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**ПРАВО  
ІНТЕЛЕКТУАЛЬНОЇ  
ВЛАСНОСТІ  
ЄВРОПЕЙСЬКОГО СОЮЗУ ТА  
ЗАКОНОДАВСТВО УКРАЇНИ**

**Intellectual  
Property Law  
of the European Union and  
the Legislation of Ukraine**

Під редакцією Ю.М. Капіці

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У монографії розглянуто законодавство Європейського Союзу у сфері охорони інтелектуальної власності, розвиток законодавства з урахуванням практики застосування, рішень Суду справедливості, перспективи гармонізації. Наведені результати комплексного порівняльного аналізу регулювання правовідносин у сфері охорони інтелектуальної власності в Європейському Союзі та Україні, надані рекомендації щодо адаптації законодавства України відповідно до стандартів ЄС.

Видання містить переклад актів законодавства ЄС у сфері охорони інтелектуальної власності, трансферу технологій, більшість з яких опубліковано вперше, глосарій термінів законодавства ЄС, інформаційні джерела щодо права інтелектуальної власності ЄС.

Монографія розрахована на фахівців органів державного управління, наукових працівників, викладачів вищих навчальних закладів, що працюють у сфері адаптації національного законодавства до законодавства ЄС, винахідників, авторів, які зацікавлені у охороні своїх творчих результатів в державах-членах ЄС та трансфері технологій до держав-членів ЄС, практикуючих юристів.

The monograph presents review of the legislation of the European Union in the sphere of intellectual property, development of the legislation with taking into account the practice of its implementation, decisions of the EU Court of Justice, prospects of harmonization. There are presented results of the comprehensive comparative analysis of intellectual property legislation of the European Union and Ukraine and recommendations on the approximation of the Ukrainian legislation to the EU standards.

The edition contains translations of the EU legal acts in the sphere of intellectual property protection, technology transfer, majority of which are published for the first time, glossary of the EU legislation terms, informational sources of the EU Intellectual Property Law.

The monograph is addressed to the specialists of the state governments institutions, academics, university lecturers, who work in the sphere of EU law and intellectual property, researchers, authors, who are interested in protection of their intellectual property objects and transferring technologies to the EU member-states, professional lawyers.

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## SUMMARY

The monograph “Intellectual Property Law of the European Union and the Legislation of Ukraine” represents results of the research project conducted in the 2003 - 2004 according to the Partnership and Co-operation Agreement between the European Communities and their Member States and Ukraine which stated Intellectual Property as a priority sphere of legal approximation and the Law of Ukraine “On the National Programme of Approximation of Ukrainian Legislation to that of the European Union” dated March 18, 2004.

The aim of the project was to make assessment of the conformity of Ukrainian IPR legislation with that of the European Union.

The aforementioned assessment was preceded by the determining the EU legal acts in the priority sphere; translating near 30 EU legal acts and 90 EU Court of Justice cases in the IPR domain into Ukrainian; conducting research on Intellectual Property regulation in the European Union and providing complex legal comparative analysis on conformity of Ukrainian law with the EU law in that sphere.

The project was organised by the Ministry of Justice of Ukraine and financed by the Government of Ukraine. The authors of the monograph are the academics from the Centre of the Intellectual Property and Technology Transfer of the National Academy of Scientist of Ukraine, specialists from the Ministry of Justice of Ukraine and other organisations.

The results of the research were the preparation of a Scoreboard, which included approximation objectives in the IPR sphere; the EU legal provisions subject to implementation; list of the specific measures on implementation of relevant EU legal provisions.

The monograph is the first special publication in the countries of former USSR on Intellectual Property issues of the European Union and describes all the IPR areas of the EU and Ukraine. Special accent was made on the evaluation of conformity of IPR enforcement in Ukraine to that of the EU.

Each section of the monograph examines:

- the basic stages of the EU legislation development: reasons of harmonization; legal protection of the corresponding IPR object in the EU member-states at the moment when the Directive or Regulation has being drafted; drafting process of the EU act (green papers, different opinions in the course of adoption of the relevant act of EU legislation); development of legislation, development of the legislation by the decisions of the European Court of Justice;
- the relevant legislation of Ukraine and the level of conformity of Ukrainian legislation to that of the EU.
- concrete proposals on amending the Ukrainian legislation in force.

The monograph contains the Scoreboard of adaptation of Ukrainian legislation to the legislation of the EU, English-French-German-Ukrainian Glossary of the EU terms and definitions in the Intellectual Property sphere, information sources on EU and member-states IPR legislation, EU Intellectual Property Law bibliography.

The general conclusion of the research is that the basic principles of Ukrainian legislation in the sphere of intellectual property protection correspond to the legislation of the European Union in general. At the same time analysis testifies that there is significant heterogeneity of the Ukrainian legislation correspondence to the EU legal acts. Thus, for example, high level of adjustment is typical in general for computer programs, trade marks protection, but some other spheres of regulation require further improving.

It relates to the introducing into legislation of Ukraine of the institute of *sui generis* right for data bases, taking into consideration peculiarities of regulating protection of biotechnological inventions, industrial designs, as well as representing in legislation a quantity of legal provisions of EU acts on copyright and related rights, plant variety rights. It is important to take into consideration experience of the EU and its Member States in the sphere of trade names protection, competition law concerning intellectual property rights.

As to Intellectual Property rights enforcement in 2001-2005 the legislation of Ukraine has been significantly amended with the aim of strengthening responsibility for the violation of intellectual property rights and implementing effective mechanisms of combating piracy. In some branches, such as, i.e., manufacturing and distribution of laser discs, Ukraine has the most strict and detailed legislation among all other countries.

At the same time, adopting by the European Union in 2004 – 2005 new acts concerning customs action against goods suspected of infringing certain intellectual property rights and enforcement of intellectual property rights (Council Regulation (EC) №1383/2003 and Directive 2004/48/EC) require to make certain amendments into legislation of Ukraine.

In Ukraine it is an urgent issue to strengthen activity of organisation on collective management of author's rights; to advance the experience of courts in considering cases in the sphere of intellectual property, as well as bodies of Internal Affairs Ministry, prosecutor's offices on preventing violations of intellectual property rights; to get practice on preliminary injunctions and temporary injunctions, determining amount of damages by violating of intellectual property rights; to introduce monitoring on distribution of piracy products in accordance with EU experience; to improve the level of license and other IPR agreements conclusion, to increase the level of legal culture of the population as well.

Results of the research project were transferred to the government bodies of Ukraine and have been used while preparing amendments to the legal acts of Ukraine in the sphere of intellectual property protection.

It is assumed that this monograph will be used by the specialists of the State Bodies, in particularly - Internal Affairs institutions, Office of Public Prosecutor, State Department on Intellectual Property, Ministry of Culture, by the judges, authors, inventors, lawyers, patent attorneys, lecturers and scientists with the aim of deeper familiarization with the EU legislation, applying EU experience in their practical, educational and scientific activity and creation in Ukraine the modern system of Intellectual Property protection and enforcement.