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LEGAL MECHANISMS OF CONTENT PROTECTION FOR UNLAWFUL USE IN THE INTERNET

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In the current framework of globalization of digital processes, the Internet has become the largest and the most powerful platform in which a huge amount of information is concentrated. This situation has two diametrically opposite consequences, on the one hand, the world has huge opportunities to use any content, and on the other hand, right holders or content managers, despite the existence of legislative attempts to regulate this area, almost no protected against unlawful and illegal using the content they created.

It should be noted that in Ukraine for a long time the legal regulation of relations related to the Internet network was left to the attention of the legislator. Following the events of 2014, legislation began to appear in the Verkhovna Rada of Ukraine, which have been aimed at limiting the use of certain content on political grounds. Interestingly, by 2013, Freedom of the Net, which is being formed by the international human rights organization Freedom House, Ukraine was a country with free Internet. But after 2014 (as of 2018 inclusive), Ukraine in this rating has gone to the group of countries with «partially free» Internet.

Obviously, such restrictions in the online environment in Ukraine have something to do with the blocking of pro-Russian or pro-separatist web pages, but not with the unlawful use of content that manifests itself in violation of intellectual property rights.

Nevertheless, these circumstances, among other things, became an impetus for the promotion and adoption of laws aimed at regulating the relations related to the protection and protection of the rights of users of the Internet, the content placed by them, which may contain as objects of copyright rights, related rights, and other objects related to intellectual property.

Actually, only since March 2017 (with the adoption of the Law of Ukraine «On State Support to Cinematography in Ukraine» [2]) the modern legal regulation of this sphere began.

It should be noted that the current legislation of Ukraine, in particular, the Law of Ukraine «On Copyright and Related Rights» [1] does not contain such term as «content». However, Article 1 of this Law defines the term «web page» as part of a website that may contain data, electronic (digital) information, other copyright and (or) related rights objects, etc. Such a wording completely covers the definition of the concept of «content».

In Ukraine, copyright holders have a wide range of technical and legal means of controlling the works posted on the Internet before the violation of their rights. Technical means of copyright protection on the Internet are divided into two ways of identifying copyright and related rights objects, access restrictions, cryptographic transformation, etc. The choice of method of protection depends on the nature of the work to be protected.

Identification of copyright and related rights objects in most cases is carried out using the ISBN identification code, digital signature, digital mark (Digital Watermark, Digital watermark).

The most common form of product protection on the Internet is the «digital watermark» that is introduced into the works (texts, graphic images, etc.) on the Internet. Their main advantage is that during the viewing a standard visual image, the user does not see any encoded designations – copyright © marks, author's name, year of publication. However, when applying a particular software tool, you can set that the files contain additional information indicating the person who wrote it. It is also possible to use special «prints», which also allow you to control the use of copyright objects on the Internet [3].

Among other ways of protecting copyright and related rights on the Internet are the restrictions on access to materials placed on the Internet, providing access to the Internet resource at a prepaid fee. It is also possible to use so-called «digital envelopes», envisaging the conclusion of an agreement with the owners of certain resources in the network. In addition, you can use content cryptographic conversion methods, such as encryption, to restrict or completely exclude the possibility of copying copyright objects (for example, a SCMS system that allows you to make only one copy of a document and prevents further copying of this instance the product) [6].

Another way of protecting content from misuse in the Internet, which is quite actively used in the world, but for some reason in Ukraine is still not popular, is to create web-depositaries that allow the recording of copyright and related rights in the Internet and to consolidate their legal status.

You should also highlight a content security system used by YouTube's renowned video hosting. The YouTube Copyright Center has four good faith criteria, as exemplified by US copyright law: the nature and purpose of the content, the nature of the copyrighted work, the number and significance of the used part of the entire protected work, and the result of the use of the protected material for the potential market or revenue of the right holder. In

each case of suspicion of copyright infringement, these criteria are used by courts in each individual case individually.

The most effective and widespread way of using and simultaneously protecting copyright is the licensing of works, which allows you to protect all or only a portion of copyright, depending on the choice of the copyright holder. Thus, one of the most famous Internet users is the Creative Commons nonprofit organization that offers licenses for works that allow you to retain some of the copyright and at the same time grant other users the right to use them in works in the cases specified by the copyright owner. The main purpose of this organization is to preserve the idea with which the Internet was created – the idea of universal access to the research, educational, and cultural achievements of all mankind. Also, there is no violation of the copyright of the use of materials that are public domain [5].

In Ukraine, in comparison with other categories of disputes, the jurisprudence on disputes in the field of copyright infringement is insignificant, while there is a huge amount of Ukrainian-language web content with content that is distributed without the consent of the right holders and contrary to their will (so-called "pirate" content), which suggests a low level of protection of the rights of owners of copyright objects.

Although the current legislation of Ukraine and includes provisions aimed at regulating mechanisms to protect rights holders, such a mechanism of copyright protection on the Internet, unfortunately, does not solve all the problems faced by the person whose rights have been violated. Among such problems are distinguished:

1. The problem of determining and establishing an appropriate defendant in a case. The question of who is the proper defendant in cases involving copyright infringement on the Internet is very important and ambiguous. Courts are different in approach to the question of determining the proper defendant in the case: the claim can be filed either with the person who directly posted the relevant content on the Internet, either to the hosting provider, or both.

2. The problem of determining the place of commission of the violation. In accordance with the provisions of national law, a person who has suffered harm in connection with a copyright infringement has the right to claim compensation for the damage caused. National courts proceed from the fact that property liability for infringement of copyright comes in the presence of certain conditions established by law: the fact of the wrongful conduct of a person; damage to the subject of copyright and (or) related rights; causal link between the harm done and the unlawful conduct of the person; fault of the person who caused the damage. However, taking into account the extraterritorial nature of the Internet, as well as in the event that a foreign element is present, it is very problematic to establish the place of the violation.

Thus, despite the legislative changes introduced in 2017 in regulation of the issue of the protection of works on the Internet, new challenges of technological development stimulate the formation of new approaches to the protection of copyright in the Internet.

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