

ІТ-ЦІВІЛІСТИКА

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PIRACY IN THE INTERNET – PROBLEM OF IT SPHERE AND INFORMATION SECURITY

Outline of the problem and aim of the article. In the process of development the Internet has transformed from a free network into a commercial one which stipulates the necessity of developing new forms (methods) of control of eligibility of actions of the participants of corresponding relations. The combination of the control of the Internet with the main functions retention and positive moments connected with the nature of this network (free access to information) is necessary. The emergence of the Internet has become the main factor of the transformation of society into informational one in which free access to information, which should be exercised within the law without violation of other persons' rights, is necessary.

Globalization processes and scientific-technical progress preconditioned not only positive changes in the economy of states. Piracy in the Internet has become one of the violations of law which appeared due to these factors. The contradiction and complexity of the phenomenon raise a lot of issues which need solutions and the introduction of new, more efficient measures in the sphere of protection of author's and related rights.

In the last decades new objects have appeared in intellectual property law, the value and the number of intellectual activity results have increased, authors and copyrighters have got an opportunity to distribute their works all over the world and receive considerable incomes. Such positive changes led to realizing a real potential of intellectual property in the society. Intellectual property effects economic, political, legislative, social and other relations. The recognition of the value of intellectual property objects also encouraged the processes of development and improvement of statutory-legal regulation of protection of such objects. The growth of law violations in this sphere has become an impact of these processes. Piracy in copyright and related rights has

been recognized as one of the most detrimental and wide-spread law violations.

Analysis of recent researches and issues. It is necessary to point out that piracy in the Internet was subject of different issues. Among recent researchers of this topic are H.I. Kharitonova, O.O. Stefan, A.V. Kirilyuk, J.J. Simonyan I.M. Sopilko, V.P. Chebotarev, V.O. Zharovothers.

Main material. The influence of globalization and scientific-technological progress on IT law appearing is manifested in the creation of information space which unites all the countries into one information network the negative impact of which is the spread and speed of persistent violations: commission of acts of piracy; plagiarism in the Internet, independence of borders violations; complexity of control of the intellectual activity results; necessity of an individual approach to piracy and plagiarism control depending on the level of economic development of a country;

general world tendencies to increased piracy and plagiarism liability; possibilities of protecting the intellectual property objects regardless of borders; improvement of piracy production quality; creation of new means of objective expression of intellectual property rights objects; opportunities of using the copyright and related rights objects without being bound to a permanent form; technical innovations which make it possible for pirates to bypass the protective measures taken by authors and copyrighters [1, p.13].

The law on «Copyright and Related Rights» in article 50 defines piracy as publication, reproduction, import into and export from the customs territory of Ukraine, distribution of counterfeit copies of creative products (including software and data bases), phonograms, videogram illegal publishing programs of broadcasting organizations, camcording, cardsharing and Internet piracy is taking any actions under

this article recognized the violation of copyright and (or) related rights with use of the Internet [2].

As it has been mentioned the arrival of the Internet made it difficult to fight piracy, plagiarism, counterfeiting and other violations of intellectual property rights. The exchange of information has become easier, copyright objects, namely, audio-video, musical and literary works are available in the Internet. To watch a film you need only use the Internet and download it on your computer which makes it possible to save finance and time. However, the eligibility of such actions, financial losses of copyrighters, creators of copyright and related rights objects is disregarded. Due to scientific-technological progress modern piracy is more far-reaching and infringes on all copyright and related rights objects, created new intellectual property rights objects as well as new means of their objective expression (cassettes, disks etc.) which resulted in appearing of piracy in its modern sense and the distribution, including counterfeit creative products, has become much easier and practically does not require any financial expenses.

Herewith, it is necessary to add that in modern conditions piracy and use of pirated produce by most of citizens is accepted as an ordinary phenomenon.

Globalization and scientific-technological progress are directly connected with the appearance of new type of piracy which is characterized by a large scope, easiness and speed of conducting pirate actions.

It should be noted that the main efforts of the state are focused on fighting only the piracy effects i.e. restoration of infringed rights, compensation for material and nonmaterial damages, exercising of criminal and administrative sanctions to wrongdoers. In our opinion it is inefficient as it does not allow taking effective measures directed at piracy prevention.

In this connection, first of all, it is necessary to research those social, psychological, economic and other factors which stipulate the fast spread of piracy in the sphere of intellectual property which will make it possible to develop efficient ways of prevention and termination of piracy, protection of copyright and related rights objects.

According to the spheres of influence the main factors of appearing IT piracy can be classified as follows:

1) social-economic: inability of society to adapt quickly to new economic conditions; discrepancy between the needs of an individual person and opportunities of the society and the state; low financial capacity of population; significantly lower prices of unlicensed products or free access to such prod-

ucts; unbalance of prices for legal products and users' financial state; poor financial provision of state employees who are experts in intellectual property which leads to their changing the state companies for private ones;

2) social-psychological: legal nihilism (negligence of legal norms, recognition them as unnecessary); conformism (acceptance of the situation when copyrights are infringed); drawbacks of education, adverse environment (acceptance of piracy as ordinary and even useful phenomenon); social tension in the society; low level of legal culture and legal awareness of the population; extensive advertising of intellectual creativity products, which encourages people's wishes to have them irrespective of their financial state; saving time for searching legal ways of receiving the produce etc.;

3) political and ideological: ideological and political pluralism (for example, acceptance of ideas as to free access to any information in the Internet); poor state policy in the sphere of protection of intellectual property rights; the broadening by the state of the powers of copyrighters along with the restriction of access to intellectual property objects for users with the aim not forbidden by the law etc. ;

4) juridical: imperfection of legislation in the sphere of intellectual property rights (insufficient, contradictory and conflicts norms of law); inefficient performance of state authorities in the sphere of security and protection of intellectual property rights etc.;

5) organizational: lack of proper technical support of security of copyright and related rights objects; complexity of conducting legal expertise connected with violation of rights for copyright objects; complexity of establishing the amount of damage caused by the violation of rights of copyright objects; imperfectness of organizational measures of action against violations in the sphere of intellectual property; insufficient provision of the right for free access to copyright objects with educational and scientific aims etc.

On such background the emergence of new technologies preconditioned the appearance of IT piracy as well. The lack of legislative reinforcement of notions of IT piracy and piracy in the Internet results in discrepancy in the practice of resolution of cases which refer to violation of copyright and related rights in the information space.

Taking into account the mentioned above, depending on the method of distribution of pirated products piracy can be classified into ordinary (traditional) piracy – distribution of pirated products by copying into tangible media and a new type of piracy – piracy in the Internet (kind of IT piracy). Such

classification substantiates the necessity of applying new approaches to security of copyright and related rights objects.

IT piracy (as a modern kind of piracy) can be differentiated from ordinary piracy by the following features: distribution, direct connection with the level of scientific-technological progress; independence of borders; high quality of pirated products; support of acts of piracy by the network society; ability to exist without tangible media; complexity of discovery of acts of piracy; difficulty in deletion of pirated content; low price of electronic copies. IT piracy is the most general category which can be defined as the copyright and related rights violation which is carried out with the application of new technical capabilities, characterized by the speed of distribution and high quality of produce, causes damage to the author and (or) copyrighter. Piracy in the Internet network is one of the kinds of such piracy.

Piracy in the Internet network can be defined as violations committed in the digital network which use and spread illegal content with the aim of gaining profit or other benefits which causes damage to the interests of authors and (or) copyrighters at the same time having support from the major part of society who are supporters of free access to information. It is a kind of IT piracy, which is practiced in the sphere of information technologies with the use of innovative technical capabilities, characterised by the speed of distribution and high quality of pirated produce. It is necessary to emphasize its specific feature such as capability to adapt to the conditions of technical, legislative and social development. With the arrival of new devices and media piracy transformed into a technically perfect violation, there appeared new methods to override security measures used by authors and copyrighters with the aim of prevention of copyright and related rights violations.

Copyrighters and authors facilitate spreading piracy in the Internet in some way. Inconvenience with payments and complexity of search for licensed content encourages pirates' activity and copyrighters demand to increase responsibility and apply sanctions to as wide circle of persons as possible instead of finding consensus or developing the competition.

The Internet piracy is a specific kind of violations of law, the significant feature of which is the society's attitude to acts which are illegal in nature but for common people they have become an ordinary practice. The Internet is considered by the majority of users as a territory with a free access to information.

Scientific researches suggest an idea of necessity of liability of users of the Internet network for downloading the unlicensed content. It is necessary to agree that violations of law can be justified nei-

ther by the fact that we got used to receiving information free, nor that the necessity for information has become the life foundation, nor the pricing policy of copyrighters. However, the introduction of such practice of considerable restrictions and users' liability will not lead to a positive result and only provoke upheaval in the society. In this connection the necessity arises to develop a model of cooperation of copyrighters, users and society in which the interests of all parties will be considered and demands of not only authors but ordinary public will be met. Such cooperation will serve law observance and the formation of negative attitude to acts of piracy.

It is necessary to distinguish specific features of piracy in the Internet which are as follows: perceiving piracy in the Internet by users as a positive and natural phenomenon; absence of borders for acts of piracy; use of innovative technological achievements in conducting such an activity; failure of the state's control of all copyright violations in the Internet; low price of electronic copies.

Information posted in the Internet plays a significant role on the modern level of the development of the society. The restriction of access to information resources is not reasonable as a way to punish users who do not always legally use the posted copyright objects. In our opinion such an approach breaks the main principles of information society and principles of equivalency of punishment to the person's guilt (justice). In order to improve the legislation in effect in the connection with the appearance of the Internet relations it would be reasonable to introduce into the legal environment the categories which are used in the digital network (for example, hoster, content, provider, authorization and others); define the Internet network objects, their rights and duties in terms of legislation.

Moreover, it is necessary to develop efficient methods of fighting the Internet crime with the application of modern technological and organizational methods with the regulation of the level and boundaries of state interference into the relations in the Internet.

The list of assignments which should be completed is rather long but the regulation of the mentioned four points will result in the solution to many problems which exist in the sphere of protection of copyright objects in the Internet. Piracy in the Internet is regarded not only as copyright violation but as a natural phenomenon in the process of development of digital technologies, protest against the restriction of free access to the results of creative activity in the Internet.

In modern society two opposite approaches to piracy in the Internet have been formed. A more

widespread one is the approach according to which piracy is considered to be a dangerous, destructive for the society phenomenon which should be fought against. Piracy causes damage to the object's author, country's economy, national culture and society as quality products are not received.

According to the other approach piracy is regarded as an inseparable part of modern information society. The main proof-points of supporters of this approach are: 1) society has the right for free access to culture (results of creative work of other

people); 2) too high prices for certain pieces of work; 3) limitation of some countries to access to creative work (for example, prohibition of some computer games); 4) limited access of citizens to copyright and related rights objects.

First of all, piracy is supported by ordinary people who do not want (cannot) pay money for the content which they can download free from the Internet. However this support is not limited by only such users. It should be admitted that in the sphere of production of copyright and other related rights objects

(for example, development of computer games) some authors or copyrighters not only do not criticize acts of piracy but use them as advertising [3, p. 155].

One of the main problems, which have arisen for the states in their struggle against piracy, is the support of pirates by the network society. In particular it comes to the creation of political movements aimed at fighting for free exchange of information in the Internet; massive protests in defense of sites which were closed because they put unlicensed content, hackers' attacks on sites of state bodies of different countries etc. The statement that all users support free content distribution is inaccurate as a great number of users advocate the interests of copyrighters and authors.

Conclusions. Therefore, not all people consider piracy in copyright and the related rights as only a negative phenomenon and this approach finds more and more supporters, even among authors and copyrighters. The rational kernel in the viewpoint «for piracy» is still and all seen, however it should be specified that it is necessary to fight against this phenomenon but not by the methods of severe forbiddance and great sanctions as such methods will only lead to the consolidation of the society in defense of piracy. Herewith, the protection of copyright and other related rights is necessary and it is not correct and legal to give way to people who stand for free Internet with uncontrolled and free access to its all resources. The example of undue abusive practice of using rights is so called «Declaration of Independence on Cyberspace». In the modern world the fighting against piracy in the Internet network has become the factor of appearing new rules and order of using the Internet. Two decades ago it was impossible to imagine that technologies would become so widely spread that they would be purposefully used for criminal purposes. Modern development of the right of intellectual property including copyright gives new conditions as to using and acquiring the result of intellectual activity. Information is considered one of the most valuable and important resources which is owned by authors and copyrighters. With the aim of securing the interests of copyrighters free distribution of the results of intellectual property in the Internet is undergoing considerable restrictions. The main problems which arise in the process of securing and protection of copyright and related rights in the Internet are: legislation discrepancy; absence of special norms of regulation of the Internet relations, lack of conformity of the norms with the real situation; low level of legal culture of the citizens, their conviction in the rightfulness of their behavior and fighting for free access to information in the Internet; low level of qualification of government employees and programmers; insufficient financing by the state of measures aimed at fighting piracy; anonymity of the Internet users which makes it difficult or impossible to find lawbreakers and pirates; insufficient level of knowledge of authors and copyrighters in the sphere of copyright; speed of spreading of pirated products in the Internet; difficulty in documenting evidence in the Internet and scarce technological support of people who offset the illegalities.

Elimination of these problems will make it possible to achieve better results in fighting such a complicated and specific phenomenon as piracy in the Internet.

LITERATURE:

1. Грігор'янц Г.І. Піратство як порушення авторських і суміжних прав в мережі Інтернет: Автореферат дис. на здобуття наук. ступеня канд. юрид. наук: 12.00.03 / Грігор'янц Галина Ігорівна. – Одеса : Фенікс, 2016. – 23 с.
2. Закон України «Про авторське право і суміжні права» від 23.12.1993 р. // Нормативні акти України: Електронна база даних. – Режим доступу : <http://zakon4.rada.gov.ua/laws/show/3792-12/page2>
3. Грігор'янц Г.І. Піратські партії та їх відношення до піратства в авторському праві / Г.І. Грігор'янц // EVROPSKÝ POLITICKÝ A PRÁVNÍ DISKURZ (Європейський політико-правовий дискурс). – 2015. – № 4. – Том. 2. – С. 153- 157.

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PIRACY IN THE INTERNET – PROBLEM OF IT-SPHERE AND INFORMATION SECURITY

The concept features and nature of IT piracy and effect of information society on the emergence and spread of piracy on the Internet are considered in the scope of an article.

Keywords: copyright and related rights, piracy on the Internet, IT-piracy, defense and protection of objects of copyright and related rights.

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ПІРАТСТВО В МЕРЕЖІ ІНТЕРНЕТ – ПРОБЛЕМИ ІТ-СФЕРИ ТА ІНФОРМАЦІЙНОЇ БЕЗПЕКИ

В межах даної статті були розглянуті концептуальні засади та природа ІТ- піратства, а також вплив інформаційного суспільства на появу та розповсюдження піратства в мережі Інтернет.

Ключові слова: авторське право і суміжні права, піратство в мережі Інтернет, ІТ- піратство, захист та охорона об'єктів авторського права і суміжних прав.

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ПІРАТСТВО В СЕТИ ІНТЕРНЕТ – ПРОБЛЕМЫ ІТ-СФЕРЫ И ИНФОРМАЦИОННОЙ БЕЗОПАСНОСТИ

В статье были рассмотрены концептуальные основы и природа ІТ- пиратства, а также влияние информационного общества на появление и распространение пиратства в сети Интернет.

Ключевые слова: авторское право и смежные права, пиратство в сети Интернет, ІТ- пиратство, защита и охрана объектов авторского права и смежных прав.