

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34



CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.41

Nº 78

Julio

Septiembre

2023

Peculiarities of protection of personal non-property intellectual rights on the internet

DOI: <https://doi.org/10.46398/cuestpol.4178.43>

Ekaterina Spasova *

Olha Kulinich **

Svitlana Mazurenko ***

Andrii Ivanytskyi ****

Olesia Izbash *****

Abstract

Using a documentary analysis method, it examines the legal issues that exist in the field of application and protection of non-proprietary personal intellectual rights on the Internet. The first section examines the legal consequences of the active development of information technologies and their impact on relations in the field of intellectual property. It identifies some issues that arise when placing intellectual property objects on the Internet. The second section of the article provides an overview of approaches to the legal regulation of intellectual property relations under the legislation of Ukraine. The third section highlights the types and features of violations of non-proprietary personal intellectual rights on the Internet, as well as legislative and technical methods of their protection. It is noted that the main types of violations of non-proprietary personal intellectual rights on the Internet are piracy and plagiarism. It is concluded that, among the problems that hinder the adequate protection of intellectual property rights on the Internet, the main ones are the legal uncertainty of many key concepts or their insufficient development and the lack of effective mechanisms for the protection of personal non-property rights.

Keywords: intellectual property; non-proprietary personal rights; copyright; information technologies; piracy and plagiarism.

* Ph.D., Associate Professor of Civil Law Department of National University "Odessa Law Academy", Odessa, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8126-2306>

** Doctor of Law, Associate professor, Professor of IP and information law Department, Educational and Scientific Institute of Law, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0003-1337-8494>

*** Ph.D., Associate Professor of the Department of Intellectual Property Law and Patent Justice of National University "Odessa Law Academy", Odessa, Ukraine. ORCID ID: <https://orcid.org/0000-0003-2572-9909>

**** Senior Lecturer, Department of International and European Law Leonid Yuzkov Khmelnytskyi University of Management and Law. Khmelnytskyi, Ukraine. ORCID ID: <https://orcid.org/0000-0002-3689-6334>

***** Ph.D., Associate Professor of of the Department of General Legal Disciplines of the National University "Odessa Maritime Academy", Odessa, Ukraine. ORCID ID: <https://orcid.org/0000-0001-7629-1957>

Peculiaridades de la protección de los derechos intelectuales personales no patrimoniales en Internet

Resumen

Con un método de análisis documental, se examina las cuestiones jurídicas que existen en el ámbito de la aplicación y protección de los derechos intelectuales personales no patrimoniales en Internet. La primera sección examina las consecuencias jurídicas del desarrollo activo de las tecnologías de la información y su impacto en las relaciones en el campo de la propiedad intelectual. Se identifican algunas cuestiones que surgen al colocar objetos de propiedad intelectual en Internet. La segunda sección del artículo ofrece una descripción general de los enfoques de la regulación legal de las relaciones de propiedad intelectual bajo la legislación de Ucrania. La tercera sección destaca los tipos y características de las violaciones de los derechos intelectuales personales no patrimoniales en Internet, así como los métodos legislativos y técnicos para su protección. Se advierte que los principales tipos de violaciones de los derechos intelectuales personales no patrimoniales en Internet son la piratería y el plagio. Se concluye que, entre los problemas que dificultan la adecuada protección de los derechos de propiedad intelectual en Internet, los principales son la inseguridad jurídica de muchos conceptos clave o su insuficiente desarrollo y la falta de mecanismos efectivos de protección de los derechos personales no patrimoniales.

Palabras clave: propiedad intelectual; derechos personales no patrimoniales; derechos de autor; tecnologías de la información; piratería y plagio.

Introduction

In the modern era, which is called the “information society”, we are witnessing the rapid development of human intellectual and creative activity. At the same time, society faces problems of a global nature, the solution of which requires maintaining a balance between meeting the needs of society and preserving individual rights.

The issue of legal regulation and protection of personal non-property intellectual rights on the Internet is becoming more and more relevant every year, as the number of offenses related to the use of intellectual property rights is constantly growing, and the level of legal regulation and protection of these rights does not change.

Personal non-property rights are an integral part of every person, their individuality, a special indicator, a characteristic of the author’s personality.

That is why the violation of these rights is unacceptable from the point of view of respect for the honor and dignity of a person, business reputation and other non-property rights, which are recognized at the international level in all human rights documents.

The last few years have been characterized by the development of Internet technologies that allow downloading, storing and distributing various types of information in social and other networks, on various media and devices. Objects protected by copyright are subject to both legal and illegal, and sometimes even arbitrary distribution, so the insufficient protection of a person's personal rights on the Internet and an uncertain legal field of protection can harm human rights, which is unacceptable. That is why it is important to know the rules that protect from violations of intellectual rights and should guarantee sufficient regulation of this issue at the international and national level, since nowadays the Internet has become the most important source of information, more popular than any printed sources and publications.

Due to the fact that the regime of legal regulation of relations on the Internet is not clearly defined, and identifying the offender and bringing him to justice is not a simple enough task, the issue of protecting personal non-property intellectual rights on the Internet is one of the most difficult and the most pressing issues.

1. Information technologies and intellectual property rights

Modern socio-economic development is characterized by the growth of the role and importance of factors related to the intellectualization and informatization of the economic life of society. The share of people who become mental workers is constantly growing. Information and knowledge are both the source material and the product of their activity. Analyzing the long-term trends of economic development and technological progress, modern researchers single out the following main features of the information society:

- transformation of information into the most important economic resource, which has a global character and ensures increased efficiency, increased competitiveness and innovative development of business entities;
- the growing influence of information on all areas of human life, its transformation into a subject of mass consumption by the population;
- intensive formation of the information sector of the economy, which occupies a dominant position in the new society;

- transformation of the information sphere into a foundation, the basis of all types of economic activity (Pozhuev, 2011).

In terms of the intellectual economy (knowledge economy), information acts as a special object of contractual relations related to its search, selection, preservation, processing, distribution and use in various spheres of human activity. As a specific economic benefit, it is an important means of obtaining additional benefits by reducing the uncertainty and risk of business entities. Circulating in the market economy as a product (information product, service) or a resource used in the process of economic activity, information has certain features, namely:

- is an intangible good (an ideal component of existence) and is not reduced to physical objects that are its carriers;
- is characterized by inexhaustibility, does not decrease in the process of use and is not consumed in the traditional sense of this term;
- it is not localized in space, easily spreads, replicates (at the current level of technology) and changes the form of fixation;
- does not disappear in the process of consumption, but in order to obtain a useful effect from the latter, it requires certain intellectual skills;
- it is practically not subject to physical wear, but it can age morally;
- there is no monopoly on its possession and use, except for the part that is an object of intellectual property (Bilan, 2016).

The uniqueness of information is determined by the inherent dichotomy of prevalence and rarity, inexhaustibility and finitude. Despite the fact that in the conditions of a market economy, information can be an object of ownership and exchange, the right to own information not only does not contradict the possibility of its maximum distribution, but also provides for the latter as a source of growth of the owner's income.

- The transition to the information economy is inextricably linked with the rapid development of electronic means of communication, the latest digital technologies, which significantly shorten the terms of reproduction of information, provide opportunities for its use, making changes and quick delivery of intelligent products to consumers (Vorontkova, 2016).

Modern information technologies, and in particular the Internet, have formed as a powerful information space. Freedom of communication aims at equal access of users to information from any, even the most remote point. Unfortunately, we often think about the problems of legal relations that arise. Works presented in electronic form and available online can be

used by an unlimited number of users at any time. Every work posted on the Internet becomes easy prey for copyright infringers (Dubov, 2010).

The widespread use of the Internet in the field of intellectual property creates not only new opportunities, but also a number of problems regarding the effective protection of intellectual property rights. First, the Internet as a super media means of communication facilitates information exchange, accelerates the flow of information, contributes to the further development of the global market of rights to intellectual property objects and the improvement of mechanisms for coordinating the interests of all interested parties.

For example, in 1998, the WIPO General Assembly adopted the WIPONET project, which aims to simplify intellectual property transactions by creating a global network infrastructure capable of making intellectual property information available to the general public. Second, the formation of cyberspace, which has global and digital characteristics, creates problems of protecting intellectual property rights that have territorial and temporal parameters, as well as geographical and physical boundaries. Current regulations are generally focused on the distribution of works on physical media protected by copyright, while their use on the Internet is practically unlimited (Kharchenko *et al.*, 2021).

In addition, the use of programs in the global computer network makes it possible to carry out practically unlimited export and import of intellectual property objects. Information is transmitted via the Internet in the form of objects protected by intellectual property rights, in particular: literary, musical and audiovisual works, photographs, illustrations, drawings, maps, plans, schemes, etc.

The processing and transmission of data by the network and its functioning itself occurs thanks to such an object of intellectual property law as a computer program, and the storage and search of information is usually carried out using electronic databases, which are also the object of legal protection in the field of intellectual property (Goncharenko *et al.*, 2019). In addition, the Internet also uses means of individualization of participants in civil circulation, goods and services, in particular: trademarks, commercial (brand) names, geographical indications (indication of the origin of goods), domain names (Tomarov and Netska, 2015).

Fixation of the above intellectual property objects in electronic form and the cross-border nature of the Internet simplifies the possibility of infringement of the rights of intellectual property subjects. At the same time, an increase in the scope of intellectual property rights or the introduction of a complex procedure for their implementation, on the contrary, will lead to the restriction of the rights of Internet users (Nekit *et al.*, 2019). That is why the task of modern intellectual property law is to achieve a fair and viable

balance of interests of rights owners and users of intellectual property objects placed on the Internet.

The transfer of a growing number of literary works, films, and computer programs to the digital environment creates a real threat of alteration and falsification of these works, creation of cheap and high-quality copies, and their wide distribution in violation of copyright. Computer users with special devices get the ability to record and re-record and then play them back on any household device. There is also a real threat of forgery of trademarks, the spread of computer piracy, etc. (Zharov, 2005).

Thus, the penetration of commercial relations into the Internet creates qualitatively new problems related to the protection of rights to intellectual property objects. This necessitates the revision of traditional approaches to the protection of these rights, the realization that the institutional environment of the functioning of intellectual property in the industrial era turned out to be unsuitable for the information society, in which the problems of protecting copyright and related rights in the digital space are becoming more and more relevant; protection of business methods and prevention of violation of rights regarding means of individualization of unfair competition in electronic commerce.

Systematization and reform of intellectual property rights in the field of protection of materials and other objects transmitted over the Internet is an urgent issue when information is becoming an increasingly important factor production and an increasingly valuable object of civilian circulation (Tsybulev, 2005).

Intellectual property is one of the components of the information society. Intellectual property is an intangible resource, the result of human creative activity reproduced in an information product. Information product is documented information that is intended to meet the needs of users, use in the information society. It can be bought, sold or transferred for use. As with a tangible product, it can be subject to illegal acts such as theft, misuse, etc. Information products are objects of copyright.

Most often, the following are distributed through the world network: literary works, musical works, audiovisual works, computer programs, works of art, photographs. Information product is a driving factor in the field of information technology (IT), which contributes to the expansion of the IT industry, because its sale, service and support creates a new type of human activity – IP marketing and related functions.

In general, there are two views regarding copyright protection of intellectual property objects on the Internet. According to the first, the global Internet network as a man-made phenomenon develops according to the laws that apply in other areas of human life. And, therefore, it should be regulated by the same laws. Such an opinion is held by those users who believe in the principles of copyright.

On the other side are those who support the principles of copyleft. The latter argue that the Internet was conceived as a free environment, based on the provisions of public access and openness of information, and therefore cannot obey any laws, especially those that are unable to regulate it. Its development should be self-regulated based on internal rules (Orlova and Perevalova, 2014).

The widespread use of the Internet gives rise to significant legal problems concerning, in particular, such important issues as: information security; rights and freedoms in the field of information; access to information, information resources, information products and obtaining information services; electronic commerce (trade); taxation of commercial activities on the Internet; concluding contracts electronically; use of computer software; use of domain names; illegal behavior of users in the network (cybersquatting, typesquatting, hacking); protection of intellectual property rights (copyright and related rights, patent rights, rights to means of individualization, etc.). The system of free distribution of software with subsequent paid maintenance and provision of various information services is gaining more and more importance.

Protection of rights to intellectual property objects on the Internet by traditional means is impossible, so there is an objective need to create a new institutional environment in this area. Emphasizing the fact that property generally loses any meaning in the information society (knowledge society), researchers claim that, unlike traditional society, in which law was the guarantee of protection, in the information economy moral norms play the main role.

Proponents of this approach pay attention to changes in human psychology, the system of motivations, preferences, norms of behavior and emphasize the emergence of a new “informational” morality, in which access to information acquires an ethical meaning. Therefore, each individual is interested not only in one’s own knowledge, but also in access to this knowledge by all members of society (Ketrar, 2012).

Attempts by the world community to adapt information technologies to the protection of rights to intellectual property objects were reflected in DRM systems - digital rights management. These systems are aimed at approving certain rules regarding the use of intellectual property objects based on the definition of: subjects who are granted access to the works; prices of intellectual property objects; conditions of access to works, including granting users the right to copy and make changes to works, determining the time during which they are granted the right to access these works.

Thus, DRM systems are aimed at automating the process of licensing works and ensuring clear compliance with license terms. DRM technical

means ensure the protection of the rights of copyright holders in the digital environment, contribute to curbing piracy of copyrighted objects, their effective and adequate protection during distribution in the global network, and the further development of international cooperation in the field of science, culture and art (Nekit, 2020).

The issue of safety, honesty and good faith in the possession and management of information are highly important for the formation of information relations. Inadmissible is the situation when the subjects of relations manipulate the norms of the law, or, in some cases, their absence.

2. Peculiarities of the concept and types of intellectual property rights on the Internet under the legislation of Ukraine

Objects of intellectual property rights are the results of intellectual, creative activity, expressed in an objective form, that is, recorded on a certain material medium (including electronic or digital) that meet the criteria of protection established by legislation. To define the category “intellectual property object”, the legislator in Ukraine provides a non-exhaustive list of objects, as well as a definition of individual objects, mainly by listing their main features, criteria of protection.

The Civil Code of Ukraine mentions among the objects of intellectual property rights, in particular: literary and artistic works; computer programs; compilation of data (databases); phonograms, videograms, broadcasts (programs) of broadcasting organizations; scientific discoveries; inventions, utility models, industrial samples; layout (topography) of integrated circuits; rationalizing proposals; varieties of plants, breeds of animals; commercial (brand) names, trademarks (marks for goods and services), geographical indications; commercial secrets (Verkhovna Rada of Ukraine, 2003).

It is common to divide intellectual property objects into four categories depending on the scope, purpose of creation and use, conditions of legal protection: objects of copyright and related rights; objects of industrial property law (patent law); means of individualization of participants in civil circulation, goods, works and services; non-traditional objects of intellectual property law.

Copyright plays a primary role among types of intellectual property on the Internet. In the clarifications of the International Bureau of WIPO, the concept of “copyright” is defined as follows: it is the exclusive right granted by law to the author of a work to declare himself the creator of this work, reproduce it, distribute it or make it known to the public by any means, as well as to allow others individuals to use the work in a specified way (Butnik-Siverskyi, 2008).

Copyright has an exclusive character and is considered as a set of non-property (personal) and property rights of the author, granted by law, to declare one an author of a work, to publish the work, reproduce and distribute or use it in any other ways and means, and give permission to others to use the work in certain ways.

The definition of the concept of “copyright” is not fixed in the legislation of Ukraine. In Art. 433 of the Civil Code of Ukraine and Art. 6 of the Law “On Copyright and Related Rights”, it is established that the objects of copyright include: literary and artistic works, including digital (novels, poems, articles, and other written works; lectures, speeches, sermons, and other oral works; dramatic, musically – dramatic works, pantomimes, choreographic works, other stage works; other groups of objects); computer programs; compilation of data (databases), if they are the result of intellectual activity by selection or arrangement of their component parts; other works (Verkhovna Rada of Ukraine, 2022). That is, the objects of copyright are quite diverse, and with the development of culture and society, new objects will appear. Thus, with the development of the global Internet, such objects as computer programs and data compilations appeared.

Article 434 of the Civil Code of Ukraine and Article 8 of the Law “On copyright and related rights” define object which are not covered by the concept of copyright, these are:

1. reports on news or other facts of the nature of ordinary press information;
2. expression of folk creativity (folklore);
3. acts of state authorities, local self-government bodies, official documents of a political, legislative, administrative and judicial nature (laws, decrees, resolutions, decisions, state standards, etc.), as well as their drafts and official translations;
4. state symbols, state awards; state signs, emblems, symbols and signs of state authorities, the Armed Forces of Ukraine and other military formations of Ukraine, approved by state authorities; symbols of territorial communities of Ukraine, approved by relevant local self-government bodies;
5. money signs;
6. timetables of vehicles, schedules of television and radio programs, telephone directories and other similar databases that do not meet the criteria of originality and are covered by the right of a special kind (*sui generis*);
7. abbreviations;

8. photographs that do not have signs of originality (are not photographic works) (Verkhovna Rada of Ukraine, 2022).

In addition to the fact that copyright objects are in constant development, they need high-quality protection. This issue became especially relevant after the development and spread of the global Internet. The global system has become an integral part of the development of society and the world. In fact, with the use of the Internet, various kinds of relationships emerge. But in addition to the creation of new relationships, the implementation of a number of other relationships and all other useful directions, the Internet has become a space for violation of the rights of individuals and copyright in the first place.

As noted by scholars, data filling the global Internet, that is, content, are objects of copyright. But in order to gain access to this computer network, it is necessary to use various software, which, in turn, is also an object of copyright. According to specialists' estimates, the total amount of information on the Internet is more than 500 billion gigabytes, and this indicator is constantly growing (Rippa, 2011).

As already mentioned, copyright in Ukraine is regulated by the Civil Code of Ukraine and the Law of Ukraine "On Copyright and Related Rights". According to the recent amendments, placing a work in digital form on the Internet is considered a publication or distribution of the work and therefore requires the permission of the copyright owner. Placing a copy of a work or its part on the Internet without the permission of the author is a violation of the Law and may be challenged in court with a demand for compensation for moral damage and material damages.

Legal relationships on the Internet are very diverse, so there are various rights that can be violated, in particular:

- copyright of providers on computer programs and databases that implement access to the Internet itself or hosting websites on their technical platforms (servers);
- copyrights of software manufacturers for these providers' servers;
- copyrights of website owners on the actual content of the website, its software part and other objects of copyright placed on it - articles, images, music, databases, etc.
- copyrights of specific owners of rights to objects posted on websites: computer programs, music, articles, images, databases, etc., which are actively used (Abdulina, 2014).

Thus, copyright is one of the main types of intellectual property on the Internet for at least two reasons:

- firstly, most of the materials that are transmitted using the network are works in the legal sense, and therefore, copyright applies to them;
- secondly, since the very nature of electronic communications involves multiple copying of data in the process of their transmission through communication channels, naturally, the question of compliance with such copying of copyright arises (Denysova, 2013).

3. Legal issues in the field of copyright protection on the Internet

In the field of copyright protection on the Internet the following legal issues caused by the development of information technologies can be notified:

- 1) absence of specific legal provisions to regulate this sphere of relations; legal uncertainty of many key concepts or their insufficient development.
- 2) the cross-border nature of the use of copyright objects via the Internet. Open access to the object of intellectual property right on the Internet makes it possible to use it virtually all over the world, therefore there are cases when the objects of copyright are used by the Internet user in the territory where the relevant legal norms do not apply.
- 3) after placing an object on the Internet, a problem arises regarding the possibility of tracking by whom and how this object of copyright or related rights will be used. This is primarily due to the fact that access to the corresponding object of exclusive rights is opened simultaneously for an extremely wide range of persons, reaching millions of Internet users.
- 4) a large and constantly increasing number of copyright violations, since lack of effective copyright protection mechanisms.

According to some scholars, the legislator should increase the level of penalties for violations in the specified area depending on the level of public danger. The government must take active actions to prove to society that it will not condone copyright violations in the field of information technologies and with their help.

The facts of illegal distribution of works on the Internet, their public notification in public places, trade establishments, catering, etc., have also become widespread (Melnikov, 2003).

Offenses related to the use of copyright objects are becoming more and more widespread on the Internet.

The most common types of copyright violations on the Internet are: plagiarism - publishing completely or partially someone else's work under the name of a person who is not the author of such a work on the Internet; forging, changing or removing information, in particular in electronic form, about rights management without the permission of the subjects of copyright and (or) related rights or the person who carries out such management.

A separate group of violations on the Internet consists of piracy in the field of copyright, in particular, Internet piracy - copying and distribution of copies of musical compositions; distribution of copies of films or television programs via computer networks; illegal distribution of author's works.

One of the main problems in the fight against piracy is its support by the network society through: the creation of political movements that fight for the free exchange of information on the Internet, protests in defense of sites that were closed for posting unlicensed content, attacks hackers to the websites of state bodies of various countries (Grigoryants, 2015).

Among the most famous cyberattacks, which disabled the sites of the FBI, the White House, the Department of Justice, the Universal Music Group, the Recording Industry Association of America, the Motion Picture Association of America, and the American Copyright Office, was the Anonymous DDoS attack.

A popular way of distributing content (both legal and illegal) on the Internet is using the p2p protocol. The problem of solving the issue with the activity of torrent sites is that they do not contain the copyright object itself, but only have links to the persons who own it, and such persons, in turn, are not necessarily within the same countries and can be anywhere.

Of course, there are other ways of sharing files, uploading them to the Internet using various systems, programs, and it is impossible to control these processes regarding the number of copyright violations, as well as to find out who exactly uploaded the file to the Internet (the right holder or another person) due to the anonymity of Internet users (Kulinich, 2016).

Talking about measures to protect copyright on the Internet from piracy, it is necessary to introduce fines for the distributors of pirated content, as this way the violators will be punished more quickly than enduring a criminal trial. Other experts believe that in order to protect copyright objects from piracy, it is necessary to have legal and at the same time accessible content, since the main reason for copyright infringement is the high cost of the content from a financial point of view and from the point of view of its inaccessibility in search.

Only then can we talk about driving pirates out of the market. The experience of foreign countries shows the effectiveness of the fight against piracy. For example, in France, the principle of “three warnings” applies: the first warning is sent to the user of Internet services by e-mail, the second is considered an official notification of a violation, as a result of the third warning, a special agency has the right to deprive the violator of access to the Internet (Galyantych, 2011).

Unlike piracy, where someone else’s work is distributed without the permission of the author, but without concealing his name, in plagiarism someone else’s authorship is assigned, and in this way both the property and personal non-property rights of the author are violated. Among all, the nature of electronic libraries as an online resource that hosts literary works that can be viewed by any Internet user remains controversial.

On the one hand, such libraries save time searching for the work of even a little-known author, and their maintenance is cheaper, compared to a regular library. However, readers of such libraries do not buy books, authors risk losing profit from the sale of copies of works, and it is impossible to check whether the reader saves the book on a technical device for educational or personal purposes (Kovalenko, 2018).

Of course, if the main condition for the use of material in the electronic library is registration and payment of funds for access to the work, and the author of such a work is aware of the placement of his work in the electronic library system, and later receives profit from the online sale of copies, then there is no violation of copyright.

Somewhat similar in nature are web depositories, a kind of archives of copyright objects, where there is an indication of the author of the work, the date of publication, its coordinates and the options that can be exercised with this work, which are determined by the author himself (whether it is possible to reprint his work, translate, is it mandatory to indicate his authorship for a specific work).

There is a large amount of illegal distribution of copyright objects on the Internet, and the type of violation is of great importance for the protection of author’s rights in pre-trial or judicial proceedings, as well as for determining the sanctions that should be applied to violators. One of the types of illegal distribution of copyright objects is their publishing on the Internet by a violator and their use (listening, reading, recording on media, etc.) by a recipient. Another case is when the recipient must pay to the person who posted something.

However, if the copyright holder has given permission for such posting, and the author receives funds from payment for copying, downloading, viewing, there will be no violation of copyright. In another case, if there was no such permission, then all the grounds for applying civil liability to the

offender are fully available. There are other cases where ISPs reward people who place copyright objects on the Web for expanding the network's archive, and payment is made for the distribution of each unit of information that comes from its archive. Therefore, users do not pay anything to the owner of such an archive, except for the payment for Internet services of the provider (Ennan and Mazurenko, 2021).

The actions of the owner of copyright, aimed at the protection of a created object, should be planned in advance, in order to prevent a possible violation of copyright on the Internet. The copyright protection measures proposed by scholars differ among themselves only taking into account the features of the Internet and the means by which copyright infringement occurs. However, the majority of scholars point out that, regardless of the chosen method of copyright protection, even at the stage of creating one's own object, the author must follow at least one fairly simple recommendation: to not publish the created object until the copyright registration, because in case of violation of such a right, the process of its restoration will be more difficult and time-consuming (Kalitenko *et al.*, 2021).

The order of copyright protection, among others, should include: the copyright owner's own actions aimed at preventing the leakage of information about the object of the right and the directions of its application; creation of own specialized services; involvement in the protection of the rights of specialists; close cooperation with retailers and distributors of media of intellectual goods; active use of the capabilities of law enforcement agencies and the judicial procedure for the protection of rights by filing lawsuits against violators of intellectual property rights (Ulianova, 2008).

Of course, the proper protection of copyright is provided by a perfect legal framework and a system of state bodies whose task is the protection of human rights. However, in the era of technological development, it is worth noting that effective prerequisites for copyright protection on the Internet are the availability of a wide range of techniques at the author's disposal, which, together with others, act as preventive measures for the protection of copyrights, and their proper application will avoid court proceedings.

Among technical means of copyright protection on the Internet, we can name: the ISBN identification code, which is intended for the protection of phonograms; ISAN is a number used to protect films and other audiovisual works; DOI is a digital identifier that accompanies works or their parts, thus allowing to trace the "fate" of the object in trade circulation, etc. For example, with the help of a digital signature, the real author of a particular work is identified, this in turn promotes trust relations between the author and his counterparty, since the latter is sure of who he is dealing with (Asongu, 2021).

The most well-known and appropriate way to designate a person as the author of a work is the copyright mark (©), the name of the author, the year of publication, but the absence of this mark does not mean the absence of copyright, since the appearance of copyright is not tied to their designation with signs and arises from the very fact of the creation of the work. The copyleft sign (an expanded copyright symbol) has a slightly different legal meaning.

By copylefting, the author does not require permission to use his original work when creating a derivative. Copyleft is a type of free public license, but its legal regulation is not yet developed in Ukrainian legislation. Thus, the Ministry of Economy of Ukraine determined that free public licenses are a publicly available contract of affiliation, which provides a person who has joined such a contract free of charge permission to use the object of copyright and (or) related rights in certain ways under the conditions specified by the license.

Other technical methods of copyright protection include the use of a system of “digital watermarks”, which the user does not see with the usual visual examination of the image and text, but in case of copyright infringement, with the help of special software, it is possible to prove that the file contains information about the author. Authors can also use so-called special “fingerprints”, which indicate the author and the determination of which will be sufficient evidence in court in case of copyright infringement.

Also, as a means of protection, authors can use: passwords, the entry of which will be the only condition for the user’s access to the copyright object; provision of a limited volume of the work, the purpose of such placement is to get acquainted with the work for further use, but after payment (most book applications, for example, Google Play books, work according to this principle); providing a time limit for using the work (for example, after the tenth viewing of the file, it will not be possible to view it); also by giving authors, for works posted on the Internet, the authority to license their rights to clearinghouses, and users, in turn, pay a fee for issuing such a license to the clearinghouse, which distributes the received funds among copyright owners (Kiema, 2008).

Among the drawbacks of the Internet, which makes it difficult to resolve a conflict related to the violation of copyright on the Internet not only during defense in court, but also in a claim procedure, the difficulty of proving the committed offense and its fixation is mentioned, because it can be quickly deleted. And after it was deleted it is almost impossible for the author to prove the fact of an offense, since there could be several sites on the same server.

Among the measures that confirm the illegal publishing of copyright object on a web page are: contacting companies that record information

posted on Internet pages that has been deleted or recorded using the Internet Archive, Way back Machine service, or contacting an expert on the research of telecommunication systems, as well as before applying to the court, to contact the offender in order to stop the copyright infringement and record this application.

In view of the above, it is worth noting that proper protection of copyright can only take place in a complex of procedures, actions not only on the part of government bodies, but also Internet users, providers, the authors themselves and all other persons who daily get acquainted with any amount of information. A sufficient system of copyright protection can be noted if there is proper public awareness of the need for such measures, clarification of the value of copyrights, since the observance of the rights of other persons has not only a legal basis, but also a moral and ethical one in the first place.

The creation of progressive, special legal norms for the regulation of Internet relations, proper legal awareness, culture of citizens, awareness by authors of the consequences of indifferent treatment of their own copyright objects, and therefore the application of preventive measures to avoid possible violations of their own copyrights, will contribute to the prevention of copyright infringement on the Internet.

Based on the global nature of the Internet, pursuing the goal of protecting human rights and freedoms and the further development of the global information space, the following methods of solving existing problems in the field of copyright protection on the Internet seem to be appropriate:

- 1) use of a digital signature. The essence of a digital signature is that it allows to identify the real author of a particular work, thereby removing any doubts from the counterparty about who he is dealing with;
- 2) use of digital stamps. The most common is the system of so-called “digital watermarks”, embedded into objects (texts, graphic images, etc.) published on the Internet. Their advantage lies in the fact that during a normal visual examination of the image, the user does not see any encoded markings, such as the copyright icon (©), the author’s name, the year of publication. But then, using a certain software tool, you can prove that the files contain additional information that points to the person who recorded them;
- 3) limiting access to materials posted on the Internet. For example, databases of commercial sites and some electronic libraries and archives are available only for an upfront fee;
- 4) methods of cryptographic transformation of materials, such as encryption, the use of which allows to limit or completely eliminate the possibility of copying works;

- 5) creation of web depositories that allow recording intellectual property objects on the Internet and securing their legal status;
- 6) limited functionality: under this approach, the copyright owner provides the user with a copy of the work that has functional limitations. This approach is one of the ways to implement such business models as “try before you buy” and “sell improved versions”;
- 7) “time bomb”: under this approach, the copyright owner distributes a functionally complete intellectual property object, but sets a date after which access to it will not be possible. One option for this approach involves the seller closing access to the work after a certain number of uses (for example, after viewing a computer file 10 times, it will be impossible to view it again);
- 8) contracts are one of the most effective and, unfortunately, underestimated means to prevent infringement of author’s rights. When properly drafted, contracts can give copyright holders greater powers to control the use of their works than is available to them under the law;
- 9) clearing centers: under this approach, owners of copyright and related rights in works posted on the Internet grant clearinghouses the authority to license their rights. The user pays a license fee to such a clearinghouse, which in turn distributes the received funds among copyright owners.

The above methods of preventing violations in the sphere of protection of intellectual property rights on the Internet are promising, and some have already proven their effectiveness (Kovalenko, 2018).

Conclusions

In connection with the increase in the number of offenses on the Internet, where any person at any time has the opportunity to obtain information, it is very difficult to trace the occurrence of an offense and identify the person who committed it. Nowadays, the rapid development of technical mechanisms and IT-technologies gradually make it possible to ensure access and transfer of intellectual property objects and to complement the legal protection provided by law and contracts with effective technical protection.

The specified problems regarding legal regulation and protection of personal non-property intellectual property rights on the Internet require further development, in particular in the legislation of Ukraine. In our opinion, some basic concepts in the field of protection of personal non-

property intellectual property rights on the Internet are still not clearly defined by the current legislation, which significantly complicates the regime of their legal protection and negatively affects the formation of contractual relations in the field of copyright implementation on the Internet.

It is advisable to introduce clearer and stricter rules regarding the use of intellectual property objects on the Internet and to establish strict means of punishment in case of violation of the rights to use them in order to ensure the protection of personal non-property rights. It is also necessary to create and implement limits on the use of intellectual property objects on the Internet, which were made without obtaining the consent of a person, but within the limits of existing legislation.

Taking into account the rapid development of new technologies and the constant increase in the level of opportunities for commercial and non-commercial activities of private and public persons on the Internet, it would be appropriate to create special committees, which would deal with the development appropriate software and the formation of a mechanism for the protection of intellectual property rights on the Internet, in particular in social networks.

It is also necessary to constantly improve existing security systems and create new ones, since new types of offenses, illegal schemes and cases of cybercrime periodically appear in the network, which require appropriate countermeasures in their practical implementation.

We would like to note that it is extremely important to be ready to quickly respond and eliminate the consequences of violations in the field of intellectual property on the Internet, as well as to constantly develop new mechanisms to prevent their recurrence in order to protect the personal non-property rights of intellectual property.

In general, controlling copyright infringement on the Internet today is quite complicated. That is why, in modern conditions, it is most appropriate for authors to take care of the protection of their legal rights in advance, using various technical means of protection that allow creating technological obstacles to the violation of copyright or related rights.

Bibliographic References

- ABDULINA, Inna. 2014. "The Internet in the law, without trial and investigation: the Internet is a country that is not on the map" In: Legal Bulletin of Ukraine. Vol. 15, No. 21, pp. 07-14.
- ASONGU, Simplicie. 2021. "Global software piracy, technology and property rights institutions" In: Journal of the knowledge economy. Vol. 12, No. 3, pp. 1036-1063.

- BILAN, Natalia. 2016. "Social communications in the information society: theory, evolution, models and applied aspects". Doctoral Thesis. Kyiv, Ukraine.
- BUTNIK-SIVERSKYI, Olexandr. 2008. Economics of intellectual property. Institute of intellectual property and law. Kyiv, Ukraine.
- DENYSOVA, Ruslana. 2013. "Issues of copyright implementation on the Internet" In: Lawyer of Ukraine. Vol. 03, pp. 32-36.
- DUBOV, Dmytro. 2010. Information society in Ukraine: global challenges and national opportunities. NISD. Kyiv, Ukraine.
- ENNAN, Ruslan; MAZURENKO, Svitlana. 2021. Information rights and freedoms on the Internet: general principles of international legal regulation. Shereshevsky readings "Civil law issues in terms of a pandemic and IT". Phoenix. Odesa, Ukraine.
- GALYANTYCH, Mykhaylo. 2011. Compensation for moral and material damage. Yurinkom Inter. Kyiv, Ukraine.
- GONCHARENKO, Vladislava; SPASOVA, Ekaterina; KALITENKO, Oksana. 2019. "Protection of civil rights and legal interests in Ukraine" In: Amazonia Investiga. Vol. 08, No. 22, pp. 135-140.
- GRIGORYANTS, Galyna. 2015. "Some problematic issues of copyright protection against piracy on the Internet" In: Juridical scientific journal. Vol. 04, pp. 70-72.
- KALITENKO, Oksana; ANIKINA, Galyna; SPASOVA, Ekaterina; SHAHAKA, Olexandra. 2021. "The restrictions of the freedom of information during the Covid-19 pandemic" In: Cuestiones Políticas. Vol. 39, No. 70, pp. 426-445.
- KETRAR, Anna. 2012. "Legal problems of protection of copyright and related rights from piracy on the Internet" In: Journal of Civil Studies. Vol. 14, pp. 141-145.
- KHARCHENKO, Olesia; KRONDA, Olha; KRYVOSHEYINA, Inha; ZEROV, Kostiantyn. 2021. "Protection of intellectual property rights on the Internet: new challenges" In: Amazonia investiga. Vol. 10, No. 41, pp. 224-236.
- KIEMA, Ilkka. 2008. "Commercial piracy and intellectual property policy" In: Journal of economic behavior & organization. Vol. 68, No. 01, pp. 304-318.

- KOVALENKO, Inna. 2018. "Actual issues of protection of intellectual property rights on the Internet in terms of globalization of society and modern technologies" In: Scientific notes of V. I. Vernadskyi Tavriy National University. Series: Legal sciences. Vol. 29, No. 68, pp. 52-55.
- KULINICH, Olha. 2016. The right of an individual to his own image: current state and development prospects. Juridical literature. Odesa, Ukraine.
- MELNIKOV, Mykhaylo. 2003. "Piracy as a crime in the field of copyright and related rights: a view of the problem" In: Law of Ukraine. Vol. 4, pp.72-75.
- NEKIT, Kateryna. 2020. "Fiduciary management of a social media account" In: Trusts & Trustees. Vol. 26, No. 4, pp. 295-302.
- NEKIT, Kateryna; ULIANOVA, Galyna; KOLODIN, Denis. 2019. "Website as an object of legal protection by Ukrainian legislation" In: Amazonia investiga. Vol. 08, No. 21, pp. 222-230.
- ORLOVA, Alina; PEREVALOVA, Viktoriia. 2014. "Issues of copyright protection in Ukraine" In: Bulletin of NTU "KhPI". Vol. 37 (1080), pp. 04-08.
- POZHUEV, Vitaliy. 2011. "Ways and directions of the formation and implementation of a modern information society in terms of globalization" In: Humanitarian Bulletin of the Zaporizhzhya State Engineering Academy. Vol. 46, pp. 05-18.
- RIPPA, Petro. 2011. "Copyright protection on the Internet" In: Scientific Bulletin of the National University of the State Tax Service of Ukraine (Economics, Law). Vol. 02, pp. 194-202.
- TOMAROV, Ilarion; NETSKA, Svitlana. 2015. "Ways of defense in disputes about illegal domain name registration" In: Lawyer & Law. Vol. 30, pp. 111-126.
- TSYBULEV, Petro. 2005. Management of intellectual property. K.I.S. Kyiv, Ukraine.
- ULIANOVA, Galyna. 2008. "Forms of copyright protection" In: South Ukrainian legal journal. Vol. 02, pp. 169-170.
- VERKHOVNA RADA of Ukraine. 2003. Civil Code of Ukraine: Law of Ukraine Available online. In: <https://zakon.rada.gov.ua/laws/show/435-15>. Consultation date: 12/09/20.
- VERKHOVNA RADA of Ukraine. 2022. "On copyright and related rights ": Law of Ukraine No. 2811-IX. Available online. In: <https://zakon.rada.gov.ua/laws/show/2811-20#Text>. Consultation date: 02/11/22.

VORONKOVA, Valeria. 2016. "The Internet as a global trend of the development of network society and informationalism" In: Humanitarian Bulletin of the Zaporizhzhya State Engineering Academy. Vol. 64, pp. 32-43.

ZHAROV, Volodymir. 2005. Protection of intellectual property rights in Ukraine. Institute of intellectual property and law. Kyiv, Ukraine.



UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.41 N° 78

*Esta revista fue editada en formato digital y publicada en julio de 2023, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

www.luz.edu.ve
www.serbi.luz.edu.ve
www.produccioncientificaluz.org