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Combating crimes against intellectual property: Comparative analysis of international best practices

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Abstract

The relevance of the subject is conditioned by the fact that economic and scientific advance leads to an increase in the level of crime against property rights, specifically its most relevant form – intellectual property. An important task of law enforcement agencies is to overcome threats to intellectual property using the world's best practices in this area. The purpose of this study was to perform a comparative analysis of the world experience of combating crimes against property. Using such methods as the method of legal hermeneutics, formal legal method, comparative legal method and problem analysis, the study outlined the problems associated with the prosecution of intellectual property crimes. The study classified countries according to the type of intellectual property protection regulation and outlines the key issues in the investigation of intellectual property cases. It was found that countries with a long history of criminal law counteraction to crimes against intellectual property, whose experience can be considered advanced, are divided into two groups. The first group includes those countries where legal protection of intellectual property is provided exclusively through the national criminal code. The second group of countries includes those where the relevant provisions are consolidated in special laws, which often prescribe sanctions for intellectual property infringement. As society develops and the use of intellectual property intensifies, the need to create a unified system of legal protection of these rights becomes apparent. The distribution of legal provisions among different legislative acts complicates their application in practice. Based on the conducted study, recommendations were offered for improving the mechanism of combating crime in the field of intellectual property. The study analysed the results of a survey conducted by the World Intellectual Property Organisation in 2023, which aimed to collect information on the prosecution of intellectual property crimes in the member states. The practical significance of this study lies in the fact that the proposed recommendations can be used to improve national mechanisms for combating intellectual property crime

Keywords:

copyright; industrial property; infringement of property rights; protection of property rights; World Trade Organisation; genocidal intent; nationalist

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Introduction

Criminal offences against property are classical or so-called conventional crimes, as property is the economic basis of any country, regardless of its historical development, political regime, and other circumstances. The right to property is one of the fundamental rights prescribed in Article 17 of the Universal Declaration of Human Rights¹. Ensuring effective protection of property, including criminal law measures, is the task of any state. As of 2024, criminal law has undergone considerable changes in concepts and theoretical approaches. They are driven by the development of information technology (Bondarenko *et al.*, 2020). The changes also affect economic relations, where new objects of property rights emerge, and the protection of new intellectual property rights related to the creativity of the economy, new technologies, and innovations is being updated.

According to O. Bakulina *et al.* (2019), S. Sudomyr *et al.* (2020), and I. Tkach *et al.* (2020), the conventional methods of criminal law protection of property relations and the definition of theft of property cannot fully accommodate modern reality. Law enforcement agencies should use the extensive experience of information systems and technologies to combat money laundering, organised crime, cybercrime, and national security. To successfully combat crimes against intellectual property, it is important to analyse the world's best practices in this area.

Despite the relevance of these issues, few studies have addressed the above aspects. The problematic of combating crimes against property per se, however, including crimes against intellectual property (IP), has long been discussed in academic circles. Thus, Indonesian researchers A.N.B. Pardede & A. Rachmad (2024) note that experience in dealing with ordinary offences is of great importance for the prosecution of copyright offences. The researchers recommend reclassifying copyright infringements as ordinary crimes to simplify law enforcement procedures and increase their effectiveness. This means that law enforcement agencies will have the power to initiate, conduct, and prosecute investigations without having to wait for complaints from copyright owners. By removing the restrictions that exist in connection with such complaints, law enforcement will be able to act promptly and decisively to counter copyright infringement, which will help strengthen the protection of intellectual property rights. Generally, this transition in classification, according to the researchers, will help to create a more reliable and proactive approach to combating copyright infringement, harmonising it with the state's duty to protect justice and the rights of its citizens.

Other researchers, such as N. Abd Malek *et al.* (2024), discuss the role of the government in the fight against crime, which is to protect the individual

and property, as well as to ensure an effective criminal justice system. They focus on the protection of IP rights, which is an essential economic resource, including copyrights, patents, trademarks, and trade secrets. N.A. Sinaga (2020) and R. Sousa-Silva (2021; 2022) covered the significance of legal mechanisms for the protection of intellectual property, which aim to prevent illegal use that may cause damage to rights holders. However, A. Lazuardi & T. Gunawan (2024) indicate that a special law on intellectual property protection can stimulate investment in the creative and industrial sectors, promoting fairness for rights holders and fair international trade. O. Hubanov *et al.* (2021) note the trend towards codification of criminal law, when the rules governing criminal liability for intellectual property infringement are combined in one legislative act. A. Lazuardi & T. Gunawan (2024) also point to the need to unify or codify the legal rules governing the criminal protection of intellectual property.

Thus, the study aims to fill the existing gap in the literature. The purpose of this study was to perform a comparative analysis of the world's best practices in combating crimes against property. To fulfil this purpose, the following tasks had to be completed: to carry out a comparative analysis of existing national regulations that form the regulatory framework for combating intellectual property crimes in certain countries of the world; to compare the practices of combating intellectual property crimes at the national level in certain member countries of the World Intellectual Property Organisation (WIPO); to identify problems in the prosecution of intellectual property crimes.

Materials and Methods

The study employed the methods of legal hermeneutics, formal legal, comparative legal methods, and problem analysis. Comparative legal and formal legal methods were used to investigate national regulations of certain countries of the world. These methods were employed to analyse the legislative acts of various countries regulating criminal law counteraction to crimes against intellectual property. This helped to identify key differences and commonalities in approaches to intellectual property protection at the international level. The method of legal hermeneutics was used to determine the content of these legislative acts. This method allowed for a deeper understanding of legal norms, interpretation of their meaning and application, which is necessary for accurate analysis and adequate interpretation of legislative provisions. The problem analysis was applied to analyse the current problems existing in the field of combating intellectual property offences. This method helped to identify and systematise the principal challenges faced by countries in implementing criminal law

¹ Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

measures to protect intellectual property, as well as to propose possible ways to address them. Thus, the integrated use of these methods allowed for a comprehensive and in-depth analysis of the issues of criminal law counteraction to crimes against intellectual property, considering both the specific national features and the international context.

The study analysed the national regulations that form the basis for combating crimes against intellectual property in different countries of the world. These included the Swiss Criminal Code¹, the Law of Greece No. 2239 "On Trademarks"², the Law of Cyprus No. 59 "On Copyright and Related Rights"³, The Norwegian Trademarks Act⁴, the Law of Portugal No. 143 "Portugal Industrial Property Code Decree"⁵, as well as provisions of international law, namely the Agreement on Trade-Related Aspects of Intellectual Property Rights⁶. The findings of a survey conducted by the World Intellectual Property Organisation in 2023 (WIPO, 2024) were used for a comparative analysis of the experience of combating intellectual property crimes. The purpose of the survey was to gather information on the prosecution of intellectual property crimes in the WIPO Member States. Based on the survey findings, recommendations were formulated to improve the fight against these crimes. The survey included data on the key components of national systems for the prosecution of intellectual property crimes; measures used in this area, including blocking/seizure of infringing websites; statistical information on prosecution and confiscation of illegally acquired funds; successes and challenges in the work of national systems for the prosecution of intellectual property crimes. The survey was conducted among 29 respondents from 27 WIPO Member States. Professional affiliation of the respondents: 23 prosecutors, two judges, two representatives of the ministries of justice, one representative of the national police and one representative of the national intellectual property office. The analysis of the WIPO survey report helped to investigate the experience of combating intellectual property crimes at the national level.

Results and Discussion

Criminal activity related to copyright infringement is on the rise globally, which is an alarming trend. This trend creates a variety of risks that affect not only those who produce intellectual property, but also the social structure and economic landscape of society. Copyright infringement indirectly reduces tax revenues,

has a considerable impact on the financial and mental state of a person, making it a serious social problem (Pak & Gannon, 2023), and negatively affects the state treasury. That is why modern governments are increasingly taking a strong stand against such crimes to mitigate their negative consequences. A key step in this direction is to strengthen court practice in enforcing decisions in such cases. By improving the implementation of the proclaimed legal measures, the government can effectively prevent future copyright infringements and protect the interests of both authors and society as a whole. Legislative norms are used as instruments that determine the behaviour of legal entities. As legislation evolves, it is vital to ensure that it is in harmony with human behaviour and the evolution of social relations, including the development of intellectual property rights.

In 2019, the US Federal Bureau of Investigation (FBI) reported that around 692 5677 property crimes were committed in the United States, resulting in a total loss of USD 15.8 bn (FBI, 2019). Therewith, according to data from 2022, losses from such offences amounted to USD 38 bn (Federal Bureau of Investigation, 2023). In Nigeria, in 2017, the National Bureau of Statistics reported 134 663 cases of offences, most of which were property crimes. Approximately one-third of Nigeria's population has been a victim of theft or robbery (Abd Malek *et al.*, 2024). In Malaysia, property crimes account for approximately 80% of all crimes. In 2020, theft (16,725 cases) was the most frequent property crime, followed by motorcycle theft (16,059 cases), residential burglary (14,040 cases), car theft (4,599 cases), and other vehicle theft (921 cases) (Abd Malek *et al.*, 2024). There is an elevated level of property crime in various countries around the world, and it is influenced by a range of factors, such as environmental, economic, social, political, demographic, etc.

Therewith, there has been an increase in the number of crimes against intellectual property. As noted by the Organisation for Economic Co-operation and Development and the European Union Intellectual Property Office, trade in counterfeit and pirated goods accounts for about 2.5% annually, and considering imports to the EU alone, it is 5.8% or EUR 134 bn (OECD & EUIPO, 2021). Along with such violations, crimes against IP in the digital environment are also spreading, and crime in this area is taking on organised forms and shows signs of criminal professionalism, which requires adequate measures to counteract it.

¹ Swiss Criminal Code. (1937, December). Retrieved from https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en.

² Law of Greece No. 2239 "On Trademarks". (1994, October). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/9777>.

³ Law of Cyprus No. 59 "On Copyright and Related Rights, as Amended up to Law No. 77 (I)". (2019, January). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/19025>.

⁴ The Norwegian Trademarks Act. (2010, March). Retrieved from <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/no/no101en.html>.

⁵ Law of Portugal No. 143 "On Portugal Industrial Property Code Decree". (2008, July). Retrieved from https://www.jpo.go.jp/e/system/laws/gaikoku/document/index/portugal-e_sangyou.pdf.

⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). (1995, January). Retrieved from <https://www.wipo.int/wipolex/en/treaties/textdetails/12746>.

The growth of piracy of copyrighted works is explained not only by the inefficiency of law enforcement agencies, but also by insufficient control over creative materials circulating in society. Copyright infringements are openly occurring due to the widespread distribution of pirated works. This suggests that the effectiveness of law lies not only in the logical structure of the statements used by science to describe its respective objects, but also in the concrete meaning of such a description. From the standpoint of natural laws, this condition is related to the fact that legal norms that use the term “necessity” in a descriptive sense should be adapted to all the nuances of the modern criminal situation (Pardede & Rachmad, 2024).

According to economic theory, as opportunities and economic progress increase, crime should decrease. This is because as legal ways of making a living develop, they are less costly, and therefore the incentives to engage in illegal behaviour are reduced (Ajide, 2021). Therewith, economic and scientific progress leads to an increase in crimes against property in its most relevant form – intellectual property. In the modern world, intellectual property makes a considerable contribution to the economy of countries and stimulates innovation, economic growth, and competition (Bondarenko *et al.*, 2020). Therefore, a crucial task of law enforcement

agencies is to overcome threats to intellectual property, using the extensive experience of information systems and technologies in combating money laundering, organised crime, cybercrime, and national security (Bakulina *et al.*, 2019; Sudomyr *et al.*, 2020; Tkach *et al.*, 2020). To successfully combat crimes against intellectual property, it is important to analyse the world’s best practices in this area.

Global practice is characterised by a differentiated approach to the protection of intellectual property rights. Thus, law enforcement agencies investigate the theft of trade secret information, trade in counterfeit goods, and copyright and/or trademark infringement. Priority is given to issues that pose a threat to public health and safety, national security, or have a considerable economic impact. The key purpose of intellectual property rights enforcement for law enforcement agencies is to identify and disrupt international and national individuals and organisations that produce or sell counterfeit and pirated goods, as well as those who steal, distribute, or otherwise profit from intellectual property theft. The analysis has shown that countries with a long history of criminal law counteraction to intellectual property crimes, whose experience can be considered advanced, can be divided into two groups (Fig. 1).

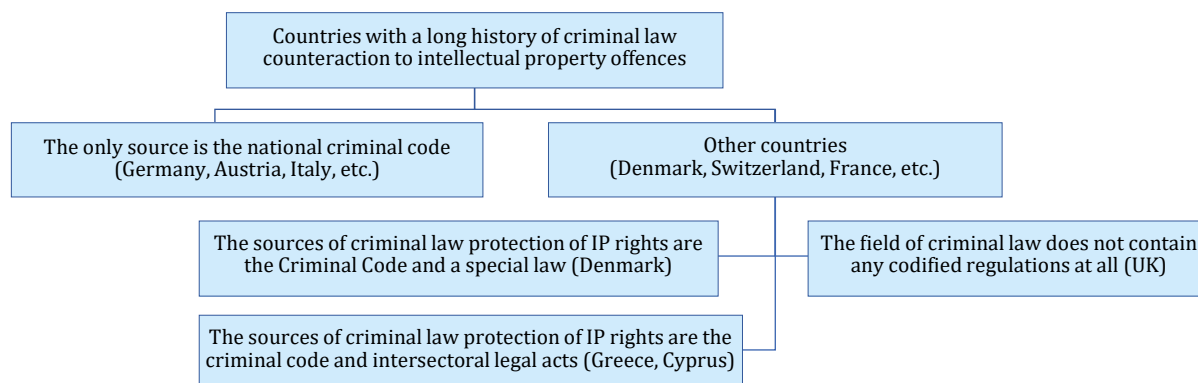


Figure 1. Classification of countries by sources of criminal law counteraction to crimes against intellectual property

Source: compiled by the authors

Two groups of countries can be distinguished according to the sources of criminal law protection of IP rights. The first group includes countries where IP is protected exclusively through the national criminal code, such as Germany, Poland, Austria, Italy, the Netherlands, etc. The second group of countries includes those where the relevant rules are consolidated in special laws, which often prescribe sanctions for IP infringement. In these countries, criminal liability may

be regulated both through the code and other laws, or there may be no codified regulations at all. For instance, the Danish Criminal Code¹ states that only those acts that are defined by law or analogous are punishable. Similarly, according to Article 1 of the Swiss Criminal Code, a person cannot be punished for a criminal offence unless it is clearly defined as a violation of the law². Among the European countries where provisions on the application of criminal law for the protection

¹ Denmark Criminal Code. (2009, November). Retrieved from <https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Denmark-Criminal-Code.pdf>.

² Swiss Criminal Code. (1937, December). Retrieved from https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en.

of intellectual property are included in cross-sectoral legal acts are Greece¹, Ireland², Cyprus³, Norway⁴, Portugal⁵, etc.

As society develops and intellectual property is increasingly used, the need for a unified system of legal protection of these rights becomes apparent. The division of legal provisions among different legislative acts complicates their application in practice (Balynska, 2021). To ensure more effective application of the law, it is recommended that these norms be harmonised in one document – the Criminal Code. An analysis of the criminalisation of intellectual property rights infringements around the world has shown that Article 61 of the Agreement on Trade-Related Aspects of Intellectual Property Rights obliges members of the World Trade Organisation (WTO) to prescribe “criminal procedures and penalties that shall apply at least in cases of wilful trademark counterfeiting or piracy of copyright on a commercial scale”⁶. This means that WTO Members should adopt legislation that criminalises such violations, where they can regulate the issue of criminal liability according to their needs.

The analysis of the criminal legislation of the EU countries showed that most countries criminalise any infringement of copyright or industrial property rights, such as trademarks, industrial designs, patents, etc. Some countries also impose criminal sanctions for infringement of moral rights or plagiarism. Criminal law systems for combating intellectual property crimes can be adversarial or inquisitorial. In the adversarial system, which is used primarily in common law countries, the court considers the case based on the evidence presented by the parties. The inquisitorial process of criminal prosecution is typical for continental law countries. In these countries, the court conducts an extensive pre-trial investigation and interrogations to establish the truth.

According to a World Intellectual Property Organisation survey among representatives of WIPO Member States, the majority of respondents reported that their country uses an adversarial system (59%), while 30% use an inquisitorial system (WIPO, 2024). The adversarial system is typical for common law countries such as the UK, USA, etc. In such countries, the court process determines the facts, while the judge acts as an arbiter. The inquisitorial system is typical of continental law countries such as France, Germany, etc. These countries use extensive pre-trial investigation and interrogation as an official inquiry to establish the truth.

In this system, the judge only supervises the process. Representatives from one country that uses an adversarial system noted that pre-trial investigations can be inquisitorial in nature, with the investigator collecting evidence of a violation. Generally, 11% of respondents could not classify the system as one of the two systems (marked as “unsure”) (Fig. 2). Thus, the adversarial process of criminal prosecution is more common in the practices of leading countries.

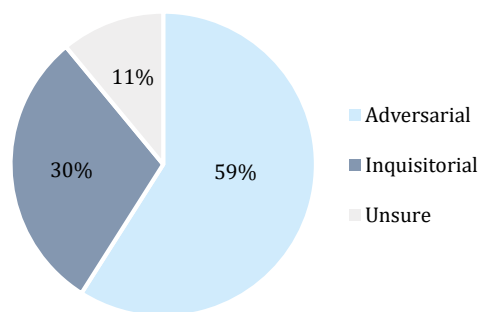


Figure 2. Adversarial vs inquisitorial criminal prosecution in WTO member states

Source: WIPO (2024)

The analysis of the results of the survey conducted among representatives of WIPO Member States (WIPO, 2024) has revealed a series of issues in the prosecution of intellectual property crimes. The WIPO report does not contain information on why these problems occur, which countries are characterised by certain of these problems, and what regulations, procedures, and measures have been taken to address them. The names of concrete countries are also not mentioned. These problems can be classified into three groups. The first includes problems in the prosecution of intellectual property crimes. Among them, WIPO representatives mentioned the complex nature of investigating this category of cases, the difficulty of identifying criminal offenders in the digital environment, and determining and calculating damages to victims, which are often transmitted through a complex chain of intermediaries. Problems arise with the identification and investigation of offenders in a cross-border context. The digital environment also creates other problems: the difficulty of collecting evidence, calculating the damage caused to victims, and recovering illegally obtained assets.

¹ Law of Greece No. 2239 “On Trademarks”. (1994, October). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/9777>.

² Law of Republic of Ireland No. 28 “On Copyright and Related Rights Act”. (2000, July). Retrieved from <https://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html>.

³ Law of Cyprus No. 59 “On Copyright and Related Rights”. (1976, December). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/19025>.

⁴ The Norwegian Trademarks Act. (2010, March). Retrieved from <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/no/no101en.html>.

⁵ Law of Portugal No. 143 “On Portugal Industrial Property Code Decree”. (2008, October). Retrieved from https://www.jpo.go.jp/e/system/laws/gaikoku/document/index/portugal-e_sangyou.pdf.

⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). (1995, January). Retrieved from <https://www.wipo.int/wipolex/en/treaties/textdetails/12746>.

The second group of problems – problems related to human and institutional capacity resources – identified in the WIPO survey (2024) include the lack of special training and experience of investigators, law enforcement, prosecutors, and judges, which is partly explained by the insufficient number of cases; lack of human resources: investigators and prosecutors, especially in the areas of financial and technological crimes.

The third group of problems is the problem of operational nature in criminal prosecution. In some jurisdictions, intellectual property crimes are not considered a priority, which may result in insufficient time being allocated by prosecutors to these cases, even though they may be complex in nature. There is also a lack of coordination with the police and other intellectual property rights enforcement agencies, and a lack of cooperation with some right holders. All the above problems are exacerbated by the lack of public awareness of intellectual property crimes and the hesitation of IP rights holders to file criminal lawsuits.

The following steps could be useful to improve the mechanism of combating crime in the field of intellectual property. To improve the administration, it would be useful to establish national bodies to organise and coordinate the activities of state bodies, institutions, and organisations in the field of intellectual property protection. It is important to develop principles and mechanisms for organising and coordinating the structures of the intellectual property protection system. These principles and mechanisms should be approved in a separate sub-legislative act. It is also important to expand the specialisation and training of judges and develop forensic expertise in the field of intellectual property. The specialisation of a judge is the main prerequisite for obtaining a high-quality, properly motivated court decision (Hulak & Shcherbak, 2021).

It is extremely necessary to modernise the information technology system used in the state system of intellectual property legal protection and harmonise it with modern technologies used by leading European and global countries. It is essential to develop patent information support in the field of intellectual property, and to ensure broad public access to information related to the acquisition of rights to intellectual property. There is a need to improve the coordination of law enforcement and regulatory authorities in combating infringements of intellectual property rights. The active use of information and communication media to combat infringements of intellectual property rights will also increase the effectiveness of this mechanism. It is vital to ensure access to information and knowledge in the field of intellectual property. Since the personnel issue is always one of the key ones, it is significant to maintain a high professional level of employees of the state system of intellectual property legal protection, as well as to improve the skills of judges, law enforcement, and regulatory authorities (Svitlychnyi & Korotun, 2021).

The above recommendations can be used to improve national mechanisms for combating intellectual property crime. Therefore, to ensure more effective application of the law, it is recommended to harmonise these provisions in a single document – the Criminal Code. To ensure a unified system of legal protection of IP rights, and to improve the mechanism for combating crime in the field of intellectual property, it is also recommended to establish a national body for organising and coordinating the activities of state bodies, institutions, and organisations in the field of intellectual property; develop principles and mechanisms for organising and coordinating the structures of the National Intellectual Property System; and expand specialisation and training.

The issue of crimes against property, including crimes against intellectual property, has long been discussed in academic circles. Therewith, A. Lazuardi & T. Gunawan (2024) also expressed conclusions analogous to those presented in this study, specifically regarding the need to unify or codify legal norms governing the criminal law protection of intellectual property. N. Abd Malek (2024) and S. Ramadani *et al.* (2021) share the opinion noted in the present study that reducing crime is one of the key tasks for maintaining quality of life standards. According to N. Abd Malek *et al.* (2024) and S. Ramadani *et al.* (2021), the role of the government in combating crime is to protect persons and property, as well as to ensure a criminal justice system. Other researchers share this opinion, such as S. Saeed *et al.* (2021) and A. Zurnetti & N. Mulyati (2022) who emphasise the need for increased attention to the protection of intangible assets.

Intellectual property rights cover a wide range of assets, such as copyrights, patents, trademarks, and trade secrets, which help their owners to secure a competitive advantage, which is significant in the era of digital transformation and the evolution of capitalism (Kusumaningtyas *et al.*, 2022). B. Budiman & R. Hammar (2024) illustrated this with the example of copyright infringement of the Grand Indonesia logo. Therewith, the analysis of C. Durand & W. Milberg (2019) introduces the concept of intellectual monopoly capitalism, where state protection of intellectual property helps to block monopoly power through the creation of intangible assets. This concept is expanded to include “information rents”, which arise from economies of scale and network externalities associated with the production of intangible assets. Integrating global value chains (GVCs) requires intensive information flows to transfer specifications, standards, technical know-how, as well as costs and other operational details. Thus, the expansion of trade within the GVCs is associated with the growing mobilisation and circulation of intangible assets, and the monopoly dynamics arising from these assets should be assessed in this context. It is worth agreeing with the conclusions drawn in this study and

noting that analogous IP antitrust legislation should also be codified in a single legal document.

N.A. Sinaga (2020) and R. Sousa-Silva (2021, 2022) emphasise the significance of legal mechanisms for the protection of intellectual property, including copyrights, patents, and trademarks, the purpose of which is to prevent illegal use that could harm rights holders. However, A. Lazuardi & T. Gunawan (2024) show that IP protection through special legislation can stimulate investment in creative and industrial fields, as well as provide fairness to rights holders, promote fair international trade, and disseminate information and knowledge.

This study concludes that it is necessary to create a unified system of legal protection of IP. O. Hubanov *et al.* (2021) came to comparable conclusions, noting the tendency to codify liability for intellectual property crimes in different legal systems. This means that the provisions relating to criminal liability for intellectual property infringement are consolidated in a single legislative act (code), which helps to ensure a single set of criminal law provisions. For instance, the Criminal Code of the Republic of Bulgaria contains a special section on “Crimes against Intellectual Property”¹, while the Spanish Criminal Code of 1995² has a section on intellectual property-related crimes. J. Kjakšta (2019) formulated a hypothesis that the content of intellectual property in European regulations is mostly uniform in terms of the object of a criminal offence. This hypothesis was confirmed by the findings of the study. The reason for this is the unifying effect of international agreements such as Universal Copyright Convention³, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations⁴, World Intellectual Property Organisation (WIPO) Performances and Phonograms Agreement⁵, World Intellectual Property Organisation Copyright Treaty⁶, Agreement on Trade-Related Intellectual Property Rights⁷, etc.

As of 2024, the Directive on copyright and related rights in the Digital Single Market is in force within the European Union⁸. J.P. Quintais (2019) points out that this act, which was created as a legislative instrument to promote the digital single market, has become an industry policy instrument shaped more by effective

lobbying than by evidence and experience. Despite some positive aspects, the Directive contains many problematic provisions, including a controversial new right for press publishers and a new liability regime for content sharing platforms. Generally, the Directive reflects the preference for private ordering over public choice in EU copyright law and does not provide adequate safeguards for users. It is also, as J.P. Quintais (2019) points out, a complex text with many ambiguities, which will not contribute to the desired harmonisation and legal certainty in this area. One can agree with the researcher's conclusions and note that this contradictory experience should be considered when formulating national legislation, especially comprehensive documents in the field of IP protection.

Thus, the issue of crimes against property, including crimes against intellectual property, is not new in academic circles. The above analysis of the studies on this issue has shown that the opinion on the need to unify or codify the legal provisions governing the criminal law protection of intellectual property is shared by many researchers.

Conclusions

Thus, this study performed a comparative analysis of the key current issues and regulatory approaches to combating crimes in the field of intellectual property as an example of the most relevant category of crimes against property. The study analysed the national regulations that form the basis for combating crimes against intellectual property in different countries of the world. This study also analysed the results of a survey conducted by WIPO in 2023 to collect information on the prosecution of IP crimes in its member states.

A comparative analysis of the world's best practices in combating property crimes has shown that countries with a long history of criminal law counteraction to intellectual property crimes, whose experience can be considered advanced, can be divided into two groups. The first group includes countries where IP is protected exclusively through the national criminal code. The second group of countries includes those where the relevant rules are consolidated in special laws, which often prescribe sanctions for IP infringement. Therewith, as society develops and intellectual

¹ Bulgaria Criminal Code. (1968, May). Retrieved from <https://www.refworld.org/legal/legislation/natlegbod/1968/en/37489>.

² Spain Criminal Code. (1995, October). Retrieved from https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Criminal_Code_2016.pdf.

³ The Universal Copyright Convention. (1952, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_052#Text.

⁴ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. (1961, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_763#Text.

⁵ World Intellectual Property Organization Performances and Phonograms Treaty. (1996, December). Retrieved from https://zakon.rada.gov.ua/go/995_769.

⁶ World Intellectual Property Organization Copyright Treaty. (1996, December). Retrieved from https://zakon.rada.gov.ua/go/995_769.

⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). (1995, January). Retrieved from <https://www.wipo.int/wipolex/en/treaties/textdetails/12746>.

⁸ Directive of the European Parliament and of the Council No. (EU) 2019/790 “On Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC”. (2019, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

property is increasingly used, the need for a unified system of legal protection of these rights becomes clear. The division of legal provisions among different legislative acts complicates their application in practice.

The study of the legislation of EU countries also showed that the systems of criminal law counteraction to crimes against intellectual property can be adversarial or inquisitorial. In the adversarial system, which is used primarily in common law countries, the court considers the case based on the evidence presented by the parties. The inquisitorial process of criminal prosecution is typical for continental law countries. In these countries, the court conducts an extensive pre-trial investigation and interrogations to establish the truth.

The analysis of the studies on the issues of crimes against property, including crimes against intellectual property, has shown that the opinion on the need to unify or codify the legal provisions governing criminal law protection of intellectual property is shared by many researchers. Prospects for future research may include finding ways to implement the recommendations proposed in this study into the law enforcement practice of a particular country.

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Conflict of Interest

None.

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Протидія злочинам проти інтелектуальної власності: порівняльний аналіз передового світового досвіду

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Анотація

Актуальність обраної теми зумовлена тим, що економічний та науковий прогрес має наслідком зростання рівня злочинності проти права власності, зокрема найактуальнішої її форми – інтелектуальної. Важливим завданням правоохоронних органів стає подолання загроз інтелектуальній власності, використовуючи провідний світовий досвід у цій сфері. Метою статті є здійснення порівняльного аналізу світового досвіду протидії злочинам проти власності. За допомогою таких методів, як метод юридичної герменевтики, формально-юридичний, порівняльно-правовий метод і проблемний аналіз, окреслено проблеми, пов'язані із судовим переслідуванням злочинів проти інтелектуальної власності. Здійснено класифікацію країн за типом регламентації захисту інтелектуальної власності, окреслено головні проблеми в розслідуванні справ щодо інтелектуальної власності. Встановлено, що країни з тривалою історією кримінально-правової протидії злочинам проти інтелектуальної власності, досвід яких можна вважати передовим, поділяють на дві групи. До першої групи належать ті, у яких правовий захист інтелектуальної власності здійснюють виключно через національний кримінальний кодекс. До другої групи країн віднесено ті, де відповідні норми закріплено в спеціальних законах, які часто передбачають санкції за порушення інтелектуальної власності. З розвитком суспільства й активізацією використання інтелектуальної власності стає очевидною потреба створення єдиної системи правового захисту цих прав. Розподілення правових норм між різними законодавчими актами ускладнює їхнє застосування на практиці. На підставі здійсненого дослідження запропоновано рекомендації з удосконалення механізму протидії злочинності у сфері інтелектуальної власності. Здійснено аналіз результатів опитування, проведеного Всесвітньою організацією інтелектуальної власності у 2023 році, що мало на меті зібрати інформацію про переслідування злочинів проти інтелектуальної власності в державах-членах. Практична значущість дослідження полягає в тому, що запропоновані рекомендації може бути використано для вдосконалення національних механізмів протидії злочинності у сфері інтелектуальної власності

Ключові слова:

авторське право; промислова власність; порушення прав власності; захист прав власності; Світова організація торгівлі