

FEATURES OF COPYRIGHT PROTECTION IN THE INTERNET

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Implementation of digital technology has changed the ways in which the objects of intellectual property rights are distributed. While, before the era of digitalization has occurred, the intellectual property objects obtained protection only if they were expressed in material form, digital works, even being non-material in the classic sense of the word, shall enjoy the same level of protection.

It is apparently that “the digital technology is a phenomenal impact on copyright works – its creation, dissemination, and protection. Digitization has made it much easier to manipulate, reproduce, and distribute protected works. Digital content can be combined, altered, mixed, and manipulated easily.”¹

Not only the users of intellectual property objects, but the authors (creators) themselves benefits of digitalization. The Internet, as an “open platform model” (opposite to the model of most existing media), grant to the authors the possibility to disseminate freely their works within intervention of intermediaries (as publishers, producers, media).

Despite the many advantages of digitalization, it is also provides new possibilities to infringe authors’ rights and increase unauthorized use of copyright works. The authors’ proprietary intellectual property rights and moral rights, as well as their enforcement, could be easily violated by the Internet user, by taking content from the web-site, modifying it, coping or uploading to the other web-site, creating a derivative works etc. In modern world, the need for legal regulation and mechanism of control over the unauthorized usage of intellectual property objects could not be exaggerated.

Taking into consideration great demand for legal protection of the copyright in the Internet, especially in Ukraine, lots of scientists raised in issue for scientific discussion. For instance, following scientists contributed into research: Y.M. Baturina, V.I. Zhukova, D.M. Boyko, O.V. Dzera, O.V. Kochanovska, U.V. Nosikov and so on. Among foreign scientists it is necessary to name E. Fleischmann, K. Koelman, T. Vinje, Gr. Smith, J.P. Barlow and lots of others. At the same time, lots of issues are remaining uncovered and needs further investigation or clarification.

¹ Rafiqi A., Bhat I.H. Copyright Protection in Digital Environment: Emerging Issues. – Access mode: [http://www.ijhssi.org/papers/v2\(4\)/version-3/B240615.pdf](http://www.ijhssi.org/papers/v2(4)/version-3/B240615.pdf)

We could define two primary ways to combat the violations of intellectual property rights: technical protection measures and regulatory framework.

Not only legal norms, but also digital technology itself could be used to monitor, trace and control the usage of copyright objects. While copyright legislation shall be applied after violation of rights, technological protection measures work constantly and could prevent infringement. Moreover, “while copyright law provides authors merely with a right to control the use of their copyright works, technological protection measures enable authors to exercise factual control over what users can and cannot do with their works”¹ In view of this, two types of technological protection measures have developed to control access to or use of copyright works – access control and copy control.

The most basic and important type of technological protection is **access-control technology**: it prevents someone from viewing, reading, hearing, and/or otherwise perceiving the work without the author’s consent.² When an access control is used “encryption effectively ‘locks’ digital works to ensure that only authorized users have the keys to unlock and use it”³.

In this respect, the following forms of access control can be distinguished:

- Encryption, which provides the control over access to a copy or a performance at the web site of an information provider, as the digital content is encoded to prevent it from being viewed until it reaches a user possessing a decryption key(s);
- Technical measure that concerns not only initial access but also each subsequent act of access even of a purchased or downloaded copy.

However, sometimes it is for author’s sake to give access to work remaining the control over usage. **Copy control** enables the author to limit the user’s freedom of movement once the access to intellectual property object has been obtained, as this technology limits “whether and to what extent a work can be copied, communicated, viewed, or played”⁴. The following technologies could be outlined in this respect:

¹ Copyright & The Internet // Parliamentary Office of Science and Technology. – Access mode: <http://www.parliament.uk/documents/post/pn185.pdf>

² Conroy M. A. Comparative study of technological protection measures in copyrightlaw. – Accessmode: <http://uir.unisa.ac.za/bitstream/handle/10500/2217/thesis.pdf;jsessionid=1B3A808C53C22ACD336AE150F13C23AE?sequence=1>

³ Bhat I.H. Technological Protection Measures under Copyright Law. – Access mode: <http://www.ijettcs.org/Volume2Issue2/IJETTCS-2013-04-18-125.pdf>

⁴ Conroy M. A. Comparative study of technological protection measures in copyrightlaw. – Accessmode: <http://uir.unisa.ac.za/bitstream/handle/10500/2217/thesis.pdf;jsessionid=1B3A808C53C22ACD336AE150F13C23AE?sequence=1>

- Serial Copyright Management System (SCMS), which prevents the making of digital copies of a copy;
- Copy Control Flags, which is a digital flags inserted into content that indicate whether copying is authorised, how many copies can be made, the duration of viewing etc.¹;
- Copy Generation Management System (CGMS), which is “an agreed standard that controls the copying of DVD video, which can be calibrated to prevent entirely the making of any digital copies”²;
- CD Copy Protection, which is an additional track is inserted into an audio CD to prevent it from being played/copied on a CDRom;
- ‘worm’ in computer programs, which detects efforts to coping or making of print-outs.

The notable disadvantage of the mentioned above technical measures of copyright protection is that it could be overlap and once a copy control key is found, everyone has access to the work without the author’s consent. Thus, the next step after the implementation of a technological protection measure called rights management information, which is like digital mark that “hides information in digital files that identifies the work and makes it possible to track the uses and automate the administration of the rights relating to such uses”³.

Rights management information shall be implemented into the file of intellectual property object and enable author to trace. It is so called passive defence, as the owners of intellectual property rights achieve the possibility to monitor uses of their works. In this view, rights management information has several advantages: “it provides evidence of authorship; advances moral rights; enables authors to be informed about who is using their content, when, and in what context”⁴.

In view of above-mentioned, it is apparent that the technological protections play an important role in protecting the copyright in the Internet,

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³ Conroy M. A. Comparative study of technological protection measures in copyrightlaw. – Access mode: <http://uir.unisa.ac.za/bitstream/handle/10500/2217/thesis.pdf;jsessionid=1B3A808C53C22ACD336AE150F13C23AE?sequence=1>

⁴ Conroy M. A. Comparative study of technological protection measures in copyrightlaw. – Access mode: <http://uir.unisa.ac.za/bitstream/handle/10500/2217/thesis.pdf;jsessionid=1B3A808C53C22ACD336AE150F13C23AE?sequence=1>

however; remain insufficient to provide adequate protection for copyright works. Taking everything into account, the need for statutory regulation of rights of authors in the Internet and technology protection measures could contribute into effective and adequate protection of copyright.

From the end of nineteenth century the most important treaty in the field of copyright in the Berne Convention for the Protection of Literary and Artistic Works, which was adopted in 1886 (Ukraine has ratified it in 1995 year). However, despite the fact that it was revised quite regularly, it did not include any specific provisions to regulate relations that occurred in the Internet.

The preparation of the new legal norms led to adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS), the purpose of which were “to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade”.¹ However, it does not contain any provisions regarding means of protection of the intellectual property rights in the Internet (i.e. technological protection measures or rights management information).

In 1996 the two important international treaties were adopted – the WIPO Copyright Treaty (hereinafter – the “WCT”) and the WIPO Phonograms and Performances Treaty (hereinafter – the “WPPT”). Ukraine has ratified both of treaties in 2001 year.

It should be noted that under WCT the three crucial rights of authors were directly established – distribution (by Article 6 of the WCT², as the Berne Convention contains a right of distribution only in respect of cinematographic works), rental (by Article 7 of the WCT³, which creates a new right of rental in respect of computer programs, cinematographic works and works embodied in phonograms) and communication to the public (by Article 8 of the WCT, as Berne Convention has been regulated it in a fragmented manner).

Also, according to Article 8 of the WCT, “<...> the authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them”⁴.

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights. – Access mode: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

² WIPO Copyright Treaty. – Access mode: http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=295157

³ WIPO Copyright Treaty. – Access mode: http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=295157

⁴ WIPO Copyright Treaty. – Access mode: http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=295157

What is important is that WCT directly provided that the circumvention of technological protection measures and the removal or alteration of rights management information is an infringement of copyright in the Internet.

In the United States of America, the Digital Millennium Copyright Act (DMCA) was adopted in October 1998 in order to implement the obligations, which USA took after ratification of WCT and the WPPT.

An author can protect and control her works by means of contractual conditions, which is concerned as the most effective measure of protection. Agreements mainly used by software developers and publishers and is usually in the form of a licence agreement. Authors have the ability to contract directly with users, which grant authors a possibility to restrict terms of usage to the extend they could not restrict through copyright. However, contractual relationships is bounding only the parties of the contract and could not be extended.

Ukrainian legislation do not contain special legal norm for protection of copyright in the Internet, however, the main international treaties aimed on copyright protection were successfully ratified by Ukraine. This mean that they became the part of Ukrainian legislation and should be taking into consideration by the Internet users, state bodies (especially courts).

The first step in order to find the solution to the problems of protection of intellectual property on the Internet shall be implementation of the specialized legal regulation in Ukraine. While there was several legislative initiatives, none of them was effective. Thus, the problem of protection of copyright in the Internet nowadays will remain the greater interest until the full legislative clarification and unification.

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