

## Free E-Materials for Education vs Copyright in Ukraine



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**Abstract:** *Based on the results of the sociological studies, it was found that students require to receive from the University free educational materials in electronic form. It is not about e-Learning, but about an issue on free access to scientific and educational literary works. At the same time, civil legislation and specific legislation on intellectual property of Ukraine do not envisage a ready-made legal structure to enjoy the IP rights and preserve the interests of all parties: a student as the recipient of educational materials; the University as a party, which is obliged to provide student with high-quality educational services; and a lecturer as the author of such educational materials. This article contains a general analysis of the legal regulation of proprietary IP rights to be licensed to third parties, including through public licenses.*

**Key words:** *intellectual property, copyright, license, civil legislation of Ukraine*

### Problem statement

As a result of the sociological studies, conducted on no-name basis, we identified the existence of such issue: Ukrainian students require from their University free access to electronic educational materials. The authors of this article set themselves the respective objectives on providing general legal requirements of the copyright of University's lecturers on their educational materials and analyzing the options for licensing rights on such materials to third parties (e.g. University and students). We also investigate the legal requirements for the licensing rights to such IP work, including through public licenses.

**Analysis of Recent Research and Publications:** Ukrainian scientists of the civil law - Bazilevich V.D., Dzera O.V., Dovgan G.V., Luts A.V., Kharitonov Y.O., of the intellectual property rights - Dmytryshyn V.S., Drobyazko V.S., Orlyk O.M., Shtefan O.O., and ones interested in the issues of disposing of intellectual property rights through public licenses - Zhilinkova O.V., Zerov K.O.,

Kharitonova O.I. and others, have studied issues on disposal of intellectual property rights.

**Presenting the Main Material.** The quality of education is an urgent task that worries both institutions that educates students, as well as companies and organizations, to which such "specialists" come

to work. The society pays a lot of attention to the methods of teaching: the current methods are critically examined and the new ones are suggested taking into account modern technologies, innovations and achievements.

Today students are used to search information in the Internet, so books and any papers are behind in comparison to the availability and search rate of the web-sites and open educational resources.

MOOC (massive open online course), such as Coursera, Udacity, is widely used in the world. In Ukraine it is Prometheus. These platforms offer convenient distance learning courses, however, in their current form, they still cannot fully replace the lessons at schools and universities. Nevertheless, as so-called "blended learning", these courses have gained some popularity in the world as well as in Ukraine. "Blended learning" means additional education, in particular, additional to school classes or selected lecture courses at the University. UNESCO considers the special role of open educational resources that define either academic or scientific resources that are freely available or issued with a license that allows them to be freely used or processed. Open educational resources include full courses, modules, tutorials, videos, tests and any other tools, materials or technologies that are used to provide access to the knowledge [1, p.29].

The authors of this article raised the questions before students of the one of Kyiv University, on how correlates the students' expectations on free access to educational materials that they need, with the authors' copyright of such educational materials.

In this context, educational materials mean a literary work of a scientific and educational nature for acquiring knowledge and making independent study of the information contained in such educational materials.

A number of questions were asked to get answers on two following questions: (1) whether there is a need for students to obtain educational materials from the University in electronic form for free; and (2) can students who received such materials make any actions further (to download or copy and to transfer to other persons) with such materials?

These questions were asked to students of the Law Faculty (97 respondents) studied with the one Kyiv University.

1. Obtaining educational materials by students from the University

As researchers predicted, a positive answer was given to the first block of questions: 67% of the respondents agreed that the University should provide educational materials for free. As to the form of such materials, the studies revealed the following: 49% - exclusively in electronic form; 31% - the form of educational materials is not important, 20% - exclusively in paper form. Indeed, learning materials in electronic form are convenient and flexible than making notes at the lecture or from a textbook.

In Ukraine, the University provides educational services to the students based on respective contracts (with certain exceptions). According to Clause 5 of Article 62 of the Law of Ukraine On Higher Education [2], the student has the right to use free of charge libraries, information funds, educational, scientific and sports facilities of the University. This is a fairly general provision and, on the one hand, it does not say anything about the University's obligation to provide educational materials and, accordingly, does not distinguish between hard-copies and electronic materials and also is silent about payment. 72% of the respondents said that the educational materials should be provided by the University for free.

On the other hand, the legal connection between the student and the University and the University and the lecturer is regulated by the legislation of Ukraine[3]. Civil law and special laws of Ukraine on intellectual property define the legal framework for the protection of copyright of the authors and recognize the authors' personal moral and economic intellectual property rights. Under the general rule the author has an exclusive right to authorize the use of his copyright over the literary work and, accordingly, to prohibit such use. At the same time, it establishes cases when the law allows the use of the copyright object without author's consent.

Thus, it is allowed to freely reproduce copies of the work for the purpose of study. According to Clause 2 of Article 23 of the Law of Ukraine On Copyright and Related Rights [4] the consent of the author (or other copyright holder) is not required for educational institutions to reproduce for lessons published articles and other small works and excerpts, with or without illustrations, provided that: a)

the extent of the reproduction is consistent with said purpose; b) reproduction of the work is a single, not a regular, event.

The cited law contains a limitation on reproduction (e.g. small works) and contains a restriction on the copying of educational materials systematically, so we think the University cannot provide students with educational materials based on this law provision.

Thus, in the case we are considering, the lecturer is the author of educational materials who owns copyrights to such literary works (this article does not analyze the case of co-authorship and/or the creation of educational materials as work for hire as well as payments made from the state budget funds or grants).

In accordance with the Civil Code of Ukraine [5], the author of the literary work has personal non-proprietary (moral) and proprietary (economic) rights in his work. Moral rights are (1) the right to be recognized as the creator (author) and (2) the right to prevent any infringement to the right of intellectual property that may damage the honor or reputation of the creator (Article 423).

Article 424 of the Civil Code of Ukraine lists the economic rights of intellectual property: (1) the right to use of intellectual property object; (2) the exclusive right to allow the use of the object of intellectual property by third persons; (3) the exclusive right to prevent the unlawful use of intellectual property object, including to prohibit such use.

Thus, only the author of educational materials may grant a consent (a license) to the University on the disposal of such educational materials, including for further transfer to the students.

With respect to the payments for the author, under the law parties of the contract (or license) allowed to establish the amount of fees to be paid for author. Furthermore, parties may also agree for granting abovementioned rights for free [6, p.170].

2. Further transfer of the educational materials by students to other persons

The main attention of the authors of this article was given to the question on how students are aware of and estimate the actions they are allowed to do with the received electronic educational materials. Two questions were asked for this.

The first question is whether students should be able to download (and save) such materials to their own computers. This question deals with specific nature of electronic educational materials, so it was explained to the students that this is not just text documents saved in Word, but also materials in electronic form as they presenting in the distance learning format, for example, at Coursera website. 48.8% of respondents said that they want to have an option to download educational materials. 40.4% stated that such option is not required, access only option is sufficient.

Upon receiving the results of this study, we realized that Coursera wasn't a good example of this question. According to the Coursera's Terms for Use, the website provides a limited, personal, non-exclusive, and non-transferable and revocable license to the user to use the Coursera services. Materials posted at the website may be downloaded for personal non-commercial use only. User of Coursera materials does not acquire any intellectual property rights to the materials [7].

In accordance with Article 424 of the Civil Code of Ukraine and Article 15 of the Law of Ukraine On Copyright and Related Rights, the author has the exclusive right to authorize or prohibit the use of his work. Use of non-owned work is allowed by conclusion of a written contract (or the issuance of a license). Therefore, in accordance with the general law provisions, student must obtain the consent of the author of this work (in this case, the lecturer) to dispose this work, including for the transfer to third parties. In other words, there is a non-exclusive license to use a work with the right to sublicense. From the practical point of view, the arrangement of such bunch of papers for each student, lecturer and discipline seems an impossible task.

The second question relates to the identification of scope of rights received by students: whether they can transfer such educational materials to third parties and whether it requires a permission. Students answered as follows: both 46.2% answered that they could dispose of educational materials at the University's permission or without permission; 7.6% answered that they did not acquire the right to dispose of educational materials.

Under the law, the use of non-owned work requires the permission of the author (or other

rightholder). Furthermore, there is an exhaustive list of cases allowed use of non-owned work without the author's consent. Previously we have mentioned about the cases on use of works without the author's consent for study purposes, as stipulated by law. In addition to such cases, the law allows to reproduce IP works exclusively for personal purposes or for members of a family, however this right does not apply to copying books and software (Clause 2 of the Article 25 of the Law of Ukraine On Copyright and Related Rights).

In practice, lecturers used to mark educational materials they have created with a copyright mark (c), if the author wishes to reserve his rights and benefit from any use of his work. Another scenario may appear when the author, to the contrary, wants to distribute his work freely and free, and wants to allow to anyone free use of his IP work, remaining being the author of such work.

In order to actually fulfill this "desire", a public (free) licenses are globally used and Creative Commons licenses are the most known for literary works. Currently, there are

six variations of the license which include a combination of the following conditions: the attribution (the designation of authorship), non-commercial use, the prohibition on the creation of derivative works and the requirement to distribute work under the same conditions. In Ukraine, the Creative Commons licenses have no legal ground, as they are not explicitly envisaged in the legislation and contradict the requirements regarding mandatory written form of a contract (license) for the disposal of intellectual property rights.

Nowadays, Ukrainian Parliament adopted as a basis the Draft Law No. 7539 On Amendments to Certain Legislative Acts of Ukraine concerning the Regulation of Copyright and Related Rights [8], which, among other things, is proposed to supplement the Civil Code of Ukraine with the provisions on establishing the electronic form of contracts for public non-exclusive licenses. The proposed wording will legitimize the possibility of using public licenses in Ukraine, because at present the failure to comply with the written form makes them null and void [9, p.201].

## Conclusion

The studies show that Ukrainian students require obtaining from the University, where they are studied in, free electronic educational materials. Today Ukrainian legislation does not contain a legal structure that could meet this need, but there are existing requirements to prior obtain written consent of the author of the IP work and the nullity of the use of public licenses. Adoption of amendments to the Civil Code of Ukraine regarding the establishment of electronic forms of contracts for public non-exclusive licenses will solve most of the problems of legal regulations mentioned above.

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