

Russian legislation, and the balance of interest of copyright holders, users and providers in the digital age.

by Aryna Dzmitryieva and Denis Saveliev

The issues balance of intellectual rights regulation in connection with usage of internet technology is among the most critical ones on the modernization agenda. On the one hand, free and fast access to information is one of the crucial conditions of societal development in the modern world. On the other hand – dissemination of production on the Internet very often violates the intellectual rights of its creators.

The Institute for the Rule of Law has analyzed the real situation (on the basis of a series of interviews with representatives of all the interested parties), the legal foundations ensuring protection of intellectual rights on the web, as well as law enforcement in this sphere. Attention was given to intellectual property rights (related to literary, scientific and artistic work) and allied rights (related to performances and phonograms) and those technological changes that led to obsolescence of legal mechanisms that had worked in the past. This issue is a subject of heated debates; it is controversial and salient as it regards legal regulation on the Internet.

As a result of the study on the characteristic traits of intellectual rights regulation on the Internet, conducted with support from Google, we have come to a conclusion that the key question posed by all the interested parties, and, consequently, examined by law-makers – is the question of responsibility for copyright violations. The situation in which the author's rights entail severe restrictions but are barely implemented in practice, satisfied neither the users nor copyright holders. There is a relative consensus between all the key participants of the discussion that the authors and holders of allied rights on products must receive remuneration. There is also a relative consensus that illegal content is present on the Internet. However, the question arises: who must in fact bear responsibility for placement of content that violates the author's and allied rights? What must the procedures and responsibilities of the interested sides look like?

From the existing debate a number of questions arise. First of all, these questions concern the volume of responsibilities and duties of the provider in a situation when a user violates the author's and allied rights. Aside from that, the questions concern the volume of rights and responsibilities of an internet user under conditions of new network technologies.

Full responsibility of the provider presupposes that the provider must check legality of the user's total content, which is technically impossible and economically unjustified. Securing this variant in the legislation, nevertheless, is quite possible, since copyright holders are actively lobbying for it.

Another extreme measure presupposes that the full responsibility is borne by the end-user, who placed the content, which violated the author's and allied rights. In other words, the provider must, in theory, grant the copyright owner or law enforcement authorities information about the user. After that, the responsibility is fully borne by the specific user. However, providers do not always possess such information, and establishment of the duty for the provider to identify each user and store information, introduces limitations on freedom and privacy, which can hardly be considered justified in this case. In the event of the realization of this measure several negative consequences may come about. The users will perceive rigid rules as unjust, since users face numerous problems gaining access to legal content.

First of all, they face economic barriers (high prices for books, video and audio discs, low quality of legally available products, logistic issues). Secondly, the internet infrastructure (broadband internet connection, electronic payment systems) is underdeveloped, which complicates user access to legal content. Thirdly, the basis of social relations on the internet is a principle of mutuality and freedom of information exchange among members of the same social circle. This, in essence, is not a violation of the author's rights. The global experience shows that the introduction of strict responsibilities for the users does not in any way influence the volume of illegal content exchange.

The aforementioned measures cannot provide for an increase in protection of intellectual rights on the Internet. The only adequate solution is that of a compromise — allocation of responsibility between the user, provider and copyright holder.

Various arrangements of the provider's responsibilities have already been put into practice in the European Union and USA. The general principles of responsibility allocation are extremely simple.

First of all, the provider is not considered to have violated the rights and does not bear responsibility for technical operations performed with the content (for example, cacheing).

Secondly, the provider is not considered to have violated the rights for the content uploaded by the user, if the former 1) does not know about presence of such content on his or her resources 2) did not receive direct material profit from copyright violations 3) took certain measures in order to delete illegal content upon copyright holder's request.

It is this separation that will allow us to, on the one hand, provide for a maximally effective development of the Internet, and on the other — will create conditions for real, and not illusory, protection of the author's rights. As any compromise, this solution is not perfect from all points of view. However, only going for this solution can help avoid the destruction of what a crucial development tool that the Internet has become, and will provide for an adequate level of intellectual rights protection.