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Types of Economic Activity in the Field of Cinematography in Ukraine

1. Introduction

Nowadays cinema represents an important element of public life, which existence depends on economic activity. At the same time, classification of types of economic activity in the field of cinematography is the issue of great importance as a tool for identifying methods and means of improving legal regulation of activities in the field of cinematography and the general state of affairs in this field.

The legal basis for the implementation of economic activity in the field of cinematography consists of provisions of the Constitution of Ukraine, the Commercial Code of Ukraine, the Law of Ukraine "On Cinematography", other laws and bylaws. However, shortcomings of the legislation include uncertainty of some key terms and concepts, incompatibility of some regulations with public relations existing in this area to date, lack of timely response of government agencies to challenges arising in the course of economic activity in the field of cinematography etc. Apart from that, current legislation does not specify the types of economic activity in the field of cinematography, but existing legal provisions can serve as a basis for analysis of this issue.

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General analysis of the issues related to legal basis of economic activity in the field of cinematography was conducted by several Ukrainian scientists, such as S. Yu. Burlakov², M.O. Katsuba³, S.W. Slepak⁴. At the same time, studies specifically dedicated to classification of economic activity in the field of cinematography are unavailable as of today.

The above considerations confirm relevance of stated research subject, aimed at classification of economic activity in the field of cinematography.

2. Classification by parties of activity and corporate objects

The term “type of economic activity in the field of cinematography” is not mentioned in the relevant laws of Ukraine (“On Cinematography”⁵ and “On State Support of Cinematography”⁶). Thus, in order to analyze and classify economic activity in the field of cinematography, it is necessary to consider this activity through the prism of concept of economic activity provided in the Commercial Code of Ukraine⁷ and the existing grounds for its classification.

According to Art. 3 of the Commercial Code of Ukraine the term economic activity is understood as activities of economic entities in the field of public production, aimed at manufacturing and selling products,

² Burlakov S. Yu. (2008). *Kinematografichnyi tvir yak ob'ekt prava intelektualnoyi vlasnosti: avtoref. dis.kand. yurid. nauk.* [Cinematographic work as an object of intellectual property law: abstract. dissertations of the candidate of legal sciences]. Kyiv: Drukarnya Harklvs'kogo natsionalnogo universitetu imeni V.N. Karazina. [in Ukrainian].

³ Katsuba M.O. (2013). *Khudozhnie kino yak zasib formuvannia masovoi politychnoi svidomosti.* [Feature film as a means of forming mass political consciousness.] Kyiv: Parlamentske vydavnytstvo. [in Ukrainian].

⁴ Slepak S.V. (2014). *Derzhavne rehuliuвання diialnosti subiektiv kinematohrafi v Ukraini.* [State regulation of cinematographic subjects in Ukraine.] Lviv: Lvivskiy rehionalnyi instytut derzhavnoho upravlinnia. [in Ukrainian].

⁵ On Cinematography: Law of Ukraine of January 13, 1998 № 9/98-BP. Information of the Verkhovna Rada of Ukraine. 1998. № 22. St. 114.

⁶ On state support of cinematography: Law of Ukraine of March 23, 2017 № 1977-VIII. Information of the Verkhovna Rada of Ukraine. 2017. № 20. Art. 5.

⁷ Economic Code of Ukraine of January 16, 2003 № 436-IV. Information of the Verkhovna Rada of Ukraine. 2003. № 18. St. 144.

performing works or providing services with specified monetary value.

There are various classifications of economic activity provided in scientific literature. The subject (or direction) of economic activity (Vinnyk O.M.)⁸ may serve as a basis for classification.

Art. 261 of the Commercial Code of Ukraine stipulates that the sphere of material production includes sectors characterized by business activities aimed at creation, restoration or finding material benefits (goods, energy, natural resources) and continuation of production in turnover sector (sales) by transportation, storage, sorting and packing of goods, or other activity types. All other activities shall make non-material production sector (non-production sector).

Considering the above statement, it is necessary to analyze Art. 7 of the Law of Ukraine “On Cinematography”, which enshrines the division of cinematographic subjects by direction of their activity into entities engaged in filmmaking, film distribution, film screenings, training and improvement of creative skills, development and manufacture of technological equipment.

Taking this into account, it can be argued that provisions of Art. 7 of the Law set preconditions for defining of 5 types of economic activity in the field of cinematography, using the parties involved in cinematography and the subject of their activities as criteria for classification. Thus, according to the above criteria, the main and more developed types of cinematographic activity in Ukraine are: film production, distribution and screening of films. At the same time, training of professional personnel and development and manufacture of technological equipment can be classified as secondary types, as they mainly support the main types of production and have only indirect influence on the process of creation of the final product. Definitions of production, screening and distribution of films are enshrined in law, namely in Art. 3 of the Law of Ukraine “On Cinematography”.

Thus, production is the process of creating a film that combines cooperation of authors and performers of the film and other parties in-

⁸ Vinnyk O.M. (2008). *Hospodarske pravo: Navchalnyi posibnyk*. [Economic law: Textbook. manual.] Kyiv: Vseukrainska asotsiatsiia vydavtsiv “Pravova yednist”. [in Ukrainian].

volved, which consists of periods (stages) of production. Such activities are aimed at production and sale of products that have monetary value (creation of a feature film for further sale of rights for its screening and distribution). The parties involved in production are film production studios, video production studios, producers etc.

Screening is defined as “a type of professional cinematographic activity, which consists in showing the film to the audience in the designated premises (cinemas, other entertainment facilities), on video installations, as well as on television broadcasting channels.” Thus, screening as a type of activity has its own dedicated entities engaged in activities in the field of public production (cinemas and television channels); aimed at providing cost-effective services (showing movies in movies and on television for a fee).

Distribution is defined as “the process by which the parties involved in cinema production directly or indirectly offer the film to the audience (theatrical distribution, rent, promotion, advertising, etc.)” The parties involved into this type of activity are producers, distributors, film-copying enterprises, cinema foundation, archives of cinema, photo, sound documents. Their activity is aimed at product sales, provision of services and performance of works of specified monetary value. (Selling and copying of physical film storage media, provision of copies for use for a certain period of time (rent), providing the original copy of the feature film for use for a fee or for free).

3. Classification by purpose of activity

Returning to the Commercial Code of Ukraine, it should be noted that Art. 3 of this Code provides the basis for the division of economic activity into types, which is purpose of activity. Thus, economic activity carried out to achieve economic and social results and for the purpose of making a profit is considered as entrepreneurship, while economic activity carried out without the purpose of making a profit is considered as non-commercial economic activity.

In particular, V.K. Mamutov considers non-commercial economic activity: “...as one of the types of economic activity. With the transition to a market economy, legal basis was created for economic activities

aimed at making a profit (entrepreneurship). However, the structure of management also includes activities of another kind, aimed at achieving economic, social and other results without the purpose of making a profit (non-commercial economic activity)⁹.

Current legislation of Ukraine does not contain norms that would clearly state the purpose of economic activity in the field of cinema. However, Art. 8 of the Law of Ukraine "On Cinematography" states that parties involved into cinematography carry out business activities in the field of cinematography in accordance with the laws of Ukraine. Taking this into account, it can be assumed that economic activity in the field of cinema can be both profit-driven as well as non-commercial. To some extent, the purpose of economic activity may be defined by the organizational and legal form of the party involved into cinematographic activity.

Thus, most business entities engaged in such types of cinematographic activity as screening, production and distribution of films in the organizational and legal form are registered as limited liability companies or joint stock companies, or individual entrepreneurs. Since the provisions of the Civil Code of Ukraine, the Laws of Ukraine "On Limited and Additional Liability Companies" and "On Joint Stock Companies" directly state that the purpose of economic activity for the above entities is to make a profit¹⁰, method of deduction leads us to conclusion that entities of these organizational and legal forms carrying out the production, distribution, screening of feature films perform their activities for profit¹¹.

In particular, it can be argued that production of feature films is carried out to achieve economic and social results, in order to make a profit (in particular, even the creation of documentaries and other films for charitable, educational, scientific purposes involves sale of rights to show such films for their screening).

⁹ Mamutov V.K. (2004). *Naukovo praktychnyi komentar Hospodarskoho kodeksu Ukrainy*. [Scientific and practical commentary on the Commercial Code of Ukraine.] Kyiv: Yurinkom Inter. [in Ukrainian].

¹⁰ On limited and additional liability companies: Law of Ukraine of February 6, 2018 № 2275-VIII. Information of the Verkhovna Rada of Ukraine. 2018. № 13. Art. 5.

¹¹ On Joint Stock Companies: Law of Ukraine of September 17, 2008 № 514-VI. Information of the Verkhovna Rada of Ukraine. 2008. № 50. Art. 2432

In terms of commercial activity film screenings remain the most stable type of business. Screenings are also carried out to achieve economic and social results, in order to make a profit, as free or discounted viewing sessions for certain segments of the population still aim at drawing attention to a particular feature film as a way of marketing, or are paid for by manufacturers.

In general, achievement of satisfactory state of affairs in this field of activity in Ukraine is possible by signing licensing agreements with the owners of quality European and American content, and showing it for a fee.

So, today all 5 types of cinematographic activity can be aimed at making a profit, but the real state of affairs in the industry does not always allow that.

4. Classification according to availability of special terms

Analysis of the current legislation allows us to identify at least two more ways of classifying economic activity in the field of cinematography, namely: the existence of special conditions for carrying out such activities and the possibility of obtaining state support.

While freedom of enterprise is established in the Commercial Code of Ukraine, its boundaries are also defined. Limits of freedom of enterprise are determined by conditions of entrepreneurial activity. Conditions for doing business can be either general or special, depending on their subject and scope.

General conditions of entrepreneurship apply to all business entities and all types of entrepreneurship. In particular, these are: registration in the manner prescribed by law; providing proper and safe working conditions, remuneration not lower than specified by law and its timely receipt by employees, as well as other social guarantors, including social and medical insurance and social security in accordance with the legislation of Ukraine; absence of environmental damage.

Special conditions for doing business apply to individual (not all) entrepreneurs and to certain types of business activities. There is no systematic list of special conditions for doing business, specified in a singular regulatory act. All those conditions of commercial activity that are not

included into general category should be considered special. Examples of special conditions for commercial activity can include licensing, patenting, quotas etc.¹²

In general, economic activity in the field of cinematography, from the point of view of the relevant Law, is not subject to such kind of special condition for economic activity as licensing, but some of its features are manifested, in particular in establishing additional requirements for certain activities in this area. For example, the process of licensing in its pure form is not recognized as a type of cinematographic activity, but some of its features are manifested, for example, in passing a cultural exam for cinema producers wishing to participate in state cinema competitions for state support of their films, which includes evaluation of correspondence of the script and final version of feature film, as well as presence of national and patriotic idea in it.

Considering professional training it can be argued that licensing for this type requires compliance of academic institutions and specialties provided by them with criteria and requirements set by central executive bodies in terms of material and technical base, number of students and teachers, curricula and programs.

The need for a licensing procedure for screening is not defined in the context of the relevant Law, as well as further prospects for feature films broadcasted in a foreign language, but with Ukrainian subtitles or typhlocommentary.

Considering the latter, it is necessary to introduce a special requirement for cinemas, which involves provision of 2 seats equipped with typhlocommentary in headphones for the visually impaired in each cinema and making appropriate changes to the legislation.

Licensing for distribution involves issuing stamps to protect quality products and consumers and combat piracy in this area, while market situation today is unsatisfactory for licensing of production of film equipment – due to the lack of such equipment in the industry and significant cost of modernization and the technology itself. Therefore, licensing procedures are also not defined for entities of this type for the reason stated above.

¹² Ortynskiy V.L. (2008). *Osnovy derzhavy i prava Ukrainy*. [Fundamentals of State and Law of Ukraine.] Kyiv: Znannia. [in Ukrainian].

Apart from that, Art. 8 of the Law of Ukraine “On Cinematography” states that all subjects of cinematographic activities engaged in the production, distribution and screening of films are included into the State Register of Producers, Distributors and Broadcasters of films, approved by the Cabinet of Ministers of Ukraine. This can be seen as a special condition for businesses occupied with these types of activity.

Patenting as a special condition for economic activity in the field of cinematography should be connected to the following types of cinematographic activity: development and manufacturing of technological equipment. However, as of today, due to neglect and actual absence of Ukrainian business entities operating in the area of new technical developments, their registration and legal protection are not relevant.

In view of the above, it can be concluded that patenting is not defined as a special requirement for any of the types of cinematographic activity in Ukraine.

As for the quotas, in accordance with Art. 15 – 2 of the relevant Law: “in order to promote film production in Ukraine, as well as ensure access of viewers to the works of national cinematographic heritage, until January 1, 2022 television and radio organizations that carry out television broadcasting or multi-channel broadcasting using radio frequency resources, other television and radio organizations are obliged to reserve at least 15 percent of the total monthly time of film screening to screening of national films, other films produced by Ukrainian cinematographers, and works of national cinematographic heritage “. While after January 1, 2022 this quota will amount to at least 30 percent of the total monthly time of film screening.

Thus, it can be concluded that the state currently demands compliance with quotas for screening of national films by the parties involved in screening operations as a type of economic activity. In particular, control over observance of quotas is entrusted to Ukrainian state film agency and local cinematographic authorities, as well as to the National Council on Television and Radio Broadcasting, according to the law while the Code of Administrative Offenses of Ukraine establishes administrative liability for parties involved in cinematographic activity for non-compliance with quota of national films screening while using national

screen time¹³. Thus, in view of the above, it can be concluded that quotas as a special condition for entrepreneurship, are uniquely applied to screening as a type of cinematographic activity, while it is not envisaged for other types¹⁴.

5. Classification by state support

Considering the types of cinematographic activity from historical and legal perspective, it is necessary to point out that all types of economic activity in the field of cinematography are closely interconnected, and historically the crisis of one type of activity affects other types and vice versa.

Given the above, presence or absence of state support for a particular type of commercial activity serves as an important criterion for classifying the types of cinematographic activities in Ukraine.

Regarding screenings, actual marker of both the need and the availability of state support for this type of cinema is the adoption of the Law of Ukraine "On Amendments to the Tax Code of Ukraine for state support of cinema in Ukraine" dated November 7, 2017¹⁵, according to which the cinemas broadcasting Ukrainian feature films and foreign films in Ukrainian are exempt from VAT.

As for feature film production, despite large number of legal entities and individuals present in the register of producers compiled by the State Agency for Cinema, it is too early to say whether stable profit is possible in this area of commercial activity.

The negative aspects of regulating this type of activity include significant influence of the state and presence of imperative norms and barriers, which are manifested in most of the films shot at the expense of

¹³ On approval of the Regulations on national screen time and its use by the subjects of cinematography and television: Resolution of the Cabinet of Ministers of Ukraine of 14.09.1998 № 1436. Official Gazette of Ukraine. 1998. № 37. p. 63. Art. 1359.

¹⁴ Code of Ukraine on Administrative Offenses of December 7, 1984. Information of the Verkhovna Rada of the USSR. 1984. № 51. St. 1122.

¹⁵ On Amendments to the Tax Code of Ukraine on State Support of Cinematography in Ukraine: Law of Ukraine of November 7, 2017 № 2176-VIII. Voice of Ukraine. 2017. № 226.

state budget, as well as in the small number of films shot in cooperation with foreign contractors, due to imperfect legislation.

In 2017, 33 feature films of Ukrainian production were released, which is a positive trend in itself, but only one film was financed privately (and this is only due to the opinion of experts monitoring the box office, as the estimate has not been announced by the manufacturers). This state of affairs is influenced by two main reasons. The first is low quality of Ukrainian films (as even these 33 films were not shown in all cinemas of Ukraine and were promptly removed from theatrical distribution, given the clear desire of broadcasters to make money on screening foreign feature films that viewers will come to see instead of low-quality Ukrainian movies). The second is insufficient number of cinemas in the country. In particular, according to the head of Ukrainian state film agency Philip Ilyenko, there are about 470 district centers in Ukraine, not counting the occupied territories, of which only 70 have cinemas. That is, the absolute majority of Ukrainian cities do not have them, respectively: "... people do not have the opportunity to get acquainted with new Ukrainian films, and producers, respectively – to earn"¹⁶. It is often impossible to sell a licensed film abroad, given its low quality.

Given the above, the availability of state support for this type of cinematographic activity is manifested in the ability of filmmakers to participate in tenders of the State Cinema for budget funds distribution for their films and so-called "cash rebates", or chargebacks for the cost of production taken from the state budget, which are available exclusively for foreign film producers¹⁷.

Considering the following type of economic activity in the field of cinematography, namely distribution – it can be said that today the parties involved into this type of activity are struggling to make profit, for a number of objective and subjective reasons.

¹⁶ Dlia sil bez kinoteatriv orhanizuiut festyvali (2017). [Festivals are organized for villages without cinemas]. URL: <https://www.ukrinform.ua/rubric-culture/2372545-dla-sil-bez-kinoteatriv-organizuiut-festyvali.html> (Access date: 7.04.2020).

¹⁷ Prystrasti za kesh-ribeitamy: shcho potribno dlia toho, shchob serial «Chornobyl» znialy v Ukraini (2019). [Passions for cash rebates: what it takes for the series "Chernobyl" to be shot in Ukraine]. URL: https://lb.ua/culture/2019/09/25/438225_pristrasti_keshribeytami_shcho.html (Access date: 17.10.2020).

Among the negative trends in this type of activity, world-wide tendency towards transition to new electronic carriers and rejection of DVD – disks should be noted. And although at the moment theatrical distribution can still be profitable and can constitute a share of revenue against the film's budget (especially in the countries of former Soviet Union) – but future trends indicate the transition of this business segment to the Internet and online – subscription services. In this context, the second reason for lack of profitability of this type of commercial activity should be noted, which is piracy and the fight against it. Although the register of film producers, distributors and broadcasters in Ukraine contains a lot names, even more persons are illegally engaged into such activity, while existing countermeasures, such as as establishing various types of legal liability for filming in a cinema theatre, for illegal distribution of unlicensed film copies, etc., so far fail to have an impact on the industry. State support for this type of cinematographic activity is currently not provided by the relevant laws.

Low quality of feature films, in turn, is directly related to the auxiliary type of economic activity in the field of cinematography, such as training of professional staff, which is carried out by specialized educational institutions of cinematography, specialized faculties in other educational institutions, regardless of forms of ownership, theaters (studios).

Today, there are two main higher education institutions in Ukraine that train professional actors, screenwriters, directors and cameramen. These are Kyiv National University of Culture and Arts and Kyiv National I. K. Karpenko-Kary Theatre, Cinema and Television University. This small number of specialized higher education institutions is directly proportional to the labor market and demand for these professions within society. This leads to neglect of the industry, lack of competition, obsolescence of material, technical and human resources in these universities and, as a consequence, inability of the national product to compete with European and other foreign film industries. State support of this type of cinematographic activity, first of all, envisages creation of state order for students of various cinematographic specialties, as well as modernization and maintenance of material and technical base of educational institutions in this field.

Yet another auxiliary type of economic activity in the field of cinematography is development and production of technological equipment. It should be noted that the parties involved into this type of activity include research, design institutions, service centers, associations, manufacturing companies and other legal entities, regardless of forms of ownership. This activity is aimed at products sales, provision of services and performance of works with established monetary value (creation and manufacture of various film-production equipment to order and for sale).

Thus, the main problem of this type of cinematographic activity is lack or obsolescence of enterprises and institutions able to produce or develop their own film production. This fact is indirectly confirmed by the Law "On Amendments to the Tax Code of Ukraine on State Support of Cinematography in Ukraine" of November 7, 2017, which exempts from customs duties some film-producing equipment, in particular, the import of cameras, projectors, sound recording and reproducing equipment, television cameras, digital cameras, film, reels, apparatus and equipment for photo and film laboratories, as well as lighting equipment. Thus, the state actually recognizes the fact that it is more profitable to buy film equipment abroad and bring it to Ukraine than to create specialized institutions and enterprises in our state. For example, a single cinema with modern IMAX technology for showing movies in the cinema costs as much as 10 regular cinemas with old movie projectors¹⁸. Thus, there is virtually no state support for this type of cinematographic activity.

6. Conclusions

Taking the above considerations into account:

- by the parties involved into the activity and corporate objects, types of cinematographic activity are divided into basic and auxiliary. The main types are: filmmaking, film screenings, film distribution. Auxiliary types include: training of professional personnel and improvement of creative skills and development and manufacture of technological equipment;

¹⁸ Romaniuk M.I., Popovych P.V. (2018) *Tekhnichne zabezpechennia kinoteatriv ta informatsiino – rozvazhalnykh zakhodiv*. [Technical support of cinemas and information and entertainment events.] Kyiv: KPI im. I.Sikorskoho. [in Ukrainian].

- by the purpose of activity, all types of cinematographic activity may be considered as striving to make profit, but that is not always possible in the current state of affairs;
- by availability of special conditions (licensing, patenting, quotas), the types of economic activity in the field of cinematography include: making films, showing films, distributing films and training professionals and improving creative skills. Development and manufacture of technological equipment currently does not require any kind of special conditions;
- by availability of state support for economic activities in the field of cinematography include: filmmaking, film screenings, training and improvement of creative skills, other types of cinematographic activities, namely: development and manufacture of technological equipment and distribution may not be considered eligible for state support.

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Summary

The article analyzes current state of economic activity in the field of cinematography in Ukraine and offers several approaches to its classification, in accordance with criteria defined by legislation of Ukraine. In particular, the following criteria of classification are proposed: parties involved into the activity and corporate objects, purpose of activity, availability of special terms (licensing, patenting, quotas), availability of state support. Emphasis is placed on lack of the term "type of cinematographic activity" in the relevant legislation of Ukraine. Both positive and negative aspects of economic activity in the cinematographic industry which currently affect the activities of economic entities are considered. Examples of different types of cinematographic activity in Ukraine are given as perceived through the prism of entrepreneurship and economic relations in general. Recommendations have been developed aimed to improve the state of cinematographic legislation in Ukraine – both at the level of laws and by-laws. Main types of cinematographic activity in Ukraine are substantiated and singled out on the basis of conducted research.

Keywords: economic activity, state support, film screenings, film production, film distribution, licensing, entrepreneurship, profit