

Using of Intellectual Property Rights in a Creative Industry in a Global Dimension

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Abstract.

Research background: The paper is based on a summary and evaluation of previously conducted domestic and international research on the issue of rights and protection of intellectual property. The own research is part of solution of the scientific project VEGA focused on the field of creative industry and is on processing.

Purpose of the article: The creative industries are an integral part of any developed economy. In an effort to protect the results of their activities, it is possible to use several options for the protection of intellectual property through intellectual property rights. The article defines the possibilities of protecting the results of creative intellectual activity of its authors at the global level, as well as defining the rights associated with this protection.

Methods: In the paper, there are used general methods such as analysis, synthesis, induction and deduction, which allow us a thorough knowledge of the researched issues and allow us to process information from the research.

Findings & Value added: The main value added of the article is to map of the situation with intellectual property rights in a global aspect, and thus what rights are used by countries, to what extent they are used in selected countries in comparison with the Slovak Republic. At the same time, the paper also includes an evaluation of what barriers companies of the creative industry consider to be the most important in solving the protection of intellectual property and suggestions on how to eliminate them.

Keywords: *creativity; intellectual property rights*

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1 Introduction

Intellectual property is an important means of fostering innovation. Small and medium-sized enterprises also play an important role in the innovation process. The ability to innovate gives the small business sector the opportunity to develop and thus contribute to GDP growth and employment as key economic indicators. It follows from the above that both innovation and the prosperity of the economy are linked to the protection of intellectual property. Innovative activities, ie. the development of research and development must be encouraged through innovative tools. One of the direct innovative tools is the protection of intellectual property. At present, Slovakia is one of the weakest countries in the European Union in terms of innovation. Therefore, it is very important that the innovation process is an integral part of most business activities. [1] Another important factor for economic development and increasing employment is small and medium-sized enterprises in creative and cultural industry. Innovation enables small and medium-sized enterprises to grow and thus contribute to increasing GDP as well as creating new jobs. If SMEs use at least one intellectual property right as a means of promoting innovation, this increases their potential for faster growth. However, almost half of SMEs are not aware of the importance of intellectual property. [2] Intellectual property allows SMEs to benefit from their innovative ideas as long as it is protected. Legal protection also discourages breaches. However, the implementation of intellectual property rights is relatively challenging, which discourages many SMEs from using them. [3] The World Intellectual Property Organization (WIPO) speaks of intellectual property as the result of the creative activity of human thinking. [4] However, intellectual property as a term is not precisely defined, but it can be characterized by three elements of the legal relationship, namely the object, the subject and the content. [5] The economic theory of property rights emphasizes not only their incentive effects, that is, the investment that they encourage, but also their effect in op-timizing current uses of property. [16]

1.1 Object of intellectual property

The division of an intellectual property object as an element of a legal relationship consists of a direct and an indirect object. By direct object we mean active or passive human behavior. The purpose of this behavior is precisely an indirect object, which may be things, rights or other property values.

The term object of intellectual property means intangible assets. It is an indirect subject of the object of the legal relationship, which we classify under other property values. Another property value is precisely the intangible good, which we define as a good whose essence is the creation of creative mental activity and which can be perceived by the senses. In most cases, an intangible asset is expressed through a material substrate that allows it to be recognized. It follows from the above that intangible goods are in many cases connected with tangible ones.

In order for an intangible asset to become an object of intellectual property, it must have the following characteristics:

- independence of the intangible asset from the material substrate,
- the perception of an intangible asset is not linked to the existence of a material substrate,
- an intangible asset can be perceived without prejudice to its nature,
- the existence of an intangible asset is not conditioned by its definition as an object of legal relations,
- the transfer of rights to an intangible asset is excluded, resp. limited. [6]

1.2 Subject of intellectual property

The subjects of intellectual property include both natural and legal persons, but only a natural person can be the creator of the object of intellectual property, as he is the only one capable of intellectual creative activity.

However, a natural person becomes a subject of intellectual property law only by acquiring legal personality, i. j. by birth. Legal personality is lost to natural persons. However, how to dispose of an intellectual property object is related to legal capacity. This is fully acquired by a natural person at the age of eighteen.

We further distinguish a natural person as a subject of intellectual property into a creator and a creator. In both cases, it is the person who created the intellectual property object. However, those designations differ according to the intellectual property law. The term creator is used exclusively in the field of copyright, while the term creator is used in the field of industrial rights.

On the other hand, a legal person is an entity that creates favorable conditions for the development of a person's intellectual creative activity. Compared to a natural person, a legal person is equally granted legal personality as well as legal capacity from the moment of its creation to its termination. [5] [7]

1.3 Content of intellectual property

Objects of intellectual property can only be disposed of (intellectual property does not expire, as it is not tied to the existence of a material substrate) and their use (transferability of intellectual property applies only to property rights, not personal rights). In the case of intellectual property, it is possible to hold only the material substrate of the intangible asset. the object of intellectual property represents the so-called ideal object. The ideal object never disappears; it is not worn or consumed. Nor can it be lost, abandoned or hidden as an object of property. [8]

1.4 Classification of intellectual property rights in a global sense

Intellectual property rights have given the creator right to prevent others from making unauthorised use of their property for a limited period. Globally, these types of intellectual property rights are used (especially using in creative and cultural industries) [9]:

Patents - it is an exclusive right awarded to an inventor to prevent others from making, selling, distributing, importing or using their invention, without license or authorisation, for a fixed period of time. However, some of realized researchs suggest that patents do not necessarily promote R&D investments. [12] They are are public documents which provide detailed information on an invention. [20]

Industrial Designs - protect the aesthetic aspects (shape, texture, pattern, colour) of an object, rather than the technical features. TRIPS requires that an original design be eligible for protection from unauthorised use by others for a minimum of 10 years.

Trademarks provide exclusive rights to use distinctive signs, such as symbols, colours, letters, shapes or names to identify the producer of a product, and protect its associated reputation. In order to be eligible for protection a mark must be distinctive of the proprietor so as to identify the proprietor's goods or services. Trademarks fulfill two functions-they indicate the origin of the market offerings by linking them to the firm responsible for bringing them to market and also flag to consumers that those offerings are different from competing offerings in the same marketplace. [19] Trademarks represent an important driver of firm profitability and brandawarenessland, as such, are of growing interest to many business. At the same time, the trademark registration process represents an area

of the law in which nonlawyers are frequently able to successfully proceed on a pro se basis. [14]. Trademarks may also capture new products and services that could not be patented due to subject matter. Further, given the relatively low standards and fees of obtaining trademarks, firms with budget constraints may pursue trademark protection while relinquishing patent protection. [15]

Copyright grants exclusive rights to the creators of original literary, scientific and artistic works. Copyright only prevents copying, not independent derivation.

2 Methods

The presented contribution is a partial output of the VEGA scientific project focused on the cultural and creative industries. General methods such as analysis, synthesis, induction and deduction can be included among the basic methods that we use in the presented paper. Last but not least, the method of comparison is important, through which we compare the development of indicators during the period under study. In the application part of the paper we also use basic mathematical recalculations. Main data for analyses are from previously conducted domestic and international research on the issue of rights and protection of intellectual property.

3 Results and Discussions

For the very first time, the creative industries notion emerged in Great Britain at the end of the 90s. The creative sector was defined as the one pertaining to branches that show the capability of creating workplaces and wealth, as a result of individual skills, creativity, and talent. [18]. Creative industries typically include sectors that focus substantially on creating and exploiting intellectual property products, such as music, books, film and games, but also sectors that focus on providing business-to-business creative services, including advertising, public relations and direct marketing. [10] As the nomenclature suggests, creativity is the basis of Creative Industries, known as any economic activity that produces products that are heavily dependent on intellectual property, aiming at the largest possible market. [17]

Figure 1 [11] shows the total number of applications of individual intellectual property rights in the world. As can be noticed, the most frequently used intellectual property tool is trademarks, used in 2018 in up to 68% of cases). The second most used form of protection of intellectual activity is patents, which are experiencing modest growth. The least used rights are industrial designs and then utility models.

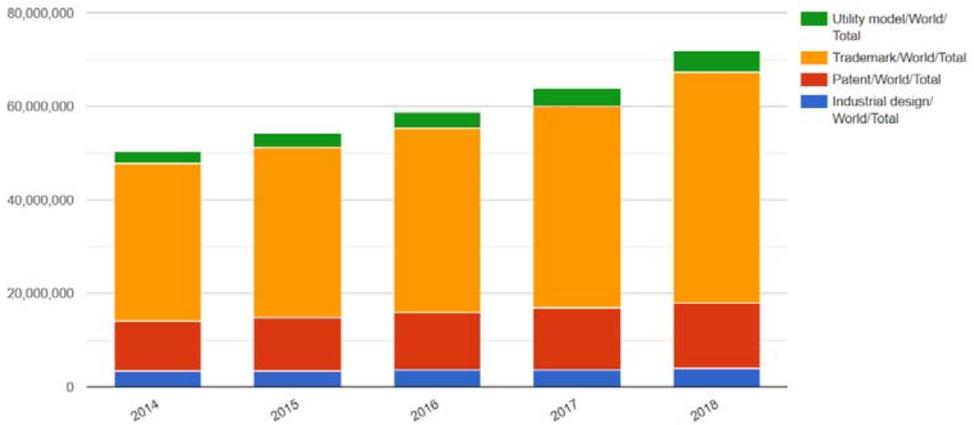


Fig. 1: Total applications of intellectual property right

In the following section, we focus on the use of individual intellectual property rights, taking into account the country of the world and the industry, and we determine the extent to which these tools occur in the cultural and creative industries.

According to the survey, the most frequently used tool for the protection of intellectual activity is the trademark. As Figure 2 [11] shows, it is most commonly applied in the US, followed by Germany, China, France and Switzerland. From the point of view of the industry, it can be argued that research and technology fall under the creative industries, and thus that it is this industry that benefits from trademark protection. The cultural and creative industries can to some extent also include education, which is in the 3rd place of use of trademarks.

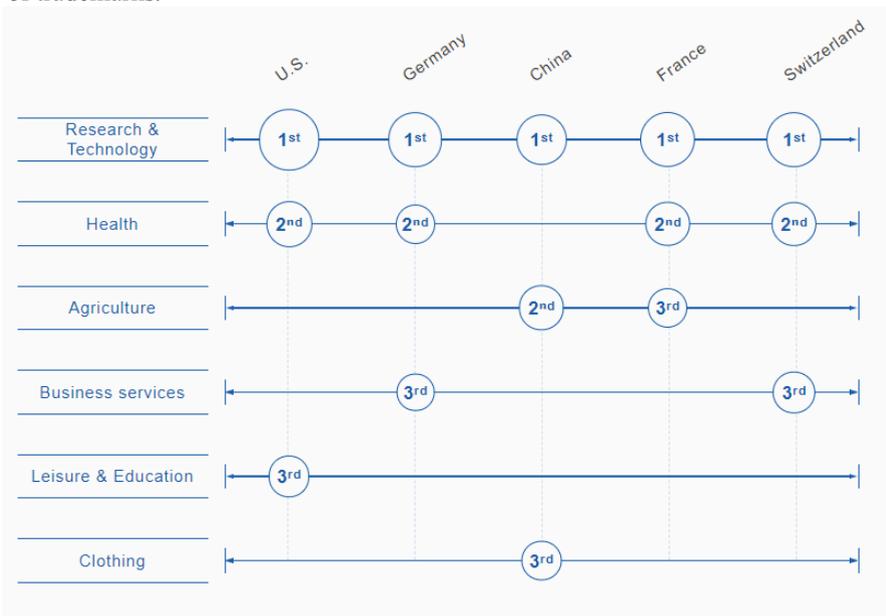


Fig. 2: Top 6 industries sector for trademark

As we can see in figure 3 [11], applicants from China and the Republic of Korea filed intensively for patents related to digital communication, while those from the U.S. filed

most in the field of computer technology. For Japan, the top technology field was electrical machinery, and for Germany it was transport.

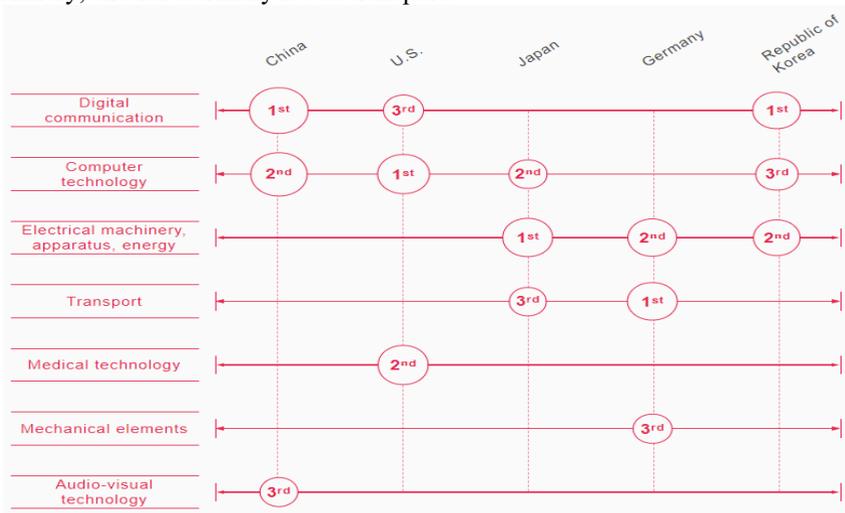


Fig. 3: Top 7 industries sector for patent

Again, of the listed industries in which patents are used, there are at least 3 industries from the cultural and creative industries - digital communication, computer technology and audio-visual technology. References to patents may provide clues to underlying technologies that influence a firm's own patented inventions, but by definition they provide a rather incomplete record. Other research suggest that barely 10% of scientific discoveries at universities are pat-ented. Patenting inventors may have built upon a much wider array of basic science and tech-nology than is captured by the patent corpus. [13]



Fig. 4: Top 8 industries sector for design

As figure 4 shown, companies from Germany and the Netherlands filed most in furniture and household goods, while those from the Republic of Korea filed most intensively for designs related to ICT and audiovisual. The tools and machines sector accounted for the largest share for Switzerland and the electricity and lighting was the top sector for Italy. ICT and audio-visual can be considered as cultural and creative industries from these sectors. The small and medium-sized enterprises of the European Union, which do not have a single intellectual property right registered, give several reasons why they have chosen not to register these rights, namely [2]:

- lack of knowledge (38 %),
- information on innovation should be available to everyone (21 %),
- insufficient innovation potential (20 %),
- no benefits from registration (15 %),
- registration is too expensive (11 %),
- registration conditions not met (5 %),
- other reasons (4 %).

4 Conclusion

At the end of the presented paper, we present several recommendations, the application of which could eliminate problems in the field of the use of intellectual property rights and could be used to a greater extent.

The first recommendation is to raise the awareness of the small business sector about intellectual property rights, as the lack of knowledge is one of the reasons why SMEs do not use these rights. The second recommendation is to shorten the length of the procedure for applying for the registration of industrial intellectual property rights. In this case, the biggest problem is the invention and its patent application, as the granting of a patent document can take more than one year. The third recommendation is to reduce registration fees, as registration of intellectual property rights is relatively expensive. The high amount of administrative fees as well as renewal fees may discourage legal protection. The fourth recommendation is to put in place a stronger anti-corruption policy and increase the enforcement of rights in the event of infringements. The last, fifth recommendation is to limit the publication of filed applications for the protection of industrial property rights, and we propose that the possibility of inspecting these applications should not be available to the public, resp. that the publication of applications be bound by the expiry of a certain period.

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