

The peculiarities of certain types of violations of copyright and related rights



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Abstract. *The article analyzes the peculiarities of some of the most common types of copyright and related rights in Ukraine. The authors analyze such concepts as: piracy, plagiarism, camcording, cardsharing, and pay attention to the imperfection of legislative definitions.*

Key words: *violation of copyright and related rights, piracy, plagiarism, camcording, cardsharing.*

Problem statement

Today the infringement of copyright and related rights is one of the main problems for Ukraine. This problem is still unresolved and continues to cause serious economic damage to foreign and Ukrainian copyright holders. Take into consideration a legal and democratic way of development and European way of Ukrainian integration, we emphasize that, among many factors such as proper and an effective copyright protection is also an important factor in this complex process. The protection of copyright and related rights and the effective fight against various types of the infringement shall provide Ukraine with the opportunity to improve the legal system and successfully co-operate in this area with the developed countries of the world.

The problem of violation of copyright and related rights refers not only to the situation in our country, but it also acquires international character. Disadvantages in Ukrainian legislation, concerning the protection of copyright and related rights, have created favorable conditions for spreading the Internet piracy in the country. The experts of the International Intellectual Property Alliance organization noted, that in the last few years individual Internet pirates have transferred their servers and activities to Ukraine. This fact

facilitates the inclusion of Ukraine in the List 301- list of countries with unsatisfactory level of protection of intellectual property rights. Guided by the data of this document, The United States makes a decision to grant or cancel trade preferences for goods, imported into the United States by a certain country, which can cause significant economic losses to the exporting country, not to mention the reputation losses.

Analysis of the latest researches and publications.

Many research publications of domestic lawyers are devoted to both theoretical and practical aspects of the problem of violation of copyright and related rights, in particular: G. K. Avdeyeva, A. I. Galchenko, K. V. Guryanova, A. O. Dvoryankina, S. L. Panova, A. E. Chumachenko and others.

The purpose of the article. The purpose of the article is to study the peculiarities of some of the most common types of copyright and related rights, among which are: piracy, plagiarism, camcording, cardsharing.

The statement of basic materials.

The infringement of copyright and related rights is the actions deliberately committed by a person who understands the illegal nature of these actions in order to obtain material benefits from objects of intellectual property owned by other persons.

In accordance with the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993 No. 3792-XII (with amendments and supplements), the infringement of copyright is:

- commit any actions that infringe the personal non-proprietary rights and property rights of the copyright;

- a piracy in the field of copyright such as a publication, a reproduction, an import into the customs territory of Ukraine, an export from the customs territory of Ukraine and a distribution of counterfeit copies of works (including computer programs and databases);

- a plagiarism is a publication of work wholly or in part of an author under the name of a person who is not an owner of this work;

- import into the customs territory of Ukraine without the permission of the persons having the copyright, copies of works (including computer programs and databases);

- a forgery, an alteration or a deletion of information, in particular in electronic form, about rights management;

- a distribution, importation into the customs territory of Ukraine for the purpose of distribution, public disclosure of copyright objects, of which, without the permission of copyright subjects, information about the management of rights, including in electronic form, has been deleted or changed [1].

One of the most widespread infringements of the copyright and related rights in Ukraine is a piracy and a plagiarism, which show the imperfection of the copyright protection system in Ukraine. [2, p. 26].

There is a legal definition of the term "piracy" in the national legal system and

international legal acts. Also, there is a list of the actions that can qualify as piracy.

According to the clause "b" of Part 1 of Art. 50 of the Law of Ukraine "On Copyright and Related Rights" the piracy in the field of copyright is recognized a publication, a reproduction, an import into the customs territory of Ukraine, export from the customs territory of Ukraine and distribution of counterfeit copies of works (including computer programs and databases) [1]. The concept of "piracy" by the legislator is determined by the concept of "counterfeit". A term "counterfeit" comes from «contrefaçon» (fr.) – a fake, and according to the normative definition of Art. 1 of the Law of Ukraine "On Copyright and Related Rights". The counterfeit copy of a work shall be a reproduction, a publication or a distribution of the copyright infringement, including a copy of protected works in Ukraine imported into the customs territory of Ukraine without the consent of the author or other subject of copyright, in particular from countries in which these works have never been protected or ceased to be protected. We can state that the legislator gives definition not the concept of "counterfeit", but the definition "counterfeit copy of the work".

In the special legal literature, you can find different approaches to the classification of pirates actions. For example, piracy in the field of copyright is divided into:

- a) "pure" piracy, which is associated with the semi-legal disclosure of the copyright object;

- b) piracy connected with forgery of objects of copyright;

- c) piracy, which manifests itself in the illegal reproduction of copies of copyright objects. [3, p.10].

Another common type of the copyright infringement is a plagiarism. According to the doctrine of modern copyright, the plagiarism is the infringement of non-property and property rights of the author. The main aim of the plagiarism is to "steal the result of intellectual work." [4, p. 38]. There is the definition of plagiarism in scientific literature and legal system, but despite this, its content remains vague. It is not always possible to distinguish plagiarism from other concepts related to it. For example, actions of unlawful use, copying, publication of other materials of authors by themselves cannot be recognized as the plagiarized. Such violations relate to another type of copyright infringement and are called "piracy". "Piracy becomes the plagiarism" when

the illegal use of the results of intellectual work and the appropriation of authorship. [5, p. 23].

With the entry into force the Law of Ukraine "On State Support to Cinematography in Ukraine" of 23.03.2017 № 1977-VIII, the following types of infringements of copyright and related rights include such as camcording and cardsharing.

Article 1 of the Law of Ukraine "On Copyright and Related Rights" defines camcording as a video recording of an audiovisual work during its public demonstration in cinemas, other particular institutions by the persons who are in the same premises, where such a public demonstration takes place, for any purpose without the permission of the subject of copyright or related rights [1].

Researchers note that the foregoing statutory definition of camcording is incorrect, since it is a question of the connection between the violation and the absence of permission from the subject of related rights. Audiovisual work according to the p. 7. ch. 1 of Article 8 of the Law "On Copyright and Related Rights" belongs to a group of objects of copyright. Related rights, as it is known from the theory, are closely connected with copyrights. They arise from the reproduction, the disclosure of works protected by copyright and, as a rule, are derived from the rights of the author. " If the concept of camcording should also cover video performance, which is used in an audiovisual work and the property rights that remained for the performer, the creation of such video may constitute a violation of related rights" [6, p.14]. We support A.Stefan's position on the need to clarify the legislative definition, which in its actual state is terminologically incorrect.

It should be noted, that as a result of camcording, the creation of a copy of an audiovisual work takes place, which is essentially counterfeit, since it was created in violation of the rights of the authors of the audiovisual work. Article 50 of the Law defines camcording as a separate type of violation of copyright and related rights [1]. So, camcording is essentially counterfeiting - violation of exclusively copyright and related rights during reproduction, publication, storage, transportation, distribution, import or export of appropriate intellectual property - audiovisual works [7, p. 135]. Since piracy is the use of the objects of copyright and related rights without the permission of the subjects of

these rights, then the inclusion of camcording in paragraph b of article 50 is considered not entirely correct.

The chairman of the Ukrainian Anti-Piracy Association, Vladimir Eling, believes that camcording should be considered as the primary source of all other types of violations [8]. Because if there was no illegal playback of a movie on a recording device during its demonstration in the cinema, there would not be a number of other problems among which: playing a movie on a pirate media, illegal demonstration of an audiovisual work in a cinema or putting it on the Internet.

According to the data of the reports of the International Intellectual Property Alliance (IIPA), Ukraine in 2017 remained an exporter of Internet piracy and today it is among countries where there are significant problems with the protection of copyright and related rights [9]. IIPA also notes the criminalization of camcording, as well as counteraction to Internet piracy in the Law of Ukraine "On State Support of Cinematography", which has been introduced though imperfect, but the procedure for notifying about copyright infringement on the Internet (takedown notice) [10].

Such type of violation of copyright like cardsharing is a technical opportunity to provide access to a large number of users to encrypted paid channels through the use of one official access card located on a dedicated server. That is card-sharing means of common using of satellite TVs card by distributing keys directly through the Internet or local area network. Thus, the user receives access to plenty of paid channels for a much lower fee, which is levied in favor of card-sharing service owners and installers of such equipment.

The term "cardsharing" is formed from two English words: "card" and "share". That is if you translate verbatim - "share the card". According to the article 1 of the Law "On Copyright and Related Rights" defines this notion as providing in any form and in any way access to the broadcasting organization's program (transmission), access to which is restricted by the copyright holder and/or adjacent the right to use technical means of protection (subscriber card, code, etc.), bypassing such technical means of protection, as a result of which the specified program (transmission) can be perceived or otherwise accessible without the use of technical means of protection.

It should be noted that the above definition does not quite rightly refer to the indication of the subject of copyright on the program (broadcast) broadcast organization. Because, firstly, a program or transmission of a broadcasting organization may include both copyright and related rights objects as well as objects that are not protected. Secondly, the broadcast (programs) of broadcasting organizations refers to objects of related rights (Article 35) [1], and copyright cannot be obtained in this case [6, p.14]. Consequently, in its essence cardsharing is a kind of circumvention of technical means of protection - devices and/or developments intended to create a technological obstacle to the violation of copyright and/or related rights in the perception and/or copying of protected (encoded) records in phonograms (videograms) and transmissions of broadcast organizations or to control access to the use of copyright and related rights objects.

In the Law of Ukraine "On Copyright and Related Rights," camcording and cardsharing are mentioned in case b) and case z) of article 50. In the first case, the legislator refers these violations to types of piracy, while in the second they refer to them as separate violations. The question arises what is the difference between piracy in the form of camcording (cardsharing) from proper camcording (cardsharing) [1].

As it was noted, cardsharing is a kind of bypassing of technical means of protection, which constitutes an independent violation, stipulated in subsection e) of Part 1 of Art. 50 of the Law. That is, cardsharing is essentially mentioned three times in Article 50: as a form of piracy (case b), as any action for deliberate circumvention of the technical means of protection of copyright and (or) related rights

(case e), and as a separate violation of the author rights and related rights (case z). Such a position is not entirely clear since it does not allow for unambiguous interpretation of the term. Also, we should agree with A.Stefan, who observes "the possibility of further illegal distribution of broadcasting organizations' programs arises due to the pre-implemented cardsharing, but it does not relate to piracy [6, p.15].

How copyright and related rights are violated in other countries. In the US, at the federal level, recording movies in the cinema (camcording) is considered a serious criminal offense, which provides for huge fines or imprisonment of up to three years, and in case of repeated violation is up to six years. In Canada there is a special law according to which such a breach of camcording is punishable by up to five years of imprisonment [11].

Special laws on camcording are accepted in European countries. In Germany, the punishment can reach three years of imprisonment. In Italy, the maximum prison term is three months, in the Czech Republic, it is five years. In the UK, Finland and, Switzerland, criminal liability only occurs when the intention is to copy and distribute copies [11]. Also, special laws operate in Hong Kong and Japan. In Hong Kong, punishment as fine or imprisoned for up to three months may be used. In Japan, punishment in the form of imprisonment may be up to ten years.

In Ukraine, penalties for violation of copyright and related rights are determined by the norms of the Criminal Code, in particular, Art. 176 which provides for punishment in the form of a fine, or correctional labor, or imprisonment, if the violation has caused material damage to a considerable extent [12].

Conclusion

The spread of works on the Internet, their public announcement in public places became much widespread. It is more difficult to prove the infringement of intellectual property rights on the Internet. The question about the responsibility of the infringer is still open because in most cases it is impossible to determine to whom the site belongs. The experience of the Russian Federation can be useful to Ukraine, where these problems are solved partly by the institution of the notary public. The majority of litigation cases in court are being closed due to the difficulty in detecting infringers, gathering evidence of copyright infringement. Particularly its deals with non-proprietary rights of an author. Mistakes are made in a legal process due to incorrect application of copyright laws.

So, it should be noted that today the problem of violation of copyright and related rights requires attention from both scientists and lawmakers. Regarding the unresolved issues, the uncertainty of the terms, which the legislator denotes types of violations of copyright and related rights. Particular attention is needed to such terms as camcording that is misclassified as piracy, and cardsharing, the definition of which has no unambiguous understanding in the legislation.

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