

## INTELLECTUAL COMMON PROPERTY IN THE PRACTICAL LIFE

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**Abstract:** *In case of intellectual common property – when an intellectual product is created by more persons – persons involved in the creation form a community. This community is kept together with rights and obligations that are connected to the intellectual product made together.*

*During creation of intellectual products involved persons' creative ideas are helpful but at stage of use and utilization uncertain conditions may lead to conflicts among parties. In general, if more persons are entitled to rights related to one intellectual work, possibility of legal dispute will increase.*

*In field of copyright and protection of industrial property rights there are several cases that clearly highlight the practical specificities of common intellectual property mentioned above.*

**Key words:** *research collaboration, intellectual common property, innovation, R+D activities, trade secret*

### INTRODUCTION

Nowadays we live in an era where such terms as innovation or research-and-development have become all the more important. The situation resulted by the economic crisis and together with it the increased scarcity of resources have transformed the market conditions. The companies appreciated the opportunity to collaborate with others in order to develop a new and beneficial solution in a short time.

Recognizing that the economic circumstances have changed, the European Union set research and innovation as one of the most important goals. (Brüsszel, 2010.3.3.). They regard the latter as efficient tools to recover from economic crisis. In this framework the EU encourages the co-operation of market actors with each other and with certain universities. All of these efforts appear as a unified system in the Horizon 2020 Framework Programme for Research and Innovation (1291/2013/EU).

The above considerations that the actors in the market, in cooperation with each other, combine their own research and innovative results combined and create an intellectual product leads to the legal institution of common intellectual property. In general, the joint work of companies, research groups of people with individual intellectual potential have vast possibilities. It is not only the time and resources for the research that can be reduced; by uniting the existing results an unexpected novelty can be created.

The phenomenon also has risks. The research and innovative collaborations have the possibility of confidential business information getting into unauthorized hands. This threat requires a clear establishment of an effective legal protection of trade secrets. Another practical problem is that the more legal entities take part in a research co-operation the higher the risk is for a judicial combat in the phase of the usage of the intellectual property.

The present study was designed to look into the matter of the appearance of intellectual property as well as its advantages and disadvantages. As we can see the intellectual common property is widespread legal institution in the practise but the jurisprudence has not worked out its legal theory yet.

## MATERIALS AND METHODS

In the study, the conclusions are based on the examination of the primary literature dealing with this subject, analytical studies and monographs published in the Hungarian legal doctrine in this field of law, as well as on analyzing empirical data obtained from the judicature. During research, we considered the jurisprudential opinions and the conclusions drawn from the practice of everyday life.

## RESULTS

### The definition of intellectual common property

To understand the phenomena of the intellectual common property resulted by research collaboration it is worth speaking about the legal institution of the intellectual property and the intellectual common property.

Intellectual property rights in a broad sense include legal institutions in connection with the creation and the usage of works, intellectual products containing new ideas (Csécsy Gy., 1998).

From legal dogmatic point of view, it is a very complex field of law. The intellectual property law "as an odd one" of the civil law is about halfway between personal rights and ownership related to things (Szladits K., 1937). The civil law, in principle, is based on protecting the ownership related to things possessed physically and the incorporeal field of intellectual property was integrated into this system (Boytha Gy., 2000). Because of that it has always been in the forefront of heated legal theory debates. The outcome of these debates was that intellectual property rights were not included in the new Civil Code the recent entered into force.

We speak of intellectual common property when more than one legal entity is engaged in creative partnership to create an intellectual product. In this case all of the authors have the rights, the entitlements for the result, even if in different shares. There can be an exception, in case the law, or an agreement between the parties, provides the entitlements for any other person.

The intellectual property created in employment is typically the case when the rights do not belong to the authors under certain conditions; it is another entity, namely the employer that is entitled (Mt.).

### The named and unnamed forms of intellectual common property

Intellectual common property appears as common work, common invention and common patent in practice. The latter two forms are included separately in Act On Copyright and Industrial Property (Szt., Szjt. etc.). In addition to these examples, in practice we come across a number of different intellectual common property forms which are not named otherwise by a special law. Although certain intellectual properties deriving from research and innovative collaboration belong to the field of industrial property law, to be precise, we must mention the institution of common work belonging to the field of copyrights law. In this case the work is a result of several authors in co-operation and not only of one person.

It is so in case of common invention and common patent covered by the Act on Patent: the intellectual product is created by more than one person during a creative activity. The difference is – in addition to other significant ones – that common invention originates in a period before the patent, while the origin of the patent is after the patent

(Szt.). It is true for each of the three intellectual common properties separately named by law that only the actual creative, intellectual involvement confers rights over the joint intellectual property. The Supreme Court also highlighted that in the case of a special joint invention, the idea or the simple, non-creative assistance and control is not included in the inventor partnership (Legf. Bír. Pf. IV.). Furthermore, the level of contribution also determines the level of privileges. The higher share someone contributed to an intellectual property, the higher share they have from the benefits. These principles definitely apply to the unnamed forms of intellectual common property as well.

### **The practical advantages and disadvantages of intellectual common property**

Certain research and development collaborations and the intellectual common properties deriving from them actually have a number of concrete benefits in practice. In case several companies, research groups unite their R+D activities, the time for research and development can be decreased considerably and also the money invested. It is even more so when an actor in theoretical research (higher education institution) and a skilled actor of practical application (industrial company) integrate their intellectual potential. In the latter case we can witness a splendid interlacement of theory and practice. In addition to the foregoing, common intellectual work always involves the possibility that new ideas from the other party will lead the research process to completely unexpected new directions. Then the work can be completed with the creation of some novelty that has not been expected at the beginning of the process. It is also a significant fact that the co-operations that have been successfully completed might strengthen the need for further joint work, which can generate more and more effective cooperation.

Overall, we can say that the co-operation between actors in the market and also with some theoretical research units definitely helps and generates the creation of intellectual property. In case of intellectual common properties the persons belonging to the legal institutions – that is, the entities contributing to the intellectual property – create a type of community that is held together by the network of rights and obligations concerning the intellectual property they jointly created. The previously mentioned benefits of intellectual common property (innovative ideas from some members of the group) may turn into a disadvantage during the usage/utilisation phase if the conditions are unclear. In this way, there is an increased risk of a possible judicial combat.

Another basic problem is that the wider the range of people taking part of the research the higher the risk is that confidential, protected business information might get into unauthorized hands. During research vast quantities of information is collected, which then cumulates into knowledge with a significant economic value. This knowledge must be protected by all means. Knowledge is manifested in a form named by the Act on Copyright and Industrial Property Right or creates value as a secret without fitting into the above rights. The strongest protection for information to be protected is the various named forms. They establish an absolute structure and negative relationship over the intellectual property. Until this kind of protection over the knowledge of value does not exist it is protected a trade secret or as a know-how, under the identical legal protection (Új Ptk.). In both cases confidentiality has a key part.

In case of the violation of trade secrets or know-how, or protected knowledge the sanctions of the New Civil Code apply (sanctions for the violation of privacy rights). However, it should be noted that due to the violation of law the confidentiality is lost. The essential foundation of the trade secret and the know-how is destroyed and there is no way to recover (Görög M., 2012).

At this point, a sharp dividing line can be drawn between this type of protection and the protection provided by the named forms. With the latter the violation of law has no such consequences.

To sum up, more emphasis should be placed on the confidentiality provisions in the various research collaborations and of the parties should clarify the terms in their internal relations. In addition, it is obvious that the named forms of protection are stronger protection for the information to be protected as the institutions of trade secret and know-how.

### CONCLUSIONS

Regarding the generation of intellectual common property we can say that only creative contribution entitles someone to have entitlements. The person who contributed to an intellectual common property with actual creative work can be an author. In addition, the rights over intellectual property are proportional to the contribution rate, unless otherwise agreed. The real benefits of research and innovation cooperation can be summarized in the following points: the decrease of time spent on research and simultaneously the invested amount, the creation of unexpected novelty, the possibility of further cooperation. On the other hand it is obvious that various forms of cooperation promoting innovation also increase the risk of that protected information might get into unauthorized hands. Due to the former during a variety of research and innovative cooperation, i.e. during the creation of intellectual common property, special precautions must be taken to lay down certain provisions for the protection of confidentiality and protection of information about the novelty.

There is a delicate borderline between the benefits of the cooperation and the danger of breach of confidentiality. Secondly, the co-operation, due to a wider range of co-workers increases the risk is of a possible judicial combat in the phase of the usage/utilisation of the intellectual property.

To summarize the text the institution of intellectual common property gained ground in practice. The reason for the above mentioned the several kind of advantages of this institution.

### REFERENCES

1. **1291/2013/EU:** AZ EURÓPAI PARLAMENT ÉS A TANÁCS 1291/2013/EU RENDELETE (2013. december 11.) a „Horizont 2020” kutatási és innovációs keretprogram (2014–2020) létrehozásáról és az 1982/2006/EK határozat hatályon kívül helyezéséről.  
[http://eurlex.europa.eu/legalcontent/HU/TXT/?uri=uriserv:OJ.L\\_.2013.347.01.0104.01.HUN](http://eurlex.europa.eu/legalcontent/HU/TXT/?uri=uriserv:OJ.L_.2013.347.01.0104.01.HUN) (Download: 31/3/2014)
2. **BOYTHA GY., 2000:** A szellemi alkotások joga és az új Ptk. Polgári Jogi Kodifikáció. 2000. 3. pp. 13-23.
3. **BRÜSSZEL, 2010.3.3.:** Brüsszel, 2010.3.3. COM(2010): BIZOTTSÁG KÖZLEMÉNYE, EURÓPA 2020, Az innovatív, fenntartható és inkluzív növekedés stratégiája.  
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:HU:PDF> (Download: 31/3/2014)
4. **CSÉCSY GY., 1998:** Szellemi alkotások joga. „Novotni Alapítvány a Magánjog Fejlesztéséért”. Miskolc. 1998. 216 p.
5. **GÖRÖG M., 2012.:** A know-how jogi védelmének alapvető kérdései. HVG-ORAC Lap és Könyvkiadó Kft. Szeged, 2012. 191. p.
6. **LEGF. BÍR. PF. IV.:** Legf. Bír. Pf. IV. 20.466/1977.

7. **MT.:** 2012. évi I. törvény a munka törvénykönyvéről
8. **SZLADITS K., 1937:** A magyar magánjog vázlata. Grill Károly Könyvkiadó Vállalata. Budapest, 1937. 507 p.
9. **SZJT:** 1999. évi LXXVI. törvény a szerzői jogról
10. **SZT.:** 1995. évi XXXIII. tv. a találmányok szabadalmi oltalmáról
11. **ÚJ PTK. (New CC):** 2013. évi V. törvény a Polgári Törvénykönyvről