have created the work together;  
 (c) who have organized creation of the work;  
 (d) who have given material assistance to the author.

## Unit 2

### OBJECTS AND SUBJECTS OF COPYRIGHT AND RELATED RIGHTS

**Key words:** copyright, literary works, art works, objects of related rights, objects of copyright, subjects of related rights, subjects of performance, phonograms, videograms, software, data base compilation, broadcasting, creative unions.

#### 2.1. Historical preconditions of copyright formation

One of the first legal acts to lay down the foundation of copyright legislation was the Censorial statute (22 April 1828) which contained the chapter "On authors and creators of books". The provisions of that act dealt with literary works; in particular, the author or translator of the book had exclusive right to use his publication during all his life. The term of validity of copyright was 25 years from the date of author's death. After that this work became "public property". However, that law was not in effect for long, and in 1830 the new regulation on authors' legal protection in comparison with previous legal act. The new act covered protection of articles in magazines, private letters, readers etc. According to the new legislation author's rights were extended greatly property right. The term of legal protection of works was prolonged to 35 years after an author's death.

The development of copyright in XIX century extended the list of works and authors' rights as objects of protection. In 1845 and 1848 rights to music and art works were recognized. In 1875 the term of copyright protection was extended to 50 years, and in 1877 the tenth volume of "the Code of laws of the Censorial statute to the document "Regulations on copyright" was adopted on March 20, 1911

which took into consideration the experience of the best foreign relations in this field.

In the first years of the Soviet Power some legal acts governing important matters of intellectual property right and copyright were applied. On 30 January, 1925 "The foundations of copyright" was applied as national legal act. In this document the term of validity of copyright after an author's death was reduced to 25 years.

Legal norms that regulated intellectual property were codified only in 1963 according to the Civil code of Ukrainian SSR which was adopted on 18 July, 1963 by the Supreme Rada of USSR. That Code contained Chapter IV "Copyright" and consisted of 44 articles. At the end of 70s the specialists expressed the opinion that it was necessary to bring legal relations in the sphere of copyright closer to the principles applied for the most developed countries. For this reason much work was done in order to adjust copyright legislation in accordance with the main international conventions.

After declaration of independence Ukraine started to classify its legislation in the sphere of intellectual property. So, on 23 December, 1993 the Supreme Rada of Ukraine adopted the Law of Ukraine "On copyright and related rights" which made radical changes in the system of copyright. This law regulated copyright relations, contractual relations between the author and other persons. It also defined legal mechanism of the protection of author's rights.

The next important step in the development of copyright was the adoption of the Law of Ukraine "On accession of Ukraine to Berne convention concerning protection of literary and art works" by the Supreme Rada. The provisions of this convention take into consideration the international experience in the sphere of copyright relations, determine legal aspects of Ukraine's cooperation with other participants of convention, authors' rights and protection of literary and art works.

On the international scale intellectual property started to be legally regulated in 1996 after signing in Geneva of the Copyright Treaty of the World Intellectual Property Organization and provisions of the Berne Convention. Ukraine joined the Copyright Treaty of WIPO on 20 September, 2001.

The next important step of development of legislation regulating intellectual property rights was the adoption of the Civil code of