

BADANIE POJĘCIA OCHRONY WŁASNOŚCI INTELEKTUALNEJ W INTERNECIE

Kateryna Mudryts'ka

*doktorantka Katedry Własności Intelektualnej i Prawa Korporacyjnego,
Narodowy Uniwersytet Odeska Akademia Prawa, (Odessa, Ukraina)*

Adnotacja. W danym artykule rozpatrywany jest problem stosunków, związany z badaniem własności intelektualnej w sieci Internet. Autor rozkrywa i uzasadnia potrzebę zdefiniowania pojęcia własności intelektualnej w Internecie. Przeprowadzono analizę literatury naukowej oraz opinii naukowców dotyczących pojęcia własności intelektualnej, na podstawie czego opracowano metodę ochrony informacji, zawierającej przesłanki własności intelektualnej. Podsumowując, we wnioskach autor proponuje własną definicję pojęcia własności intelektualnej w sieci Internet, a także przedstawia autorskie pojmowanie pojęcia ochrona własności intelektualnej w Internecie.

Słowa kluczowe: własność intelektualna, Internet, strona internetowa, relacje, nazwa domeny, prawa autorskie.

RESEARCH CONCEPT OF PROTECTION OF INTELLECTUAL PROPERTY IN THE NETWORK OF INTERNET

Katerina Mudrytskaya

*post-graduate student of the Department of Intellectual Property and Corporate Law
National University "Odessa Law Academy", (Odessa, Ukraine)*

Abstract. This article examines the problem of relations related to the research of intellectual property in the Internet. The author finds and justifies the need to define the notion of intellectual property on the Internet. The analysis of scientific literature and scientific opinions concerning the notion of intellectual property has been carried out. On this basis, the method of information protection containing intellectual property features has been investigated. In the conclusions the author suggests, the concept of intellectual property on the Internet, and also provides an author's understanding of the concept of protection of intellectual property in the Internet.

Key words: intellectual property, Internet, site, relations, domain name, copyrights.

ДОСЛІДЖЕННЯ ПОНЯТТЯ ЗАХИСТУ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В МЕРЕЖІ ІНТЕРНЕТ

Катерина Мудрицька

*аспірант кафедри інтелектуальної власності та корпоративного права
Національного університету «Одеська юридична академія», (Одеса, Україна)*

Анотація. В даній статті розглядається проблема відносин, пов'язана з дослідженням інтелектуальної власності в мережі Інтернет. Автором виявляється та обґрунтовується необхідність у визначенні поняття інтелектуальної власності в мережі Інтернет. Проведено аналіз наукової літератури та думок науковців що стосуються поняття інтелектуальної власності, на цій основі досліджено спосіб захисту інформації яка містить ознаки інтелектуальної власності. У висновках автор пропонує власне, поняття інтелектуальної власності у мережі Інтернет, а також подає авторське розуміння поняття

захист інтелектуальної власності в мережі Інтернет.

Ключові слова: інтелектуальна власність, Інтернет, сайт, відносини, доменне ім'я, авторські права.

Problem solving in general and its connection with important scientific or practical tasks. The creation of the World Wide Web in the 1990s turned the Internet of technological infrastructure into a popular network that connects representatives of different communities around the world. The Internet and the "web" have become a tool through which people around the world began to exchange and share ideas, information and, gradually, goods and services.

Along with the rapid development of the Internet, the system of intellectual property is rapidly evolving and while the nature of rights in terms of controlling and using products of creativity and innovation remains in itself, but the way of expressing rights and exchanging them is constantly adapted to technological advances, which influenced both the form and the essence of intellectual property rights. Therefore, the Internet itself becomes a virtual market for the circulation and distribution of products, in violation of the exclusive rights of authors and other right holders.

However, it is impossible to enforce the judicial protection of those who have been struggling with the use of the Internet of intellectual property without defining intellectual property as a deadline because the problem of the competence of such a category of disputes has its main extraterritorial nature of the network, which causes the problem of territorial jurisdiction of the states.

An analysis of recent research and publications, which began the solution to this problem, the allocation of previously unsettled parts of the general problem. Many researchers have tried (often quite successful) to resolve issues of competence over disputes related to the use of the Internet. However, in the periodical literature, quite a few publications can be found devoted to the discussion of some specific issues of competence in disputes regarding the violation of intellectual property rights in the Internet. Outlined topics were studied by G.O. Androshchuk, O.F. Doroshenko, Yu.M. Kapitsyn, O.P. Orlyuk, O.I. Kharitonova and other scientists, but not in full, and need further disclosure.

The purpose of the work is to study the understanding of the concept of the protection of intellectual property on the Internet and its own definition of the author.

Presenting main material. Across the world, intellectual property is the object of civilian traffic. The growth of the value of intellectual property and, above all, its results in the socio-economic development of any society, as well as the growth of demand for it, is due not only to the appearance of positive factors, but also, to a lesser extent, to negative ones. Thus, the violation of intellectual property rights to date in the most expressive form appears on the Internet, due, above all, to the simplicity and speed of the information on the World Wide Web, in the absence of the need for mandatory authorization in such actions, openness and accessibility the use of electronic resources is unlimited in fact by a circle of persons.

Web sites that have already become an independent object of intellectual property and activity are sites that actually violate intellectual property rights in the Internet.

However, before moving on to direct research on intellectual property using the Internet, namely, websites, in our opinion it is necessary first of all to determine the meaning of the term intellectual property used in the context of this article, as well as to investigate

For the first time, the term "intellectual property" was used in the Convention Establishing the World Intellectual Property Organization (WIPO), adopted in Stockholm on July 14, 1967, and since then, this term has been applied in international conventions and in the legislation of many countries of the world. According to the WIPO definition, intellectual property is a legal right enshrined in the law, which is the result of intellectual activity in the industrial, scientific, literary and artistic fields (World Intellectual Property Organization, 1999. 600 s). However, it should be noted that in the XIX century for the first time, the term "IV" was used by Charles Woodbury, judge of the District Court of Massachusetts in 1845 (DAVOLL et al v. BROWN). In Europe, for the first time, this term was used by Alfred Nion in his treatise "Droits civils des auteurs, artistes and inventeurs" ("Civil Rights of Authors, Artists and Inventors"), which was first published in 1846.

In Ukrainian current legislation, in accordance with the provisions of the Civil Code of Ukraine (Article 418), the right of intellectual property is interpreted as "the right of a person to the result of intellectual, creative activity or other object of intellectual property right, as defined by this Code and other law" (*Civil Code of Ukraine, 2010. 260 p*). It should be noted that such a definition in its essence contains a legal approach to the interpretation of the content of intellectual property, which is associated with the rights to the results of creative, intellectual activity of man.

It is worth mentioning that on the Internet the free encyclopedia Wikipedia provides the following definition of intellectual property, abbreviated as "intellectual property" - the result of the intellectual, creative activity of one person (author, performer, inventor, etc.) or several Persons (Intellectual Property <https://uk.wikipedia.org/wiki/>).

In the first volume of the reference dictionary, Intellectual Property, edited by O.D. Svyatotsky and VS The following definition, in the broad sense, implies intellectual property means the rights enshrined in the law, which are the result of intellectual activity in the scientific, literary, artistic and industrial fields (*Svyatotsky O.D., Drobyazko V.S, 2000 c. .106*).

Ukrainian scientists Semkiv V. O., Shandra R. S in the textbook "Intellectual Property" point out that intellectual property is the result of intellectual, creative activity of a person in the industrial, scientific, literary, artistic and other spheres protected by the law (Sevens V. O., Shandra R. S., 2015. - 9 pp.).

It should be noted that, in our opinion, foreign scholars give the definition, so Sergeev A.P., notes that intellectual property as a legal category is a combination of exclusive rights, both personal and property, to the results on the self before both the intellectual and creative activity, as well as some other objects equated with them, a specific list of which is established by the legislation of the respective state, taking into account its international obligations (*Sergeev A.P., 1999, p.19*).

As far as intellectual property is available on the Internet, it's worth noting that, according to some scholars, the widespread use of the Internet in the field of intellectual property generates not only new opportunities but also a number of problems regarding the effective protection and protection of intellectual property rights (*Bazylevych V., Ilyin, V. 2006*).

It is worth pointing out that it would seem that in the presence of the relevant rules of law the problem should not arise - when placing an article on the Internet violates the author's right to authorize or prohibit the use of the transmission of it to the public by cable or by similar means. It is the placement of objects protected by

copyright in the Internet, does not change the existing provisions on their protection, which are declared in the laws of Ukraine "On Copyright and Related Rights", "On Information", etc.

The Internet provides wide opportunities for uncontrolled distribution of such intellectual property objects. The law requires that all users of the Network, by placing information in it, have previously obtained the consent of the official owners for the reproduction of information. But this is not always the case, and the number of conflict situations is rapidly increasing, which finds its explanation in the approach to the problem of legal regulation on the Internet that promotes absolute freedom. This approach goes back to the network tradition of free exchange of information, which says that the adoption of quoting foreign ideas inhibits familiarity with the results of scientific work.

In connection with the emergence of legal conflicts, there was a question of providing evidence for the Internet. Leaving aside traditional methods of proof of copyright, and there are various types of expertise in this area, it should be pointed out that the Internet has developed modern ways to protect the rights to intellectual property.

You can protect copyrights on the Internet by recording information from Web-pages on a laser disk and then depositing it in a repository - a Web-depository. For this, the person submits a statement of authorship with an indication of the work, its description, the date of receipt is fixed, a certificate of acceptance of the object is issued. The date of deposit will be proof that at the specified time the applicant possessed a copy of the object.

In some segments of the network, the method of protection in the form of "watermarks" in electronic copies of photographs and images is effectively used. With the help of special software, the hidden code of a certain format is embedded in the files. When visual examination is not visible coded designations - the name of the author, year of publication, a sign of authorship. Watermarks are resistant to any operations on the image - compression, resizing, format, color. When applying a particular software tool, you can prove that the files contain additional information that points to the person who wrote it. Similarly, trying to protect and text information. Such systems of protection are beginning to spread to Ukraine (*Copyright-related aspects Protection of Intellectual Property Rights in the Global Network ...*, 2005).

In our opinion, it is on the Internet that a legal problem has arisen in the field of copyright, which has no analogy in the real world. On sites on the Internet, you can use the mechanism of hyperlinks to address other sources of information on the network. But when placing references to the source of information it is necessary to take into account the legitimate interests of the right holder of resources, to give them complete information and to correctly address.

Yes, a known dispute between Ticketmaster and Microsoft, which put a link with the signature of "ticket sales" and was addressed to the publication Ticketmaster, where there was a form of ticket order. Such a link created an impression on the user about the affiliation of the order form and services directly to Microsoft. After reviewing the dispute, Microsoft eliminated the violation.

It is worth agreeing with scientists, Menyailenko O.S., Chuzhba V.A., who believe that the organization of access to information on the Internet uses a system of special windows on the browser screen (frames). You can show alien pages in these windows. So did the Total News, opening up the resources of Washington Post, Reuter,

etc., which led to the need to restore the legal rights of the owners of resources (*Menylylenko O.S., Chuzhba V.A., 2001*).

It should be noted that the specificity of legal relationships on the Internet is that the use of special technological support (computers, telecommunication facilities, software products for them) should provide for each participant in the legal relationship a clear fixed expression of will and authorization.

We believe that the objectivity of copyright protection for works published on the Internet is possible, provided, first of all, to find out a number of issues, in particular, to determine on which site the resource is located. As you know, there are two types of sites that offer their services: paid and free. The first is the sites that provide services (information) for money (the person by the card, check, telephone account executes payment for the necessary service); general rule: all paid sites work by subscription. The second is the sites, the information of which is provided freely, without any restrictions (fee, opening of the sponsor's site - as a payment for the service). We believe that it is much easier with paid sites (especially if they are residents), since it is a business activity, and for registration it requires registration with the relevant authorities. With this in mind, we can conclude that the case has a legal entity with a clearly defined address, bank account and manager. The subject of entrepreneurial activity is an individual who is responsible for the obligations of all the proper property. So, if necessary, you can sue a specific defendant. As for free sites, this issue is much more complicated, because when registering a site you need the minimum data (last name, first name, middle name, e-mail address, all other items in the questionnaire are not mandatory, and almost no one not filled) It is worth pointing out that there is no certainty that the given data is reliable, since registration takes place without the user appearing to the registrar, and a copy of the passport or other document confirming a person is not provided to the registrar.

There is also a problem that, when appealing to the court, the plaintiff will not know the surname of the person - the owner of the site (more precisely, he will not be fully sure that it is indeed the person for whom she gives himself), the address where the offender lives (and where to call a court), there will be no documents proving that the person summoned to the court and is the owner of the site where the copyright was violated. Although the copyright was formally infringed, but the person did not receive any income from it. We support the position of the scientists Kurile T.V., and Verbova N.V., that not entrepreneurial activity and no court, based on the provisions of the laws, objectivity and comprehensive consideration of the case, will not be able to oblige the individual to compensate for the moral harm or lost profit (*Kurilo T.V., Verbova N.V., 2008, p.119-124*).

Along with this, it's worth agreeing with Galitsina D., that there are several approaches to solving problems related to copyright infringement by free sites. For example, warn the site owner of their copyright violations and ask them to stop the violation by removing information from the site (having first learned which source he took this information - this can "lead" to another offender) (*Galitsin D., 2005*). Inform the site owner of the copyright infringement they have violated and ask them to identify the name of the author, or the author in general (if the work is not signed). Write a complaint to a court in which to challenge the actions of the site owner and ask the court to decide on the termination of the offense by closing the site. List of persons to be involved in the case: the plaintiff; infringing website: its Internet address and relevant

evidence that the site is free of charge and its registration does not require the submission of identity documents (these may be the relevant provisions taken from the site of the registrar, clarifications of the authorized representatives - representatives of the registrar, or the relevant provisions of the agreement (agreement) on the provision of place and address, which is contained on the registrar's website and the consent of which is an obligatory element, without which no further registration can take place) (*Galitsin D., 2005*).

It is also worth noting that there are problems with the definition of the form and title of the copyright document, the protection of copyright. The current Civil Procedural Code of Ukraine does not provide for such a request as a statement on the restoration of the infringed copyright and the obligation of the registrar to close the offending site. Theoretically, a lawsuit can be filed, but in fact this is impossible in the light of the following circumstances: the unknown address of the individual - the owner of the site, since in 99.9% of cases such information is not provided; it is impossible to file a lawsuit against the registrar, because he is not responsible for the violation of persons owning sites in his registration field (*Kurilo T.V., Verbova N.V., 2008, p.119-124*). The registrar can only be involved in the case as an interested person. Thus, a procedural form of appeal to a court should be a complaint, for example, on unlawful actions of authorities or officials.

In our opinion, in this case there is no violation by the authorities, and officials are not responsible for the violation of copyright by the owner of the site. However, it should be noted that the closure of the infringing site can take place only with the motivated approval (decision) of the court. So, in order for the court to accept the lawsuit, it is necessary to provide unequivocal evidence that you tried to resolve this issue in all possible ways without bringing it to court. To the claim you must add: a copy of the claim, a copy of the response to the claim, all the emails sent to the offender, the replies received on these emails; printing a site with a contract (agreement) for registration of the site; correspondence between you and the administration of the site-registrar, which provides a place for placing the infringing site. The letters to the administration should indicate: who you and whom you represent; a small description of the violation with the obligatory indication of the location of the controversial material, proof that the work, which you specify, belongs to another person (photocopies of the newspaper, books, the address of the site where the original copy of the work is located, etc.).

By providing all these materials, we can assert with a high probability, about 80%, that the decision taken on your complaint will be positive. This is evidenced by the following factors: the site is registered to an unknown person, and you have evidence that this product (material) to be clearly defined by the person holding the passport data sources and confirming its authorship (*Halitsin D., 2005*).; Part 3 of Article 15 of the Law of Ukraine "On Amendments to the Law of Ukraine" On Copyright and Related Rights "includes the exclusive rights of authors to authorize or prohibit the use of the work (including reproduction). jurisprudence shows that leaves the Supreme Economic Court of 14 January 2000 No. 01-8 / 31 "On certain issues concerning the resolution of disputes related to the application of intellectual property law" states that the placement of a work on the Internet in a form accessible to the general public (for example, as an Internet site with text) is its use anyway and therefore requires permission of the author of the work or the person who has the appropriate permissions. However, this letter has been circulated for review of commercial courts, it can be used in civil proceedings in

disputes over copyright infringement (*Intellectual Property on the Internet, 2009*).

Conclusion the above, we note that the notion of intellectual property on the Internet should be understood set of exclusive rights to both personal and economic nature of the results to himself as to the intellectual and creative activity, as well as some other equivalent sites a specific list of which is established by the law of the respective state, taking into account its international obligations that are posted on the World Wide Web sites.

As for the protection of intellectual property on the Internet, its concepts, we define a complex aggregate of legal action (civil law, criminal law, administrative law and commercial law nature) aimed at the protection and defense of the rights to the text content (content) website - as an object of copyright in the literary work, to health and the protection of graphic elements (website design) - the object of copyright in the graphic work on health and protection of the rights to a domain name - as object of law a trademark or trade name, the health and protection of the site as software - as an object of copyright in the computer program.

References:

1. Vsemyrnaya organizatsiya intelektualnoj sobstvennosti. Osnovy intelektualnoj sobstvennosti [Tekst]. — K.: Yzd. dom «Yn Yure», 1999. — 600 s.
2. Rishennya u spravi DAVOLL et al. v. BROWN Elektronnyj resurs [Rezhym dostupu]. <https://law.resource.org/pub/us/case/reporter/F.Cas/0007.f.cas/0007.f.cas.0197.pdf>
3. Cyvilnyj kodeks Ukrainy [Tekst]: zi zminamy ta dopov. na 25 serpnya 2010 roku. — K.: Alerta; KNT; CzUL, 2010. — 260 s.
4. Intelektualna vlasnist Elektronnyj resurs [Rezhym dostupu]. <https://uk.wikipedia.org/wiki/>.
5. Intelektualna vlasnist: slovnyk-dovidnyk / Za zag.red. O.D. Svyatoczkogo. — u 2-x t.: Tom 1. Avtorske pravo i sumizhni prava / za red.. O.D.Svyatoczkogo, V.S. Drob'yaza. — Uklad.: V.S. Drob'yazko, R.V. Drob'yazo. — K.: Vydavnychij Dim «In Yure», 2000. 356 s. - s.106).
6. Intelektualna vlasnist: pidruchnyk dlya studentiv neyurydychnyx fakultetiv / V. O. Semkiv, R. S. Shandra. — Lviv: Galyczkyj drukar, 2015. — 280 s.
7. Sergeev A.P., Pravo intelektualnoj sobstvennosti v Rossyjskoj Federatsii : uchebnyk / A.P. Sergeev, - Yzdanye vtore pererabotannoe y dopolnennoe. — M.: PROSPEKT. — 752 s.
8. Intelektualna vlasnist: paradygma metafizychnogo vymiru. V. Bazylevych, V. Ilyin. - K., Znannya, 2006. — 431s.
9. Avtorsko-pravovi aspekty Zaxyst prav na intelektualnu vlasnist v globalnij Merezhi // Fond Informatsijne suspilstvo Ukrainy. - 21 grudnya 2005.
10. Menyajlenko O.S., Chuzhba VA. Pravovi aspekty zlomu i pronyknennya v IS u rozvynenyx krayinax svitu i Ukrainy // Nauka na protyazi novogo tysyacholittya. - 2001. - № 54
11. Progalyny zakonodavstva Ukrainy Shhodo Zaxystu avtorskyx prav v Internet / T.V. Kurylo, N.V. Verbova // Nauk. Visn. Lviv. derzh. un-tu vnurishnix sprav. - 2008. - № 1. - S.119-124.
12. Galicin D. Aktualni problemy Zaxystu avtorskyx prav v Merezhi Internet // Yustinian. - 2005. - № 5
13. Intelektualna vlasnist v merezhi Internet. 2009. Elektronnyj resurs [Rezhym dostupu] <http://ua-referat.com>