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SOME PROBLEMS OF EXCLUSIVE RIGHTS TO THE RESULTS OF INTELLECTUAL ACTIVITY

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Among the civil rights that make up the content of the legal capacity of individuals, a special place is occupied by the rights to the results of intellectual activity, which is due to the specifics of their legal nature, as well as the features of the mechanism of their implementation, security and protection.

Recently, the attention paid to intellectual property rights has significantly intensified due to the unprecedented expansion of their scope. A significant role is played by the growing processes of actively developing international economic integration, in which it is very important, the right to the results of intellectual activity. Traditionally, exclusive rights to the results of intellectual activity are divided into two groups:

- copyright and related rights;
- patent rights (rights to the objects of so-called industrial property).

At the same time, there are good reasons to assert the independent character of other rights: the right to the means of individualization of participants in civil circulation, goods, works and services, rights to such non-traditional objects as selection achievements, integrated circuits, rationalization proposals, commercial and service secret.

Copyright takes the most important place in the system of these specific rights. It is quite complex in its composition and includes a number of powers, which content and mechanism of implementation largely depend on the characteristics of certain intellectual property object, as well as on the range of entities to which they belong. The debate about legality of division of copyright into property and personal non-property rights, which has been going on for a long time in civil law, should be the subject of an independent analysis, and in this section it is necessary to identify and disclose the main problems arising in the course of their implementation, security and protection.

The key point for their identification and characterization is the range of subjects of copyright, among which the authors and their successors stand out [1, p. 53]. It is obvious that the greatest amount of subjective rights belongs to persons whose creative work has made a work of literature, science or art. They have a wide range of both property and personal non-property rights [2, p. 56–60]. The legal nature and content of the latter are defined in different ways in the literature, but no one disputes that these rights are closely related to the identity of the author, who in accordance with the law has the right of authorship, the right to a name, the right to publish, including the right to recall the work, as well as the right to reputation [3].

At the same time, it is necessary to agree with O. S. Ioffe who said that these rights are inseparable to the extent that they express the self-determination of the individual, since only such approach allows solving the fundamental question of the possibility of succession of some of them. It is obvious that the authorship and the right to a name cannot act in this capacity, while the remaining personal non-property rights can be exercised not only by the right holders, but also by their successors.

On the basis of the above, it can be concluded that copyright is very complex in composition and includes a range of powers, content and implementation mechanism which in many respects depend, firstly, on the features of the specific objects of subjective rights, and, secondly, on the circle of subjects to which they are belong. The greatest amount of rights belongs to persons whose creative work created a work of literature, science or art, which is fully possess both property, and personal non-property rights under the applicable law. At the same time, personal non-property rights are inseparable from the author to the extent that they express the personality of the individual.

The issue of the duration of personal non-property rights is also debatable. Some scientists believe that the right of authorship is indefinite [4, p. 64], pointing to the inadmissibility of its assignment by other persons and after the expiration of the established terms of copyright protection. However, another approach seems to be more justified, based on the statement that the authorship of the person who created the work of literature and art is to be protected after the death of the author not as his subjective right, but as a public interest, which is associated with both national consciousness and the definition of the role of the state in the world of artistic culture.

There are a number of questions about exercising the right to protect the reputation of the author, which was previously called the right to the inviolability of the work (which seemed to reflect its essence more accurately). The content of this right is that the publication, public performance or other use of the work is prohibited without the consent of the author to make any changes either in the work itself or in its name and, in addition, in the designation of the name of the author. In this case, the discussion arises on the possibility of transferring this right to others and on the limits of possible exercise of this right, especially in the creative interpretation of known works.

On the first of these issues, two diametrically opposed opinions are being expressed. Some scholars argue that the right to inviolability of the work is inalienable from the author's personality and, as a result, is non-transferable neither by inheritance nor by contract [5, p. 294]. Pre-revolutionary civilists, on the contrary, recognized the possibility of the transition of this right to heirs, although in incomplete volume, given its derivative nature [6, p. 75]. Currently, although the right to protect the reputation of the author does not pass by inheritance, the heirs have the right to protect this important legal category as a socially significant interest.

Among the problems that arise in this area, preventing the use of the Internet for the distribution of pirated products is of particular public importance. Its relevance is undeniable, as, in particular, according to representatives of the U.S. film industry, one in four Internet users use the Network to download pirated copies of videos, and, according to experts, in the near future the problem of «electronic piracy» may worsen even more. The situation is complicated by the fact that the extraterritoriality of the global computer network of the Internet makes it possible to export and import virtually uncontrolled intellectual property, which causes significant economic damage to both the owners of exclusive rights and the states [7, 16].

Meanwhile, legal mechanisms of protection of violated copyright, as practice shows, are not yet effective enough. This is largely due to the fact that there is no single approach to solving this problem in theory. Thus, some scientists suggest using the mechanisms provided for the legal protection of databases (in particular, for their registration) in this area, considering the website as a set of hypertext documents combined according to a certain criterion. Such a position, however, is subject to fair criticism, as it leads to the conclusion about the illegality of copying a web page for personal use [8, p. 15].

On the basis of the above, it can be concluded that there are many problems in protecting intellectual property on the Internet. They are connected, first of all, with proving the authorship, fixation of the moment of publication of the work, defining the jurisdiction in deciding on the protection of the violated copyright provider or user. The solution is named and such problems become much more complicated by the instability of the network publications, as well as the extraterritoriality of the Internet, making export and import of intellectual property objects almost uncontrolled. The question of the legal nature, the order of choice and the forms of use of the domain name remains unresolved a name that, under certain conditions, should be regarded as means of individualization of a particular person.

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