



The Mechanism of Classifying Intellectual Property Offenses as Economic Offenses

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Abstract: *The purpose of this article is to consider intellectual property as an object of economic crime. In the course of the study, an attempt will be made to identify certain mechanisms and patterns in economic violations, where the object of encroachment is intellectual property. As a result of studying the object of the offense as the main element of its composition in criminal, administrative and civil law, it has been concluded that these violations adversely affect the economic development of the state, as well as the global economy. The article reflects the presence of differences in the concepts of the object of the offense in accordance with the branch of law (civil, administrative and criminal law). Based on Article 147 of the Criminal Code of the Russian Federation, the authors make a conclusion on the expediency of attributing offenses, the object of which is intellectual property, to offenses committed in the economic sphere. In conclusion, the authors propose measures to toughen responsibility for economic offenses, the objects of which are intellectual property, since those lead to unfair competition. Particular attention is paid to embezzlement in relation to the result of intellectual work and the intellectual property right.*

Keywords: *civil law, criminal law, offense, administrative responsibility, industrial design, intellectual property.*

I. INTRODUCTION

A. Introduction of the problem

The establishment of the economy around the world is accompanied by the intensive development of industrial design. With this in mind, the legal protection of the results of intellectual activity in this sphere is extremely important. The product design is protected in the form of industrial samples in the Russian Federation. It should be noted that the demand for their legal protection in Russia at the moment is still insufficient. Despite the growing number of applications for these samples, more than 50% of applications in this category are submitted by foreign applicants [1].

Assigning the right to someone else's intellectual property

is a fairly common phenomenon in world practice, and can manifest itself in various forms from banal plagiarism to industrial espionage. This approach has been repeatedly described by the authors, including authors of literary works. Even more evidence of this behavior can be found on the Internet.

Issues related to intellectual property as an object of an offense have been reviewed by Shulga [2], Medvedev [3], Lopashenko [4], and others.

Questions of the object of the offense as an element of its composition are considered in the thesis research of Avtaeva [5] and others.

B. Importance of the problem

Problem issues and definitions of intellectual property as an object of economic offenses are caused primarily by the very specifics of intellectual property, which appears in various forms, and therefore performs different functions for subjects of economic relations. Intellectual property at different stages of "clearance" can be in the form of an intangible asset, an intangible – intellectual product, and a certain resource. In turn, the forms, methods, and ways of protection (applied to civil, administrative and criminal law) of the results of intellectual activity allow it to be separated from other objects of offenses, for example, as an object of the intangible world.

II. METHODS

A. General description

In the process of research, theoretical, general philosophical (dialectics, systemic method, comparative analysis, synthesis, analogy, deduction, observation, modeling), traditionally legal (formal-logical) methods, as well as methods used in specifically sociological research (statistical, expert assessments, etc.), have been implemented (Table 1).

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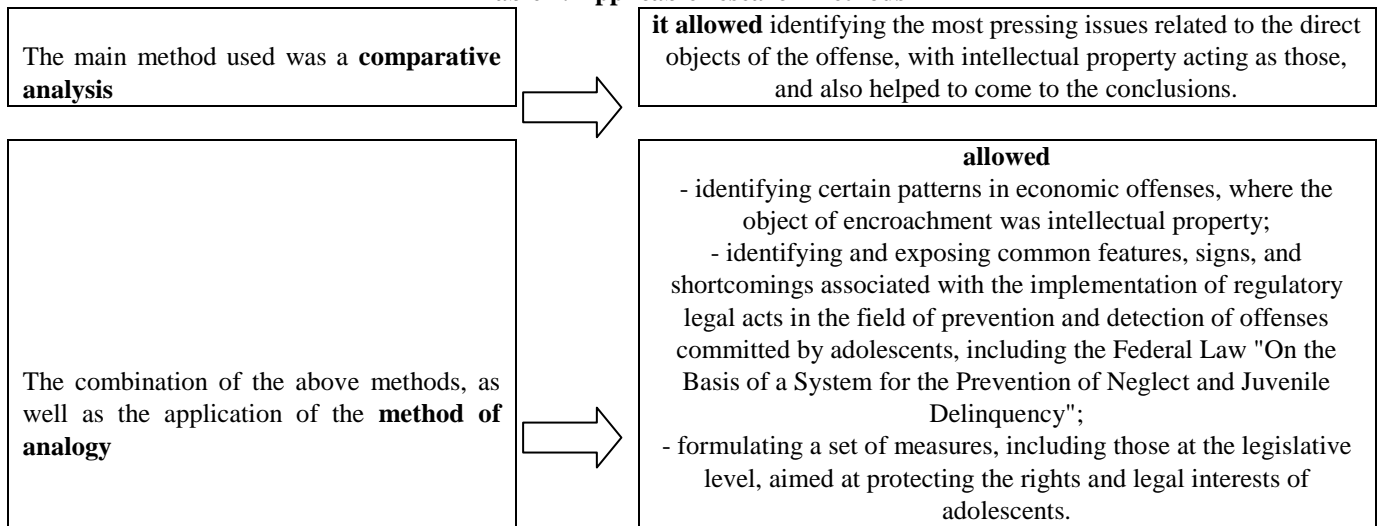
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Table 1. Applicable research methods



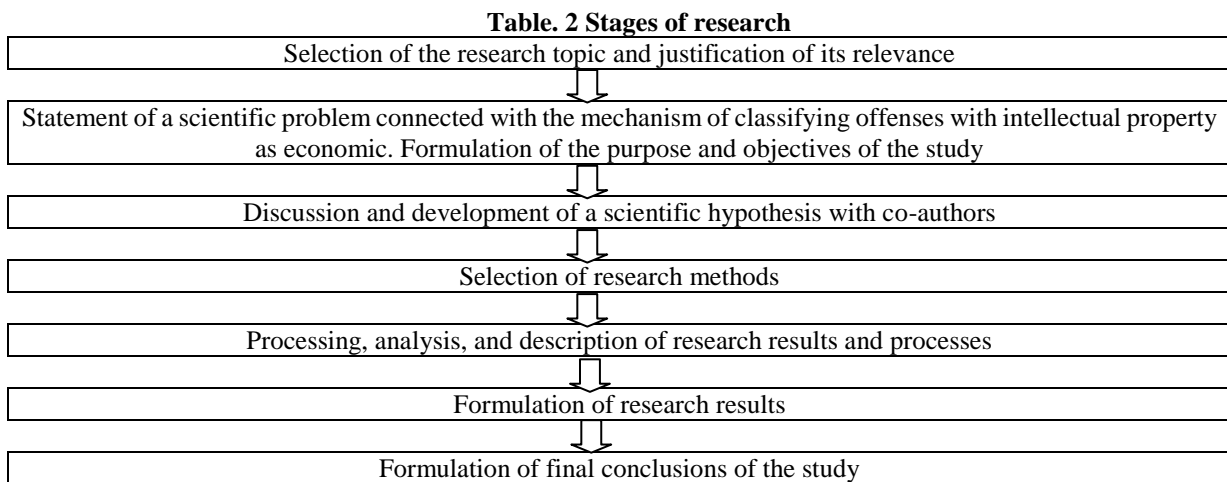
B. Algorithm

The study of the mechanism of attributing offenses with intellectual property to economic offenses was based on a branching algorithm.

In the course of the study, the authors analyzed the norms of various branches of law on these issues. Types of

responsibility for crimes in the field of intellectual property were generalized. The object of encroachment in the intellectual sphere was specified and measures for its protection in the economic sphere were proposed (Table 2).

C. Flow Chart



III. RESULTS

It is revealed that the intellectual property offenses inflict not only material damage but also impact the business reputation of the author (inventor), a conscientious manufacturer, who underwent certain registration procedures and attempted to protect his invention, as well as his good name, in this way. It is reasonable to assume that almost all offenses, where intellectual property is the direct object of the offense, are prerequisites for unfair competition.

However, the object of the crime under Article 147 of the Criminal Code of the Russian Federation – "Violation of Inventive and Patent Rights" – is public relations that provide for inventive and patent rights.

This approach, in the authors' opinion, requires applying certain changes to existing Russian legislation. For example, the illegal use of a patent, as well as the illegal use of someone else's trademark, causes material damage (as intellectual property is illegally used), moral damage (for

example, for the author and the inventor), as well as unfair competition, which formally allows classifying this crime as economic offense.

IV. DISCUSSION

The current legislation of the Russian Federation provides for three types of responsibility for violations in the field of intellectual property: civil, administrative and criminal. Before talking about intellectual property as an object of the offense, in the authors' opinion, it is advisable to explain what the object of the offense is (using the example of various branches of Russian law).

Thus, many authors rightly point out that in the criminal law of Russia a direct object is a specific social relation, against which criminal assault is directed and which suffers damage whenever a crime of a certain type is committed [6].



In administrative law, it is generally accepted that the object of an administrative offense is those social relations that are harmed by a committed unlawful act. Moreover, each of the offenses contains an indication of a specific object of infringement [7].

In turn, objects of civil wrongdoing are areas and legal means of civil law regulation, as well as social benefits protected by civil legislation (actual object). In most cases, the establishment of social and legal objects is only a necessary law-enforcement step to identify the actual object in order to implement such measures of civil responsibility as compensation for damages, recovery of penalties and compensation for moral harm [5; 8].

Speaking about the objects of civil offenses, it is worth noting that many scholars are lawyers who share the opinion that it is not advisable to single out the object as an element of the offense.

It is necessary to clarify that the issues of the legal protection of intellectual property are regulated primarily by the fourth part of the Civil Code of the Russian Federation. Thus, Chapter 72 of the Civil Code of the Russian Federation – "Patent Law" – establishes the requirements necessary for granting the intellectual rights, including trademarks, service marks, appellations of origin. Most of the provisions referred to in the articles of this chapter are common to all objects of patent law.

Let us consider the protection of intellectual property rights under the criminal law of the Russian Federation, and, therefore, draw attention to Article 147 of the Criminal Code of the Russian Federation – "Violation of Inventive and Patent Rights".

Thus, the named article provides that the use of an invention, utility model or industrial design, disclosure without the consent of the author or applicant of the invention, utility model or industrial design before the official publication of information about them, attribution of authorship or coercion to co-authorship, if these acts caused major damage, are unlawful [9].

The object of Article 147 of the Criminal Code of the Russian Federation is public relations providing inventive and patent rights.

At the same time, let us consider part 1 of Article 180 of the Criminal Code of the Russian Federation – "Illegal use of means of individualization of goods (works, services)".

This part provides for the responsibility for "illegal use of another's trademark, service mark, appellations of origin or similar designations for similar goods". In this case, the act must be committed repeatedly or cause major damage.

Thus, the immediate object of the crime, in the authors' opinion, will be: the unlawful use of a trademark; service mark; appellations of origin; similar designations for similar products.

The authors believe that this crime inflicts not only material damage, which should not be less than 250 thousand rubles, but also impacts the business reputation of a conscientious manufacturer who has passed the trademark registration procedure and who is trying to protect the manufactured products and his good name in this way. In addition, the prerequisites for unfair competition are created.

At the same time, as noted above, even though the object of Article 147 of the Criminal Code of the Russian Federation

is public relations that provide inventive and patent rights, in the authors' opinion, the unlawful use of a patent as well as the unlawful use of another's trademark causes material damage (since intellectual property is used illegally), moral damage (for example, for the author), as well as contributes to unfair competition, which formally allows the crimes to be classified as economic offenses.

Russian criminal law distinguishes crimes against intellectual property and crimes against traditional property (the protection of which is set out in Chapter 21 of the Criminal Code of the Russian Federation "Crimes against property") by the object of the offense – the subject of infringement. The subject of crimes against property is material wealth, and against intellectual property – intangible benefits [4].

Drawing an analogy with other crimes, in the authors' opinion, one should pay attention to theft, because the result of intellectual labor may be the object of theft as well. Thus, when considering the issues of theft, the Code of Administrative Offenses of the Russian Federation does not provide an independent concept, but only refers to Note 1 to Art. 158 of the Criminal Code. For example, theft is understood to be a mercenary purpose, unlawful, gratuitous seizure and (or) circulation of someone else's property in favor of the perpetrator or other persons that caused damage to the owner of this property. Thus, it can be concluded that the direct object or the subject of crimes against property is someone else's property, and only in exceptional cases – the right to property itself.

According to many authors, property as an object of unlawful encroachment is associated only with objects of the material world, which can be in any physical condition and be animate and inanimate [10]. Property as an object of crimes against property is a material object that is the result of human labor, has acquired value, expressed in price, and is capable of satisfying human needs. In other words, property, be it a commodity, a thing or the banknotes, has a certain natural (physical) substance: it is always a sensually tangible subject of the material world, having value or being the universal equivalent of value, which is money [11].

Despite the fact that the right to property itself is the subject of an offense, for example, in fraud and extortion, some scholars still believe that the right to property cannot exist by itself and is necessarily fixed in specific tangible media, which is considered to be the subject of property crimes.

Modern realities, as well as a change in worldview regarding the object of the offense among scientists, have recently allowed moving away from the outdated model in determining the object of the offense in general, and in determining the subject of economic crimes (Medvedev, 2008).

The reality requires making various changes, which is caused primarily by the development of market relations, the emergence of many intangible benefits. At the same time, these intangible benefits relate to property and are included in property relations.

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For example, they participate in the processes of production, distribution, and exchange, and are objects of possession, use and disposal (Schulga, 2012).

Thus, the concept of ownership overcomes the boundaries of property relations and enters into other nonproperty relations, namely, intangible spheres (patents, industrial designs, trademarks, etc.).

V. CONCLUSION

Based on the above, the authors believe that in order to clarify the prevailing situation, prevent offenses, and improve the protection of intellectual property, it is advisable to toughen the responsibility for economic offenses, the objects of which are intellectual property.

In addition, according to the authors, almost all offenses, where intellectual property is the direct object of the offense, create prerequisites for unfair competition, and, therefore, can be classified as economic.

The article deals with issues related to various types of offenses in the field of intellectual property and the normative legal regulation of responsibility for these offenses in Russia.

Based on the analysis of the concept of theft, it is concluded that both the result of intellectual work and the right to intellectual property itself can be the object of theft.

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