

Artículo de investigación

Protection of copyright on the Internet

Захист авторського права у мережі Інтернет

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Abstract

The problem of improving of legislation in the field of copyright protection is one of the urgent problems facing modern legislation. Due to the rapid development of information and communication technologies, dishonest users have the opportunity to post fragments of other people's creative works on their sites without reference to the author, source of borrowing and without disclosing information about the owners of the site.

According to the main international copyright convention, the Berne Convention for the Protection of Literary and Artistic Works (1886), copyright protection covers a wide array of human creativity - all "literary and artistic works." Due to the process of digitization all these forms of creativity can be transmitted across the Internet and in case of violation of rights to them, a mechanism for their protection should be developed in a modern society.

It is concluded that information is transmitted via the Internet mainly in the form of creative works that are object to copyright. Moreover, the implementation of any formalities and the fact of publication of the creative work are not needed.

Анотація

Проблема вдосконалення законодавства в сфері захисту авторських прав є одним із актуальних завдань, що стоять перед сучасним законодавцем. Обумовлена вона тим, що у зв'язку із стрімким розвитком інформаційних і комунікаційних технологій у недобросовісних користувачів з'являється можливість розміщувати фрагменти чужих творів на своїх сайтах без посилання на автора і джерело запозичення, без розкриття інформації про власників сайту.

Відповідно до головної міжнародної конвенції про авторське право, Бернської конвенції про захист літературно-мистецьких творів (1886 р.), захист авторських прав охоплює широкий спектр людської творчості - усі "літературні та художні твори". Завдяки процесу оцифрування всі ці форми творчості можуть передаватися через Інтернет, і у сучасному суспільстві має бути розроблений механізм їх захисту в разі порушення прав на них.

Зроблено висновок про те, що інформація передається через Інтернет переважно у вигляді творів, які підлягають охороні

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The peculiarities of the legal regime of creative works placed on the Internet, the rights of which are the object of civil protection, were disclosed in the article. The author discloses problems of copyright protection for works posted on the Internet, including the problem of identification of the offender. In the article it is also identified basic ways to protect copyright, such as self-defense and judicial protection.

The author examines issues of copyright protection for creative works posted on the Internet. Technical and legal means and methods of protecting the rights of authors are analyzed, which allow effective protection of creative works placed on the Internet both before and after their infringement.

In the article it is argued that the protection of interests of copyright entities on the Internet depends to a large extent on the technological means that they use. The evolution of these tools and techniques will diminish the role of copyright as a regulator of civil legal relations on the Internet.

Keywords: Intellectual property, copyright, related rights, protection of copyright and related rights, Internet.

Introduction

From the development of the World Wide Web in the 1990s, the Internet has become a network linking people in different countries throughout the world. It is the instrument for exchanging and sharing of ideas, information, goods and services. Therefore, the Internet is used for the accumulation, processing, storage and transmission of data (Ennan, 2019).

The digitization (Barlow, 1996) of works of intellectual property has enabled the intellectual property to transfer so efficiently to the Internet. There are numerous e-commerce companies that trade in physical objects of intellectual property. For instance, Amazon proposes vast databases of book, video and music titles and has created purchasing systems to attract consumers to buy

авторським правом будь-якої з країн Бернського Союзу, нарівні з творами, закріпленими в більш традиційних формах, за умови відповідності встановленим законодавством країни критеріям охорони. При цьому виконання будь-яких формальностей і факт опублікування твору значення не має.

У статті розкрито особливості правового режиму творів, розміщених в Інтернеті, права на які є предметом цивільного захисту. Автор розкриває проблеми захисту авторських прав на твори, розміщені в Інтернеті, включаючи проблему ідентифікації правопорушника. У статті також визначені основні способи захисту авторських прав, такі як самозахист та судовий захист.

Досліджуються проблемні питання захисту авторських прав на твори, розміщені в Інтернеті. Піддається аналізу технічні і правові засоби і методи захисту прав авторів, що дозволяють ефективно захищати розміщені в Інтернеті твори як до моменту їх порушення, так і після.

В роботі аргументується точка зору, відповідно до якої захист інтересів суб'єктів авторських прав в Інтернеті в значній мірі залежить від технологічних засобів, які вони застосовують. Еволюція згаданих засобів і прийомів призведе до зниження ролі авторського права як регулятора цивільних правовідносин в Інтернеті.

Ключові слова: право інтелектуальної власності, авторські права, суміжні права, захист авторського права та суміжних прав, Інтернет.

in Internet with delivery of works of intellectual property to consumers using postal mail.

Today copyright legislation is a part of international Intellectual property law and is similar in the whole world. International Treaties and Conventions has been developed in order to insure same rights and protection in each state. The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention, 1886) was the first convention in a field of copyright law. Under this treaty, all member countries - and there are more than 100, including virtually all industrialized nations - must afford copyright protection to authors who are nationals of any member country. This protection must last for at least the life of the author plus 50 years and must be automatic without the need for the author

to take any legal steps to preserve the copyright. The introduction of the WIPO Copyright Treaty 1996 (WIPO Copyright Treaty, 1996) and the WIPO Performances and Phonograms Treaty 1996 (WPPT) (called as the “Internet Treaties”) led to further development of the system of copyright protection (Shishka, 2002). The GATT (General Agreement on Tariffs and Trade) treaty contains provisions for affective copyright protection in signatory countries.

The main problem of protecting intellectual property rights on the Internet is the unstoppable growth and popularity of the Internet, especially online social media platforms. Law regulation of various government legislative bodies on the field of protection of copyrighted works and materials can't keep up with the rapid rise of new technologies.

Due to the process of digitization all forms of creativity can be transmitted across the Internet and in case of infringement a mechanism for their effective protection should be developed in a modern society. So the issue of protection of copyright on the Internet becomes more and more relevant every year.

Traditional means for protection of copyright are not able to solve the problem. Capabilities of modern technologies such as distributed ledger (block chain) and smart contracts can guarantee protection and create a new market for intellectual products and services.

In Ukraine, the problem of copyright infringement on the Internet has not been regulated on a legislation level for a long time. Only after amending the Law of Ukraine «On Copyright and Related Rights» (Law of Ukraine “On Copyright and Related Rights”, 1994) in 2017 an effective non-jurisdictional mechanism for protecting copyright has appeared in Ukraine (Art. 52-1 of the Law of Ukraine «On Copyright and Related Rights»).

The purpose of this article is a comprehensive, systematic research of different legal strategies that should be coordinated and maintained to protect copyright on the Internet; identifying conflicts, gaps and inconsistencies in the field and providing suggestions and recommendations for improvement of Ukrainian legislation in this field.

Analysis of recent research

The appearance of the Internet has caused a number of legal issues, most notably the

problems of protection of copyright. Copyright is one of the most important types of protection of intellectual property on the Internet for at least two reasons. First, most of the material transmitted on the Internet (texts, images, audio signals) are creative works in a legal sense and are therefore objects to copyright. Secondly, since the very nature of electronic telecommunications requires multiple copies of data in the process of transmitting them by communication channels and acquaintance with them by an unlimited range of consumers, problems of copyright protection arise. As the Internet becomes increasingly used as a method of selling and delivering of information without national boundaries, issues of protection of copyright on the Internet will become increasingly important.

The elimination of a huge gap that exists between copyright and public relations arising from the use of the Internet and other information technologies is possible only through the systematization of legislation on copyright in Ukraine and bringing it into line with international standards in this field.

Ukrainian copyright law is mainly consists of the provisions of the Civil Code of Ukraine (Civil Code of Ukraine, 2003) and the Law "On Copyright and Related rights", which poorly meet requirements of protection of copyright in the digital age. In Ukraine, provisions on the procedure for termination of copyright infringement using the Internet appeared in the Law "On Copyright and Related rights" only in 2017. Many of the questions covered by the Ukrainian legislation are still unsettled and are likely to remain so.

In Ukraine issues, related to the legal aspects of the functioning of the Internet, have been investigated by many scholars: Androshchuk, Ennan, Pastukhov, Shabkhazian, Shishka, Shtefan, Vashchynets, Zerov and others authors. However, a comprehensive study of the problems of the protection of copyright on the Internet has not been carried out so far. Therefore, problem of protection of copyright on the Internet remains uncontested relevant.

Methodology

Research methods follow from the requirements of a comprehensive and objective analysis of the protection of copyright and an interdisciplinary approach to the tasks. The research was carried out on the basis of formal-logical, comparative-

legal, historical methods and purely legal techniques.

Using the formal-logical method, the provisions of the legal acts in the field of protection of copyright have been analyzed. The formal-logical method gave the opportunity to study the provisions of the legal acts of Ukraine, United States and United Kingdom, legal acts of the European Union on the protection of copyright of member states.

On the basis of the comparative-legal method, a comparison of the provisions of the laws of Ukraine and other countries is made, which allows to define the concept of copyright, to distinguish not only common but also different in regulation of legal protection of copyright, identify gaps in civil Ukrainian legislation, to resolve the problems of legal regulation.

The historical method was used to study the formation and development of the mechanism of civil legal protection of intellectual property rights.

Presentation of key research findings

Intellectual property is very important in digital environment, because business assets have been transformed in intellectual as opposed to physical property. For many online companies, for example, their databases of customer information, as a subject of intellectual property protection, create their trade value (Rose, 2002). The main idea of copyright and its essence has been preserved to this day almost unchanged. This is the idea of controlling the use of works of art on the basis of copyright exclusivity, which is able to generate income for the author of a work, thereby stimulating his work. The essence of the copyright system is the balance between, on the one hand, the moral and material interests of the author and, on the other hand, the interests of others and society in the use of works.

All participants of intellectual property community, including film and music creators, software developers, authors and publishers, are now exploring opportunities how to protect their rights and receive incomes from using their products on Internet. To some extent, the uptake of fee-based intellectual property services is dependent on the efficient management of these rights, as well as the availability of workable and secure methods of micropayments that would enable pay-per-unit purchases, and the building of consumer confidence in online payment security, privacy and consumer protection. At the

same time, however, creators and intellectual property rights holders need to feel sure that they can protect their property from piracy and control its use, before they will be willing to make it available online (World intellectual property organization. Intellectual property on the Internet: a survey of issues, 2002).

According to the main international copyright convention, the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention, 1886), copyright protection covers a wide array of human creativity - all "literary and artistic works." This term includes different forms of creativity, such as writings (fiction and non-fiction), including scientific and technical texts and computer programs; databases that are original due to the selection or arrangement of their contents; musical works; audiovisual works; works of fine art (drawings and paintings); photographs. Related rights give the protection to the creative contributors who add value in the presentation of literary and artistic works to the public: performing artists, such as actors, dancers, singers and musicians; the producers of phonograms; and broadcasting organizations.

Works first published need not include a copyright notice to gain protection under the Ukrainian civil law. But it is hardly recommended to include a copyright notice to make it easier to win a copyright infringement cases and collect enough damages to form the cost of the case. And of course a copyright notice make it easier for a person to receive an author or a copyright owner a permission to use the work. A copyright notice should contain: the word "copyright", a "c" in a circle (©), the date of publication, and the name of either the author or the owner of all the copyright rights in the published work.

A computer program is an object of protection of copyright as a work of literature. Copyright for a computer program arises at the time of its creation and does not require mandatory registration. But today there is not enough one "presumption of authorship" for a computer program, so creators of computer program prefer to register their rights in the special Registers, as it has a number of advantages. At the same time, despite the obvious advantages of registering the computer programs, copyright protects only the form of objects and the embodiment of ideas, but not the essence of the objects and not the ideas themselves. Copyrights may only be applied to protect against general reproduction of the program and for copying computer code.

The advantage of patent protection for computer programs lies in the ability to protect a particular algorithm embodied in a computer program from being used by others without permission. Currently, the software products can't be registered as inventions. However, in order to obtain a patent, it is necessary to apply for registration of the algorithm of the program as a solution of a specific problem. The algorithm, its essence and stages are written in a clear verbal form, and then supported by diagrams and flowcharts. Although this procedure is difficult, it is best suited to protect computer program.

In Art. 50 of the Law of Ukraine "On Copyright and Related Rights" Ukrainian legislation contains a list of actions that may qualify as infringement of copyright and, consequently, as grounds for appeal to the court for protection. According to this Law, copyright infringement is:

- Committing any acts that violate personal non-property and copyright rights, as well as abuse of officials of the organization of collective management of property rights;
- Piracy in the field of copyright - publication, reproduction, importation into the customs territory of Ukraine, export from the customs territory of Ukraine and distribution of counterfeit copies of works (including computer programs and databases), phonograms, videograms, illegal promulgation of programs of broadcasting organizations, as well as Internet piracy, i.e. committing any actions that are recognized as copyright infringement using the Internet;
- Plagiarism - the publication, in whole or in part, of someone else's work under the name of a person who is not the author of the work;
- The import into the customs territory of Ukraine without the permission of copyright holders, copies of works (including computer programs and databases), phonograms, videograms, broadcasting programs;
- Committing acts that threaten copyright;
- Any actions to deliberately circumvent copyright protection techniques;
- Falsifying, altering or deleting information, including in electronic form, about rights management;
- Camcording - a video recording of an audiovisual work during its public

demonstration in cinemas by persons in the same premises for any purpose without the permission of the owner of copyright;

- Cardsharing - providing access to a broadcasting program without the permission of the owner of copyright.

The list of copyright infringement is general and non-exhaustive. This is absolutely correct, because the modern development of technologies has considerably expanded the range of possible offenses in the field of copyright (Shtefan, 2009). Non-jurisdictional procedure for termination of copyright infringement on the Internet provided in Art. 52-1 of the Law of Ukraine "On Copyright and Related Rights". This procedure applies to relationships involving the use of a limited list of objects: audiovisual works, musical works, computer programs, videograms, phonograms, broadcasts (programs) of broadcasting organizations. This list of works is formulated as exhaustive and united by the concept of "electronic (digital) information". Thus, the protection does not apply to such works as photographs, graphic design objects, and, in fact, literary works, which include any texts regardless of their genre, orientation and aesthetic level. For some reason, they forgot about the database. But the rights of the authors of these types of works are violated on the network, and maybe even more often than the rights of authors of music or films.

Moreover the procedure can be used only in cases of violation of property rights, although at the same time personal non-property rights can be violated also on the Internet.

The Law of Ukraine "On Copyright and Related Rights" also states that the attorney must confirm according to the documents provided by the applicant the fact of the applicant's rights. This provision is not consistent with the principle of automatic protection of copyright provided in Art. 11 of the Law of Ukraine «On Copyright and Related Rights».

In accordance with the Law of Ukraine "On Copyright and Related Rights", an application for termination of copyright infringement should be submitted to the site owner, and a copy of such an application should be sent to the hosting service provider. If the owner of the site is not known, as well as a repeated application, it should be submitted directly to the hosting service provider.

An application for termination of copyright infringement must contain, among other things, the term of copyright validity. As a general rule in Ukraine, copyrights are valid throughout the life of the author and for 70 years after his death. If the claimant is the author himself, he/she cannot objectively know what the term for property rights to his works will be (Shtefan, Zerov, 2017).

Therefore, the order of self-protection of copyright on the Internet cannot be considered satisfactory and other specific means for copyright protection should be considered.

Under the Art. 52 of the Law of Ukraine "On Copyright and Related Rights" for the protection of copyright creator have the right to apply to the court and other bodies in accordance with their competence. The court has the right to make a decision on: compensation for moral (non-pecuniary) damage caused by copyright infringement, with the determination of the amount of compensation; compensation for losses caused by copyright infringement; recovering from the copyright infringer the income received as a result of the violation or paying compensation, instead of damages or recovery of income; the prohibition of the publication of works, their performances or productions; the requirement to open the information about third parties involved in the production and distribution.

The technical capabilities of the Internet have created new problems in the field of protection of content on the Internet. The term "content" can be defined to include all materials, information, text, graphics, images, logos, photographs, illustrations, audio clips, video clips, and audio visual material available on the Web site. So, the most convenient and efficient way to find the information that the subscriber needs in the "home pages" are special search programs that automatically "scan" a lot of documents stored on the servers and display them on the subscriber's computer. Since the search process takes a split second, it is unrealistic to obtain the consent to copy even of one "home page".

To solve the problem of copying the "home pages", the concept of "implied license" is used, which the owners of the "network sites" have as a result of placing their information on the network. If access to such information or service is provided for a fee, then the consumer is informed in detail about the conditions under which he/she can use the proposed service (or information). In a case of free access, the

consumer has the right to use it, but not for the purpose of a profit. The criteria for "non-commercial" use correspond to the general principles of protection of copyright and are specified by judicial practice.

Contractual terms of use on Web site are one of the most important legal means for protecting content on the Internet. These contracts, can be in the form of click wrap or browse wrap agreements, are valid and enforceable after the review of the terms of use applicable to the site by users. Terms of use on Web site should be used as a first level to protect the copyright and other intellectual rights to such content.

Copyright holders should take advantage of the new tools to mark their content with electronic fingerprints and monitor cyberspace with software agents and bots to determine the cases of infringement of their intellectual property rights and track how the unauthorized use occurred.

Conclusions

This article provides a brief statement of what is copyright law based on the Ukrainian legislation which is similar to the whole world and its relationship with international law, examines how the copyright law has respond to the challenges of technological development.

Protection of copyright on the Internet requires a comprehensive legal strategy depending on the types of copyright. This strategy includes copyright protection provided in legislation (jurisdictional and non-jurisdictional order) and special contractual terms of use protection.

A significant disadvantage of the current legislation of Ukraine on intellectual property is the absence of a well-established economic and legal mechanism for determining the limits of use, the procedure and terms of fees for use of works. This fact significantly reduces the effectiveness of legislation in the field of protection of copyright, which influences the level of creative activity.

The conclusion was made about the advantage of patent protection of the computer program. The advantage is in the ability to protect a particular algorithm embodied in a computer program from being used by others without permission.

It turned out that in Ukraine, an application for termination of copyright infringement is submitted to the site owner, and a copy of such

an application is sent to the hosting service provider. If the owner of the site is not known, as well as a repeated application, it is submitted directly to the hosting service provider. The procedure for termination of violation of copyright and related rights on the Internet is optional according the Ukrainian law. Author or other authorized person may choose other ways of self-defense.

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