

## Reformation of the Copyright in United States and Russia in the Digital Era: Some Aspects of Comparative Legal Analysis

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**Abstract:** At the XX-XXI centuries the use of copyright and related rights through the Internet is especially important. Development of the information society today suggests that the number of violations of copyright and related rights in their use through the Internet becomes more significant. Internet became a communication system covers the whole world. Internet has been introduced in almost all spheres of life, in many ways changing social relations in the field of information dissemination, business, public service delivery, etc. Because of this, today we are seeing in the domestic and in foreign legislation, particularly in the United States legislation transformation rules of copyright: defining responsibilities of Internet providers and other participants of information relations. Today, however, neither in Russia, nor in any other country, there is no specific legislation on Internet use. Now the Internet is still partially out-of-control. It is noted that there is a need to identify the legal framework of Internet sites and other complex information resources. These complex information resources include Web servers, Web pages, e-mail, network news, web chat, social networks, search engines.

**Key words:** Intellectual property • Exclusive rights • Information and telecommunications networks

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### INTRODUCTION

Comprehensive study of the legislative regulation of the use of copyright in the Internet evolution involves the use of various methods of knowledge, the relevant aspects of the diversity of legal reality. The study used a dialectical, formal-logical and comparative legal, specific historical, inductive, deductive methods, systematic approach, analysis and synthesis. In addition, the realization of the principle of unity of historical and logical methods of analysis that can cover the studied phenomenon in all its forms.

**Main Part:** Currently, information and telecommunications network Internet today is an environment not only for copyright infringement, but also patent and other intellectual property rights infringement. The number of copyright and related rights violations during their use through the Internet is especially significant because of the proportion of the various objects of intellectual property, as well as the appropriate ways of exclusive right use [1].

Therefore today we are seeing in the Russian and foreign legislation, particularly in the USA transformation

basically copyright rules unlike other institutions intellectual property rights. For the formation of the USA National Information Infrastructure (NII) in 1993, the President established a commission for the information infrastructure-the Information Infrastructure Task Force (IITF) [2], whose main objective was the development the USA policy in the field of telecommunications and information. As a part of ITF was created Working Group on Intellectual Property, which was analyzed the USA law in this area, in particular the law on the protection of copyright, to the needs of the National Information Infrastructure [3].

As a result of work of this group appeared document named "Intellectual Property and the National Information Infrastructure: a preliminary draft of the working group on intellectual property rights" [4]. It pointed to the need to clarify some of the powers of authors and other right holders, but denied the idea of a fundamental transformation intellectual property rights. Thus, it was proposed to recognize the file downloads to the computer memory as a reproduction, the transfer of a work by telephone and other means of communication as the spread, which requires making a ban on protecting information technology as well as the production and

distribution of any hardware and software designed to circumvent these technologies. It was also proposed that a provider responsible for any copyright infringement committed by its participation ("information intermediary"). The project has generated discussions among scientists and law enforcement and many of the components of this ideas were not recognized by the legislator. Thus, the thesis of the recognition the file downloading into the computer memory as a reproduction and transmission works through private channels as a spread was not supported. Therefore, any person who owns the computer, get the right to copy computer programs for personal use, in particular, for the personal computer operation.

October 28, 1998, the USA President signed a law known as the Digital millennium copyright act (DMCA) (Law on copyright in the digital age). [5] Because of the need to establish additional prohibitions to combat violations of copyright and related rights, the USA legislator has introduced a new entitlement, which is part of the exclusive right in the work-the right to determine access to the product. In addition, was increased responsibility of providers and was given a detailed regulation of copyright protection technical measures [6].

Considering foreign and international regulatory experience Russian legislator included in Part IV of the Civil Code of the Russian Federation [7] Article 1299, about copyright protection technical measures.

Copyright protection technical measures are any technology, technical devices or their components, which control access to the work to prevent or limit the possibility of actions that are not permitted by the author or other right in relation to the work.

**Provided That Are Not Allowed:**

- Implementation without author or copyright holder of action to ensure that addresses the limitations of use of the work established by the use of technological protection of copyright;
- Production, distribution, lease, providing for temporary free use, importation, advertising of any technology, any technical device or its components, the use of such technologies for profit or the provision of services, if the result of such action becomes impossible to use technical protection of copyright or these technical measures can not provide adequate protection of those rights.

In case of violation of the above provisions of the author or other copyright holder has the right to demand of their choice from the infringer for damages or compensation in accordance with Article 1301 of the Civil Code.

Draft amendments to Section VII of the Russian Federation Civil Code [8] was created in 2010 to meet the foreign and international experience of legal regulation. Changes, particularly, related to the need of legal regulation of the use of intellectual property in the Internet and other information and telecommunications networks [9].

The new Article 1253.1 of the Civil Code is about features of responsibility of the information intermediary, responsibilities of Internet service providers in the transfer of materials in the Internet or provided to third parties the possibility of their disposal in the Internet. The person performing the transfer of material on the Internet or provides the possibility of placing the material in the network-an information broker (Internet Service Provider) is responsible for the violation of intellectual property rights on the Internet on the general basis of the Civil Code, if found guilty, with the following features. [10]

Information intermediary who transmitted material on the Internet can not be held responsible for violations of intellectual property rights that may result from the transfer, subject to the following conditions are met simultaneously:

- The information intermediary does not modify such material after it is received, except for changes made to ensure the technological transfer process material;
- Information intermediary knew or should have known that the use of the corresponding result of intellectual activity or means of individualization of the person initiating the transfer of material containing such a result or means of individualization, is illegal.

Information intermediary who provides the possibility of placing material on the Internet, can not be held responsible for violations of intellectual property rights that may result from placing the material on the Internet by a third person, or by his order, under the following conditions:

- The information broker knew or should have known that the use of the corresponding result of intellectual activity or means of identification contained in such material is illegal;

- The information intermediary in the case of a written statement of the holder of intellectual property rights violations as a result of placement of such material on the Internet to take the necessary and reasonable measures to remedy the violation of intellectual property rights under the laws of information.

### CONCLUSION

As for the legal regulation of reproduction rights, in accordance with paragraph 2 of Art. 1270 of the Civil Code, of a work in electronic form, including an entry in the memory of a computer is playing, except when such record is temporary and is an integral and essential part of a technological process whose sole purpose of the lawful use of lawful entry or bring the product to public. The project involves the expansion of the Civil Code, a list of these goals and the inclusion of their number as the transfer of the product on the Internet, provides information intermediary, or any other similar purpose, which has no independent economic significance. Some of the powers that are part of the exclusive rights in accordance with art. 1270 of the Civil Code, in contrast to USA law (DMCA), currently not included the right to determine the conditions of access to the work, which, in our opinion, reduces the effectiveness of the regulation. In this regard, consider it expedient to continue work on improving legislation on intellectual rights and powers of the rule addition, specially designed for the exclusive right to use the Internet.

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