

Strong copyright protection versus development: comparative legal and economic analysis of copyright infringement in the US, the EU and Ukraine

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ABSTRACT

Recently the United States government declared Ukraine a country with unacceptable piracy rates implying that in case of further ignorance of IP rights enforcement, it would lead to certain restrictions from the developed world. This thesis examines the issue of strong intellectual property protection and the economic impact of digital piracy in order to answer the question whether developing countries like Ukraine need the intellectual property enforcement in the process of transition and development. Based on the comparative analysis of legal acts of the US, the EU and Ukraine and on the economic examination of the of copyright industries contribution to the economy of these regions the thesis stands for solving other problems before the problem of IP enforcement because in order to eliminate copyright infringement, there is a need to eliminate poverty, to improve other sectors of the economy and to fight with problems like corruption in the country.

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INTRODUCTION

In recent years, there has been an increasing interest of supreme authorities in intellectual property protection, due to the fact that Internet has become not only a way for people to connect, but also the method of earning money, movement of data and goods. International governments and organizations became particularly concerned with growing piracy rates in developing countries like Ukraine, stating that piracy should be eliminated for future development of the country and threatening with trade sanctions in case of disobedience. The situation is aggravated by the fact that Ukrainian society does not perceive intellectual property seriously and does not consider downloading illegal content from the Internet thievery.

Intellectual property in WIPO Intellectual Property Handbook¹ refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. This work focuses on the specific type of intellectual property – copyright and related rights. Copyright protection was created in order to protect the rights of authors, performers, reproducers against unlawful copying, reproduction or distribution to contribute in the cultural development of the countries. Indubitably, cultural development is essential for the whole world, but still the main reason of intellectual property was welfare.

This thesis observes the welfare effects of copyright protection and piracy impact on the welfare of developed countries and regions such as the United States and the European Union in comparison with developing countries particularly Ukraine.

The thesis examines the issue of digital piracy in developed countries, the impact of piracy on the GDP of the USA and the European Union as the most common examples of strong intellectual property protection in order to answer the question about the need of intellectual

¹ WIPO Intellectual Property Handbook (2nd ed. World Intellectual Prop. Org. 2004).

property rights enforcement in developing countries, in case of Ukraine, in the current economic situation. The purpose of the work is to answer the question whether strong or aggressive copyright protection will hurt the development of growing countries with a high level of digital piracy.

The methodology used throughout the work includes the comparative and descriptive methods. The descriptive method is used to introduce legal provisions and studies results while the comparative method is used to analyze these legislative acts of the US, the EU and Ukraine and results of studies about the impact of piracy on GDP to reach a conclusion about the need of enforcement of intellectual property rights in Ukraine.

This thesis has been divided into three parts. The first chapter introduces the concept of digital piracy and examines international and Ukrainian legislation. It will then go on to the justification for severe enforcement acts that international governments failed to implement. Chapter 2 begins by laying out positive and negative impacts of copyright protection. Additionally it examines the effects of digital piracy and analyzes the results of different studies and reports in order to see the real impact of piracy on the economy in general and in different countries. The last chapter will be devoted to the current economic situation of Ukraine, problems of enforceability of copyright legislation and answering the question whether Ukraine needs such enforcement in its current state of development.

Chapter 1: Overview and comparison of copyright protection and the level of digital piracy in the EU, the US and Ukraine

The following chapter is going to introduce the main substantial provisions of the international copyright protection: WIPO Copyright Treaty as the international source of intellectual property law, main aspects of copyright protection of the European Union and United States of America as the main examples of strong enforcement of intellectual property rights in order to compare it with the Ukrainian legislation and point out the main disadvantages of Ukrainian laws. The last issue that will be discussed in this chapter is the rationale behind the acts of a severe enforcement such as ACTA, SOPA and PIPA.

1.1 Digital piracy as a threat to copyright

Black's Law Dictionary defines piracy as "the unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law."² This work focuses on the reproduction or distribution of the copyrighted works through the Internet, called digital or internet piracy, which includes software, literary, audio and video piracy and constitutes copyright infringement.

Before Internet became a part of people's everyday life, piracy existed only in the form of tangible goods. Therefore, it was hard for pirates to compete with legitimate sellers because they were limited in quantities of goods produced, copied or bootlegged as well as restricted in access to consumer demand, moreover, it was not possible to copy a book, video or audio record without losing its quality. With the existence of Internet, pirates can easily gain access

² Black's Law Dictionary 1186 (8th Ed. 2004).

to a large number of consumers through websites, where they store pirated goods in an unlimited amount and, what is important, in the same quality as the original legitimate copies.

In 2011, about one quarter of all internet traffic was copyright infringing³ and it is growing every day, causing losses for copyright owners and companies. However, there is no single report on copyright property, which would estimate all the losses from piracy all over the world. Moreover, it is hard to make such report due to a lot of insufficient data, for example, in developing countries like Ukraine.

There are a lot of types of copyright infringement, which can be organized in several segments: copying, type of infringement whereby person copies purchased content for personal use, for example, copying a music CD to an iPod; downloading for a private use of non-purchased products; uploading or making available through downloading with Torrent, through uploading to P2P networks or through free websites; and the commercial piracy where websites offer counterfeit⁴ goods for a smaller price than legitimate ones, or selling the entrance to websites with infringing content.⁵

One of the main governments' concerns is the enforcement of intellectual property rights, which can fight the piracy and defeat infringers all over the world, however, as much as it is a solution it is also a main problem of the developing world, where the enforcement is very weak or does not exist at all. Reports state that such developing countries may suffer from strong intellectual property protection, and even slowdown in the economic growth⁶, nevertheless, representatives from rich countries like the United States threaten with trade

³ Envisional, "Technical Report: an Estimate of Infringing Use of the Internet," January 2011.

⁴ A copy or imitation of something that is intended to be taken as authentic and genuine in order to deceive another. West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.

⁵ The UK Publishers Association, E-piracy: Copyright Infringement and Enforcement, http://ec.europa.eu/avpolicy/docs/other_actions/contributions/uk_publishers_annex1_col_en.pdf (last visited May 28, 2013).

⁶ Professor Ian Hargreaves, Digital Opportunity. a Review of Intellectual Property and Growth 24 (2011), <http://www.ipo.gov.uk/ipreview-finalreport.pdf> (last visited May 28, 2013).

sanctions and demand from developing states to prevent the illegal activities at whichever cost.

1.2 International copyright laws and copyright protection in the European Union and the United States of America

In recent years, the legislative acts concerning copyright issues have moved from the direction that was established in the Berne Convention for the Protection of Literary and Artistic Works⁷, the oldest international convention in this field. With the increasing role of the internet, there was a greater need to control the protection of intellectual property and to make the enforcement of intellectual property rights, particularly copyright, easier and more severe. The World Intellectual Property Organisation developed the global international treaty – WIPO Copyright Treaty - with the aim to develop the existing provisions and create new ones that would correspond to the needs of copyright protection in the digital world, which was approved by the decision of the Council of European Union⁸.

The WCT is not a consolidation of national copyright treaties, but a joining of proposals that were introduced on the national level, it was an assimilation of national and international legislation, settled in one document. Treaty also incorporates a lot of provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (hereinafter TRIPS)⁹, which established the minimum principles for intellectual property regulations. For example, the protection of databases and software by copyright was established by TRIPS Agreement firstly, and WIPO Copyright Treaty includes this provision in the text.

⁷ Berne Convention for the Protection of Literary and Artistic Works (1971 Paris text), adopted Sept. 9, 1886, S. Treaty Doc. No. 99-27, 1161.

⁸ Council Decision 2000/278/EC of 16.03.2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

⁹ The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), adopted Apr. 15, 1994.

The WIPO Copyright Treaty first introduced the concept of ‘balance’, which is stated in the Preamble as one of the main aims that the Treaty is supposed to fulfill:

maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention.¹⁰

This concept is essential because it links not only the rights of copyright holders with rights of users, but also it connects copyright legislation with public, social needs like access to information in order to study or make research or just simply to be literate and informed. As was said above, the main purpose of the WCT was to create new provisions to answer to the new problems created by the Internet and digital technology as a whole.

Provisions of WCT on the topic of digital copyright protection covers the following matters: rights of distribution, rental and communication of works to the public, limitations on such rights, technological measures of protection of works and digital rights management. Concerning rights of distribution, rental and communication to the public, the so-called rights on transmission of works in a digital environment, the WCT applies the “umbrella solution”: right of communication of works to the public is extended to all kinds of works¹¹. Authors are entitled to authorize any transfer of their works to the public, including all communication methods, whereby everybody can gain access to their works¹².

The Treaty establishes that states “shall provide adequate legal protection and effective legal remedies” to combat the circumvention of the technological measures¹³ undertaken by authors while exercising their rights and to restrict activities that may violate laws and authors’ rights.

¹⁰ WIPO Copyright Treaty (WCT), adopted Dec. 20, 1996.

¹¹ International Bureau of WIPO et al., WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) 5, http://www.wipo.int/export/sites/www/copyright/en/activities/wct_wppt/pdf/wct_wppt.pdf (last visited May 28, 2013).

¹² *Supra* note 10.

¹³ Article 6, Directive 2001/29/EC of 22.05.2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

Moreover, states mean to be responsible for remedies against persons involved in such infringing actions.¹⁴

The WIPO Copyright Treaty was implemented by the prevailing number of member states of the World Intellectual Property Organization, the European Union implementation is the Copyright or Information Society Directive, which also harmonized important aspects of the EU copyright legal acts. These include the definitions of the WCT rights, the list of copyright exceptions and rules about protection of technological measures. The Directive states that the Member States must provide the “adequate legal protection” against the purposeful violation of the technological measures protecting authors from copyright infringement, against

manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which are promoted, advertised or marketed for the purpose of circumvention of, or have only a limited commercially significant purpose or use other than to circumvent, or are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.¹⁵

While the European Union implementation of WIPO Copyright Treaty is Information Society Directive, in United States this treaty came into effect by the Digital Millennium Copyright Act¹⁶. The internet is, without exaggeration, a central part of the United States economy which delivers their innovations, goods and services to the entire developed and the developing world. So it is not a question why American government and copyright holders want a higher level of protection for their intellectual property. The Digital Millennium Copyright Act was developed to create changes to the US Copyright Act to make it satisfy the terms of WIPO Copyright Treaty. Since articles 11-12 of the WCT established a legal background for Digital Rights Management, meaning the technological measures that are used by authors for protection of their works in a digital environment, The DMCA includes

¹⁴ *Supra* note 10.

¹⁵ *Supra* note 13.

¹⁶ Digital Millennium Copyright Act, adopted Oct. 28, 1998.

sections 1201 “Circumvention of copyright protection systems”, criminalizes acts that any person undertakes to violate this section. Moreover, the law changes remedies for such circumvention stating that violation the section 1201 for financial gain or commercial advantage may lead an infringer to paying a fine up to \$500,000 or up to five years imprisonment, penalties double for a second violation¹⁷.

The Act also introduced a safe harbor, for online service providers, which excludes them from the copyright infringement liability, whereby providers should delete the infringing content from the website only when they receive notice from the copyright owner asking to take down the infringing materials.

To conclude, the main international legal act dealing with the issue of copyright protection in the technological era is a very good tool for further development of legislation. The Information Society Directive supplemented the provisions of the WCT by describing the terms and adding definitions. The criminalization of the DMCA violation by the United States can be understood due to the fact that the influential part of the country’s economy depends on intellectual property industries, which will be discussed further in the work.

1.3 Ukrainian copyright laws and international treaties as part of Ukrainian legislation

Ukraine is a very young developing country that only starts to make first steps in order to prevent copyright infringing activities. It is been a little time from the moment, when the Internet became widespread in Post-Soviet Countries, and citizens discovered a network to share the audio, video content and computer software programs. However, inhabitants of Ukraine already contribute in making the country one of most pirated states in the world. For

¹⁷ *Ibid.*

the problem analysis, it is essential to have a look on the Ukrainian legislation relating to copyright protection and to compare domestic laws with international legislation in order to see flaws and weaknesses of the domestic one.

The system of Ukrainian intellectual property law developed a lot after the collapse of the Soviet Union. It took its basic principles from the Berne Convention of 1886¹⁸ and all the international treaties to which Ukraine is a party. In case of conflict of rules, the Ukrainian constitution states that international treaty can be ratified only after amendment in the domestic legislation¹⁹, hence international law prevails over the domestic legal system. The international treaties that form the Ukrainian copyright protection system include:

The Berne Convention for the Protection of Literary and Artistic Works; the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (The Rome Convention); the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms; the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

National legislation on the issue of copyright protection is composed of the number of acts that reflect the main international provisions. The Law of Ukraine “On Copyright and neighboring rights”²⁰ is the main act of protection of Ukrainian copyright owners. There are certain provisions that also contain relevant intellectual property provisions in the Criminal, Civil codes and the Code on Administrative Offences.

The Ukrainian Copyright Law defines a list of works within the scope of copyright protection. Such works can be written or verbal works, audio and video works, dramatic and theatrical

¹⁸ *Supra* note 7.

¹⁹ Конституція України [Constitution of Ukraine] dated 28.06.1996, No 254к/96-ВР.

²⁰ Закон України "Про авторське право і суміжні права" [The Law of Ukraine “On Copyright and neighboring rights”], adopted 23.12.1993, No 3792-XII.

works, architectural, photographic works, software programs and databases, and the number of other works that can be protected by the copyright law. The protection is provided to citizens of Ukraine, temporary or permanent residents, legal entities that conduct business in Ukraine.

Under the Ukrainian Copyright law in order to be protected the work should exist in a tangible form or form of expression of ideas, theories etc. The registration of property rights is not needed, however, in order to certify the property rights on the copyrighted work person can be registered in the Ukrainian Agency of Copyright and Neighboring Rights.

Copyright holders have moral and economic rights towards their works. Economic rights mean that an author can use his own work, allow or forbid any usage of his work by the other person. Economic rights can be licensed or transferred to the other persons. The duration of protection of economic rights set by the Law is longer than the duration set in the Berne Convention. Copyright holders enjoy the copyright protection from the moment of the creation of the work during the author's whole life and 70 years more after the author's death. Moral rights, however, cannot be sold and belong to an author on the permanent basis. The scope of them include: the right to claim for recognition of authorship, the right to use a pseudonym, the right to forbid revealing the name of the author on the public and the right to require the integrity of the work and to prevent any distortion, mutilation or other modification of the work or any other encroachment which can harm the honor and reputation of the author²¹.

The Law states that computer software is included in the list of protected works also as the copyright protection object, it is also stated that software is protected as a literary work. It is essential to mention that it is possible to patent software under United States law, however,

²¹ *Ibid.*

European Patent Convention ignores computer software in the list of the inventions that can be patented. Ukrainian Laws, The Law of Ukraine on Protection of Rights to Inventions and Utility Models in particular, do not state that it is possible to patent software programs, despite the fact that it can be more sufficient for programmers to patent their software in the developing country with growing piracy rates.

As was said above, Ukraine is a young developing country and its intellectual property protection system is in the process of evolving. Ukraine takes basic steps to improve the legislation system in this area in order to create laws in accordance with standards established by the European Union. For instance, one of big steps was the adoption of the Law “On the Specifics of the State Regulation of Business Entities associated with the Manufacture, Export and Import of Discs for Laser Reading Systems” which establishes requirements for additional protection of copyright and related rights for works issued on discs. Another huge and weighty step towards the harmonization of Ukrainian Laws according to the international intellectual property protection standards was the adoption of the new Civil Code²² which has a separate section which deals with intellectual property. Basically, all the provisions are based on the prior laws and international legislation, but it also presented a number of new terms and regulations²³. For example, the new Civil Code presented novel rules and provided definitions for the protection of scientific discoveries, and specific terms about protection of commercial secrets.

Ukrainian national legislation – meaning not only domestic laws, but also international laws to which the country is a party – is a quite strong protection system, which includes the most significant international treaties and incorporates relevant and key provisions of other countries in national laws. There may be a lot of flaws for a 20 year old country, however, it

²² Цивільний кодекс України [The Civil Code of Ukraine], adopted 16.01.2003, No 435-VI

²³ Vate C Toms & Olga Prokopovych, Intellectual Property Protection in Ukraine 348-349 (BC Toms & Co 2004).

is hard to say that there is no formal intellectual property protection which can be the basis of enforcement of intellectual property rights.

1.4 Formation of PIPA, SOPA and ACTA and the rationale behind these legal acts

The Stop Online Piracy Act, or SOPA, was introduced in the US House of Representatives in October, 2011. It presented novel provisions of aggressive copyright protection, which were totally different from all the international legal acts concerning intellectual property protection, in order to combat online piracy. The act planned to empower copyright holders and US Department of Justice to dismantle infringing websites without going to the court²⁴, which literally means the deprivation of owners of websites of the right to defend. Moreover, every company that was making business with such rogue websites could be sued by copyright owners²⁵. SOPA gave force to close both American and foreign websites to the US executive power, and even simple citizens who could have watched an infringing video on YouTube could be sentenced up to 5 years of imprisonment.

SOPA was not the first attempt to introduce such legislative acts. On May of 2011, the Protect Intellectual Property Act was introduced by the Senate Judiciary Committee. The document was basically re-statement of the previously introduced bill, Combating Online Infringement and Counterfeits Act²⁶, which did not pass a year before the introduction of PIPA, and was put on hold. SOPA had several differences from PIPA, for example, it did not state that search engines should block rogue foreign websites²⁷, but the framework was almost the same.

²⁴ Commentary, What Are SOPA, PIPA CISPA and ACTA?, TechAdvisory.org, Aug. 7, 2012, available at <http://www.techadvisory.org/2012/08/what-are-sopa-pipa-cispa-and-acta/> (last visited May 29, 2013).

²⁵ *Ibid.*

²⁶ Brian T. Yeh & Jonathan Miller, A Legal Analysis of S. 968, the PROTECT IP Act. CRS Report for Congress (Cong. Research Serv. 2011).

²⁷ *Supra* note 24.

The most successful act was Anti-Counterfeiting Trade Agreement, which was signed by 31 states, including the United States, the European Union and 22 countries of the EU, ratified only by Japan and hence not enforced²⁸. The purpose of the Agreement was to prevent theft and counterfeiting of copyrighted goods everywhere including internet²⁹. Provisions of the ACTA are similar to those in PIPA or SOPA, service providers are empowered to monitor and control the content of websites, however, the amount of influence of governments and corporations in the controlling of piracy is not clear³⁰.

The experience of US government to implement such acts of aggressive enforcement implies that they saw a rationale behind and thought that gains from such legislation would compensate damages. However, after the European Union's Trade Committee rejected the Act stating that approval of the ACTA would threaten to the freedom of speech, Wikipedia, Google, Facebook and other Internet organizations opposed SOPA and PIPA, it was understood that these acts are not the nearest future of intellectual property rights protection.

Nevertheless, these acts have a lot of supporters such as Motion Picture Association of America, which shown their support in their "Statement on Strong Showing of Support for SOPA"³¹. Such action can be justified looking at the report the MPAA issued in 2010, were it is stated that in 2005 motion picture industries all over the world lost more than \$18 billion as a consequence of digital piracy³². The President of Global Intellectual Property Center, which is part of the United States Chamber of Commerce, indicated in the Statement to the US

²⁸ http://en.wikipedia.org/wiki/Anti-Counterfeiting_Trade_Agreement

²⁹ *Supra* note 24, 27.

³⁰ *Ibid.*

³¹ The Motion Picture Association of America, Inc. (MPAA), MPAA Statement on Strong Showing of Support for Stop Online Piracy Act (2011), <http://www.mpa.org/resources/5a0a212e-c86b-4e9a-abf1-2734a15862cd.pdf> (last visited June 2, 2013).

³² L.E.K. Consulting & , The Cost of Movie Piracy: An Analysis Prepared By LEK for the Motion Picture Association (2005), <http://ia600407.us.archive.org/3/items/MpaaPiracyReort/LeksummarympaRevised.pdf> (last visited June 2, 2013).

Senate Committee on Finance that intellectual property industries contribute to the economy by creating and supporting more than 55 million of jobs in the United States³³.

The concern of industries is comprehensible when looking at these numbers in the reports issued by huge companies that exist on the intellectual property protection and enforcement, and, of course, the implementation of such acts is in their interest. However, the fact that large Internet companies and people through protests shown their negative attitude towards such legislation shows that people and countries are not ready to live without any piracy, and that government cannot introduce proper acts, which would balance on the needs of copyright holders and consumers.

³³ GIPC, Statement of the U.S. Chamber's Global Intellectual Property Center (2013), <http://www.finance.senate.gov/imo/media/doc/Hirschmann%20testimony%20GIPC.pdf> (last visited June 2, 2013).

Chapter 2: Economic impact of piracy and effects of copyright protection

The second chapter is going to discuss the main economic effects of copyright protection on copyright holders such as welfare effects in order to see the benefits and detrimental effects of strong copyright protection. Furthermore, the chapter is going to focus on the general negative and positive effects of copyright infringement over the Internet followed by the contribution of intellectual property to GDP of a country and by the description of digital piracy impact on GDP in the European Union, United States and Ukraine. The last issue discussed is benefits from combating the copyright infringement in above said areas in order to sum up the economic side of the copyright and digital piracy.

2.1 Welfare effects of copyright protection

According to the economic theory of copyright the main concern of copyright protection is the achievement of the equilibrium between the protection of copyright material and its consumption³⁴. The basic point is that the copyright protection should incentivize authors to create and, at the same time, stimulate consumer demand for copyrighted goods.

Usually, economists hypothesize that the supply of copyright goods increases with the copyright protection, but the demand for these works decreases. Excessive copyright protection usually leads to extra supply, whereas moderate copyright protection leads to excess consumer demand for copyrighted works³⁵. Copyright protection depends on the interests of two parties: author and consumer.

³⁴ Richard Watt, *An Empirical Analysis of the Economics of Copyright: How Valid Are the Results of Studies in Developed Countries for Developing Countries?* WIPO, http://www.wipo.int/export/sites/www/ip-development/en/economics/pdf/wo_1012_e_ch_3.pdf (last visited June 2, 2013).

³⁵ *Ibid.*

From the author perspective, it can seem obvious that the greater the copyright protection, the more incentives to create an author has. Hence, the more he creates, the higher is the financial gain and authors create further new goods to gain more profit. This could be true in the absence of infringement, where consumers have no other way to enjoy the copyrighted materials. At the same time, some papers criticize the standard approach where the straight link between strong copyright protection and bigger incentives to create is described³⁶. It is argued that if with stronger copyright protection appears the bigger level of profit, then according to the income effect creators would spend more time in leisure and would create less. The connection between the level of copyright protection and the level of creativity is extremely difficult to measure because the creativity is the human ability which cannot be measured easily. Hence, it is hard to justify the strong level of copyright protection by referring to some theoretical papers stating that it gives authors incentives to create.

To increase the protection does not always mean that the level of punishment for violation of copyright would become more severe or the enforcement level would change. There are some studies that analyzed the justification of the extended copyright protection duration by making a research on the basis of the value of works after copyright expires. The idea of such papers was to prove that there is no reason to increase the duration of copyright if it has no commercial value anymore. One of the examples of such papers, which analyzes the value of copyright products is the Congressional Research Service Report for Congress ‘The Copyright Term Extension: Estimating the economic values.’³⁷ The author of the report evaluates the money-making value of copyrighted goods, mainly books, movies and music, which were issued during the period of 1920 to 1940. The paper stated that more recent

³⁶ R. Watt & R. Towse, Copyright Protection Standards and Authors' Time Allocation, *Industrial and Corporate Change* (2006), <http://polis.unipmn.it/seminari/information/papers/WattTowse.pdf> (last visited June 2, 2013)

³⁷ Edward Rappaport, Copyright Term Extension: Estimating the Economic Values (Cong. Research Serv. 1998), http://digital.library.unt.edu/ark:/67531/metacrs727/m1/1/high_res_d/98-144e_1998May11.pdf (last visited June 2, 2013).

products, meaning those that were created closer to 1940, were most profitable ones, however, the commercial value of the earlier issued goods in the late 90s, when the research had been published, was still surprisingly high. For example, in the 1998 the yearly royalty price of books published between 1922 and 1926 was equal to 46 million dollars, yearly value of music written in this period was 3.4 million dollars, and the value of movies of the period 1926 to 1928 was 175,000 dollars. The report states that these numbers increased while estimating the goods published during the period of 1930 to 1940, but the overall result seems obvious: extended copyright duration is reasonable due to the fact that those artistic works still have quite a significant profit importance.

Different results leading us to the contrary position towards the duration of copyright protection were described by William Landes and Richard Posner³⁸: by looking at the renewals of copyright during the period of 1910 to 1991, they found that 80 per cent of works had a remarkably small economic value after the original copyright period, copyright holders did not see big amounts of further earnings from the good, and copyright goods just lost their commercial importance.

Looking at the increase in copyright protection from the demand or consumer side leads us to the basic assumption that with the increased level of copyright protection, meaning stronger enforcement, higher prices and more severe punishment, the demand decreases and the welfare benefits generated by the copyright goods are reduced. The consumers are worse off because of the increase of copyright protection; usually it happens with the increase of prices on goods. The greater protection can be efficient only if it helps the supply of goods to rise. If it does not, or does but in very insignificant quantities, then this would emphasize that the greater level of copyright protection is neither efficient, nor advantageous and does not work

³⁸ W. M. Landes & R. A. Posner, *The Economic Structure of Intellectual Property Law* (Belknap Press of Harvard Univ. Press 2003).

as a proper instrument to balance on the comfort of users and interest of inventors³⁹. Consequently, establishment of the stronger consumer protection can be justified only if it incentivizes authors to create.

2.2 Economic impact of digital piracy on copyright holders, users and society

There are a lot of researchers who claim that counterfeiting and piracy have a wide variety of effects (including not only negative, but positive effects) on consumers, commerce, government and economy dependent on the form of the violation involved⁴⁰. The first thing that comes to mind when thinking about the impact of piracy is its effect on copyright holders. If we think about intellectual property in a very rational way, basically, the reason it was created and is created now - is for the welfare of authors or copyright owners, to gain profits and to earn money. For example, in motion picture industry the movie would not be financed, supported by producers and filmed in case if producers and companies would consider that it will not be popular enough and hence not profitable.

Here comes the very consequential and controversial question: whether this effect is positive or negative for copyright holders. One might say that the answer is obvious: the effect is negative, because when the good is illegally copied into the World Wide Web, it becomes available mostly for everybody and instead of buying this good, millions of users would simply download it and as a consequence of this copyright owners would lose their profits. Indeed, lost sales and reduced incomes are the most common effects of all studies concerned with digital piracy. Industries lose revenues because consumers instead of buying legitimate goods buy counterfeit or pirated products. In cases where the consumer confuses legitimate

³⁹ *Supra* note 34.

⁴⁰ Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods (United States Gov't Accountability Office 2010), <http://www.gao.gov/assets/310/303057.pdf> (last visited June 2, 2013).

goods with pirated goods, the lost sales are equal to the portion of the pirated goods bought. Similarly, if customer purchases or downloads the pirated good instead of the genuine one on purpose, meaning that, if there was no specific pirated good, he would buy the genuine one for sure, the lost sales are also equivalent to the share of the pirated goods. For instance, music industries lose a big share of their revenues because of rogue websites that store pirated music for free or for a symbolic price. Lost sales can also arise if authors or intellectual property owners reduce prices for legitimate goods in order to compete with prices for illegally copied goods, or if rights holders increase expenditure on additional intellectual property protection⁴¹. These actions of copyright owners decrease the level of income and, for example, in companies it can reduce financing of new projects, which, therefore, leads to slow development and reduced innovative processes. However, some scholars⁴² state that piracy can have positive effects on copyright owners, for example, in case of audio, video industry or literature piracy can cause bigger popularity through the internet, which due to an increased awareness can become a reason for authors to create and for users to buy distributed legitimate goods as the more valuable ones.

The concern of governments with extremely growing piracy rates has several reasons. Firstly, the efficient intellectual property protection is costly and, secondly, lost profits of copyright holders result in a reduced amount of taxes paid to the government. There are even some reports which show that piracy helps fund terrorism and organized crime by trading pirated audiovisual CDs and other infringing activities⁴³. The rationale behind this belief is the knowledge that criminals usually seek for easy methods to earn fast money and there is no reason not to believe that piracy is an option to do it.

⁴¹ *Ibid.*

⁴² *Supra* note 34.

⁴³ Film Piracy, Organized Crime, and Terrorism (RAND 2009), http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG742.pdf (last visited June 2, 2013).

Internet piracy is a threat to many countries, but United States of America suffer a lot more than any country in the world. It is already a common knowledge that US produce more innovation, technologies, more brands and creative goods than any country in the world⁴⁴. According to the OECD's 2008 study⁴⁵ US can experience a slow growth similar to those companies that experience lost revenues since intellectual property activities contribute a very important role in the country's GDP through not only innovations, but also through trade with other countries. Consequently, it is no surprise that United States force other countries, even developing ones, to comply with international standards of intellectual property protection.

The question of consumer effects is the most difficult one because it is hard to say if consumers' benefits from piracy are greater than detriments. Moreover, answers can vary for consumers of different countries, for example, in case of cross-subsidization whereby companies and copyright owners can increase prices for legitimate copies in one country in order to cover the cost of piracy which occurs in another country with high piracy rates.

The Intellectual Property report by US Government Accountability Office⁴⁶ states that pirated computer software can threaten consumers' computer safety: unlawful computer programs may contain certain code to affect the hardware or violate users' privacy. Same code can be contained within downloaded illegitimate media files.

However, consumers tend to think that piracy's benefits outweigh its detriments because the level of digital piracy grows, hence, consumers prefer to download goods illegally then to spend money buying genuine products. Consumers purchase or download illegitimate goods when legal ones are unavailable to them or the cost is too high, and they indeed experience positive effects from it. For instance, in developing countries there is not much access to all

⁴⁴ *Supra* note 40.

⁴⁵ The Economic Impact of Counterfeiting and Piracy (OECD 2008), <http://www.oecd.org/industry/ind/38707619.pdf> (last visited June 2, 2013).

⁴⁶ *Supra* note 40.

American or European TV-shows, books or movies and downloading the content illegally from the internet has not only the entertaining, but also to the educational rationale.

As was said above, estimating the exact economic impact of Intellectual Property infringement is very problematic. The main problem occurs because of the so-called 'substitution rate'⁴⁷. It is an assumed rate at which consumer wants to switch from purchasing fake good to the legitimate one. In other words, scholars that make researches cannot know if the consumer would purchase the legitimate good in the absence of pirated one or if he would just be without the good than spend money on the legitimate one. Pirated goods and genuine goods are not perfect substitutes, so the cost of copyright piracy cannot be calculated by simply calculating the amount of pirated goods bought and downloaded from the Internet.

2.3 Impact of piracy on GDP

Before analyzing and describing the results of different studies concerning the impact of piracy on the economy, it is very important to look at the data regarding the gains of government budget due to the creation and existence of copyrighted goods.

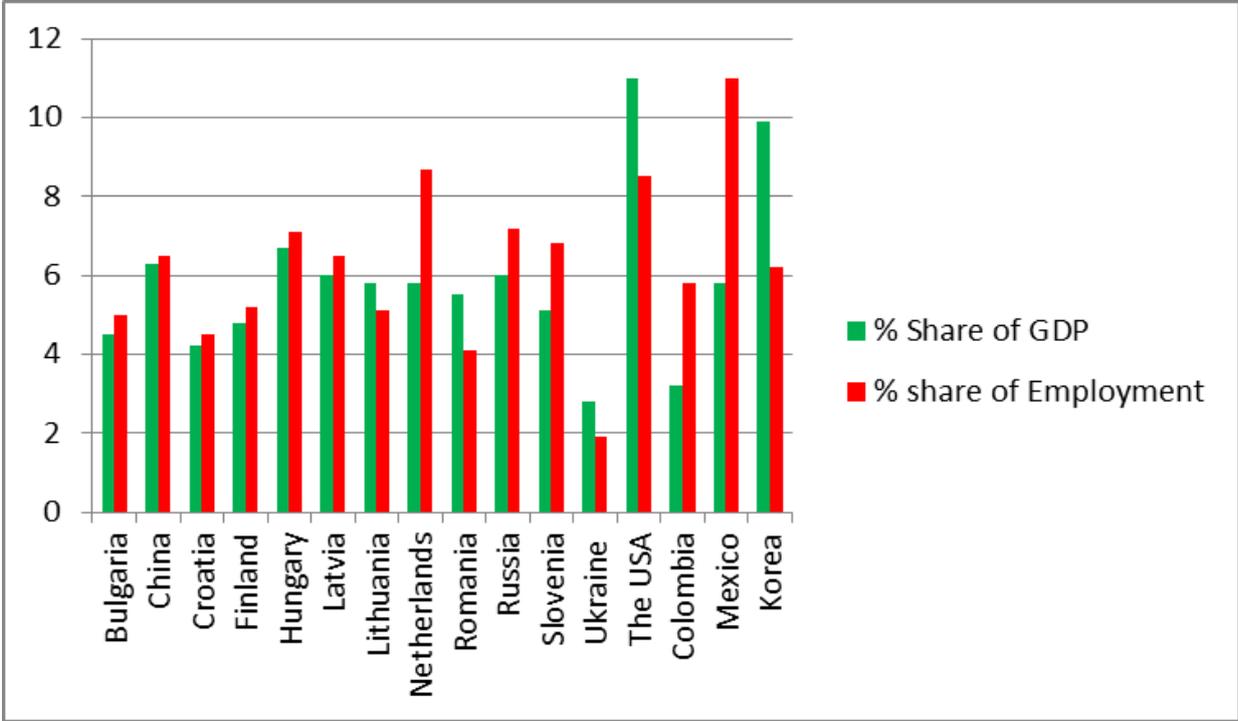
The graph on the Figure 2.1 below shows a copyright industries importance in different developed and developing countries. It is visible that copyright in United States, as the most creating and trading country, contributes 11 per cents or even more to the GDP and creates more than 8 per cents of jobs of the overall employment rate. Indeed, the US Chamber of Commerce⁴⁸ evaluates that American intellectual property constitutes more than \$5 trillion of the country's GDP and intellectual property industries occupied by more than 18 million workers.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

In countries of the European Union, the impact is also significant, which means that the copyright commerce is also relatively big, and the level of GDP and employment depends on the copyright industries. Whereas in Ukraine copyright constitutes less than 3 per cents of the growth domestic product, hence people either do not have incentives to create, because of the high piracy rates, or there are a lot of creative goods, but everybody simply downloads goods from the internet for free and the government is not making any profits.

Figure 2.1: Overall Contribution of Copyright Industries to GDP and Employment



Source: WIPO⁴⁹

One of the most profitable sectors of copyright is the information technology industries. The Business Software Alliance Study about the software piracy⁵⁰ evaluates that IT industries employ over 13 million people all over the world, moreover, IT companies and workers paid

⁴⁹ WIPO Studies on the Economic Contribution of the Copyright Industries (WIPO 2012), http://www.wipo.int/export/sites/www/ip-development/en/creative_industry/pdf/economic_contribution_analysis_2012.pdf (last visited June 2, 2013).
⁵⁰ Piracy Impact Study: The Economic Benefits of Reducing Software Piracy (Bus. Software Alliance 2010), <http://portal.bsa.org/piracyimpact2010/studies/piracyimpactstudy2010.pdf> (last visited June 2, 2013).

over \$1 trillion taxes by the end of 2010 and by the end of 2013 this sum would grow to \$1.5 trillion. Digital music sales industries receive revenues approximately equal to \$5 billion every year, and every year revenues grow by 5-8 per cents⁵¹. Estimations of the contribution of motion picture industries to the economy of the US by The Motion Picture Association of America shown that in 2010 industry employed 2.1 million jobs, generated almost \$143 billion in overall salaries and paid \$15.6 billion of taxes⁵².

Reports do not show the whole picture of copyright industries contribution throughout the entire world, but it is clear that the industry is growing, making innovations and artistic works and generates billions of dollars of profits and taxes.

In order to estimate the impact of piracy on the economy there is a need to compare results of different studies, the analysis is constructed on the results of studies about sound piracy, motion picture piracy and software piracy.

The policy report estimating the cost of sound recording piracy to the US economy states that, by the 2005, the losses of industries were \$5.33 billion because of global – not only US – piracy. Moreover, American retailers lost more than \$1 billion as a result of decreasing demand on legitimate music recordings; hence, the total losses to industries exceed \$6 billion. Furthermore, more than 70,000 jobs, including lost jobs at the level of production of recordings and retail jobs. Report implies that annual tax revenue losses constitute a minimum of \$422 million. Lastly, as a consequence of piracy throughout the world the United States economy suffer from the overall loss of more than \$12 billion annually⁵³.

⁵¹ Digital Music Report 2012. Expanding Choice. Going Global (IFPI 2012), <http://www.ifpi.org/content/library/dmr2012.pdf> (last visited June 2, 2013).

⁵² The Economic Contribution of the Motion Picture & Television Industry to the United States (Motion Picture of Am. 2010), <http://www.mpa.org/Resources/6f8617ae-bdc7-4ff2-882e-746b1b23aba9.pdf> (last visited June 2, 2013).

⁵³ Stephen E. Siwek, The True Cost of Sound Recording Piracy to the U.S. Economy (Inst. for Policy Innovation 2007), http://www.ipi.org/docLib/20120515_SoundRecordingPiracy.pdf (last visited June 2, 2013).

The report⁵⁴ of Motion Picture Association of America on the cost of movie piracy claims that piracy is the biggest threat to motion picture industries, additionally it names two countries where piracy rates were the highest in 2005: Russia and China. Study indicates that companies in the US lost \$6.1 billion due to piracy, \$2.3 billion of them was lost due to the digital copyright infringement, such as downloading or directly streaming movies and TV-shows from the internet. Worldwide piracy costs constitute the sum of \$18.2 billion overall, however, the study does not indicate the particular type of losses which occur because of piracy in the Internet worldwide.

In 2010, the Business Software Alliance report⁵⁵ on software piracy showed that the impact from every type of illegal distribution of software amounts up to \$50 billion in losses to the economies worldwide, it means that out of 10 software programs, which were installed on the computers, 4 were illicit. Study points out main benefits from reducing piracy rates by 10 percentage points on average per country: it would add 500 thousand of new jobs in the software industries and more than \$32 billion in tax revenues. This information may imply that, on average, countries losses from software piracy constitute above indicated numbers. The report focuses only on benefits from decreasing piracy rates, which would be discussed further in the work, but looking on the result from reducing the level of piracy by 10 per cents it is explicit that in every country software piracy generates more losses than music and video piracy together.

To conclude, all the reports about copyright infringement in the Internet assure that piracy has a enormous impact on the economy, however, since there is no single study about every sector of copyright industries, we cannot be sure that all the reports indicate accurate calculations. The Graph 1 implies that copyright constitutes less than 3 per cent in Ukraine

⁵⁴ *Supra* note 32

⁵⁵ *Supra* note 50.

and more than 10 per cent in the USA, hence, even if the piracy rate in the US is four times fewer than in Ukraine, the impact on the economy in the US is still much bigger. It happens because of huge American intellectual property sector and due to the much bigger GDP in comparison with Ukrainian.

2.4 Benefits from reducing piracy rates

As we can see, copyright piracy makes a significant difference to the growth of all countries in the world, so it is reasonable from the government point of view to attempt to eliminate such a phenomenon. As indicated in the previous sub-chapter, the country which contributes the most to the creation of intellectual property and copyright in particular is United States, and even if the piracy rates in US are much less than in Ukraine, it does not mean that Ukraine suffers more from infringing activities, since the large part of the US economy is dependent on intellectual property. In case of Ukraine, there are only 2 per cents of IP industries that contribute to GDP of the country, thus losses of Ukraine from illegal activities cannot compete with losses of United States.

For all developed world piracy means lost opportunities for businesses and related sectors, for employees and employers, and, unquestionably, for governments. The results of studies in the previous chapter demonstrate that in the absence of piracy there could have been more jobs, more revenues for companies and copyright holders, and more paid taxes for governments. Consequently, the bigger part of the economy the copyright property sector holds the bigger economic impact on the economy.

BSA Piracy Impact Study⁵⁶ uses the model which links the connection between spending on software programs and software circulation using market information, the number of companies and employees, taxes paid by them and software piracy rates including its commercial value in order to calculate the amount of benefits from the reduced piracy rates.

The methodology used by BSA for calculating piracy rates is as follows: firstly, it is essential to determine the amount of software installed in the course of the year. Secondly, to calculate the quantity of software bought or obtained legally. Finally, to determine the piracy level researchers subtracted the legal software amount from the total amount of software programs set up onto computers and piracy rate is computed as a percentage of total software used⁵⁷.

The study presented the calculation of benefits from reducing piracy rates, indicated in the Tables 2.1. According to this model, European Union would gain \$17,358 million of tax revenues in first four years, \$58,527 million would be added to GDP. Additionally, reduction of piracy would lead to an increase in the number of jobs – more than 60,000 of working places⁵⁸.

⁵⁶ *Supra* note 50.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

Table 2.1: Economic impact of reducing EU PC software piracy by 10 percentage points

	Piracy rate, (%)	10 pt reduction	10 pt in first 2 of 4 years (\$M)		10 pt spread over 4 years (\$M)		Rapid reduction dividend, 2 against 4 years	
		New jobs	Added GDP	Extra Taxes	Added GDP	Extra Taxes	Added GDP, (%)	Extra Taxes, (%)
Belgium	25	1125	1207	391	879	284	37	38
Czech Republic	37	1085	650	157	478	116	36	36
France	40	14599	12697	4721	9289	3442	37	37
Germany	28	12136	12471	3352	9080	2427	37	38
Greece	58	1313	690	213	512	157	35	36
Hungary	41	885	326	82	239	61	36	36
Italy	49	7538	7130	2450	5213	1785	37	37
Netherlands	28	3815	4456	1095	3260	799	37	37
Poland	54	1812	1433	209	1062	155	35	35
Spain	42	2244	3994	739	2923	538	37	37
Sweden	25	1962	1603	690	1170	502	37	37
the UK	27	13011	11870	3258	8669	2373	37	37
EU Subtotal	35	61525	58527	17358	42774	12639	37	37
Ukraine	85	1957	755	116	586	88	29	31
The USA	20	25431	52984	8425	37810	6094	38	88

Source: adapted from Piracy Impact Study: The Economic Benefits of Reducing Software Piracy (Bus. Software Alliance 2010)

Table 2.1 displays benefits from reduced piracy level in Ukraine and the United States. Numbers demonstrate that even with lower piracy rates the US still gains more benefits than Ukraine – country with piracy level four times higher - from the decrease of illegal software distribution. This means that indeed the American losses from the copyright infringement are much higher than in developing countries like Ukraine.

Other report⁵⁹ indicates one more obvious but key consequence of decreasing piracy – the increase in demand for legitimate goods. It states that in the absence of piracy the increase in demand would lead the US to increase in total earnings from sound recording products by more than \$1 billion.

⁵⁹ *Supra* note 53.

Undeniably, there is not enough data to calculate all the revenues, taxes and work places the reducing of piracy would lead to, however, these few reports point out main areas of piracy impact, regardless of the type of infringement – sound recording, software, motion picture or literature infringement. Reports also cannot show the blueprint for dropping the level of copyright infringement. Though, it is obvious that all the studies are made by companies and researchers who wish to push the government to the efficient legislation acts. Because regardless of numbers or estimations in the content of report papers they all lead to one conclusion: piracy should be eliminated.

Chapter 3: Question of the need to enforce intellectual property rights in Ukraine as a developing country

Following chapter is written to connect previous two chapters in order to observe the problem from the economic and legal point of view and to try to reach a conclusion whether Ukraine as one of the developing countries needs a strong intellectual property rights enforcement, whether it is necessary for the current economic situation or whether it could cause more detrimental effects and harm the economic and social life of the country.

3.1 Problem of enforceability of IP rights in Ukraine

In the early May, 2013 Ukraine was recognized as the number one pirate in the world, according to the report of the United States representative on trade issues⁶⁰. The article of one of the main Ukrainian newspapers states that the report includes the list of countries with weak intellectual property rights enforcement, where Ukraine ranks the first place. Moreover, it is stated that the problem of the usage of the illegal software in this country is so high that even in governmental institutions workers use unauthorized software programs. Microsoft even filed a claim to a Kyiv court for usage of unlicensed software by the Ministry of Internal Affairs of Ukraine in their offices⁶¹.

Despite the fact that Ukraine is a part to the main international copyright treaties and has quite a big number of national legislation on the issue, Ukraine is the country, where protection of intellectual property is not enforced and exists only on paper, the country where the piracy is flourishing and growing every day. The evidence of the failure to enforce are news in internet newspapers, TV-news about threats of trade sanctions from developed countries and, what is

⁶⁰ <http://comments.ua/world/401197-ukraina-priznana-piratom-1-mire.html>

⁶¹ http://www.novostimira.com.ua/news_50395.html

the most demonstrative – the amount of pirated goods that simple Google search offers or Ukrainian websites that offer unlicensed content, like ex.ua⁶², for free. For example, if an average Ukrainian user enters the name of a song on a search page, the dozens of pages which offer this song with the words “download for free”⁶³ would appear as a result of the search. Government tried to close the above mentioned website ex.ua in 2012, but it caused a lot of public demonstrations, and the website was restored.

As a post-soviet country, Ukraine still suffers from consequences of communism and still lives in a transitional economy, which reflected in the moral and behavior of citizens. As a command economy, USSR controlled all spheres of people’s lives, restricting them in their desires and intruding in their private and public life⁶⁴. So there is no surprise that the concept of intellectual property was absent in times of communism. Soviet Union controlled all the literature, newspapers and publications, claiming that all the artistic works are created for the common benefit. This idea of common benefit still exists in society, since most of the people refuse to pay for copyright works thinking that downloading them from the Internet is not a theft⁶⁵. Likewise, many people think that sharing a DVD or CD for a private use is not a crime, but laws do not provide an exception for distribution for private use and hence such actions considered illegal.

The problem goes deeper in the minds of people, politicians and companies. No Ukrainian politician has ever said anything about the need to enforce intellectual property rights and the elimination of digital piracy as a priority problem of the country. Instead of domestic political figures Ukraine gets threats about trade sanctions and pressure in the direction of enforcement

⁶² <http://www.ex.ua/>

⁶³ Result of author’s test on May 25, 2013

⁶⁴ Lajos Bokros, *Accidental Occidental: Economics and Culture of Transition in Mitteleuropa, the Baltic and the Baltic Area* (2013).

⁶⁵ Maria Haigh, *The “Goodbye Petrovka” Plan: Moral Economy of File Sharing in Post-Soviet Ukraine* (Univ. of Wisconsin-Milwaukee 2008), http://www.gesis.org/knowledgebase/1989/papers/haigh_wp7.pdf (last visited June 2, 2013).

from international governments⁶⁶, most often from the US, and organizations like World Intellectual Property Organisation or Business Software Alliance⁶⁷. Report issued by The United States Department of State, which is responsible for international relations with other countries, states that the reason why governments do not enforce is the laws which do not give clear power to authorities to shut down all the rogue websites. Website owners cannot voluntarily give up their sites and after shutting down they appear on new internet service providers⁶⁸.

Furthermore, the huge company Volia-cable providing the majority of the population of the capital of Ukraine – Kyiv – with Internet literally pushes consumers to download goods through Internet. Figure 3.1 demonstrates the commercial stating that Volia-cable would provide users with high speed Internet for downloading without problems, playing with Ukrainian word “kachka” – is a “duck” and a slang translation of “downloading”. Such an advertisement that implies the opportunity to use the high speed internet access in order to download illegal content can indeed encourage people to consume more pirated goods through the Internet.

⁶⁶ *Supra* note 60.

⁶⁷ *Supra* note 65.

⁶⁸ 2013 Investment Climate Statement - Ukraine (U.S. Dep't of State 2013), <http://www.state.gov/e/eb/rls/othr/ics/2013/204754.htm> (last visited June 2, 2013).

Figure 3.1: The example of Ukrainian Internet provider advertisement

ВІСЬКОШВИДКІСНИЙ ІНТЕРНЕТ

Безпроблемна Качка

розслабся і скачуй

10 Гб змішаного трафіку
за 100 грн/міс

30 Гб змішаного трафіку
за 150 грн/міс

на швидкості до 38 Мбіт/сек

доставка, підключення,
налаштування **всього за 1 грн***

бонус – соціальний пакет кабельного ТВ! **

*Акція "Підключись звичку за 1 гривню!" діє з 1.02.2007 по 31.03.2007. Стандартна (не акційна) ціна за підключення становить 49 грн. Оплата штатного підключення включає доставку, підключення та налаштування кабельного модему.
**Абонементу за доступ до програм аналогового соціального пакету "Україна" (32 телеканали, стандартна ціна 22 грн.) вкрито до вартості тарифних планів високошвидкісного Інтернету Воля Бровари.

Повну інформацію про акцію та інші послуги зручай на
WWW.VOLIA.COM

Замов за телефоном
50-222-50

Source: *volia.com*⁶⁹

The research paper from the Assistant Professor of University Wisconsin-Milwaukee⁷⁰ uses statements from works of students of one of the best Ukrainian universities. Undergraduates explain their attitude to piracy over the Internet and with this attitude they express the problems of the Ukrainian society and economy. They say that the main reason of growing piracy is the lack of money and resources, which leads people to lack of knowledge and education, which should be free, because if the government wants people to develop country, citizens should have access to information. Indeed, most of materials available abroad reach Ukraine after several years or do not reach at all. Moreover, the future of the country – students – cannot afford a book which costs more than \$10. One more point of view states that in the question of intellectual property enforcement international society should consider the fact that Ukraine is a developing country which has immense economic problems that

⁶⁹ *Supra* note 65.

⁷⁰ *Ibid.*

make impossible the enforcement at least in a current situation. Moreover, student implies that, for example, books which are not translated in Russian or Ukrainian should be available for downloading for free, because “for now hiding information should be a greater crime than copying it”⁷¹.

3.2 Necessity of enforcement of copyright legislation in Ukraine as a developing country

The main subject of this work is whether Ukraine as one of the developing countries needs a copyright protection which would match all the requirements of the international community and global legal acts. Looking at the results of studies and reports in the second chapter, it is visible that copyright industries have a great impact not only on the economy, but on the quantity of people employed. Hence, the United States and countries of the European Union are right about the need to enforce. However, it is still a question whether the results for developed countries are relevant for the developing states, since the intellectual property industries do not constitute a significant part of the economy there and works more as cultural and educational industries.

The Hargreaves report mentioned before in the work stated that stronger intellectual property protection can hold back the growth of the countries, moreover, it noted that there are more relevant and necessary matters which need to be improved first in order to attract investors, for example, infrastructure or finance⁷². For instance, the example of China as a country with enormous piracy rates proves that weak intellectual property enforcement may not always be a problem for foreign investment flow into the country. Investors entered Chinese market

⁷¹ *Ibid.*

⁷² *Supra* note 6.

because of its inefficient economy, lower manufacturing costs, cheaper labor force and the better attitude towards overseas investors⁷³.

There are a lot of differences between developed and developing states. Firstly, citizens of developing countries have a lower income and consequently they do not have the same opportunity costs. This is the main reason to consider that copyright protection standard for developed countries does not fit in the framework of the standard that should be established in developing states⁷⁴. Secondly, the WIPO report⁷⁵ on copyright suggests that developing countries have less advanced copyright industries, what leads to the conclusion that the amount of creative works is relatively low and authors do not have incentives to create. It may happen because of low profits generated from creative activities and because authors have to spend more time in working on another job, or as a consequence of weak intellectual property protection, whereby authors may think that spending time creating something does not worth the low wages caused by piracy and free downloading of the illegal goods from the Internet.

From the consumer point of view it is not clear how the demand on the legitimate copies would change with strengthening the copyright protection, for the reason that benefits from strengthened standard of protection are derived at very high costs⁷⁶. There can be two outcomes: consumers would stop buying legal goods because of the high price and the demand would decrease, or in case of absence of pirated goods consumers would be left with a choice to buy a legitimate good or not to buy it, and definitely a certain part of people would switch to legitimate copies and this would lead to increase of demand.

⁷³ Peter K. Yu, Intellectual Property, Foreign Direct Investment and the China Exception, <http://www.peteryu.com/fdi.pdf> (last visited June 2, 2013).

⁷⁴ *Supra* note 34.

⁷⁵ *Supra* note 49.

⁷⁶ Douglas Lichtman & William Landes, Indirect Liability for Copyright Infringement: An Economic Perspective, 16 Harv. J.L. &Tech. (2003), <http://jolt.law.harvard.edu/articles/pdf/v16/16HarvJLTech395.pdf> (last visited June 2, 2013).

Next important point that needs to be taken into consideration is the need of a developing country in access to education, innovations and new technologies. A question of access to knowledge is truly serious for students and growing generations since they are the future of a country. As was said in the previous sub-chapter, students copy goods from the Internet since they cannot afford expensive materials for education and research. Developing countries usually do not have costs to purchase legitimate goods and by copying or downloading people gain access to information, which they cannot afford to buy. If there are no blueprints on how to make new technologies, then country will be left without any development and become poorer. Making an enforcement regime weaker for developing countries it can push the states to further growth and bigger economic benefits by employment of highly educated people and by not restricting the use of foreign innovations⁷⁷. With further growth of states it is fully justifiable to make enforcement stronger in order to protect rights of inventors and artists and not to deprive them of incentives to create.

These are the main factors that need attention when thinking about the implementation of new legislation or stronger enforcement in developing countries. However, there is no single approach which would fit all the countries: developed and developing ones. Each country has its own level of copyright protection and enforcement at the particular stage of its development. As this work examines this problem on the example of Ukraine, it is possible to conclude that for now the intellectual property rights protection is not the main issue in this country. There may be a lot of discussions regarding this topic, nonetheless, current results of studies imply that developing countries would suffer more from strong intellectual property rights protection than from the weak protection. Moreover, Ukraine still has not overcome the USSR and transition after-effects existing in the economy and people's minds. Summing up, there are a lot of problems that need to be conquered before the country would come to an

⁷⁷ *Supra* note 34.

environment, where the enforcement of authors' rights would be a logical and natural decision of the government and where citizens would not consider it an act of totalitarianism.

CONCLUSION

This thesis has explained the importance of a problem of intellectual property rights enforcement in developing countries with high digital piracy rates on the example of Ukraine. The present work was designed to determine whether developing countries need strong intellectual property protection in order to fight with Internet piracy. Jurisdictions that were taken into examination and comparison are the United States of America and the European Union. The comparison was made to point out flaws in Ukrainian legislation and what needs to be improved towards enforcement.

Furthermore, few studies were analyzed in order to compare economic impact of copyright industries in the chosen jurisdictions and to see the impact of piracy on the economic growth of countries. It was concluded that piracy has a significant impact on the economies, particularly GDP of states and jobs, moreover, studies showed that developed countries suffer more from the digital piracy due to the vast copyright industries comparing to insignificant role of copyright industries in developing countries.

Taking into account the economic situation of Ukraine, thesis examined papers that discussed whether developing states need strong copyright enforcement. It was established that, in current economic environment, it would be inefficient to enforce intellectual property rights, since the cost of enforcement would not outweigh the benefits from it, moreover, the strong protection may restrict the innovation, which is the key to the state's development and growth.

BIBLIOGRAPHY

Statutes

Berne Convention for the Protection of Literary and Artistic Works (1971 Paris text), adopted Sept. 9, 1886, S. Treaty Doc. No. 99-27, 1161.

Council Decision 2000/278/EC of 16.03.2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), adopted Apr. 15, 1994.

WIPO Copyright Treaty (WCT), adopted Dec. 20, 1996.

Directive 2001/29/EC of 22.05.2001 on the harmonization of certain aspects of copyright and related rights in the information society.

Digital Millennium Copyright Act, adopted Oct. 28, 1998.

Конституція України [Constitution of Ukraine] dated 28.06.1996, No 254к/96-ВР.

Закон України "Про авторське право і суміжні права" [The Law of Ukraine "On Copyright and neighboring rights"], adopted 23.12.1993, No 3792-XII.

Цивільний кодекс України [The Civil Code of Ukraine], adopted 16.01.2003, No 435-VI

Books

WIPO Intellectual Property Handbook (2nd ed. World Intellectual Prop. Org. 2004).

Black's Law Dictionary 1186 (8th Ed. 2004).

W. M. Landes & R. A. Posner, *The Economic Structure of Intellectual Property Law* (Belknap Press of Harvard Univ. Press 2003).

Lajos Bokros, *Accidental Occidental: Economics and Culture of Transition in Mitteleuropa, the Baltic and the Baltic Area* (2013).

Other Materials

Envisional, "Technical Report: an Estimate of Infringing Use of the Internet," January 2011.

The UK Publishers Association, *E-piracy: Copyright Infringement and Enforcement*, http://ec.europa.eu/avpolicy/docs/other_actions/contributions/uk_publishers_annex1_col_en.pdf.

Professor Ian Hargreaves, *Digital Opportunity. a Review of Intellectual Property and Growth* 24 (2011), <http://www.ipo.gov.uk/ipreview-finalreport.pdf>.

International Bureau of WIPO et al., *WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)*.

Bate C Toms & Olga Prokopovych, *Intellectual Property Protection in Ukraine* 348-349 (BC Toms & Co 2004 2004).

Commentary, *What Are SOPA, PIPA CISPA and ACTA?*, TechAdvisory.org, Aug. 7, 2012, available at <http://www.techadvisory.org/2012/08/what-are-sopa-pipa-cispa-and-acta/>

Brian T. Yeh & Jonathan Miller, *A Legal Analysis of S. 968, the PROTECT IP Act*. CRS Report for Congress (Cong. Research Serv. 2011).

The Motion Picture Association of America, Inc. (MPAA), *MPAA Statement on Strong Showing of Support for Stop Online Piracy Act* (2011), <http://www.mpa.org/resources/5a0a212e-c86b-4e9a-abf1-2734a15862cd.pdf>.

L.E.K. Consulting &, The Cost of Movie Piracy: An Analysis Prepared By LEK for the Motion Picture Association (2005), <http://ia600407.us.archive.org/3/items/MpaaPiracyReort/LeksummarympaRevised.pdf>.

GIPC, Statement of the U.S. Chamber's Global Intellectual Property Center (2013), <http://www.finance.senate.gov/imo/media/doc/Hirschmann%20testimony%20GIPC.pdf>.

Richard Watt, An Empirical Analysis of the Economics of Copyright: How Valid Are the Results of Studies in Developed Countries for Developing Countries? WIPO, http://www.wipo.int/export/sites/www/ip-development/en/economics/pdf/wo_1012_e_ch_3.pdf.

R. Watt & R. Towse, Copyright Protection Standards and Authors' Time Allocation, Industrial and Corporate Change (2006).

Edward Rappaport, Copyright Term Extension: Estimating the Economic Values (Cong. Research Serv. 1998), http://digital.library.unt.edu/ark:/67531/metacrs727/m1/1/high_res_d/98-144e_1998May11.pdf.

Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods (United States Gov't Accountability Office 2010), <http://www.gao.gov/assets/310/303057.pdf>.

Film Piracy, Organized Crime, and Terrorism (RAND 2009), http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG742.pdf.

The Economic Impact of Counterfeiting and Piracy (OECD 2008), <http://www.oecd.org/industry/ind/38707619.pdf>.

WIPO Studies on the Economic Contribution of the Copyright Industries (WIPO 2012), http://www.wipo.int/export/sites/www/ip-development/en/creative_industry/pdf/economic_contribution_analysis_2012.pdf.

Piracy Impact Study: The Economic Benefits of Reducing Software Piracy (Bus. Software Alliance 2010), <http://portal.bsa.org/piracyimpact2010/studies/piracyimpactstudy2010.pdf>.

Digital Music Report 2012. Expanding Choice. Going Global (IFPI 2012), <http://www.ifpi.org/content/library/dmr2012.pdf>.

The Economic Contribution of the Motion Picture & Television Industry to the United States (Motion Picture of Am. 2010), <http://www.mpa.org/Resources/6f8617ae-bdc7-4ff2-882e-746b1b23aba9.pdf>.

Stephen E. Siwek, The True Cost of Sound Recording Piracy to the U.S. Economy (Inst. for Policy Innovation 2007), http://www.ipi.org/docLib/20120515_SoundRecordingPiracy.pdf.

Maria Haigh, The “Goodbye Petrovka” Plan: Moral Economy of File Sharing in Post-Soviet Ukraine (Univ. of Wisconsin-Milwaukee 2008), http://www.gesis.org/knowledgebase/1989/papers/haigh_wp7.pdf.

2013 Investment Climate Statement - Ukraine (U.S. Dep’t of State 2013), <http://www.state.gov/e/eb/rls/othr/ics/2013/204754.htm>.

Peter K. Yu, Intellectual Property, Foreign Direct Investment and the China Exception, <http://www.peteryu.com/fdi.pdf>.

Douglas Lichtman & William Landes, Indirect Liability for Copyright Infringement: An Economic Perspective, 16 Harv. J.L. &Tech. (2003), <http://jolt.law.harvard.edu/articles/pdf/v16/16HarvJLTech395.pdf>.

http://en.wikipedia.org/wiki/Anti-Counterfeiting_Trade_Agreement

<http://comments.ua/world/401197-ukraina-priznana-piratom-1-mire.html>

http://www.novostimira.com.ua/news_50395.html

<http://www.ex.ua/>