

Protection of intellectual property rights to intellectual property in the Internet

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In recent years the society manifested undoubted and considerable interest in the protection of intellectual property rights on a number of objective and subjective reasons. Use of the results of intellectual activity has an increasing impact on the state's economy. Economic growth and modernization of the Russian economy are only possible in the case of increasing the rate of development of high-tech industries, for which the necessary public policies aimed at improving the investment attractiveness of the industries, support for Russian manufacturers of high technology products and services, promotion of these products in the domestic and on the world market, the development of intellectual potential in the field of high technologies.

So back in 2009 in the Council of the Federal Assembly of the Russian Federation stated that the original rights to the vast majority of the results of intellectual activities in science and technology are not fixed or open (through patents), or closed manner (through the know-how of a trade secret), it does not appear, intellectual property, and consequently, there is no formal object of market relations. According Rospatent 100% protectable intellectual activity results obtained with state funding, patents only to 10%². Because of these features must be clear of different legal arrangements for the protection and eligibility for the results of intellectual activity.

In the Russian Federation, Institute for Information Law, aimed at regulating, including innovative relationship is the intellectual property accumulated in the fourth part of the Civil Code, which defines the rules for protection, eligibility, use, created by the authors of intellectual property, is the legal basis for the innovative development of society . The scope of the institution of intellectual property issues get a results of intellectual activity, relationship, by definition, eligibility results of intellectual activity, classification, transfer of exclusive rights (license agreements and the alienation of the exclusive right of franchise agreements, etc.), the relations between the free use of intellectual property, rights of intellectual property, etc.

The Constitution of the Russian Federation (Article 44) are among the most important rights of Russian citizens the right to freedom in all spheres of creative activity. This means that the state undertakes to provide its citizens with an effective means of legal protection of these rights and freedoms. Does this mean that, in matters of intellectual property paramount interests

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² Resolution of the Council of Federation of the Federal Assembly of the Russian Federation from March 4, 2009 N 54-SF "The report of the Council of Federation of the Federal Assembly of the Russian Federation in 2008" On the status of legislation in the Russian Federation " // information and the legal system «guarantor»



of the individual. What is the place in which case the rights of third persons and their right to information? These issues are the rights of every relation with third parties are particularly relevant in the Internet. The global network is filled with its own characteristics that must be considered. Thus, it is difficult to determine the relationship of the subject party, jurisdiction of the legal fact, the mechanism of regulation of relations occurred, the availability of international agreements on the mutual recognition of judicial decisions, etc.

Above listed features put my mark on the issue of protection of intellectual property rights, as it is directly connected with the legal mechanisms provided by the law of a particular state. Violations occurring in the global network, often related and affect a number of different states.

In accordance with paragraph 1 of Art. 1250 of the Civil Code are protected by intellectual property rights in the means provided by the Civil Code, subject to all violations of law and the consequences of the violation of this right. Lack of guilt of the offender does not exempt him from the obligation to stop the violation of intellectual property rights, and does not exclude the application to the offending action to protect those rights. On the basis of paragraph 23 of the Resolution N 5/29³ courts in cases of intellectual property protection should bear in mind that this rule should be applied to methods of protection of the rights not related to measures of accountability. Responsibility for violation of intellectual property rights (collection of compensation, compensation) occurs in relation to Art. 401 of the Civil Code.

As defined by Section 1, Art. 1252 of the Civil Code, the protection of exclusive rights to results of intellectual activity and means of individualization is carried out, in particular, by the request:

- Recognition of the right - to a person who denies or otherwise does not recognize the right, in violation of the interests of the right holder;
- Suppression of actions that infringe or threatening to infringe, - to the person performing the act or make the necessary preparations for them;

- For damages - to a person who unlawfully used the results of intellectual activity or means of individualization without an agreement with the copyright holder (non-contractual use) or otherwise violated his exclusive right and cause him harm;

- The seizure of material support in accordance with paragraph 5 of Article. 1252 of the Civil Code - to its manufacturer, the importer, the keeper, the carrier, the seller, to another distributor, mala fide purchaser;

³ Plenum of the Supreme Court and the Supreme Arbitration Court on March 26, 2009 N 5/29 "On some issues that have arisen in connection with the introduction of Part IV of the Civil Code of the Russian Federation"



- The publication of the court decision on the violation, indicating the actual owner - to the violator of the exclusive right.

In cases provided for by the Civil Code for certain types of intellectual activity or means of individualization, in violation of the exclusive rights holder has the right to demand compensation for damages instead of an offender to pay compensation for the violation of this right. Compensation to be recovered in fact proof of the offense. In this case, the legal owner, applied for protection of the right is exempt from proving the size of losses (§ 3 of Art. 1252 of the Civil Code).

The amount of compensation is determined by the court depending on the nature of the offense and other circumstances of the case, taking into account the requirements of reasonableness and fairness. Right holder may require the offender to pay compensation for each case of misuse of the results of intellectual activity or means of individualization or for the committed offense as a whole.

Analysis of legislative and regulatory practice areas points to the following problem areas in the Russian Federation in the field of regulatory protection of rights in intellectual property, located on the Internet.

The first step is to bring a common understanding of the rule of law. Currently, law enforcement practice for this category is heterogeneous and often contradictory. In the courts of the Russian Federation for civil and arbitration cases there is no uniform approach to the identification and assessment of the damage suffered by the right holder. It is for this reason, in the Russian Federation in 2012 was the decision to establish the Court for intellectual property rights⁴. Court for intellectual property rights will be established no later than February 1, 2013

The powers of the Court of intellectual property rights as a court of first instance are the following cases:

1) cases challenging the regulations of the federal bodies of executive power, affecting the rights and interests of the applicant in the legal protection of intellectual activity and means of individualization, including in the field of patent rights and rights for breeding achievements, the right to integrated circuits, rights on secrets (know-how), the right to the means of individualization, goods, services and businesses, the right to use the results of intellectual activity in the same technology;

2) cases of disputes on whether or termination of legal protection of intellectual property and similar means of individualization, goods, works, services and businesses (with the

⁴ Resolution of the Plenum of the Supreme Arbitration Court on June 22, 2012 N 17 "On the determination of the residence of the Court for intellectual property rights"



exception of copyright and related rights, topographies of integrated circuits), including: challenging the non-normative legal acts, decisions and actions (inaction) of the Federal executive authority on intellectual property, the federal executive body for the selection achievements and their officers and agencies authorized by the Russian Government to consider an application for a patent for a secret invention;

challenging the decision of the federal antimonopoly body to recognize as unfair competition actions related to the acquisition of exclusive rights to the means of individualization of a legal person, goods, services and enterprises;

the establishment of the patent owner;

to invalidate a patent, utility model, industrial design or selection achievement solutions for legal protection for a trademark, appellation of origin and the granting of exclusive rights to a name, if federal law does not provide a procedure for invalidation;

early termination of the legal protection of a trademark due to its non-use. Court for intellectual property rights as a court of appeal, consider:

1) The cases dealt with them in the first instance;

2) cases on protection of intellectual property rights, to the arbitration courts of the Russian Federation in the first instance, the appellate courts of arbitration. Court for intellectual property rights by reviewing new and newly discovered evidence and made them the force of law judicial acts.

Court for intellectual property rights:

1) apply to the Constitutional Court of the Russian Federation with a request to review the constitutionality of the law applied or to be applied to them in the present case;

2) examines and summarizes judicial practice;

3) prepare proposals for the improvement of laws and other legal acts;

4) analyzes judicial statistics.

The establishment of this Court is undoubtedly a positive development in the Russian Federation. But, at this point it can be argued that there is no common understanding of the courts counterfeiting, plagiarism, despite the fixed legal definition of counterfeit goods, and plagiarism. These definitions, in the formulation, as laid down in the legislation of the Russian Federation can be interpreted very broadly. These concepts. In addition, in the field of criminal - legal protection of this category of cases is almost not excited. This is due to the reluctance and, in most cases, and lack of understanding the problem and the lack of specialists in the field. Statistics disclosed initiated, completed cases vary considerably, reflecting the lack of attention to the affairs of a given category in the law



enforcement agencies of the Russian Federation. Bodies of investigation and interrogation of criminal and administrative cases do not have the necessary regulations for the application.

So, if the U.S. has, in the framework of the current legislation on ensuring copyright regulations interaction providers and rights holders or interested third parties, in Russia this normative document absent.

In this regard, the Russian Federation must develop rules of interaction and information intermediaries holders or other stakeholders. That would allow in case of conflict for intellectual property rights on the Internet, residual unambiguously determine the structure and mechanism of the relationship of subject of electronic documents. Around the world is growing rapidly combating violations in the sphere of protection of copyright and related rights, including on the Internet. Proof of this are the provisions of the Convention on Cybercrime (ETS № 185), WTO challenges, the National Strategy Information Security of the Russian Federation and other normative documents. However, the existence of federal laws and other global acts will not solve the problem in the absence of regulatory documents locally - regulations, instructions, officially recognized techniques.

In this connection we can offer, and sometimes just need to develop guidelines for the assessment and management of the damage caused to the right holder, in connection with the unauthorized use of works posted on the Internet, including to determine the extent of exclusive rights.

Currently, of intangible assets (Form IA-1), defined by the Regulations approved by Decree of the Russian Statistics Committee 30.10.1997 N 71a (as amended on 21.01.2003) "On approval of the unified forms of primary records for accounting and remuneration, fixed assets and intangible assets, materials, low value items, works in capital construction" // "Regulations on finance, taxes, insurance and accounting », № 1, 1998. As well as provisions on accounting "Accounting for Intangible Assets" (AR 14/2007), letter e, paragraph 3, which determines the actual (initial) value of the object to be measured reliably. Evaluation of the intangible asset is determined by the amount calculated in terms of money, equal to the amount of payment in cash or other form or amount payable, paid or accrued by the organization of acquisitions, asset and provide the conditions for use of the asset in the planned order.

But, in any position does not take into account that the true value of these assets may be much higher in this case, re-evaluation of these facilities will be hindered. In accordance with the Accounting "Accounting for Intangible Assets" (AR 14/2007), there are time constraints in the revaluation - once a year in accordance with the market value.

Due to the fact that originally defined the binding normative instrument for development costs or purchase of an intangible asset (the result of intellectual activity), it is necessary to



develop a methodology to assess the damage caused by misuse of the products placed on the Internet, including to determine the extent of exclusive rights.

The next problem is the ambiguity site enforcement. In this connection, it should take steps to operating time of jurisprudence concerning the protection of copyright and related rights in civil, administrative and criminal cases in Russia. Positive results would be of a generalization of judicial practice.

Thus, in regard to the use of terms that define the subjects participating in the Internet in Russia there is the following situation:

1. Federal Law "On Information, Information Technologies, and Information Protection" defines the following entities:

- 1.1, the operator of the information system,
- 1.2. persons service providers.

Federal Law "On Information, Information Technologies and Protection of Information" Section 12. Art. 2, defines the operator of the information system as "a citizen or legal person involved in activities on the information system, including the processing of the information contained in its databases." The same law p.3. Art. 17 contains the term "entity that provides services," so in art. 17 stipulates that if the spread of certain information is restricted or prohibited by federal law, civil liability for the dissemination of such information shall not be a person providing services:

- 1), or the transfer of information provided by another person, provided that no transfer of changes and fixes;
- 2) or for the storage of information and access to it, provided that the person could not have known of the illegality of information.

2. Federal Law "On Communications" defines the following entities:

- 2.1. operator occupying a significant position in the public network;
- 2.2. operators;
- 2.3. operator universal service;
- 2.4. operator mandatory public television and (or) radio channels

Operator the Federal Law "On Communications" defined as a legal entity or individual entrepreneur, providing communications services under license (V. 2) 3. bill in the fourth part of the Civil Code (which regulates the protection of intellectual property) of Art. 1253 'Civil Code included other subjects:

- 3.1. Internet provider, to make transfers of material on the Internet,
- 3.2. Internet service provider who provides services to place materials on the Internet.

Furthermore, the current enforcement practices and uses another term - the provider. Thus, the



definition of the Presidium of the Russian Federation of 23.12.2008 № 10962/08. provider (within the meaning of the judgment, it is a hosting service provider) is not responsible if it does not initiate the transmission of information, do not select the recipients of information and does not affect the integrity of the data transmitted. Unless it is determined that the provider knew or could have known about the illegal distribution of works, it does not have to prove the absence of a use of them works. Furthermore, the burden of proof of unauthorized accommodation provider in the network of copyrighted works is the original.

Following resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation of November 1, 2011 N 6672/11, also uses the term. So, in this resolution states that in the absence of the service provider within a reasonable period of action to stop these violations, or in case of passive behavior, demonstrative and public removal of content from the content the court may recognize an approved provider of guilt offense and bring him to justice .

Given the current development of the Internet, such a legal position could be applied in bringing to account holders social and file-sharing Internet sites. However, the SAC recommended that other courts in proceedings to consider the action of the provider, ie Did the provider preventive measures to stop possible breaches its customers using its services or not.

Thus, the legal classification of subjects required for the services provided, and functions, operators should be presented as:

1. operators access to technology and
2. operators access to the content - the information referred to in the international

ractice providers Insufficient use of mechanisms for the implementation of law enforcement in the digital environment. Due to the remoteness of the actors in the Internet environment, such courts, such as virtual courts would be the best solution. As part of their activities would be considered category of cases involving violations of the global network, the participating entities such relations are divided geographically.

In Russia, not guaranteed the rights holders organizations for collective management of rights that must be just to protect those rights. Thus, lacking the necessary organization to ensure the full protection, including from the point of view of self-regulation. Not available or are not sufficiently effective levers of economic policy that are directly associated with benefits, such as the maintenance of a patent. For example, a student of intellectual property, are not always registered in Rospatent, because initially high patent fees. And the benefits to such entities in the Russian Federation is not provided.

And in this case the question is about the government's ability to effectively address, and then use their intellectual resources.



The problem of protecting the rights of intellectual property on the Internet is in the existing mechanisms in the RF licensing agreements. For instance, in Russia there is no way to give up their rights in favor of an indefinite number of subjects. For example, this mechanism works in the GPL. Would bring a positive acceptance of the mechanism of open licenses and the distribution of such a mechanism of open licenses for various of intellectual property.

In Russia, there is only the target of subject agreements for a certain amount of rights, ie agreement that expressly provides for certain subject composition. Despite the adoption in 2011, the Russian Federal Law "On electronic signature" issues in this area still remain and need to be addressed.

In addition, the existing facilities to deal with online offenses, in some cases, are not sufficiently effective. What also does not affect the enforcement of rights. In view of the above, it should develop a set of regulations in the Russian Federation Law "On information intermediaries"; Regulation interaction information intermediaries with the rights holders, as Currently, there are art. Federal Law "On information" is actually based only on the knowledge (awareness) of the person providing services of ongoing violations; Information Code, as well as other legislation in the field.

