



# LEGAL PROTECTION OF INTELLECTUAL PROPERTY

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## IP POLICY IN ACADEMIC INSTITUTES AND HIGHER EDUCATION INSTITUTIONS

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**Introduction.** Along with the creation of intangible objects, their effective introduction into production and other spheres of public relations to satisfy both the private interest of creators, the persons who have invested the funds in their creation, and the public interest acquire the particular importance.

**Problem Statement.** The study of intellectual property policy in the activities of universities and research organizations now receives serious attention, in particular by institutions such as the World Intellectual Property Organization and the European Union.

**Purpose.** The purpose of this research is to identify regulatory requirements and scientific approaches to the formulation of intellectual property policy of higher education establishments and R&D institutions of Ukraine, as well as proposing measures to improve the effectiveness of this policy.

**Materials and Methods.** Analytical analysis of current regulations and scholarly research works in order to develop proposals for improving the effectiveness of intellectual property policy in the activities of higher education establishments and R&D institutions of Ukraine.

**Results.** It is disputable that in the case of the conveyance of intellectual property rights as a contribution to the authorized capital of legal entities, such property rights “shall be held by a state-owned R&D institution or university, academies, institutes”. After all, if any assets are conveyed as a contribution to the authorized capital of a corporation, the titles to these assets are transferred to the corporation.

**Conclusions.** The positive legislative trends in the educational field provide for strengthening the positions of education establishments and R&D institutions in terms of the commercialization of scholarly research and R&D results.

**Keywords:** intellectual property, higher education establishments, university, R&D institution, and property rights.

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In today's world, the results of human intellectual work in scientific, technical, literary, artistic, and other spheres are one of the determining factors of economic growth and socio-cultural development. After the creation of intangible objects, the effective introduction of these products into the industry and other spheres of public life is very important to meet the private interests of their creators and individuals who have invested in their creation, as well as the public interests. Otherwise, the results of intellectual activity cannot bring beneficial effect on both micro and macro levels. This is especially typical for domestic higher education establishments and R&D institutions, which, despite the difficult economic situation in the country, have preserved their scholarly research potential and remain powerful intellectual centers that create numerous inventions, utility models, industrial designs, plant varieties, software and other kinds of intellectual property. Suffice to mention that domestic R&D institutions have traditionally been the absolute leaders among subjects of intellectual property rights in submitting applications for inventions and utility models (90.8% of applications) [1].

However, there has still remained the problem that often R&D institutions are merely generators of ideas, which do not take part in their further commercialization. Typically, the academic performance of a higher education establishment or institution is measured by the total number of applications submitted and patents or published monographs, scholarly research articles etc., in a research report. It is a common practice for a higher education establishment to obtain a patent for a service invention created by its employees, then pay an annual fee for the first 3–5 years to maintain its validity without taking any measures to commercialize it, and finally, offers the workers (inventors) who created it to re-apply for a patent in their name. Despite the fact that according to Part 3 of Article 69 of the Law of Ukraine *On Higher Education* [2], the state-owned and communal higher education establishments shall cover the costs they incur in connection with

the provision of legal protection for objects of intellectual property rights, the titles for which are acquired in accordance with the procedure established by applicable law, from their own revenues.

In this respect, it will be advisable to draw attention to the progressive experience of leading foreign universities and research organizations, which in their activities pay great attention to intellectual property issues, in particular commercialization of intellectual property. One of the major global trends of the last decades in the development of innovation activity has been the transition from the linear model of managing the innovation cycle to the cooperative model, called the triple helix. The institutional nucleus of the latter became the so-called Entrepreneurial University that combined the educational and research missions of a traditional university with the mission of generating innovation in close organic cooperation with public authorities and enterprises acting as customers and co-developers of university-level innovations [3]. Intellectual property policy is often associated with the so-called “third mission” of universities – “commercialization”, which, along with education and research (first and second missions), is one of the main functions of universities in the modern economy [4].

It should be noted that the problems related to the activity of R&D institutions and higher education establishments in terms of the acquisition and exercise of intellectual property rights have not yet received adequate theoretical understanding in the domestic legal doctrine. In this aspect, it is possible to note researches by Yu. Atamanova [5], Yu. Kapitsa [6], I. Koval [7], O. Orlyuk [8], E. Sesitsky [9], I. Yakubivskiyi [10], and others. In 2016, the International Seminar *Intellectual Property Policy in Universities and Research Institutions* was held at the International Center for Legal, Historical, and Political Studies of the CEE countries at the Kyiv University of Law of the NAS of Ukraine (Lviv, 29.02–01.03 and Kyiv, 03.03–04.03) [11].

The World Intellectual Property Organization pays considerable attention towards intellectual

property issues in the operation of academic institutions and higher education establishments. It has produced a set of standard documents on the management and commercialization of intellectual property in these institutions: IP Toolkit for Universities and Public Research Institutions, including, in particular, WIPO Intellectual Property Policy Template for Universities and Research Institutions (hereinafter referred to as WIPO Template) [12] and Guidelines for Customization of the WIPO Intellectual Property Policy Template for Universities and Research Institutions [13]. These documents have been developed based on the experience of leading universities: Oxford University, University of Cambridge, University of California, King's College London, Glasgow University, Bournemouth University, Debrecen University, Plymouth University, and Oxford University [9]. They cover a wide range of issues related to the definition of intellectual property entities, the management of intellectual property, its commercialization, and distribution of revenues from its usage, resolution of disputes, and more.

Many acts on these issues have been adopted at European Union level. These include *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee, and the Committee of the Regions: Improving knowledge transfer between research institutions and industries across Europe and embracing open innovation* [14] and *Commission Recommendations on the management of intellectual property in knowledge transfer activities and the Code of Practice for universities and other public research organizations* [15]. The latter document sets out the basic principles of intellectual property policy for universities and research organizations. Although the Recommendations are rather general and not very extensive, as compared with the WIPO documents mentioned above, its implementation has given a significant impetus to the formation of a uniform policy of the EU Member States on the management of intellectual property rights of R&D institutions and universities [6].

The above mentioned demonstrates that intellectual property policy for universities and research organizations is now in the focus of such institutions as the World Intellectual Property Organization and the European Union. As of today, much of the leading universities in Europe, the United States, and other countries in the world have adopted and are in possession of relevant local intellectual property policy documents. In particular, the website of the World Intellectual Property Organization has accumulated information about such documents that operate in universities and research institutions in more than 70 countries [16]. However, this database does not contain any information about Ukrainian universities and academic institutions. This is an expected fact, since, as of today, only a few domestic R&D institutions and higher education establishments have had such documents. In 2008, the Presidium of the NAS of Ukraine adopted a package of documents related to intellectual property issues in the activity of R&D institutions [17]. Among the national universities it is worth mentioning the *Igor Sikorsky Kyiv Polytechnic Institute* National Technical University of Ukraine, which in 2019 approved the Policy in the field of intellectual property [18]. Proceeding from the information contained on the official websites, most higher education establishments have not adopted such a document (that, according to paragraph 3.4.4. of the WIPO Template, shall be posted on the website of a university or academic institution). This fact adversely affects the effectiveness of the management and commercialization of intellectual property.

Intellectual property policy (hereinafter referred to as IP Policy) is, in its essence, a local act of a relevant R&D institution or higher education establishment adopted by its competent collegial body in order to regulate the relations between R&D institution or higher education establishment, on the one hand, and employees (students, postgraduate students, invited researchers, etc.), on the other hand, for intellectual property objects created in such R&D institution or higher educa-

tion establishment. According to WIPO Template, such a document is accepted by the Board or Senate of the Institution. That is, a collegial governing body of the respective institution. From the standpoint of Ukrainian legislation, such functions shall be vested in the Academic Council of higher education establishment (Article 36 of the Law of Ukraine on *Higher Education*), or the scientific (research, R&D, engineering) council of R&D institution (Article 10 of the Law of Ukraine on *Scholarly Research and R&D Activities* [19]).

One of the basic issues to be addressed by IP Policy is the determination of the entity's intellectual property rights created within the institution. In the legislation of Ukraine this issue is settled controversially. Thus, special laws on the protection of rights to the relevant intellectual property objects contain an approach according to which the property rights of the intellectual property to the object created by the employee in connection with the performance of duties under the employment contract belong to the employer, unless otherwise provided for by the agreement (Article 16 of the Law of Ukraine on *Copyright and Related Rights* [20], Article 9 of the Law of Ukraine on *Protection of Rights to Inventions and Utility Models* [21], Article 8 of the Law of Ukraine on *Protection of Industrial Design Rights* [22], etc.). In turn, Part 2 of Art. 429 of the Civil Code of Ukraine [23] provides that the property rights to the object created in connection with the performance of employment contract belong to the employee who created the object and the legal or natural person where or in which he works, jointly, unless otherwise agreed by the contract. A similar approach is enshrined in Part 2 of Art. 430 of the Civil Code of Ukraine on property rights to an object created by order, that is, in the order of fulfillment of obligations under a civil contract.

According to item 24 of the Resolution of the Plenum of the Supreme Court of Ukraine, *On application by the courts of the rules of the law on copyright and related rights* [24], a conflict between Art 429 of the Civil Code of Ukraine and Art.16 of the Law of Ukraine on *Copyright and Related*

*Rights* shall be decided in favor of the first one. A similar position is reflected in paragraph 5.2. Recommendations on the legal regime of official works [25].

According to Art.70 of the Law of Ukraine on *Higher Education*, a higher education establishment in accordance with the procedure established by law and in accordance with the statute has the right of ownership of objects of intellectual property rights created at their own funds or from the state or local budgets, except in cases specified by law.

The stated norm is not sufficiently clear and does not give an unambiguous answer to the question of who owns the intellectual property rights of objects created in the course of activity of the higher education establishment. For example, a pedagogical researcher receives salary that is paid at the expense of budgetary funds (employees who are on the so-called "general fund") or at the expense of higher education establishments (employees, whose salaries are paid, for the performance of their work duties) from the "special fund").

In accordance with clause 4.2 of Regulations on the organization of scholarly research, R&D activities in higher education establishments of III and IV levels of accreditation [26], sources of financing scholarly research and R&D activities in higher education establishments are the state budget funds and the funds received for the implementation of research, design works, provision of educational and research services commissioned by legal entities and individuals, other sources in accordance with applicable law. At the same time, clause 4.3 of the said Regulation provides that research and development of higher education establishments conducted at the expense of the state budget shall be financed by the Ministry of Education and Science of Ukraine under the relevant budget program.

Therefore, under the above provision of Art. 70 of the Law of Ukraine on *Higher Education* should be covered only in cases where the funds of the higher education establishment or the corresponding budget are spent on the targeted financing

of scholarly research works (state budget topics, self-financing topics, etc.).

A clearer regulation of these issues is contained in the WIPO Template. This document provides a differentiated approach to determining the legal regime of intellectual property objects, first and foremost, depending on the entity that created it. According to Art.5 of the mentioned document, there are three categories of the following entities: 1) Staff Members; 2) Students; 3) Visiting professors.

The category of employees includes any person working under a contract of employment in R&D institution or higher education establishment, including teaching staff, researchers, engineers, administrative and backstopping staff, regardless of full-time or part-time employment. That is, the main feature of this category of subjects is that the basis of their relationship with R&D institution or higher education establishment is a contract of employment.

In respect of intellectual property rights to objects created by employees, they belong to a R&D institution or higher education establishment, provided one of the following conditions is true:

- ◆ the object was created by an employee in the manner of performing his/her duties;
- ◆ if in the process of creation of the object the employee made a significant use of resources of R&D institution or higher education establishment (the latter include, in particular, facilities, equipment, human resources or funds, but does not include the usual use of libraries, office premises).

A student, according to the WIPO Template, is considered to be any student registered for an approved course at the Institution. Regarding the Ukrainian legislation, it should be noted that it operates in a broader category: “persons studying in higher education establishments”, which includes higher education applicants (students, cadets, graduate students, adjuncts, doctoral students, teaching assistants) and other persons who study at higher education establishments (trainees, interns, resident doctors) (Article 61 of the Law

of Ukraine on *Higher Education*). In this aspect, it should be noted that the legal status of postgraduate students is different in different countries — in some countries they refer to students and in others to employees.

Unlike objects which were created by employees, as a general rule, the objects made by students in course of their studies at a higher education establishment, including diploma papers, dissertations, etc. are their intellectual property. With regard to theses or dissertations, IP Policy may stipulate that the student shall submit their final version to a proper higher education establishment of the repository or issue a free higher education establishment license for their reproduction.

At the same time, there are two cases in which intellectual property rights to student-created objects belong to a higher education establishment:

- ◆ if the object is created with the substantial use of the appropriate higher education establishment (except supervision), unless otherwise stipulated in the contract;
- ◆ if the student’s research is part of the research projects of a higher education establishment (any project that forms the basis of a higher education establishment’s research, including projects undertaken by a student under the direction of an employee or a visiting researcher as part of a degree program).

It is noteworthy that the legislation of Ukraine leaves unresolved issues regarding intellectual property rights for objects created by students and other persons studying in higher education establishments. And this despite the fact that these persons refer to the legislation of Ukraine as the subjects of scientific and research activities (paragraph 9 of Part 1 of Article 62, Part 2 of Article 65 of the Law of Ukraine on *Higher Education*). Qualifying (diploma) works of students may include intellectual property (literary and artistic works, computer programs, technical and design decisions, etc.), property rights of which are of commercial value. Therefore, determining the subject of the rights to such objects is crucial. In this aspect, adopting a higher education establishment’s



IP Policy will address the issue of the distribution of intellectual property rights to objects created by students in the learning process.

A separate category of subjects is Visiting professors. According to WIPO Template, these include any person who is not a Staff Member nor a Student of the Institution who engages in work at the Institution, including visiting professors, teachers, researchers, scholars and volunteers; and who concludes an Appointment Agreement with the Institution. These are persons who work in a R&D institution or higher education establishment or cooperate with them on the basis of an agreement (Appointment agreement). The latter means a formal agreement for a Visitor at the Institution, which is a prerequisite to participate in or conduct research, scholarship, creative work, or teaching at the Institute. In general, as regards intellectual property rights for objects created by invited researchers, WIPO Template establishes approaches similar to those of employees. According to clause 5.3.1., unless otherwise agreed to in writing by the Institution and Visitor's home institution to the tenure at the Institution, Visiting professors are required to assign to the Institution any IP created in course and within the scope of their Appointment at the Institution, or created by making Substantial use of the Institution's resources. In the context of this provision, reference is made to a written agreement between the academic institution or higher education establishment, which invited the researcher and the academic institution or higher education establishment at which the researcher works (Home Institute). It is a civil contract concluded between two academic institutions / higher education establishments, which may include, among other things, the conditions for the allocation of intellectual property rights between them to objects created by a visiting researcher. In addition, an appropriate agreement, the Appointment agreement, is also concluded between the host R&D institution or higher education establishment and the visiting researcher. In this aspect the question arises about the legal nature of the latter, in particular,

in the context of the legislation of Ukraine. The WIPO Template analysis indicates that this is not a contract of employment, since this document clearly distinguishes between a contract of employment, which is the basis for a legal relationship between a R&D institution or higher education establishment and an employee, and an "appointment agreement".

If a researcher or teacher has a principal place of work in a particular higher education establishment or research institution, and at the same time works part-time in another institution (organization), he is in employment with the latter, and therefore is an employee (Staff Member), and not a visiting professor. Therefore, by its very nature, the Appointment agreement is a civil law contract.

Such agreements are discussed, in particular, in Part 4 of Art. 33 of the Law of Ukraine on *Scholarly Research and R&D Activities*, which provides that a full-time scientific (scientific-pedagogical) employee of a R&D institution (higher education establishment), which performs scientific (scientific-technical) work under contracts of a civil nature under business trip, saves wages, fixed at the main place of work.

Thus, the basis of the relationship between a R&D institution or higher education establishment and a Visiting professor is a civil contract, called the Appointment agreement in the WIPO Template.

According to WIPO Template, special rules are provided for the legal regime of course materials (paragraph 5.4.) and scholarly works (Scholarly Works) (paragraph 5.5).

According to the WIPO Intellectual Property Policy Customization Guidelines Template for Universities and Research Institutions (hereinafter referred to as WIPO Guidelines), Course Materials can be in any form including digital, print, video, and graphic materials and may include: course guides, handouts, online materials; presentation materials (including lecture notes, images, slides, graphics, multi-media presentations, course software and other audio-visual materials); vir-

tual learning tools; instruction manuals, books and handbooks; and assessment and examination questions.

In Section 5.4 WIPO Template states the general rule that intellectual property rights to educational materials created by an employee or a visiting researcher belong to a R&D institution or higher education establishment. In this case, the Institution grants the Creators of Course Materials a royalty-free, non-exclusive license to use the Course Materials created by them for teaching and research purposes at the Institution. Alternatively, the IP Policy may provide that such licenses may be utilized for commercial purposes outside the Institution.

As an exception one can set out training materials created from or for Open Educational Resources. Such Course Materials belong to the Public Domain. Open Educational Resources include teaching, learning and research materials that reside in the Public Domain and have been released under an open license that permits their free use or modification by others. In the latter case, we are talking about open (public) licenses for the use of copyright objects. The most common system of such open licensing is Creative Commons, which includes, in particular, the option of waiving the right holder of all property rights and transferring the work to the public domain (CCO) [27]. However, in domestic literature, it has been pointed out that as of today the use of public licenses in the conditions of the legal field of Ukraine is problematic [28]. In addition, the copyright law of Ukraine links the transition of a work to the public domain with the expiration of the copyright term (Article 30 of the Law of Ukraine on *Copyright and Related Rights*), and not with the will of the copyright subject in the form of open license.

Also, a special rule is provided in the WIPO Template for Scholarly Works: scholarly research publications, articles in scholarly research journals, newsletters, monographs, conference materials and related presentations, sound recordings, videos, multimedia works, and more. Employees are

recognized as subjects of property rights to R&D works. However, they often have to obtain permission from the publisher to include their published scientific works in the repository's academic institution or higher education establishment (Clause 5.5.2) and grant a scientific or higher education establishment a non-exclusive, royalty-free license of their use for scientific, educational and other purposes (Section 5.5.3).

Another important set of issues to be addressed in IP Policy is the commercialization of intellectual property by a R&D institution or higher education establishment. The legislation of Ukraine in the field of education and science also uses this term. The Guidelines on Commercialization of Developments Created as a Result of Scientific and Technical Activities [29] provide a definition of this concept: commercialization of intellectual property rights – the organization of the movement of intellectual capital for profit.

Within WIPO Template the Commercialization is defined as any form of utilization of IP intended to generate value, which may be in the form of a marketable product, process or service, commercial returns, or other benefit to society. In other words, commercialization can take many forms. In domestic literature, such include the creation of companies at universities, the establishment of special departments (offices of commercialization), the cooperation of universities (research organizations) with the state on the terms of public-private partnership [30].

We believe that in addition to the above, other forms of commercialization of intellectual property by R&D institutions and higher education establishments are also possible, in particular, the conclusion of agreements on the disposal of intellectual property rights, in particular, licensing, the conveyance of intellectual property rights as a contribution to the authorized capital. The above and some other ways of commercialization are mentioned in clause 9.4 of WIPO Template.

Successful commercialization of intellectual property implies the creation in the R&D institution or higher education establishment appro-

appropriate structural units dealing with intellectual property issues. In this respect, WIPO Template, based on the positive experience of leading Western universities, focuses on a two-tier organizational structure for intellectual property management, consisting of the IP Committee and the IP Management Office (IPMO). The purpose of the IP Committee is to oversee the implementation and evolution of the IP Policy and provide strategic guidance to the IPMO. The IP Committee is the ultimate decision making body in the determination of an IP management and commercialization strategy for a particular IP. The purpose of the IPMO is to assist the Institution in managing and commercializing its IP in a form that will most effectively promote its development and use for economic and social benefits. The main responsibilities of the IPMO will include outreach (awareness) for creators, relationship with creators, IP management, technology marketing and IP contract negotiation, IP contract management, IP costs and revenue distribution.

If we analyze from this point the practice of Ukrainian R&D institutions and higher education establishments, no special bodies with IP Committees functions have been created. The functions of IP governance are usually entrusted to the Academic Council, the Rector or, most often, the Vice-Rector for scientific work. Instead, there are structural units that perform IP operations. For example, the decree of the Presidium of the NAS of Ukraine [31] provides for the creation of units in the NAS of Ukraine R&D institutions for the transfer of technology, innovation and intellectual property, and approved a typical provision for such units. In turn, the decree of the Ministry of Education and Science of Ukraine [32] also provides the establishment of higher education units in the intellectual property institutions and approves an exemplary provision for such unit. Therefore, the relevant units are established in many higher education establishments. Usually they function within the research part of the respective institution and are subordinate to the Vice-Principal for Research.

The current model of intellectual property management in most domestic academic and higher education establishments appears to be insufficiently effective and does not fully comply with the WIPO Template. The latter implies the existence in the academic institution or higher education establishment of two organizational structures dealing with intellectual property: IP Committee, as a body that implements IP governance (policy creation / evolution and overarching strategic guidance) and IP Management Office that implements IP operation (domain of day-to-day management, and transactions). Moreover, WIPO Guidelines focus on the fact that the IP Committee is typically a committee or board or panel, i.e. a collegiate body. Many national universities have scientific and technical councils. However, they cannot be considered as a fully-fledged IP Committee, as their activities are usually focused on other functions.

One form of commercialization by a R&D institution or higher education establishment of intellectual property rights is the creation (or participation in the creation) of relevant legal entities. WIPO Template is about the formation of a Commercialization Entity to which the IP is licensed or assigned in terms of this Policy. Commercialization Entity is a company that has access to the IP of the Institution, through any one or more of the available Commercialization modes, to produce new products, processes or services. This can be a spin-off, a start-up, a joint ventures, etc.

Within IP Policy at the University of Malaysia [33] provides the possibility of IP commercialization by creating spin-off or joint ventures. Article 5.3 *Spin-off* provides that the Recipient establishes a company for the purpose of the Commercialization of Intellectual Property, where the Inventor (s) and the Recipient may own equity in the Company together with any third party, in proportions to be negotiated. Article 5.4 "Joint Venture" prescribes that the Recipient establishes an entity together with a third party for the purpose of the Intellectual Property Commercialization.



lization, where the Recipient and the third party are shareholders of the said company.

University spin-offs are defined as new ventures initiated within a university setting and based on technology derived from university research [34].

Venture funds are called private equity funds that invest in companies that are in the early stages of their development (so-called “start-ups”, which means “start-up”) [35].

So there are no similar approaches to defining start-ups, spin-offs and joint ventures. In general, it can be noted that specific organizational forms of Commercialization Entities are determined by the national legislation of a particular country and are, accordingly, reflected in the Institution IP Policy.

As far as Ukraine, for a long time, the domestic state R&D institutions and higher education establishments were actually deprived of the legal opportunity to act as founders or co-founders of legal entities [5]. Such an opportunity appeared in 2009 with the adoption of the Law of Ukraine on *Science Parks* [36], in accordance with Art. 13 of which a higher education establishment and / or R&D institution may be founders of legal entities and / or their associations for the organization and implementation of science park projects. The next step in this direction was the adoption in 2014 of the new Law of Ukraine on *Higher Education*, in accordance with Art. 68 of the Law of Ukraine on *Higher Education*, scholarly research, R&D and innovative activities may be carried out by higher education establishments, including through legal entities created by them, the activity of which is aimed to bring the results of scientific and technical activities of higher education establishments to the state of innovation product and its further commercialization.

Article 70 of the Law of Ukraine on *Higher Education* provides that a higher education establishment, in the manner prescribed by law, and in accordance with the charter has the right, in particular:

- ◆ to participate in the formation of the authorized capital of innovative structures and high-

er education establishments of small enterprises, which develop and introduce innovative products, with the participation of higher education establishments, by introducing intangible assets (property rights to objects of intellectual property rights);

- ◆ to establish enterprises for implementation of innovative and / or production activity;
- ◆ by contributing intangible assets (property rights to intellectual property objects) to participate in the formation of the authorized capital of innovative structures of different types (scientific, technological parks, business incubators, etc.).

The *Higher Education* Law does not contain the concepts of “spin-offs”, “startups”, etc. However, some of them are used in other pieces of legislation. For example, a startup is defined as a project related to the creation and / or use of inventions, utility models, industrial designs, know-how and other results of intellectual, creative activity [37]. That is, a startup is understood not as a legal entity but as a project submitted for a competition.

By enshrining the right of higher education establishments to dispose of intellectual property rights, the Law of Ukraine on *Higher Education* separately allocates their right to bring such rights to the authorized capital of the respective legal entities. The relevant provisions on this form of higher education establishment’s disposal of the intellectual property rights belonging to it are also contained in the Law of Ukraine on *Scholarly Research and R&D Activities*. According to Art.60 of this law, state R&D institutions (except state R&D institutions of the defense-industrial complex), state universities, academies, institutes shall have the right to be founders and co-founders of economic societies and participate in the formation of the authorized capital of such economic society solely by introducing the intellectual property rights thereto property, exclusive property rights to which are kept by a state R&D institution or a state university, academy or institute.

Despite the overall positive importance of the above-mentioned provisions of the Law of Ukrai-

ne on *Scholarly Research and R&D Activities* regarding the empowerment of state higher education establishments with respect to commercialization of the results of scholarly research and R&D activities, we consider it is disputable that in the case of the conveyance of intellectual property rights as a contribution to the authorized capital of legal entities, such property rights “shall be held by a state-owned R&D institution or university, academies, institutes”. After all, if any assets are conveyed as a contribution to the authorized capital of a corporation, the titles to these assets are transferred to the corporation. However, in the context of Art.60 of the Law of Ukraine on *Scholarly Research and R&D Activities*, only the right to use respective object, not the title to intellectual property in its full meaning is conveyed as contribution.

### Conclusions

Nowadays, commercialization by R&D institution or higher education establishment of the objects of their intellectual property created in the course of its activity becomes one of the basic functions, along with educational and scientific activities. Therefore, it is crucial to develop and approve, in domestic higher education establishments and R&D institutions, the Intellectual Property Policies or any similar local content document that would regulate major issues related to the acquisition and allocation of intellectual property rights created in the process of their acti-

vity, objects, commercialization of rights to such objects, revenue sharing, etc. When developing such a document, it is advisable to take into account the positive experience of leading foreign universities, which is generalized by WIPO in the IP Toolkit for Universities and Public Research Institutions. Given the imperfection of the Ukrainian legislation on intellectual property service objects, it is advisable in IP Policy to provide clear regulation of the legal regime of intellectual property objects created at the university or R&D institution, depending on the category of the entity that created them (Staff Members, Students, Visiting professors), and in some cases, depending on the features of the course (Course Materials, Scholar Works). It becomes advisable for R&D and higher education establishments seeking an effective intellectual property policy to create an IP Committee or other collegial body to perform the functions of IP governance.

In general, we can note the positive trends that have emerged in recent years in the legislation of Ukraine in the field of education and science, which provide for the empowerment of higher education establishments and R&D institutions, including state institutions, for the commercialization of R&D results, including creation (participation in the creation of legal entities). Therefore, issues concerning the theoretical and practical aspects of these institutions’ intellectual property policies should be the subject of further scholarly research.

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## ПОЛІТИКА У СФЕРІ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ У ДІЯЛЬНОСТІ НАУКОВИХ УСТАНОВ ТА ЗАКЛАДІВ ВИЩОЇ ОСВІТИ УКРАЇНИ

**Вступ.** Особливого значення, поряд зі створенням нематеріальних об'єктів права інтелектуальної власності, набуває ефективне їх впровадження у виробництво та інші сфери суспільних відносин для задоволення як приватної зацікавленості творців, осіб, які інвестували кошти у їх створення, так і загальносуспільних інтересів.

**Проблематика.** Вивченню політики у сфері інтелектуальної власності у діяльності університетів та дослідницьких організацій зараз приділяється серйозна увага, зокрема, такими інституціями, як Всесвітня організація інтелектуальної власності та Європейський Союз.

**Мета.** З'ясувати нормативні вимоги та наукові підходи до формування політики у сфері інтелектуальної власності у діяльності закладів вищої освіти та наукових установ України та запропонувати заходи з підвищення її ефективності.

**Матеріали й методи.** Аналітичний аналіз чинних нормативних актів і наукових праць з метою розроблення пропозицій щодо підвищення ефективності політики у сфері інтелектуальної власності у діяльності закладів вищої освіти та наукових установ України.

**Результати.** Спірним є положення про те, що при внесенні майнових прав інтелектуальної власності як вкладу до статутного капіталу створюваних ними юридичних осіб, такі майнові права «зберігаються за державною науковою установою або державним університетом, академією, інститутом». Адже, при внесенні будь-яких активів як вкладу до статутного капіталу господарського товариства має місце перехід прав на такі активи до господарського товариства.

**Висновки.** Позитивні законодавчі тенденції в освітній сфері передбачають розширення можливостей закладів освіти та наукових установ щодо комерціалізації наукових та науково-технічних результатів.

**Ключові слова:** інтелектуальна власність, заклад вищої освіти, університет, наукова установа, майнові права.