

Main Department of Civil Service of Ukraine
Center for Adaptation of the Civil Service to the Standards of the European Union
Center of Social Expertise of the Institute of Sociology, NAS of Ukraine

*Development of a Network of Policy Analysis Groups
in the System of Central Executive Bodies in Ukraine*

**Determination of Optimal Ways to Reduce the Level
of Piracy in Ukraine with Respect to Copyright
and Related Rights in the Course of Circulation
of Copyright Objects on Tangible Mediums**

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Foreword

Development of the Ukrainian State and its movement towards the European community requires establishment of modern, professional civil service that would function in accordance with the requirements of democratic governance. Civil servants of Ukraine must be politically neutral and professional, armed with modern knowledge and skills in public administration.

Among the key functions of public officials in democratic countries is the development of policy recommendations and policy alternatives to solve the existing problems in specific sectors. Civil servants also hold consultations with stakeholders and carry out monitoring and evaluation of the policy efficiency and effectiveness.

Comparing with EU practice, the system of policy coordination and development in Ukraine is not sufficiently transparent and is too centralized. Requirements to analyze policy alternatives and hold consultations with stakeholders are not always fulfilled. The Ukrainian officials often lack practical skills to analyze policy problems and their causes, possible consequences and obstacles to implementation of various options for problem solution.

In order to strengthen the capacity of civil servants to analytical support of the strategic government decisions, the Main Department of Civil Service of Ukraine during 2005–2008 supported a number of initiatives dealing with activities of a network of the policy analysis groups in the central executive bodies in Ukraine. Around 130 civil servants of top and middle managerial levels from the Secretariat of the President of Ukraine, Secretariat of the Cabinet of Ministers of Ukraine, National Bank of Ukraine, ministries and other central executive bodies received training and acquired relevant public policy skills and knowledge needed for application of democratic procedures to the decision-making process.

Results of the policy analysis groups' activities include publication of green and white policy papers. This is an effective tool used in the EU member states and other developed countries to ensure efficiency, transparency, consistency and predictability of work of public authorities.

Requirements to the quality of public policy development and implementation become even more exacerbated in the context of preparation of the EU – Ukraine Association Agreement. Success of the relevant negotiation process largely depends on the capacity of the Ukrainian officials to formulate a coherent, effective and far-sighted strategy of mutual relationships.

Given the magnitude of the obligations of Ukraine in the framework of the future Association Agreement with the European Union, in 2008 the Main Department of Civil Service of Ukraine put forward an initiative, which was supported by the Government, to expand the network of policy analysis groups and to focus their work on the issues of implementation of Ukraine's commitments under the future Free Trade Agreement with the EU.

In December 2008 the initiative on “Development of a Network of Policy Analysis Groups in the Central Executive Bodies in Ukraine” was launched by the Center for Adaptation of the Civil Service to the Standards of the European Union. It was implemented by the Center of Social Expertise of the Institute of Sociology of the National Academy of Sciences of Ukraine. 10 cross-sectoral groups were created to deal with the sectoral issue of the EU–Ukraine Free Trade Agreement and 3 policy analysis groups—to deal with issues of the civil service reform. Each of the groups consisted of 7–10 top-level civil servants (II–IV categories).

Policy analysis groups dealing with priority issues of the EU-Ukraine Free Trade Agreement:

- Development of a strategy to overcome technical barriers to trade: standardization and compliance assessment.
- Development of a strategy in the field of financial services.
- Development of a strategy in the field of trade in services: the movement of capital.
- Development of a strategy in the field of public procurement.
- Development of a strategy in the field of sanitary and phytosanitary regulations.
- Development of a strategy in the field of protection of intellectual property.
- Development of a strategy in the transport sector.
- Development of a strategy in the environment sector.
- Development of a strategy in the energy sector.
- Development of a strategy in the field of taxation.

Policy analysis groups dealing with priority issues of the civil service reform:

- Reform of the classification system in connection with the civil service compensation system.
- Introduction of new approaches for the annual performance evaluation of civil servants’ activities.
- Reform of the system of professional development for civil servants.

In 2008–2009 the main task of policy analysis groups was the development of the sectoral strategies to meet the obligations imposed by the future Association Agreement with the EU. These strategies defined objectives and steps of implementation of the Agreement, as well as resources needed to implement a strategy (financial, human, and institutional). The draft strategies, discussed with all stakeholders, will enable to prepare for implementation of future Agreement and strengthen the position of the Ukrainian party at the currently running negotiations with the EU.

Public discussions of policy options for solving sectoral problems will promote better understanding and support by the stakeholders of the government policy and provide a feedback for the government.

This year, the policy analysis groups have had a number of innovations. First of all, it is their inter-ministerial structure: representatives of the Ministry of Justice, the Ministry of Economy and the Secretariat of the Cabinet of Ministers participated in almost all policy analysis groups. Secondly, the number of involved public officials and authorities significantly increased comparing to previous years—130 civil servants from 20 central executive bodies as well as from the Secretariat of the Cabinet of Ministers and the National Bank of Ukraine took part in policy analysis groups. In addition, analytical support to members of policy analysis groups was provided by both international and local sectoral experts from the International Center for Policy Studies (ICPS) and the Ukrainian-European Policy and Legal Advice Centre (UEPLAC).

During the year members of policy analysis groups participated in trainings and seminars guided by the EU and Ukrainian experts. They mastered the methodology of development of policy documents and decision-making procedures according to the European standards. The groups organized public consultations aimed at discussion of proposed drafts strategic documents with representatives of NGOs, business community and experts. Considerable number of received comments and suggestions greatly improved the quality of the policy documents.

The key to successful implementation of this initiative was a permanent monitoring and evaluation of the results of policy analysis group's work. According to the survey, most participants consider such trainings in policy analysis as very useful and effective because they provided opportunity to get equipped with skills in policy analysis, cost-benefit analysis and effective communication in the context of the requirements posed by the process of adaptation of the Ukrainian legislation and norms to the EU norms and standards, taking into account national interests of Ukraine.

Moreover, activities of policy analysis groups generate a multiplication effect; they become a basis for the new quality civil service and new administrative capacity of the central executive bodies. Despite the fact that only about ten civil servants are official participants of the policy analysis group, the practice shows that the number of public officials involved into the process of development of strategic policy documents is actually bigger.

In 2008, the School of Senior Civil Service was established, the task of which is to create institutional conditions for developing leadership in the civil service and public administration reform. Given the fact that policy analysis groups have proved their effectiveness as a progressive form of the civil servants' on-the-job training, the follow-up initiatives relating to policy analysis groups are planned to be carried out on the basis of the School of Senior Civil Service. This will contribute to further development of both policy analysis groups' network and strengthening of the in-service training system of the civil servants.

Introduction

This analytical paper is designed to hold consultations with all stakeholders: copyright owners, government representatives, general public, scientists, and others in order to determine the optimal ways to reduce piracy level.

The policy paper was developed under the framework of the project on “Development of a network of policy analysis groups in the system of central executive bodies in Ukraine” by a policy analysis group, established according to the Decision of the Cabinet of Ministers of Ukraine “On support of activities of policy analysis groups in the central bodies of the executive power and the Secretariat of the Cabinet of Ministers of Ukraine”, dated 07.02.2007 ¹ 32 and order of the Cabinet of Ministers, dated 30.12.2008 ¹ 43542/99/1-08.

The purpose of this document is to develop proposals on reduction of the level of piracy in Ukraine in respect to the objects of the copyright and related rights in the process of their distributing with a use of the material media.

Issues which are proposed for discussion:

- Ignorance of the population in respect to the need to comply with the rights for objects of the intellectual property belonging to other people.
- Why users prefer unlicensed copy of a product?
- Employment of a substantial number of people in the business of production and distribution of pirated products.
- Does the legislation provide effective protection of copyright and related rights?
- Is the system of control of compliance with legislation in the field of copyright and related rights sufficiently effective?
- Do measures to encourage the use of licensed products are implemented?

This policy document focuses on the problems arising from the subjects of discussion mentioned above.

This document was prepared by the policy analysis group composed of: head of the group – M. Striha (Deputy Minister of Education and Science of Ukraine); group members – O. Gumenyuk (State Department of Intellectual Property of Ukraine), O. Kulyk (State Department of Intellectual Property of Ukraine), O. Kulikov (Secretariat of the Cabinet of Ministers of Ukraine), I. Lambutsky (Ministry of Justice of Ukraine), O. Pichkur (Secretariat of the Cabinet of Ministers of Ukraine), M. Tkachuk (Ministry of Environment and Natural Resources of Ukraine), I. Shatova (State Department of Intellectual Property of Ukraine).

In order to obtain opinions of the interested ministries and other government bodies, as well public opinion in respect to this document public consultations were carried

out with the Association of Music Industry of Ukraine, Ministry of the Internal Affairs of Ukraine, Security Service of Ukraine, State Customs Service of Ukraine, Ukrainian Agency of Copyright and Related Rights, State Enterprise “Ukrainian Music Alliance”, State Committee for Regulatory Policy and Ministry of Justice of Ukraine.

All comments and suggestions provided by the stakeholders, have been carefully studied and results of their processing are reflected in the Report on the consultation (see Appendix).

In our opinion, this document will be in the future presented to the central bodies of executive power (Cabinet of Ministers of Ukraine, Ministry of Finance, Ministry of Economy, State Customs Service of Ukraine, Ministry of Internal Affairs, Security Service of Ukraine, State Committee for Regulatory Policy, Ministry of Justice), as well as to various association (Association of the Music Industry of Ukraine, the European Business Association) and other stakeholders (copyright owners, patent attorneys) in order to improve their professional skills on policy development.

1. Situation Analysis

Background.

Since the time Ukraine gained its independence, the administrative-command principles of the intellectual property management that was a distinctive feature of the period of the existence of the former USSR, were replaced by the private right to the intellectual property in respect to the results of creative work (mental activity) as well as to scientific and technological (intellectual) activity. Personal property and non-property rights to results of the above activities were clearly enshrined in legislation: the Constitution of Ukraine (Articles 3, 41 and 54), Civil Code (Section Four “Intellectual Property”) and a number of laws and secondary laws regulations in the field of intellectual property.

With the development of modern information technology the society started to use new information media, especially digital ones. In this connection, there was a need to improve mechanisms for acquisition and protection of intellectual property rights, including copyright and related rights.

This, in its turn, is closely linked to the need to take really effective measures to inform the public about the need and obligation to comply with the rights of the holders of the copyright to originals and copies of works, musical performance and literary works in their private and commercial use, when making copies of such works and performances, carrying out their distribution and sales in Ukraine and abroad only by permission of relevant copyright holders. Therefore, there is also a need for undertaking public education and awareness campaigns among the population of Ukraine.

According to data of the IFPI, in 2000 the level of piracy in Ukraine in respect to laser discs reached 95% of their total circulation. Due to such situation the International Alliance of Intellectual Property (hereinafter – IAIP) on June 16, 1999 filed a petition requesting the cancellation or temporary suspension of benefits granted to Ukraine under the Generalized System of Preferences (GSP). On February 14, 2000 this petition was adopted by the United States Government and as a result of the hearings and comprehensive review, benefits and preferences granted to Ukraine under the GSP rules were temporarily suspended on August 24, 2000, resulting in imposition of 100 percent ad valorem duty on the Ukrainian exports.

In 2000 the Ukrainian-American joint program of action to combat the piracy in the field of optical carriers of information was signed. Under this program, Ukraine implemented some appropriate measures, including: closure of factories producing pirated discs, adoption of legislation, which created necessary legal framework for production companies – manufacturers of discs to be able to produce lawful production.

Ukraine has fulfilled the requirements stipulated by the Joint Program of Action, namely:

- established a state control in the area of production, export and import of discs;
- resumed production of legitimate discs.

Ukraine had also taken other actions pursuant to the above program:

1. Closed factories for production of discs (during 2000–2001 halted in Ukraine was operation of such CD producing factories as “Bolidisk” Ltd, “Laser-Info” Ltd).

2. Legislative acts were also approved, creating the necessary legal basis for production companies – manufacturers of discs, including through:

- introduction of licensing of manufacture facilities, export and import of discs;
- introduction of the system of assignment and labeling of special identification codes in order to identify the manufacturer of discs;
- implementation of state control over production, export and import CDs, introduction of monitoring of equipment and raw materials for their production;
- strengthening of administrative and criminal liability for violations of law.

3. Criminal penalties were strengthened, and, in particular, relevant amendments to the Criminal Code were introduced, namely: the Article 203-1 of the Code has a new reading (in connection with the adoption of the amendments to the Law on Laser-Readable Discs), that modified conditions under which a criminal liability is imposed for illegal manufacture, export, import, storage, sale and movement of discs, equipment or raw materials for their production. It also envisaged a degree of differentiation in the level of severity of relatively to the size of inflicted damage - significant and big losses.

In 2003, the relevant ministries and agencies approved Joint Program of coordinated actions by the law enforcement and regulatory agencies to combat illicit production, distribution and sales of audio and video products, CDs and other intellectual property objects. This program has identified the main directions of cooperation of the law enforcement and regulatory authorities in respect to implementation of a unified policy in fighting violations of intellectual property rights throughout the territory of Ukraine.

In the same year, the State Department of Intellectual Property established a department of state inspectors on intellectual property, the functions of which included monitoring of the activities of the economic entities regarding their compliance with the legislation in the field of intellectual property (in the field of copyright and related rights).

After adoption in August 2005 of the law “On Laser-Readable Discs”, U.S. Government lifted the 100 % ad valorem duty, which was mentioned earlier, on August 31, 2005. In October 2005, the unscheduled review of the situation with scale of piracy in Ukraine was declared. The review was completed by January, 2006. On January 23, the US Government officially declared about the change of the status of Ukraine under the so-called the “Special 301” List from the status of the priority

foreign country to the status of the country as included into Priority Watch List. Simultaneously with this declaration, the US Government announced about resumption of benefits and preferences to be again granted to Ukraine under the GSP rules.

Resumption of these benefits and preferences in 2006 enabled Ukraine to receive benefits equal to USD 23.8 million, provided under GSP rules. During the first 11 months of 2007 these benefits amounted to USD 44.5 million.

According to the IFPI, in 2007 the level of pirated discs for laser reading systems in Ukraine was estimated at 65%.

Measures aimed at reduction of the levels of piracy are also carried out by other public authorities.

In particular, the customs authorities take preventive measures in respect to movement across the customs border of Ukraine of the counterfeit goods. The owner of an intellectual property right, which have reasons to believe that in the process of movement of the goods across the customs border of Ukraine may already violated are or could be violated or infringed his rights, which are to be protected in Ukraine, has the right to apply to the State Customs Service of Ukraine and request registration of the product that contains the object of his intellectual property right. State Customs Service of Ukraine is maintaining a register of such products.

Control of the movement across the customs border of Ukraine of laser disks (exports and imports) is implemented by the customs authorities in accordance to the Laws of Ukraine “On the Specifics of the Government Regulation of the Activity of Subjects of Economic Activity Associated with the Manufacture, Export, and Import of Laser-Readable Discs” and the Law of Ukraine on “Distribution of copies of audiovisual works, phonograms, video, computer programs, databases”. According to these laws, import to Ukraine of disks, excluding standard package of documents on the basis of which customs clearance of such goods is exercised, should be accompanied by the presentation of the following:

- license to carry out this particular economic activity – that is import of disks for laser reading systems, which is issued by the Ministry of Economy and European Integration of Ukraine for 3 years;
- availability on the imported disks of special identification codes (hereinafter– Sid codes) which are recognized by the State Department of Intellectual Property of the Ministry of Education and Science of Ukraine.

In addition, after customs clearance, imported laser discs intended for sale must be marked with control stamps.

Besides that, the Ministry of Internal Affairs established some units to combat crimes in the field of intellectual property, including for fight against piracy involving discs for laser reading systems. Such units were established both at the central office and at the regional level offices. The activities of these units are aimed at the following areas:

- elaboration and upgrading of the methodology for documentation of and detection of crimes in the field of intellectual property;
- operational support to pre-trial investigation and court hearings of criminal cases;
- involvement into carrying out national operational and preventive measures;
- cooperation with other governmental authorities and public organizations;
- improvement of legislation in the field of protection of intellectual property;
- raising of the professional level of the operatives of the regional offices through organization and conducting seminars, trainings, skill-upgrading training courses, etc.

Much attention is paid by the Ministry of Internal Affairs to withdrawal from circulation of the “pirated” audiovisual products. Among recently exposed crimes about 80% were related to violations of copyright and related rights. Organizational and practical measures taken by this Ministry, led to increased efficiency in combating crimes in the field of intellectual property.

According to the Annual Report of the State Department of Intellectual Property, as a result of inspections carried out in 2008 seized were counterfeit goods worth 3.9 million UAH.

However, some significant obstacles still remain in this country, due to which the level of piracy in Ukraine declines very slowly. These obstacles include: lack of sufficient initiative on behalf of copyright owners in respect to protection of their own rights ; a significant difference between the price of licensed and pirated products; too easy opportunity to get extra profits through copying and distribution of laser discs; insufficient number of employees at the relevant authorities which oversee and inspect these activities; lack of demarcation of the border with the Russian Federation; insufficient level of awareness of the population (citizens and business entities) which use such products, about the need for strict observance of intellectual property rights. Due to the above-mentioned obstacles rates of reduction of the pirated production circulation for eight years do not exceed 30%.

According to estimations made by members of the policy analysis group, of 40 million of the Ukrainian population, about 20 million people belong to a group of solvent individuals who are interested in obtaining information contained on laser disks. More than half of such people get this information from Internet resources. That means that, approximately 8.5 million people bought laser discs. Assuming that one person regularly buys one laser disc a month, then the annual number of purchased laser discs is 100 million units. In 2008 about 40 million pieces of control stamps were issued. It means that approximately 60 million laser discs were sold illegally.

It should be noted that in the world gathering steam is a tendency to infringe intellectual property rights on the Internet. This situation is also observed in Ukraine. In the territory of our country established and actively operating are Web sites which offer pirated products (e.g. DVDs at the price of about USD 10.) and local Internet Service

Providers give technical support to such web sites (150 of 400 ISP supported such web-sites).

Taking into account the above facts, and with due account for situation when the level of legal market in Ukraine in 2008 decreased by 5%, if compared to 2007, it can be surely predicted that piracy moves to a new level – piracy on the Internet.

Due to this development, proposed document relies on objectivity of statistical data on piracy in respect to material carries of information used for its preparation.

It should be noted that Ukraine’s desire to be integrated into the European Union, which, in its turn, will require solution of the issues relating to reduction of circulation of pirated products and, in particular, the need to ensure compliance with the provisions of the Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004.

Analysis of the situation in this area shows that Ukraine makes maximum efforts to prevent manifestations of violations of intellectual property rights in the field of copyright and related rights, creating conditions for prevention of piracy. However, at the current moment because of the above-mentioned reasons and due to the deepening of the world economic crisis, the rates of legal production of such goods in Ukraine has been partially reduced.

Target groups:

- copyright owners (persons who own the rights to intellectual property should be protected under the Ukrainian law);
- consumers (those who consume goods and services of the specified category);
- distributors – those who spread objects of the intellectual property rights (legal and illegal).

Institutions:

Cabinet of Ministers of Ukraine, State Department of Intellectual Property of the Ministry of Education and Science, Ministry of Justice of Ukraine, State Customs Service of Ukraine, Ministry of Interior Affairs of Ukraine, Security Service of Ukraine, State Committee of Ukraine for Regulatory Policy, the European Business Association, the Association of the Ukrainian Music Industry.

2. Problem Description

Despite of organizational and practical measures undertaken at the level of government bodies and aimed at reduction of piracy, the situation existing in the market of audio and video products can not be considered as satisfactory one, because rates of reduction of pirated products circulation in the last eight years made up only 30%.

High level of piracy in Ukraine is a considerable problem for the private sector and for the state as a whole. This problem is caused by a number of reasons, including:

Information:

- ignorance of the population in respect of a necessity to comply with intellectual property rights of the others;

Economic:

- employment of a large number of people in the business of manufacture and selling of pirated products;
- simple way to get extra profits due to the absence of technical barriers;

Public governance:

- lack of adequate effectiveness of the system of enforcement of compliance with legislation in the field of copyright and related rights;
- relatively low level of fines for manufacturing and distribution of pirated products;
- absence of measures designed to encourage the use of licensed products;

Aspects related to people's mentality:

- rejection by the population of licensed products due to deeply rooted stereotypes.

The above-mentioned causes of this problem lead to a number of negative consequences. In particular, further development of the market of pirated products and slow down of the process of transition of the society to the European norms and standards deteriorates the image of our country and impede the process of accession to the European Union. It should be emphasized that expansion of the pirated goods market makes it impossible to actively develop the market of the licensed products, which, in turn, leads to a decrease in the in-flow to the state budget of tax revenues which could be generated by such market.

3. Policy Objectives

The policy of Ukraine in respect to fight against piracy is directed at ensuring respect for the property and non-property rights of the owners of intellectual property. Important component of this policy implementation is reduction of the level of piracy in the Ukrainian market by improvement of the relevant legislation and by undertaking a number of actions by the police and other copyright law enforcement authorities.

Therefore, policy objectives, which are planned to be achieved include:

Long-term (5–7 years):

- raise of awareness of the population about the benefits of using licensed products;
- reduction of piracy level by 40% compared to its level in 2008 year with the level of piracy – 65%;

Medium-term (3–5 years):

- reduction of piracy level by 50% compared to its level in 2008 year with the level of piracy - 65%;

Short-term (up to 2–3 years):

- increase in the number of the relevant staff of the law enforcement and control authorities, increase of the field of the efficiency of their work in combating piracy and, as well, provision of the adequate logistic, technical and organizational basis ensuring proper implementation of the functions;
- improvement of the legal and regulatory framework.

4. Policy Alternatives

Given the urgency and specificity of the problems associated with high level of piracy in Ukraine, and in order to achieve specified policy objectives, the following approaches to problem solution were identified:

- introduction of amendments to the current legislation;
- implementation of the large-scale educational campaign on issues related to use of licensed products;
- monitoring of developments in the market of pirated and licensed products without direct intervention.

Alternative 1. Implementation of legal regulation measures and introduction of information-related measures in order to reduce piracy.

To implement this alternative such activities can be offered:

1. Introduction of changes to the relevant legislative acts and administrative documents which would stipulate the increase in the number of the personnel to be directly involved in combating piracy and adequate provision of required material and technical logistics to support their work.

To implement this measure the Cabinet of Ministers of Ukraine must adopt a resolution authorizing increase in the number of personnel employed by the relevant authorities involved into fight against piracy (Ministry of Internal Affairs, Security Service, State Customs Administration, State Tax Administration, State Department of Intellectual Property of Ministry of Education and Science of Ukraine).

This decision can be practically implemented at the expense of the existing public funding budgets of the above-mentioned public authorities, functional responsibilities of which include ensuring of development and formulation of the policy, control and supervision in the field of the intellectual property, and, therefore, does not require attraction of additional budget funding.

So, as a result of adoption of this decision the existing situation will be improved only partially, the problem as a whole still will not be fully and comprehensively solved.

Yet, this proposed solution is perceived by the control and supervision authorities as a positive one, because it would enable them to better fulfill their functions. However, adoption of such decision will lead to increase in money spending from the State budget for maintenance of the increased number of public employees which fact can be negatively perceived by the taxpayers.

The risk of introduction of this solution lies in possible emergence of “force majeure” circumstances (presence or absence of required political will, etc.).

2. Making changes aimed at increase of fines for violations of the rights of copyright holders in respect to objects of copyright and related rights.

This solution will not require additional funding.

The risk of introduction of this solution is similar to the risk associated with the first solution, but given the established procedure for adoption of such changes (introduction of them to existing codes and laws), implementation of this solution will be more complicated and longer.

It is expected that the President of Ukraine, Verkhovna Rada and the Government will favorably treat this initiative, because, first of all, it will have a positive impact on the protection of the rights of intellectual property, and, secondly, will lead to increase of revenues in-flow to the State budget.

This solution will, however, be perceived in the negative way by manufacturers and distributors of pirated products, because they will lose the economic benefits from engagement into such business activity.

3. Introduction of changes aimed at ensuring compliance with the legislation in the field of copyright and related rights protection.

The essence of this solution is to introduce changes to the list of permitting documents, which should be obtained by subjects of business entrepreneurship, who plan to use in their business activity that or another object of copyright and related rights.

This solution does not require additional funding, but needs approval from a number of interested ministries and departments and mandatory discussion with the general public. This implies a possible risk of rejection of this solution by any individuals and organizations that will participate in the discussion of such a solution.

However, as a result of implementation of this solution, payments to copyrights holders will increase which, in its turn, will lead to growth of tax revenues in-flow to the State budget.

4. Active information campaigns.

Implementation of target-oriented (educational) information campaigns in respect to pirated and licensing activities will include the following measures:

- educational activities in educational establishments;
- publication and distribution of specialized literature;
- promotion and highlighting some aspects of the use of licensed products in the mass media;
- information of users about the consequences of buying and using pirated products and responsibility for such actions;
- arrangement of relevant conferences, seminars and training for public and professionals involved into this field, etc.

This solution measures, unlike the preceding ones, are directed not at manufacturers and distributors of pirated products, but at the society in general. Main shortcoming of introduction of these measures is that their results will become obvious only in 30–40 years. In addition, it is impossible to accurately determine the financial resources required to implement such measures due to lack of information on budgetary requirements, to be estimated for the future period of 30–40 years, for implementation of such measures and lack of proper methods for calculation of costs associated with carrying out such measures with such methods being able to estimate not only the amount of public money required, but also volume of attraction of required financial resources from copyrights holders for such a long estimation period.

Alternative 2. Doing nothing but only monitoring development and changes of the situation in Ukraine in respect to the distribution of pirated products on the material information carriers.

Proposed alternative can not be viewed as quite fully acceptable, but it is possible as an option, if we take into account the earlier mentioned trend in developments relating to violations of intellectual property rights on the Internet, which is also true for the case of Ukraine, and if we also take into account the fact that the level of the legal market in our country declined in 2008 by 5%, compared to the level in 2007, which certainly will affect objectivity of statistical data on piracy business involving tangible mediums of information.

Specified alternative (zero-action) is unacceptable in terms of protection of the rights copyrights holders in respect to their intellectual property. It is identified with emergence of negative trends in the economic sphere and will inevitably lead to deterioration of the image of the state.

5. Policy Impact

In order to determine possible costs and benefits of the strategy it is necessary to make calculations which would take into account the strategy's *financial, economic and social impacts*.

Regarding Alternative No.1

Costs	Benefits
Financial aspects	
<p>Expenditures from the State budget should be allocated for:</p> <ul style="list-style-type: none"> - employment and support of public officials who are involved in the protection of intellectual property rights (in this system employed currently are about 300 people with an average salary 2,500 UAH per month); - development, coordination and adoption of relevant regulations; - implementation of educational activities (seminars, round-tables, promotional campaigns in the mass-media, etc.) 	<p>Revenues in-flow to the budget may include the amount of paid fines that are imposed on violators of intellectual property rights and the amounts equivalent to the price of confiscated pirated products (for the year 2008 this was equal to USD 60 million)</p>
Economic aspects	
<p>It is necessary to introduce to schools and higher education institution teaching of new subject devoted to issues of protection of intellectual property rights (number of schools/wages of teachers/preparation and publication of the relevant teaching literature)</p>	<p>Raising of awareness of users about issues of legitimate use of objects of authors right and related rights</p>
Social aspects	
<p>Interests of the buyers</p>	<p>Increase of the level of esteem to creators of objects of intellectual property</p>

Regarding Alternative 2

Costs	Benefits
Financial aspects	
Avoided will be additional expenses from the State budget for employment of additional public employees	Budget expenses for maintaining additional public servants will not be necessary
Economic aspects	
Level of awareness of the customers about objects of intellectual property will not grow up	Purchasing capacity will be increased
Social aspects remain the same	

- Assessment of impact on the sector and economy as a whole.
- Assessment of impact on the State Budget of Ukraine.
- Assessment of impact on society (on different interest groups).

6. Main Steps and Responsible Institutions

Task/Measure	Terms	Result	Resources	Organization in charge
Development of proposals in respect to increase of the number of public employees directly involved into fight against piracy	2010–2012	Approval of relevant proposals	Will not require State Budget expenses	State Customs Service of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, State Department of Intellectual Property
Development of proposals concerning increase in the size of fines imposed for violation of the rights on objects of intellectual property belonging to copyrights holders and owners	2010–2012	Approval of the relevant proposals	Will not require State Budget expenses	State Customs Service of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, State Department of Intellectual Property

Implementation of educational measures in educational establishments	2010–2017	Introduction of special training curriculums in educational establishments	Required funding will be allocated from the State budget and through attraction of funding from interested parties	Ministry of Education and Science of Ukraine
Publication and dissemination of specialized literature	2010–2017	Provision of the public with special literature relevant to these issues	Required funding will be allocated from the State budget and through attraction of funding from interested parties	State Customs Service of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, State Department of Intellectual Property, Association of Musical Industry of Ukraine, European Business Association, Copyright holders and owners
Promotional campaigns and reporting on issues of the use of licensed products in the mass media	2010–2017	Provision to the public of information about benefits of using licensed products	Required funding will be allocated from the State budget and through attraction of funding from interested parties	State Department of Intellectual Property, Association of Musical Industry of Ukraine, European Business Association, Copyright holders and owners

<p>Provision to users of information on consequences of buying and use of pirated products and liability for such actions</p>	<p>2010–2017</p>	<p>Awareness raising of the users</p>	<p>Required funding will be allocated from the State budget and through attraction of funding from interested parties</p>	<p>Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, State Department of Intellectual Property, Association of Musical Industry of Ukraine, European Business Association, Copyright holders and owners</p>
<p>Organization of relevant conferences, seminars, training workshops for the public and specialists working in this field</p>	<p>2010–2017</p>	<p>Provision of the citizens with information about protection of copy rights and related rights and upgrading of the professional level of staff working in this field</p>	<p>Required funding will be allocated from the State budget and through attraction of funding from interested parties</p>	<p>State Customs Service of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, State Department of Intellectual Property, Association of Musical Industry of Ukraine, European Business Association, Copyright holders and owners</p>

Appendix

Report on Carrying out Public Consultations on the Draft Policy Document

Title of the document “Determination of optimal ways to reduce the level of piracy in Ukraine in respect to copyright and related rights in course of circulation of copyright objects on tangible mediums”.

Group on ”Development of a strategy in the field of legal protection of intellectual property”.

1. Date of presentation of the draft policy analysis document on the Internet web-site: 13 May 2009.

2. Measures taken in respect of information of the stakeholders about availability of the draft document and scheduled consultation process:

Measures	Number of addressees	Date (period)
Distribution of letters	10	17.04.2009 (letter 1 1/12-1556)
Telephone contacts	4	25.04.2009 and 18.05.2009

3. Quantative indices and characteristics of consultation process (without accounting for project representative/experts of the project)

Quantative data	Central bodies of executive power – Participants of the Group	Other authorities	Public, experts	Mass-media	Total
Number of persons/ organizations responding to the Project	3	1	3		7
Number of persons/ organizations who presented proposals					
Number of received proposals					
• Related to the problem identification					

Quantative data	Central bodies of executive power – Participants of the Group	Other authorities	Public, experts	Mass-media	Total
• Related to policy objectives					
• Related to possible alternative measures		1			1
• Related to possible expansion of the number of stakeholders involved		1			1
• Related to applied formulations					
• Other (to indicate in general terms)		1	1		2
Number of proposals taken into account					

4. Lessons learned as a result of implementation of consultation. How useful for you was submission of the document for discussion? What conclusions did you arrive at?

Consultations were an opportunity to get opinions from the government bodies, organizations and experts in respect to issues of this field. During public consultations discussion useful suggestions concerning improvement of this draft policy document were received. Also, it was ascertained that there is a great interest and understanding of the need to solve this problem which, therefore, confirms the urgency of development of such policy document.

5. Analysis of proposals and comments:

¹	Essence of the proposal	Author ¹	Taken into account/Not taken into account	Reasons for not taking this proposal into account
1.	Develop an appropriate method of calculation of damage inflicted by violation of copyright and related rights, which would provide compensation for inflicted damage in the amount which would cover legal costs of copyright holders associated with their legal activities against violators of their copyrights and would also bring them some profit	State Enterprise “Ukrainian Music Industries Alliance”	Not taken into account	This proposal is not compatible with objectives of this project and in relation to these project stated objectives this organization did not present any comments or proposals
2.	Summarize the court practices with due account for provisions of the above damage calculation methodology in order to use it as a tool for judges to base their court decisions in such legal cases	State Enterprise “Ukrainian Music Industries Alliance”	Not taken into account	Due to lack of such approved methodology for damage calculation it is considered to be impossible to summarize existing court practices
3.	State Department of Intellectual Property should explain to copyright holders that they may have an opportunity to earn money by engaging into anti-piracy activities	State Enterprise “Ukrainian Music Industries Alliance”	Not taken into account	State Department of Intellectual Property functions within the limits of its institutional competence and can give clarifications only in respect of application of the current legislation in the field of intellectual property rights
4.	To include the list of documents required for receiving a permit to engage into specified business activity or to sign a contract for rent of premises which belong to communal property	“Ukrainian Agency of Copyright and Related Rights”	Taken into account	
5.	To create a mechanism of “Rapid procedure “ for processing of administrative protocols relating to violation of copyrights	“Ukrainian Agency of Copyright and Related Rights”	Taken into account	

¹ For your personal needs you can in the separate column to fix requisites of the letters, contact details, etc.

6.	To increase responsibility of the staff officers of the control authorities	“Ukrainian Agency of Copyright and Related Rights”	Not taken into account	According to the opinion of the Working Group members, current legislation provides a sufficient level of responsibility of the staff of the control authorities. In particular, this issue is regulated by the laws of Ukraine “On fight against corruption”, “On Civil service”, “On police” and other legislative acts and is in the competence of the relevant authorities
7.	To change the total list of questions posed in the process of scheduled audits of the activities of the business enterprises by controlling authorities, that is to make a shift to comprehensive auditing practices	“Ukrainian Agency of Copyright and Related Rights”	Not taken into account	Because members of the Working Group took into account a proposal from this organization concerning inclusion into the list of documents required to obtain permission to perform business activity, business entities which plan to use object of copyright and related rights, we think that this particular proposal contradicts to the one which we already took into account
8.	To improve professional training of the staff of the controlling authorities and judges on issues related to legal aspects of protection of intellectual property rights	“Ukrainian Agency of Copyright and Related Rights”	Taken into account	
9.	To expand number of control authorities	“Ukrainian Agency of Copyright and Related Rights”	Not taken into account	

Information about the Activities of Policy Analysis Groups

The project “Development of a Network of Policy Analysis Groups in the System of Central Executive Bodies in Ukraine” is aimed at:

- promoting the development of democratic governance in Ukraine;
- promoting the strengthening of institutional capacity of central bodies of executive power for policy making;
- improving the coordination of public policy development;
- strengthening the strategic character and analytical support of decisions and enhancing the quality of overall government planning; and
- enhancing civil servants’ professionalism in developing policy proposals.

The legal basis for policy analysis groups functioning includes:

1. Order of the Cabinet of Ministers of Ukraine on “Activities of Policy Analysis Groups”, dated December 30, 2008 ¹ 43542/99/1-08.
2. Regulation of the Cabinet of Ministers of Ukraine “On approval of the year 2008 “EU – Ukraine Action Plan“, dated August 6, 2008 ¹ 1072-p.
3. Memorandum of Understanding between the Government of Ukraine and the Government of Canada concerning Ukrainian Civil Service Human Resources Management Reform Project, signed on May 26, 2008.
4. Regulation of the Cabinet of Ministers of Ukraine “On Ensuring Functioning of the Policy Analysis Groups in Central Executive Bodies and the Secretariat of the Cabinet of Ministers of Ukraine”, dated February 7, 2007 ¹ 32-p.
5. “Civil Service Development Program for 2005–2010”, approved by the Cabinet of Ministers of Ukraine on June 8, 2004 ¹ 746, with changes approved by the Cabinet of Ministers of Ukraine on September 3, 2008 ¹ 776.

The objectives of the project are the following:

- holding a series of practical target-oriented trainings and ensuring exchange of experience between the groups in respect to policy analysis, including methodology and practice of the comprehensive study of a situation and identification of a problem, assessment of its causes and implications, selection of alternative approaches to problem solution based on cost-benefit analysis and consideration of different stakeholders’ opinions;

- drafting policy documents relating to fulfillment of obligations imposed by the future EU – Ukraine Association Agreement with clear definition of tasks and steps for implementation of this Agreement;
- organizing public consultations aimed at discussion of proposed policy documents.

Policy documents developed by policy analysis groups in 2009:

- A policy on overcoming technical trade barriers: standardization and conformity assessment;
- Improvement of risk management in financial services sphere in Ukraine;
- Consultations on improving the investment climate of the agricultural sector of the Ukrainian economy;
- Dissemination of information on public procurement: adaptation of the Ukrainian legislation to the *acquis communautaire*;
- Strategy for the improvement of state sanitary and phytosanitary control and surveillance at state border crossing;
- Determination of optimal ways to reduce the level of piracy in Ukraine with respect to copyright and related rights in the course of circulation of copyright objects on tangible mediums;
- Harmonization of the national aviation safety system with European standards within the framework of the common aviation area Agreement. Participation of Ukraine in the European Aviation Safety Agency;
- Development of water resources management policy under the “Environment” Section of the EU Association Agreement;
- Priority efforts for the integration of unified power system of Ukraine into unified power systems of the European Union;
- Harmonization of Ukrainian legislation on the application of excise duty on alcohol and tobacco products in the context of the future Agreement on Association with the European Union.

Previous Initiatives on Policy Analysis

This project is a logical follow-up of the previous policy analysis initiatives carried out by the Main Department of Civil Service of Ukraine and international donors:

- “Public Policy Capacity Building” (1999–2003);
- “Establishing Policy Analysis Groups and an Information Resource Centre in the Government of Ukraine” (2000–2001);
- “The Activity of Policy Analysis Groups (PAGs) in Government Bodies in Ukraine” (2005–2006);
- “Strengthening the Institutional Capacity of Central Executive Power Bodies for Policy Making in the Context of the Concept Development of a Training and Consultative Center for the Highest Corps of Civil Servants” (2007–2008).

Firstly, such initiatives were funded by foreign donors, in particular, by the Canadian International Development Agency (CIDA) and the Swedish International Development Agency (SIDA).

Within the framework of the first project “Public Policy Capacity Building” (1999–2003) students of the National Academy of Public Administration under the President of Ukraine (NAPA) were engaged in the policy analysis training. The training included the internship in Canada and drafting of policy papers. Based upon project results, a course on policy analysis was included into the Academy’s curriculum, with practical assignments in drafting policy papers on selected topics.

The next project “Establishing Policy Analysis Groups and an Information Resource Centre in the Government of Ukraine” (2000–2001) was implemented as a joint initiative of the Cabinet of Ministers of Ukraine, International Center for Policy Studies (ICPS), Open Society Institute (OSI) and International Renaissance Foundation (IRF) with financial support from IRF under the tripartite agreement on cooperation between the Secretariat of the Cabinet of Ministers of Ukraine, ICPS and the IRF. The participants of this project were 49 governmental officials of higher and middle rank from the Ministry of Economy, Ministry of Finance and the Secretariat of the Cabinet of Ministers.

The outcome of these projects was inclusion into Regulations of the Cabinet of Ministers of Ukraine of a section that set requirements to policy documents (“policy decisions”), in particular, with regard to analysis of alternative solutions.

Upon the initiative of the Main Department of Civil Service of Ukraine, the efforts towards creation of policy analysis groups in central bodies of executive power continued in 2005. The projects were implemented by the Center for Adaptation of the Civil Service to the Standards of the European Union (the former name – Center

for Civil Service Institutional Development under the Main Department of the Civil Service of Ukraine), and were financed from the State Budget. List of policy documents developed by policy analysis groups during 2005–2008, is presented in Table 1.

In 2005–2006 the International Centre for Policy Studies implemented a project “The Activity of Policy Analysis Groups in Government Bodies in Ukraine”. The Department for International Development of the United Kingdom (DFID) and the Delegation of the European Commission to Ukraine provided assistance in engaging foreign consultants and trainers. The project results demonstrated the need to modify the training programs, to create policy analysis groups in other governmental bodies and to develop the network of policy analysis groups as a permanent forum for the articulation of new policy priorities and discussion of trends and prospects of social development.

The project “Strengthening the Institutional Capacity of Central Executive Power Bodies for Policy Making in the Context of the Concept Development of a Training and Consultative Center for the High Corps of Civil Servants”, which was implemented during 2007–2008, showed the importance of enhancing professional capacity of top civil servants in policy analysis and democratic decisions-making process. The need to acquire more knowledge and skills is emphasized in the context of participation of the government bodies in the Twinning projects.

Table 1. Analytical documents prepared by the policy analysis groups in 2005–2008

¹	Central executive body	Period of activity of PA groups	Subject of study
1.	Secretariat of the President of Ukraine	2005–2006	Strategy of democratic development of Ukraine and institutionalization of public policy tools in work of central bodies of executive government
2.	Secretariat of the Cabinet of Ministers of Ukraine	2005–2006	Democratization of decision-making process and compliance with the European requirements on applying democratic procedures in the decision-making process
3.	National Bank of Ukraine	2007–2008	Building the National Bank of Ukraine on the basis of independent, open and transparent activity
4.	Ministry of Economy of Ukraine	2005–2006	Policy and procedures for the preparation of state budget as the strategy for economic development of the country
5.	Ministry of Finance of Ukraine	2005–2006	State fiscal and taxation policy

6.	Ministry of Transport and Communication of Ukraine	2005–2006	State policy of Ukraine on integration of Ukraine to trans-European transport networks
7.	Ministry of Fuel and Energy of Ukraine	2007–2008	Creation of minimum supplies of oil and oil products
8.	Anti-Monopoly Committee of Ukraine	2005–2006	Policy in respect to liberalization of the domestic market and raise of competition at this market
9.	State Tax Administration	2007–2008	Improvements in tax information exchange
10.	State Committee of Ukraine on Technical Regulation and Consumer Policy	2005–2006	Policy of adaptation of the national legislation to norms and standards to requirements of the European Union
11.	State Nuclear Regulatory Committee of Ukraine	2007–2008	Increasing safety for resources of ionizing radiation in Ukraine
12.	State Agency of Ukraine for Investments and Innovations	2005–2006	Attracting foreign investments to Ukraine: problems and solutions
13.	State Commission on Securities and Stock Market	2007–2008	Increasing the level of corporate governance in joint-stock companies and ensuring of investors' rights
14.	National Electricity Regulatory Commission of Ukraine	2005–2006	Policy on regulation of the domestic electricity market
15.	National Space Agency of Ukraine	2005–2006	Policy on institutional development of the national space industry under market conditions
16.	Administration of State Border Service of Ukraine	2007–2008	Improvement of the system of border crossing in Ukraine for persons and transport vehicles
17.	State Department for the Execution of Punishment of Ukraine	2007–2008	Identification of the most optimal ways for minimizing the number of detainees in custody, and observance of norms for detention procedures in Ukraine

Information edition

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**Determination of Optimal Ways to Reduce the Level of Piracy in Ukraine
with Respect to Copyright and Related Rights in the Course of
Circulation of Copyright Objects on Tangible Mediums**

developed within the framework of the "Development of a Network of Policy Analysis
Groups in the System of Central Executive Bodies in Ukraine" project

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