

ПРАВО ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

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CURRENT PROBLEMS OF REFORMING THE MECHANISM OF COPYRIGHT PROTECTION ON THE INTERNET

For a long time, the protection of intellectual property rights is determined within the research topic. This situation explains the imperfection of the legislation in the field of law, the large number of wheels and gaps, the inconsistency with the needs associated with practical use. These and other facts indicate the need for systematic reform of this area.

One of the biggest pressing issues is copyright protection on the Internet. Thus, during the period of rapid development of information technologies, their spread among all segments of the population and the beginning of another information revolution, the mechanism of copyright protection on the Internet needs special attention.

The legislation of Ukraine regulates this issue in accordance with the general provisions provided for in the Civil Code of Ukraine and the special procedure specified in Articles 52-1 of the Law of Ukraine «On Copyright and Related Rights».

The Civil Code of Ukraine stipulates that every person has the right to protection of his personal non-property or property rights or interests from reports and illegal achievements through conviction and use of self-defense. Self-defense should be considered the use of a person's means of counteraction, which are not prohibited by law and do not contradict the moral basis of society [1].

In accordance with these rules, there are jurisdictional and non-jurisdictional forms of protection of civil rights.

Jurisdictional form should be understood as protection of rights by means of adjustment to the authorized state bodies or court with the involvement of the instruction on achievement and restoration of the violated rights.

The general procedure for protection of rights (recourse to the court) is considered the most common and most effective way to protect copyright, while recourse to the competent authorities is possible only under the law. But what is common is that the special way is little adapted to the peculiarities of the Internet.

Thus, the protection of copyright objects placed in cyberspace within the jurisdictional approach has several problematic aspects, such as the anonymity of users and the global nature of the space.

The global nature of cyberspace, offers cross-border access to copyright objects. Copyright infringement may occur in a person who is in a territory that is not protected by Ukrainian law. As a result, it becomes impossible to centralize the achievements and bring the offender to justice.

Another urgent problem is the difficulty of further establishing the identity of the offender. The Plenum of the Supreme Court of Ukraine in paragraph 12 of the decision of 27.02.2009 determined that the responsibility for requests related to the dissemination of supporting information is determined by the owner of the website – the person who owns the account and establishes the procedure and conditions – site [3].

Articles 52-2 of the Law of Ukraine «On Copyright and Related Rights» state that the owner of the website is associated with the placement in the public domain of reliable information about himself, contact information, name and address of residence / postal address.

However, in most cases, offenders do not support these requirements due to a single option of attributing offenses – return to representatives of economic services – the person who provides website owners with services and (or) resources to host websites or their parts on the Internet and provide access to them via the Internet [2].

As a result, in order to use the general order of jurisdiction, it is necessary to take action, as a result of which to obtain reliable information about the person who will open a dispute. It should be noted that in this provision, the legislator also specifies a special procedure for the protection of protected rights. The same person who proposes the mechanism according to which the subject of copyright has the right to apply to the owner of the website with a request to make a legal decision. If the offender does not specify the requirements, the author has the right to contact the service placement services, which also require restrictions on access to tools.

The mechanism specified in this rule has its own advantages. These do not include the fact that all actions must take place in a short time and without government intervention.

The requirement to approve a lawyer's approval is rather doubtful. On the one hand, such a requirement removes the relationship with the representatives of hosting services to establish the establishment or absence of copyright in the subject.

The protest from this follows another shortcoming of this mechanism, namely that the subject of the appeal can only be the subject of copyright. Most copyright notices occur in front of objects of foreign origin. Thus, in order to protect the rights of authors to these words, the author must transfer part of his property rights to a representative in our country. Also, on the other hand, a lawyer's conclusion is the presence or absence of copyright is not legally valid, therefore that the establishment of the presence or absence of rights is the exclusive competence of the court.

In addition, as noted by A. Stefan, and K. Zerov for the emergence of copyright and related rights does not require state registration or any other formalities, so the primary subject of copyright and / or related rights may not have in its no document relating to the creation of this object by this person. Whereas the Procedure stipulates that the lawyer sends the relevant application on condition that the documents provided by the applicant confirm the fact that the applicant has the rights to terminate the violation of which a request is made. As a result, this provision obviously conflicts with the principle of automatic protection of the work, as it

requires the author to have documents, the receipt of which is not required in accordance with Part 2 of Art. 11 of the Law [4].

Another problematic issue of copyright protection through litigation is the collection of evidence. In particular, there is an inexhaustible list of electronic evidence in the legislation of Ukraine. Information in cyberspace is constantly changing, so without proper recording, the court can not accept such evidence as appropriate. There is a requirement for fixation in procedural law, but there are no specific criteria for this procedure and methods of its implementation. In turn, it is physically impossible to prove copyright infringement on an object placed in cyberspace without providing data from the cyberspace itself.

As a result, these factors create obstacles to the use of the jurisdictional form of protection of copyright objects placed in cyberspace.

The non-jurisdictional form consists in independent actions of the subject of copyright or other persons that are not prohibited and not provided by law and are aimed at protecting the rights and interests. This form is considered the most effective for the protection of copyright objects placed in cyberspace. Ways in this form include negotiating with the infringer, contacting a webmaster / social network administrator, or hosting provider. Such appeal is made in the manner prescribed by the Law of Ukraine «On Copyright and Related Rights».

Thus, the legislation of Ukraine provides a mechanism for the protection of copyright on the Internet. The most appropriate way to protect infringed rights is to contact the owner of the website or hosting provider in the manner prescribed by the Law of Ukraine «On Copyright and Related Rights». Despite its own revolutionary nature, this procedure needs to be further reformed, including the need to approve the application by a lawyer and the entity entitled to file such a request.

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