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Protection of Intellectual Property Rights on the Internet

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ABSTRACT

The article provides a comprehensive analysis of the legal protection and enforcement of intellectual property rights on the Internet in the context of rapid technological development and the globalization of the information environment. It is substantiated that the digital environment significantly transforms social relations related to the creation, use, and dissemination of intellectual outputs, while simultaneously generating new challenges for the effective protection of authors, performers, and other right holders. The study identifies the specific characteristics of the Internet, including its decentralized and cross-border nature, the absence of a single regulatory authority, the high speed of information dissemination, the possibility of anonymous use, and the ease of copying digital content. These features considerably complicate the detection of infringements, the identification of offenders, and the enforcement of liability, as well as the process of proving violations of intellectual property rights. Doctrinal approaches to understanding intellectual property as a complex legal institution are analyzed. The structure of intellectual property law is outlined, encompassing copyright and related rights, patent law, and means of individualization. Particular emphasis is placed on copyright, as it is the area most frequently affected by infringements in the digital environment. The article examines the specific nature of digital intellectual property objects, including their ability to be stored, reproduced, and distributed without significant loss of quality, as well as their instant accessibility regardless of the user's location. It is demonstrated that these characteristics contribute to the widespread unauthorized use of protected works online. The publication of works on the Internet is considered a form of use that requires the authorization of the right holder.

KEYWORDS

digital environment, Internet, protection of rights, piracy, right holder, electronic form of the work.



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Захист прав інтелектуальної власності в мережі інтернет

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У статті здійснено комплексний аналіз проблем правової охорони та захисту інтелектуальної власності в мережі Інтернет в умовах стрімкого розвитку цифрових технологій і глобалізації інформаційного простору. Обґрунтовано, що цифрове середовище істотно трансформує суспільні відносини у сфері створення, використання та поширення результатів інтелектуальної діяльності, водночас породжуючи нові виклики для ефективного забезпечення прав авторів, виконавців та інших правовласників. Розкрито специфічні особливості функціонування мережі Інтернет, зокрема її децентралізований і транснаціональний характер, відсутність єдиного центру управління, швидкість поширення інформації, можливість анонімного використання ресурсів та легкості копіювання цифрового контенту. Встановлено, що зазначені фактори значно ускладнюють процес виявлення правопорушень, ідентифікацію порушників та притягнення їх до юридичної відповідальності, а також доведення факту порушення прав інтелектуальної власності. Проаналізовано наукові підходи до розуміння інтелектуальної власності як комплексного правового інституту, що охоплює сукупність норм, спрямованих на регулювання відносин у сфері створення, використання та охорони результатів творчої діяльності. Визначено структуру права інтелектуальної власності, яка включає авторське право і суміжні права, патентне право, а також засоби індивідуалізації учасників цивільного обороту. Особливу увагу приділено авторському праву як одному з ключових інститутів, що найчастіше зазнає порушень у цифровому середовищі. Досліджено особливості існування об'єктів інтелектуальної власності в цифровій формі, зокрема можливість їх зберігання, відтворення та поширення без істотної втрати якості, а також миттєве відтворення незалежно від місцезнаходження користувачів. Показано, що саме ці характеристики сприяють масовому незаконному використанню творів у мережі Інтернет. Визначено, що розміщення твору в Інтернеті є одним із способів його використання та має здійснюватися виключно за згодою правовласника.



КЛЮЧОВІ СЛОВА

цифрове середовище, Інтернет, охорона прав, захист прав, піратство, правовласник, електронна форма твору.

1. Introduction

The introduction of digital technologies and the processes of globalization of the information space have led to a significant increase in the volume of creation, distribution and use of intellectual property objects on the Internet. The digital environment opens up significant prospects for creative activity, the development of innovations and the expansion of access to information, at the same time giving rise to new problems in the field of proper protection of the rights of authors, performers and other rights holders. The relevance of the research topic is due to the fact that the existing legal mechanisms for the protection of intellectual property often do not keep pace with the rapid development of digital technologies and the transformation of social relations on the Internet. Traditional approaches to legal regulation are not effective enough in the conditions of the transnational nature of the network, where violations can be carried out from the territory of different states.

Scientific research of the peculiarities of the implementation and protection of copyright and related rights on the Internet, identification of the main problems of law enforcement in this area and search for effective ways to counteract Internet piracy is also of great importance. The analysis of the current state of legal regulation makes it possible to identify gaps in legislation and outline possible directions for its improvement in order to ensure an appropriate balance between the interests of right holders and the needs of society in free access to information.

2. Literature Review

The issue of legal protection and protection of intellectual property in the digital environment is one of the most studied in modern legal science. This is due to the rapid development of information technologies and the growth in the number of offenses on the Internet, which requires a comprehensive scientific understanding and improvement of legal regulation.

The theoretical foundations of intellectual property law, its concept, structure and place in the system of civil law are disclosed in the works of domestic scientists, in particular in textbooks and scientific research [3; 4; 6; 10]. In these works, intellectual property is considered as a set of legal norms that regulate relations related to the creation, use and protection of the results of creative activity, as well as determine the mechanisms for the implementation of the rights of their subjects.

Special attention in the scientific literature is paid to the issues of protection of copyright and related rights. In particular, the procedural aspects of such protection, including the methods of restoration of violated rights and compensation for damages, are studied in the works [14], where the need to improve judicial mechanisms in this area is emphasized.

A significant contribution to the study of the peculiarities of copyright protection on the Internet was made by K. O. Zerova [21] and other researchers who analyze the specifics of violations in the digital environment, in particular, illegal reproduction and distribution of works through network resources. In turn, M. Sosnovsky [12] draws attention to the need to form special legislation that would adequately regulate activities on the Internet and provide effective protection of copyright holders.

The issues of international legal regulation of intellectual property are covered in the context of the analysis of international treaties and obligations of Ukraine, in particular the Association Agreement with the European Union [1], which provides for the harmonization of national legislation with European standards in the field of intellectual property.

Certain aspects of the implementation of intellectual property rights in contractual relations are studied in the works [18], which consider the issues of the creation of intellectual property objects by order and the peculiarities of the distribution of rights between the parties to such legal relations.

In addition, the scientific literature analyzes the role of the state in ensuring the protection of intellectual property. In particular, N. M. Batanova [2] considers the protection of intellectual property rights as a system of measures carried out by authorized bodies in order to restore violated rights and bring guilty persons to justice.

Thus, the analysis of scientific sources and regulations indicates the presence of a solid theoretical base in the field of intellectual property, at the same time, confirms the need for further research aimed at adapting legal mechanisms to the conditions of the digital environment and increasing the effectiveness of protection of rights on the Internet.

3. Problem Statement

The article is aimed at studying topical problems of ensuring intellectual property rights on the Internet, identifying the main threats and risks for rights owners, assessing the effectiveness of existing legal instruments and formulating recommendations for their improvement.

4. Methods and Materials

The methodological basis of the study is a complex of general scientific and special legal methods, the application of which made it possible to comprehensively analyze the features of legal protection and protection of intellectual property rights on the Internet. The use of a systematic approach made it possible to consider the institution of intellectual property as a complex legal category that combines various elements of legal regulation, in particular the norms of civil, administrative and criminal law, aimed at ensuring proper protection of the results of intellectual activity in the digital environment.

In the process of research, analysis and synthesis were applied, which made it possible to investigate the essence of the concept of intellectual property, the features of copyright and related rights, as well as to generalize scientific approaches to their protection in the conditions of the functioning of the Internet. With the help of the formal legal method, the provisions of national legislation, in particular the norms of civil legislation and special normative legal acts regulating the protection of intellectual property objects, have been interpreted.

An important role was played by the comparative legal method, which made it possible to analyze approaches to copyright regulation in the digital environment and identify certain trends in the development of the legal mechanism for the protection of intellectual property. In addition, the use of logical-legal and system-structural methods contributed to the identification of the relationship between individual elements of legal regulation in the field of copyright and related rights, as well as the identification of problematic aspects of their implementation on the Internet.

5. Results and Discussion

In the current conditions of the development of the information society, intellectual property plays a key role as one of the main resources of economic, cultural and technological progress. With the transition of a significant part of social relations to the digital environment, the Internet has become the main platform for creating, disseminating and using the results of intellectual activity. This, in turn, has led to a transformation of approaches to the protection and enforcement of intellectual property rights, since traditional legal mechanisms are not always effective in the virtual space.

The Internet is distinguished by its globality, lack of a single control center and constant changeability, which significantly complicates the identification of persons who violate the law and bringing them to legal responsibility. The efficiency of disseminating information, the ability to use resources under the guise of anonymity, as well as the ease of copying and using digital materials form a favorable basis for the illegal reproduction, distribution, or alteration of works, objects of related rights and other results of intellectual activity. Under such circumstances, right holders often face difficulties in protecting their interests, in particular due to the complexity of proving the very fact of infringement and identifying the offender.

At the same time, the rapid development of technologies leads to the emergence of new types of intellectual property objects and modern ways of their use, which require updating and adaptation of legal regulation. The protection of digital content, software products, databases, multimedia resources and other results of creative activity that exist in the virtual space is of particular relevance. This, in turn, requires the creation of effective legal mechanisms that can take into account the specifics of the functioning of the digital environment.

According to the provisions of Article 418 of the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine), intellectual property rights are defined as the right belonging to a person to the result of his/her intellectual or creative activity, as well as to other objects referred by law to the sphere of intellectual property [11].

In the scientific sense, intellectual property law is considered an ordered system of legal norms that regulate similar social relations that arise during the creation, use and protection of the results of intellectual and creative activity. That is, it includes a set of rules that determine how the rights to such results of human activity are acquired, exercised and protected [10, p. 12].

A set of these norms forms a separate branch of civil law – intellectual property law. It consists of several sub-branches, such as copyright and related rights, patent law, as well as rules that ensure the individualization of participants in civil turnover, their goods and services. Each of these objects is subject to its own protection and protection regime, which also applies to relations in the digital environment, including the Internet.

In particular, information about plant varieties, industrial design projects, trade secrets or other results of creative activity may be illegally, without the permission of the copyright holder, made public on the Internet. At the same time, most violations in the digital environment concern copyright and related rights, which explains the increased attention to this institution.

Given the urgency of the problem of protection and protection of intellectual property on the Internet, as well as a significant number of violations, the concept of intellectual property rights on the Internet is often identified primarily with copyright and related rights.

Copyright is aimed at the legal protection of works and guarantees the protection of both personal non-property and property rights of their creators, as well as the property rights of other persons who acquired them legally. It establishes the legal basis for the use of works, assigning to the author the exclusive authority to grant permission for their use or object to such use. The legislation also provides for mechanisms for maintaining a balance between the private interests of copyright holders and the needs of society, allowing, in certain cases, the free use of works, in particular for scientific, educational, informational, or cultural purposes.

At the legislative level in Ukraine, the concept of the electronic form of a work as a separate type of objective form was first enshrined in the Law of Ukraine No. 1977-VIII of March 23, 2017 “On State Support of Cinematography in Ukraine” [18].

A. Kerever draws attention to several differences between works in analog and digital forms. First of all, an intellectual property object represented in a binary code can be stored on one medium, while analog recording requires different material media depending on the type of work: for music – phonograms, for audiovisual works – videograms, for literary works – printed publications. In addition, digital copies are marked by a high level of identity from the original, unlike analog copies, which often lose quality when played.

Another important feature of the digital form is the ability to compress information without significantly losing its content. In addition, a work posted on the Internet in digital form can be reproduced almost instantly by users regardless of their location, which significantly expands the scale of its distribution.

In order to properly determine the legal status of works that have become available on the Internet, first of all, it is necessary to find out what ways of their use take place. In the scientific doctrine, there is no unity of views on the qualification of such actions. However, it is generally accepted that the publication of a work on the Internet is one of the ways of its use and can be carried out only with the consent of the person who owns the relevant rights.

The legal position on this issue is reflected in the Resolution of the Plenum of the Supreme Court of Ukraine “On the Application by the Courts of the Norms of Legislation in Cases of Protection of Copyright and Related Rights” [9]. In particular, paragraph 31 states that the placement of works on the Internet in a format that provides free access to users should be regarded as bringing them to public knowledge, i.e., creating an opportunity for any person to get acquainted with the work [9].

As K. O. Zerova notes, the illegal placement of a work on the Internet manifests itself in two forms of its use by the offender: through reproduction – that is, uploading the work to the server; through publication – making the work available to the public [21].

Further copies of the work, when viewing illegal content or downloading it to the device, are already made by other users, and the number of such repeated reproductions can serve as an indicator of the damage caused to the copyright holder or, conversely, the amount of profit received by the direct infringer.

Article 53 of the Law of Ukraine "On Copyright and Related Rights" defines the grounds for such protection, which are any violation, non-recognition or contestation of copyright and related rights, as well as the creation of a threat of their violation [14].

Violations of both personal non-property and property rights include appropriation of authorship (plagiarism), misuse of copyright objects, their distribution on the Internet (piracy), non-compliance with the provisions of license agreements, distortion or falsification of information on rights management, the use of card-sharing technology, as well as the implementation of activities related to the functioning of web resources through which works are distributed. In the digital environment, such violations are becoming especially widespread, since modern technologies allow you to quickly copy and distribute works without territorial restrictions for users.

In addition, the law defines actions that pose a threat of infringement of rights, in particular: distribution of technical devices and programs that allow access to copyright objects without the permission of copyright holders, as well as providing instructions for circumventing technological means of protection. At the same time, the provisions of this Part do not apply to cases of free use of works or objects of related rights, when a person acts on legal grounds.

The protection of these rights is carried out in accordance with the norms of administrative, civil and criminal legislation. In practice, this allows the right holder to demand the termination of violations, compensation for damages and bringing the perpetrators to justice. In today's digital society, where content spreads rapidly online, adherence to such rules is essential to maintaining a balance between the interests of creators and the needs of society.

The deeper computer technology penetrates into everyday life, the more pronounced the risk of infringement of intellectual property rights in relation to objects posted online.

Back in 1997, Ukraine was included in the list of "pirate" countries in the annual Report 301, which is prepared by the Office of the US Trade Representative, identifying states that do not meet international standards for the protection of intellectual property. In 2006, the country was removed from the list, but this did not last long. In 2013, Ukraine was again granted the status of "pirate" due to ineffective implementation of the norms on the protection of intellectual rights on the Internet.

In this context, it is necessary to conduct a study of the main tools for the protection and protection of copyright on the Internet used in Ukraine, as well as to outline problematic aspects that require proper legal regulation. This, in turn, will contribute to the improvement of both regulatory and organizational mechanisms for countering Internet piracy and ensuring the effective implementation and protection of copyright and related rights.

Modern researchers interpret copyright as the ability of the subject to protect his rights in any state where the illegal use of the work occurs. Y. E. Yakubivska emphasizes that the Berne Convention puts the rights of the author above the state interests. For this reason, some countries, including the United States and the countries of the former USSR, did not join the convention for a long time. Ukraine became a member of it in 1995.

In accordance with the provisions of the Law of Ukraine "On Private International Law", namely Article 37, in disputes related to the protection of intellectual property rights, the law of the state on the territory of which the claim for protection is made is subject to application. At the same time, the Constitution of Ukraine in Article 54 enshrines guarantees of state protection of intellectual property, copyright, as well as personal non-property and property interests arising from the implementation of creative and other intellectual activities [7].

O. Stefan notes that copyright protection can be carried out even before the actual infringement, while civil law protection is applied after it has been committed.

In general, the protection of intellectual property rights consists in the implementation by authorized state bodies of measures aimed at restoring violated rights, terminating illegal actions and ensuring the prosecution of persons who harm the legitimate interests of copyright holders.

According to N. Batanova, the protection of intellectual property is a system of legal measures carried out by authorized state bodies to protect subjective rights to intellectual property objects [2, p. 61].

When analyzing the protection and protection of copyright and related rights on the Internet, it is advisable to separate the concepts of "protection" and "protection". Protection is understood as preventive measures that can be applied by the author, the state or society until the moment of violation of rights. Protection is a system of actions taken after the fact of infringement or appeal of copyright and

related rights. In the conditions of the Internet, preventive measures are especially effective, since it is easier to prevent a violation than to prove it and restore rights.

An important prerequisite for effective protection of intellectual property rights is the choice of the optimal legal mechanism. Today, the most common ways are judicial and extrajudicial defense, including self-defense of rights. Post-facto remedies can be divided into pre-trial measures and measures implemented through court procedures, using the constitutional right to appeal to the court.

6. Conclusions

In the current conditions of digital transformation of society, intellectual property is of particular importance as a key resource for economic, cultural and technological development. The dissemination of the results of intellectual activity on the Internet creates both new opportunities for the use of digital content and significant risks of violation of the rights of authors and copyright holders. The peculiarities of the digital environment – globality, speed of information dissemination and the possibility of anonymous access – complicate the protection and protection of intellectual rights, which requires the improvement of regulatory and legal mechanisms.

The analysis of legislative and scientific sources shows that the effective protection of copyright and related rights on the Internet involves a comprehensive approach, which includes preventive measures (protection) and post-facto actions (protection) implemented through administrative, civil and criminal mechanisms. The international aspect is also important, because rights violations often go beyond national jurisdiction.

Therefore, in order to ensure a balance between the interests of authors and society, it is necessary to further improve the legal regulation in the field of intellectual property, develop technological and organizational mechanisms for the protection of digital content, as well as increase the legal awareness of network users. Such an integrated approach will effectively counteract Internet piracy and ensure real protection of intellectual property rights in the modern information society.

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