



The Problems of Responsibility for Violation of Legislation Regulating the Information Security on the Internet

Los problemas de responsabilidad por violación de legislación que regula la seguridad de información en Internet

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ABSTRACT:

The article examined the measures and methods of copyright protection on the Internet. The specific features of legal relationships arising from Internet use and effective approaches to counteracting the violations are identified. It has been established that the absence of the codified statute on information security on the Internet impedes to impose of punishment upon an offender for copyright infringement. The specificity is noted of the responsibility in sphere of intellectual property violations (it is different from the responsibility in other branches of civil legislation). The specificity of legal relations on the Internet is noted that the establishing rules of conduct on the Internet is not efficient.

Keywords: responsibility, information security, copyright protection, intellectual property, Internet.

RESUMEN:

El artículo examinó las medidas y métodos de protección de derechos de autor en Internet. Se identifican las características específicas de las relaciones legales que surgen del uso de Internet y los enfoques efectivos para contrarrestar las violaciones. Se ha establecido que la ausencia del estatuto codificado sobre seguridad de la información en Internet impide imponer un castigo a un infractor por infracción de derechos de autor. Se destaca la especificidad de la responsabilidad en el ámbito de las violaciones de propiedad intelectual (es diferente de la responsabilidad en otras ramas de la legislación civil). La especificidad de las relaciones legales en Internet se observa que el establecimiento de reglas de conducta en Internet no es eficiente.

Palabras clave: responsabilidad, seguridad de la información, protección de derechos de autor, propiedad intelectual, Internet.

1. Introduction

1.1 Introduce the Problem

The development of society in contemporary world characterized by the rapid pace and magnitude of social changes. It is largely connected with the advent and development of new information and telecommunication networks. Nowadays information and telecommunication networks are commonly used. In spite of that copyright for the Internet information lacks effective protection. This is due to the fact that this method of information transfer is relatively recent phenomenon in Russia.

As opposed to real legal relations, the Internet environment is easily accessible to the general public. There is a major problem for authors or other right holders to identify the copyright violator in case of infringement on the Internet, but the legal literature does not sufficiently address challenges to mechanism of copyright protection. Practice indicates that legislation regulating information security in information and telecommunications networks is insufficiently developed. At the same time the international community deliberately have paid particular attention to copyright protection for a long time. It was decided to enact international legislation to deal with these problems. The international conventions are required to develop the harmonized general provisions that provides stability and legal order to this aspect of social relations. It's obvious that at present legislation of the Russian Federation is needed to be brought in line with international standards in order to enhance the copyright protection. The focus should be oriented primarily towards the amendment and improvement of copyright protection laws and practice of its application.

1.2 Explore Importance of the Problem

The dynamic information space on the Internet has raised the need for adequate protection of posted information and sufficient legal regulations. In this regard the authors of this research analyzed the most controversial issues.

Some issues are reviewed in the following fundamental research conducted by I.A. Bliznec and K.B. Leontiev (2010).

Some issues are reviewed in the dissertations by A.M. Lipkes (2006), S.M. Mirzoyan (2004), S.V. Petrovskij (2002), N.G. Tolochkova (2004) and M.A. Hataeva (2009).

The certain aspects of copyright protection on the Internet are analyzed in the articles by K.V. Borodin (2016), E.P. Gavrilov (2012), V.S. Illarionov (2012a, **2012b**), A.A. Inyushkin (2016), V.N. Lopatin (2013), E.M. Makarova (2012), A.V. Palamarchuk (2010), I.V. Pogodina and A.O. Smirnova (2013), E.V. Ryabceva (2016), A.F. Skakun (2013), V.P. Talimonchik (2013), D.K. Tanatova (2016), O.V. Tanimov and Y.V. Kudashkin (2010), L.F. Tatarinova (2013), A.V. Chaplinskij (2016), P.V. Zhesterov, et al. (2017), N.V. Lutovinova, et al. (2016), S.J. Starodumova, et al. (2016) and A.L. Shilovskaya, et al. (2016).

Also the issues of distribution and protection were discussed in the open information network resource (Yumasheva, 2016).

1.3 State Hypotheses and Their Correspondence to Research Design

1.3.1. It have been identified that the copyright protection involves the protection of property and personal non-property rights: a) property rights relate to the results of intellectual activity of author; b) personal non-property rights (right to the name, the right of authorship, the right to protection of the author's reputation and others) are protected by the compensation of moral damage.

1.3.2. It have been found that there is a gap in civil copyright legislation of the Russian Federation allowing the copyright infringement through free copying the information on the Internet, such as thesis abstracts. That gap enables the unauthorized use of author's ideas, because copyright does not extend to ideas, methods, means, concepts, solutions of organizational or other tasks, principles, discoveries, facts, and programming languages.

1.3.3. It have been uncovered that the difficulties in identifying the violator and lack of evidence of copyright infringement on the Internet obstruct the legal proceedings.

1.3.4. It has been determined that the lack of restriction of free copying and complexity of monitoring the use and copying of results of intellectual activity on the Internet contribute to the copyright infringement and impede the protection.

2. Method

A set of general scientific and private law methods was used as the methodological foundation for this article, including historical legal, technical legal, comparative legal, sociological and other research methods. The main method used in this work was a systematic and structural method that has allowed to establish the legal nature of responsibility for violation of the information security legislation on the Internet.

The combination of historical legal and comparative legal methods revealed the specificity of historic circumstances impact on the development of the Internet as an information and telecommunication network of information distribution.

The technical legal method was applied to analyze a set of legal provisions regulating the use of information on the Internet as an copyright object.

The sociological method has grounded the conclusions, proposals and recommendations on the legislation improvement setting out the responsibility and methods of copyright protection on the Internet.

3. Results

The "idea of work" term should be included in article 1259 "Objects of copyright" of Civil Code of the Russian Federation.

The establishing rules of conduct on the Internet is not efficient enough as the rules of conduct are frequently violated via certain computer softwares and the restrictions such as protection symbol do not hinder the copyright infringement. There should be a viable mechanism of protection against the unauthorised use of information.

There has been identified the need to specify the cases being heard by Intellectual Property Court and protect the property and personal non-property rights on the Internet in order to improve the legislation regulating the information security on the Internet and enhance the investment appeal of the Russian Federation.

4. Discussion

Being the means of mass information distribution the global Internet becomes the instrument of different unlawful actions. Unfortunately the copyright infringements on the Internet go unpunished. In our opinion the development of Internet technologies in numerous countries promotes the increase in violations. The persons who commit the offences on the Internet derive income at minimal cost. The unpunished and illegal obtaining money substantially infringes the rights and interests of man and the citizen. The systematic improvement of legislation should solve these problems. Therefore, as noted by A.V. Palamarchuk, "... illegal use of objects of copyright is a copyright infringement on the Internet" (Palamarchuk, 2010).

The copyright protection involves the protection of property and personal non-property rights. However in contrast to property rights that imply the economic benefits (Zolotareva A.E. et al., 2017) and relate to the results of intellectual activity of author personal non-property rights such as the right to the name, the right of authorship and right to protection of the author's reputation include the moral interests.

Currently there is a lot of methods to violate the rights. We have analyzed the most relevant methods of copyright infringement on the Internet. Today, we are confronted with the challenge of massive plagiarism of dissertations. It is essential to note that the rights of scientists are protected by prohibition of distribution of dissertations on the Internet. Nevertheless in the opinion of Tolochkova N.G. the abstracts of dissertations that are publicly available make possible to use these dissertations on the Internet (Tolochkova, 2004).

The civil legislation regulating copyright also enhances the possibility of copyright

infringement. As noted by Tolochkova N.G., the free access and possibility of free copying the abstracts of dissertations on the Internet and the lack of information sharing restrictions enable the unauthorized use of authors' ideas (Tolochkova, 2004). In accordance with civil legislation copyright does not extend to ideas, methods, concepts, solutions of organizational or other tasks, principles, discoveries, facts and programming language.

It is our view that the works of authors and other right holders are unique due to the ideas. The new perspective, especially in science and art, give the new meaning. If an Internet user relying on the provisions of civil legislation use the authors' ideas as his own and change the content of the works it will lead to the fundamental copyright infringement. This issue may be solved by exclusion of "idea" term in clause 5 of article 1259 of Civil Code of the Russian Federation to read as follows: "5. Copyright does not extend to concepts, principles, methods, processes, systems, means, solutions of technical, organizational or other tasks, discoveries, facts, or programming languages".

At the same time the "idea of work" term should be included in clause 1 of article 1259 of Civil Code of the Russian Federation.

In our view the difficulties of violator's identification facilitate the copyright infringement on the Internet. Firstly, the distributors of information are hard to identify if the information transfer is done via numerous computer programs that prevent the identification of user (Maloletko, et al., 2016). Secondly, the inability to determine the external IP address also poses serious challenge for users' identification. Hence, the difficulties of violator's identification on the Internet prevent the judicial protection of copyright.

Nowadays the civil legislation stipulates the methods of copyright protection and copyright safeguarding. According to article 1271 of Civil Code of the Russian Federation author or any other right holder has the right to use the symbol of protection of the copyright. The copyright protection symbol should be placed on each copy of the work. It notifies of the copyright for a work. The copyright protection symbol consists of the following elements: circled Latin letter "C"; name (or title) of the author or any other right holder; year of first publication of the work. However this right of copyright protection is rarely exercised.

The following conclusions had been reached as results of analysis of the ways of copyright infringement:

- the certain computer programmes often prevent the identification of violator
- the violators relying on the provisions of laws that do not prohibit the use of the authors' ideas plagiarize to abuse for personal purposes, for profit and for other goals.

Taking into account the specificity of legal relations on the Internet we must note that the establishing rules of conduct on the Internet is not efficient enough as rules of conduct are frequently violated via certain computer software and the restrictions such as protection symbol does not hinder the copyright infringement. There should be a viable mechanism of protection against unauthorized use of information.

The effectiveness of the measure implemented in copyright protection on the Internet ensures the exercise of the constitutional guarantee of copyright protection. From the point of view of Lopatin V.N. the application of sanctions against the Internet users that infringe the copyright legislation guarantees the restoration of the rights of authors or any other right holders and creates favorable conditions for development of information technology and intellectual activity (Lopatin, 2013).

Article 1301 of Civil Code of the Russian Federation provides for liability for infringement of an exclusive right to a work. Under this article in cases of infringement of the exclusive right to a work the author or other right holder has the right to demand the payment of compensation instead of claiming the damages:

in the amount from ten thousand rubles to five million rubles (the amount is to be determined by court)

or double the value of the copies of the work or double the value of the right of the use of the work.

In case of the latter the value is derived from the market price generally charged for legal

use of the work.

The Russian trial practice in cases of intellectual property protection to a greater extent has faced problems arising out of the contradiction between provisions of law (Svirin et al., 2017). This is due to the following facts: the development of intellectual property institution in the context of information and telecommunication networks being a recent phenomenon for our country, the lack of legal provisions that regulate the activity on the Internet, the gaps in the copyright legislation, the lack of qualifications of the judges dealing with cases of copyright protection on the Internet. Mirzoyan S.M. assumes that such issues are the result of inadequately characterization of disputes in this sphere (Mirzoyan, 2004).

Yumasheva I.M. observes that the establishment of viable mechanism of copyright protection is a basis of further improvement of legislation regulating the operation of the intellectual property courts, as it was stated by the Prime Minister D.A. Medvedev at the international forum "Anti-Counterfeit-2012". In the opinion of the Prime Minister the establishment of new international mechanism of protection is an urgent issue. According to him the changes of phonogram protection market and selling record market have caused the situation when the most of companies producing CDs and DVDs derive the insufficient profits. D.A. Medvedev has declared that the main reasons of such situation are a capacity of free downloading on the Internet and piracy (Yumasheva, 2016).

The lack of judges that are competent in intellectual property matters in Russia obstructs the exercising of rights of man and the citizen. The reason behind this is that, firstly, the Internet is a new institution in Russia and this raises the issues of new terminology and proper application of laws regulating this sphere of relations. Secondly there is not enough trial practice and it results in court misjudgments.

The establishment of intellectual property courts will attract the qualified personnel in judicial bodies and increase the applications in courts for copyright protection on the Internet. Also the mediation and the elements of restorative justice should be analyzed in focus of their development in sphere of the copyright protection (Shilovskaya and Sitdikova, 2018).

At the same time some has found it impossible to secure the copyright protection on the Internet. The main reasons for that are the lack of restrictions of free copying and the difficulties of control of use and copying of intellectual property (unlike other types of property, whose use can be obviously controlled – movable and immovable). In the opinion of Pogodina I.V. and Smirnova A.O. the essence of copyright infringement on the Internet is the same as of traditional legal relations, the same methods of protection enshrined by Russian legislation such as procedure of civil proceedings are applied to both kind of relations (Pogodina and Smirnova, 2013). The key issue of settling legal disputes on the Internet is an impossibility to provide evidences to prove the copyright infringement. The onus of proof is on the author and other right-holders. Lipkes A.M. points out that the additional measures have to be taken by the author and other right holders to protect their rights before spreading the result of intellectual activity (Lipkes, 2006).

According to article 1302 of Civil Code of the Russian Federation a court may forbid a defendant or other person (who have not been found to have violated the law, but in respect of whom there are sufficient grounds to suppose that he is an infringer of copyright) to take specific actions (for example, production, sale, import, reproduction or other use) with the purpose of introducing copies of a counterfeited work into commercial circulation. Also the court may impose a fine on all copies of a counterfeited work and also on materials and equipment meant for their production or reproduction.

5. Conclusion

One should mention the specifics of the responsibility in sphere of intellectual property violations (it is different from the responsibility in other branches of civil legislation).

As provided by Code of Administrative Offences import, sale, renting or any other unlawful use of counterfeited copies of works or phonograms of authors or other right holders for the purpose of deriving income, or where the information about the manufacturers of the copies

of works or phonograms, or about the places of their production, as well as about the holders of the copyright and related rights, indicated on these copies, is false, incurs a fine. Article 146 of Criminal Code of the Russian Federation provides for liability for copyright and related rights infringement or more precisely wrongful appropriation of authorship (plagiarism) if this act has caused significant damage to the author or other right holder. The amount of damage will be seen by the deliverables of appraisal.

Under article 1301 of Civil Code of the Russian Federation the authors have the right to demand the payment of compensation in the amount from ten thousand rubles to five million rubles. Consequently, the question of payment of compensation in the amount less than ten thousand rubles remains unresolved. In that regard we are of the opinion that a fixed minimum amount of payment of compensation in civil legislation is unfounded.

To sum up it should be pointed out that there is small number of court cases concerning the copyright infringement on the Internet in Russia. This indicates that the civil legislation inadequately regulates the capability of court proceedings of copyright infringement on the Internet. Moreover there is no codified statute regulating the copyright protection on the Internet. Yet, as noted by E.P. Gavrilov, "...active development of legislation on this subject will result in a real prospect of intellectual property protection" (Gavrilov, 2012).

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