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FREE PUBLIC LICENSES IN THE CIVIL CODE OF UKRAINE

The importance of Creative Commons (then CC) is hard to overestimate. This is an effective instrument which makes works easier to share and contributes to the culture of free works.

If to talk about foreign research in this field, it should be mentioned the works of Adida Ben, Aliprandi Simone, Abelson Hal, Bernt Hugenholtz, Brian Fitzgerald, Elkin-Koren Niva, Guibault Lucie, Linksvayer Mike, Weichle Jess and so on. Free public licenses were researched by the following Ukrainian scientists too: Ardanov O., Bichuk A., Kalyatin V., Kharitonova O., Moskalenko K., Naumko M. Sudarikov S., Sereda S., Trotsky V., Zhukovsky T. and others.

However, the concept of public licenses is not defined clearly in the Civil Code of Ukraine. The issue of using free public licenses is not regulated by current legislation. There are a lot of controversial issues in this sphere yet. So, in order to develop the regulation of intellectual property relations, there is a need to make some amendments in the current Civil Code of Ukraine.

When a person creates a work, the copyright belongs to his. The creator has a right to decide how their work will (or won't) be copied, remixed (changed), and shared. No one can use someone's work without permission. CC empowers creators to give implicit permission to everyone to use, share, and remix their work without needing to ask in each instance [1].

CC is a social movement which was founded in 2001 as a non-profit organization, seeking to expand «the range of creative work available for others to legally build upon and share» [2]. Then it became widespread around the world, including Ukraine. CC Ukraine is in the official list of CC branches. Nevertheless, our national legislation is not properly adapted.

The current legislation does not provide for the definition of free licenses. Therefore, it is necessary to consider the definition of this term which was proposed by O. I. Kharitonova. A free license – is a license agreement, which contains the owner's permission to the user for a specific list of ways to use this work. In order to be considered free, the license must allow the following: the right to use the work for any purpose, the right to research the work, the right to distribute copies, the right to make changes to the work, publish and distribute such changes [3].

The use of the work by any person is allowed only on the basis of the copyright agreement. Art. 33 of the Law «On copyright and related rights» sets requirements

for contracts for the right to use works. In particular, this article requires that agreements on the transfer of copyrights should be concluded in writing form [4].

The Civil Code of Ukraine includes the same requirements. Part 2 of Art. 1107 of the Code stipulates that an agreement on the usage of intellectual property rights is concluded in writing form. The form in which CC licenses exist does not meet the written requirements of our national law [5]. Although Part 1 of Art. 207 recognizes an electronic form of agreement, but Art. 6 of the Law of Ukraine «On electronic documents and electronic document management» determines such mandatory details of the electronic document as an electronic signature. CC licenses do not contain such a signature, and therefore cannot be recognized as electronic documents within the meaning of our national law [6]. As a result, it is completely unclear on what legal basis Ukrainians can use, for example, Wikipedia materials, which are mostly provided under the CC Attribution-Share Alike 3.0 license [7].

In addition, the free use of orphan works must be established. Of course, this process is the subject of detailed normative regulation. However, it will also expand the culture of free works as well as should become one of the priority areas for improving Ukrainian legislation in the field of intellectual property law [8].

The actual state of affairs must proceed in accordance with the law. There is currently no such correspondence. Conflicts of current legislation must be corrected in accordance with modern realities.

It is expedient to supplement the Civil Code of Ukraine with Art. 1108-1, which would contain the definition of free public licenses and main provisions.

Therefore, the article should be as follows:

Article 1108-1 General provisions on free public licenses.

1. A free public license is a publicly available agreement that provides a person who has joined such an agreement with free permission to use the object of copyright and (or) related rights under the conditions specified in the license.
2. The public license agreement is free of charge.
3. The territory of such license is the territory of the world unless otherwise specified in the license.
4. Joining the free licenses can be done by implicit actions – upon the use of the work in the manner prescribed by the license.
5. The term of the agreement of free public licenses is equal to the term of copyright to the work unless otherwise specified in the license.

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