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D. SAPARBAEV,
Head of analytic's department LLC "ATB-Market"



M. YASEVA,
Ph.D. in economics,
National metallurgical academy of Ukraine

MODERN TENDENCIES OF LICENSING OF INTELLECTUAL AND INFORMATIONAL GOOD

The article based on the institutional approach, which helped to define possible methods of main legal faculties allocation between persons who take part in creating of intellectual and informational good on the ground of free license. The advantages of using free licenses for authors of intellectual products are determined. Examples of the use of free licenses in international practice are given. The reasons that hamper the development of free licensing in the domestic market of intellectual and informational goods on the example of the software sector are analyzed. Possible ways of overcoming them are suggested.

Key words: ownership on intellectual and information product, intellectual and information good, income of the intellectual and information good, free license, software sector, licensing of intellectual and information good, development of free licensing.

Formulation of the problem. Commercialization of intellectual activity products, in particular their licensing, has some differences. One of distinctive features of intellectual and informational good market is existence of free licenses. Despite the last don't have a price, as such, they give customer an opportunity to earn a certain income, while commercial licenses don't provide such opportunity. Besides with the increase of quantity and differentiation of intellectual activity products it becomes not a rear situation of their ownership dilution. It leads to necessity of solution of legal faculty allocation problem between the persons, who take part in creation of intellectual and informational good.

Analysis of the latest research and publication. Among domestic scientists who deal with solution of above mentioned problems it is necessary to mention Y.A. Radchenko, O.B. Butnik-Siversky, O.P. Orlyuk, G.O. Androshchuk, L.G. Oleinikova, O.G. Dovhal and others. Within the research we think it is worth to mark three main tendencies:

- first, it is a problematic of intellectual and informational goods ownership [1-2;4; 6-7];
- second, it is introduction into the market intellectual products, particularly, their licensing [2;3;5];
- third, it is typification of licenses for intellectual and informational goods [2].

Non questioning achievements of modern economists, it is necessary to mark the lack of research of action mechanism of free licenses for intellectual and informational goods, particularly, their positive effect for the authors of intellectual and informational goods.

Formulation the article purposes. The purpose of the article is a definition of possible variants of main legal faculties allocation between persons, who take part in creating of intellectual and informational good based on the free license.

Presenting of the main material. The dual nature of the appropriation process of intellectual and informational good, is defined, on the one hand, by poly subjectivity as a public ownership (intellectual product), on the other hand – mono subjectivity as an object of private ownership (storage medium object). This determine process of fictivization of intellectual and informational good when on the presence surface the object of sales become not the goods but their property rights. As was mentioned above, one of the ownership specifics of the intellectual and informational good is existence of free license, which allow the buyer to partly combine the rights for the intellectual and informational good and its copies. Free license for the intellectual and informational good allow all the members, who have joined it, to copy, study, modify and use this intellectual and informational good for any purposes [8]. All the other rights remain at authors (not at employees), at the employers of authors-employees or at customers.

The examples of free licenses for the intellectual and informational good, particularly, software, are General Public License (GNU), GNU Lesser General Public License, BSD License, Mozilla Public License, MIT License, Apache License. One of the most known software, that distributions based on free licenses, is operating system Linux. For example, among 300 its operating distributions (accumulation of programs and libraries necessary for start and usage of operating system), just 25 are commercial, and quantity of users is constantly increasing and now count nearly 100 million people [9]. In the specific sectors as web-servers (LAMP: Linux, Apache, MySQL, PHP), file-servers (Samba), mail servers

(Sendmail, Postfix), telephone server (Asterisk), products made for use in Linux/BSD environment, have major advantages determined by reliability, personal computer “virus” security, public support of specialists etc. [10]. As for the database management system sector, between 5 wire systems 3 of them are “free” (MySQL, PostgreSQL, Mongo DB) [11].

The adequate form of ownership realization of the intellectual and informational good is free license that consolidates different rights for intellectual and informational good and its copies. So, in our opinion, in the conditions of free license for the intellectual and informational good its owner has such exclusive rights according to A. Honore classification [12]: 1) to manage; 2) to the capital; 3) to security (the right of protection document); 4) of transmissibility; 5) to prohibition of harmful use; 6) of liability to execution; 7) of residuary character. The owner of the intellectual and informational good can transfer to third parties for free under the terms of free license the right to possess, the right to use (which fullness is determined depending on the contract conditions) and the right to income of the copies of the intellectual and informational good. «Total» right to use of the last includes rights: a) non-commercial use of the intellectual and informational good for personal purposes in public activity (without possibility of revenue generation); b) commercial use of the intellectual and informational good (with the possibility of revenue generation). It is relevant to mark out rights: 1) copy distribution of the intellectual and informational good; 2) provision of the services on a paid basis; 3) use of a copy of the intellectual and informational good in business.

Free license for the intellectual and informational good allows employee as its author: to improve and modify the intellectual and informational good; to be in progress, to self-improve and to self-fulfill, increasing own entity powers; to implement a right to income from services by this intellectual and informational good.

Free license for the intellectual and informational good allow members, who have joined a certain agreement, earn an income from using this intellectual and informational good. It is necessary to mention that this license type don't provide license royalty for the owner. Nevertheless, the last can sell commercial (closed) licenses for the intellectual and informational good, and in that way earn an income from it. Such experience is possible on the basis when free license users for the intellectual and informational good use it for the development their own intellectual and informational good in order to further resell commercial (closed) licenses.

Commercial license restricts receiving by the owners (included creators-employees) of the intellectual and informational good any additional copies, while free license allows them to earn service income (from technical support, granting of a

guarantees etc.), income from distribution of product duplications or income from its use in commerce.

The owner of the intellectual and informational good can use it in any purposes, permit or forbid other persons to use this intellectual and informational good.

Therefore the realization of the right to use and the right to income for copies owners will be modified depending on the license type (table 1).

As it was mentioned above the commercial license for the intellectual and informational good don't allow its owners to earn any type of income.

Free license allow the copy user to apply it for his own purposes on the contract conditions (particularly for commercial use). But unlike the owner of the intellectual and informational good, copy owner can't grant commercial licenses to other persons.

Table 1

Specifics of the right to use and the right to income for copies owners of the intellectual and informational good depending on the license type

Person	Commercial license	Free license
The copy owner of the intellectual and informational good (customer or author of intellectual product)	have a right to non-commercial use of copy, that don't allow to realize the right to income from copy of the intellectual and informational good	have a right to use a copy of the intellectual and informational good in any purposes (the rights of commercial and non-commercial use), that allow to exercise the right to income of the copy of the intellectual and informational good

Source: developed by author.

Let's determine what induce the owners to grant free licenses for the intellectual and informational goods. In our opinion their main economic interest is to gain income from technical support (education, certification, integration etc.) of this intellectual and informational good. Besides, it is possible to gain income from sales of this product's commercial licenses (when good is becoming an object of private property), since owners of the intellectual and informational good can "overlicense" it or, in other words, sell commercial licenses. Note, that users of such licenses, for example, are software developers, who aim to create commercial product based on "free" product. One of the most known example of "free" product "overlicense" is development based in Linux mobile operative system Android by Google corporation

(near 1,4 billions installations)[13], and also MacOS by Apple corporation - based on BSD.

The head motive of economic activity of owners of the intellectual and informational good is to maximize the profit from goods service supply, and also from commercial licenses sales. There are other no less important motives that induce owners to foster the distribution of free licenses for the intellectual and informational good. As for example, existence of free intellectual and informational goods stimulates the demand for other products that are complimentary for the first. The known example of product transition into free use is Java product (and also a Java technology for products launch), created by Sun Microsystems company. There are also the symbioses. For example, Microsoft Company included the distributions, that are necessary for launch of Linux virtual servers and associated programs, into Microsoft Azure platform and also supports the free software development.

Free intellectual and informational goods customers can be ruled by market and non-market motivation, depending on overriding goal of their activity: service income maximization or increase of their own entity powers. Authors of intellectual products primary can be ruled by non-market motivation.

Figure 1 presents the income distribution scheme of the intellectual and informational good that is an object of both free and commercial licenses.

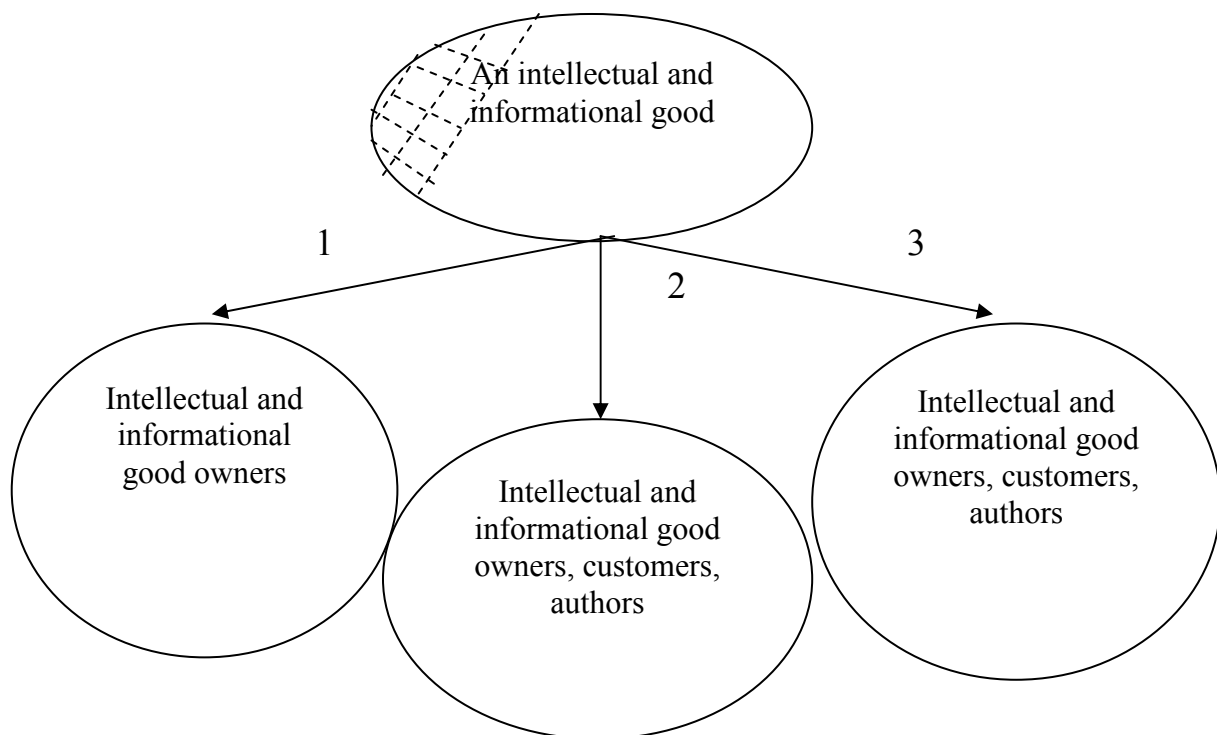


Figure 1. Income distribution from intellectual and informational good, developed by author

On the fig.1.: 1 – income from commercial licenses for intellectual and informational good; 2 – service income; 3 – income from intellectual and informational good's copies. Shaded area specify zone of free licenses for an intellectual and informational good; unshaded area specify zone of free licenses for this intellectual and informational good.

As can be seen on figure 1, at the market of intellectual and informational good there are competition of technical support services supply and the distribution of its copies.

Because the price of a copy is in fact a price of a storage medium, so there is no sense in the competition in their distribution. Let's point out that the intellectual and informational good author (as other customers) can supply services as the customer - free license user, and also as an employee. In our opinion he has evident competitive advantages over other customers. This advantages reside in the absence of time lag between the advent of intellectual and informational good on the market and possibility of service supply (guaranties, support, basic product modifications etc.), that is defined by author's fullest and extensive a priori knowledge, and so, it characterizes by the best quality of services he can provide to other customers.

Taking the above mentioned into consideration, free licenses for an intellectual and informational good allows the author - employee of intellectual and informational good:

1. To make further developments based on this intellectual and informational good, including improvement and modification of the last.
2. To self-improve and to self-engage and self-fulfill increasing own entity powers.
3. To implement a right to income of the services from this intellectual and informational good.

So, the author - employee of intellectual and informational good based on his own knowledge can earn an additional income that he couldn't earn in conditions of commercial license, for example, the income from intellectual and informational good's service supply.

But also the free licenses are not free from disadvantages, among which there are main difficulties in processing of intellectual and informational good or introduction of amendments to it. The last can cause ineffective further developments, necessity of creating of own product version. Besides, there is a problem of licenses compatibility, that is in possible contradictions in contract conditions, which make impossible to use a new product etc.

In our opinion free license can provide more reasonable distribution of income from intellectual and informational good, although it doesn't allow the author of intellectual and informational good to sell commercial licenses.

Certain institutional conditions are necessary for free license development. In Ukraine laws regulating matters between members of free licensing don't exist. Delegated legislations regulate only some issues concerning buying and using of intellectual and informational goods on a free license basis, particularly computer programs. Lack of proper legal framework in the country is slow down the development of free licensing for the intellectual and informational good. Such situation doesn't allow creating a legal environment for other license types functioning.

One of the potential legal acts that open a possibility of using not only a closed type (proprietary) software, audio- and video works is a draft Act of Ukraine "Using of open and free forms of intellectual ownership, open data formats and open (free) software in public offices in public sector of economy" [14]. It foresees:

- the right of a state actor to use any license types for intellectual and informational good;
- the use of free licenses for intellectual and informational good for proceedings of all types of common services by state actors (if it's appropriate);
- the obligatory participation in any tender for development or an acquisition of software created on free licensing (if such are exist), particularly, domestic developers.

Despite limitation of this act only by the public sector of economy, its adoption will facilitate expansion and use of intellectual and informational good, based on free license, in economy.

The conclusions and recommendations for further research. To achieve a variation in an income distribution between the owner of intellectual and informational good and the author - employee of intellectual product it is necessary to overcome an imperfection of domestic law, in which there are coexistence of ownership rights conception and exclusive rights conception on intellectual and informational good, that don't allow its definition as dialectical unity of intellectual product and storage medium. One of the possible solutions to this problem is a development of free licensing that foresee the possibility of author - employee of intellectual and informational good to possess and to use it, and also, to earn income from it.

Among the high priority state activities, that will stimulate the development of free licenses for intellectual and informational goods: is to adopt draft Act of Ukraine "Using of open and free forms of intellectual ownership, open data formats and open (free) software in public offices in public sector of economy", and also formation and

adoption of acts and delegated legislations concerning problems of functioning and development of free licensing for intellectual and informational goods in Ukraine, commercialization of intellectual and informational good, created on free license etc.

In our opinion among main research perspectives are substantiated analysis of free licenses disadvantages and their comparison with commercial licenses; establishment of differences between various free license types; combination of licenses. Also, it is necessary to consider other sectors of the market of intellectual and informational good, for which exist an opportunity of implementation of free licenses.

References

1. Radchenko, Y. A. (2011), “Intellectual Property, FOSS and the world economy, noosphere and industrial production: competitive approaches”, *Materialy mignarodnoii naukovo-praktichnoii konferencii “FOSS Lviv-2011”*, L’viv: LNU, pp. 130-133.

2. Radchenko, Y. A. (2011), “Tangible, Converging and Intellectual Property: an Introduction to the Problem and an Attempt of Categorization“, *Ekonomichna teoriia*, vol. 1, pp. 21-36.

3. Oleinikova, L. G. (2013), “Features of intellectual property as a commodity in today's economy of Ukraine”, available at: http://nbuv.gov.ua/UJRN/efek_2013_6_12 (Accessed 14 May 2017).

4. Dovhal, O. G. (2013), “Subject and object structure of intellectual product: institutional analysis”, *Visnyk Harkivs'kogo Nacional'nogo universitetu im. V. N. Karazina*, vol. 1042, – pp. 90-93.

5. Orlyuk, O. P., Androshchuk, G. O., Butnik-Siversky, O. B. (2007), *Pravo intelektual'noi vlasnosti: akad. kurs: pidruch. dlya stud. vischix navch. zakladiv* [Intellectual property rights], Publishing House “In Jure”, Kiev, Ukraine.

6. Orlyuk, O. P., Butnik-Siversky, O. B., Revutsky, S.F. (2006), *Ekonomiko-pravovi problemy v sferi intelektual'noi vlasnosti* [Economic and law problems in the sphere of intellectual property], Research Institute of Intellectual Property, Kiev, Ukraine.

7. Orlyuk, O. P., Butnik-Siversky, O. B., Mironenko, N.M. (2010), *Ekonomiko-pravovi teoretyichni ta praktyichni aspekty perehodu ekonomiky Ukrainy na innovaciinu model' rozvyitku* [Economic and legal theoretical and practical aspects of the transition of the economy of Ukraine to the innovative model of development], LLC “Lazurite-Polygraph”, Kiev, Ukraine.

8. Ru.wikipedia.org. available at: https://ru.wikipedia.org/wiki/%D0%A1%D0%B2%D0%BE%D0%B1%D0%BE%D0%B4%D0%BD%D0%B0%D1%8F_%D0%BB%D0%B8%D1%86%D0%B5%D0%BD%D0%B7%D0%B8%D1%8F (Accessed 14 May 2017).

9. Linuxcounter.net. available at: <https://www.linuxcounter.net/statistics> (Accessed 14 May 2017).
10. Blog.jelastic.com. available at: <http://blog.jelastic.com/2016/04/14/software-stacks-market-share-first-quarter-of-2016/> (Accessed 14 May 2017).
11. Db-engines.com. available at: <http://db-engines.com/en/ranking> (Accessed 14 May 2017).
12. Honore, A. M. (1961), "Ownership", Oxford essays in jurisprudence. (Ed. by Guest A. W.), Oxford: Oxford University Press, pp.112–128.
13. Expandedramblings.com. available at: <http://expandedramblings.com/index.php/android-statistics/> (Accessed 14 May 2017).
14. Proekt Zakony Ukrainy "Pro vykoristannya vidkryityih i vil'nyih form intelektual'noi vlasnosti, vidkryityih formativ danyih ta vidkryitogo (vil'nogo) programnogo zabezpechennya v dergavnyih ustanovah i dergavnomu sektori ekonomiky". available at: <http://www.uafoos.org.ua/ru/topics/ley/free-software-ley> (Accessed 14 May 2017).

Сапарбаєв, Д.Ф., начальник відділу ТОВ «АТБ-Маркет», Ясева, М.О., к.е.н., Національна металургійна академія України

Сучасні тенденції ліцензування інтелектуально-інформаційного товару

У статті на базі інституційного підходу розглянуто можливі варіанти розподілу основних правомочностей між суб'єктами, які приймають участь у створенні інтелектуально-інформаційного товару на основі вільної ліцензії. Визначено переваги застосування вільних ліцензій для авторів інтелектуальних продуктів. Наведено приклади використання вільних ліцензій у міжнародній практиці. Проаналізовано причини, які гальмують розвиток вільного ліцензування на вітчизняному ринку інтелектуально-інформаційного товару на прикладі сектору програмного забезпечення. Запропоновано можливі шляхи їх подолання.

Ключові слова: власність на інтелектуальний продукт, інтелектуально-інформаційний товар, доход від інтелектуально-інформаційного товару, вільна ліцензія, сектор програмного забезпечення, ліцензування інтелектуально-інформаційного товару, розвиток вільного ліцензування.

Сапарбаєв, Д.Ф., начальник отдела ООО «АТБ-Маркет», Ясева, М.А., к.э.н., Национальная металлургическая академия Украины

Современные тенденции лицензирования интеллектуально-информационного товара

В статье на базе институционального подхода рассмотрены возможные варианты распределения основных правомочностей между субъектами, которые принимают участие в создании интеллектуально-информационного товара на основе свободной лицензии. Определены преимущества использования свободных лицензий для авторов интеллектуальных продуктов. Приведены примеры использования свободных лицензий в международной практике. Проанализированы причины, которые тормозят развитие свободного лицензирования на отечественном рынке интеллектуально-информационного товара на примере сектора программного обеспечения. Предложены возможные пути их преодоления.

Ключевые слова: собственность на интеллектуальный продукт, интеллектуально-информационный товар, доход от интеллектуально-информационного товара, свободная лицензия, сектор программного обеспечения, лицензирование интеллектуально-информационного товара, развитие свободного лицензирования.