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APPLICATION OF SCREENSHOT AS A PROOF IN THE CIVIL PROCESS OF UKRAINE

An important problem in ensuring the protection of rights and interests in the age of information technology is providing collection and fixing of proofs on the Internet. Social networks take on more and more space in our everyday lives, and almost everyone has their own page in Facebook, Instagram, Twitter and others. The jurisprudence of recent years suggests that appears entire categories of civil cases, on which the dispute arose in connection with the information on the Internet. In this category of cases, courts are forced to add information gathered from the Internet, to the materials of court case and to investigate them in a court session.

Most often, this applies to litigation concerning the recovery of non-pecuniary damage or the protection of the honor and dignity of a individual or legal entity.

Screenshots have an important probative value. They are usually used to capture the fact that information, which is posted on the Internet is untrue or violates exclusive rights. Screenshots can also be used in other cases, since such a possibility is not provided for by law, but it does not contradict it.

The screenshots contain information about the facts on the basis of which the court can establish: the circumstances on which the arguments of the parties are

based; presence or absence of violation; guilt and other circumstances relevant to the civil case. Thus, screenshots can serve as proofs in court in civil cases.

There are many scientists who devoted their work to the use of electronic proofs. Among them: A. Bonner, N. Golubeva, Y. Pavlova, A. Kalamayko, Y. Nefediev, V. Puchinsky, E. Muradyan, O. Shelepina, T. Ruda, S. Fursa and others.

The current civil procedural law determines that the court evaluates proofs according to his internal convictions, which are based on a comprehensive, complete, objective and direct examination of the proofs, which are available in the case.

The court can not take into consideration the proof obtained in violation of the procedure established by law. However, can the court attach a screenshot of the Web-page to the proof base in the civil process in Ukraine?

Screenshot - is a digital image of what should be visible on a monitor, television, or other visual output device [2].

Prior to the adoption of the Law of Ukraine № 2147-VIII of October 3, 2017, which made significant changes to the Civil Procedural Code of Ukraine, normative legal acts did not provide a special procedure for the investigation of proofs, posted on the Internet.

The current civil procedural law provides for special ways to investigate electronic proofs posted on the Internet. The new CPC of Ukraine include Part 7 of Art. 85 of the CPC of Ukraine, according to which the court, on the application of the participant in the case or on its own initiative, may inspect the Web site (page), other places of data storage on the Internet in order to establish and record their content. That is, since the entry into force of the Law of Ukraine No. 2147-VIII "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Proceedings of Ukraine and other legislative acts" of 10/03/2017, the court has the procedural powers to directly investigate the Internet on the subject of the availability of certain facts, which are included in the subject of proof in the case [3, c. 86]

However, at this point, some courts still don't have technical basis for attracting and verification of electronic proofs and, in particular, screenshots which is a separate issue in today's technological progress.

There is also a problem in identifying the person who created and distributed a particular electronic document, which can be proof.

The next problem is that the party must safely and correctly preserve and provide to the court with an electronic proof, but it can be easily destroyed or changed[4].

Consequently, without the correct fixation of the electronic documentation in the event of a dispute, the reference to electronic correspondence will not work. Because each of the dispute parties must confirm its position by the proper facts while appealing to the court. To date, in the absence of a legislative settlement of this issue, if there is no proper confirmation that certain information has indeed been distributed (for example, an electronic digital signature) and its location is committed by the person to whom the lawsuit is filed, unfortunately, there is a possibility that such materials will be judged by the courts as improper proof and will not be taken into account by the court.

Consequently, screenshots can be used "on an equal basis" with other proofs if they meet all of the established requirements. In providing a screenshot must be specified the following information:

1. Date and time of the screenshot to prove the significance of the information contained.
2. The name of the website and its URL address.
3. Full name, position and signature of the person who made this screenshot.
4. In the event that the information contained on a foreign website, it is necessary to translate the screenshot into the national language.
5. Online-page image must be stored on the PC hard drive that will protect against the loss of proof

In view of the above mentioned problems of application screenshot as proof in civil procedure, it seems appropriate to regulate rules and registration requirements of screenshot in civil procedural legislation.

The issue of using a screenshot in civil proceedings is still rather controversial, despite the fact that the legislator introduced the definition of "electronic evidence" and the ways of their investigation into the current CPC of Ukraine. There is a need to develop legislative ways to protect the rights of individuals in the order of the civil process with the use of this type of information, as well as the development of judicial practice.

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