The Government of Ukraine reinforced its commitment to tackle problematic issues still existing in such important sphere as IPRs protection and enforcement.

As of today, IP sphere is one of the priorities of the state policy in Ukraine. The efficient coordination between legislative and executive branches of the state power was established on this matter. IP sphere is within the responsibility of Parliamentary Committee of Economic Development that is the key counterparty for the Ministry for Development of Economy, Trade and Agriculture.

Also, there is an interparty group of the members of the Ukrainian Parliament “Intellectual Ukraine” dealing with IP sphere that has already led to positive outcomes in the form of adopted legislative acts.

The Programme of Activities of the Cabinet of Ministers of Ukraine for 2020 includes a stand-alone Goal 7.8 “Owners of works and inventions are protected and receive fair remuneration”. In order to achieve this Goal several directions were determined that include the measures related to the activity in IP sphere, in particular accreditation of CMOs, launching the work of the state inspectors on IP issues, improvement of institutional framework of IP sphere.

The Parliamentary Hearings on the topic “Establishment of Efficient System of IP Protection in Ukraine”, held in the Parliament of Ukraine on 16 December 2019, emphasizes the intention of all branches of the state power of our country to ensure the complete removal of our country from the list of states permitting infringements of IPRs on their territories.

During the Hearings, the National Strategy of IP Sphere Development for 2020-2025 was discussed that was elaborated by the Ministry for Development of Economy, Trade and Agriculture of Ukraine in strong cooperation with the World Intellectual Property Organization and other involved governmental agencies of Ukraine. The relevant recommendations on the approval of the Strategy are under development and will be submitted to the Parliament.
Our work on IPRs infringement issues has taken place on the following areas:
1) tackling pending issues in the sphere of collective management;
2) legalization of unlicensed software at executive authorities;
3) strengthening intellectual property rights enforcement.

1. Tackling Pending Issues in the Sphere of Collective Management of Proprietary Rights

During 2019 – January 2020 the Ministry for Development of Economy, Trade and Agriculture of Ukraine continued to implement the procedures on registration and accreditation of collective management organizations (CMOs) within the reform of collective management system introduced by the Law of Ukraine “On Efficient Management of Proprietary Rights of Rightsholders in the Sphere of Copyright and (or) Related Rights” (the Law № 2415). The mentioned Law provides for certain requirements aimed at ensuring efficient and transparent activity of CMOs, their accountability to the rightsholders.

During the abovementioned period the Ministry ensured the registration of 16 CMOs, the relevant data was entered to the Register of CMOs posted on the website of the Ministry.

The Commission on CMOs accreditation took a decision on accreditation of 6 CMOs: in 4 spheres of mandatory collective management and 2 spheres of extended collective management, in particular:

1) resale right regarding fine arts works – the Ukrainian Author’s Rights Agency;

2) reprographic reproduction of works and their parts (excerpts) – the Ukrainian Author’s Rights Agency;

3) reproduction, both at home and for personal purposes, of works, performances fixed in phonograms, videograms and their copies, as well as audiovisual works and their copies – the Ukrainian Music Alliance;

4) cable retransmission of copyright and (or) related rights objects, except the rights of broadcasting organizations regarding their own broadcasting programs – the Coalition of Audiovisual and Music Rights;

5) right to fair remuneration, common to the performers and producers of phonograms (videograms), for public performance of phonograms and performances fixed in them, or public demonstration of videograms and performances fixed in them, that were published for the use with commercial purposes – the Ukrainian League of Author’s and Related rights;
6) right to fair remuneration, common to the performers and producers of phonograms (videograms), for public broadcasting of phonograms and performances fixed in them, videograms and performances fixed in them, that were published for the use with commercial purposes, except cable retransmission – the Ukrainian Music Alliance.

The competition regarding 2 spheres of extended collective management is going on.

According to the information provided by 11 CMOs, in 2019 the amount of collected remuneration is 106 371 143 UAH (about 4 350 000 USD), distributed remuneration – 62 838 871 UAH (about 2 565 000 USD) and paid remuneration – 52 513 911 UAH (about 2 140 000 USD).

During 2019 the Ministry supported the rightsholders to cooperate in a more efficient way with the owners of websites and hosting service providers in the process of implementation of the procedure of termination of copyright and (or) related rights infringements specified by the Law of Ukraine “On Copyright and Related Rights”.

The Draft Law “On Copyright and Related Rights” was developed which was discussed during the International workshop dedicated to the development of copyright and related rights legislation (Kyiv, 12-13 September 2019). The proposals to the mentioned Draft Law are summarized on the basis of the results of this CLDP workshop.

The development of this Draft Law is finalizing by the Ministry, after that it will be posted at the official website for the public discussion and forwarded to the interested state authorities for the approval.

The Ministry by its Order as of 17.04.2019 № 647 approved the television and radio broadcasting organizations report form. The reports of the television and radio broadcasting organizations should promote, in particular, determining the level of representation of CMOs in order to designate, during open competition, the most representative organization as the accredited one in the relevant sphere of mandatory or extended collective management.

As of today, the electronic system is being tested that will permit the television and radio broadcasting organizations to file reports in the format suitable for automated summarizing of data and determination of quantitative indicators of the use of copyright and (or) related rights objects, in particular music works, audiovisual works, phonograms (videograms) and performances fixed in them, on TV and radio air.
The Ministry also developed the Draft Law “On Amending Certain Legislative Acts of Ukraine” aimed at cancellation of holographic marking of the copies of audiovisual works, phonograms, videograms, computer software, and databases, the effectiveness of which was called into question by the rightsholders, in particular by the International Intellectual Property Alliance. The Draft Law was registered in the Verkhovna Rada (the Parliament) of Ukraine with № 2565 as of 10.12.2019.

2. Legalization of Unlicensed Software at Executive Authorities

Ukraine takes all possible measures aiming at prevention of the use of unlicensed software at executive authorities.

It is worth mentioning that according to the Decree of the Cabinet of Ministers of Ukraine No. 1433 dated 10.09.2003 it is permitted to purchase and to use only licensed software which should have the relevant license in paper and/or electronic form. Meeting these requirements by executive authorities makes it impossible to install new unlicensed software at executive authorities.

According to the web-portal prozorro.gov.ua, from 1 January 2018 to 31 December 2019 the executive authorities purchased the licensed software manufactured by “Microsoft” at the amount of 303 680 766 UAH (about 12 395 000 USD) and Oracle at the amount of 358 627 313 UAH (about 14 638 000 USD).

At the same time, according to the current legislation the state procurements are conducted through the transparent procedure and each procurement of computer equipment can be monitored on the web-portal prozorro.gov.ua that makes impossible the sale of equipment with installed unlicensed software.

Due to decrease of thresholds of the procurement, that should be reflected on the web-portal prozorro.gov.ua, even insignificant volumes of procurements won’t be able to “circumvent” requirements on previously installed licensed software.

Moreover, in pursuance of the Decree of the Cabinet of Ministers of Ukraine No. 869 dated 12.08.2009 “On Approval of General Requirements to Software Products that are Purchased or Created for an Order of the State Bodies” the State Agency for E-Governance of Ukraine as the general state contractor under the National Program of Computerization approves the procurements related to the use of software at executive authorities that also prevents violation of rights of the rightsholders.
It should be noted that with the purpose of legalization of software at executive authorities the Ministry continues the practice of summarizing the results of annual planned inventory of software at executive authorities. In order to improve the inventory procedure we resume cooperation with “Microsoft Ukraine” with the purpose of development of modern methodology of holding inventory with consideration of the international standard "Software Asset Management" (SAM, ISO/IEC 19770) as well as discussion and approval of economic price of licenses for software subject to legalization.

3. Strengthening Intellectual Property Rights Enforcement

3.1 Improvement of IP Legislation

The Ukrainian Parliament adopted the following laws in the field of intellectual property:

The Ministry is currently supporting the following draft laws:
4) Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine” (regarding the cancellation of control stamps system). The said bill has been submitted for consideration of the Ukrainian Parliament and is
currently being examined by the Committee of the Verkhovna Rada of Ukraine for Economic Development (registry No. 2565 dated 10.12.2019).

3.2 Activity of the National police

Enforcement of intellectual property rights is one of key elements of activity of the National Police of Ukraine altogether given that it demonstrates civilization and ensures the security of business sector activity in Ukraine whereas a vulnerability of intellectual property rights mitigates the investment attractiveness of the country.

Starting from 2013 and until present times the National Police divisions conducted pre-trial investigations of 7,252 criminal proceedings related to intellectual property infringements (articles 176, 177, 229, 203-1, 231, 232, 232-1 of the Criminal Code of Ukraine), including 258 criminal offences identified and registered by police officers last year.

Following the results of pre-trial investigation in the above criminal proceedings, since 2013, 990 criminal proceedings were brought to the court. At the same time, dismissing of criminal proceedings appears to be a challenging issue: the number of dismissed criminal proceedings amounts to 5,732 that reaches 79% out of total number of criminal proceedings. Such tendency is caused by the absence of a uniform regulated mechanism of charging a material damage, as well as by the fact that the said infringements are classified as a private prosecution, and, thus, right holders taking advantage of that regularly refuse from further supporting the submitted statements and from conducting an expert inquiry alluding to the trade secret.

At the moment, the National Police has been conducting 958 criminal proceedings related to intellectual property infringements that reaches around 10% out of total number of criminal proceedings.

In 2019 the representatives of the police secured 258 criminal proceedings based on crimes related to IPRs infringements, in particular:

- 154 criminal proceedings related to copyright and related rights infringements;
- 65 criminal proceedings related to illegal use of marks for goods and services;
- 22 criminal proceedings related to illegal distribution of disks for laser reading systems;
- 17 criminal proceedings related to violation of rights to industrial property objects;
- 60 indictments brought to courts;
- 107 persons were charged.
In 2019 the officers of Cyber-police Department documented and terminated the activity of 35 pirate online-cinemas infringing copyright and related rights that damaged the interests of rightsholders in a particular large amount. One of the web-sites http://kinogo.co.ua is one of the most famous web-resources in search systems on the Internet.

The officers of Cyber-police Department for the first time brought to the court a criminal proceeding with the indictment regarding a citizen of Kryvyi Rig City who has filmed for a long time the first broadcasts of movies in the cinemas “Multiplex”. The recording device was seized; examination confirmed the involvement of the arrested person in a committed crime.

3.3 Customs Procedures

During 2007-2019, based on the applications of rightsholders, 4 189 IP objects were entered to the Customs Register (221 IP objects were entered in 2019), in particular copyright objects, trademarks, inventions, utility models, industrial designs and plant varieties. The number of such applications is constantly growing.

6875 cases of suspension of customs clearance of goods related to IPRs infringements were fixed in 2019. 20 cases were secured by the Customs Authorities regarding violation of cross-boarding of Ukraine on IPRs infringements (the amount is about 1 million USD).


The Law amended the definition of the terms «counterfeited goods», «pirated goods», «goods suspected of violating IPRs». The list of measures aiming at improvement of IPRs enforcement that are applied by customs authorities to the goods suspected of violating IPRs was clearly defined and extended. Separate norms regulate the issues on reimbursement of costs related to the storage and destruction of the goods suspected of violating IPRs.

3.4 Improvement of trademark protection in the Internet

A specific area of activity of the Ministry lies in improving the mechanisms of protection of rights to trademarks in the Internet, in particular in domain names.
The Ministry together with .UA domain administrator Limited Liability Company HOSTMASTER has studied the tools of improvement of non-judicial mechanisms of enforcing the rights to trademarks by joining dispute resolution procedures in the field of domain names (UDRP) of the World Intellectual Property Organization (WIPO).

As a result, with the assistance of the Ministry, WIPO and .UA domain administrator concluded the Agreement on domain-name dispute resolution in ccTLD.UA (signed 19.12.2018). UDRP regulations entered into effect 19.03.2019 for private domain names of second level in .UA domain, and 19.12.2019 for domain of third level (com.ua).

Thus, trademarks owners obtained an effective mechanism of domain-name dispute resolution in the territory of Ukraine.

3.5. High Court on Intellectual Property Issues

In order to ensure adequate protection of IPRs the High Court on Intellectual Property Issues was established in Ukraine in 2017. This will sure positively affect the quality of litigation on IP issues, significantly shorten their consideration and will permit to unify the judicial practice. As of today, the institutional arrangements are taking place aimed at ensuring its operation (the personal composition is formed, the competitions for vacancies of judges are held, the categories of disputes that will be resolved by the Court are finally determined (with regard to the inclusion of disputes on unfair competition to its jurisdiction).

3.6. WIPO ALERT-DATA SHARING PLATFORM PROJECT

In order to combat against infringing websites the Ministry is planning to sign in the first half of 2020 the Memorandum of Understanding with the World Intellectual Property Organization with the purpose to join the project on WIPO ALERT-DATA SHARING PLATFORM. The implementation of this project will permit the rightsholders to identify infringing websites which carry advertising and to submit the list of such websites to the Ministry; after that the Ministry will contribute the list of infringing websites to the relevant WIPO ALERT database.

As online advertising is a major source of revenue for online operators of copyright-infringing websites the aim of the project is to reduce the flow of money to illegal websites operators and to reduce the risk that legitimate advertising may lend an appearance of legality to illegal websites, to the confusion of consumers.