

## Legal international aspects of copyright protected objects in Internet

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Internet is the forth revolution in information technologies. Meantime, personal computers and Internet solved the problem put forward by Abbot Joseph Liebling who back in 1960 complained that "...freedom of press is guaranteed only to few"<sup>1</sup>. However, with the development of Internet a new, important problem arose which may not be overestimated: protection of intellectual property in Internet.

Within five years since the advent of the first easy-to-use Web-browser, the USA adopted Digital Millenium Copyright Act in 1998 which became the first specialized legal act in regulation of the relations in use and distribution of copyright materials in Internet (hereinafter referred to as DMCA<sup>2</sup>).

Besides the issues of copyright protection engineering tools security and rights management information, DMCA, adopted as amendments to the current US law on copyright brought the principle of limited liability of providers<sup>3</sup>, according to which the latter may not be called financially liable in the event of no own initiation of any transfer, placing and/or amendment of illegal content.

That principle is also fixed in European directive on electronic commerce dated February 28, 2000 (sect. 4, articles 12 - 15)<sup>4</sup>, in Defamation Act, adopted in England in 1996<sup>5</sup>.

It is notable that the situation in settlement of disputes in that sphere is aggravated by collisions of constitutional and internationally accepted principles like: protection of private life and copyright protection. Therefore, supporting the first principle and refusing to bind a provider by a commitment to submit the information about certain pirate, the second principle is violated, and vice versa.

At present time, the US courts are supporting copyright holders accounting for lobbying the interests of copyright corporations in the country. In Europe, the position is opposite and is aimed at the protection of private life. For example, in November 2011 the EU court ordered that Internet providers are not entitled to inspect and filter users' traffic. That means, providers cannot use the software watching illegal downloading of files violating copyright<sup>6</sup>.

However, the organizations for collective management of copyright in the USA (for example, Recording Industry Association of America (RIAA), Motion Picture Association of America (MPAA) and National Music Publishers Association as well as similar companies and copyright holders in Europe began calling liable the most active users violating intellectual rights in Internet.

So, according to the current national acts and draft legislation, the international practice provides for gradual (Three Warnings rule) and/or alternative ways to call Internet pirates liable: restriction of access to certain Internet resources, decrease of connection speed and/or full refusal to provide Internet services (Ireland, South Korea); high penalty (the USA); calling criminally liable up to imprisonment (France). Besides, the systems preventing downloading pirated music

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<sup>1</sup> Cit. by : Intellectual property: a reference handbook / Aaron Schwabach. Contemporary world issues. ABC-CLIO, Inc. 2007. P. xiv.

<sup>2</sup> See: URL: [http://www.copyright.gov/reports/studies/dmca/dmca\\_study.html](http://www.copyright.gov/reports/studies/dmca/dmca_study.html) (last visited: 20.03.2012).

<sup>3</sup> **Author's note.** Provider is the person contributing to placing, transferring and/or downloading information via network.

<sup>4</sup> Directive 2000/31/EC of European Parliament and European Council on some legal aspects of information society services including electronic commerce in the domestic market (effective since June 8, 2000). Russian text is published in: Shamraev A. V. Legal regulation of information technologies. Analysis of the issue and core documents. Moscow. 2003. P. 317 - 327.

<sup>5</sup> See for details: URL: [http://www.legislation.gov.uk/ukpga/1996/31/pdfs/ukpga\\_19960031\\_en.pdf](http://www.legislation.gov.uk/ukpga/1996/31/pdfs/ukpga_19960031_en.pdf) (last visited: 20.03.2012).

<sup>6</sup> See for details: URL: <http://pravo.ru/interpravo/news/view/64866/> (last visited: 20.03.2012).

files from Internet to mobile phones are applied (Japan); permissive principle for publishing works accounting the available translation of the original to national language is used (China); filing users data including routing for three years are recorded (Brazil)<sup>1</sup>.

But massive intolerance by the public community and well-known web-page owners of the regulations aimed at the introduction of the said strict steps against free access to any information from Internet. Also, due to that reason, in many states such documents are remaining as draft legislation (France, Canada, Singapore, New Zealand).

In that situation, the experience of Great Britain is notable, while it adopted Electronic commerce act in 2010 accounting for a number of related acts but still the norms on calling liable are not working due to the absence of Code of providers' behavior which must be adopted in the local level.

We are sure that the problem of copyright violation in file sharing networks should not be solved exclusively by massive calling Internet users liable. Otherwise, the principles of reasonability, practicability and protection of public interests are called into doubt.

When solving the issue whether copyrighted files are used in Internet in good faith or not, judging from the current US court practice the four criteria should be considered: purpose and nature of material's use; specifics of copyrighted objects protected by law; volume and significance of material's use in Internet compared to the use of general files; impact of pirated use on the potential sales market of copyrighted objects<sup>2</sup>.

At the moment the internet community is actively discussing the adoption of two draft acts in the USA – PIPA (PROTECT IP Act<sup>3</sup>) and SOPA (Stop Online Piracy Act<sup>4</sup>), as well as the Anti-Counterfeiting Trade Agreement (ACTA)<sup>5</sup>.

As per paragraph (c)(2)(A)(i) section 102 of SOPA, by demand of General Attorney of the USA, court may order all Internet providers, all registrar's of domain names, all network information centers, operators of DNS-servers located within the USA to take steps to ensure that any domain name under any web site pirating copyrighted objects will not be transferred to a correct IP-address. As per paragraph (c)(2)(C)(i) section 102 of SOPA, transactions on accounts in connection with the operation of any domain name may be blocked. As per paragraph (c)(2)(D)(i) section 102 of SOPA, any certain domain name may be deprived from buying advertising services. Owners of search machines will be responsible as per paragraph (c)(2)(B)(i) section 102 of SOPA for deleting or otherwise blocking any ways to access a certain web site deleting all hyperlinks pointing there. As per both draft acts (SOPA and PIPA) the domain name itself is the defendant on such cases, with the provision for court proceedings and passing court order when only one party is present – attorney or civil plaintiff submitting any evidence of copyright violations.

Besides the said dissonance provisions boundlessly broadening the US jurisdiction the public reaction is deepened by the fact that huge amounts of the current US President are invested by copyright holding corporations lobbying the said draft acts.

The situation is similar to the adoption of ACTA, being a multi-party trade agreement which provides for strict observance of copyright in Internet and on the information, IT and IT-based products market. The said Agreement will allow customs officers inspect notebooks, MP3-players and mobile phones to check for the storage of any pirated files. Also, new requirements to Internet providers are suggested including partial disclosure of information in connection with

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<sup>1</sup> See for details: International anti-piracy experience // Review by RIA Novosti: URL: <http://www.arbitr.ru/press-centr/smi/25242.html> (last visited 20.03.2012).

<sup>2</sup> See for details: Vilinov A. A. Brief review of regulation practice of pirating copyright and related rights in Internet, in the EU, the USA and Russia // Culture, management, economics, law. 2011. N 1. P. 27 - 31.

<sup>3</sup> See for details: URL: <http://www.leahy.senate.gov/imo/media/doc/BillText-PROTECTIPAct.pdf> (last visited: 30.03.2012).

<sup>4</sup> See: H.R.3261 (Latest Name: Stop Online Piracy Act) 8/26/2011 [Electronic resource] / The Library of Congress. Access: URL: <http://goo.gl/pPZcU> (last visited: 30.03.2012).

<sup>5</sup> See for details: URL: [http://www.mofa.go.jp/policy/economy/i\\_property/pdfs/acta1105\\_en.pdf](http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf) (last visited: 30.03.2012).

users' activity and the utilization of network security tools. Currently, the EU court under public pressure will study the compliance of ACTA with the EU regulations<sup>1</sup>.

It is necessary to constitute the existing urge of copyright export-oriented countries to legalize wide borders of own jurisdiction. We opine that such measures without joint discussion of the drafts of the said regulations/acts by all parties concerned cannot contribute to adequate economic development and world community as a whole. We are convinced that it is initially required to create economically reasonable conditions for the normalization of relations in that sphere: fixing the terminology on legislative level as well as the core rules for the settlement procedures between copyright holders, users and owners of Internet resources; adoption of operation procedures, codes and other legal acts on the local level; improvement of technical tools allowing for restricting and watching piracy in Internet; development and introduction of the schemes enabling to charge fixed amounts from providers with the provision for representation of attested organizations representing right holders on collective basis and/or including in Internet services certain amounts for the access to some Internet resources; setting differentiated amounts for using copyrighted files accounting for the number and length of downloading or post-payment<sup>2</sup>, etc. Only thereafter any uniform regulations should be adopted taking into consideration all the check points of the multi-aspect problem in question.

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<sup>1</sup> See for details: URL: [http://www.svobodanews.ru/archive/ru\\_news\\_zone/20120222/17/17.html?id=24492508](http://www.svobodanews.ru/archive/ru_news_zone/20120222/17/17.html?id=24492508) (last visited: 30.03.2012).

<sup>2</sup> See for details: Dolgin A. Manifest of new economy. second invisible hand of market. Moscow: AST, 2010, P. 256.