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CURRENT ISSUES OF LEGAL PROTECTION OF ATYPICAL COPYRIGHT OBJECTS

With the development of information technologies, along with classic (typical, traditional) objects of copyright, new, atypical (non-traditional) objects appear, which require detailed research for effective legal protection and protection.

The question arises, what can be considered an atypical object of civil law in general and copyright in particular?

Authors of modern scientific works most often cite objects that do not have a specific material form, such as databases, information resources, computer programs, etc., as examples of atypical copyright objects.

Some scientists refer to non-typical objects of civil law as works embodied through the digital environment, which are characterized by such natural properties-characteristics that are not known to civil law and are not defined by current regulatory legislation. Such a position is quite interesting and deserves special attention. Although opponents of this theory point out that the electronic or digital form of the work is a means of its fixation and/or publication, it is one of those objective forms that enables the perception of the work by other people and does not affect the definition of the work as an object of copyright. Placing works on the Internet in a form available for public use is bringing the works to the public knowledge in such a way that it is possible to access the works from any place and at any time of their own choice in accordance with clause 9 of part 3 of Article 15 of the Law of Ukraine “On Copyright and Related Rights”.

However, the presence of only a distinctive form of expression of the object of copyright does not make this object atypical. The electronic or digital form of a literary work, a work of fine art or music is a means of its fixation or publication, it is one of those objective forms that enables the perception of the work by other people and does not affect the definition of the work as an object of copyright. But a computer game has been created, for example, which, along with a special form of expression, contains a number of other features, in particular, it may include several traditional objects of copyright, such as a script, drawing, musical composition, etc., which in as a result of the creative work of the author, combined into one work, can already be considered an atypical object of copyright. But a computer game has been created, for example, which, along with a special form of expression, contains a number of other features, in particular, it may include several traditional objects of copyright, such as a script, drawing, musical composition, etc., which in as a

result of the creative work of the author, combined into one work, can already be considered an atypical object of copyright.

At the same time, the term "atypical objects" itself, although widely used, has neither a clear definition nor a clear understanding of this phenomenon from the point of view of civil law. However, it is obvious that the concept of atypicality needs not only substantive certainty, but also formalological certainty, designed for stable practical application.

Atypicality itself means non-conformity to a certain type, species, sample, etc. But atypicality does not necessarily have to be marked by the use of unusual, non-copyright terms. In our opinion, non-typicality consists in the difference of the object of copyright from the generally accepted concept of one or another type of object of copyright, the presence of such an object of certain features, but with observance of the basic conditions inherent in typical objects of copyright.

So, for example, the object of copyright is works in the field of science, literature and art. At the same time, the part of the work that can be used independently, including the original title of the work, is also considered as a work and is protected in accordance with the Law of Ukraine "On Copyright and Related Rights".

Analysis of court practice in Ukraine shows that cases related to the protection of such an object of copyright are not isolated. Numerous disputes arose and were resolved by the courts regarding the use of the name of one well-known work in Ukraine – "Kapitoshka". And it is still a debatable question about the presence of a creative component in the name itself, whether it is derived from the name Kapiton, it is pointed out the use of this name in such a form in the work of F. Dostoevsky "The Idiot". When deciding such cases, the appellate court pointed out that part of this literary work, namely the title of the work and the name of the protagonist of the same name, is original, is the result of the creative work of its author and can be used independently (case No. 760/8059/15- ts, case No. 755/12165/15-ts, case No. 754/8971/15).

Applying the name of the literary work "Kapitoshka" to the packaging of goods and their distribution has been repeatedly recognized by courts of various instances as a violation of the plaintiff's copyright. However, there is also other judicial practice, for example, in case No. 331/213/14, the court considered that the use of the word "Kapitoshka" with a different image than the plaintiff's character cannot be considered a violation of the latter's copyright.

It should be noted that this example shows that the numerous use of the name of the work and character in the labeling of various goods is a consequence of the general knowledge of this work, its character and name, as it creates an associative perception with this character or work, and is not perceived society as a certain derived name.

Therefore, taking into account that the current legislation of Ukraine

provides an opportunity to protect the name of a work as an independent object of copyright, it is necessary to improve the definition of the signs by which the names of works can be classified as objects of copyright protection and fall under such protection. In our opinion, the key issue in this should be the originality of the title of the work, its independent use, as well as the presence of an associative perception in the public with this particular work or even a character.

By the way, the issue of legal protection of the characters of this or that work is increasingly appearing as a subject of court proceedings. Thus, in case No. 761/13278/16, the plaintiff, who is the director and co-author of the screenplay of the film, indicated that his copyright was violated by the defendant, who placed a fragment from the film and an image of one of the characters on a postage stamp without consent with him. Rejecting the claim, the appellate court proceeded from the fact that in itself and the fact that the plaintiff is the director and co-author of the script does not give grounds for concluding that the plaintiff is the author of such a character as the nun (abbess), embodied in audiovisual work by an actor and this character is the result of the plaintiff's creative activity, his creative idea. Therefore, there are no grounds to believe that a part of the work, namely this character, in the context of the circumstances of this case, is subject to legal protection and is capable of protection.

The cited case forces us to ask several questions at once, only in the context of an atypical object of copyright and its protection in court. First, can a single frame from a motion picture be a separate subject of copyright? Secondly, in this particular case, what can be the object of copyright: a shot, an image, or a character, for example, a nun (abbess)?

Yes, a character is subject to legal protection if it is an independent result of the author's creative work and is expressed in an objective form, endowed with specific features or a combination of them (appearance, style of conversation, behavior, character, etc.) that distinguish and individualize him from among others characters, and in this connection it is able to be remembered.

In this case, such a character was not used separately, it was used in the context of his perception with an actress, and the frame did not contain anything other than the image of a nun (abbess) performed by a certain actress. Thus, such components of the character and frame as independence and ability to be remembered were absent, which made it impossible to define it as a separate object of copyright or a constituent part of the object of copyright that is subject to judicial protection.

That is, the given example also indicates the need to introduce such a criterion as the presence of an associative perception among the public with this particular work or character.

In case No. 753/19860/14, the subject of the dispute was such objects of

copyright as images of characters and graphic images of the same characters, each of which was officially registered. Thus, the plaintiff, referring to the existence of a registered right to the graphic image of the characters of a series of animated films and the terms of the agreement concluded between the authors, asked to recognize him as a co-author of these characters and to recognize the exclusive right to a work created in co-authorship – a description and image of the main characters of audiovisual animated (animated) works in equal parts.

Resolving the dispute on the merits, the appellate court drew attention to the fact that the concept of a graphic image (the author of which is the plaintiff) is narrower than the concept of "image", which was used by another author during copyright registration. The image, the copyright of which is registered to another author, involves the combination of a literary description, which contains a detailed description of their appearance and character, on the basis of which the graphic image was made, while the color scheme is not defined. The plaintiff's copyright is recognized for a specifically defined graphic image with a detailed description of the appearance of the characters and a defined color scheme.

Thus, the copyright registration of each of the authors of the characters was carried out by them in accordance with the agreement reached between them when concluding the contract. And therefore, the court considered that there were no grounds for recognizing the plaintiff as a co-author of the copyright for the work "Description and image of the main characters of audiovisual animation (animated) works".

The given example shows that such an object of copyright, such as a character, has its own characteristics and can consist of both its literary description and a graphic image, which can also be separate objects of copyright.

Today, the issues of legal protection and judicial protection of such objects as the title of the work and the character are gaining more and more importance, since more and more often supporters of popular literary, cinematographic, artistic and other works create works based on the original works of their favorite authors, so-called fan fiction, fan fiction, fan art and distribute them on the Internet. Despite the existence of separate studies on this issue, atypicality needs to be analyzed precisely in the context of copyright objects, and the contradiction and ambiguity of the current legislation and the practice of its application affects the understanding of a certain object and its legal protection. Therefore, legal doctrine and judicial practice should move together with the development of creativity in society in order to ensure the rights of authors and encourage such development in the future.