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## THE LEGAL ACT OF REGULATING RELATIONSHIPS OF CO-AUTHORS AGAINST A BACKDROP OF EUROPEAN INTEGRATION

**Summary.** This article is devoted to the study of legal mechanism of relationships of co-authors in the Copyright Law of Ukraine against a backdrop of European integration, origin and characteristics of co-authorship. In terms of adaptation of national legislation to the criteria of European Union there were explained the necessity of improving the legislation of Ukraine in regulation of co-authorship relations.

**Key words:** co-authorship, co-operating, characteristics and types of co-authorship, co-authorship relations.

**Challenge problem.** Modernity pushes society to the effective use of the intellectual capital of the nation, which undoubtedly provides economic and social development of any country and increase its competitiveness on the global stage. Formation of the intellectual capital from the intellectual resources of society depends on the level of legal safeguard and intellectual property protection.

Recent years were marked with active joining of Ukraine to the Euro-Atlantic structures as part of the course to European integration. According to the signed agreements, the prerequisites for joining the European community were creation of an effective system of copyright and enforcement of national legislation to the criteria of the European Union. Ukraine actively implements the strategy of innovation and social and economic development, which should be based on the use of the State system of intellectual property legal protection, particularly in the field of copyright.

**The objective of the research.** In terms of formation of the social economy in Ukraine when civil rights and freedoms of citizens are considered to be of the highest value according to the Constitution of Ukraine, the main task of the government is to provide a real opportunity to realize their competences that are legally guaranteed and effective mechanism of their protection in case of illegal encroachments. This statement is reasonably used to the process of creation of the effective system of protection of the authors (co-authors) rights that is very important in the context of accession of our country to a number of international treaties on intellectual property. Creating of the intellectual property may be provided independently by an author and by several subjects of intellectual property rights. The procedure of creating such objects significantly affects the conditions of their use, the need to respect property and non-property rights of co-authors. Co-authorship is a reason of existence of the multi-authored works. Further, multi-authored works cause collective rights for the works. Regulation of these rights requires concerted action between the co-authors themselves and, above all, in their relations with third parties.

According to the mentioned above, there is actualized an issue of civil relations that are associated with the creation and use of intellectual property in the co-authorship that is insufficiently protected by the legislation of Ukraine.

**Results and Discussion.** The topicality of the paper lies in the signing of Ukraine Association Agreement with European Union, which states that the countries pay special attention to strengthening human rights and fundamental freedoms, creating favorable conditions for creative, intellectual activity and establishing the principles of legal regulation of the rights of the author (co-authors) for the intellectual property.

All mentioned above poses a scientific challenge of the implementation of the legal mechanisms of relationships regulation connected to the creation, use and protection of copyright property which were created in co-authorship and the introduction of amendments and additions to the legislation on the definition of the basic conditions for cooperation of co-authors, the use of general mechanism, as well as the division of remuneration by Ukrainian legislation norms.

In recent years, in the civil law science a considerable attention were devoted to the issues of copyright in general and of copyright property created in co-authorship. This question studied such scholars as: E. Gavrilova, O. Dzera, V. Dozortseva, O. Zhylinkova, M. Kyrlyova, S. Kleymenova, etc.

In the legal literature, there is discussed a problem of copyright protection, including the rights of the co-authors, the issues of contractual regulation of civil relations of co-authorship. However, there was not made any comprehensive analysis of the interaction of copyright rules in the regulation of civil relations of co-authorship. All mentioned above demonstrates the relevance of complex scientific research of the relations in the sphere of realization of civil relations of co-authorship, the necessity of the theoretical analysis of the general principles of contractual regulation of relations on the sale of property rights for a writing that was created in the co-authorship, the provision of scientific advices on the application of the rules of the new civil legislation on regulation of such types of relations in the field of copyright as a co-authorship [1].

The state of modern copyright legislation of Ukraine reflects the lack of a systematic approach to the regulation of civil relations of co-authorship in the European integration conditions, which manifests itself in the vagueness of the legal terminology, ambiguity and the presence of contradictions between the provisions of the Civil Code of Ukraine and the Law of Ukraine "On Copyright and Related Rights" and the actual norms of these Legislation Acts. There are gaps in the law in issues that relate to the definition of the legal status of subjects of copyright, in particular the co-authors, means of the co-authorship rights protection. The provisions of international treaties are not always clearly transferred to the field of copyright, the consent for obligation of which were provided by the Supreme Council of Ukraine in the course of their implementation.

In the domestic legal system, namely civil law and other regulations governing the intellectual property aspects that are only par-

tially covered the question of co-authorship [2]. Under the section 436 of the C.C. of Ukraine and under the section 13 of the Act of Ukraine "On Copyright and Related Rights" there are given only such issues: definition of the concept of co-authorship and its subject, features of some types of co-authorship, distribution of royalties. The importance of co-authorship increase when there are used the results of creative intellectual activity in economic and commercial activities [3].

Nowadays, there is a practice that writings appear as a result of the work of several people so in legal science the theory of co-authorship is well developed. However, for example, it remains a controversial question about the possibility of co-authorship on the finished product. So, V. Serebrovskii argued that there are not co-authorship relations if on the basis of already finished works another ones are created but at the same time he says that in some cases it is possible. He gives examples of co-authorship of the author of a novel and a visiting playwrights who are processing a novel into a play; a composer and an author of the text, a photographer and an artist who paints a picture with a photo. In those cases, the second product was based on the first one.

The issue of recognizing the co-product of the writer and the artist is considered ambiguously. A text and pictures may be viewed as different objects of the copyright property. That is why, as an exception V. Serebrovskii proposed to consider a writer and an artist as co-authors when a text and pictures to it are as one unit. An example of that are picture books for children.

We should distinguish cooperation and co-authorship. Cooperation means that several authors are involved in the creation of the collective result of the creative activities on the instructions of a specific organization (the customer). This collective object belongs to the entity who gave a task to create it.

According to the norms of current legislation, the co-authors are considered to be those people who create the final product together. The copyright right in a writing that was created in co-authorship shall belong to all the co-authors regardless of whether this constitutes an indivisible whole or consists of parts, each of which has independent significance [4]. We can speak about co-authorship only in the case if the joint efforts of several people cause creating of a single collective writing. Such a collective work is considered to be a work, if it is an indivisible whole (for example, a novel or a painting that were created by several persons).

The civil-law theory recognizes two types of co-authorship:

1) when it is impossible to single out the work of each co-author. This type of co-authorship is called an undivided co-authorship. It is typical for the Copyright right but even more for the scientific and technical work;

2) when the component parts are clearly defined and it is known which of the co-authors have created this or that part. This type of co-authorship is called a separate co-authorship. For this type of cooperation there should be an agreement to work together. It may be of both forms: written and oral. Co-authorship should be voluntary.

While an undivided co-authorship takes place, an object of collective work may be used by mutual agreement of all the co-authors. However, the right of publication and other ways of using of the work, the right to apply for industrial property, belongs to all the co-authors unless otherwise was mentioned in the agreement between them [5]. The staff of the co-authors in the scientific and technical work can be reviewed on the general application of people mentioned in the application as co-authors.

It is more difficult to determine the owner of the Copyright right in those cases when each part of the work has independent signif-

icance and can be used independently (e.g., poetry and music in a song, textbook chapters written by a team of co-authors). It is clear that a collective work cannot be created as a result of a simple mechanical connection of the authors' works. Such works should be linked so it could be perceived by the public as a single product.

In other words, changing or removing of any part of the collective work cause a corresponding change in other parts or the inability to use the product as a whole [6].

For example, if we exclude from the textbook on civil law any of the chapters devoted to, for example, agreements, legal persons, the statute of limitations, etc., then this tutorial is unlikely to be regarded as a complete collective work that is able to perform its functions.

Another essential condition for the emergence of co-authorship is the creation of works of joint creative work of several people. At the same time, under the overall nature of work we should consider not a general working process but a jointly achieved result.

Co-authors can work on a product together from the beginning to the end and each of them can create any separate part of the work or one can modify the result of another, etc. The fact that a work has appeared as a result of joint efforts of co-authors is important but not the form of their working process.

The most important condition of co-authorship is an inspirational contribution of people claiming authorship. Finally, existence of an agreement on co-authorship is an important requirement for the recognition of certain individuals as co-authors [7].

The relationship between the co-authors are determined by agreement between them. The right of publication and other use of the work as a whole belongs to all the co-authors. If a work of the co-authorship constitutes an indivisible whole, none of the authors can forbid others to publish, use in other way or change works without sufficient reasons for that. In case of violation of the common copyright right, each of the co-authors can prove their right in a court. If a work of co-authorship consists of independent parts, each of the co-authors has the right to use the part created by him in his own way, unless otherwise is mentioned in the agreement between the co-authors.

**Conclusion.** The mechanism for implementing the co-authorship relations on the national legislation of Ukraine is rather complicated and therefore it requires changes and additions primarily to the Law of Ukraine "On Copyright and Related Rights" of rules regarding the "co-authorship" concept and its types, as well as a distinction for the legitimate boundaries of the use of works created in joint work of several people, as well as possible ways to protect the rights of the co-authors.

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**Жарко О. Г. Правовий механізм реалізації відносин співавторства в умовах євроінтеграції**

**Анотація.** У статті розглянуто правовий механізм відносин співавторства в авторському праві України в умовах євроінтеграції, природу виникнення співавторства, ознаки співавторства. В умовах узгодження вітчизняного законодавства з нормами Європейського Союзу обґрунтовано необхідність удосконалення законодавства України щодо регулювання відносин співавторства.

**Ключові слова:** співавторство, співробітництво, ознаки та види співавторства, відносини співавторства.

**Жарко О. Г. Правовой механизм реализации отношений соавторства в условиях евроинтеграции**

**Аннотация.** В статье рассмотрены правовой механизм отношений соавторства в авторском праве Украины в условиях евроинтеграции, природа возникновения соавторства, признаки соавторства. В условиях согласования отечественного законодательства с нормами Европейского Союза обоснована необходимость совершенствования законодательства Украины по регулированию отношений соавторства.

**Ключевые слова:** соавторство, сотрудничество, признаки и виды соавторства, отношения соавторства.