

ISSUES OF PUBLIC AND PRIVATE LEGAL REGULATION OF SEPARATE SOCIAL RELATIONS

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LEGAL REGULATION OF COPYRIGHT ON THE INTERNET: GENERAL STATE

Андрій Кучук, Юлія Сігалова. ПРАВОВЕ РЕГУЛЮВАННЯ АВТОРСЬКОГО ПРАВА В ІНТЕРНЕТ: ЗАГАЛЬНИЙ СТАН. Актуальність дослідження обумовлюється необхідністю систематичного вивчення стану забезпечення авторських прав, зокрема через постійний розвиток інформаційної сфери. Вказується, що сучасній людині для розвитку своєї особистості важливим є доступ до мережі інтернет. Забезпечення доступу до мережі інтернет стало необхідністю для багатьох аспектів життя сучасної людини. Інтернет є безмежним джерелом інформації.

Метою дослідження є висвітлення загальних аспектів правового регулювання авторського права в мережі інтернет.

Наголошується, що Україна посідає перші місця серед європейських держав за кількістю порушень авторських прав в Інтернеті. Технологічний прогрес, з одного боку, покращив ситуацію щодо захисту авторських прав, однак, з другого боку, спричинив нові проблеми, які потребують свого вирішення.

Наводяться окремі приклади, пов'язані з конфліктами у сфері вирішення питань порушення авторських прав. Проведено аналіз національного законодавства щодо забезпечення авторських прав (загальні та спеціальні норми). Наголошено, що норми інституту авторського права, що закріплені у Цивільному кодексі України, не визначають особливості захисту авторського права щодо об'єктів, розміщених в мережі Інтернет.

Резюмується, що для вирішення викликів у сфері захисту авторського права в інтернеті в Україні необхідно: посилити контроль за дотриманням законодавства України у сфері захисту авторського права; запровадити ефективні механізми захисту авторського права в мережі Інтернет; адаптувати законодавство України до стрімких змін соціальних умов.

Ключові слова: авторське право, захист авторського права, Інтернет, Інтернет-піратство, цивільне законодавство.

Relevance of the study. Currently, the formation of a new generation of human rights is one of the important issues within the legal discourse. The essential nature of this generation of rights is connected with the development of the information technologies. Access to the Internet is crucial for the development of a modern person's personality. Modern technologies, in particular the Internet, actually play a key role in personality's development. Providing access to the Internet has become a necessity for many aspects of a modern person's life. The

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Internet is an unlimited source of information. A person can join various courses, read the news, explore the world and learn new ideas without leaving home, which expands opportunities for independent learning and personal development. By virtue of the huge volume of information on the Internet, a person can develop his critical thinking, analyze various sources of information and form rational opinions.

The Internet provides tools for self-expression, such as blogs, videoblogs, and social media. A person can share his thoughts, creativity, ideas and receive feedback from the audience. This promotes self-expression and creative skills development.

In this aspect, we will point out that the Internet allows a person to receive access to electronic resources of various libraries, museums, etc. Libraries and archives, museums, art galleries, etc. give way to electronic versions. The electronic data repository has a significant number of scientific and literary publications, providing simultaneous access to many users from different parts of the world. Scientific and technical progress (in particular the development of the Internet) affects a large number of life spheres of a modern person, including civil and legal relations.

The situation in the described area has gained special importance with the wide access of the population to artificial intellect, let's mention ChatGPT, Bard as the most famous among them. Thus, publications reporting on the appropriation of the authorship of works made by the artificial intellect periodically appear in the mass media.

Therefore, it can be stated that the issue of intellectual property regarding works on the Internet or created on the Internet is quite relevant today.

Recent publications review. It should be noted that the issue of protection of intellectual property rights (and in particular copyright) on the Internet is constantly the subject of discussion among legal scholars. However, the words of P. Kalynechenko that "problems of protecting copyright and related rights on the Internet are characterized by their specificity. Their consideration requires updating and improving, first of all, the provisions of international legal treaties to which Ukraine is a party, as well as the corresponding bringing of the national legislation acts into line with them" [1, p. 198].

L. Mamchur's conclusion that "it is difficult to apply national legislation to its territorial nature to the legal regulation of relations in the virtual world" should be also mentioned [2, p. 34].

Studying the peculiarities of the implementation of copyright norms on the Internet, one cannot ignore the creative paper of the domestic researcher O. Matskevych, in particular the paper devoted to copyright in the digitization of works [3, p. 14-23]. "Today, there is not just a process of converting analog works into digital ones, but a general conversion of the collective creative component into digital form" [3, p. 14].

Certain aspects of the raised issues are covered by T. Dudenko, researching the protection of rights to cultural values [4]. Analyzing the scientific literature by the subject of research, it is worth mentioning the names of scientists whose papers cover certain aspects of the issues under consideration: Yu. Boshytskyi, I. Vashchynets, O. Germanova, S. Glotov, T. Dudenko, L. Yerofeienko, O. Zhuvaka, Yu. Kapitsa, L. Mamchur, O. Matskevych, O. Pastukhov, O. Pidoprygora, P. Ripa, I. Rymarenko, S. Stupak, O. Sulyma, O. Ugrynovska, and others.

Herewith, one cannot but agree with L. Yerofeienko that "there is a necessity for further study of this themes taking into account the development of legislation and information and communication technologies" [5, p. 41].

The article's objective is to cover the general aspects of the legal regulation of copyright on the Internet.

Discussion. Before covering the main results, let's point out that discussions about the legal regulation of copyright on the Internet are becoming more urgent. It should be noted that Ukraine ranks first among European states in the number of copyright violations on the Internet. Although, it should be mentioned that quite often one can notice a message that a work has been removed from public access due to an appeal by the subject of copyright. Technological progress, on the one hand, has improved the situation regarding copyright protection, but on the other hand, it has caused new problems that should be solved. It is obvious that the development of the network is a factor in the spread of piracy. We would like to emphasize that the mentioned issue is quite relevant for the Ukrainian state, in particular due to the significant popularity of free servers from which one can illegally download or view copyright objects.

Copyright is a key aspect of the legal realm of intellectual property. Historically, it arose as a means of protecting the rights of creators of literary and artistic works. In modern times, the scope of copyright covers the results of a significant number of types of creative activity, let's mention, in particular, photographs, computer programs, databases, films, and others. Copyright is a system of subjective and exclusive rights providing the authors of literary, artistic, scientific and other works with the opportunity to receive social benefits from the results of their creative work.

Within the scope of our research, we cannot but mention that back in October 1998, the Digital Millennium Copyright Act was adopted in the United States of America, which became a reaction of legislators to the necessity to resolve the problems of copyright protection caused by the Internet and the development of information technology in general. Without resorting to the evaluation of this legislative act, we will point out the positive nature of the very fact of its adoption, indicating an effort to regulate the relevant relations by protecting the rights of the authors of the works.

Although, we cannot but point out the negative evaluations of this legislative act by some scientists. Thus, for example, Edward H. Freeman J. D. emphasizes the contradictory nature of the norms of this law [6, p. 4-8]. And "a significant number of copyright subjects believe that Section 512 of the specified legislative act is insufficiently effective in the fight against copyright infringement on the Internet" [7, p. 131].

Van Horn points out that the adoption of this legislative act has caused confusion and considerable criticism. Herewith, the following two norms of this law have received the greatest criticism:

- a ban on circumventing technological measures used by copyright holders to control access to protected works;
- a ban on the production or "other trade" of a device that is designed to bypass technological measures controlling access or protecting the rights of the copyright owner [8, pp. 248-249].

It is appropriate to emphasize that, like German lawyers, in this study we understand the term "copyright on the Internet" as "a collective term that covers the provisions of the law on copyright (it is the Law "On Copyright and Related Rights" [9]), as well as current legal practice" [10].

In Ukraine, in accordance with the norms established in Art. 54 of the Basic Law of the Ukrainian State, the state guarantees citizens "protection of intellectual property, and their copyrights" [11]; at the same time, "every citizen has the right to the results of his intellectual and creative activity; no one can use or distribute them without his consent, with exceptions established by law" [11].

These constitutional prescriptions determine the general principles of copyright protection, regardless of the ontological forms in which objects, the subject to protection, exist (whether it is a printed work, audiovisual on disk, etc., or whether this object is placed on the Internet). It is obvious that these provisions are becoming more specific in national legislation. Thus, first let's recall the norms of civil legislation.

In the text of the Civil Code of Ukraine, the term "Internet" is used only once: Art. 641 establishes the institution of an offer and states that the posting of certain information on the Internet (in public access) might be perceived, under certain conditions, as an offer to conclude a contract [12]. However, the norms of the copyright institute, enshrined in the Civil Code of Ukraine, do not determine the specifics of copyright protection for objects placed on the Internet.

The law that directly regulates relations in the field of copyright is the Law of Ukraine "On Copyright and Related Rights". "This Law regulates relations regarding the acquisition, implementation and protection of personal non-property and property copyright and/or related rights, as well as sui generis rights related to the field of copyright and/or related rights" [13].

Let's note that the term "Internet" is used 30 times in this law. We would also like to add that in order to substantiate the urgency for the adoption of this law, the legal subjects of the legislative initiative indicated the following: "The development of scientific and technical progress, the emergence of new opportunities for the reproduction and introduction of the results of creative activity into civil circulation in the field of copyright and related rights presupposes the introduction of appropriate changes to the current legislation, in particular for the purpose of keeping records of original digital works" [14].

A number of articles of the analyzed law establish the procedure for stopping violations

of copyright and related rights using the Internet (Article 56 of the law); obligations of hosting service providers to ensure protection of copyright and related rights using the Internet (Article 57 of the law); liability of content exchange service providers for copyright and/or related rights violations (Article 58 of the law) [13].

Let us point out that copyright on the Internet is protected in the same way as in other areas. The author of the work has the right to demand from copyright infringers the cessation of illegal use of the work, as well as compensation for the damage caused. It is important for the Internet users to understand that while the Internet is largely a space in which users remain somewhat anonymous and use the Internet not for direct profit, the Internet is not a completely "free space" where any activity is allowed.

For example, let us point out that the most famous example of copyright infringement on the Internet is piracy (the law uses the term "Internet piracy", manifesting itself through the illegal copying of files (these can be both books, video films, and computer programs, computer games, etc.). Usually, such a violation is carried out by virtue of sites that are file exchangers. We should point out that site administrators in many cases do not directly add pirated files themselves. However, as Damian Savvitsky points out, this did not prevent the Court of the European Union to decide to ban such a site – The Pirate Bay – because of copyright infringement, creating conditions for sharing pirated files [15].

In this context, it is impossible but point out the numerous reports on copyright infringement due to the posting of videos on YouTube. Herewith, if cases of copyright infringement are found, the person who posts the relevant content is found guilty, not YouTube itself.

The following case is indicative in this aspect. After creating a video file with her child, the mother posted the video on YouTube (<https://www.youtube.com/watch?v=N1KfJHFWlhQ>). The child dances and a certain song is heard. Universal Music Group issued a takedown notice citing the use of its song. The mother appealed this removal. The court put an end to the case (8 years after the described event), pointing out the absence of copyright infringement, relying on the doctrine of fair use [15].

In our opinion, it is important to constantly monitor compliance with the norms of current legislation on copyright, the state of development of social relations and the provision of effective guarantees for the implementation of copyright. In the same aspect, it is worth mentioning the following proposals.

M. Melnikov believes that the lawmaker should strengthen sanctions for copyright infringement in all areas of use. The public authorities should demonstrate the rigidity of their position on copyright infringement by their actions [16, p. 3].

According to S. Galinska, electronic libraries have the right to exist, however, it is necessary to legally ensure the observance of copyright (property and non-property), for example, by providing for paid registration of electronic cabinets or charging a fee for downloading a file [17, p. 3].

Conclusions. Thus, in order to solve challenges in the field of copyright protection on the Internet in Ukraine, it is necessary to: strengthen control over compliance with Ukrainian legislation in the field of copyright protection; to implement effective copyright protection mechanisms on the Internet; to adapt the legislation of Ukraine to rapid changes in social conditions.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The urgency of the study is determined by the necessity of a systematic study of the state of copyright protection, in particular due to the constant development of the information sphere. The issue of protection of intellectual property rights (and, in particular, copyright) on the Internet is constantly a subject of discussion among legal scholars. It is indicated that access to the Internet is important for a modern person to develop his personality. Providing access to the Internet has become a necessity for many aspects of the life of a modern person. The Internet is an unlimited source of information. The situation has become especially important with the wide access of the population to artificial intelligence: ChatGPT, Bard, etc. The purpose of the study is to cover the general aspects of the legal regulation of copyright on the Internet.

It is emphasized that Ukraine ranks first among European states in the number of copyright violations on the Internet. Technological progress, on the one hand, has improved the situation regarding copyright protection, but on the other hand, it has caused new challenges that should be solved. Historically, copyright arose as a means of protecting the rights of creators of literary and artistic works. Nowadays, the sphere of copyright application covers the results of a significant number of types of creative activity. Individual examples related to conflicts in the sphere of resolving issues of copyright infringement are given. The adoption of the Digital Millennium Copyright Act in the United States of America is mentioned as one of the first legislative acts related to the protection of copyright on the Internet. An analysis of national legislation on copyright protection (general and special norms) was carried out. It is emphasized that the norms of the copyright institute, enshrined in the Civil Code of Ukraine, do not determine the specifics of copyright protection for objects placed on the Internet.

It is summarized that in order to solve challenges in the field of copyright protection on the Internet in Ukraine, it is necessary to: strengthen control over compliance with the Ukrainian legislation in the field of copyright protection; to implement effective copyright protection mechanisms on the Internet; to adapt the legislation of Ukraine to rapid changes in social conditions.

Keywords: *copyright, copyright protection, Internet, Internet piracy, civil law.*

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THE LAW APPLICABLE TO OBLIGATIONS ARISING OUT OF TORTS IN ROMANIAN AND UKRAINIAN PRIVATE INTERNATIONAL LAW

Катерина Хмеленко, Космін Дарієску. ПРАВО, ЩО ЗАСТОСОВУЄТЬСЯ ДО ЗOBOB'ЯЗАНЬ З ДЕЛІКТІВ У РУМУНСЬКОМУ ТА УКРАЇНСЬКОМУ МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ. Сучасна правова співпраця України та Румунії базується на результатах партнерства держав у минулому. Актуальність дослідження пояснюється підвищенням рівня зацікавленості правників обох держав у дослідженні міжнародного приватного права (сімейне, спадкове, право тощо), викликаного посиленням співпраці України та Румунії у сфері транспорту, торгівлі, судноплавства, захисту біженців тощо після початку російсько-української війни у 2014 році. Метою статті є визначення законодавства, що застосовується до деліктних зобов'язань,

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