

Адміністративне право і процес; фінансове право; інформаційне право
UDC 342.92

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**ADMINISTRATIVE RESPONSIBILITY IN THE FIELD OF
INTELLECTUAL PROPERTY: APPROACHES TO UNDERSTANDING
AND FEATURE**

***Summary.** Introduction. Interest in the specifics of administrative liability for intellectual property rights violations in Ukraine at the current stage of the development of legal science is not decreasing, since research in this area, given the growing number of violations of intellectual property rights, the existence of a number of factors that complicate the effective application of administrative liability measures in the field under consideration, has a need of rethinking of the conceptual foundations of legal understanding and the search for an effective legal toolkit, with the help of which effective influence on relevant social relations will be carried out, taking into account the needs and interests of the individual, society and the state.*

Purpose. The purpose of the article is to investigate the theoretical and practical aspects of administrative responsibility in the field of intellectual property based on the analysis of the works of Ukrainian scientists devoted to the problematics of the development and functioning of the institution of administrative responsibility, the provision of a mechanism for combating misdemeanours, the norms of current legislation.

Materials and methods. The research materials are the legislative regulation of relations in the field of intellectual property, the work of domestic legal scholars who researched the issue of administrative offenses and administrative responsibility.

In the process of carrying out the research, a set of general and special methods of scientific knowledge were used: dialectical, complex, structural-functional, theoretical generalization and grouping, analysis and synthesis, logical generalization of results.

Results. Theoretical and practical aspects of administrative responsibility in the field of intellectual property are investigated in the article, based on the analysis of the works of Ukrainian scientists, devoted to the development and functioning of the institution of administrative responsibility and the provision of a mechanism for combating misconduct and of the norms of current legislation.

The analysis of the works of scientists devoted to the study of the problems of administrative responsibility for the violation of intellectual property rights and the provision of a mechanism for countering the offense allows us to assert that it is considered within the scope of the "sanction concept", within the scope of the concept of "responsibility - reprehension", in the objective (the concept of "responsibility – legal relations") and subjective (the concept of "responsibility – obligation") meanings, as well as one of the core means of administrative coercion.

The concept of administrative responsibility in the field of intellectual property and its features are defined, in particular: the role and place of

administrative responsibility in the mechanism of administrative and legal regulation of social relations in the field of intellectual property are determined by its specific functions (restorative, compensatory, punitive, preventive, educational), which collectively ensure implementation of orderliness and protection of these relations; its occurrence is possible if there are three grounds - normative (the system of material and procedural rules of law that regulate this type of responsibility), factual (commitment of an administrative offense in the field of intellectual property) and procedural (an individual act issued by a competent subject on the basis of legal norms, which determines the degree of responsibility for a specific person guilty of an administrative offense); the presence of a wide range of entities authorized to consider cases of administrative offenses and impose administrative penalties; special procedural order for its implementation; being held liable does not release a person from the obligation to compensate damage caused as a result of a violation of the legislation in the field of intellectual property in the manner and amounts established by the law.

Discussion. In further scientific research, the factors that complicate the effective application of measures of administrative responsibility in the field of intellectual property will be identified.

Key words: *administrative responsibility, the sphere of intellectual property, intellectual property rights, administrative offense, measures of administrative responsibility, administrative sanctions.*

Statement of the problem. Interest in the specifics of administrative liability for intellectual property rights violations in Ukraine at the current stage of the development of legal science is not decreasing, since research in this area, given the growing number of violations of intellectual property rights, the existence of a number of factors that complicate the effective application of administrative liability measures in the field under consideration, has a need of rethinking of the conceptual foundations of legal understanding and the search

for an effective legal toolkit, with the help of which effective influence on relevant social relations will be carried out, taking into account the needs and interests of the individual, society and the state.

Analysis of recent researches and publications. The theoretical and practical problems of the development of the doctrine of administrative responsibility and the provision of a mechanism for combating misdemeanours were addressed by such well-known Ukrainian administrative scientists as V. Averyanov, O. Bandurka, A. Berlach, N. Berlach, Yu. Bityak, I. Borodin, V. Galunko, I. Golosnichenko, V. Zuy, A. Ivanyshchuk, R. Kalyuzhny, T. Kolomoets, V. Kolpakov, A. Komzyuk, O. Kuzmenko, V. Kurylo, O. Mykolenko, O. Ostapenko, S. Petkov, S. Stetsenko, O. Strelchenko, N. Khoroschak, V. Shcherbina, and others.

Various aspects of legal responsibility for offenses in the field of intellectual property were studied in the works of such legal scholars as H. Androschuk, S. Bondarenko, Yu. Boshytskyi, O. Golovkova, S. Gordienko, I. Horyachev, A. Gurzhii, T. Gurzhii, V. Drobyazko, I. Zaporozhets, O. Zapototska, N. Kapitanenko, M. Kovaliv, I. Komarnytska, V. Kuzmichev, A. Maidanevych, O. Mykolenko, V. Mushenok, O. Orlyuk, O. Pidoprigora, M. Plugatyr, H. Rymarchuk, O. Svitlichnyi, O. Svyatotskyi, O. Kharitonova, O. Kharitonov, P. Tsybulev, T. Yaroshevska, and others. However, it should be stated that scientists are not unanimous in their views regarding the understanding of the concept of administrative responsibility, including responsibility for the violation of rights to the object of intellectual property rights, the features of such responsibility and further ways of its improvement.

The purpose of the article is to investigate the theoretical and practical aspects of administrative responsibility in the field of intellectual property based on the analysis of the works of Ukrainian scientists devoted to the problematics of the development and functioning of the institution of administrative

responsibility, the provision of a mechanism for combating misdemeanours, the norms of current legislation.

The main material. The analysis of numerous definitions of the category "administrative responsibility" existing in scientific and educational literature, the considerable number and content diversity of which is determined, among other by the lack of a normative definition of this concept, allows us to single out the main features (characteristics) of the latter, which are emphasized by modern scientists [1, p. 122-126; 2, p. 235-238].

Administrative responsibility, being a complex and multifaceted legal phenomenon, remains the subject of scientific discussions among administrative scientists for a long time, evidence of which is the existence of different approaches to defining its concept and understanding of its essence. In particular, it is considered as a socio-legal phenomenon (through the prism of administrative legal relations), as an institution of administrative law (a relevant set of administrative and legal norms), as a legal instrument (a means of implementing the coercive method of state administration, protection of social relations, ensuring legality and order of law, the application of punitive sanctions for committing an administrative offense, ensuring the normal functioning of the mechanism of administrative and legal regulation, etc.), but when formulating the concept of administrative responsibility, the emphasis is on one feature, which is defining from the scientist's point of view, or several of them that are synthesized in different variations [2, p. 242-243].

The analysis of the works of scientists devoted to the study of the problems of administrative responsibility for the violation of intellectual property rights and the provision of a mechanism for countering the offense allows us to assert that it is considered within the scope of the "sanction concept", within the scope of the concept of "responsibility - reprehension", in the objective (the concept of "responsibility – legal relations") and subjective

(the concept of "responsibility – obligation") meanings, as well as one of the core means of administrative coercion.

In particular, some scientists point out that administrative liability is one of the most common types of legal liability for offenses in the field of intellectual property, which involves the application by authorized bodies of appropriate sanctions for committing administrative offenses. Administrative responsibility for infringement on intellectual property rights is understood as a system of sanctions provided for by law, which may be applied by state bodies to individuals or legal entities for violation of intellectual property norms. This responsibility may include such measures as fines, confiscation of property, prohibition of certain types of activities, as well as other administrative sanctions aimed at preventing and punishing violations of intellectual property rights [3, p. 338].

Representatives of the next approach, in particular, such as A. Gurzhii, O. Zapototska, M. Plugatyr consider administrative responsibility for offenses in the field of intellectual property as a means of legal protection of the rights of authors of works of science, literature, art or other citizens or legal entities who have the exclusive right to the result of intellectual activity or to a means of individualization, as well as consumers, which is expressed in the appointment of the relevant subject of authority of administrative punishment to a person who has committed an offense in the field of intellectual property, and also contributes to the prevention of administrative offenses, crimes and civil law torts in this sphere of social relations on the basis of the norms of the current legislation on administrative offenses [4, p. 660].

In the system of state protection of the intellectual property rights of individuals, some scientists define administrative liability as the implementation of an administrative-legal sanction, which is manifested in the application by the court to a guilty person who has committed an administrative offense in the field of intellectual property, the punishment provided for by the Code of Ukraine on

Administrative Offenses and other legislative acts, in accordance with the procedure defined by law [5, p. 53].

Also, administrative liability for offenses in the field of intellectual property is considered by scientists as one of the institutions of administrative law and a form of ensuring one of the measures of coercion (enforcement), as a type of legal responsibility, as a means of preventing offenses and ensuring v of law, as a certain state of social relations that arises as a result violation of legislation [6, p. 133], and the institution of administrative and legal responsibility for offenses in the field of intellectual property is a guarantor of ensuring that authorities fulfill their functions and duties and serves as a lever for the effectiveness of preventing offenses and ensuring proper protection of intellectual property objects [6, p. 135].

Taking into account the modern scientific approaches of Ukrainian scientists to the understanding of the concept of administrative responsibility for the violation of intellectual property rights, as well as extrapolating the previously obtained theoretical ideas about the essence and main features of administrative responsibility to the subject area of this research [1, p. 122-127; 7, p. 153-157], under administrative responsibility for offenses in the field of intellectual property, we propose to understand the state's response to an administrative offense, which is manifested in the application by an authorized subject of state coercion measures - administrative penalties (measures of influence) provided for by law to the guilty person, as a result of which the latter suffers personal or property restrictions.

The Code of Ukraine on Administrative Offenses establishes administrative liability for the following misdemeanours: article 51-2 "Violation of rights to the object of intellectual property rights"; article 164-3 "Unfair competition"; article 164-6 "Demonstration and distribution of films without a state certificate for the right to distribute and demonstrate films"; article 164-7 "Violation of the conditions for the distribution and showing of films provided for by the state certificate for the right to distribute and show films"; article 164-

13 "Violation of legislation regulating the production, export, import of disks for laser reading systems, export, import of equipment or raw materials for their production" [8].

Without aiming to characterize the composition of administrative offenses within the scope of this study, we will focus our attention on the features of administrative responsibility in the field of intellectual property, which are emphasized by scientists.

A. Gurzhii, O. Zapototska, M. Plugatyr point out that the basis for bringing to administrative responsibility for the violation of rights to an object of intellectual property rights is an administrative tort, which entails a violation of legal norms, rights and legitimate interests of an unlimited number of persons (authors and other right holders, consumers, etc.), as well as capable of causing significant damage to the state economy and to other spheres of social life [4, p. 659].

Scientists draw attention to the fact that administrative responsibility for violations in the field of intellectual property (in most cases) is applied: 1) in extrajudicial procedural forms; 2) to persons who are not under the official authority of the body that applies it [5, p. 53].

M. Kovaliv emphasizes that administrative responsibility has specific features in terms of form and content. For the purpose of operative official response to the fact of an offense, the administrative legislation establishes a simplified, compared to the criminal, procedure for consideration and imposition of administrative sanctions, but the observance of the legal rights and interests of all interested parties is guaranteed. Administrative responsibility involves the application of administrative and legal sanctions of a personal, financial, property or organizational nature to individuals and officials who have committed relevant offenses. The sanction of the law expresses a public negative assessment of the illegal behavior of these persons and is primarily aimed at preventing the commission of new illegal acts [8, p. 145].

According to I. Komarnytska, the most important feature of administrative responsibility is that in most cases it is applied in extrajudicial procedural forms. There are many state bodies and officials who are authorized to impose administrative penalties on offenders. This is due to the features of administrative offenses - their danger, prevalence, and the need for prompt punitive action. Another feature of administrative responsibility, as the scientist points out, is that it arises for the commission of an administrative offense and is applied to persons who are not under the official authority of the body that applies responsibility [6, p. 134].

Insights from this study and perspectives for further research in this direction. Thus, on the basis of the investigation of experts in the field of law, a definitional analysis of administrative responsibility in the field of intellectual property was carried out, the concept was defined and the features of the latter were identified, in particular: 1) the role and place of administrative responsibility in the mechanism of administrative and legal regulation of social relations in the field of intellectual property are determined by its specific functions (restorative, compensatory, punitive, preventive, educational), which collectively ensure the implementation of orderliness and protection of these relations; 2) its occurrence is possible if there are three grounds - normative (the system of material and procedural rules of law that regulate this type of responsibility), factual (commitment of an administrative offense in the field of intellectual property) and procedural (an individual act issued by a competent subject on the basis of norms law, which determines the degree of responsibility for a specific person guilty of an administrative offense); 3) the presence of a wide range of entities authorized to consider cases of administrative offenses and impose administrative penalties; 4) special procedural order for its implementation; 5) being held liable does not release a person from the obligation to compensate for the damage caused as a result of a violation of the

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