

# **METHODS OF COPYRIGHT PROTECTION**

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*Abstract.* The article analyzes the methods of copyright protection. It has been established that the copyright protection system includes civil-law methods of copyright protection provided for by current legislation. It is noted that the methods of copyright protection are the means by which the termination of rights violations, the restoration of rights, and compensation for damages caused by such violations are carried out.

A classification of civil-law methods of copyright protection has been conducted, distinguishing between general methods, provided for by general norms of civil legislation, and special methods, established by the current copyright legislation of Ukraine. Jurisdictional and non-jurisdictional forms of copyright protection have been studied.

The classification of copyright protection methods has been conducted based on their functional purpose: preventive and prohibitive methods – aimed at preventing and terminating violations, as well as non-recognition of rights; restorative methods – focused on restoring the infringed right; compensatory methods – designed to provide additional compensation for damage caused by the infringement.

Technical means of copyright protection have been analyzed, with the primary ones identified as anti-copying systems, conditional access systems, cryptographic means (encoding, digital envelope, and digital signature), as well as postage stamp and electronic management systems.

*Key words:* protection of rights, copyright, jurisdictional copyright protection, non-jurisdictional copyright protection, methods of copyright protection, technical means of copyright protection, compensation for damages.

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# **СПОСОБИ ЗАХИСТУ АВТОРСЬКИХ ПРАВ**

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*Анотація.* У статті проведено аналіз способів захисту авторського права. Встановлено, що система захисту авторських прав включає в себе передбачені чинним законодавством цивільно-правові способи захисту авторських прав. Зазначено, що способами захисту авторських прав є методи, за допомогою яких здійснюється припинення порушення прав, відновлення прав, а також компенсація завданої шкоди внаслідок такого порушення. Здійснено класифікацію цивільно-правових способів захисту авторського права залежно від нормативного закріплення на загальні, передбачені загальними нормами цивільного законодавства і спеціальні, передбачені чинним авторським законодавством України. Досліджено юрисдикційні та позаюрисдикційні форми захисту авторських прав. Проведено класифікацію способів захисту авторських прав залежно від цільового спрямування на превентивно-припинні, тобто такі, що спрямовані на попередження та припинення порушення, невизнання права; відновлювальні – спрямовані на відновлення порушеного права; компенсаційні, спрямовані на додаткову компенсацію шкоди, завданої порушенням права. Проаналізовано технічні засоби захисту авторських прав, основними з яких названо систему антикопіювання, систему обумовленого доступу, криптографічні засоби (кодування, цифровий конверт та цифровий підпис), бандерольну та електронну системи управління.

*Ключові слова:* захист права, авторське право, юрисдикційний захист авторських прав, неюрисдикційний захист авторських прав, способи захисту авторських прав, технічні засоби захисту авторських прав, компенсація завданої шкоди.

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Human intellectual activity is gaining increasing popularity and expanding into almost all areas of civil-law relations. The results of such activity are subject to legal protection, and the social relations arising from their use require legal regulation, which is ensured by copyright law. Without the legislative enshrinement of such fundamental intellectual property rights as the right to a name, the right of authorship, and the right to the protection and safeguarding of the results of human creative activity, the development of culture, science, and technology would be impossible.

One of the most powerful driving forces behind the development of civilization is human creative activity. The attitude toward intellectual property in society largely depends on the overall status of the institution of property within it, as well as the effectiveness of legal protection mechanisms. The study and research of the nature of copyright relations, their characteristics, and development trends have been the focus of both domestic and foreign scholars. The aim of this research is to analyze the issue of protecting the rights of participants in copyright relations and to identify the main methods of copyright protection.

The issue of intellectual property rights protection has become a priority in the development of legislation and the establishment of the corresponding organizational and judicial mechanisms [8].

The copyright protection system includes civil-law methods of copyright protection provided for by the current legislation. In legal science, methods of protection are understood as means established by law through which violations of any individual's rights are prevented, stopped, or eliminated. They also include measures for restoring rights or compensating for losses incurred as a result of such violations. In copyright law, methods of protection can be defined as legislatively established substantive legal enforcement measures aimed at restoring violated and recognizing disputed rights, as well as influencing the infringer.

Civil-law methods of copyright protection can be conditionally divided into two main groups: general civil-law methods provided by the general norms of civil legislation and special methods of intellectual property rights protection established by the current copyright legislation of Ukraine. A comparative analysis with other means of copyright protection reveals that civil-law methods of copyright protection are the most practical and effective.

General civil-law methods of protection can be used by an individual when exercising their right to protection in cases of violation, non-recognition, or dispute of their copyright and other intellectual property rights in general.

Special methods of protection apply exclusively to the protection of copyright. In civil law, before the Civil Code of Ukraine came into force, the methods of protecting rights, freedoms, and interests included only those that could be exercised by interested parties through court appeal. The court could provide protection by: recognizing a right; restoring the situation that existed before the violation; stopping actions that infringe on a right; enforcing obligations in kind; terminating or modifying legal relations; compensating for damages; or providing compensation for moral harm.

The procedure for protecting intellectual property rights includes: the rights holder's own actions aimed at preventing the leakage of information about the object of rights and its application areas; the establishment of specialized internal services; the involvement of intellectual property law specialists in the protection of rights; close cooperation between rights holders and government authorities, assisting them in detecting, documenting, and assessing violations; close collaboration with retailers and distributors of intellectual property carriers; active utilization of law enforcement agencies; and, finally, judicial protection through the filing of lawsuits (civil claims) against intellectual property rights violators.

Additionally, supplementary forms of protection include self-defense, civil society organizations (associations of citizens) with a creative or human rights focus, and other similar initiatives.

In general, the forms of copyright protection can be divided into two groups: jurisdictional and non-jurisdictional [5]. When exercising the right to protection, the primary form is jurisdictional, meaning the appeal to competent authorities with a lawsuit, claim, or complaint. Jurisdictional protection involves judicial consideration of cases regarding the violation of copyright and related rights, as well as the activities of other state

bodies that contribute to establishing the truth in the case, conducting expert assessments, and taking actions to prevent violations in the relevant area.

In a broader context, jurisdictional protection can be defined as the activity of state-authorized bodies that protect infringed or disputed copyright and related rights. Its essence lies in the fact that an individual whose rights and legitimate interests have been violated by unlawful actions seeks protection from competent state authorities or the court to restore and safeguard their personal non-property and property rights and interests. Jurisdictional protection is carried out through the application of substantive and procedural legal norms.

Non-jurisdictional protection primarily involves actions taken by individuals and public organizations independently, without the involvement of state authorities, to stop violations of copyright and related rights, restore violated rights, and create favorable conditions for the exercise of legal opportunities by subjects of copyright and related rights [1, p. 39]. Of course, the activities of the relevant public organizations and individual citizens aimed at protecting copyright and related rights must not exceed the boundaries of lawful behavior of these legal subjects.

The most popular and effective forms of protection are jurisdictional forms: lawsuits in courts (of general jurisdiction, commercial, and administrative), civil liability, administrative liability, and others.

One of the methods of protecting intellectual property rights is the procedure of reconciliation. Reconciliation is most common in situations where the parties to the conflict intend to maintain their business relationships and resolve the issue privately. This form involves the selection or appointment of a mediator who attempts to assist the parties in settling their dispute. For more effective and refined protection of copyright in Ukraine, non-traditional or, as they are also called, alternative methods of protection should be introduced.

Ways of protection can also be classified in the following way: depending on their purpose, they are divided into preventive-preventive, meaning those aimed at preventing and stopping violations, disputes, or non-recognition of rights; restorative, aimed at restoring the violated right; and compensatory, meaning those aimed at providing additional compensation for damages caused by the violation of rights.

Preventive-preventive methods include, first and foremost, the recognition of rights. Essentially, this method of protection can only be implemented through judicial procedures. There are two approaches in legal science regarding the grounds for applying this method of protecting rights: from the first perspective, recognition of rights is possible only when the right is not yet violated, but is merely disputed or not recognized, or there is a real threat of such actions. From the second perspective, recognition of rights can be applied even when the right has already been violated.

Methods of protecting copyright have repeatedly been the subject of research, but scholars' attention has mainly been focused on clarifying the legal nature and peculiarities of applying such methods of copyright protection as compensation for material damage and compensation for non-material damage.

Compensation for property damage as a method of protecting copyright and related rights is considered a compensatory method of protection. In the field of copyright and related rights protection, compensation for property damage has been transformed into the possibility of recovering the actual amount of harm caused (compensation for losses, including lost profits), may have an indirect relation to the amount of harm (recovery of income earned by the infringer as a result of violating copyright and related rights), or be relatively independent of the amount of harm caused (payment of compensation).

The compensation for non-pecuniary damage as a means of protecting copyright and related rights may occur in a non-jurisdictional form if the holder of the violated right and the infringer reach an agreement on the form and extent of such compensation. In judicial proceedings regarding the claim for compensation for non-pecuniary damage, the size of the compensation, as stated in the claim, is specified by the owner of the copyright and/or related rights that were violated, taking into account the circumstances of the harm caused, its nature and consequences, and substantiating the fact of such harm with relevant evidence. The court, based on the requirements of reasonableness and fairness, and considering circumstances of significant importance, determines the amount of compensation.

Significant funds and efforts of the best specialists from leading manufacturers of products containing intellectual property objects, including copyright, have yielded serious results. Today, it is already difficult to compile a list of technical protection measures being used or developed in the field of copyright protection. Technical protection measures for copyright can be divided into four major groups.

The first group is aimed at protecting actions that fall under the exclusive right of the author, including printing, public distribution, digital copies, alterations of works, etc. This is also referred to as the anti-copying system. The main function of this system is to prevent the creation of both exclusively digital and digital-analog copies of protected works. This category includes smart cards, which allow for the storage of large amounts of information.

A number of technical measures, known as conditional access systems, are used to protect copyright objects in information highways. These systems are developed and implemented to address the main issue of digital networks – providing secure access to protected information and content while ensuring payment and copyright protection for the «locked» work. There are many technologies that address this issue, including encryption, passwords, «secret blocks», «black boxes», digital signatures, and digital envelopes.

Attention should be given to measures such as encryption, digital signatures, and digital envelopes. This group of protection measures falls under cryptographic methods. Cryptographic protection measures refer to special methods and tools for transforming information, resulting in the masking of its content. The main types of cryptographic encryption are data encryption and encoding of the protected information.

A digital signature is a special method of encoding used to authenticate or recognize a document. An electronic digital signature is a type of electronic signature obtained through cryptographic transformation of a set of electronic data, which is added to this set or logically combined with it, allowing its integrity to be confirmed and the signatory to be identified. The electronic digital signature is applied using a personal key, which is used to encrypt the information, available only to the signer, and is verified using a public key.

Digital envelopes (containers) are a type of encryption in which a work is «packaged» in a digital envelope that contains information related to the work and the conditions of its use.

The banderol system is the most common and simple method of protection. It involves placing the carriers in a special wrapper or packaging that contains important information, sometimes encoded, which defines the items produced and distributed in compliance with copyright.

Another technical means of copyright protection is electronic rights management systems. These systems enable the management of rights in electronic networks, providing the ability to obtain permissions for the use of works online and to monitor such usage. These devices combine contractual and technological protection. In addition to other functions, the tasks of this group of technical measures include the distribution of royalties among rights holders, accepting payments from users, sending invoices, registering subscribers who copy data, and so on [3, p. 86–87].

Producers of intellectual property products are aware of the scale of the problem and the need for joint efforts to resolve it. However, the creation of technical means of copyright protection and their increasingly widespread use today, based on commercial licensing agreements, must be supported by stringent legal measures. Defining the legal status of these protection measures and the associated legal aspects of their enforcement currently presents serious challenges for copyright specialists and is the subject of heated discussions among them.

Thus, copyright protection should be understood as the legal measures provided by law for the recognition of rights, the cessation of their infringement, and the application of legal responsibility to infringers.

Methods of copyright protection refer to specific techniques used to stop rights violations, restore rights, recognize disputed rights, and compensate for damages caused by such violations. Copyright protection methods can be classified into preventive, remedial, and compensatory methods. The main methods of copyright protection include: recognition of rights, prohibition of actions that violate rights or create a threat of violation, cessation of preparatory actions aimed at violating copyright and related rights, restoration of violated personal non-property rights, compensation for damages, recognition of a transaction as invalid, recognition of unlawful decisions, actions, or omissions by state authorities, local government bodies, or their officials, as well as the refutation of false information, among others. Technical means of copyright and related rights protection are also effective, with the key ones being: anti-copying systems, conditional access systems, cryptographic tools (encryption, digital envelopes, and digital signatures), banderol systems, electronic rights management systems, and others.

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