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Legal Standards of Free Utilization of Intellectual Property in the Sphere of Digital Economy

T.V. Shatkovskaya,[1] T.V. Epifanova,[2] A.N. Pozdnishov,[3] N.V. Fedorenko[4]

Abstract:
The aim of the article is the development of legal standards of free utilization of intellectual property, which will become the basis for the new complex legislative regulation of relationships, that has been arisen due to the development of digital economy. Conceptual basis for the new institutional environment can be represented by the theory of free culture, practical implementation of which provides the transition from agreement-based monopolistic rhetoric towards free utilization of the results of intellectual activity in the cyber environment.

We conclude the need to define the legal regime for intellectual property, dependent on its intended use into commercial and non-commercial. We propose to free the sphere of non-commercial from as many legislative barriers as possible. We also propose to widen the use of simplified registration procedures with the participation of commercial organizations, as well as intellectual property (IP) data bases. The preservation of copyright in this sphere is sensible.

The principles of equity, fairness should be fundamental institutions for the free utilization of IP. Authors propose the most open and vast rules of communication within the digital environment, which have evolved naturally. Separate standards exists in the form of concepts requiring practical implementation, others have been legally enforced, such as the priority of market mechanisms over government regulation of Internet, principle of balance of right-holders and users. Absence of unified standards of synchronization of digital hardware and high cost of automated systems of control with exclusive rights within the Internet network (e.g. Swiss DRM) oppose the development of digital economy. The results of the study can be used in further development of the stated problems.

Keywords: *Intellectual property, digital economy, free license, commercialization of intellectual products, legal integration, innovational structure, Creative Commons.*

[1]*Ph.D. in Law, The Russian Presidential Academy of National Economy and Public Administration, Rostov-on-Don, e-mail: shatkovskaya.tv@gmail.com*
[2]*D.Sc. in Economics, Rostov State University of Economic, Rostov-on-Don, e-mail: rostovshell@mail.ru*
[3]*D.Sc. in Law, Rostov State University of Economics, Rostov-on-Don, Russian Federation.*
[4]*D.Sc. in Sociology, Rostov State University of Economic, Rostov-on-Don, e-mail: fedorenko_vladim@mail.ru*

1. Introduction

Modern IT community set legal problems that are of revolutionary character, as they require to reassess traditional approaches to legal regulation of intellectual property. This requires a breakthrough in defining the legal nature of new socio-economic phenomena, that are supported by the wide implementation of information and communication technology. Thus according to Internet World Statistics, that analyses statistical data related to Internet, the total number of users globally accounts for 3 731 973 423 people, as of 31st of March 2017 (49,6% of the global population). Russia is placed 7th in the list of top 20 most active countries in terms of Internet use (number of users is 104 553 691 people, 72,9% of the total population). According to the Russian Government officials in 2016, the share of people actively using Wi-Fi Internet access is 18,77%.

The newest perception of the economy has emerged in the previous century, and today we can see governments initiating programs for digital development. Thus, 28th of July 2017, the Russian Government has approved the "Digital Economy of the Russian Federation" program. This document defines the digital economy as the ecosystem, in which the digital data is the key factor of production in all spheres of socio-economic activity, effective interaction is supported, including business, scientific, educational community of government and its citizens. Formation of digital economy architecture requires the removal of a number of legal restrictions present in legislation, as well as solving the problems such as: contradictions between existing network rules, acting norms between international and domestic laws and differences between doctrine approaches regarding the utilization of common jurisdiction tools in the cyber-sphere (Kalogeridis *et al.*, 2016).

The format of the study cannot address the discussion regarding all the problems. Therefore, the authors refer to the development of legal standards of free usage of IP, which on one hand will provide the protection of copyright infringement in the digital sphere. On the other, it will allow to transfer from exclusive rights and monopolistic privileges limiting competition, towards free movement of IP, based on the principles of human rights sovereignty, free information creative work transfer, societal interest balance, need for government control, market competition and free information access (Shatkovskava *et al.*, 2017; Emelkina, 2016).

2. Methodological and conceptual basis of the study

Conceptual basis for the study is the theory of free culture, developed by Lessig, (2004) which has become the basis for transition from jurisdiction construction of permission based relations, towards free availability of results of intellectual activity. Lessig offers to expand the sphere of free access and integrate it with the Internet network. "Free" doesn't necessarily mean free of charge, non-commercia

and uncontrollable. The author talks about the expansion of existing limits of rights as a result of Internet development, which has led to widely spreading international and domestic laws targeting arts, which has traditionally evolved via interpreting and using commonly available cultural heritage. Active integration of legal limits and barriers "blocks" the sphere of free usage of scientific, creative and cultural achievements, imposing constraints on the authors of new generation to refer to the predecessors in order to improve and amplify existing results of intellectual activity. Web technology allows to distribute these results almost instantly amongst huge groups of people. Therefore, modern makers of legislation are faced with the problem of balancing between exclusive rights and interests of the consumers. Moreover, the latter include the creators of modern technology, that are in need of community and government support (Vovchenko *et al.*, 2016; 2017).

This study is aimed at producing practical recommendations in order to overcome the conflicts between the monopolistic nature of legal IP construction and the existence of a unified information system, rethinking the existing doctrines and the formation of legal standards and tools, that will contribute towards digital economic development, as well as to define the relationships in the digital sphere. In order to implement this target the following methods will be required. Method of logical elimination extracted from the founding principles of law, used to legally qualify the relationships, that are related to the utilization of IP in digital sphere.

Systematic method used to investigate separate elements on the institute of free licenses, defining their place in the system of law. In fact, all the elements are considered as objects with a number of features, that are exhibited dependent on its place in the hierarchy and stage of development. The main point of the theoretical modelling method is to substitute the real object within the social sphere by a theoretical model, which allows to avert the breach of citizens interests. Afterwards the results of the study are transferred onto the original.

3. Practical realization of the concepts of free intellectual property use in the digital economy sphere

Practical instrument for implementation of the concept of free use of intellectual property is the institute of licenses, that allows any IP creator to obtain the rights to use the IP from the author in a simplified way. Widespread use of licenses allows the author to realise one's right for being rewarded for exclusive rights. Furthermore, open licenses expand free completion and under the market influence are able to define real commercial value of intellectual product. Notably, despite global spreading of free licensing models and active discussion of their implementation in academic sphere, amongst legislators – a unified method of understanding free licenses hasn't been developed.

We agree with Gorodov (2011) defining licenses based on the type of offer, targeting the aims to fulfil a licensed deal – into open and standard licenses. Given this, open licenses are defined by the absence of the addressee of the offer, which is expressed by the readiness of the patent-holder to agree to the deal with anyone.

Due to the fact that in various national legal systems there are significant differences of legal support for licensing, Creative Commons (CC) has offered a model of universal open licenses, that allow to use intellectual products to an unlimited number of participants internationally (dependent of the type of international license) on a free-of-charge basis.

The terms of open licenses allow for commercial or non-commercial use of objects of copyright available via Internet. The proposed universal model is adapted to fit the legislative criteria of 55 countries, which is ensured by foreign legal practices. However, CC licenses are not suitable for authors receiving any commercial benefits, and are applied with the aim to popularize art and develop innovations in the digital sphere. For users seeking for more freedom while using the object there is another type of licensing called Attribution, which allow to spread copyright products under the condition of mentioning the author.

The potential of free licenses for further sphere development is supported by leading governments in innovation development. Thus, on the 28th of May 2003, during the 840th meeting of the Ministry Committee of the European Council, a legal act that ensures the basic principles of Internet freedom protection has been passed – "Declaration regarding Freedom of Internet Communication". In order to simplify the software use on the territory of European Union, the license compatible with acting alternative licenses of the GPL and CC type has been developed.

4. Conditions and potential for open license use in the Russian Federation

Modern development of Russian government is aimed at the development of legislative mechanisms of free usage of various results of intellectual activity within the information and TV communication. Thus, the Strategy for IT development in the Russian Federation for the period 2017-2030, accepts the development of digital economy as a national interest alongside with development of human potential. Perspectives of this strategy are supported with statistical data. According to the research conducted, Runet is considered the most active segment of the Russian economy. GDP input of Runet was estimated at 2.4% in 2015.

However, the establishment of key institutes, which create the conditions for the necessary digital economic development, can be performed using the allowance method for the intellectual property in the IT sphere. The licenses offered by the

Ministry of Communication of the Russian Federation contain limiting terms for the users, that are related to the further spreading of the contents of the agreement.

The institute for free usage of results of intellectual activity is present within the Russian legislation without any reference of monetary reward for the author. However, the list of types of use of those results is not freely available, which limits the ways of further utilization of the objects, given technological development.

Therefore, legislation becomes a barrier for digital economic development. In fact, such tendency is common for a majority of countries, where actual behaviour of Internet users goes beyond the boundaries of existing legal framework. Hence, evaluation of Internet users activity is fully dependent of the judicial approach towards defining the limitations and legislative exceptions regarding Intellectual Property.

Here it is recommended to follow the example of French Intellectual Property Codex and German Copyright Regulation, which account for transfer of rights in the form that is not existent on the date of agreement.

Considering the model of free licensing in the Russian law, legislator has accounted for 2 mechanisms of implementation; public statement of rights holder allowing any party to freely use the product (Part 5, p. 1233 CC of the Russian Federation) and a new type of author licensed agreement, referred to as “open license” (Article 1286.1 CC of the Russian Federation). The above types of free licenses are different from the authors’ point of view, and we have to point out that the mechanisms stated in Article 1286.1 CC of the Russian Federation is more effective and attractive for both users and right holders. The reason is that the legal structure of the public statement (Part 5, p. 1233 CC of the Russian Federation) is not fully developed.

Open license mentioned in (Article 1286.1 CC of the Russian Federation) is a licensed agreement regarding exclusive rights transfer to use the copyright on the conditions of non-exclusive license in a simplified order. Article 1286.1 CC of the Russian Federation states that an open license is an attachment agreement. Part 4 of Article 1286.1 CC of the Russian Federation ensures the right to reject the agreement from the side of licensee, in case the user provides access to third parties beyond the terms and conditions mentioned in the open license. This serves as a normative basis implementing “Creative Commons” in Russia, denoted as “SA”.

Article 1286.1 CC of the Russian Federation, doesn’t talk about the situations, where and open license is issued given the acting exclusive licenses. In compliance with Article 1286.1 CC of the Russian Federation, licensor is not entitled to use the product of Intellectual Activity or means of individuality in the boundaries, in which the right to use such product is provided to the licensor by the agreement of

exclusive licensing. Therefore, open license cannot be issued, given the acting exclusive licenses. However, due to the anonymity of relations within the Internet network, users opting for the free license may not know about other exclusive licenses agreed to by the licensor, which is another reason for necessary updates in the current legislation.

It is important to point out the unresolved issue about the responsibility of users in case of an open license being invalid and freedom from responsibility for breaching Intellectual Property Rights. Common Rules state that the licensee will bear responsibility for breaching the intellectual property rights in case of guilt (if one was aware or was supposed to be aware about validity status of the open license). Regarding sole traders, guilt will have significance (part 3, p. 1250 CC of the RF). Therefore, given that Article 1286.1 CC of the Russian Federation doesn't contain other mention, we can assume that open license is any free license (Creative Commons, GNU and others), which complies with the terms of Article 1286.1 CC of the Russian Federation. This gives us reasons to believe in spreading of open licenses, the subject of which will be the right to use the product of science, literature or art as digital content in the Internet network.

Overall, practical implementation of free licensing institute contains huge commercial potential, as it provides for effective IT society functioning in the digital epoch in 2 directions; widening of free choice for the right holder in determining the volume of legal protection for IP and implementation of social purpose of IP. Tendency towards the total commercialization of intellectual property is supported by the growth of digital economy, highlights the potential of widespread free licensing in the Internet network. Volume of digital content in Runet in 2015 has totalled as: electronic books – 1,61 bln RUB (67% growth compared to 2014), games – 46,7 bln RUB (14% growth compared to 2014), online music – 2,33 bln RUB (6% growth compared to 2014), online videos – 3,8 bln RUB (9% growth compared to 2014).

5. Discussion

Relying on the information stated above, we believe that Lessig's (2014) idea about requirements to define intellectual property as commercial and non-commercial needs to be further standardized. The creator of the product needs to determine the products further use. Sphere of non-commercial use needs to be exempt of any legislative barriers, ensuring author rights for the inventor. The following requirements are successfully satisfied by the implementation of Creative Commons licensing.

Commercial use implies registration of the object, which can be carried out in various ways, including government registration. The latter should be simplified to a

maximum level, increasing the speed via wide-spread use of the newest available technology. Moreover, we regard the development of regional data bases for Intellectual Activity as sensible, as well as the creation of centralized Internet portals, containing unified data base similar to the Centralised Portal within the EU.

Legal instrument of commercial objects protection can be the use of copyright. We believe that the preservation of the copyright in order to protect the interests of authors and other holders of intellectual property rights as essential. However, the time period for expiration of exclusive rights should be limited with the opportunity to extend based on the holders' initiative given further use of the object, to the period that does not exceed the limits stated in the law. We regard the changes related to the deadlines of expiration of exclusive rights stated in the industrial prototypes of the Russian Federation as sensible (5 years with the opportunity to extend; no longer than for 25 years). Objects, that no longer require protection become publically available.

Economic effect of issuing open and free licenses significantly curb government spending on the development of innovative products given the simplified procedures for creation of Intellectual property and significantly reduce spending of license purchasing; demonopolize and improve competitiveness in the digital economy sphere, expanding the government's intellectual frontier. Important condition for validity of free (open) licenses is the compatibility of nationally developed models with the existing alternatives of these models. Despite this, it is necessary to ensure that the authors are able to extract monetary benefits from others using the results of their intellectual activity. This requires the expansion of use of free licenses on the monetary exchange basis.

Exterritorial character of licensing sphere of exclusive rights in Internet and active use of free market mechanisms for attracting right holders and users expands the opportunities for commercial organizations in the sphere of exclusive rights management and therefore attracts investment and improvement of legal standards for the activity of such organizations. For example, for organizations representing licenses on the territory of the European Union there are existing requirements for obtaining Intellectual Property rights in Internet. Constant turnover, saving and storage of information in the Internet space that is regarded as IP requires legal backing of freedom of some types of copyright, in the form of short-term storage, as well as transfer which is also part of the technological process. An example of such implementation can be the process of cashing, which is compliant with the EU Directive 2000/31/EU, where data is first stored in fast-memory, before being analysed by the processor. One of the possible solutions to the problem can be extracted from the experience of Great Britain.

Law "Regarding the regulation of author and shared rights" as of 31st of October 2003 (Copyright and Related Rights Regulations 2003) which was accepted with the aim to unify the legislation of Great Britain with the norms of the EU, particularly with the European Parliament Directive and the Council of the European Union "About the Harmonization of some of the aspects of author and shared rights in the IT community" as of 22nd of May 2001 2001/29/EU (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society). Part 2 of the Article 8 28A Law 2003 states, that author rights for texts (except computer programs and databases) or sources in their original form; fiction literature, art, paintings, music or films – is not breached when a short-term copy is created, which is in its transition form, the only aim of which is to allow legal use without commercial context.

6. Conclusion and Recommendations

Therefore, the experience of communicative relationship of subjects in the Internet space allows to highlight the most socially significant approaches in order to achieve communality while preserving individuality of each participant in agreement between them. The most common rules of communication, established in the Internet network as they are should be legally documented. Part of the standards exist in the form of concepts and require practical implementation Other standards, have received legal interpretation, for example the EU Directive "About the collective management of author and shared rights" ensures the priority of market mechanisms over government management in the Internet network.

The principle behind the interest balance is realized in accordance with the TRIPS Agreement. It states that support for Intellectual Rights obedience should enhance technology spreading from the position of mutually beneficial relations between right holders and users, contributing towards social and economic well-being. Following TRIPS, the balance of interest is also ensured by the Agreements of World Intellectual Property Organization of 1996. These highlight the necessity to support the balance of interest of authors and the community, which is expressed by the harmonic development of education sphere, scientific research, information access and digital economy.

Overall, the foundation for the free use of intellectual property should be formed by the principles of equity and fairness. Their modern definition is exercised in the theory of fair use of Intellectual Property Results. The presence of legal boundaries in the fair use of IP limits the freedom of scientific and other types of creative activity and contracts the development of internet entrepreneurship, granting the author not only with rights to use the object one has created, but also controlling the turnover of all the related objects, based around this invention.

Implementation of the concept of fair use stimulates innovation. However, its practical implementation must be balanced by the flexible system of limits for exclusive rights, aimed at eliminating rights abuse and breaching human rights, ensuring national security and altogether allowing for the opportunity to develop successful business models, based on the user content.

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