

СУСПІЛЬСТВО: СТАН І ПЕРСПЕКТИВИ РОЗВИТКУ. ОСОБИСТІСТЬ

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SUBSTANTIVE COMPONENTS OF COPYRIGHT: ESSENCE, FEATURES, SPECIFICITY

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ЗМІСТОВНІ СКЛАДОВІ АВТОРСЬКОГО ПРАВА: СУТНІСТЬ, ОСОБЛИВОСТІ, СПЕЦИФІКА

Objective. The objective of this scholarly article is to find out the essence of copyright, namely its key concepts and basic principles, to identify the mechanisms and tools for its protection in Ukraine.

Methods. Theoretical methods include analysis and synthesis of literature on the problem under study; practical methods are the selection of factual material on the basis of which conclusions about the essence of copyright. Key concepts and basic provisions, mechanisms and instruments of copyright protection in Ukraine will be formulated.

Results. The 21st century is considered the beginning of a new era, which is characterized by global technologies, high informatization, mechanization, and dynamic economic growth. In this century, the main attention of society is paid to the intellectual product, which forms the basis of the concept of "intellectual property" (IP) in the economic and legal context.

The collected factual material allows us to conclude that the modern development of any field of human activity (culture, industry, agro-industrial complex, health care, etc.) is impossible without proper technical and scientific support and spiritual achievements of society. These aspects are closely related and interdependent. Thus, the problem of proper use of the intellectual potential of society and the nation as a whole requires constant attention and support from the state.

The existence of a modern system of legal protection of IP in Ukraine contributes to the preservation and enrichment of the technical and scientific potential of the state, the development of the national economy and international trade, as well as the attraction of foreign investments, in particular in the form of advanced technologies, which allows Ukraine to enter the world market of intellectual property as an equal in rights partner.

The norms of copyright, together with provisions on related rights, form a single institution of IP law - the institution of copyright and related rights.

Objectively, copyright is considered as a complex of civil law norms that regulate relations that arise during the creation and use of works of art, science and literature.

Subjectively, copyright represents personal and property rights that arise in connection with the creation of works of science, literature and art by the individuals who created them, and which are subject to protection according to the law.

It is important to note that copyright arises immediately from the moment of creation of the work, and this moment is recognized by the manifestation of the work on a tangible medium in such a way that it can be understood by others.

Key words: *copyright, intellectual property, objects of copyright, subjects of copyright, principles of copyright, provisions of copyright, specifics of copyright.*

Introduction

Nowadays, scientific and technical, literary and artistic activities are the main directions of the spiritual creativity of the people and are not directly regulated by civil law because the process of artistic and scientific and technical creativity remains outside the scope of its legal norms and does not function properly.

The relevance of this scientific article is due to the fact that copyright is a part of civil law and is aimed specifically at the protection of IP of any creative activity of people, it is also one of the essential factors in the perception of each state as a highly civilized society, not only on paper, but also in real life. Today, copyright is considered one of the rights that is quite important for every developed country, and particularly for Ukraine. Copyright appears in certain results of creative activity and arose precisely because of the need to be protected and to protect the rights of authors of scientific, literary and artistic works.

Creative activity, or simply creativity, is an activity resulting in something qualitatively new, distinguished by uniqueness, originality and socio-historical uniqueness [3, p. 20].

Intellectual activity and creative activity are mental activities. In this aspect, these two activities coincide. But not all mental activity is intellectual or creative. A person can work mentally, but cannot achieve a creative result. It should be mentioned that many people are engaged in mental activity, and with the development of society, there are more and more of them. These are scientists, engineers, teachers, doctors, etc. Creativity, as a result of which something new appears, is characteristic of not everyone. Therefore, intellectual activity differs from creative activity in that its results necessarily become objects of legal protection. Far from all, the results of creative activity become the objects of intellectual property, and therefore, objects of legal protection [3, p. 21].

The highly developed countries successfully cooperate with each other in the economic, political and cultural spheres of public life, in turn, thanks to the proper provision of relevant legal norms in accordance with modern living conditions, as well as the protection of copyright.

The sources of copyright include the following regulation documents: the Civil Code of Ukraine, Laws of Ukraine "On Copyright and Related Rights" dated 07.11.2001, "On Distribution of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases" dated 03.23. 2000, "On the peculiarities of state regulation of business entities related to the production, export, import of discs for laser reading systems" dated 17.01.2002, Resolution of the Cabinet of Ministers of Ukraine "On approval of minimum remuneration (royalty) rates" for the use of objects of copyright and related rights" dated 18.01.2003 No. 72 and "On approval of the Procedure for state registration of copyright and contracts relating to the author's right to a work" dated 27.12.2001 No. 1756, etc. [2, p. 31].

Some aspects of this scientific research were considered in different periods by well-known foreign and domestic scientists. They are O. Orliuk, O. Denysiuk, O. Oliynyk, H. Androshchuk, O. Butnik-Siverska, S. Volkov, T. Rudnyk, O. Shtefan, V. Fuchej, I. Blyznets, V. Kaliatin, N. Makohonova, L. Bentley, B. Sherman and others.

The objective of this study is to clarify the essence of copyright, namely its key concepts and basic provisions, mechanisms and tools of its protection in Ukraine. Objectives of the study are:

- 1) to find out the state of development of the researched problem in the scientific literature;
- 2) to define the objects and subjects, the main task, the basic provisions, and the basic principles of copyright;
- 3) to select actual material for research on this topic, organize it, and depict it;
- 4) the peculiarities of copyright protection in Ukraine should be considered;
- 5) to draw conclusions regarding the selected material.

Methods

Theoretical methods include analysis and synthesis of literature on the problem under study; practical methods are the selection of factual material on the basis of which conclusions about the essence of copyright. Key concepts and basic provisions, mechanisms and instruments of copyright protection in Ukraine will be formulated.

Results and Discussions

Copyright is a legal concept that gives authors and performers control over certain types of use of their works during a certain period of time, limiting the circle of people who can copy, modify, perform their works, or use them as part of other works [1, p. 17].

The task of copyright is to create the most favorable legal conditions for creative activity, to ensure the availability of the results of this activity for the entire society. Its main principle is the combination of the interests of the author and the interests of the whole society. Thus, the Law of Ukraine "On Copyright and Related Rights" allows the free use of published works without the permission of the author, but within the limits of the Law (Articles 15-19). Copyright proclaims and provides broad protection of the personal non-property and property rights of authors [2, p. 31].

The economic purpose of copyright and related rights is to ensure:

- the rewards to authors and performing artists;
- satisfactory income from their capital investments, i.e., payback to producers of cultural products.

The Directive of the European Parliament (May, 2001) "On harmonization of some aspects of copyright and related rights in the information society" states that the protection of copyright and related rights is of great importance from the point of view of culture. In order for authors and performers to be able to carry out creative activities, they must receive remuneration for the use of their works, and producers will be able to finance further production from the income. Income corresponding to capital investment can be ensured only with an adequate level of protection of copyright and related rights [4, p. 50].

According to Article 8 of the Law of Ukraine "On Copyright and Related Rights":

1. Objects of copyright are works in the fields of science, literature and art, namely:
 - 1) literary works of a fictional, journalistic, scientific, technical or other nature (books, brochures, articles, etc.);
 - 2) performances, lectures, speeches, sermons and other oral works;
 - 3) computer programs;
 - 4) databases;
 - 5) musical pieces with and without text;
 - 6) dramatic, musical-dramatic pieces, pantomimes, choreographic and other works created for stage performance and their productions;
 - 7) audiovisual works;
 - 8) works of fine art;
 - 9) works of architecture, urban planning and garden and park art;
 - 10) photographic works, including works made by methods similar to photography;
 - 11) works of applied art, including works of decorative weaving, ceramics, carving, foundry, art glass, jewelry, etc.;

12) illustrations, maps, plans, drawings, sketches, and plastic works related to geography, geology, topography, technology, architecture and other fields of activity;

13) stage processing of the works specified in clause 1 of this part and processing of folklore suitable for stage performance;

14) derivative works;

15) collections of works, collections of works of folklore, encyclopedias and anthologies, collections of ordinary data, and other composite works, provided that they are the result of creative work in the selection, coordination or arrangement of the content without violating the copyright of the works included in them as constituent parts ;

16) translated texts for dubbing, dubbing, and subtitling in Ukrainian and other languages of foreign audiovisual works;

17) other works [5].

The part of the work that can be used independently is also protected, in particular, the original title.

Example; In 1999, the heirs of O. Tolstoy threatened the Moscow confectionery factory "Krasnyi Oktyabr" (Rus.«Красный октябрь») with a lawsuit for illegal use of the name of the writer's most famous fairy tale, "The Golden Key or The Adventures of Pinocchio"(Rus.«Золотой ключик или Приключения Буратино») as the name of the "Golden Key" toffee. It did not go to trial: an agreement on the author's remuneration was signed.

Criteria for the protection of works (for the protection of rights in court):

1) novelty (sometimes originality, which is not synonymous with novelty, can provide protection for similar works), that is, it means that the work is not plagiarized. Novelty can refer to both content and form.

Example; Stendhal used Italian medieval chronicles for his novels; Shakespeare used stories of ancient authors; painters used biblical subjects, often one and the same, but the form of these works was different;

2) expression in material form. Treated according to national legislation.

Examples.

USA: Any material form, now existing or hereafter invented, in which works can be perceived, reproduced, communicated, directly or by machine or device. This form should be stable for a considerable period.

Result: oral, dramatic, choreographic works, not captured on film, are not protected. Works on the Internet are not protected if they are not simultaneously recorded in real time.

Continental Europe: the form is not necessarily "material", but "objective", i.e. the form that allows the perception of the work by the senses, i.e. the works placed on the Internet are protected, regardless of the recording on the information medium [4, p. 52].

Certain categories of works are not recognized as objects of copyright, namely:

1) official documents of a political, legislative, or administrative nature (laws, court decisions, state standards, etc.) and their official translations issued by state authorities within their powers. However, it should be borne in mind that the authors of the drafts of the specified official documents have the right of authorship;

2) official symbols and signs (flags, coats of arms, orders, money signs, etc.),

3) announcements about the news of the day or announcements about current events that have the character of a regular press conference;

4) works of folk creativity;

5) results obtained with the help of technical means intended for the production of a certain kind – without the implementation of creative activity directly aimed at the creation of an individual work.

Legal protection extends only to the form of expression of the work and does not extend to ideas, theories, methods, procedures, processes, systems, methods, concepts, principles, discoveries or simply facts, even if they are expressed, described, explained, or illustrated in the work [2, p. 35].

Subjects of copyright are natural and juridical persons who are the bearers of subjective property and non-property rights and obligations [3, p. 151].

Subjects of copyright are:

- 1) authors of works of science, literature and art;
- 2) heirs of the authors;
- 3) persons to whom authors or their heirs have transferred their copyright property rights (successors).

Taking into account Article 435 of the Civil Code, the primary subject of copyright is the author of the work; the creator is only a natural person, regardless of age and citizenship. In the absence of evidence to the contrary, the author of the work is considered to be the natural person indicated in the usual way as the author on the original or copy of the work (presumption of authorship). The right to a work belongs to its real creator, the real author - the one who wrote a book, a painting, created music or a sculpture [2, p. 35].

The original copyright is called the author's copyright; the derivative one is the copyright of the successors.

According to Article 13 of the Law of Ukraine "On Copyright and Related Rights", co-authors are persons whose joint creative work created a work.

The copyright for a work created in co-authorship belongs to all co-authors, regardless of whether such a work forms one inseparable whole or consists of parts, each of which has an independent meaning [6].

In accordance with Article 14 of the Law of Ukraine "On Copyright and Related Rights", the author has the following personal non-property rights:

- 1) to demand recognition of one's authorship by properly indicating the author's name on the work and its copies and for any public use of the work, if this is practically possible;
- 2) to prohibit the mention of his name during the public use of the work if he, as the author of the work, wishes to remain anonymous;
- 3) to choose a pseudonym, indicate and demand the indication of a pseudonym instead of the real name of the author on the work and its copies and during any public use of it;
- 4) to demand preservation of the integrity of the work and oppose any twisting, distortion or other change of the work or any other encroachment on the work that may harm the honor and reputation of the author [5].

According to Article 15 of the Law of Ukraine "On Copyright and Related Rights", the property rights of the author (or other person who owns the copyright) include:

- a) exclusive right to use the work;
- b) the exclusive right to permit or prohibit the use of the work by other persons.

The property rights of the author (or other person who has copyright) may be transferred (alienated) to another person in accordance with the provisions of Article 31 of this Law, after which this person becomes the subject of copyright.

The author's exclusive right to use the work by the author (or another person who holds the copyright) allows him to use the work in any form and in any way.

The exclusive right of the author (or other person who owns the copyright) to permit or prohibit the use of the work by other persons gives him the right to permit or prohibit:

- 1) reproduction of works;
- 2) public performance and public notification of works;
- 3) public demonstration and public display;
- 4) any repeated publication of works if it is carried out by an organization other than the one that carried out the first publication;
- 5) translations of works;
- 6) revisions, adaptations, arrangements and other similar changes to works;
- 7) inclusion of works as constituent parts of collections, anthologies, encyclopedias, etc.;

8) distribution of works by means of the first sale, alienation in another way, leasing or rental and by other means of transfer before the first sale of copies of the work;

9) presenting one's works to the public in such a way that its representatives can access the works from any place and at any time of their own choice;

10) leasing and (or) commercial rental after the first sale; alienation by other means of original or copies of audiovisual works, computer programs, databases, musical works in sheet music, as well as works recorded in phonograms or videograms or in computer-readable form;

11) Importation of copies of works.

This list is not exhaustive [7].

Conclusions

Therefore, copyright protects not the ideas themselves, but the form of their expression. Legal protection comes into force only when these ideas are realized on a physical medium. From an objective point of view, copyright is a set of civil-law norms that regulate relations that arise during the creation and use of works of art, science, and literature, and from a subjective point of view, it is personal non-property and property rights that arise in connection with the creation of works of science, literature and art by the persons to whom they belong and are protected by law.

Acquiring certain knowledge in the field of copyright will make it possible to learn how to find IP objects in one's works, developments and products that are created at the same time, to obtain the right to protect IP both in our country and abroad, and also give the opportunity to turn it into an absolutely competitive product on the market, which with rational and correct use can become profitable, highly profitable and important.

With the help of intellectual and creative activity, it is possible to achieve a high socio-economic level of welfare in society.

Ukraine is not far behind the world leaders and has a rather powerful intellectual potential and numerous world-class achievements, but for the most part, they were not properly directed to the benefit of our people.

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Мета даної наукової статті полягає у тому, щоб з'ясувати суть авторського права, а саме його ключові поняття та основні положення, визначити механізми та інструменти його охорони в Україні.

Методи. Теоретичні – аналіз та синтез літератури з досліджуваної проблеми; практичні – відбір фактичного матеріалу, на основі якого будуть сформульовані висновки про суть авторського права, його ключові поняття та основні положення, механізми та інструменти його охорони в Україні.

Результати. ХХІ століття вважається початком нової ери, яка характеризується глобальними технологіями, високою інформатизацією та механізацією, динамічним ростом економіки. У цьому столітті основна увага суспільства приділяється інтелектуальному продукту, який утворює основу поняття "інтелектуальна власність" (ІВ) в економіко-правовому контексті.

Зібраний фактичний матеріал дозволяє зробити висновок, що сучасний розвиток будь-якої галузі людської діяльності (культура, промисловість, агропромисловий комплекс, охорона здоров'я тощо) неможливий без належного технічно-наукового забезпечення та духовних досягнень суспільства. Ці аспекти тісно пов'язані та взаємозалежні. Таким чином, проблема належного використання інтелектуального потенціалу суспільства і нації в цілому вимагає постійної уваги та підтримки з боку держави.

Існування сучасної системи правового захисту ІВ в Україні сприяє збереженню та збагаченню технічно-наукового потенціалу держави, розвитку національної економіки та міжнародної торгівлі, а також залученню іноземних інвестицій, зокрема у вигляді передових технологій, що дозволяє Україні вступати на світовий ринок інтелектуальної власності як рівноправного партнера.

Норми авторського права, разом з положеннями про суміжні права, утворюють єдиний інститут права ІВ – інститут авторського права та суміжних прав.

Об'єктивно авторське право розглядається як комплекс цивільно-правових норм, що регулюють відносини, що виникають при створенні та використанні творів мистецтва, науки та літератури.

Суб'єктивно авторське право представляє собою особисті та майнові права, які виникають у зв'язку із створенням творів науки, літератури та мистецтва особами, що їх створили, та які підлягають захисту згідно з законом.

Важливо відзначити, що авторське право виникає негайно з моменту створення твору, і цей момент визнається проявом твору на матеріальному носії таким чином, щоб його можна було розуміти іншим особам.

Ключові слова: авторське право, інтелектуальна власність, об'єкти авторського права, суб'єкти авторського права, принципи авторського права, положення авторського права, специфіка авторського права