

LEGAL RELATIONS ON COPYRIGHTS IN PUBLISHING

ПРАВОВІДНОСИНИ ЩОДО АВТОРСЬКИХ ПРАВ У ВИДАВНИЧІЙ ДІЯЛЬНОСТІ

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The background of this article is actual problem and main provisions of the development of legal relations on copyrights in publishing. The article includes examples of court practice concerning disputes between authors and publishers regarding intellectual property rights violation. Recommendations on improving the system of copyright management for literary works and prevention of its protection in the field of publishing are developed.

Key words: author, publisher, legal relations, copyright, publishing agreement, literary works, intellectual property, violation of rights, plagiarism.

Стаття присвячена висвітленню актуальної проблеми та основних положень розвитку правовідносин щодо авторських прав у видавничій діяльності. Наведені приклади судової практики щодо спорів між авторами та видавництвами стосовно порушення авторських прав. Розроблені рекомендації щодо вдосконалення системи розпорядження авторськими правами на літературні твори та профілактики їх захисту у сфері видавничої діяльності.

Ключові слова: автор, видавець, правовідносини, авторське право, видавничий договір, літературні твори, інтелектуальна власність, порушення прав, плагіат.

Статья посвящена освещению актуальной проблемы и основных положений развития правоотношений в сфере авторских прав в издательской деятельности. Приведенные примеры судебной практики по спорам между авторами и издательствами о нарушении авторских прав. Разработаны рекомендации по совершенствованию системы распоряжения авторскими правами на литературные произведения и профилактики их защиты в сфере издательской деятельности.

Ключевые слова: автор, издатель, правоотношения, авторское право, издательский договор, литературные произведения, интеллектуальная собственность, нарушение прав, плагиат.

Problem statement. Publishing industry in Ukraine began to develop at a rapid pace of compliance with the norms of civil society after the entry into force of the Law of Ukraine «On Publishing» [1]. This legislative act systematized the legal framework for the interaction between authors and publishers. However, this Law does not fully take into account the copyrights for a work, leaves incompletely relationships for transfer of property rights from the author to the publisher, as well as the legal consequences of copyrights violation by the publisher.

Analysis of recent research and publications. Today the problem of protection of intellectual property rights, in particular, copyright, is an actual issue. This is due to the fact that violation of intellectual property rights is usually observed while using of the copyright object. The use of copyrights is often carried out in publishing process or on the Internet.

With the purpose of preventive protection of intellectual property rights in a publishing agreement and/or an author's agreement with the website owner, it is necessary to stipulate such requirements to the publisher that will preventively disable the implementation of risks of violating the rights of authors.

Different aspects of contractual relations in the field of copyright were investigated by the following scientists: V.S. Dmytryshyn, O.P. Orliuk, T.M. Vakhoniva, R.S. Kirin, I.F. Koval, V.S. Drobiazko, R.V. Drobiazko, D. Long, V.O. Zharov, K.O. Afanasieva, V.V. Konovalenko, O.O. Shtefan, A.S. Shtefan, Yu.S. Hanzhurov and other. However, problems of law enforcement at the time of publishing agreements issuing are not fully resolved.

The purpose of this article is to analyze problematic legal relations and to develop practical recommendations for improving the system of copyright manage-

ment for literary works and preventing their protection in the field of publishing.

Statement of basic materials. As we know, copyright has arisen since the moment of creation of a work and does not require any formalization for registration, as indicated in provisions of the Berne Convention. However, there are a number of cases where the author faces the need for documentary proof of his/her copyright. One of such cases is the prospect of commercialization of a literary work by concluding an author's agreement, disputes, including, in court, violations in the production of copies of any publishing products. In this case, the standard of a literary work may be only an original work, which is stored in the state authority of copyright protection. Consequently, the first and necessary condition for resolving the issue of documentary proof of copyright is obtaining a certificate of registration of copyright for a work that is also the first important step for effective use of any copyright object.

Contractual relations that arise while transferring of copyright are based on copyright agreements. The most widespread copyright agreements are copyright agreements on the use of works. These include: a publishing contract; agreement on the deposit of a manuscript of a work; a settlement agreement; a script contract; artistic order; an agreement on the use in the industry of an unpublished piece of decorative arts [2, c. 515–529].

O.O. Shtefan said that case material testify for widespread nature of claims for recognition of the author's rights to works, the invalidation of an author's or publishing agreements, etc. [3, c. 21].

It is necessary to recommend to the authors and/or copyright holders at the conclusion of publishing agreements, to provide conditions, violation of that, provides publisher to bear responsibility of the parties. In case of substantial violation of this right, the author has the right to demand termination of this agreement, termination of the rights of the publisher to the publishing house of corresponding work and is obliged to compensate the damages incurred by the author and to pay penalties for failure to comply with the terms of an agreement.

Yu.O. Zaika claims that under the publishing agreement, the author transfers or undertakes to create and transfer to the publisher a scientific or artistic work, and the publisher undertakes to release this work within specified time period and pay the prescribed remuneration. A created work must conform to the terms specified in an agreement, for example, genre, volume. During the term specified in an agreement, the author does not have the right to transfer this work to another publisher [4, p. 144]. Accepting statement of Yu.O. Zaika, it is necessary to clarify the definition of the term specified in such agreement. This may be the period of approving for print, term of completion of printing run or period of transfer a circulation for distribution, etc. If the publisher has not coped with the term of publication, it is advisable to conclude an additional agreement on the postponement of publication of a work, or the termination of publishing agreement.

According to Y.S. Hanzhurov, the publishing house, that is a one party of the agreement, may invite another publishing house to assist in the implementation of the signed agreement, informing the author in writing. But the publishing house cannot, while remaining a party of the agreement, grant other organizations the right to publish this work of author, referring to the fact that the publisher, and not the author, has the right to publish, reproduce and distribute such work [5, p. 132]. In pursuance of the foregoing, it should be noted that the non-exclusive rights of the author to the inviolability of the work, which are not specified as transferred, cannot be used by a third party.

In the Ukrainian judicial practice, there are cases of disputes between the author and the publishing house, when the publisher, without the consent of the author, began distributing the book through the Internet. As a result, the author did not get any benefits. In order to avoid such situations it is necessary to take a responsible attitude towards the procedure of conclusion of the copyright agreement, carefully elaborate each item and take into account all possible consequences.

In such manner, Natalia Guzieieva, author of the literary and artistic character Kapitoshka from Rivne city, has won a lawsuit with the publishing house, which, without her consent, placed the character on the cover of a notebook for preschoolers «Tsikava Gramota». The Court of Appeal in Rivne region has obliged communal enterprise of the communal enterprise of the regional council «Rivneknyha» to stop selling of this notebook. Instead, the Ternopil manufacturer, «Publishing House «Navchalna knyga – Bohdan» for allegedly infringing on the character of Kapitoshka, the authorship of the Ukrainian and Soviet children's writer Natalia Guzieieva, will bear almost half a million hryvnias of compensation and litigation costs together [6]. In view of the above mentioned, the offender «Publishing House «Navchalna knyga – Bohdan», initially did not acknowledge his mistake and refused to pay the author's remuneration voluntarily. Obviously, the most effective means of protecting infringing copyrights on a work is precisely the judicial copyright protection. It is cautious to the authors who are recommended to conclude publishing agreements in view of their possible trial.

Plagiarism is a serious violation of copyrights in publishing. For example, in the forum of Ukrainian publishers in 2017 was scandal in which the publishing house of the Ukrainian Catholic University was accused of the Kharkiv publishing house «Folio» in the plagiarism of their book «Josyph Slipyi. Spomyny», and specifically, they mean text from 65 to 228 pages. Currently, publishers have not yet come to an agreement [7]. Taking into account the above mentioned, the solution of this question is possible only in the judicial order.

So, consider the terms of publishing agreement, which require special attention from the author to prevent copyright infringement.

First, the agreement should specify the degree of interference of an editor to copyright text. There are following

types of an editor's alteration: editorial analysis, editor's alteration with abbreviated text, editor's alteration- adaptation. This does not allow a radical change in the text and the abuse of preferential changes [8, p. 162].

In addition to seriousness of editor's alteration, it is advisable to specify the publishing rights with respect to replication: the volume of circulation, the number of copies and time limits. At the same time, an additional circulation should be made by concluding an additional agreement or with the written consent of the author.

It is also very important to specify all permissions and prohibitions for publishing a literary work in the publishing agreement.

Conclusions. The foregoing actualizes the issue of analysis and development of practical recommendations that would complement the requirements for the content of publishing agreements on literary works aimed at the prevention protection of copyright.

It is confirmed that the first and necessary condition for resolving the issue of documentary proof of copyright in the publishing agreement is the fact of obtaining a certificate of registration of copyright for a work, which is also an important step towards the effective use of the copyright object.

It is recommended that authors and/or holder of a copyright, when signing publishing agreements, should stipulate the conditions for breach of which the publisher bears all responsibility specified by the parties. In case of substantial breach, the author has the right to demand termination of this agreement.

A publishing house that has received copyrights for the publication of a literary work has no reason to transmit them to any third party.

It is necessary to specify all permissions and prohibitions when publishing a literary work in a publishing agreement.

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