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VIOLATION OF COPYRIGHT AND RELATED RIGHTS ON THE INTERNET: HOW TO PROTECT YOURSELF AND YOUR CREATION

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Purpose: the purpose of the research paper is to analyze reasons for the most frequent violations in the field of copyright and related rights to objects posted on the Internet, to study ways of their protection, and to provide for preventive methods of dealing with the violations of rights and freedoms of rightsholders. **The methodological basis** of the study comprises general scientific, philosophical, ideological, method of analysis and special methods. **Results:** the protection of copyright and related rights on the Internet is a complicated task because of the need to ensure a balance between the mentioned rights and the freedom to disseminate and receive information. The author gives her recommendations on how to prevent the infringement of copyright and related rights on the Internet and how to protect them using out-of-court (extrajudicial) and judicial procedures. **Discussion:** learning the essence of copyright and related rights, clarifying the essence of their normative regulation, description of the works that most often become the object of violation of rights, searching for methods and procedures to protect violated intellectual property rights on the Internet.

Key words: cyberspace; intellectual property; intellectual property law; violation of intellectual property rights; cyber environment; protection of intellectual property rights in cyberspace; internet cyber crimes.

Problem statement and its relevance. The Internet today plays a particularly important role not only in the life of almost every person but in general in world development. Taking into account the fact that Ukrainian society is an information society, in this regard it became necessary to create a sufficient legal regulation in the aforementioned area. After all, the World Wide Web is not only a global platform for communication, business, and other activities, but, unfortunately, a fertile field for various violations of the rights of authors, performers, trademark and patent owners, and other subjects of intellectual property rights.

Ukrainian society, like the societies of many other countries, is now going through a stage of digital transformation. The authorities develop and implement various services of public assistance, we actively exchange various information on the Web, communicate in messengers, and make purchases in

the field of e-commerce. That is why the problem of infringement of intellectual property rights on the Internet is now on the agenda of governments and the world community as a whole. Accordingly, without providing a sufficient level of protection for these objects, the interests of both representatives of the business community and individual consumers and even states as a whole will be seriously affected.

Analysis of research and publications. The issue was studied by M.V. Gura, O.A. Pidoprygora, O.M. Pastukhov, N.V. Trotsyuk, K.O. Zerov and other scientists.

Purpose of the article. This scientific research is devoted to the study and analysis of effective methods of protecting intellectual property rights on the Internet, as well as the development of recommendations for improving the current national legislation on copyright and related rights.

The presentation of the main material. While many Internet users are still convinced that if certain content is posted on the World Wide Web, then its creators automatically allow their free use. This is not the case, and there is a violation of the Ukrainian legislation on copyright and related rights. Let's look at when an infringer should be held accountable for violating copyright legislation and what mechanisms are available to protect intellectual property rights on the Internet.

But first of all, one should understand the basic concepts and categories that make up the subject of research. So, according to Article 1 of the Law of Ukraine dated December 23, 1993 № 3792-XII «On Copyright and Related Rights» (hereinafter referred to as the Law), the author of work should be considered an individual who created this work with his creative work. The author, according to Article 7 of the Law, is the subject of copyright, they also include other individuals and legal entities who have acquired the rights to works following a transaction or law.

At the same time, the objects of copyright in Article 8 of the Law include literary, artistic, scientific works, including literary written and oral works; dramatic and musical, computer programs and databases, photographs, audiovisual works, various sketches, maps, and the like, collections of works and other results of creative activity, the list of which is not exhaustive. Clause 2 of Article 11 of the Law is important for us, it declares the origin of copyright in a work upon its creation; accordingly, to exercise his rights, the author is not obliged to register or otherwise formalize his rights.

Having understood the basic concepts, it is necessary to determine which acts will be considered illegal and violating copyright. So, one of the widespread violations in this area is the posting of someone else's written work on the Internet without the consent of the respective copyright holder. According to Article 15 of the Law, the author (or the person holding the copyright) has the exclusive right to use the work and to permit or prohibit its use by others. But under Article 21 of the Law, you can freely use the work, provided that the authorship is indicated without the consent of the copyright holder. Cases of such free use are: citing an excerpt of work for justified purposes of quoting to

an extent or using it as illustrations; news reports or coverage of current events like ordinary press information; reproduction in catalogs of works; reproduction of works in braille; reproduction of works for judicial and administrative proceedings and other cases, an exhaustive list of which is contained in the article.

Accordingly, only with the permission of the copyright holder, you can post works on the Internet for public use.

It is also important to point out the possibility, according to Article 22 of the Law, of free reproduction by libraries and archives of copies of a work in a reprographic way, if such activity is not carried out to obtain commercial benefit. This is done when there is a suspicion that the original work may be lost, damaged, and the copy will be used for education, training or private research. The situation is more complicated with online libraries, which quite often illegally host copyrighted works. These are resources like Library Genesis and Twirpx, which aim to provide a free exchange of scientific and educational materials that users themselves upload to the website.

In our country, as noted by N.V. Trotsyuk, a very complicated procedure is provided for creating an electronic library with the origin of a Register of copyright holders for the published works and the conclusion of agreements with rightsholders, payment of remuneration and similar actions. And therefore, due to such a resource-intensive procedure, the scientist concluded that many Ukrainian electronic libraries illegally place copyright objects on their web resources [1, p. 106].

Similar to literary works, computer programs are protected, both in Ukraine and in most countries of the world. Article 18 of the Law specifically indicates that Computer programs are protected as literary works, and regardless of the method or form of their expression [2]. A.M. Grabovskaya in her research analyzed the legislation of the leading countries of the world on software protection. For example, India has the Copyright Act of 1957, which regulates the original expression of software. The UK Copyright Act identifies all types of technological works that are used with computers, tablets, smartphones, or video game systems among the relevant objects. It is important to indicate in this

normative legal act the distribution of copyright to works that are used or distributed on the Internet. Canadian law protects software as a literary work, as does Pakistani law (under the Copyright Act 1962). The scientist notes that in the member states of the European Union, computer programs are also protected by copyright, and for them, there is a Directive on the legal protection of computer programs as literary works in the sense of the Berne Convention for the Protection of Literary and Artistic Works [3, p. 109-110].

An interesting object from the point of view of research is photographic works. Today, during the period of ongoing usage of social networks, Instagram has gained particular popularity, where these photos are used as the main object of self-identification, as a result of a hobby, and sometimes they play an important role even in professional activities. It should be noted that the legislation does not give a specific definition of the term «photography», and this, of course, is a direct path to collisions and other negative outcomes in the field of judicial protection of the corresponding copyrights.

It is important to understand how to interpret national legislation concerning photographs in the current conditions, for which we will analyze the requirements, the fulfillment of which will help to make photography subject to copyright laws. To begin with, the photo must contain the indication of the author, as a result of whose creative activity such an object of rights emerged. We have already established that an individual is considered to be such a subject, but today this issue is not agreed upon from the point of view of world practice, because many of us know the case of the so-called «monkey law», when the authorship of the photo was received by the monkey Naruto, and not by photographer David Slater. No less important is the originality of the photo, so the author must create it on his own (or in co-authorship with the same living people), and not «copy» it from a second person. Also, a minimum degree of creativity is required. So, in the case of photographic work, it is the author-photographer who formulates the composition, chooses the location and time for shooting, the angle of view, and the like. Still, as is clear, our legislation does not protect the idea, but specifically the objective (material) form of expression of

the work, as stated in Part 3 of Art. 8 of the Law. Accordingly, the picture must be printed on photographic paper, or, as an example, placed on a digital medium in one of the commonly used formats like .png, .jpg and the like [4, p. 26-27].

Concerning audiovisual works, from the point of view of copyright, rightsholders are subject to the same rights as in the case of any object from the previously named list. Also with performances, phonograms, videograms, and broadcasts (programs), there are related rights to which Section 3 of the Law is devoted. Thus, Article 35 lists these works as objects of related rights, Article 36 is dedicated to their subjects, namely performers, producers of phonograms and videograms, broadcasting organizations, and legal successors of these subjects. Part 2 of Article 37 declares that related rights arise in connection with the performance of a work, the production of phono- and videograms, and the publication of broadcasts by broadcasting organizations. And, as in the case of copyright, for the exercise of related rights, the holder of the right does not need to fulfill any formalities [2]. It is important to note that you will also have to conclude separate agreements with the indicated subjects of related rights if someone wants to use the objects belonging to them.

Thus, we can conclude that regardless of whether you wrote a poem, a song, or created a sculpture, the results of your creative activity require legal regulation and protection.

Let us pay your attention to the fact that for the violation of the copyright in our country, civil, administrative, and criminal liability is provided. So, the Civil Code of Ukraine in Article 22 provides that in case of violation of a person's civil rights and the presence of corresponding damage, the victim has the right to compensation. Such damage will be considered the losses incurred by the person and the costs of restoring his violated right, as well as the loss of profit, that is, the income that the copyright holder would receive if his rights were not violated. Article 23 speaks of the possibility of obtaining compensation for moral damage caused as a result of the violation of the rights of the copyright holder. In this case, the amount of pecuniary compensation for moral damage will be determined by the judicial authority, taking into account the na-

ture of the offense, the extent of physical and mental suffering, the degree of guilt of the offender and others, but taking into account the requirements of reasonableness and justice [5]. The author can also count on the recovery from the infringer of the income received by him as a result of copyright infringement.

In this case, it is worth considering the following. As noted by N.V. Filyk and N.V. Trotsyuk, the method of copyright protection specified in clause «r» of Part 1 of Article 52 of the Law, has a civil legal nature, and, at the same time, meets the general frameworks of national civil law. It is possible to apply for compensation as a measure of liability under an author's contract only if the parties establish a clear amount of this compensation, which thus equates such compensation with a penalty. At the same time, N.V. Filyk and N.V. Trotsyuk emphasize that the application of this method of civil legal protection is not perceived by the states of the continental system of law sufficiently loyally and, most importantly, it is contrary to European human rights standards. In turn, this may lead to an appeal against the relevant decision in the European Court of Human Rights based on a violation of the European Declaration of Human Rights. Scientists also clearly highlight that all the member states of the European Union have made appropriate changes to their national legislation on relevant issues, and therefore the Ukraine rule-makers should act in the same vein in the context of European integration processes [6, p. 50].

As for administrative responsibility, Article 51-2 of the Ukrainian Code of Administrative Offenses directly indicates the possibility of imposing a fine in the case of illegal use of an object of intellectual property rights (and, accordingly, copyright as an essential part of it), appropriation of authorship and other deliberate violation of rights on objects of intellectual property rights. The amount of the fine, in this case, will be from 10 to 200 non-taxable minimum incomes of citizens with confiscation of illegally manufactured products and equipment and supplies intended for such manufacture [7]. Note that in 2021, the non-taxable minimum income of citizens amounted to 17 hryvnias. At the same time, it is worth considering the norm contained in paragraph 5 of Section XX of the Ukrainian Tax Code:

«if the norms of other laws contain a link to a non-taxable minimum income of citizens, then for their application, an amount of 17 hryvnias is used, in addition to the norms of administrative and criminal legislation in part qualifications of crimes or offenses for which the amount of the non-taxable minimum is set at the level of the tax social benefit, defined by subparagraph 169.1.1 of paragraph 169.1 of Article 169 of Section IV of this Code for the corresponding year» [8]. Thus, the amount of the fine at the moment will be 170-3400 hryvnia.

Criminal liability is provided for in Article 176 of the Criminal Code for violation of copyright and related rights in the form of illegal reproduction, distribution of relevant works, for camcording, card sharing, and other intentional violation of copyright and related rights, as well as for financing these actions that caused material damage in a significant amount. In this case, the penalty will be the imposition of a fine on the culprit in the amount of 200-1000 non-taxable minimum incomes of citizens. Or such punishment can be replaced by correctional labor or imprisonment for up to 2 years. In the event of a repeated before-mentioned violation, or if it was committed by prior consent by a group of persons, the fine will increase to 1000-2000 non-taxable minimum incomes of citizens, or the punishment will be the imprisonment for a term of 2-5 years or correctional labor for a term of up to 2 years. Paragraph 3 of the same article provides for a fine of 2000-3000 non-taxable minimum incomes of citizens, imprisonment for 3-6 years, and a ban on certain positions or conducting certain activities for up to 3 years for violators from among officials or an organized group [9].

Today, in case of violation of your copyright and related rights on the Internet, you can use both judicial and extrajudicial procedures for resolving a dispute that has arisen.

Concerning the extrajudicial procedure, when identifying the «stolen» content, the copyright holder should contact the infringer and the site's owner with a demand to stop the violation of his rights. The site owner has 2 days (48 hours) from the moment of such a request to close public access to plagiarized content, as well as provide the copyright holder with information on the measures taken [10]. M. Izhevskaya also advises demanding

compensation for damage from the violator. In addition to this, it is worth notifying of the violation a special body whose activities are aimed at protecting intellectual property objects, and then contacting the search engine managers to remove the violator's web page from all possible requests [11].

Article 52 of the Law declares the right of the subject of copyright and related rights to go to court and other authorized bodies to recognize and renew his rights, as well as prohibit illegal actions. The court can decide on compensation for moral and material damage, recovery from the violator of the income received as a result of the violation, payment of compensation (lump sum), prohibition of publication of works, and the like [2].

Conclusion. Thus, protecting copyright and related rights on the Internet is not an easy task. The fact is that the essence of interaction in the world wide web is the transfer of information. In this regard, it is required to ensure a balance between copyright and related rights and the freedom to disseminate and receive information. The problem of ensuring the protection of the rights in question on the Internet, and with it - and counteraction to illegal acts is particularly complex. As already mentioned, plagiarism is especially common among the relevant violations, the same as illegal trade of objects of copyright and related rights, as well as of counterfeit products through web platforms. These acts are often accompanied by the spread of malware and applications, spam and violation of the rules for the processing of personal data. It is important to note that such violations are transnational.

You can and should protect your rights. To do this, you can use an out-of-court procedure for resolving a dispute, for example, in the form of an appeal to the offender with a demand to stop illegal actions, or to a provider with a demand to block the site. Also, everyone has the right to file a claim in court for the protection of his violated intellectual property rights. It is important to note that the burden of proof, in this case, is on you as the plaintiff. You will have to use all available materials in order not only to prove the fact of an offense but also that you have the very rights to demand the elimination of the violation, that is, you will need to prove, for example, your authorship. To do this, you can pro-

vide drafts and blanks of your work. But, again, where is the confirmation that they belong to your «pen»? To prevent such troubles from arising, we strongly recommend proactively protecting your work by registering the copyright. The certificate of such registration will become a sufficiently convincing document during the proof that you have the appropriate rights. Such a document, moreover, is valid in all countries participating in the Berne Convention, and it can be obtained using a quite simple procedure through the Department of Intellectual Property Development of the Ministry of Economy of Ukraine.

Our legislation provides for copyright protection of objects of creativity throughout the life of the author and another 70 years after his death, related rights are protected 50 years after the first recording and the first performance. Thus, you should not let the issues of protecting your copyright and related rights on the Internet take their course, because you can lose not only money but also your reputation, which is often much more important.

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ПОРУШЕННЯ АВТОРСЬКИХ ТА СУМІЖНИХ ПРАВ В ІНТЕРНЕТІ: ЯК ЗАХИСТИТИ СЕБЕ І СВІЙ ТВІР

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Інтернет сьогодні відіграє особливо важливу роль у житті майже кожної людини, а також у світовому розвитку загалом. Зважаючи на те, що українське суспільство є інформаційним суспільством, виникла необхідність створення та втілення у життя достатнього правового регулювання у зазначеній сфері. Адже Всесвітня павутина – це не лише глобальна платформа для спілкування, ведення бізнесу та іншої діяльності, але, на жаль, благодатний ґрунт для різних порушень прав авторів, виконавців, власників товарних знаків та патентів, а також інших суб'єктів права інтелектуальної власності.

Українське суспільство, як і суспільства багатьох інших країн, зараз переживає етап цифрової трансформації. Влада розробляє і впроваджує сервіси громадської допомоги, ми активно обмінюємося різною інформацією в мережі, спілкуємося в месенджерах, купуємо товари у представників електронної комерції. Саме тому проблема порушення прав інтелектуальної власності в Інтернеті зараз стоїть на порядку денному урядів країн та світової спільноти загалом. Відповідно, без забезпечення достатнього рівня захисту цих об'єктів, серйозно постраждають інтереси як представників бізнес-спільноти, так і окремих споживачів і навіть держави в цілому. Дане наукове дослідження присвячене вивченню та аналізу ефективних методів захисту прав інтелектуальної власності в мережі Інтернет, а також розробці рекомендацій щодо застосування чинного національного законодавства про авторське право та суміжні права задля забезпечення необхідного рівня охорони відповідних об'єктів.

***Мета дослідження** – проаналізувати причини виникнення порушень у сфері авторських та суміжних прав на об'єкти, розміщені в мережі Інтернет, дослідити способи їх захисту та передбачити превентивні методи боротьби з порушеннями прав та свобод правовласників. **Методологічну основу** дослідження становлять загальнонауковий, філософський, світоглядний методи, метод аналізу та спеціальні методи. **Захист авторських та суміжних прав в Інтернеті** – складне завдання, що спричинене необхідністю забезпечення балансу між зазначеними правами та свободою розповсюдження та отримання інформації. Автор дає свої рекомендації, як запобігти порушенню авторських та суміжних прав в Інтернеті та як захистити їх за допомогою позасудових та судових процедур. **Обговорення** в цьому дослідженні зосереджено на вивченні сутності авторських та суміжних прав, роз'ясненні особливостей їх нормативного регулювання, аналізі творів, які найчастіше стають об'єктом порушення прав, пошуку методів та процедур для захисту порушених прав інтелектуальної власності в Інтернеті.*

***Ключові слова:** кіберпростір; інтелектуальна власність; право інтелектуальної власності; порушення прав інтелектуальної власності; кіберсередовище; захист прав інтелектуальної власності у кіберпросторі; інтернет-кіберзлочини.*

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