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ІНТЕЛЕКТУАЛЬНА ВЛАСНІСТЬ VS ПРАВ ЛЮДИНИ В УМОВАХ ВІЙНИ: ЯК ЗБЕРЕГТИ БАЛАНС

INTELLECTUAL PROPERTY VERSUS HUMAN RIGHTS IN A WAR: HOW TO KEEP BALANCE

Анотація. Пошук балансу прав власників інтелектуальної власності та інтересів суспільства має вирішальне значення для реалізації права на охорону здоров'я. У випадку, коли права інтелектуальної власності суперечать або обмежують права на життя, здоров'я чи безпечне довкілля, права людини мають безумовний пріоритет.

Abstract. Finding a balance that respects intellectual property holders' rights is crucial while addressing society's emergency needs. In a case where IP rights contradict or restrict the Rights of Life, Health, or a Safe Environment, Human Rights have the obvious priority.

The Russian war against Ukraine, which escalated significantly in February 2022, has had widespread implications not only on geopolitical stability, economic conditions, and humanitarian situations but also on specific sectors such as intellectual property (IP) rights.

The German Minister of Health Karl **Lauterbach** rejects any possible declared: "It would be silly to say that we are not preparing for a military conflict and then it won't come... Doing nothing is not an option. A turnaround is also needed for the healthcare system. Especially since Germany could become a hub for the care of injured and wounded people from other countries if there is an alliance." [1]

Russia's military aggression has posed new challenges to transforming intellectual property in strategically important world areas. The most essential of them are public health and a

safe environment. Both of the mentioned spheres are covered by the scope of Human Rights on Life.

Therefore, the experts of the Scientific and Research Institute of Intellectual Property of the National Academy of Legal Sciences of Ukraine have an ambitious plan to work out the legal instruments to balance IP and Human Rights in alliance with the international obligations of Ukraine. This task is complicated by Ukraine's EU candidate status and the war. In some areas, the provisions of intellectual property rights in EU law do not respond to the challenges of war.

From one side, by providing unprecedented political support to Ukraine in the face of Russian aggression, the EU has officially supported our country's candidacy for membership. This path provides for the full implementation of EU legislation into the national legislation of the candidate country, which in the field of intellectual property until recently meant the introduction of maximum standards of legal protection of patentable objects, defined in legal doctrine as TRIPS-plus provisions [2]. On the other hand, international law has IP security exceptions, which proclaimed TRIPS-flexibility provisions.

The long-term impact of the Russian-Ukrainian war on IP waivers and the broader IP landscape will likely depend on several factors, including the duration and intensity of the conflict, the evolving international legal and policy frameworks, and the outcomes of ongoing debates about the role of IP in global challenges like public health emergencies and humanitarian crises.

Intellectual Property (IP) security exceptions during a war or a conflict allow countries to bypass certain IP rights in the interest of national security or to address emergency needs. These exceptions are often enshrined in international agreements and national laws, providing a legal framework for overriding standard IP protections under specific circumstances. The justification for these exceptions typically revolves around ensuring access to essential goods, services, or technologies that are crucial for national defence, public health, or the welfare of the population during crises.

The TRIPS Agreement includes provisions that allow member states to use flexibilities such as compulsory licensing and government use without the authorization of the patent holder in cases of national emergency or other circumstances of extreme urgency. While TRIPS is primarily focused on balancing IP rights with public health needs, its provisions can be interpreted to apply in situations of war or conflict [3]. Although the Doha Declaration focuses on public health, it reinforces the principle that countries can use TRIPS flexibilities to address emergencies. This precedent supports the broader interpretation of IP exceptions during crises, including armed conflict.

Today, Ukraine is developing a new Strategy for Intellectual Property Reframing in the framework of the "Trade, Intellectual Property Support and Technical Regulation" project [4]. One of the main parts of the Strategy is IP in the Pharmaceutical Industry where the IP rights play a crucial role, influencing research and development (R&D), innovation, and access to medicines. The intersection of IP with pharmacy encompasses several key aspects, each with its implications for healthcare, economics, and public policy.

While IP security exceptions are crucial tools during times of war, their use raises several challenges to which we must be prepared. Beyond such challenges are the following:

- (i) the use of IP exceptions can lead to diplomatic tensions, especially if the countries where the IP rights are held view the exceptions as unjustified or overly broad;
- (ii) determining fair compensation for the use of IP under these exceptions can be contentious, especially if the emergency use extends over a long period;
- (iii) overreliance on IP exceptions could potentially discourage innovation by undermining the incentives provided by patent protection.

It's crucial to find a balance that respects IP holders' rights while addressing society's emergency needs. If IP rights contradict or restrict the Rights of Life, Health or a Safe Environment the Human Rights have the obvious priority.

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