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ECONOMIC AND LEGAL PRINCIPLES OF COMMERCIALIZATION OF INTELLECTUAL PROPERTY IN UKRAINE

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Abstract. *The subject* of the study is the conceptual, theoretical, empirical and methodological foundations of the legal and economic nature of the commercialization of intellectual property in Ukraine. *Methodology*. General and special methods of cognition were used in the process of research. The essence of the commercialization of intellectual property was evaluated on the legal and economic level, on the basis of the same and opposite parameters with the help of the dialectical method. The analysis created conditions for a multifaceted study of all characteristic features of the commercialization of intellectual property as an economic and legal phenomenon. The synthesis created conditions for summarizing the characteristic features of this process. The formal legal method allowed to correctly interpret the content of normative legal acts that determine the general legal regime of commercialization of intellectual property and the special legal regime of its forms with regard to their use in civil or economic circulation. *The purpose* of the article is to determine the economic and legal foundations of the commercialization of intellectual property in Ukraine as an economic and legal category at the theoretical and empirical level. The results of the study prove that the commercialization of intellectual property is a form of implementation of scientific developments and innovations in various spheres of human life, which is usually accompanied by obtaining a certain benefit and includes a number of forms of implementation regulated by administrative, civil and economic legislation. *Conclusion*. Commercialization of intellectual property in Ukraine consists of two conceptual approaches to the study and implementation of an economic and legal nature. Economists propose to consider commercialization as one of the constituent stages of the social life process of intellectual property objects along with creation, security and protection. Within this approach to the forms of commercialization of intellectual property, the following manifestations are distinguished: 1) use of the corresponding object within the limits of own production, transfer under contracts (licensing, leasing, commercial franchise) to other subjects or entry of rights to the object objects of intellectual property into the authorized capital of the enterprise; 2) capitalization and sale. Among the factors that determine the qualitative and quantitative indicators of commercialization, the most important are legislation, state management in this area, and the existence and implementation of measures to stimulate participants in this area. From a normative point of view, the phenomenon of commercialization of intellectual property has gained publicity in various levels of understanding, both from the standpoint of private law and public law. For both components of jurisprudence, the approach is generally accepted, according to which the given issue is considered with a view to ensuring public or private protection of intellectual property rights. Attention is paid to the set of tools provided by special legislation to higher education and scientific institutions in the field of commercialization of intellectual property. The provisions of the Ukrainian legislation defining the general legal regime of commercialization of intellectual property and the special legal regime of its forms are characterized.

Key words: commercialization, intellectual property, intellectual property law, forms of commercialization, economic principles, legal principles.

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1. Introduction

The results of creative and intellectual activity, as a corresponding good that satisfies the needs of specific users and society, as well as a form of expression of the creator's own creative identity, have always been an integral attribute of humanity and of man in particular. In the conditions of globalization of all spheres of society, the question of finding a place for such benefits has always been a priority, which has become especially acute in the circumstances of diversification of forms of realization of the results of creative and intellectual activity within the framework of manifestations of human coexistence unknown until recently, as an example of various types of computer networks, in particular, the Internet.

The results of creative and intellectual activity, like any other good, especially those that have a certain material embodiment, have been and are the object of relevant social relations, have been and are the subject of certain agreements made with a certain purpose. At the same time, one of the manifestations of the purpose regarding the circulation of similar goods in civil or economic turnover is the need to obtain a certain economic benefit, profit, which acquires a special color within the economic activity of certain legal entities and individuals. The demand for such objects also creates a corresponding supply, which correlates with a number of other factors. Such processes have a socio-economic and legal nature, which is perceived as a phenomenon of commercialization of intellectual property, which, taking into account the above, requires research from the standpoint of its legal and economic nature.

Of course, the commercialization of intellectual property could not stay away from the scientific views of economists, as evidenced by the works of: L. Oleinikova on the peculiarities of intellectual property as a product in the modern conditions of the development of the economy of Ukraine (Oleinikova, 2013), E. Stanislavik and K. Kovtunenko regarding the determination of the place of intellectual property objects in the content of the process of commercialization of the results of innovative activity (Stanislavik and Kovtunenko, 2011), I. Shuba on the classification of forms of commercialization of intellectual property objects (Shuba, 2014), I. Shushakova on the characteristics of commercialization of intellectual property objects at enterprises (Shushakova, 2015), A. Kodynetz and L. Maidanyk on the stages of commercialization of intellectual property (Kodynetz and Maidanyk, 2019).

The vast majority of legal scholars have studied the commercialization of intellectual property in terms of the legal regime of one or another form of this phenomenon, as well as its other legal manifestations. Thus, H. Mydzhyn drew attention to the need to create an effective system of executive authorities, ensuring their optimal structure and competence as a prerequisite for the progressive development of commercialization of intellectual property (Mydzhyn, 2021). T. Yaroshevska examined the constituent elements of relations with commercialization of objects of industrial property rights (Yaroshevska, 2021), and I. Okonkwo singled out Non-Fungible Token (NFT) as channels of commercialization of intellectual property (Okonkwo, 2022). I. Yakubivskyy studied the development of commercialization of intellectual property through the widest possible involvement of property rights to objects of intellectual property law in civil turnover (Yakubivskyy, 2019), and I. Koval projected the formation of the process of commercialization of objects of intellectual property law, created within the scope of activities of higher education institutions (Koval, 2014).

The above considerations contribute to the actualization of the knowledge of the economic and legal basis of the commercialization of intellectual property in Ukraine, which is the subject of this work.

2. Economic principles of intellectual property commercialization

The commercialization of intellectual property as a socio-economic category has a purely rational meaning, which consists in obtaining the maximum profit from the use of the results of creative and intellectual activity, within the limits of business turnover, whether civil or governmental. It is this pragmatic imprint that can be traced in a number of studies by scientists in the field of economics. In general, the intellectual activity of a person is considered as a behavior aimed at obtaining a certain economically effective result (a new method, technology, means of marketing promotion, means of individualization of a product or service, etc.) (Oleinikova, 2013). The given point of view only partially reflects the content of mental behavior of a person, the result of which is the result of creative activity, since not everything that is obtained has the appropriate economic efficiency, to say the least, quite often objects of intellectual property appear without the desire for certain legal consequences, including economic significance. It is proposed that the following characteristics should be attributed to intellectual property: its material essence; its distribution in all spheres of human activity; the temporal limits of the validity of rights to intellectual property objects; the presence of moral wear and tear in the case of the appearance of a new, more advanced technology, method or technique in

the absence of physical wear and tear. The above characteristics are more applicable to industrial property objects. There is a widespread opinion that the stable functioning of the intellectual property market plays an important role in the commercialization of intellectual property objects, which largely depends on such parameters as: legislation, state administration in this area, and the existence and implementation of incentive measures in this area for participants.

Economists propose to consider commercialization as one of the constituent stages of the process of social life of intellectual property objects along with such as creation, security, protection. Such a position fully corresponds to another one existing in the legal sphere, which will be discussed below, since the stages of creation, exercise and termination of the intellectual property right are actually demarcated, where the commercialization of such goods is realized within the middle limits.

The position that commercialization is the process of obtaining any benefit from the use of an object of intellectual property, and not only profit, is appropriate. However, in such conditions it is necessary to clarify – the benefit must have an economic shade, which is subject to appropriate assessment from the point of view of the good for which demand is formed. Within the economic turnover, the economic effect of the commercialization of intellectual property depends on the amount of additional income received from the use of a similar object in production.

According to another approach, the commercialization of intellectual property objects is considered one of the remaining forms of commercialization of innovative activity in the economic sphere (Stanislavik and Kovtunenko, 2011). To determine the effectiveness of commercialization, general parameters are taken into account, in particular, the results of marketing research on the introduction of innovative products and technologies to the market. Therefore, in order to increase the efficiency of commercialization of innovations in the enterprise, including the use of intellectual property objects, the following measures are proposed Provision of various state support for patent and inventive activities, creation of innovation funds with appropriate incentive mechanisms within the life stages of these innovations, introduction of various forms of training of employees of enterprises with the aim of increasing literacy in the field of passing through all stages of existence of innovations, introduction of administrative procedures regarding the accounting of such objects and management of their life in production, creation of a mechanism for transfer of similar technologies and an effective marketing system and sale of goods and services produced using similar innovative developments.

It is appropriate to study the measures of state regulation that contribute to the commercialization of intellectual property in comparison with modern developed countries (Shushakova, 2015). Measures of organizational, financial and regulatory support are proposed. Thus, in the EU countries, such tools as the development of the system of cluster scientific associations, technopark systems, and financial support in the aspect of state support of national producers are widely used in the EU countries for organizational support in the framework of state stimulation of the activities of scientific institutions and scientists in the EU countries innovations involved state support for the development of national brands, State support for small and medium enterprises, from regulatory and legal support in the context of stimulation of scientists in the transfer of innovations found a legislative enshrinement of the right of scientists to own shares in companies being formed, taking into account the period of performance of duties of the scientist in state scientific institutions, for entrepreneurship of persons of this category, for benefits in the field of taxation of royalties.

Such, which has appropriate grounds, is the justification in the economic context of the stages of commercialization of intellectual property, where the following are highlighted: 1) identification of the object of intellectual property, which is mediated by obtaining a law enforcement document; 2) marketing (identification of goods, among others, analysis of the market, sales channels, pricing, audit), which includes the promotion of goods and services on the market using intellectual property objects; 3) evaluation of such a product or service taking into account the intellectual component by cost, market (comparative), income methods; 4) insurance of intellectual property rights; 5) searching for users and concluding contracts with them on the use of intellectual property rights (Kodynetz and Maidanyk, 2019). Obviously, obtaining a security document is a mandatory stage in the case of identification of the relevant object of intellectual property rights, given the nature of the latter. In any case, each stage is mediated by the application of economic parameters to the characteristics of the object of intellectual property, directly or indirectly.

The approach from the position of economists to the definition of participants in relations with the commercialization of objects of intellectual property is quite common. In particular, such subjects of this activity are distinguished as: state administration bodies, creators, investors (customers of relevant innovative developments), enterprises (manufacturers of relevant products), competitors in

terms of homogeneity of the manufactured product with an innovative component (Stanislavik and Kovtunenko, 2011). According to another point of view, the subjects of commercialization of intellectual property objects are the state, an enterprise, a higher educational institution, a technology park, an innovation incubator, a natural person, etc. (Shushakova, 2015)

There is an approach to distinguish groups based on the functional affiliation of such participants, where among them are distinguished developers, intermediaries and buyers of the relevant object. The first group includes independent inventors (creators), scientific and educational institutions, the second group consists of commercialization centers, technology parks and business incubators, and finally the third group includes the state, venture funds and large companies (Shuba, 2014). Based on the results of the analysis of indicators of commercialization of intellectual property objects in Ukraine, it was concluded that the most productive participants of such are research institutions (Chugrii, 2017), which is explained by the special legal status of such legal entities according to their statutes and the relevant legal framework.

From the point of view of forms of commercialization of objects of intellectual property from the position of individual economists there is a simplified approach due to the understanding of such a process as the use of the corresponding object within the limits of own production, transfer under contracts (licensing, leasing, commercial franchise) to other subjects or adding rights to intellectual property objects to the authorized capital of the enterprise (Oleinikova, 2013).

More fundamental is the position according to which the forms of commercialization of intellectual property objects are divided into capitalization and disposal, where the methods of the first are contribution to the statutory fund of the company, accounting, and the second – use in own production, leasing, conclusion of license agreements, franchising, transfer of know-how, creation of a small business based on innovation, engineering – provision of technical assistance, industrial cooperation – transfer of rights within the framework of a joint venture (Shuba, 2014).

According to a more rational approach, it is proposed to separate the capitalization of intellectual property objects as part of intangible assets as indirect commercialization of intellectual property, which includes contribution to the authorized capital of another enterprise, acquisition of licenses and patents, free acquisition of these objects, acquisition, privatization or unification of enterprises, as well as direct commercialization (Shushakova, 2015). The latter includes 1) use in own production through manufacture of corresponding products, including through modernization of the production process and monopolization of sales markets; 2) certain forms of contracts on creation of new objects, their transfer for use on the basis of patents or licenses, franchising, leasing, engineering, commercial concession; 3) specific or qualified forms, for example, on the consequences of assignment of damages for infringement of certain intellectual property rights within the limits of patents or licenses.

Regarding the forms of commercialization, it is necessary to come to a conclusion about their diversity, where such criteria as: purpose of use can be clearly traced, place in the production cycle, value for the user. Among the forms of commercialization that are most significant for society and the development of the economy in terms of specific weight in the composition of capital, preference should be given to contracts as the most dynamic mechanism that mediates the movement of objects of intellectual property in civil and economic turnover, as well as ensuring access to such benefits for a significant number of users and society in general. The above is also confirmed by the statistical data of the authorized body of state management of intellectual property in Ukraine. Thus, according to the results of activity in this field in 2021, the state enterprise "Ukrainian Institute of Intellectual Property" provides the following indicators. In 2021, 1,922 contracts were registered for the transfer of exclusive intellectual property rights to industrial property objects, 212 licenses for their use, of which 98 were open, most of which related to the disposal of property rights to a trademark, while almost 500 such contracts were concluded and registered in respect of copyright works, the vast majority of which related to the disposal of property rights to computer programs (UKRPATENT Annual Report for 2021).

With regard to the economic principles of the commercialization of intellectual property, it is necessary to express the following. This socio-economic category has a purely rational meaning, which consists in obtaining the maximum profit from the use of the results of creative and intellectual activity within the limits of business turnover, whether civil or economic.

The characteristics that make intellectual property marketable include: its material essence; its distribution in all spheres of human activity; the time limits of validity of rights to intellectual property objects; the presence of moral wear and tear in the case of the appearance of a new, more advanced technology, method or technique in the absence of physical wear and tear.

Commercialization is considered in the narrow sense as the possibility of using an object of intel-

lectual property for the purpose of obtaining a certain benefit, and in the broad sense as one of the forms of commercialization of innovative activity in the economic sphere. The stages of commercialization, the participants of this process and its forms are highlighted.

Among the factors that determine the qualitative and quantitative indicators of commercialization, the most important are legislation, state management in this area, and the existence and implementation of measures to stimulate participants in this area.

3. Legal principles of commercialization of intellectual property in Ukraine

Since, as mentioned earlier, legislation is a directly proportional lever of society's influence on the commercialization of intellectual property, it is necessary to address this issue in more detail.

From a normative point of view, the phenomenon of commercialization of intellectual property has gained publicity in various levels of understanding, both from the standpoint of private law and from the standpoint of public law. For both components of jurisprudence, the approach is generally accepted, according to which the given question is considered with regard to the provision of public or private law protection of intellectual property rights, respectively. In addition, in the field of economics, the essence of intellectual property as the result of a certain type of activity, which can be appropriated and acts as intellectual capital, is important, and in the field of law – the ability to exercise a set of powers over the created or acquired result of intellectual property at one's discretion and independently of the will of other persons – the right of intellectual property. Therefore, jurists study the commercialization of intellectual property objects in the context of providing legal protection to them in the narrow or broad sense, where the first is a system of measures of a judicial and self-governing nature as a reaction to violations, and the second – a system of regulations, contracts, moral principles or customs of business transactions, which in absolute terms outline the circle of abstract rights of subjects of intellectual property law.

In the field of public law, more precisely, administrative law, there is an attempt to distinguish the category of commercialization in projection through the essential categories of administrative-legal protection of intellectual property rights (Mydzhyn, 2021). When considering the administrative responsibility in the structure of protection of intellectual property rights in its interrelated legal and social aspect, it is noted that it provides an opportunity to overcome the contradictions between the public and private interests of right holders and users inherent in the commercialization of intellectual property objects. Separately, it should be noted that administrative responsibility in the sphere of intellectual activity is applied in the case of committing a socially dangerous, illegal, criminal act (action or inaction) that interferes with the relations between the state and other participants in the commercialization or other use of the object of intellectual property. From the characteristics of the strategic directions of the development of the institute of protection of intellectual property rights, a conclusion is drawn about the regulation of the behavior of the participants in relations in the field of intellectual property, which is ensured by the creation of an effective structure of executive authorities, which correlates with the formation of their optimal structure and competence, as a result what is the progressive development of relations of commercialization of objects of intellectual property. This use of the term, which is the subject of this paper, means the following. From the author's point of view, commercialization is considered to be: 1) a type of use of the object of intellectual property rights; 2) a compromise means of resolving the conflict of public and private interests in the implementation of the content of intellectual property rights; 3) a type of social relations in which the implementation of the content of intellectual property rights is fully ensured.

The latter approach was developed in connection with the study of the content of such relations, where the object (invention, utility model, industrial design, trademark, geographical indication, trade name), participants (creators and derivative entities, which may be individuals, legal entities, subjects of public law), as well as the content, which includes the range of personal non-property and property rights (Yaroshevska, 2021). The mechanism of co-commercialization of industrial property rights as a type of intellectual property rights is considered as a separate category along with protection. Such an opinion can be accepted only in the case of a narrow understanding of the concept of "protection", which is identified with the above-mentioned narrow understanding of the concept of "protection" as a system of measures to respond to the violation of the relevant right, otherwise the commercialization of the object of new intellectual property will be covered by the content of protection, which includes all stages of the existence of the right to the object of intellectual property from the moment of its creation to its termination.

The author outlines the problem of commercialization of an object of industrial property created as a result of research and development work at an enterprise, where in fact commercialization is perceived precisely as a set of property rights that

are actually acquired by the customer of the corresponding research and development project – bots. Such an opinion is not perfect for the following reasons. First of all, this can be agreed only if the customer is a state scientific institution or a state higher education institution, and even then, if it is an order from the state budget, and the direct executor of such works is also the creator, is a scientific or scientific-pedagogical employee of such an organization, who creates a similar object within the framework of his own work duties, defined by an employment contract, etc. If commercialization is understood as a form of exercise of exclusive property rights over an intellectual property object that provides a corresponding benefit in material form, then there is no problem at all, regardless of the source of funding for such work. In such circumstances, it is clear that the employee is receiving compensation for the work performed, but the question is what portion of the total compensation received for the work performed, which includes other work, constitutes such compensation. When it comes to the organization itself, which is an employer that is actually also the executor of the R&D order, such an organization is also remunerated as part of the financing of its activities from the budget of the relevant level, another problem is that such financing will be somewhat disguised in terms of performing a specific task. The researcher's argumentation is based on the fact that in such circumstances the conditions for commercialization of an object of intellectual property rights are created from the moment of transfer of the property rights to such an object from the creator to the organization, and the latter already gets the opportunity to realize the economic value of the result of creative and intellectual activity through the corresponding contractual relations with other business entities. When such items are transferred free of charge, without corresponding remuneration, it is proposed to recognize such a phenomenon as opposed to commercialization by transfer of knowledge in the part related to know-how. It is correct to consider the commercialization of technology, including the object of intellectual property rights, as a form of technology transfer, which contributes to increasing the level of technological development of society and its participants, and is also directly related to making a profit. In addition to what has been said, it is reasonable to consider that the successful commercialization of industrial property objects is covered by the key interaction of the public administration sector, scientific institutions and industry.

However, there are studies that, unlike the previous, rather classical field of commercialization of objects, have revolutionary directions for the implementation of the results of creative intellectual activity, using the example of the spread of Non-Fungible Token (NFT) (Okonkwo, 2022). It is proposed to use NFT as a means of distribution of copyright objects through the Internet using digital currency, which is quite innovative and ensures: 1) the efficiency of a single transaction for marketing the object in question; 2) the possibility of simultaneous access to the object by an unlimited number of people; 3) the provision of a set of technological tools for diversifying the forms of marketing.

Rather, the private-law approach is supported when the commercialization of intellectual property is considered precisely as a diverse involvement of property rights in the objects of intellectual property rights in civil circulation (Yakubivskyy, 2019), while one of the manifestations of such involvement is the introduction of a patented invention into production with, among other things, results of creative and intellectual activity. The above distinguishes the static existence of property rights to such an object from the moment of its creation and acquisition of legal protection, passing the patent procedure on the example of an invention, from their dynamic life through mediation, in particular, the conclusion of civil law or economic law contracts. In addition, in such circumstances, the assumption regarding the recognition of commercialization of intellectual property rights in the absence of transfer of property rights to other subjects, but their implementation directly by the creator with the receipt of a certain property benefit, profit, is controversial.

The existing positive response to the last assumption indicates the perception of the commercialization of intellectual property in a broader context of options for the possible exercise of property rights of intellectual property, even without making a profit (Turchyn, 2020). It is proposed, following the example of the USA, to give priority to the subjects of commercialization of intellectual property, on the example of patenting of inventions at the stage of conception, to establishments and institutions that are financed by the state or joint private-state financing. The following methods of commercialization of intellectual property rights are distinguished: 1) using them in one's own activity; 2) transferring them to other entities; 3) including them in the authorized capital of a legal entity. Among the above mentioned methods, more attention is paid to the last one, which describes the organizational and legal forms of similar legal entities, among which scientific parks have a special status.

Taking into account what has been said about the participants in the commercialization of intellectual property relations, legal scholars pay attention to the question of the place of higher education institutions

and scientific institutions in this process. This approach is a development of the conceptual work of the World Intellectual Property Organization (WIPO), which encourages the development of higher education institutions and scientific institutions of their own intellectual property policy. Thus, according to the developed WIPO Intellectual Property Policy Template for Universities and Research Institutions, the commercialization of intellectual property is perceived as any of its implementation, which results in the receipt of any benefit by society, both property and non-property. At the same time, such forms of commercialization are distinguished as: transfer under licenses or contracts, contribution to joint activities or to the authorized capital of relevant organizations, non-profit use, donations, etc. (WIPO Policy Template, 2019).

Considering this issue, I. Koval tried to define commercialization as an economic and legal phenomenon mediated by a set of means of a legal, economic, technical and managerial nature, which are related to commercial activity in the implementation of the content of intellectual property rights (Koval, 2014). At the same time, attention is drawn to the need to improve the regulatory and legal provision of financing the activities of scientific units of higher education institutions, to determine the mechanism for the latter's use of funds received from such activities, to improve the legal regime of property rights to objects of intellectual property to be commercialized, etc.

These considerations are extended in connection with the development of self-governance and self-financing of higher educational institutions, giving them the opportunity to independently determine the forms and means of commercialization of intellectual property within the limits of educational and scientific activity, where the priority is the activity of organizations of such organizational and legal form aimed at producing knowledge for the benefit of society (Suglobov et al., 2021). That is, in essence, it is about introducing elements of control over economic efficiency into the intellectual property management policy, in particular, determining the appropriate measures directly within the framework of local regulatory documents, such as the charter of a higher education institution. At the same time, the formation of a system ensuring the maintenance and development of the scientific and technical potential of a higher education institution as a strategic resource and a factor of competitiveness is recognized as a priority task of such a policy.

The above mentioned researches of jurists concerning the commercialization of intellectual property can be summarized in the part of its relation with the protection of intellectual property rights, where the problems raised in the legal field are quite valid concerning: the distribution of rights between creators, employers and customers, especially within the framework of carrying out research and development works at the expense of budget funds, regulatory regulation of concluded license, investment and other agreements on transfer of technologies, methods of assessment of rights to objects of intellectual property rights, the role of state institutions in support of intellectual innovations, provision of patent information, etc.

The analysis of the theoretical basis will be incomplete without the study of the empirical part on the basis of the relevant legal acts. In fact, if one approaches the nature of commercialization as a type of social relation, the question of its legal regulation comes to the fore. In addition to the aforementioned WIPO and international conventions, the regulation of the commercialization of intellectual property is also reflected in the national legislation of Ukraine, where administrative and legal regulations regulate the peculiarities of state administration in this area, and civil and economic legislation determines direct forms or methods of commercialization and mechanisms of its implementation.

Analysis of the Fourth Book of the Civil Code of Ukraine (The Civil Code of Ukraine as amended on December 1, 2022, No. 435-IV) and relevant special normative acts on the basis of the Laws of Ukraine "On Copyright and Related Rights" (On Copyright and Related Rights: Law of Ukraine of December 1, 2022, No. 2811-IX), "On Protection of Rights to Inventions and Utility Models" (On Protection of Rights to Inventions and Utility Models: Law of Ukraine as amended on July 21, 2020, No. 3687-XII), "On Protection of Rights to Industrial Designs" (On Protection of Rights to Industrial Designs: Law of Ukraine as amended on July 21, 2020, No. 3688-XII), "On Protection of Rights to Trademarks for Goods and Services" (On Protection of Rights to Trademarks for Goods and Services: Law of Ukraine as amended on July 1, 2020, No. 3689-XII), etc. indicates the enumeration of types of personal non-property and property rights in relation to certain objects of law intellectual property, which in their essence are not exhaustive within the limits of the relevant regulations and ensure the scope of commercialization of intellectual property. Chapter 16 of the Commercial Code of Ukraine (as amended on July 29, 2022, No. 436-IV of the Commercial Code of Ukraine) defines the scope of commercialization of intellectual property for economic turnover in relation to such objects as an invention, a utility model and industrial design, a trademark, a trade name, a geographical indication, a trade secret, i.e., the results of creative and intellectual activity in the field of science and

technology and in the field of individualization of business entities and the goods and services produced by them. At the same time, it is mentioned that in case of agreements on commercialization of intellectual property, the intellectual property rights to such objects are added to the authorized capital of the business entity as a contribution.

Taking into account the above and considering the nature of civil and economic contracts as the most common form of commercialization of intellectual property, civil and economic legislation operates in such categories as 1) a contract for the performance of scientific research or research and development works and technological works; 2) transactions on the disposal of intellectual property rights, including a license to use an object of intellectual property rights, a license agreement, an agreement on the creation and use of an object of intellectual property rights by order, an agreement on the transfer of exclusive property rights to intellectual property, other transactions on the disposal of property rights to intellectual property; 3) commercial concession; 4) other contracts that may indirectly involve objects of intellectual property rights in civil or economic turnover (renting, leasing, investment transactions, etc.).

In addition to the above, Ukrainian legislation contains norms ensuring the management of a number of processes directly or indirectly related to the phenomenon of commercialization of intellectual property. Among them is the Law of Ukraine "On State Regulation of Activities in the Sphere of Transfer of Technologies" (On State Regulation of Activities in the Sphere of Transfer of Technologies: Law of Ukraine as amended on September 20, 2019, No. 143-V), the provisions of which define the legal, economic, organizational and financial principles of state regulation of activities in the sphere of transfer of technologies with the aim of ensuring the effective use of the scientific, technical and intellectual potential of Ukraine, the manufacturability of production, the protection of property rights to domestic technologies and/or their components in the territory of countries where their use is planned or implemented, the expansion of international scientific and technical cooperation in this sphere. Agreements on transfer of technologies concerning scientific and scientifically applied results, objects of intellectual property rights in their variability have become widespread within the limits of this normative legal act, in the content of which the order and sequence of operations regarding such objects, the process of production, sale and storage of products, provision of services are determined. That is, such contracts can have objects of intellectual property both as a direct and as an indirect subject.

The Law of Ukraine "On the Priority Directions of Innovation Activity in Ukraine" (On the Priority Directions of Innovation Activity in Ukraine: Law of Ukraine as amended on February 1, 2022, No. 3715-VI) is adjacent to the given law within the scope of this study, as it provides an innovative model of economic development through the concentration of state resources, including intellectual activity, on the priority areas of scientific and technical renewal of production, increasing the competitiveness of Ukrainian products on the domestic and foreign markets, as well as in Art. 6 of which defines state measures to support the transfer of technologies, in particular through the commercialization of intellectual property.

The Law of Ukraine "On Scientific and Scientific-Technical Activities: Law of Ukraine as amended on March 30, 2021, No. 848-VIII), which provides the legal basis for the creation of mechanisms for the commercialization of the results of scientific research, which are objects of intellectual property rights.

The foregoing creates conditions for drawing important conclusions about the legal basis of commercialization of intellectual property rights in Ukraine. This category in law is reflected both in the theoretical work of legal scholars and in empirical sources, which are used by normative legal acts, which determine the legal regime of this phenomenon.

The national legal system of Ukraine in the components of private and public law contains normative regulations regulating the commercialization of objects of intellectual property rights.

Legal scholars consider the commercialization of intellectual property objects as: 1) a type of use of the object of intellectual property right; 2) a compromise means of resolving the conflict of public and private interests in the implementation of the content of intellectual property rights; 3) a type of social relations in which the implementation of the content of intellectual property rights is fully ensured.

The following methods of commercialization of intellectual property rights are distinguished: 1) use of such rights in one's own activity; 2) transfer of such rights to other entities; 3) their inclusion in the authorized capital of a legal entity.

In the legislation of Ukraine, administrative-legal norms determine the peculiarities of state management in this area, and civil and economic law determine direct forms or methods of commercialization and mechanisms of its implementation.

4. Conclusions

The results of this study can be presented as follows. Commercialization of intellectual property in Ukraine has two conceptual approaches to the study and implementation of an economic and legal nature.

Economists propose to consider commercialization as one of the constituent stages of the process of social life of intellectual property objects along with creation, security and protection. The position that commercialization is the process of obtaining any benefit from the use of an object of intellectual property, and not only profit, is appropriate. However, under such conditions, a clarification is necessary – the benefit must have an economic aspect that is subject to appropriate assessment from the point of view of the good for which demand is formed.

The position regarding the selection in the economic context of the following stages of commercialization of intellectual property is supported: 1) identification of the object of intellectual property, which is mediated by obtaining a law enforcement document; 2) marketing (identification of the product, etc., analysis of the market, sales channels, pricing, audit), which includes promotion of goods and services to the market using intellectual property objects; 3) evaluation of such a product or service taking into account the intellectual component by cost, market (comparative), income methods; 4) insurance of intellectual property rights; 5) searching for users and concluding contracts with them on the use of intellectual property rights.

Within this approach to the forms of commercialization of intellectual property, the following manifestations are emphasized: 1) use of the corresponding object within the limits of own production, transfer under contracts (licensing, leasing, commercial franchise) to other subjects or entering rights to the object of intellectual property into the authorized capital of the enterprise; 2) capitalization and sale.

Among the factors that determine the qualitative and quantitative indicators of commercialization, the most important are legislation, state management in this area, and the existence and implementation of measures to stimulate participants in this area.

From a normative point of view, the phenomenon of commercialization of intellectual property has gained publicity in various levels of understanding, both from the standpoint of private law and from the standpoint of public law. For both components of jurisprudence, the approach is generally accepted, according to which the given question is considered with regard to the provision of public or private law protection of intellectual property rights, respectively.

Legal scholars consider commercialization as: 1) a type of exploitation of the object of intellectual property rights; 2) a compromise means of resolving the conflict of public and private interests in the implementation of the content of intellectual property rights; 3) a type of social relations in which the implementation of the content of intellectual property rights is fully ensured. The constituent elements of such relationships are highlighted, with a special place for scientific and academic institutions among the participants. Special attention is paid to the issue of commercialization of intellectual property using the Internet. The forms of commercialization of intellectual property proposed by economists are supported.

Attention is drawn to the set of instruments provided by special legislation for higher education and scientific institutions in the field of commercialization of intellectual property.

The provisions of the Ukrainian legislation defining the general legal regime of commercialization of intellectual property and the special legal regime of its forms are characterized.

References:

Oleinikova, L. G. (2013). Osoblyvosti intelektualnoi vlasnosti yak tovaru v suchasnykh umovakh rozvytku ekonomiky Ukrainy [Features of intellectual property as a commodity in today's economy of Ukraine]. *Efficient economy*, 6, 187–204. Available at: http://www.economy.nayka.com.ua/?op=1&z=2091 (in Ukrainian)

Stanislavik, E. V., & Kovtunenko, K. V. (2011). Komertsializatsiia rezultativ innovatsiinoi diialnosti [Commercialization of innovation activities results]. *Proceedings of the Odessa Polytechnic University*, 2(36), 301–306. (in Ukrainian)

Shuba, I. V. (2014). Analiz form komertsializatsii obiektiv intelektualnoi vlasnosti [Analysis of forms of commercialization of intellectual property objects]. *Vestnik HPI*, 23, 150–156. (in Ukrainian)

Shushakova, I. K. (2015). Osoblyvosti komertsializatsii intelektualnoi vlasnosti na vitchyznianykh pidpryiemstvakh [Peculiarities of commercialization of intellectual property for domestic enterprises]. *Financial and credit activity: problems of theory and practice*, 2, 133–141. (in Ukrainian)

Kodynetz, A. O., & Maidanyk, L. R. (2019). Commercialization of Intellectual Property Rights as Foundation for Innovation. *Science and Innovation*, 15(4), 81–92.

Mydzhyn, H. Ye. (2021). *Administratyvno-pravovyi zakhyst prav intelektualnoi vlasnosti v Ukraini* [Administrative and legal protection of intellectual property rights in Ukraine]. (PhD Thesis), Lviv: State University of Internal Affairs. (in Ukrainian)

Yaroshevska, T. V. (2021). *Okhorona prav promyslovoi vlasnosti: pryvatnopravovyi aspekt* [Protection of industrial property rights: private-law aspect] (doctoral dissertation), Odessa: National University "Odessa Law Academy". (in Ukrainian)

Okonkwo, I. E. (2022). NFT, copyright and intellectual property commercialization. *International Journal of Law and Information Technology*, 29(4), 296–304.

Yakubivskyy, I. Y. (2019). *Problemy nabuttia, zdiisnennia ta zakhystu mainovykh prav intelektualnoi vlasnosti v Ukraini* [Problems of acquisition, exercising and protection of intellectual property rights in Ukraine] (doctoral dissertation), Lviv: Ivan Franko National University of Lviv. (in Ukrainian)

Koval, I. (2014). Problemy komertsializatsii vyshchymy navchalnymy zakladamy prava na obiekty intelektualnoi vlasnosti [Problems of commercialization of rights on the objects of intellectual property by higher educational establishments]. *Theory and practice of intellectual property*, 4, 11–18. (in Ukrainian)

Chugrii, N. A. (2017). Komertsializatsiia intelektualnoi vlasnosti yak neobkhidna umova innovatsiinoho rozvytku pidpryiemstva [Commercialization of intellectual property as a prerequisite for innovative development enterprise]. *Black Sea Economic Studies*, 17, 137–141. (in Ukrainian)

UKRPATENT annual report for 2021. Available at: https://ukrpatent.org/atachs/zvit-eng-2021.pdf

Turchyn, L. Y. (2020). *Mainovi prava intelektualnoi vlasnosti yak vnesok do statutnoho kapitalu hospodarskykh tovarystv* [Intellectual property rights as a contribution to the charter capital of the companies]. (PhD Thesis), Lviv: Ivan Franko National University of Lviv. (in Ukrainian)

WIPO Policy Template (2019). WIPO Intellectual Property Policy Template for Universities and Research Institutions.

Suglobov, A. E., Orlova, K. S., Kalliopin, A. K., Katys, P., & Novikov, A. V. (2021). Intellectual property policy of universities: specific regulation. *Revista Tempos e Espacos Educacao,* 14(33). DOI: https://doi.org/10.20952/revtee.v14i33.16155

The Civil Code of Ukraine as amended on December 1, 2022, № 435-IV. Available at: https://zakon.rada.gov.ua/laws/show/435-15?lang=en#Text

About Copyright and Related Rights: Law of Ukraine on December 1, 2022, № 2811-IX. Available at: https://zakon.rada.gov.ua/laws/show/2811-20?lang=en#Text

On Protection of Rights to Inventions and Utility Models: Law of Ukraine as amended on July 21, 2020, № 3687-XII. Available at: https://zakon.rada.gov.ua/laws/show/3687-12?lang=en#Text

On Protection of Rights to Industrial Designs: Law of Ukraine as amended on July 21, 2020, № 3688-XII. Available at: https://zakon.rada.gov.ua/laws/show/3688-12?lang=en#Text

On Protection of Rights to Trademarks for Goods and Services: Law of Ukraine as amended on July 1, 2020, № 3689-XII. Available at: https://zakon.rada.gov.ua/laws/show/3689-12?lang=en#Text

The Commercial Code of Ukraine as amended on July 29, 2022, № 436-IV. Available at: https://zakon.rada.gov.ua/laws/show/436-15?lang=en#Text

On State Regulation of Activity in the Sphere of Transfer of Technologies: Law of Ukraine as amended on September 20, 2019, № 143-V. Available at: https://zakon.rada.gov.ua/laws/show/143-16?lang=en

On the Priority Directions of Innovation Activity in Ukraine: Law of Ukraine as amended on February 1, 2022, № 3715-VI. Available at: https://zakon.rada.gov.ua/laws/show/3715-17?lang=en#Text

On Scientific and Scientific-Technical Activities: Law of Ukraine as amended on March 30, 2021, № 848-VIII. Available at: https://zakon.rada.gov.ua/laws/show/848-19?lang=en#Text

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