



What to do when your intellectual property rights are violated

Practical experience of the Ukrainian rightholders
(audio-visual content)

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INTRODUCTION

The illegal use of audio-visual content and the protection of intellectual property rights are problems that are faced by most of the rightholders. What to do if intellectual property rights have been already violated? What are the types of violations? What restrictions should be brought to notice? What could be achieved by protecting your rights?

The Clear Sky Initiative offers you possible solutions, taking into account significant experience of its members.

WHERE TO START?

Firstly, you need to have documented evidence of the ownership of the audio-visual content, and must have the right to protect the object of intellectual property based on an agreement or law.

Secondly, you need to detect a violation, for that you need to monitor and record the infringement by a method that will be recognized by Ukrainian court (involving the third parties with special knowledge and experience).

Note: In criminal cases, it is also important to prove the intention of the offender to commit a crime, so you must warn the offender that it violates your rights, and only after that, record the violation.

Thirdly, you must believe that you can protect your rights and we will help you in that.

By joining Clear Sky Initiative you will get:

- Full access to the analytical information and practical experience of other participants in the Anti-Piracy Initiative;
- Get qualified assistance from proven partners to protect your rights;
- You can contribute to monthly updating of list of websites that violate participants intellectual property rights - blacklists.org.ua.

These are the main principles of Clear Sky initiative participants:

- Adherence to intellectual property rights: the author's right to receive honest remuneration for its work. Respect for the resources and efforts put into creation of people's works and understanding that illegal monetization in Internet limits the development of the audio-visual industry;
- Readiness to fight decisively for your product;
- Active participation in anti-piracy activities of the Clear Sky Initiative.

Principles can be changed and supplemented in the process of expanding the Initiative, changing social context or tasks of the Clear Sky.

TYPES OF ILLEGAL USE OF CONTENT

VoD

Video on demand, video on request, system of individual delivery of television programs and movies from a multimedia server to subscribers. Violation: illegal placement of content on the server and granting of access to it to the third parties without permission of the rightholder.

Online broadcasting / Streaming

Video broadcast of the continuous TV channel signal, available for viewing in real time via the Internet. Violation: illegal placement of a signal or the reference to the channel signal on the server and granting of access to it to the third parties without the permission of the rightholder.

Broadcasting in cable provider network

Video broadcast of the continuous TV channel signal in real time in a cable television network. Violation: unauthorized access to the TV channel signal at the provider's head-end and granting of access to it to the third parties without permission of the rightholder.

Decoding satellite signal (card sharing)

Providing access to the signal of the encrypted channels from the satellite. Violation: unauthorized use of the keys to access to the channel's signal through the unauthorized devices and decoding systems and granting of access to it to the third parties without permission of the rightholder.

Illegal use of programs in cafes, restaurants, hotels (HoReCa)

Video broadcast of the continuous TV channel signal in real time on the cable / Internet network of the hotel and / or on video screens in restaurants and facilities of the third persons' mass presence (public announcement). Violation: unauthorized granting of public access to the channel's signal to the third parties without permission of the rightholder.

Incorrect reporting and underpayment for channel retransmission (underreporting)

Violation: Enfringement of contractual relations with the rightholders by deliberate providing of false information about the number of subscribers who have access to the TV channel signal in order to reduce the amount of deductions under the license.

This list is not exhaustive, the information will be updated in the process of forming the new experience of the Initiative participants.

WHAT ARE YOUR FIRST STEPS?

1. Blocking the illegal use of content in the Internet in accordance with the Law

When to apply?

In cases when the facts of violation of copyright and / or related rights on audio-visual and musical works, computer programs, videograms, phonograms, programs of broadcasting organizations by any person, which is committed with the use of the Internet are revealed.

There are some restrictions when hosting and domain are located outside Ukraine.

What types of violations are covered?

The placement or use by other means of appropriate electronic digital information that violates copyright and / or related rights. In particular, VoD, on-line broadcast of a channel, audio-visual and musical works, phonograms, computer programs, videograms, programs of broadcasting organizations.

What can be achieved?

- Blocking access to illegally placed information / content;
- Get complete information about the offender, necessary for further process of prosecution;
- In case the owner of the website and the hosting service provider fail to delete the illegal content or fail to provide information about the offender this could lead to an administrative offence or penalty (UAH 8500-34000)

What should be done?

If an offense is detected, you should immediately contact an authorized representative - a lawyer - to prepare and submit a statement on the termination of the violation. It is imperative to provide the lawyer with proof of the existence of violated rights and documents identifying the rightsholder.

At the same time the lawyer must have an electronic signature and represent and protect the interests of the rightsholder during the entire procedure of blocking.

2. Initiation of a criminal case under Article 176 of the Criminal Code of Ukraine

When to apply?

In cases when of illicit reproduction, distribution of works of science, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcast programs, their illegal replication and distribution on audio and video cassettes, floppy disks, other media, camcording, card sharing or other intentional violations of copyright and related rights, as well as financing such actions.

When the injury is more than UAH 16,000. Remember that you might have to prove it in Court.

What types of violations are covered?

Reproduction, distribution, replication of copyright and/or related rights objects, camcording, cardsharing and other intentional violations of property rights, as well as financing of piracy.

What can be achieved?

Up to six years' imprisonment, deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

What should be done?

- Contact the offender (if possible) about the detected facts of illegal use of the intellectual property;
- Record violation in a way that is recognized by the court (involving the third parties with special knowledge and experience);
- Prepare and file an appropriate criminal offence statement to Police of Ukraine;
- You need to prove that the injury that you have received is more than UAH 16000. Only in this case this will be classified as criminal offence;
- Personally and/or with the participation of a lawyer to take an active part in the pre-trial investigation and trial proceedings.

3. Filing a claim to the Commercial Court

When to apply?

When both the offender and rightholder are legal entities (including self-employed individuals).

What types of violations are covered?

- Any person's actions that violate the personal non-property rights and/or property rights of copyright holders and/or related rights defined in art. 50 of the Law of Ukraine "On Copyright and Related Rights";
- Violation of copyright and/or related rights to publish, reproduce, import into the customs territory of Ukraine, export from the customs territory of Ukraine and distribution of counterfeit copies of works (including computer programs and databases), phonograms, videograms, unauthorized disclosure of broadcasting organizations' programs, camcording, cardsharing, and also online piracy, that is, the commission of any actions that are recognized as infringements of copyright and/or related rights through the use of the Internet;
- plagiarism - the disclosure (publication), in whole or in part, of someone else's work under the name of a person who is not the author of this work;
- import into the customs territory of Ukraine without the permission of the persons having copyright and/or related rights of copies of works (including computer programs and databases), phonograms, videograms, broadcasting programs;
- actions that create a threat of infringement of copyright and/or related rights;
- any actions for deliberate circumvention of the technical means of protection of copyright and/or related rights, in particular the production, distribution, import for the purpose of distribution and use of means for such circumvention;
- forgery, alteration or deletion of information, in particular in electronic form, about the management of rights without the permission of the subjects of copyright and/or related rights or the person who carries out such management;
- distribution, import into the customs territory of Ukraine for the purpose of distribution, public disclosure of copyright and/or related rights objects, from which, without the permission of copyright and/or related rights subjects, the information on the management of rights has been deleted or altered, especially in electronic form.

What can be achieved?

- Recognize and renew your rights, including prohibiting actions that infringe copyright and/or related rights or threaten to violate them;
- renew violated rights and/or terminate actions that violate copyright and/or related rights or threaten to violate them;
- compensate moral (non-property) damage;

- indemnify (pecuniary) damage, including lost profits, or collect the income received by the offender as a result of violation of your copyright and/or related rights, or payment of compensation in the amount of from 10 to 50 000 minimum wages (instead of indemnification or collection of income);
- stop preparatory actions for infringement of copyright and/or related rights, including suspension of customs procedures, if there is a suspicion that may be passed in the customs territory of Ukraine or from its customs territory, counterfeit copies of works, phonograms, videograms, means of bypassing technical means of protection, in accordance with the procedure provided by the Customs Code of Ukraine;
- take part in the inspection of the industrial premises, warehouses, technological processes and business operations related to the production of copies of works, phonograms and videograms, on which there are grounds for suspicion of violation or threat of infringement of copyright and/or related rights, established by the Cabinet of Ministers of Ukraine;
- publish in the mass media the information on alleged infringements of copyright and/or related rights and court decisions on these violations;
- obtain from persons who violate the copyright and/or related rights of the plaintiff the information about the third parties involved in the production and distribution of counterfeit copies of works and objects of related rights as well as means of circumvention of technical means of protection and on their distribution channels;
- other legislative measures to protect copyright and related rights;
- prohibit the publication of works, their performances or production, the issue of phonograms, videograms, their notifications, the cessation of their distribution, the seizure (confiscation) of counterfeit copies of works, phonograms, videograms or broadcast programs and the equipment and materials intended for their production and reproduction;
- impose on the offender a fine of 10% of the amount awarded by the court in favor of the plaintiff, which is paid to the state budget of Ukraine;
- remove or confiscate all counterfeit copies of works, phonograms, videograms or broadcast programs that have been found to have been manufactured or distributed in violation of copyright and/or related rights, as well as means of circumvention of technical means of protection, including cliché, matrices, forms, originals, magnetic tapes, photographic negatives and other objects by which reproductions of copies of works, phonograms, videograms, broadcasting programs, as well as materials and equipment used for their reproduction and for making the means of circumvention of technical means of protection;
- obtain counterfeit copies of works (including computer programs and databases), phonograms, videograms, broadcast programs at the request of the person who is the subject of copyright and/or related rights and the rights of which are violated.

What should be done?

- In case of detection of an offense, record a violation in a way that will be recognized in court (with the involvement of the third parties with special knowledge and experience);
- identify the defendant;
- collect evidence;
- prepare and submit a claim statement to the Commercial Court, in which case it is necessary to send a copy to the defendant (defendants) and pay the court fees and include evidence, in particular of sending payment of the judicial collection of the statement of claim;
- the claim to the Commercial Court may be submitted not only by a lawyer, but only lawyer will be able to represent and protect the rights of the rightholder during the process. (Obligatory representation of a lawyer in the Supreme Court and courts of cassation - from 1 January 2017, in courts of appeals - from 1 January 2018, in courts of first instance - from 1 January 2019, unless a law on exclusion from this);
- personally and/or with the participation of a lawyer take an active part in all stages of the trial.

4. Submission of a civil lawsuit

When to apply?

When offender and/or the rightholder are private persons (not legal entity).

What types of violations are covered?

- Any person's actions that violate the personal non-property rights and/or property rights of copyright holders and/or related rights defined in art. 50 of the Law of Ukraine "On Copyright and Related Rights";
- piracy in the field of copyright and/or related rights to publish, reproduce, import into the customs territory of Ukraine, export from the customs territory of Ukraine and distribution of counterfeit copies of works (including computer programs and databases), phonograms, videograms, unauthorized disclosure of broadcasting organizations' programs, camcording, cardsharing, and also online piracy, that is, the commission of any actions that are recognized as infringements of copyright and/or related rights through the use of the Internet;
- plagiarism - the disclosure (publication), in whole or in part, of someone else's work under the name of a person who is not the author of this work;
- import into the customs territory of Ukraine without the permission of the persons having copyright and/or related rights of copies of works (including computer programs and databases), phonograms, videograms, broadcasting programs;
- actions that create a threat of infringement of copyright and/or related rights;
- any actions for deliberate circumvention of the technical means of protection of copyright and/or related rights, in particular the production, distribution, import for the purpose of distribution and use of means for such circumvention;
- forgery, alteration or deletion of information, in particular in electronic form, about the management of rights without the permission of the subjects of copyright and/or related rights or the person who carries out such management;
- distribution, import into the customs territory of Ukraine for the purpose of distribution, public disclosure of copyright and/or related rights objects, from which, without the permission of copyright and/or related rights subjects, the information on the management of rights has been deleted or altered, especially in electronic form.

What can be achieved?

- Recognize and renew your rights, including prohibiting actions that infringe copyright and/or related rights or threaten to violate them;
- renew violated rights and/or terminate actions that violate copyright and/or related rights or threaten to violate them;
- compensate moral (non-property) damage;
- indemnify (pecuniary) damage, including lost profits, or collect the income received by the offender as a result of violation of your copyright and/or related rights, or payment of compensation in the amount of from 10 to 50 000 minimum wages (instead of indemnification or collection of income);
- stop preparatory actions for infringement of copyright and/or related rights, including suspension of customs procedures, if there is a suspicion that may be passed in the customs territory of Ukraine or from its customs territory, counterfeit copies of works, phonograms, videograms, means of bypassing technical means of protection, in accordance with the procedure provided by the Customs Code of Ukraine;
- take part in the inspection of the industrial premises, warehouses, technological processes and business operations related to the production of copies of works, phonograms and videograms,

- on which there are grounds for suspicion of violation or threat of infringement of copyright and/or related rights, established by the Cabinet of Ministers of Ukraine;
- publish in the mass media the information on alleged infringements of copyright and/or related rights and court decisions on these violations;
 - obtain from persons who violate the copyright and/or related rights of the plaintiff the information about the third parties involved in the production and distribution of counterfeit copies of works and objects of related rights as well as means of circumvention of technical means of protection and on their distribution channels;
 - other legislative measures to protect copyright and related rights;
 - prohibit the publication of works, their performances or production, the issue of phonograms, videograms, their notifications, the cessation of their distribution, the seizure (confiscation) of counterfeit copies of works, phonograms, videograms or broadcast programs and the equipment and materials intended for their production and reproduction;
 - impose on the offender a fine of 10 percent of the amount awarded by the court in favor of the plaintiff, which is paid to the state budget of Ukraine;
 - remove or confiscate all counterfeit copies of works, phonograms, videograms or broadcast programs that have been found to have been manufactured or distributed in violation of copyright and/or related rights, as well as means of circumvention of technical means of protection, including cliché, matrices, forms, originals, magnetic tapes, photographic negatives and other objects by which reproductions of copies of works, phonograms, videograms, broadcasting programs, as well as materials and equipment used for their reproduction and for making the means of circumvention of technical means of protection;
 - obtain counterfeit copies of works (including computer programs and databases), phonograms, videograms, broadcast programs at the request of the person who is the subject of copyright and/or related rights and the rights of which are violated.

What should be done?

- Record a violation in a way that will be recognized in court (with the involvement of the third parties with special knowledge and experience);
- identify the defendant;
- gather the evidence;
- prepare and submit a claim to the Court of General Jurisdiction, in which case it is necessary to send a copy of the claim to the defendant (defendants) and pay the court fee and include evidence, in particular of sending payment of the judicial collection of the statement of claim;
- the claim to the Commercial Court may be submitted not only by a lawyer, but only lawyer will be able to represent and protect the rights of the rightholder during the process. (Obligatory representation of a lawyer in the Supreme Court and courts of cassation - from 1 January 2017, in courts of appeals - from 1 January 2018, in courts of first instance - from 1 January 2019, unless a law on exclusion from this);
- personally and/or with the participation of a lawyer take an active part in all stages of the trial.

5. Commencement of an administrative case under Article 51-2 of the Code of Ukraine on Administrative Offenses

When to apply?

In case of detection of the illegal use of the object of intellectual property right (literary or artistic product, its performance, phonogram, broadcasting program, computer program, database, scientific discovery, invention, utility model, industrial design, mark for goods and services, integrated circuit topography, rationalization proposal, plant variety, etc.), misappropriation of authorship to such an object or other intentional violation of rights to the object of intellectual property rights protected by law.

Applies when the obvious (impossible to prove) damage is less than estimated considerable amount (that is twenty times more than the non-taxable minimum income of citizens). .

What types of violations are covered?

Illegal use of the object of intellectual property rights (literary or artistic product, its performance, phonogram, broadcasting program, computer program, database, scientific discovery, invention, utility model, industrial design, mark for goods and services, integrated circuit topography, rationalization proposal, plant variety, etc.), misappropriation of authorship to such an object or other intentional violation of the rights to the object of intellectual property rights, which is protected by law.

What can be achieved?

Bringing to administrative responsibility entails the imposition of a fine of ten to two hundred tax-free minimum incomes of citizens (UAH 170 - 3400) with the confiscation of illegally manufactured products and equipment and materials that are intended for their manufacture.

What should be done?

- Report the offender (if possible) about the detected facts of illegal use of the intellectual property;
- record a violation in a way that is recognized by the court (involving the third parties with special knowledge and experience);
- prepare and file an appropriate statement on the commission of an administrative offense to the national police body of Ukraine;
- take an active part in the investigation stage (national police bodies make a record) and court proceedings (district, city or city-district courts (judges) consider the case and impose a fine).

6. Appeal to the National Council of Ukraine on Television and Radio Broadcasting

When to apply?

When the offender is a program service provider or broadcaster with a corresponding license.

What types of violations are covered?

Illegal reproduction, distribution of broadcasting programs.

What can be achieved?

- Alert notification;
- charging a fine;
- Cancellation of a license based on a court decision on a suit of the National Council.

What should be done?

- Record a violation in a way that will be recognized by the National Council (documentary evidence, including fixation on electronic media, in particular, involving the third parties with special knowledge and experience);
- prepare and file an appropriate statement to the National Council of Ukraine on Television and Radio Broadcasting.

7. Blocking of cash flow

When to apply?

- When detecting illegal channels broadcasting facts by any service (provider) that accepts funds through Visa and Mastercard international payment systems;
- when detecting illegal content placement on websites and fixing brand advertising on these websites.

What types of violations are covered?

Illegal reproduction, distribution of copyright and/or related rights objects.

What can be achieved?

a) Make it impossible to accept payment for services from subscribers of the service through Visa and Mastercard payment systems.

What should be done?

If VISA

- Write a warning letter to the service that illegally broadcasts the TV channels;
- send a complaint to VISA payment system - fill out the form via the link: <https://usa.visa.com/Forms/report-ip-abuse-form.html> ;
- attach the following documents to the complaint:
 - screenshots of letters with the warnings and requirement to stop the TV channels broadcasting (three letters with a periodicity of sending not less than 24 hours);
 - copies of documents confirming the rights of the rightholder;
 - screenshots of the pirate website with the logo of VISA payment system;
 - screenshots, testifying TV channels broadcasting;
 - copy of the receipt for payment for services.

If Mastercard

- Write a letter to e-mail: ipinquiries@mastercard.com . In the period up to two weeks Mastercard sends a letter to the rightholder with the anti-piracy form to fill out the complaint;
- send the following documents to Mastercard:
 - filled out anti-piracy form;
 - screenshots of letters with the warnings and requirement to stop the TV channels broadcasting (three letters with a periodicity of sending not less than 24 hours);
 - copies of documents confirming the rights of the rightholder;
 - screenshots of the pirate website with the logo of Mastercard payment system;
 - screenshots, testifying TV channels broadcasting;
 - copy of the receipt for payment for services.

b) Reduce the financial revenues of the offending site from advertising.

What should be done?

- Record the presence of illegally placed content on the website;
- fix a brand's advertising on the offending website;
- contact the brand with an explanation of the placement on the website that violates intellectual property rights and the request not to finance piracy. Recall that, according to the law, this entails criminal liability.

Example: The Ukrainian Anti-Piracy Association (UAPA) monitors the brands that advertise on the websites that violate intellectual property rights <http://apo.kiev.ua/reklama.phtml> and write letters to advertisers.

8. Appeals to search engines to block pirate sources from being searched

When to apply?

When detecting violation of any copyright and/or related rights by any website.

What types of violations are covered?

The placement or use of electronic digital information that violates copyright and/or related rights. Including: VoD, on-line TV channel broadcasts.

What can be achieved?

Prevent access to illegally placed information through Google's search engine.

What should be done?

Correctly fill out the form on [the following link](#), entitled "Removing copyright infringing materials." After that, Google employees will analyze the complaint and, in case of confirmation of the illegal distribution of the audio-visual content, the links will be removed from the Google search engine.

9. Appeal to the video services (such as YouTube) in order to block the illegal placement of your content

When to apply?

When detecting illegal content placement on a video service (for example, on YouTube).

What types of violations are covered?

Illegal reproduction, distribution of copyright and/or related rights objects.

What can be achieved?

Blocking of the illegally placed content.

What should be done?

- Use Content ID system. Content ID helps rightsholders to identify and manage their content on YouTube. The system stores digital imprints - samples of content downloaded by the rightsholders. All new videos placed on YouTube are compared to the imprints. If a coincidence occurs, Content ID claims the rights to the videos on behalf of the rightsholder and applies the policy chosen by him.
- Apply manually to the CMS, where Content ID is available. It happens that Content ID does not work, or does not work correctly. In this case, the rightsholder has an opportunity to apply for manual locking. In doing so, you need to provide a link to a video that uses copyrighted material as well as an Asset ID that specifies which piece of the rightsholder's video is used illegally.
- Report copyright infringement. Any user of the Internet may apply for removal of a video that, in his opinion, infringes upon copyright. It is enough to fill out a form in which it is necessary to specify the maximum amount of information about the object of copyright.

10. Addressing social networks to block illegal content placement as well as blocking pirate sources groups

When to apply?

When detecting violation of the copyright and/or related rights.

What types of violations are covered?

The placement or use of electronic digital information that violates copyright and/or related rights. In particular, VoD, an on-line TV channel broadcast.

What can be achieved?

Blocking and deleting of the content violating copyright and/or related rights.

What should be done?

- Record links to illegally placed content;
- if the content is recorded on Facebook, correctly fill out the complaint form <https://www.facebook.com/help/contact/208282075858952> . Be sure to add copies of the documents confirming the rights of the rightholder;
- if the content is recorded in VKontakte, correctly fill out a complaint form <https://vk.com/dmca>;
- if the content is recorded in Odnoklassniki, write an e-mail to videoadministration@odnoklassniki.ru . Be sure to add copies of the documents confirming the rights of the rightholder;
- if the content is fixed in Mail.ru, write an e-mail to support_team@corp.mail.ru .

11. Addressing hardware vendors to remove piracy applications from set-top boxes and smart-TV

When to apply?

After establishing and fixing the fact of infringement of intellectual property rights.

What types of violations are covered?

Illegal reproduction, distribution of copyright and/or related rights objects.

Smart-TV Application

What can be achieved?

Blocking of access to content directly in the application; remove this add-on from the online store / set-top box / smart-tv. Compensation for violation of intellectual property rights in case of filing a claim in court.

What should be done?

- Send a complaint to the support service of the application with the attachment of the relevant documents;
- submit a complaint to the support store and the store with the application, having pre-recorded the violation: having recorded the video of the illegal content being played;
- file a suit.

Set-top box

What can be achieved?

- Video stream blocking through the hosting provider;

- bringing to responsibility of the hosting provider in case of his full control over the content being broadcast;
- filing a claim to the court for compensation for a violation of rights, the defendants in this case will be a store that establishes a pirate application to the set-top box, developers of the application, persons who have received income from the implementation of this activity.

What should be done?

- Submit a complaint to the hosting provider with the fixing of the offense (photo or video);
- file a suit.

This document was created by the participants of Clear Sky initiative and specialists from Smartsolutions Law Group and "Vindex" law firm.