

# THE THEORY OF TRANSFORMATION OF INTELLECTUAL PROPERTY LEGAL REGIMES USING BLOCKCHAIN TECHNOLOGIES: INTERNATIONAL CONTEXT

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**Abstract.** This article is dedicated to the study of the theory of transformation of intellectual property legal regimes through blockchain technologies on an international scale. It focuses on three thematic blocks: firstly, defining the essence of blockchain technologies; secondly, analysing international blockchain technology standards; and thirdly, exploring variations in the use of blockchain technologies for the registration of intellectual property objects. The subject of the study is the social relations in the field of intellectual property and the mechanisms for their regulation. *Methodology.* The article employs scientific methods of cognition and doctrinal resolution of issues related to the use of digital tools in the regulation of social relations. This encompasses formal-logical and dialectical methodologies. A variety of empirical techniques, including synthesis, deduction, and statistical analysis, were employed. *Results.* The study reveals the absence of a direct indication of the use or intent to use distributed ledger technology, otherwise known as blockchain technology. The study demonstrates the significance of utilising blockchain technology in maintaining the customs register to account for intellectual property objects protected by law. This ensures the impossibility of unauthorised alteration or deletion of information about intellectual property objects, as provided by distributed ledger technology. These legal relations emerge in the course of entering information into the aforementioned registers, making modifications (updates), and providing information to interested parties. The use of blockchain technologies in the formation of the register of issued certificates of state registration of copyright for a work is justified.

**Keywords:** legal theory, legal regimes, intellectual property, blockchain technologies, international private law, property rights.

**JEL Classification:** O34, K33, D23

## 1. Introduction

The advent of distributed ledger technology, or "blockchain," has emerged as a pivotal domain of digitalization in Ukraine. This technological evolution has indirectly shaped the legal landscape in the information sector, giving rise to novel forms and types of legal relations and introducing distinctive principles governing the functioning of the public sector. Distributed ledger technology will be legitimised in Ukraine in the following areas: determining the legal status of virtual assets and virtual crypto assets (in particular, introducing special

conditions for taxation of transactions with virtual assets/currencies, creating transparent and effective mechanisms for transferring rights to any virtual assets); creating the concept and conditions for transparency of state procedures and development of public monitoring tools; implementing the technology in the work of state registers (The official website of the Ministry of Digital Transformation, 2021). At the same time, there is no direct evidence that the distributed registry technology has been used or is intended to be used. The above is subject to identification only on the basis of analysis of regulatory legal acts

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and program documents of public authorities, which establish a new – information and telecommunication model of organisation of specific social relations.

Within the framework of legal relations in the field of intellectual property, a special aspect is the protection of copyrights to intellectual property in the context of digitalisation. With the rapid development of technology and the opening of customs borders, copyright protection of intellectual property is a key aspect of international trade and economic development, as provided for in international documents such as the Council Regulations of the European Union and, in particular, the Agreement on Trade-Related Aspects of Intellectual Property Rights (Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994). As for individual cases, it is difficult to disagree with the position that counterfeit or pirated products do not cause property damage to the owners of intellectual property rights. Moreover, infringement of intellectual property rights contributes to the economic stability of the Ukrainian state as a whole.

In such circumstances, it is the customs authorities that are entrusted with the function of primary protection structures against the illegal movement of goods, which leads to copyright infringement. Given the importance of the process of copyright protection of intellectual property, it is proposed to distinguish three main aspects: 1) defining the essence of blockchain technologies; 2) analysing international standards of blockchain technologies; 3) variations in the use of blockchain technologies in the registration of intellectual property. The study of these aspects will allow to analyse current approaches and challenges in the field of intellectual property protection and its legal regimes, which is necessary to ensure economic security and law and order in the state.

## 2. International Legal Characteristics of Blockchain Technologies

As for the essence of the distributed ledger technology, the prototype of the idea was formed by W. Scott Stornetta and Stuart Haber as a technology for creating a secure archive that allows storing records without disclosing their content. The technology in question is known as blockchain. This is a distributed electronic ledger which stores data elements in digital groups with time stamps called blocks. Each block contains a digital code, known as a "hash". The "hash" of a completed block is displayed in the next block. In order to change one block, it is necessary to change other blocks. This is a preventive measure against unauthorised interference with the system. The key to describing the substantive components of distributed ledger technology is that it is constantly evolving in

technological, national identification and industry aspects (Kud, Kucheriavenko, Smychok, 2019: 16).

In examining the practical implementation of distributed ledger technology, it becomes evident that the issue encompasses two fundamental criteria: a) legal; b) technological. In order to optimise the potential of distributed ledger technology, it is essential to integrate decentralised systems with the pertinent legal framework (Krychevska, 2018).

Directions for intensifying the use of distributed ledger technology in Ukraine are related to international standards of the need to stimulate the information technology sector (Okinawa Charter on the Global Information Society, 2000; Declaration on a European policy on new information technologies, 1999; Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, 2018; Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union, 2016) the priority tasks of the Ministry of Digital Transformation, namely: implementation of measures aimed at forming high-quality methods of electronic interaction of state electronic information resources and an integrated approach to electronic identification; preparation of the regulatory framework for digital transformation; formation of the state policy of cryptographic and technical protection of information, cyber defence; ensuring the introduction of virtual assets, blockchain and tokenisation, artificial intelligence, and so forth (The Resolution of the Cabinet of Ministers of Ukraine "Issues of the Ministry of Digital Transformation", 2019).

Thus, the state of differentiation of principles, forms and types of legal relations in the information sphere based on distributed ledger technology is gaining new importance for the Ukrainian state, and the challenges of globalisation mediate the need for urgent streamlining of the selected approaches.

## 3. Variability of the Use of Blockchain Technology in Legal Relations for the Protection of Intellectual Property

The distributed registry technology is used in the creation and operation of various state registers aimed at recording and storing relevant information. State Register of Property Rights to Real Estate, the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations, the Register of Public Organisations, the State Register of Printed Mass Media and News Agencies as Information Entities, the Unified Register of Special Forms of Notarial Documents, the Unified State Register of

Regulatory Legal Acts, etc. operate on the basis of this technology. This technology also provides an up-to-date record of legally protected intellectual property in the Customs Register (The Order of the Ministry of Finance of Ukraine "On Approval of the Procedure for Registration in the Customs Register of Intellectual Property Rights Protected in accordance with the Law", 2020). Common to each of these registers is the need to preserve the information contained in them and ensure that it cannot be unauthorisedly altered or deleted, which is ensured by the distributed registry technology.

These legal relations arise when entering information into these registers, changing (updating) them, as well as obtaining information from these registers by other interested parties.

It is advisable to use blockchain technologies to create a register of issued certificates of state registration of copyright in a work. As of today, consideration of an application and decision on registration of copyright in a work is carried out within one month from the date of receipt of the application by the State Enterprise "Ukrainian Institute of Industrial Property" (The Resolution of the Cabinet of Ministers of Ukraine "On State Registration of Author's Rights to Works of Science, Literature and Art"; The Resolution of the Cabinet of Ministers of Ukraine "On State Registration of Copyright and Agreements Concerning Property Rights to a Work", 2021). The certificate shall be issued to the author or the person holding the copyright directly or sent to the address specified in the application. If there are several authors, the certificate may be issued to each of them, provided that a document confirming payment of the state fee for the issuance of each certificate is submitted. The objects of copyright are works in the field of science, literature and art, namely: 1) literary written works of artistic, journalistic, scientific, technical or other nature (books, brochures, articles, etc.); 2) speeches, lectures, addresses, sermons and other oral works; 3) computer programs; 4) databases; 5) musical works with or without lyrics; 6) dramatic, musical-dramatic works, pantomimes, choreographic and other works created for stage performance and their staging; 7) audiovisual works; 8) works of fine arts; 9) works of architecture, urban planning and gardening; 10) photographic works, including works created by methods similar to photography; 11) works of applied arts, including decorative weaving, ceramics, carving, casting, art glass, jewellery, and so forth (The Law of Ukraine "On Copyright and Related Rights", 2023). In order to obtain a copyright registration certificate for a work, a certain list of documents must be submitted. These include the following: an application for copyright registration of a work; a copy of the work in the prescribed material form; a document certifying

the fact and date of publication of the work (if the work has been published); a document on payment of the fee for preparation for registration and a document on payment of the state fee for issuance of the registration certificate or copies of documents confirming the right to exemption from payment of the fee and the state fee; a document on payment of the state fee for issuance of the certificate or a copy of the document confirming the right to exemption from payment of the fee for issuance of the certificate; a power of attorney issued in accordance with the established procedure, if the application is submitted by an authorised person on behalf of the author or his/her heir, or a copy of the power of attorney certified in accordance with the law; a document certifying the right to inherit the author's property right (if the application is submitted by the author's heir); instructions on the use of the database and a description of the database structure (for registration of copyright in the database); an abstract, which should contain the title of the work, its location (address), architectural characteristics and parameters, time and place of creation (for registration of copyright in works of architecture, urban planning, landscape and monumental art) (Registration of the right to a work. Diia portal).

Another option for using blockchain technology may be to ensure electronic document management in certain government agencies and institutions, as well as a system of electronic interaction between executive authorities, electronic interaction of state electronic information resources, etc.

A striking example of practical implementation is the system of electronic interaction of state electronic information resources (Trembita system), which is defined as a modern organisational and technical solution that ensures secure interagency information interaction between state authorities, local governments and business entities via the Internet by exchanging electronic messages between their information systems (The system of electronic interaction of state digital information resources, 2021). At present, there is no such register of issued copyright certificates for a work, but its implementation on the basis of blockchain technology is advisable. The decentralisation of this system, its fault tolerance and high level of security demonstrate the potential of the technology.

The advantages of such a system can also be applied in the field of intellectual property protection, in particular, in the interaction of the State Organisation "Ukrainian National Office for Intellectual Property and Innovations" (The Order of the Cabinet of Ministers of Ukraine "Certain Issues of the National Intellectual Property Authority", 2022) with other national executive authorities (including the Ministry of Economic Development and Trade and its regional

offices, customs and tax authorities, law enforcement agencies), as well as with international partners whose main activities are related to intellectual property protection.

#### **4. The Use of Blockchain Technology in the Registration of Intellectual Property in Customs Authorities**

One of the key aspects of the copyright protection process is the registration of intellectual property with the customs authorities. This procedure is regulated primarily by the Customs Code of Ukraine (2012) and the Rules of Customs Control over the Movement of Goods Containing Intellectual Property Objects Across the Customs Border (2001), the Procedure for Registration in the Customs Register of Intellectual Property Rights Protected in accordance with the Law (2012), and the Procedure for the Application of Measures to Promote the Protection of Intellectual Property Rights and Interaction of Customs Authorities with Right Holders, Declarants and Other Stakeholders (2020), etc. At the same time, registration in the customs register is provided only for those objects that have been duly registered as intellectual property objects in accordance with the procedure established by law and have a security document (Borsa: 142).

Pursuant to Article 398(2) of the Customs Code of Ukraine, a person who has intellectual property rights and has sufficient grounds to believe that his or her rights to an intellectual property object are or may be violated during the movement of goods across the customs border of Ukraine has the right to submit a free of charge application to the State Customs Service of Ukraine for assistance in protecting his or her rights to an intellectual property object in order to register such object in the Customs Register of Intellectual Property Objects. As M. I. Korostashova points out, the meaning of the term "Customs Register of IPR (Intellectual Property Rights)", as well as the procedure for registering objects there, has been subject to significant changes: according to the Resolution of the Cabinet of Ministers of Ukraine of April 28, 2001, No. 412, the register was called the "Register of Intellectual Property Objects", and a fee was charged for registration; according to the Resolution of the Cabinet of Ministers of Ukraine of April 13, 2007 No. 622, the register was called the "Register of Intellectual Property Rights Objects"; the introduction of EU Regulations in 2020 (No. 608/2013 of June 12, 2013; No. 1352/2013 of December 4, 2013; No. 608/2013, etc.) established a new form of the customs register, which marked the beginning of its maintenance (Korostashova, 2024).

Currently, pursuant to the Procedure for Registration in the Customs Register of Intellectual Property

Rights Protected in accordance with the Law No. 648 (2012) dated 30.05.2012, the register has been slightly renamed to the "Customs Register of Intellectual Property Rights" and the fee for registration of intellectual property rights in this register has been cancelled. Analysing this legal act from the point of view of the administrative simplified procedure, since the registration of an intellectual property object in the customs register involves the disposal of rights by persons, application to public authorities and adoption of an individual (administrative) act, the following are the stages of this procedure:

1) This is the initial phase of the document preparation process. As previously stated, the proprietor of an intellectual property object that has grounds to believe that their intellectual property rights are or may be infringed during the transit of goods across the Ukrainian customs border is required to submit an application to the State Customs Service of Ukraine for the registration of such object (which encompasses copyright and related rights, inventions, industrial designs, trademarks, geographical indications, plant varieties, and so forth) in the customs register. The application must be accompanied by documents that confirm the ownership of the aforementioned object, such as a patent or certificate. If the application is submitted through a representative, the application shall be accompanied, in addition to the documents confirming the ownership, by a document confirming the representative's powers (clause 2 of Section II. Submission and Consideration of Applications for Registration of Intellectual Property Rights in the Customs Register, Applications for Extension of the Term of Registration of Intellectual Property Rights in the Customs Register, Entry of Information into the Customs Register and its Maintenance) (The Order of the Ministry of Finance of Ukraine "On Approval of the Procedure for Registration in the Customs Register of Intellectual Property Rights Protected in accordance with the Law", 2012).

2) The stage of filing an application with the customs authority. In accordance with the provisions of the current legislation, the law does not limit the right holder's ability to apply to the State Customs Service of Ukraine in paper or electronic form through an electronic service using an electronic digital signature. After the application is filed, it is registered with a registration number and date, which will allow tracking the movement and stages of consideration of the application (clause 9 of Section II. Submission and Consideration of Applications for Registration of Intellectual Property Rights in the Customs Register, Applications for Extension of the Term of Registration of Intellectual Property Rights in the Customs Register, Entry of Information into the Customs Register and its Maintenance) (The Order

of the Ministry of Finance of Ukraine "On Approval of the Procedure for Registration in the Customs Register of Intellectual Property Rights Protected in accordance with the Law", 2012).

3) Consideration of the application by the customs authority. The receipt and assignment of a registration number and date to the application indicates the beginning of the procedure for its consideration. The authorised customs authority checks: whether the applicant has legal grounds for submitting the application; the procedure for filling in the application and the documents attached to it; the presence of characteristic features of the goods that may be detected by the customs authorities during customs control and customs clearance of goods, and so forth (clause 10 of Section II. Submission and Consideration of Applications for Registration of Intellectual Property Rights in the Customs Register, Applications for Extension of the Term of Registration of Intellectual Property Rights in the Customs Register, Entry of Information into the Customs Register and its Maintenance).

4) Decision-making by the customs authority. Upon completion of the procedure for consideration of an application for registration of an intellectual property right in the customs register, the authorised body of the State Customs Service of Ukraine shall decide on registration of the intellectual property right in the customs register or refusal to register it. If a positive decision is made, registration is carried out within 30 working days from the date of registration of such an application (if submitted in paper form) or automatic registration through information and telecommunication systems (clauses 17-19 of Section II. Submission and Consideration of the Application for Registration of Intellectual Property Rights in the Customs Register, Application for Extension of the Term of Registration of Intellectual Property Rights in the Customs Register, Entry of Information into the Customs Register and its Maintenance) (The Order of the Ministry of Finance of Ukraine "On Approval of the Procedure for Registration in the Customs Register of Intellectual Property Rights Protected in accordance with the Law", 2012).

After entering an intellectual property object into the Customs Register of Intellectual Property Rights, the right holder (or, under certain conditions, its representative) is obliged to regularly update information about such object, as well as to timely provide the customs authority with information on any changes relating to the intellectual property object. The right holder is obliged to immediately, but not later than 10 working days from the date of such changes and/or additions, notify the customs authority of any changes to the registered intellectual property right (clause 33 of Section II. Submission

and Consideration of Applications for Registration of Intellectual Property Rights in the Customs Register, Applications for Extension of the Term of Registration of Intellectual Property Rights in the Customs Register, Entry of Information into the Customs Register and its Maintenance) (The Order of the Ministry of Finance of Ukraine "On Approval of the Procedure for Registration in the Customs Register of Intellectual Property Rights Protected in accordance with the Law", 2012).

Thus, the registration of intellectual property rights by the State Customs Service of Ukraine is an important stage of copyright protection, as it ensures the recording of intellectual property in the customs register, which allows timely detection and detention of counterfeit products. The procedure for registration of intellectual property rights in the customs register includes the following main stages: 1) preparation of documents; 2) submission of an application to the State Customs Service together with supporting documents of ownership in paper or electronic form; 3) consideration of the application and verification of its correctness for further identification of the object during customs control; 4) decision-making, and in case of a positive decision, the object is registered in the customs register within 30 business days. In this case, the use of blockchain technology guarantees the possibility of entering or replacing the information contained in the register.

## 5. Conclusions

To sum up, it is evident that blockchain technologies are used in various spheres of social relations without a direct reference to blockchain technologies in the legislation. The differentiation of principles, forms and types of legal relations in the information sphere based on blockchain technology is gaining new importance for the Ukrainian state. The challenges of globalisation necessitate the urgent regulation of certain approaches to the protection of intellectual property rights. The following ways of using blockchain technologies to regulate intellectual property relations are highlighted: 1) in the formation of registers reflecting the status of protection of intellectual property rights; 2) in the interaction of the State Organisation "Ukrainian National Office for Intellectual Property and Innovations" with other national executive authorities and international partners whose main activities are related to the protection of intellectual property rights. The authors substantiate the expediency of maintaining a register of certificates confirming copyright in a work. The article analyses the procedure of registration of intellectual property objects by the State Customs Service of Ukraine as a tool that ensures the entry of an intellectual property object into the customs register, which allows timely detection and detention of counterfeit products.

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