

Artículo de investigación

Show business contracts: civil legal analysis of ukraine legislation with international application experience**ДОГОВОРИ В СФЕРІ ШОУ-БІЗНЕСУ: ЦИВІЛЬНО-ПРАВОВИЙ АНАЛІЗ ЗАКОНОДАВСТВА УКРАЇНИ З МІЖНАРОДНИМ ДОСВІДОМ ЗАСТОСУВАННЯ****Contratos empresariales de show: análisis jurídico civil de la legislación ucrania con experiencia de aplicación internacional**

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The scientific novelty of the article is the need to regulate the issue of contracting in the sphere of show business in Ukraine. The object of the study of this article is the civil legal relationship arising from the conclusion of a contract in the field of show business. The following research methods were used in the study: analysis, synthesis, induction, deduction, etc. The article analyzes the legislation of Ukraine and the foreign experience in the field of conclusion a contract in the sphere of show business.

The authors concluded contracts that mediate contractual interconnections in the sphere of show business are characteristic of mixed (atypical) contracts, because often enough for the regulation of certain relations, the parties do not have separately regulated civil legal structures, stipulated by the current civil law of Ukraine. Moreover, the activities of the parties in the performance of their obligations under the contract are characterized by a high level of risk

Анотація

Актуальність статті полягає у необхідності регулювання питання укладання договорів в сфері шоу-бізнесу в Україні. Об'єктом дослідження даної статті стали цивільні правовідносини, що виникають з приводу укладання договорів в сфері шоу-бізнесу. При написанні дослідження були використані наступні методи дослідження: аналіз, синтез, індукція, дедукція тощо. В статті було проаналізовано законодавство України та закордонний досвід з питання укладання договорів в сфері шоу-бізнесу.

Авторами був зроблений висновок про те, що договорам, які опосередковують договірні відносини в сфері шоу-бізнесу, притаманна характеристика змішаних (нетипових) договорів, оскільки досить часто для врегулювання тих чи інших відносин сторонам недостатньо окремо регламентованих цивільно-правових конструкцій, передбачених чинним цивільним законодавством України. Більш

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because it is very difficult to predict the success of a particular project in show business.

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того, діяльність сторін при виконанні своїх обов'язків за договором характеризується великим рівнем ризикованості, адже наперед передбачити успішність того чи іншого проекту у шоу-бізнесі дуже важко.

Ключові слова: Інтелектуальна власність, контракти в сфері шоу-бізнесу, цивільні договори, авторські права.

Resumen

La novedad científica del artículo es la necesidad de regular el tema de la contratación en el ámbito del espectáculo en Ucrania. El objeto del estudio de este artículo es la relación legal civil que surge de la celebración de un contrato en el campo del espectáculo. En el estudio se utilizaron los siguientes métodos de investigación: análisis, síntesis, inducción, deducción, etc. El artículo analiza la legislación de Ucrania y la experiencia extranjera en el campo de la celebración de un contrato en el ámbito del espectáculo.

Los autores concluyeron que los contratos que median las interconexiones contractuales en el ámbito del espectáculo son característicos de los contratos mixtos (atípicos), porque con frecuencia suficiente para la regulación de ciertas relaciones, las partes no tienen estructuras legales civiles reguladas por separado, estipuladas por la ley civil actual de Ucrania. Además, las actividades de las partes en el cumplimiento de sus obligaciones en virtud del contrato se caracterizan por un alto nivel de riesgo porque es muy difícil predecir el éxito de un proyecto en particular en el mundo del espectáculo.

Palabras clave: Propiedad intelectual, contratos de espectáculos, contratos civiles, derechos de autor.

Introduction

Along with the development of market relations, other spheres of social relations were rapidly developing in Ukraine. Theatrical, cinematic, television, sports and other entertainment activities aimed at meeting the intangible needs of the society have occupied one of the leading places in society. Consumers of creative products of this sphere of social activity - works of cinematography, television, performing arts, sports and television programs are practically every citizen of the state.

The optimum conditions for the development of the show business sector have provided the freedom and freedom for individuals and cultural organizations to choose and implement certain new activities in this direction.

The public relations involved in the provision of cultural services are very diverse and cover different aspects of cultural activity. Civil society – is a unique system of interaction between social individuals, social groups, layers and strata, which balances the vectors of its components (Kharytonov, Kharytonova, Tolmachevska, Tkalic, & Fasih, 2019). Show business in Ukraine has been developing dynamically in recent years and requires further legal regulation of the relations that arise between its participants.

Although contractual structures in the sphere of rights to intellectual assets are generally regulated by the current legislation of Ukraine, in practice, there are some problems related to the definition of the nature and specificity of individual contracts signed in the sphere of show business of Ukraine, which follows from the peculiarities of such contracts.

Considering the peculiarities of such activity, unfortunately, as of today, relations in the sphere of show business are not properly regulated by the norms of the current civil legislation of Ukraine. Also, due attention is not paid to the problem by research by civilian scientists. It is these circumstances that determine the relevance of the topic under study.

Methodology

The authors of the article used different scientific methods of research, as synthesis, induction, analysis, deduction, etc.

Special scientific methods, which were used in the article, are the method of system research, the method of complex analysis and the method of legal modeling.

In this scientific article, the method of comparative law allowed to reveal similar and distinctive features of the show business contracts in Ukraine and foreign countries. Moreover, with the help of the method of systematic research, the special legal nature of the institute show business contracts was discovered. Additionally, the method of complex analysis helped to analyze the peculiarities of the show business contracts in Ukraine and foreign countries.

Analysis of recent research

The problems of regulation of certain civil contracts in the field of show business in their scientific works have been investigated by such scientists as A.V. Khachatryan, E. Goldberg, A.P. Kalenychenko, M.M. Poplavskyj, S.V. Ivanov, N.V. Krotova and others.

Some aspects of the systematization of treaties in the field of intellectual property rights have been addressed by such scholars as Ye.O. Suxanov, M.I. Braginskyj, V.V. Vitryanskyj, Yu.V. Romanecz, O. Tverezenko, O.O. Styepanova, O.A. Ruzakova, A.A. Amangeldy, M.V. Sevostyanov, and others.

In the presence of scientific works in the chosen field of research, it is appropriate to note that no comprehensive civil legal analysis of the nature and specificity of contracts that mediate such activities has been conducted, which, in turn, determines the urgency of addressing the identified problem within the scope of this work.

Presentation of key research findings

One of the most important components of civil law is the systematization of civil contracts, and it is therefore not surprising that a large number of works by domestic and foreign civilians are devoted to the study of this issue. E.O. Sukhanov classified the contractual obligations by types, types, and sub-types. At the same time, taking into account the criterion of the focus of the contract on a particular result, the scientist identifies such types of contracts as contracts aimed at: transfer of property to property or use; to perform works or to provide services, which are then subdivided into separate types and subdivisions by different legal criteria (Civil Law: Law of Obligations, 2005).

The systematization of contracts proposed by scientists seems incomplete since it does not take into account the particularities of treaties in the sphere of intellectual assets. Thus, the main

purpose of these agreements is to achieve a result that is in one way or another related to the intellectual property objects - their creation, use or alienation of intellectual property rights to the said objects, etc. The legal position associated with the classification of intellectual property rights contracts into a specific type of contract has received support from the scientific community. A.A. Amangeldy believes that the system of treaties in the sphere of intellectual assets, based on the criteria of target orientation, looks as follows: 1) contracts for the creation of the rights for the intellectual property objects 2) contracts for the transmission of the rights to use the objects of intellectual property rights, 3) security contracts, 4) exclusive rights services, 5) exclusive rights (Amangeldy, 2010).

It should be noted that the practice of applying the rules of the current legislation has long required the separation of contracts such as contracts in the field of show business. Modern show business is often simplified to be interpreted as making money through instrumental music, dance, works of humor and satire, etc. to a mass audience. The concept of the entertainment industry related to it is associated, among other things, with the commerce of production and rental of films, television programs, popular concert, and variety programs and the like. However, it is only natural for scholars of modern show business to associate it with the art of pop music as a component of mass culture that satisfies the needs of a wide audience in organized leisure, entertainment, play, emotional compensation, and more. popular and publicly available pop music (Osyk, Nurmagambetova, Davletbaeva, & Nyzhegorodceva, 2013).

The Civil Code does not individually regulate contracts in the field of show business, so the concept of "contract in the field of show business" is not regulated by law. Thus, show business is a specific field of activity, characterized by its peculiarities, and therefore contracts that mediate relations in a particular field are special.

First, the subject matter of contracts concluded in the field of show business are usually the objects of copyright (musical works), as well as objects of related rights (performance, phonograms, videograms, and broadcasts (programs) of broadcasting organizations).

Secondly, these contracts are characterized by a special subject structure: their parties are most often performers, producers, that is, persons with

creative abilities; models and modeling agencies, etc.

Third, in the system of contracts that mediate contractual relations in the sphere of show business, there is a large share of mixed (atypical) contracts, as it is often enough for the parties to regulate certain relations of the insufficiently named civil legal structures provided by the current civil law of Ukraine, named in its norms.

Fourth, the activities of the parties in the performance of their obligations under the contract are characterized by a high level of risk, since it is very difficult to predict the success of a particular project in show business.

Given the above, it is possible to propose a systematization of contracts arising in the sphere of show business of Ukraine.

By the criterion of result orientation, it is possible to distinguish the following types of contracts that mediate activities in the field of show business:

- Contracts for the creation;
- Agreements for the authorized use of intellectual property rights;
- Contracts for the transfer of exclusive intellectual property rights;
- Contracts for the provision of services in the field of music show business;
- Production contracts;
- Contracts whose systemic focus does not relate to intellectual property rights in the music show business of Ukraine.

Each type of contract requires a separate characteristic.

Contracts for the creation of custom and use of copyright and related rights are regulated according to the P. 1 of Art. 1112 of the CC of Ukraine (Civil Code of Ukraine, 2003). Thus, the main idea of such contracts is to create new copyright and related rights, and it is this feature that allows them to be distinguished into a separate type.

Another variety of contracts in the field of show business contracts for the authorized use of intellectual property rights (license agreements, sub-license agreements, free public licenses). According to P. 1 of Art. 1109 of the CC of Ukraine under the licensing agreement one party (the licensee) grants the other party (the licensee) permission to use the object of intellectual assets under the consent of both sides of the agreement,

taking into account the requirements of this Code and other law. Licensing agreements are the most common variety of contracts in show business in Ukraine. Although the procedure for authorizing the use of music works by both copyright and related entities has been regulated in some detail by current legislation, there has been a growing trend of copyright restrictions in the world, so-called. the story left the movement. One of the new institutes proposed by supporters of the said movement is the Institute of Free Public Licenses, which aims at simplifying and reducing the granting of authorizations for copyright and related rights (Copyleft Attitude, les premieres rencontres, n.d.). Subject to the terms of this license, the licensee shall be entitled to copy, distribute, perform publicly, and to modify the work (Free Art License 1.3, n.d.).

In turn, the CreativeCommons community, created by Harvard professor Lawrence Lessig and two other technology and intellectual property experts, has developed an alternative to the institute of traditional licenses and licensing agreements. The main idea supported by CreativeCommons is that not all individuals wish to be restricted by the intellectual property rights provided for by legislation (Gordon, 2011). Currently, CreativeCommons has developed an extensive system of free public licenses, the main ones being. The first type of license is Attribution, which grants the licensee the broadest amount of rights: the right to copy, distribute, transmit, modify, etc., but the licensee must clearly define who is the author, and so that the indication of authorship does not create a representation of support or encouragement by the author to use the work by a licensee. For the singer who is just beginning their careers and wants to become popular, distributing their music and performing through the CreativeCommons licenses can be a very effective way of promoting the work. Examples of well-known websites that distribute music under the license of CreativeCommons are soundcloud.com/creativecommons.

Legal regulation of contracts of the transmission of exclusive rights to the intellectual assets is carried out P.1 of Art. 1113 of the CC of Ukraine. The transfer of the property rights of the author (or other person having the copyright) is executed by the copyright contract. Although the legislation on the copyright and related rights in Ukraine does not directly regulate the agreement about the transition of the rights to intellectual assets to the objects of related rights, I believe that the CC of Ukraine does not prohibit the

conclusion of such an agreement and it can be signed.

The decisive feature of contracts for the provision of services in the field of music show business (contracts for the payment of concert services, contracts for the management of intellectual property rights, etc.) is their focus on the provision of services in a special area - the field of music show business.

An interesting question is the power of such legal agreement for the free provision of concert services. By the Part 1 of Art. 2 of the Law of Ukraine "On touring events in Ukraine" touring is conducted based on contracts concluded under the law (Law of Ukraine "On touring events in Ukraine", 2004). More specifically, this rule is disclosed in paragraph 3 of the Procedure for the organization and conduct of touring events (The Decree No. 35 of 15.01.2004), according to which touring events are held by organizers on the basis of contracts concluded in accordance with the law with tour operators, owners (authorized organs or persons) of the fixed stage and other enterprises, institutions and organizations (Decree "On Approval of the Procedure of Organization and Conduct of Touring Events" № 35, 2004). M. V. Sevostyanov states the following definition of a concert services contract: it is an agreement whereby one side of the agreement undertakes to provide organization and holding services to the other side of the agreement – the customer (citizens or legal entities) within a specified timeframe concert for personal or third-party interests and the other side of the agreement will pay for such actions (Sevostyanov, 2007) identifies three main varieties of the concert services contract: the contract concluded between the direct performer (artist) and the direct consumer (spectator); an agreement between a direct performer (an artist) and an intermediary organizer that sells tickets to spectators (contract for third parties) or free of charge for spectators (contract for performance to third parties); the contract concluded between the intermediary-organizer and the direct consumer (spectator).

The specific features of producer contracts is that they are mixed unnamed civil contracts. Generally speaking, a production contract can be defined as a contract whereby one party (producer) agrees to provide the production services to the other party (performer) and the performer undertakes to comply with all instructions of the producer under the contract. It should be noted that the production contracts

mediate a separate kind of legal relationship – production, that is, an integral part of which the producer acts and which are aimed at promoting the activity and personality of the performer. Coordination activities can and often are performed by a legal entity. It is the basis for the exclusive rights to the complex object, but such rights are different from the traditional exclusive rights. There is no copyright, there can only be a name. This category of exclusive rights could also be called "producer" (Dozorcev, 2003).

In a separate type of contracts should be distinguished contracts, the systemic orientation of which does not relate directly to the intellectual assets, but can include some, which are related to the sphere of show business of Ukraine (inheritance contracts, marriage contracts, employment contracts, etc.).

Moreover, Art. 1302 of the CC of Ukraine defines that by the succession contract one party (the acquirer) undertakes to comply with the instructions of the other party (the alienator) and in the event of his death acquires the ownership of the alienator's property (Civil Code of Ukraine, 2003). This agreement can be attributed to the number of contracts in the sphere of show business in the case when the person who owns the rights to the objects of intellectual in the sphere of show business in Ukraine is the alienator.

According to P. 1 of Art. 92 of the FC of Ukraine marriage contract must be signed by persons who have applied for marriage registration, as well as spouses (Family Code of Ukraine, 2002). The purpose of this contract is to regulate property relations between spouses, however, since a marriage contract may determine the ownership for intellectual assets, it is considered appropriate to refer it to this type of contract.

As seen in Art. 22 of the Labor Code of Ukraine, this article provides the definition for the employment contract (Labor Code of Ukraine, 2019). Please note that an employment contract may contain provisions designed to regulate the ownership for the rights for the intellectual assets.

Also, the attention should be paid to the fact that in the sphere of show business, a large number of preliminary contracts are concluded - contracts of intentions, protocols of intentions. P. 1 of Art. 635 of the CC of Ukraine provides the requirements to the preliminary contract (Civil Code of Ukraine, 2003). The prevalence of previous agreements is since starting

cooperation, the parties to the contract may not always immediately determine for themselves all the conditions for future cooperation. Besides, relations in the sphere of show business develop very dynamically, and therefore, there are cases when the parties do not have enough time to agree on all the terms of the main contract. In such cases, the conclusion of a preliminary contract can serve as an effective tool for securing the conclusion of the parties to the main contract.

Conclusions

Analyzing the diversity of views on the problem of the concept of civil contracts in the field of show business, their nature, types and their place in the system of certain types of civil obligations can be concluded.

The Civil Code does not specifically regulate contracts in the field of show business, so the concept of "contract in the field of show business" is not regulated at the legislative level. However, given the above material, it is clear that a civil contract in the field of show business is an agreement in the field of production and rental of films, television programs, popular concert and variety programs, music and more.

Show business is a specific field of activity that is characterized by its peculiarities, and therefore contracts that mediate relations in a particular field are special.

First, the specific subject of contracts in the field of show business is usually copyright (musical works), as well as objects of related rights (performance, phonograms, videograms, and broadcasts (programs) of organizations broadcast).

Secondly, these contracts are characterized by a special subject composition: their parties are most often performers, producers, ie persons with creative abilities; models and modeling agencies, etc.

Third, in the system of contracts that mediate contractual relations in the sphere of show business, there is a characteristic characterization of mixed (atypical) contracts, as it is often not enough for the parties to regulate certain relations to the separately regulated civil legal structures provided by the current Ukrainian legislation.

Fourth, the activities of the parties in the performance of their obligations under the contract are characterized by a high level of risk,

because it is very difficult to predict the success of a particular project in show business.

Comprehensive knowledge and systematic study of civil-law interconnections in the sphere of show business is of great practical importance, as this sphere in Ukraine has been developing dynamically in recent years and therefore requires detailed legal regulation of the relations that arise between its participants.

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