

The Intellectual Property Objects as Device for Fraud and Money Laundering

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Summary: These days it could be said that there are two important issues derived from the same area, the so-called "world of profits". The first issue could be defined as all the financial activities provided for earning more and more easy money. The second issue concerns the tools and methods used to put these activities into practise.

In the same time the importance of intellectual property object as factor for economic development highly increases. The existence of these two circumstances in the free market relations is a precondition in certain requirements for the IP objects to become device for fraud and money laundering.

The main thesis work is that the IP objects could be used as fraud and money laundering device.

The research purpose is to determinate and develop the different systems and approaches in with the IP objects could be used for fraud and money laundering.

The result of the research is a theoretical and practical work, developed trough the empirical

experience, which could serve to the people involved in crime prevention.

Key words: intellectual property, intellectual property objects, fraud, money laundering.

JEL: O34, A12, K0, M0.

Actuality of the work

As introduction of the genuine of this work I would like to say that it is a result of practical experience gained at the Commercial Crime Services/International Chamber of Commerce, which is private international organization, and supported by the professional experiences of my colleagues, the professionals working there.

This material is not based upon a theoretical literally sources it is purely developed on real cases under the investigation of CCS/ICC, which is the reason why further in the work text the cases' information are not publicly revealed.

In relation with this,

I would like to dedicate this article to the people who helped me to write it down:

I would like to start with Brian Jenkins who organize my internship in International Camber of Commerce/Commercial Crime Services-London.

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1 Linton Road
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London, UK

Thank you Brian believing in me.

Pottengal Mukundan who as my director creates perfect conditions receiving information and generating knowledge and practical skills as well as supporting all initiatives made.

Thank you Muku giving me the key.

Jon Merrett who as my assistant director at Financial Investigation Bureau/CCS provides me access to all information sources as well as reveals the basic scheme of fraud and money laundering paying me a lot of professional attention. He was my major advisor during development of the links between fraud, money laundering and IP as device researched below.

Thank you Jon for your attention and help understanding the field of financial crimes.

Peter Lowe who as my assistant director at Counterfeiting Intelligence Bureauq introduced me the intelligence process of counterfeiting devices.

Thank you Peter giving me accesses to all those cases.

John Crosby who has incredible practical experience in the field of counterfeit and fake holograms. Thank you John shearing your knowledge with me.

And I would like to say thank you to all my colleagues who were next to me and helped me in getting know of CCS works principles and giving me answers of each posed questions.

I would like to say thank you from all of my hard to my father Prof. PhD. Borislav Borissov

who was supporting me in this long journey in obtaining knowledge in domain of economy, law and intellectual property.

Thank you daddy in being with me.

Introduction of the work

These days it could be said that there are two important issues derived from the same area, the so-called "world of profits". The first issue could be defined as all the financial activities provided for earning more and more easy money. The second issue concerns the tools and methods used to put these activities into practise.

From a legislative point of view the distortion of the origin of money in the financial system is referred to as "fraud". Used methods and tactics legalizing the received dirty money develop the process of "money laundering".

It is important to differentiate between the kinds of devices in use. They are destined to generate and accumulate assets in secret and often illegally way. These devices might be legal or illegal in their origins, but nevertheless they are used for criminal activities.

Such illegal instruments are guns, prostitution, drugs and others of the same kind. Legal ones include valuable goods such as gold, silver, gums, sugar, works of art and others of high value.

Some of the aforementioned devices serve not only for fraud but also for money laundering. The major basis of applicable methods and tactics of money laundering is the "buy-sell" principle, which in fact is both common and legal. In the process of money laundering it is usual for legal high-valuated devices to be used.

The process of money laundering maintains actions, which in their genuine are not criminal. The major point in this issue is the existing link between those two illegal actions - fraud and money laundering. If once fraud is done, further will be money laundering (Table 1).

One specific and frequently used instrument for generating money is intellectual property. The reason for that is in its nature. These are intangible assets, which are results of the intellectual efforts of certain person. Therefore they are unique and their value has the tendency to increase in the future.

Not all the objects of intellectual property could be used for these purposes. Only those, which are the most commercialized, or those, which are not so commercialized but are unique in their originality and interpretation of the author's vision as trademarks and works of art,

are applicable. The explanation for that is the huge market flexibility of these kinds of IPOs¹ and their ability to represent "the face" of the certain activity or social belonging². They are able to create a positive image of their owner.

The accumulation of trademarks and artworks' value takes different forms. Value of trademarks is a question of well-established good name and quality. Works of art are evaluated in respect of their uniqueness and originality. Further there is the correspondence between an author's expression in the work and the demands of society, which in fact represents the market demands. The price increases in any case approximately equal to these two factors.

It is very difficult to determine the real price of IPOs. In general the price depends on a lot of different economic, especially market conditions whose future flexibility or staying

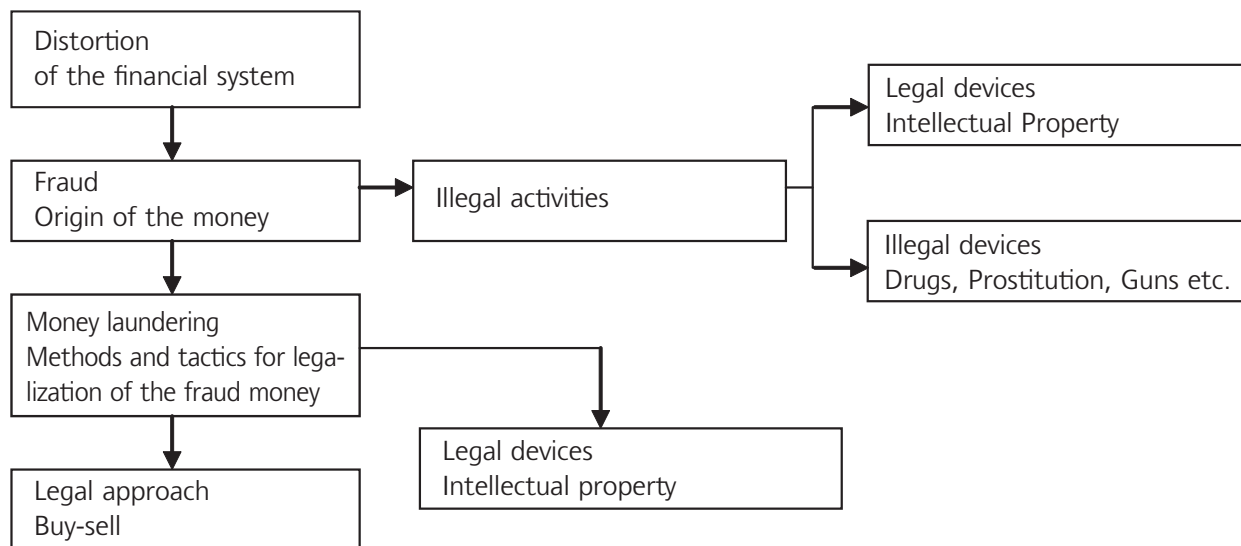


Table 1

¹ Intellectual Property Objects/IPOs.

² This is very true for the people collecting works of art especially works of the fine art. They are presumed to be a special society, which knows their member and the number of the originals sold as well as who is their owner at the moment. Usually the sale is done in a closed market with advance-estimated value of the works. Factors influencing the determination of the value are: applied working approach of creation, glory of the author, year of origin of the work as well as the numbers of its resells. Very often the given price does not correspond to the real market price. Real market price is what the buyers are ready to pay to have the work in a fixed period of time.

power are difficult to predict. Objects of intellectual property have their own value dictated by their specific origin-the intellectual potential of the human being.

The additional capability of the objects is to generate the so called "added value", which could be presented by the saved expenses and time of the new manufacturing process³. As objects with economic potential, which after economic utilizations transforms into economic value generating economic benefits, the IPOs are substantive economic factor for economic growth.

Why intellectual property objects could be precious devices for fraud and money laundering.

Intellectual property objects have economic potential, which becomes stronger after obtaining legal IP protection through their registration or automatically as copyright. From this point of view the economic potential provides law given monopoly to produce and trade on a certain⁴ market (Table 2).

As a protected object of intellectual property its economic value could be estimated by the

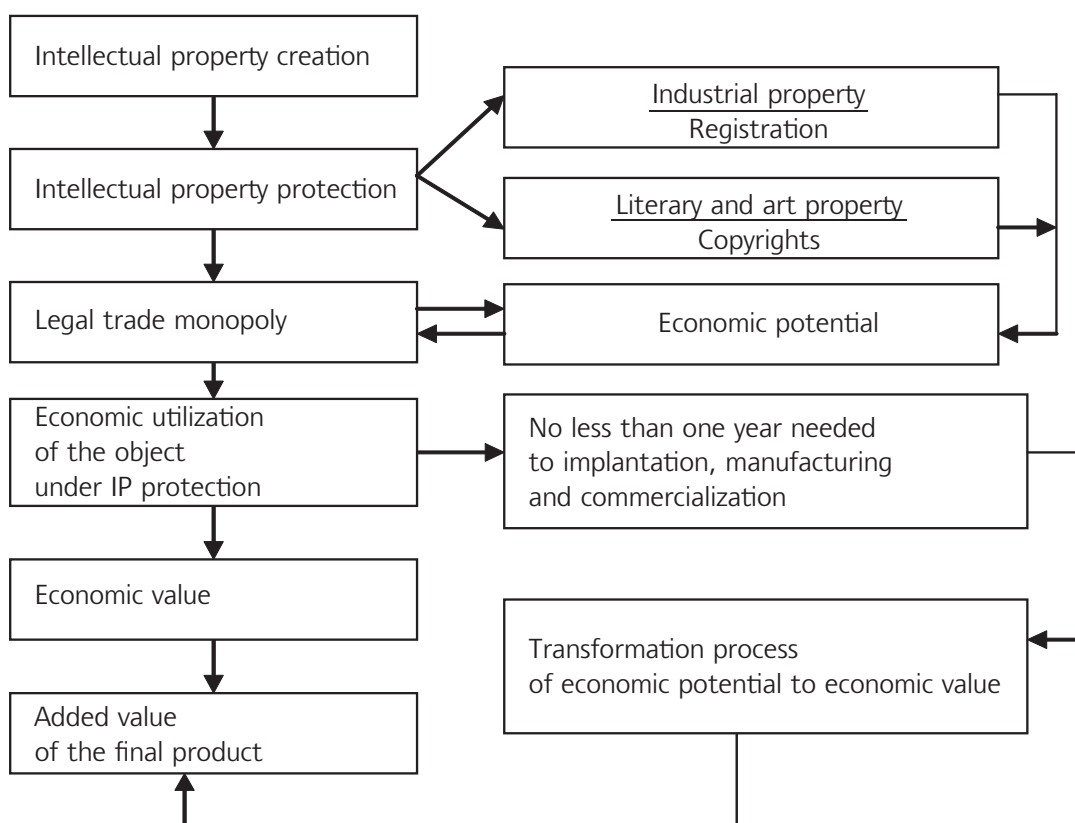


Table 2

³ This manufacturing process is called old productions process because it was applicable before the adoption/implantation of the new manufacturing process given by the licensed intellectual property.

⁴ The market territory depends on the territory of the given intellectual property protection of the object. That refers all the objects of industrial property as trademarks, inventions, industrial design, etc. A copyright protection is provided for territory where the owner of the right commercialized its works and their reproductions.

common principle defining the “the price as function of expenses made”⁵. This principle in fact is not so correct in refer to the IP, thus it is not dealing with intellectual attribution⁶ in the object given by its author.

Exactly this characteristic of IPOs differentiates them from the other economic factors. IP objects generate added value through the economic realization of the aforementioned intellectual attribution of their creator.

To become visible, the economic value of the object needs to have been implanted in the manufacturing or trade process no less than a year⁷. During this period IPOs economic potential is transforming into economic value by generating added value.

Therefore after the first production, the value of the object in question changes. The value of the IPOs tends to increase if it responds correctly to market demands.

In this case, price will be different and its estimation must be done accordingly to another principle. The price will be a “function of the future incomes”.

From the intellectual property point of view, the future incomes are observed for a period exactly five years. It is presumed that this term is sufficient for economic potential to make a full circle of transformation. More precisely, for trademarks is inherent to create good name and for the artwork’s authors to become successful.

In almost all of the practical cases, the latter approach gives higher evaluation than the former. This is the real value of the IPO thus its fully corresponds to the added and existing intellectual contribution, which actually must be explored.

Mechanisms and organization of fraud and money laundering done by the utilization of IP objects as their devices

Knowledge of these substantive differences could be used for fraud and money laundering (Table 3).

The game of different value estimation principles and economic utilization of the objects during a limited period of time could be serious criminal device.

Buying IPO on estimated price following the first approach and selling them on a price given by the “future incomes approach” after a certain period of time could be fraud. It will be fraud if all this action is deliberately done for obtaining assets in a criminal way.

The intention is substantive part of fraud conditions in this particular case, because evaluate IPO as function of the expenses is neither illegal nor forbidden by the law. But when it is deliberately done to deceive and mislead market participants it becomes a crime through, which, the money is criminally obtained.

⁵ Under the term “expenses” are all tangible assets, time and labour used for creation of certain intellectual property object. It is important the specific approach of estimation in this level between the inventions, utility models and the trademarks, industrial design to be mentioned. In a field of inventions usually IP estimation is the added “inventive step” as intellectual capability of the author. In fact distinguishing point is the “inventive step”. It is likely more visible than the intellectual attribution in the rest of IP objects. The known level of the technique until the moment for application file for patenting the invention could define it.

⁶ Concerning the inventions this is the so-called “inventive step”.

⁷ More often to put into the practice it takes two or maximum three years of IPO’s adoption. The first year is so called basic year. Its indicators are used as base to develop further evaluation process.

From a different angle and because of its double existence (not only as device for fraud but money laundering), the evaluations game could be used indeed for money laundering itself.

That occurs when IPO is bought at low price with dirty money and resold at its real market value. The money received will be laundered legally. Usually for money laundering to occur, the money used must have been obtained by different criminal actions, in this case their origin as refers to the kind of criminal action, is not important.

Money laundering is possible to be done by entering into a company shares.

Often to enter into a company shares are obtained through certain tangible or intangible assets instead of money. Whatever from these assets takes they must be of high value. Given value corresponds to the amount of obtained company shares. Further access to company capital is established.

This kind of ownership is named "aport", more precisely in refer to entering assets. Intellectual

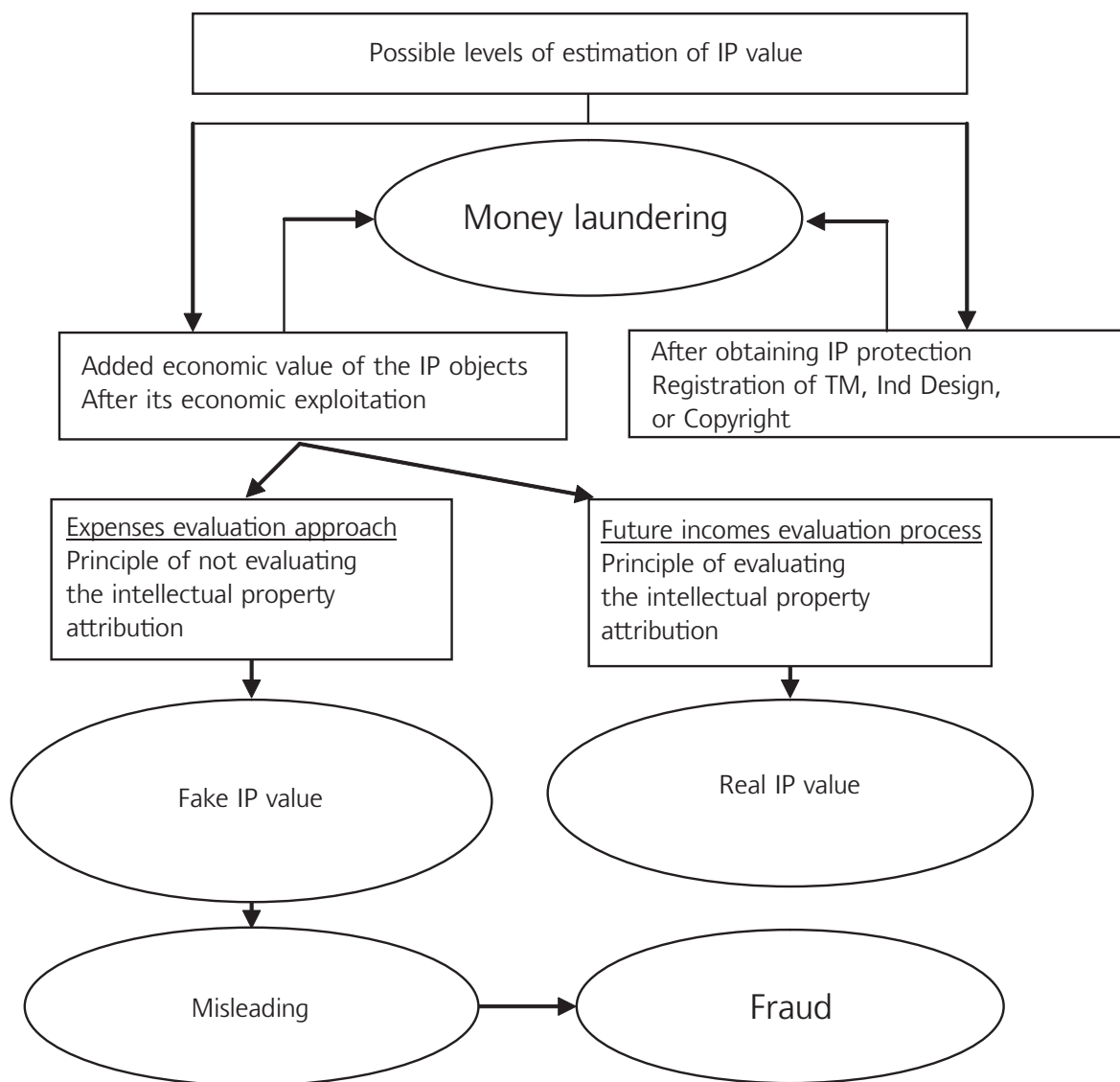


Table 3

property as intangible assets could be used for such kind of "aport" deposit. The specification concerns the different ways of evaluation used for tangible and intangible assets. When intellectual property serves as "aport" payment for shares for entering into a company it could possibly be used for fraud and money laundering.

Aport payment usually is a tangible asset, different from money. When intangible assets such as IPOs are used for this purpose they must be valued before becoming a part of the company capital. Making valuation is already a chance to distort the real value, and through misleading fraud to be commuted. Double action is reviling in making fraud money and entering

into the company by creating future conditions for the laundering of dirty money.

A second possible approach could be "aport" of IPOs made by already fraudulently obtained money. In this case before entering into company ownership, the money received from commuted crime is used for buying object of IP. IP itself is not criminally obtained, but the money is. Entrance into the company legally, but is done with criminal intention.

The "aport" itself could be done in two different ways. First directly as assets like shares or money given by the depositor of the object. The depositor could be a bank or other financial institution. They keep the object for a certain period of

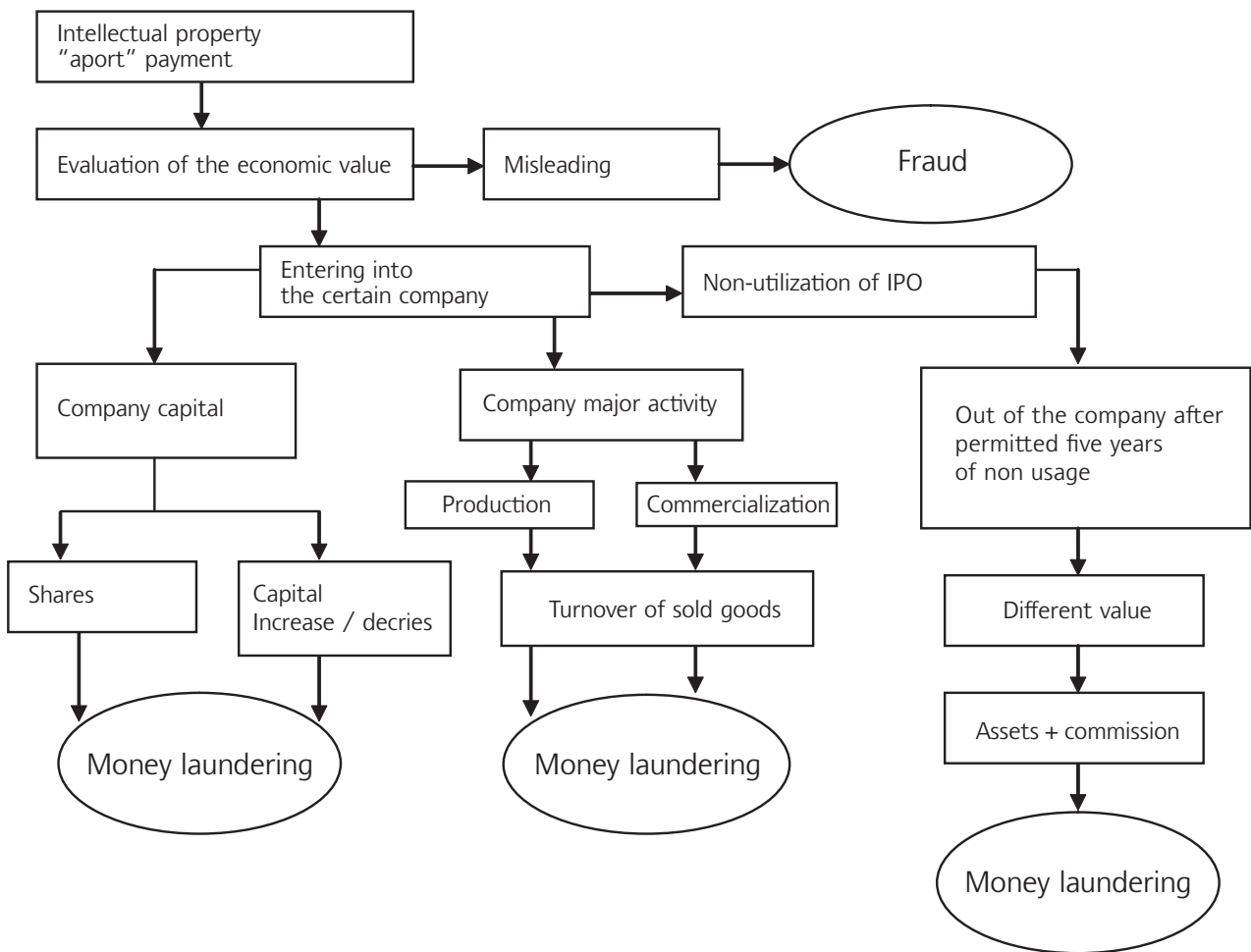


Table 4

time during which there is an obligation for the given money to be refunded. There are certain remarks, which indicate the presence of money laundering. The object is given in exchange for proper money.

Another possible way is to enter with the object and its value to be added to the general capital of the company. The amount in fact exists only in the final account report. There are two possible dimensions through, which this "invisible" money will be laundered.

Money laundering could be done through decreases and increases of company capital as well as sells of company's assets or shares. The entering intangible asset could be a part of the major company activity. The realized turnover of the sold goods or provided services will launder the money in question (Table 4).

In this scheme the bought IPO could be used depending on company type of activity. Buying trademark is always useful, copyrights requires more specifically subject of company activities, for instance publishing houses, galleries, jewel offices⁸, etc.

Other possible way is intentionally keeping IPOs in the company patrimony as intangible assets, without being in use in the aforementioned ways. Its real value in fact is not posted in the accounting report.

Through this activity money is laundered simply by entering into company capital and being refunded after some reasonable time. Reasonable

time for IP objects is no less than five years, enough to increase its value.

The following question could be posed: Is it possible for an asset to increase its value while not in use?

With regard to IP objects, for some of them that is exactly the way. Paintings, creations of fine and plastic art, architecture work, etc. Usually those are the works under copyright protection. For the rest, works of industrial property such as inventions, trademarks, industrial design, etc., there is an imperative requirement for use. If there is permanent non-use after five years of obtaining protection, the legal monopoly is taken a way⁹.

This position facilitates the laundering process to combine bigger amount of money in its exit. The quantity of laundered income is calculated by the difference between real price¹⁰ and paid price¹¹ at the time of purchase. And secondly the level if the market price increases of the IPO after a period no less then those five years¹². All this will be legal income and will be received after the sale of the object.

$$(\text{real price} - \text{paid price}_{-t}) + (\text{real price} - \text{market price}_{+t}) = \text{Laundered Income/ received applying this activity/}$$

As far as the subject of this article concerns IPOs as fraud and money laundering devices some other possible activities must be reviewed.

Following aforementioned line its concerns specific institute of the free market and law the "odd

⁸ The jewels are presumed as creations of art, they are protected by the copyright. The shape of the jewel could be in certain requirements be industrial design. Its protection is by registration and only if its possible to be reproduces.

⁹ The difference described above exists because of the various protection systems of IPO. Industrial property is protected after registration and Literary and art property automatically from the moment of creation by copyright.

¹⁰ This is the price of IPO, whose valuation is incorrect

¹¹ This is the right estimated value of the IPO by principle of the future incomes.

¹² Five years is legally accepted period during which the economic potential of the IPOs is possible to be reviled. Wherefrom, there is imperative obligation provided by the law for obligatory usage of all registered IPOs. Each non-restriction leads to determination of the ownerships over the protected object.

pledge". Its name is odd because aported object rests in the patrimony of their owner nevertheless he obtained some assets for them. The idea is certain person to do his business using the object in pledge to making some revenue to cover his debt.

In this particular case money laundering is more likely to be because the system is inverse (Table 5). Money laundering is the process of giving criminal money in receiving odd pledge. This could be a profitable business because it is possible to be the owner of several pledges of varying values at the same time. The acting person does not receive any material objects. The most important part of the deal is to get rid of criminal money and to receive it back laundered and as profit¹³.

A common practice is to steal an artwork, reproduce it and sell it on under ones own name or that of a third party. Commonly author's rights are abused by adding a different name indicating the person as co-author or author of this particular work.

These are criminal actions through, which the acting party often makes a big financial

profit. This system is applicable mainly in publishing, jewel and artwork business as paintings, sculptures, etc.

The accent in this case is over the process of reproduction of works under false name. Actually all reproductions are counterfeited. Criminal actions made exposes into infringement of the exclusive IP rights of the real author to:

- Permit reproduction and dissemination of his works and
- Insist his name or identification sign to be put in an obvious place on his creation in each frequency and type of its use.

Otherwise IPOs are used for fraud followed by money laundering. The crime provides profits, which in their first income are dirty money. Further sale of each reproduction will be money laundering of the initial benefits.

Counterfeiting intellectual property objects is a profitable business. Mainly damaged are the customers loyal to a certain manufacturer or

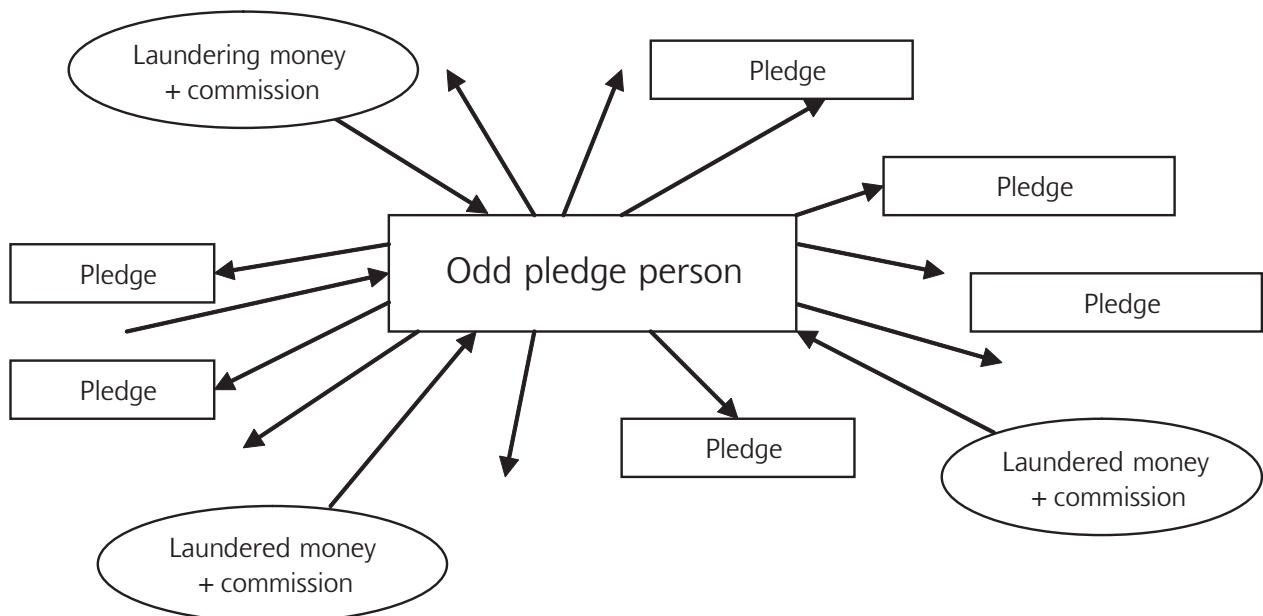


Table 5

¹³ Usually for each pledge certain percent of commission is to owe. These are the benefits of this type of activities.

author. They buy goods without considering the possibility of be mislead.

Often holograms are counterfeited as well as the IP objects. Holograms are used as protective measures of the origin and quality of the genuine commercialized products. They themselves are also objects of intellectual property, which could be protected as works of art. Alternative protection could be the industrial design¹⁴.

It is a practice to make the product's protection stronger, holograms to have same image as registered trademark or industrial design for the product. Counterfeiting holograms is another possibility for fraud or money laundering through their production and later commercialization.

Another possible source of financial distortion could be the existence of a certain business mainly linked with artworks, jewels, and antiques rather than certain activities.

When an artwork business is involved illegal activities could be put into practice at auctions or other public "buy-sell" art events. Usually dealers have the ability to speculate with the price of certain piece of art. Which in fact has the potential to increase its price unexpectedly for a short period by bidding.

The inherent flexibility of those markets provides temporary narrow term for profitable resale of works. Usually after the auction the price of the sold work increases up to 50 %. It is important to sell on the works as quickly as possible until there are buyers interested in doing it. The origin of market's flexibility is due to the wish of high social class to "having genuine prestige".

The auctions or other public sales purchase by mediator registering the new owner of the artwork, the sale price, the name of the author the number¹⁵ of the artwork, and all details describing each purchase.

Done in this way, original author of the work sold receives extra money from each further resale of his work. This is a law-limited percentage in the framework of less than 5 %, but no more than 10 % of the sale price. In this manner, a false author could obtain money and launder it by intentionally reselling of artworks.

Conclusion

As important part of the economic environment, intellectual property is interesting object of economic and commercial use. Both the existing and the potential added value incorporated into the IPOs is powerful measure for economic development and success. This major characteristics as well as the high value as flexible intangible asset create the possibility intellectual property to be easily used also as devise for fraud or money laundering.

Preventing negatives impact of such use it is important for the IPOs to obtain stable protection under the intellectual property legislative system as well as to be properly used in a public domain.

In the other hand, as long as both phenomenon fraud and money laundering exists one of the most preferred legal devise of their implementation will be the high valued intellectual property objects. **VIA**

¹⁴ More preferred protection is the copyright one, because there is time restriction for the industrial design protection. Usually the exclusive IP right/IPR belongs to the author of the hologram, but more often it is in the patrimony of the person/organization ordered it. That is exclusion of the principle the exclusiveness of the IPR to be for the author, because the legal order is made by contract between the two parties.

¹⁵ All original artworks have certain number put on them with the signature of their author. This number usually is not more than seven. Each of those artworks is presumed to be original. Their author officially announces their number.