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## CLASSIFICATION OF WORKS FORMS AS COMPONENTS OF ELECTRONIC LIBRARIES

The article deals with analysis of works forms used by electronic libraries. In the article the author presented original classification of works that form electronic libraries' stocks and analyzed each of them. She proposed new original criteria for this classification and new definitions for such works forms. The research is based on famous scientists' works and modern Ukrainian legislation. It contains wide and important answers to the questions that arise today due to creation and functioning of such specific information system as electronic libraries. This article will be useful for scientists, lawyers, students and all who are interested in intellectual property.

**Key words:** electronic library, copyright objects, free using, forms of works.

**Problem statement.** Nowadays the dynamic development of electronic libraries may be observed. However, the legal acts directly or indirectly relevant to the librarianship of Ukraine regulate relations in this area only casually, mainly all of them do not correspond to the actual demands. Although the problematic of legal regulation of electronic libraries gradually becomes a subject for various scientific researches and provokes certain interest of the state, this topic still requires further theoretical elaborations as well as legal improvement. Currently, for proper observance of copyright legislation at building up of electronic librarian funds it is important to determine main forms of works, in particular to distinguish those which belong to the funds of electronic libraries and to describe them.

**Theoretical background of the research** are the works of O.Volkov, S.Hlotov, P.Kalenychenko, V.Kalyatin, A.Kerever, K.Zerov, L.Mamchur, O.Matskevych, A.Minkov, M.Cherkas.

**The purpose of the research** is to determine the works forms which may build up funds of electronic libraries and identify usage features according to the actual copyright legislation.

**Presentation of basic material.** The Law of Ukraine "On copyright and related rights" as a majority of foreign copyright laws do not list physical forms of works expression and objects of related rights reserving this for the doctrine reasoning, apparently because the physical forms of expression of intangible objects are permanently changed and modified reflecting peculiarities of technical and entire social evolution<sup>1</sup>. At the same time the modern legal doctrine defines such physical forms of works as written (manuscript, typescript, musical notation, etc.); verbal (public proclamations, public performance, etc.); sound and video record (mechanical, magnetic, digital, optical, etc.); image (drawing, sketch, picture, plan, chart, film-, tele-, video- or photo-shot, etc.); volumetric space (sculpture, pattern, layout, construction, etc.); other forms.

There is a general idea which says that work realized digitally is an unusual object of civil law characterized by those natural "properties-features" which are unknown to the civil law. The mentioned is occurred due to the specifics of such work perceiving which follows the scheme "person-machine-creature"<sup>2</sup>.

K. Zerov states that works in digital form are divided in two groups: 1) works created for the first time with application of program records (in digital form); 2) works originally existing in physical form and needed to be processed (reading) by soft hardware for being transformed in the digital form<sup>3</sup>.

O. Matskevych divides works in digital form in the same groups, but differently to K. Zerov she proposes precise definitions for designation of these groups, namely "digitizing" and "digitization". She suggests to call the process of work transformation from "traditional" analog form into the digital (second group under Zerov's classification) the digitizing, and the general tendency of work creation and usage in digital environment – the digitalization (first group under Zerov's classification). Such differentiation, in

<sup>1</sup> Калениченко, П.А. (2009). Проблеми охорони авторського і суміжних прав у мережі Інтернет. *Часопис Київського університету права*, 2, 192-199.

<sup>2</sup> Глотов, С. (2011). *Щодо питання про твір, втілений через цифрове середовище, як нетиповий об'єкт цивільного права*. Київ: Видавничо-поліграфічний центр «Київський університет», 239.

<sup>3</sup> Zerov, K. (2016). *Поняття, признаи и форма призведеней, размещенных в сети Интернет*. <<http://www.jurnaluljuridic.in.ua/archive/2015/6/29.pdf>>.

her opinion, will help to avoid ambiguity in interpretations, and in sense of legal science – to create a corresponding mechanism of legal regulation of digitalization as phenomenon, process, and for digitizing – as certain operations, actions of specialists<sup>1</sup>. Accepting completely the aforementioned classifications and proposed definitions it is advisable to suggest broader classification of such works for their identification.

Specifically, it is proposed to single out the following forms of works:

- the analog (traditional) form;
- the digitized form (transformed from analog to digital);
- digitalized form (created in digital and absent in analog environment);
- hybrid (mixed). Whereas hybrid (mixed) form is split in two groups:

1) *Equivalent forms*. Two equivalent forms of work existence are analog and digitalized forms.

2) *Complicated forms*: digitalized works with hyperlinks and digitized works with hyperlinks.

Also the works forms may be classified under the following features:

- *an area of work existence*: analog form; digital form and mixed form.

- *a method of digital form creation*: digitized form and digitalized form;

- *a mode of works existence*: equivalent form and nonequivalent form. In its turn *the equivalent form of work existence* consists of analogous and digitalized forms created and published simultaneously.

*Nonequivalent form of work existence* consists of analog and digitized forms created and published simultaneously, consequently equal to each other.

- *a method of works arrangement in electronic libraries*: simple form and compound form. *Simple form* is defined by work arrangement without any additional preparation. *Compound form* is an arrangement of work with hyperlinks. In its turn the compound form may be divided into:

a) digitized form with hyperlinks;

б) digitalized form with hyperlinks.

Two fields of work usage follow from the proposed classification:

- analog environment;

- digital environment. At that, the sphere for electronic libraries is exactly the digital environment.

Hence, the analog form of work is subject to previous digitization for formation of electronic library stocks.

Let consider each form of works existence in electronic libraries and define the peculiarities of related to them copyrights.

**Digitalized form of work existence.** The notion “digitization”, “digitizing” and “digitalization” (from English word *digital*) have no unique interpretation which resulted in their inexplicit distinction.

Addressing literary sources which use the notion “digitizing” (“digitalization”), enough various approaches to its interpretation may be observed.

Upon the statement of French researcher A. Kerever the digitizing is electronically expressed translation to binary language which uses binary digit 0 and 1 for any communication in the form of texts, words, sounds, static or dynamic images. *These digitized messaging* are saved in the memory of computers, transmitted in any other place, and after they transformed in the forms available for persons apprehension<sup>2</sup>.

L. Mamchur explains, that «sense of digital form lays in posing of newly created or recoding of existing work through the transformation of information which it contains with application of corresponding software into special binary code which may be read only by computer equipped with relevant programs»<sup>3</sup>.

It is important to mention that now a lot of discussions arise about whether digitized work is a reproduction, new form of work, derivative work or completely new work. It is suggested to consider each of these ideas and to decide on the digitalized work and particularities of work transition from one format to another.

*Digitized work as reproduction.* This issue was heavily discussed<sup>4</sup>. Modern researches mainly recognize transformation of copyright object into the digital form as a reproduction (O. Pastukhov,

<sup>1</sup> Мацкевич, О. (2014). Авторське право при цифровізації та оцифруванні. *Теорія і практика інтелектуальної власності*, 5, 14-23.

<sup>2</sup> Кереве, А. (2001). Проблеми адаптації до цифрового мультимедійного середовища. *Права на відтворення і права на публічне сповіщення*. Київ: Ін-Юре, 135.

<sup>3</sup> Мамчур, Л. (2011). Розміщення твору в мережі Інтернет як спосіб його використання. *Теорія і практика інтелектуальної власності*, 3.

<sup>4</sup> Минков, А.М. (2001). *Международная охрана интеллектуальной собственности*. Санкт-Петербург: Питер, 208.

V. Drobiazko and R. Drobiazko, O. Sergeev, D. Liptsuk). V. Kalyatin even distinguishes a separate type of reproduction which is a “digital reproduction”, which in contrast to “analog reproduction” “significantly increases the possibilities of work reproduction”. Hence, “nonrandom in many publications currently a transformation of work into digital form is considered as independent idea”<sup>1</sup>.

L. Mamchur stated, that “digitizing of the work which originally had a traditional material (analog) form (handwriting on the paper, printing, verbal record, tape record, etc.) is an action which bears the feature of usage and in case of prohibition it violates author’s rights”<sup>2</sup>. Therefore, O. Matskevych thinks that “author’s conclusion is not enough logical, because a right to chose a form of work fixation she suggests to declare among moral rights”<sup>3</sup>. The phenomenon, which L. Mamchur understands as a “right to fixation”, other authors call - “reproduction”. Not only the reproduction is understood as repeated objectivization of the work, but also as its embodiment into another form. If the musical work was realized through notation and afterwards will be fixed on the magnetic tape or record, such must be recognized as one of the forms usage”<sup>4</sup>.

Some authors consider that digitized form is a new form of work existence. O. Hermanova is one of those authors, who using the example with media, proves that digitizing of newspaper is a new objective form of work existence, consequently the owner of certain media has to condition such usage of material with journalist in each concrete situation and to pay remuneration accordingly<sup>5</sup>. O. Matskevych mentioned in return that within work digitizing there is nothing about new form of work existence in digital environment, because it is not the form which is changed (literary, art work, etc.), but the method of its reproduction/expression and/or the carrier where it is shown – a poem written by hand in the notebook or printed in the publisher company remain the poem anyway; a movie shown in cinema or watched at the screen remains a movie.<sup>6</sup>

*Digitized work as derivative work.* According to the art.1 of the Law of Ukraine “On copyright and related rights” the derivative work is a work which present itself a creative recast of other existing work without causing damage to its protection (annotation, adaptation, arranging, folklore adaptation, other work processing) or its creative translation into other language (audiovisual works obtained by duplication, synchronization, subtitling by Ukrainian or other languages of another audiovisual works are not related to derivative works). It is assumed that translation of work into binary language with help of electronic means not fall within the scope of this article, because creation of derivative work shall correspond to the creativity criterion.

Creativity criterion means that work is protected by copyright if it appeared in the result of creative work of author. However, a notion of creativity is not determined by legislation, as far as creativity is a universal category<sup>7</sup>, the Law only uses separate notions as “creative work”, “oeuvre”. At the same time the law has a criterion of work originality applicably to the work title as independent creature and concretization of objects not protected by copyright. Namely, the paragraph “e” of Article 10 of the Law of Ukraine “On copyright and related rights” stipulates that “running time for transport, TV line-up, phone book and other similar databases which do not correspond to the originality criteria”, though the content of such criteria is not specified by the Law.

The Plenum of the High Commercial Court of Ukraine in its Opinion # 12 dated 17.10.2012 “On some practical issues in disputes resolution related to intellectual property right protection” equaled these

<sup>1</sup> Калятин, В.О. (2000). *Интеллектуальная собственность. Исключительные права*. Москва: Норма-ИНФРА, 96.

<sup>2</sup> Мамчур, Л. (2011). Розміщення твору в мережі Інтернет як спосіб його використання. *Теорія і практика інтелектуальної власності*, 3, 36, 37.

<sup>3</sup> Мацкевич, О. (2014). Авторське право при цифровізації та оцифруванні. *Теорія і практика інтелектуальної власності*, 5, 15.

<sup>4</sup> Харитонов, С.О. (заг. ред.) (2011). *Цивільний кодекс України: науково-практичний коментар (пояснення, тлумачення, рекомендації з використанням позицій вищих судових інстанцій, Міністерства юстиції, науковців, фахівців*. Харків: ФОП Лисяк Л.С., 592.

<sup>5</sup> Германова, О. (2006). *Авторське право і суміжні права в засобах масової інформації України і Польщі*. Львів, 17.

<sup>6</sup> Мацкевич, О. (2014). Авторське право при цифровізації та оцифруванні. *Теорія і практика інтелектуальної власності*, 5, 17.

<sup>7</sup> Стефан, О. (2006). Поняття об’єкта авторського права та критеріїв його охороноздатності. *Теорія і практика інтелектуальної власності*, 6, 4.

two categories stipulating the following: “The title of the work is subject to protection as copyright object only if it appeared in the result of author’s creative activity (is original) and may be used independently”<sup>1</sup>.

According to O. Matskevych’s view a digitized work cannot be considered as derivative. As R. Budnyk notes, the question whether digital forms of artworks are becoming derivative and are subject to copyright is not still resolved, and whether the process of multiplying of derivative works is in that way final<sup>2</sup>. In order to determine a digitized work’s status as derivative (converted) work there is a lack of the necessary change in the original work, when a new creativity should be brought into this changed (derivative) work, which is the main criterion for the recognition of derivative works as independent objects of copyright according to S. Hlotov<sup>3</sup>. L. Mamchur agrees with him: work in digitized form cannot be regarded as a new one, and a computer user who transformed this work cannot be considered as the co-author and copyright is not applied to him<sup>4</sup>.

Thus, the procedure of digitizing cannot be recognized as **derivative work** reasoning from the following:

- in the process of digitizing such a translation is not creative but only technical<sup>5</sup>;
- mandatory introduction of new creativity is missing<sup>6</sup>. A work doesn’t lose as well as doesn’t assume any new properties or qualities; it also doesn’t add any originality or individuality<sup>7</sup>.

Preceding from the foregoing reasons a digitized work cannot be recognized as a *new* or *derivative work*. Therefore it is reasonable to agree with L. Mamchur as to the objection to recognize the computer user, who transformed a work form, as a co-author or an author of a new work<sup>8</sup>.

Therefore, it is believed that the digitizing of a work is its reproduction. Thus the transformation of a work from analog form into digital one is possible only when the authorization is obtained. Exceptions are the works that become public domain of mankind and works authors of which cannot be found or cannot be reached (so called “orphan works”).

*Transformation of work from one digital format into other.* There is an important issue of transforming of a work from one digital format into other. We should agree with A. Volkov’s opinion of the possibility of creating the digital object that will contain technical information that doesn’t conform to the original but provides information retention that a man can perceive. We can take as an example the creation of a digital copy of a film on DVD with coding into other format of storing video data - avi container with compression algorithm H.264. The result of such process is a work reproduction in the other digital format, but the work itself and its essence remains unchanged<sup>9</sup>. Thus, transformation of a work from one format into other is not either creation of a new work or a derivative work.

The biggest threat for the subjects of intellectual property law in the field of electronic libraries functioning related with work digitizing lays in actual loss of any control over the object and a large part of their remuneration as a result of publishing of a digitized work in the Internet. In practice, it is appropriate to grant licenses for the reproduction of works, thereby preventing copyright infringement.

**Digitalized form of work expression.** As was mentioned below, the proposal of O. Matskevych on the distinction between “digitizing” (“digitization”) and “digitalization” is appropriate.

<sup>1</sup> Про застосування судами норм законодавства у справах про захист авторського права і суміжних прав 2010 (Верховна Рада України). Офіційний сайт Верховної Ради України.  
<<http://zakon3.rada.gov.ua/laws/show/v0005700-10>>.

<sup>2</sup> Будник, Р. Контент в киберпространстве. *Российская библиотека интеллектуальной собственности*.  
<<http://www.rbis.ru/article.php?article=650>>.

<sup>3</sup> Глотов, С. (2006). Можливість застосування законодавства про авторське право до творів у цифровій формі. *Теорія і практика інтелектуальної власності*, 3, 10-15.

<sup>4</sup> Мамчур, Л. (2011). Розміщення твору в мережі Інтернет як спосіб його використання. *Теорія і практика інтелектуальної власності*, 3, 35.

<sup>5</sup> Калениченко, П.А. (2009). Проблеми охорони авторського і суміжних прав у мережі Інтернет. *Часопис Київського університету права*, 2, 193.

<sup>6</sup> Глотов, С. (2006). Можливість застосування законодавства про авторське право до творів у цифровій формі. *Теорія і практика інтелектуальної власності*, 3, 10-15.

<sup>7</sup> Черкес, М.Е. (2002). *Правовое регулирование деятельности в Интернете*. Одесса: Латстар, 41.

<sup>8</sup> Мамчур, Л. (2011). Розміщення твору в мережі Інтернет як спосіб його використання. *Теорія і практика інтелектуальної власності*, 3, 36.

<sup>9</sup> Волков О.Ю. (2010). *Правовой институт защиты объектов авторских и смежных прав, выраженных в цифровой форме, в Российской Федерации*. Москва, 13.



“Digitalization” we understand as transformation of all content types (that consists of works – *author’s note*) into digital format understandable for modern computers, that allows contents to be easily transported by any electronic communication channel<sup>1</sup>.

As O. Matskevych notes that problems of digitalization are all those challenges related to copyright in the Internet. Works of many national and foreign experts are dedicated to the solution of these problems (M. Fedotov, O. Kotenko, I. Stamatudi, A. Kerever, B. Gugengolts, T. Dryer and others). However, there are problems concerning the possibility of an anonymous author during digitalization that remain unresolved. The publisher is not needed any longer for the world to see a literary work – the author publishes his work himself in the digital environment (anonymously or under pseudonym as he/she wishes). But according to Part 4, Article 11 of The Law of Ukraine “On copyright”, if a work is published anonymously or under pseudonym (except when a pseudonym expressly identifies the author) the publisher of a work (his name or title must be indicated on the product) is presumed the author’s representative and is authorized to protect the author’s rights. This provision is valid until the author discloses his name and declares his authorship. So only the author personally can represent an anonymous author or an author that acts under the pseudonym. Perhaps, content or hosting provider could represent an author instead of the publisher, but their authority doesn’t extend so far nowadays.<sup>2</sup> Electronic scientific specialized editions are the examples of such practice, namely: “Law and Civil Society”, “Theory and Practice of Jurisprudence”, “Legal Science electronic journal” and so on. The fact that these journals are professional only confirms the urgent need to resolve issues related to digitalization of works.

**Hybrid (mixed) form of a work expression** may be divided into 2 groups:

1) *Equivalent forms*. Two equivalent forms of a work existence are analogous and digitalized forms. A dissertation can be an example of such a form of work.

“Regulations on specialized academic council” following the Order of Ministry of Education and Science, Youth and Sports of Ukraine defines the procedure of the preliminary consideration of a thesis work at the specialized academic council. According to paragraph 3.1. ch. III of this Order, the Council accepts a dissertation for preliminary consideration with all necessary documents, also printed and properly structured in multiple copies being bound and signed by the author, which are necessary to transfer it for storage to the National library of Ukraine named after V. I. Vernadskii of the National Academy of Science of Ukraine, and to be send to the library of research institution, higher education institution where the specialized academic council is established, as well as to the opponents<sup>3</sup>.

The Council accepts a doctorate thesis for consideration not earlier than in two months and a PhD thesis - not earlier than in one month since the day the publishers send with mandatory copies of editions where the candidate’s works are published that describe the main results of the dissertation<sup>4</sup>.

The specialized academic council, that accepted a thesis for defense, According to Part 1 of the Order of the Ministry of Education and Science of Ukraine “On publication of theses and reviews of official opponents” aiming to comply with part five Article 6 of the Law of Ukraine “On Higher Education” publishes it in electronic format on official web-site of higher education institution (research institution) and introduces the scientific community with the content of the thesis and reviews of the official opponents. Dealing with the theses that were published as a monograph an abstract of a thesis is published in electronic format and deposited instead of the thesis itself. However, all the materials are published in the chapter where information on the council’s work is located no later than 10 calendar days before defense of a thesis. The date of the thesis defense is indicated in the abstract of the thesis. It’s important to emphasize that these requirements don’t apply to the theses that contain state secrets or restricted access information. The same requirements are also imposed for reviews of the official opponents<sup>5</sup>.

According to Part 2 of this Order the published materials are deposited in open access on the official web site of higher education institution (research institution) for 3 months from the day the certificate of

<sup>1</sup> Інтернет – медіа (2010). *Теорія і практика*. Москва: Аспект Пресс, 11.

<sup>2</sup> Мацкевич, О. (2014). Авторське право при цифровізації та оцифруванні. *Теорія і практика інтелектуальної власності*, 5, 19.

<sup>3</sup> *Положення про спеціалізовану вчену раду 2011* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon3.rada.gov.ua/laws/show/z1170-1>>.

<sup>4</sup> *Положення про спеціалізовану вчену раду 2011* [Regulations on specialized academic council] (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon3.rada.gov.ua/laws/show/z1170-1>>.

<sup>5</sup> *Про оприлюднення дисертацій та відгуків офіційних опонентів 2015* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon3.rada.gov.ua/laws/show/z0885-15>>.

doctor of philosophy or doctoral certificate is issued<sup>1</sup>.

As it follows from above mentioned, dissertations (abstracts of theses, reviews of the official opponents) exist in two equivalent forms. They are presented to the specialized scientific council in a printed form and are published on the institutions' (science institutions') web-sites in electronic (digitalized) form. However the theses that were published as monographs have only an analog form. And when such a monograph is digitized we are talking about the existence of a digitized form of a work.

Examples of hybrid equivalent forms of work are different scientific periodicals that very often publish articles in analog and electronic (digitalized) form nowadays. "Scientific Bulletin" of Kherson State University, "Law Herald" of NU "OLA", Scientific Bulletin of Uzhgorod National University are among them and many others.

Wherein, we believe it is appropriate to split such works (periodicals) in the forms they are published:

- in analog form only;
  - works that were transformed from analog environment into digital (digitized);
  - works that have hybrid equivalent form of existence.
- 2) *Complicated forms*: digitalized works with hyperlinks and digitized works with hyperlinks.

The degree of intervention into original work, while transforming it into digital format, is also important. It is obvious that the creation of a computer game based on adventure film – is a creation of a derivative work that will be used in digital environment. But it is possible that an ordinary literary work can become a digital media product.<sup>2</sup>

Let's imagine such a situation: in an ordinary literary text, for example, that tells about historical events, the system of hyperlinks enables reading of reference on the mentioned historical event; when mentioning a song - to listen to a file with records of songs of that time; watching the video of cooking a dish that characters of the story might be eating. Such combined works were created in the Internet long time ago. Wherein installed hyperlinks can be barely highlighted or underlined, and don't create "torn", split text<sup>3</sup>. Well known on-line encyclopedia "Wikipedia" is an example of such hybrid form of work. It is built on this principle but as for creation of new works; they are created - not digitized. So we are talking about digitalization and not about digitization.

**Conclusion.** Thus, nowadays we witness a significant progress and popularity of electronic libraries that permit to increase significantly the speed of delivery of information and to extent the access of users to it. Their appearance is a result of not only technical evolution (method of publication, storage and transmission of information), but also an evidence of progress and the improvement of human relations. Alongside with the rise and functioning of a new specific informational system the forms of existence of present works also change. Appearance of such forms significantly complicates the regulation of legal relations concerning their use.

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2. Volkov, O.YU. (2010). *Pravovoj institut zashchity ob'ekтов avtorskih i smezhnyh prav, vyrazhennyh v cifrovoj forme, v Rossijskoj Federacii* [Legal Institute of intellectual property and corporate law objects, expressed in digital form in the Russian Federation]. Moscow. [in Russian].
3. Hermanova, O.H. (2006). *Avtors'ke pravo i sumizhni prava v zasobakh masovoyi informatsiyi Ukrayiny i Pol'shchi* [Copyright and related rights in Ukraine and Poland: Thesis for Phd degree in philosophy]. – *Zhurnalistyka*. Lviv. [in Ukrainian].
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<sup>1</sup> Про оприлюднення дисертацій та відгуків офіційних опонентів 2015 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/z0885-15>>.

<sup>2</sup> Мацкевич, О. (2014). Авторське право при цифровізації та оцифруванні. *Теорія і практика інтелектуальної власності*, 5, 16.

<sup>3</sup> Мацкевич, О. (2014). Авторське право при цифровізації та оцифруванні. *Теорія і практика інтелектуальної власності*, 5, 16.

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