Commercialization of Exclusive Rights in the Digital Age in the Conditions of Globalization

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ABSTRACT
The article is devoted to the analysis of the process of commercialization of exclusive rights in the digitalized world's economy. In digital technology, there is a unique opportunity to create copies of works, ensuring their absolute identity with the original. As soon as an object is converted to digital form, it becomes very simple and inexpensive to reproduce its copies with virtually no loss of quality and distribute them using telecommunication means. The emergence of new distribution channels led to the formation of new business models for the monetization of intellectual rights and required their legal regulation. It is also important that the ease with which it is now possible to violate copyright and related rights has largely led to the emergence of a new phenomenon in the digital economy - content producers, copyright holders now largely compete not so much with other law-abiding market participants as with distributors of illegal content. The process of commercializing intellectual property rights is seen as a phenomenon inextricably linked with the development of the digitalization process and suggesting the need for transformation of intellectual property law. A rather high degree of awareness and interest of potential buyers serves to increase the efficiency of commercialization of intellectual rights. Its increase is the holding of intellectual property auctions. Along with successful practices of the commercialization of intellectual property rights, we can find some problems in this field. We can suggest the way of increasing of the efficiency of commercialization of exclusive rights and successful protection of IPRs on the Internet and to counteract violations of intellectual rights, it seems appropriate to conclude an international agreement that unifies the system of legal remedies to combat violations of these rights in the digital environment and the conditions for exemption from liability.
Keywords: *Intellectual property; digital technologies; commercialization; exclusive rights*

1. INTRODUCTION

Intellectual property is extremely important for the modern economy, the current state of which is succinctly characterized by the term "digital economy". It is no accident that in international acts and national legislation of a number of countries of the 90s. XX century the terms "digital era", "digital era" - the United States Digital Millennium copyright act (DMCA) Act, Directive 2001/29 / EC of the European Parliament and the Council of the European Union "On the harmonization of certain aspects of copyright and related rights in the information society" etc. Digitalization along with globalization processes defines the goals, objectives and principles of society development in the modern world.

In conditions of maximum automation of production and business processes, intangible assets are becoming increasingly important in comparison with objects of property rights.

The emergence and widespread dissemination of new digital and information and communication technologies in the last 30-35 years influenced at the intellectual property law evolution in general and, in particular, on the development of copyright and related rights. "This is consistent with the general trend, since the formation of the information society, the development of scientific and technological progress and digital technologies requires the transformation of both national and international legal norms" [1].

In digital era, era of developed digital technologies, there is a unique opportunity to create copies of works, ensuring their absolute identity with the original. As soon as an

object is converted to digital form, it becomes very simple and inexpensive to reproduce its copies with virtually no loss of quality and distribute them using telecommunication means [2-9].

The accelerating development of communication technologies is connected, among other things, with the emergence of computer networks, which are a universal way to connect a potentially unlimited number of consumer subscribers, uncontrolled information flows circulating in such networks - all this makes the position of copyright holders very vulnerable. Works in electronic form available on a computer network can be received by an unlimited circle of interested parties at any time at the request of each of them.

However, today the Internet is still partially out the law regulation both in national and international law.

2. METHODOLOGY

A comprehensive study of the problems and prospects of the commercialization of exclusive rights in the digital technologies' era involves the use of various methods of cognition that are relevant to the diversity of legal reality. The study used dialectic, formal and comparative legal, specific historical, inductive, deductive methods, a systematic approach, analysis, synthesis, the historical and logical analysis methods, which can cover the studied phenomenon in all its forms. The source base includes international agreements, legislation of the European Union, the USA and Russia, as well as doctrine, national and international law enforcement practice. This scientific research was carried out between December 2019 by March 2020. The volume of units studied is 28 acts of legislation and law enforcement acts.

3. DISCUSSION

The doctrine also reflects on the processes occurring in society. Researchers at the end of the 19th century, such as T. Asser [10], P. Mancini [11], K. Savigny [12], were engaged in the theoretical justification and promotion of the idea of unification to achieve the ideal of conformity and simplify international trade.

Today, in the context of digitalization by a number of researchers was rightly noted, that public relations have strong connection with the information sphere which is the impetus affecting the development of the concept of IP law [13-15].

Moreover, researchers have repeatedly noted that the role of intellectual property nowadays is steadily increasing in connection with the globalization processes taking place in the world, and we believe that they significantly increase the competition of states in the world market [16-18].

In the context of digitalization, the importance of intellectual work is increasing, and therefore, intellectual property [19, 20]. Along with money, bonuses and services are valued [21-23]. It is no coincidence that in the European Union the following as the main directions for creating a digital space was considered, in particular: strengthening economic cohesion and international cooperation, creating positive conditions for the implementation of digital initiatives in the regions, developing a unified digital infrastructure and introducing digital technologies in the main sectors of the economy and markets [24].

In the 1980s, the United States of America and other developed countries transferred all organizational practices related to intellectual property issues (in particular, the commercialization of intellectual property) from WIPO to the WTO, in the framework of which the Agreement on Trade-Related Aspects of Rights was developed in 1994 [25].

At the present stage, the development of the IPRs is very active, and this is natural, because the modern economy is based on innovation, which is why intellectual property law has become a very significant legal regulator of its development [26]. Researchers from various countries, both Russia and East Asia, the United States, and Europe, recognize the relationship between intellectual property and innovation, which is the cause of economic growth and successful business [27].

For example, Robert P. Merges and Seagull Haiyan Song, Robert P. Merges, noted in their work on transnational intellectual property law that, from 1800 to the present, international trade has not only increased exponentially but the production of goods and services has also changed significantly, becoming "high-tech and information-intensive" [16]. This kind of production requires significant costs, investment in research and development of new products. The information component of economic activity has increased significantly, and therefore the importance of protecting and protecting intellectual property rights has increased many times over.

The very high importance of intellectual property in ensuring the competitiveness of goods and services, in addition to the adoption of effective measures of state support for activities related to the creation of the IPRs, as well as involvement in civil circulation and protection of rights to them, also necessitates the solution of commercialization issues and protection of exclusive rights.

In connection with the characterization of intellectual property law as an important economical factor, it is important to recognize whether legal protection of intellectual property is valuable to the copyright holder, consumer, and society [28].

A patent, without any doubt, has value both for the copyright holder and for society as a whole, since its issuance allows establishing the legal monopoly of the copyright holder in exchange for disclosing information to it.

At the same time, its value for the inventor gradually decreases over time, especially when it comes to an office

object of intellectual property law, for which he is paid a lump sum remuneration, and then the employer or another person who has an exclusive right with respect to this object, continues to use it, making unlimited profits for a long period of time. The consumer can also lose, because the high price of a product is not always based on its quality or the value of the idea implemented in it, often it is associated only with the expectations of the copyright holder and (or) the manufacturer.

As for society as a whole, the researchers rightly note that "states whose legislation gives priority to protecting the rights and legitimate interests of copyright holders of intellectual property results play a leading role in the field of technology, while states whose legislation is dominated by public, public interests, as a rule, are not leaders, but technological followers" [29].

For developing countries, the relationship between effective protection of intellectual property and economic development is not always obvious, especially in light of the increased need for medicines at affordable prices to protect the health of citizens of such countries as Equatorial Guinea, South Sudan, Somalia, Niger, Nigeria, etc. [30], indicator 3.b.1: percentage of target population covered by immunization with all vaccines included in national programs). Sudan, South Sudan, Djibouti, Mauritania, Niger, Mozambique, and a number of other countries are among the countries where there is also an urgent need for food, the population is starving or malnourished World health statistics [30], indicator 2.2.2: prevalence malnutrition among children under the age of five by type (malnutrition or obesity) [29].

It is in connection with the shortage of vital products in a number of developing countries that the main argument is put forward against the protection of IPRs: the need to protect public interests and provide the public with wide access to certain socially significant benefits. In a very simplified form, it can be represented as follows: "intellectual property is a toy for the rich." In this regard, the protection of intellectual property in developing countries is being introduced gradually, with the continued assistance of the World Intellectual Property Organization.

Opponents of intellectual property protection also argue that exclusive right is a monopoly that entails negative consequences for the market. But it worth to not that there are obvious differences from monopolies in their traditional sense: the limited duration of exclusive rights, the existence of restrictions and exceptions from the scope of exclusive rights, their territoriality, etc.

Nevertheless, in the last 20-30 years, intellectual property issues have gained particular importance worldwide due to the activities of the World Trade Organization (hereinafter - the WTO): in order to participate in world trade, it is necessary to accede to the main international conventions in the field of IP and provide the effective legal protection.

Currently, there are a significant number of international agreements in the IP field, the vast majority of states are participating in them. For example, the TRIPS Agreement, designed to unify the rules on the protection and protection of intellectual rights to various results of intellectual activity and objects equivalent to them, is valid for all WTO members.

An important role in this regulation is played not only by multilateral, but also bilateral agreements, as well as local rules and regulations that are developed by large international companies such as GOOGLE, Amazon, etc. It is not by chance that the researchers note that they have practically created a new level of law [16].

In these conditions, the use of copyright protected objects on the Internet has gained particular importance.

The development of scientific and technological progress, digital technologies, the widespread dissemination of information and telecommunication networks has become the reason that the legal protection of the IPRs, in particular, copyright objects in the modern world has become particularly important, it is necessary to counteract the numerous violations of these rights committed using information - communication technologies. There are processes of intensive digitalization, digital ontologization and smartization (from the English "smart") of the economy, technology, industry, government and legal space, multimodal implementation of neural network technologies, blockchain, artificial intelligence, other latest technologies, in the context of a positive ontological combination (significantly complicating the rebirth) of the global Internet.

All these changes have fundamentally changed the methods of commercializing rights to the results of intellectual activity. The emergence of new distribution channels led to the formation of new business models for the monetization of intellectual rights and required their legal regulation. It is also important that the ease with which it is now possible to violate copyright and related rights has largely led to the emergence of a new phenomenon in the digital economy - content producers, copyright holders now largely compete not so much with other law-abiding market participants as with distributors of illegal content. This leads both to the development of technical remedies and mechanisms for the legal protection of IPRs on the Internet and creation of new forms of commercialization of rights that would be beneficial both for copyright holders and users compared with illegal services. Examples of such forms are subscription services, such as Okko.tv, Ivi.ru, etc.

In addition to the development of new digital services for the commercialization of IPRs to ensure the competitiveness of business entities, the development of the country's economy as a whole, there is a need to take effective means of state support in IP sphere. That is, in parallel with the above processes, there is an increase of influence of the state in the market of intellectual property rights. This is expressed in measures of state support (for example, cinematography) and the empowerment of state bodies with new powers to counter violations of

intellectual rights (for example, the powers of Roskomnadzor to block pirate sites by decision of the Moscow City Court).

Of course, it should be noted that basically the above changes affected the scope of copyright, since the objects protected by it, as a rule, are mostly used in the digital environment, in particular, due to the fact that 'works of science, literature and art are the most widespread and most valuable category of intellectual property' [17, 18].

To increase the efficiency of commercialization of rights to the results of intellectual activity, it is necessary to realize that "only the results of intellectual activity expressed in an objective form can participate in the economic turnover, constitute a specific product - intellectual property" [31].

Commercialization in the field of intellectual property is inextricably linked with innovation, it involves the use of rights to produce innovative products, or the transfer of these rights. This is due to the fact that 'turnover assets in the field of intellectual property are, firstly, intellectual property rights, and secondly, tangible media in which it is expressed' [31].

Direct commercialization occurs through the transfer of exclusive rights, including under the following types of contracts:

• agreement on transfer of exclusive rights;
• licensing agreement on granting the right to use IPRs on an exclusive basis (exclusive license);
• licensing agreement on the granting the right to use IPRs on a non-exclusive basis (simple (non-exclusive) license);
• agreement of commercial concession (franchising);
• by adding rights to the authorized capital of a legal entity;
• pledge of exclusive rights.

Indirect commercialization takes place through the sale of innovative products in the production of which intellectual property is used.

A rather high degree of awareness and interest of potential buyers serves to increase the efficiency of commercialization of intellectual rights. Its increase is the holding of intellectual property auctions. The practice of live patent auctions has existed since 2006 and is becoming increasingly widespread. One of the most famous are auctions organized in the USA by ICAP, a patent company that is a world leader in brokerage services in the field of intellectual property. This company organizes an IP auction - ICAPOceanTomoAuction. The company positions itself as follows: "We use the talents of experienced specialists in the monetization of intellectual property to match buyers and sellers for the sale of patents and other intellectual property assets" (http: //icappatentbrokerage.com).

ICAP has successfully transferred patents on behalf of well-known organizations such as Foxconn, Intel, Xerox, and Alcatel Lucent. The specialists of this company rightly believe that the organization and holding of such auctions not only improves market transparency, but also provides an opportunity to invest in unique technologies.

Similar practices in the field of commercialization of innovations are also being introduced in Russia. An example is the activity of the RUSINPRO Intellectual Property Auction House (http://rusinpro.ru), which provides ample opportunity to establish personal contact between copyright holders and business angels (as the American professor William Wetzel referred to private investors supporting promising startups at the initial stage (http: //kakzarabativat.ru/investirovanie/biznes-angely) as investors innovative companies, representatives of government and maximizing income from the sale of the lot. The organizers and partners of the auction are Russian commercial and industrial bodies supported by the UNIDO Center for International Industrial Cooperation in the Russian Federation, the Association of Technical Universities, the Russian branch of the International Licensing Society, the Russian Franchising Association, the Technopol-Moscow Scientific and Technical Association, the Committee on Innovations and Venture Financing of the Moscow Association of Entrepreneurs, etc.

The first auction of intellectual property took place in December 2012 in Moscow at the site of the Chamber of Commerce and Industry of the Russian Federation, the second - at the site of MSTU. N.E. Bauman. The objects of industrial property protected by national patents of the CIS states, Europe and the USA were put up for auction. Participant of the Auction came from 18 countries including Armenia, Belarus, Belgium, Bulgaria, China, France, Germany, Greece, India, Israel, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Tajikistan, Ukraine, USA, Uzbekistan. During the Auction, successful bidding was held for lots in the field of housing, energy conservation and production, processing and transportation of hydrocarbon raw materials. At the third intellectual property auction on the site of the Chamber of Commerce and Industry of the Russian Federation 35 lots were presented from the following sectors: mechanical engineering, agriculture, electric machines and equipment, medicine, information and telecommunication systems, mining and processing of minerals, chemical industry. During the Auction, 2 lots were successfully auctioned in the food and chemical industries.

Along with successful experience in the commercialization of intellectual property rights, he will note some problems that exist in this area.

1. Financial and economic problems. It is necessary to create a favorable environment for the use of intellectual property rights in different sectors of the economy, and also to carry out deep structural transformations in the economic management system to implement effective mechanisms for managing the process of introducing innovations.

2. The lack of initiative of the copyright holders. So, for example, speaking at a round table at the Literary Institute, in which the head of the Federal Service for Intellectual Property G.P. Ivliev, the authors of literary works, said mainly that the state should provide them with

the opportunity to profit from the use of their IPRs. At the same time, intellectual rights are subjective civil rights, therefore their implementation depends mainly on the right holders themselves. The state should only create the necessary conditions and opportunities for this (IP legislation and an effective enforcement mechanism), but otherwise, the copyright holder must independently, on its own initiative, realize these opportunities.

3. Insufficient number of professionals in the field of commercialization of IPRs, including intellectual property appraisers. In the sphere of rights to industrial property objects, patent attorneys operate - citizens who have received the status of a patent attorney in the manner established by this Federal Law and carry out activities related to the legal protection of the intellectual property right, and the acquisition of exclusive rights, disposal of such rights [32]. In the field of copyright, unfortunately, the institution of representatives (literary and other agents) is not developed, although it is widely used in foreign practice (http: //pro-books.ru/literaturnye-agenty).

4. The following problem follows from the previous problem - a rather low level of legal technology when formulating the terms of civil law agreements on the IPRs transfer. An example is the contract that the authors encountered in their practical activities, in which the drafter tried to combine the conditions relating to various intellectual property, not taking into account their legal nature, the time of occurrence, the features of protection (patent, copyright or other), etc.

It is also possible that unfair licensing may include in the contract conditions that knowingly infringe the rights of the other party (imposing the price of products manufactured under a licensing agreement, imposing additional conditions, restricting competition, cross-licensing).

The parties are not always able to achieve a coincidence of mutual interests, and the mediation procedure can help here. The mediation institute has established itself quite well in the international legal field. “Mediation is a form of participation of a neutral person - a mediator - in the dispute resolution procedure” [33]. Mediation in intellectual property law is an out-of-court way of resolving disputes between subjects of intellectual rights: copyright holders (in particular, co-authors), as well as between copyright holders and users with the help of an authoritative intermediary. The use of mediation procedures in intellectual property law is possible in the resolution of pre-contractual disputes (related to the procedure for concluding a license agreement, an agreement on the alienation of exclusive rights, copyright contract agreement). In a situation where the parties wish to conclude an agreement, but cannot agree on its individual conditions, mediation can help. The use of mediation is effective in cases where disagreements arose as a result of a different approach to the interpretation of the terms of the contract, determining the size of payments under the contract, etc.

The issues of international jurisdiction in the intellectual property sphere are actively debated during the activities of the special committee of the International Law Association, as part of research projects, approaches to this jurisdiction were developed - in particular, WASEDA principles [34], CLIP principles [35], Transparent principles [36] etc.

It is also justified to use mediation procedures, if disagreements arise between right holders, in this case it is advisable to resolve the dispute quickly and confidentially.

In disputes between an employee (author) and an employer regarding the rights and procedure for using an official work, mediation can play a huge role, because the conflict here can lead to negative consequences for both the employee (dismissal) and the employer (loss of valuable personnel capable of creating the results of intellectual activity).

The mediation procedure prioritizes the personal participation of the parties in order to build a dialogue, however, it is possible to conduct the mediation procedure remotely, which increases the possibility of applying this procedure in disputes in the field of IP related to the use of IPRs on the Internet. This is very relevant because parties to conflict can often be in different parts of the world.

5. The lack of effective legal mechanisms for use IPRs in information and telecommunication networks.

4. RESULTS

It is necessary to create and actively apply transparent mechanisms for the legal use of IPRs, no less available than the acquisition of counterfeit copies and other infringements. The business is currently actively taking independent steps to develop effective and competitive intellectual property outcomes compared with illegal schemes. So, the system of subscriptions to various resources is currently being actively developed, distributing the most diverse types of copyrighted content. We are talking about both the above-mentioned services in the field of cinema and television, as well as computer games (Xbox, PlayStation, etc.) and books (commercial online libraries, where fees are not charged for access to a specific book, but for access to the entire library for a certain time).

The development of digital services for the commercialization of intellectual property rights and the distribution of content has also favorably affected the fairness of the definition and distribution of royalties for the use of intellectual property rights. In connection with the emergence of platforms for the sale of musical works (for example, iTunes or Spotify) in the music industry, it became possible to carry out a fair and transparent calculation of the size of royalties to the author for the created content by calculating statistical data reflecting the number of plays and downloads. At the same time,

contracts concluded years earlier do not always reflect how musical works are currently being used.
Also, in relation to films and books, the possibility of "digital renting" of works is developing, when fees are not charged for permanent access or for the possibility of downloading a book / film (which corresponds to the purchase and sale of an analogue copy of a work), but for temporary access to only one work (usually for two weeks). This method of monetization of rights corresponds to the rental of analogue copies of a book / film. The fee for such a rental is lower than for downloading or constant access to the work.
In addition, in order to control the use of intellectual property rights, technical remedies should be mentioned. The widespread adoption of digital technology not only provides virtually unlimited copying options, but also creates enormous potential for effective copyright management. Using these technologies, you can easily track the process of using a copyrighted work or performance and collect royalties.
All types of technical means of protection contribute to increasing the efficiency of protection of copyright and related rights, and help to establish a balance of interests of copyright holders and users.
In addition, the use of blockchain technology creates new opportunities for the commercialization of intellectual property rights in the digital environment, for example, the ability to create a single register of copyright holders and intellectual property results. At the same time, with features similar to classic registries (for example, registers of the World Intellectual Property Organization), the blockchain registry will not only contain information about the name of the object, its brief description and copyright holder, but also the object itself, for example , an image or a musical work to which the conditions for the disposal of rights to it will be attached. At the same time, an object embedded in the blockchain system will have a cryptographic "seal" of originality (as an analogue of existing watermarks), which will allow parties to the transaction to be sure of its authenticity.
Another area of application of this technology is licensing of open source computer programs. The digital signature accompanying such a component will allow, firstly, to easily audit the code for its legal purity, and secondly, to establish the content of licensing conditions.
Since blockchain technology captures and enters the database all completed transactions, it becomes possible to track both license agreements and transfer of rights to an intellectual property from one copyright holder to another. In turn, this property of the blockchain to a large extent makes the circulation of intellectual rights more trusting and does not require additional confirmation of the rights to the object, which is especially important when sublicensing. Entering information about the object and the rights to it in the blockchain registry can serve as an alternative to modern escrow.
The transparency and independence of such a registry of transactions, as well as the absence of a person managing it, makes it attractive for use by copyright holders who wish to "fix" their rights in relation to an intellectual property.
Using blockchain technology will also openly determine the final number of users and, accordingly, more fairly calculate royalties.

5. CONCLUSION

It should be recognized that at the national level in the field of legal regulation of relations in the field of intellectual property, significant changes have occurred in connection with the use of digital technologies. At the same time, the norms of legislation on intellectual property still do not contain a holistic mechanism for the implementation of intellectual property rights and their protection in information and telecommunication networks. This, from our point of view, contributes to numerous violations of these rights in the modern world. It is urgent to develop a civil-law regime of Internet sites and other information resources (social networks, web pages, web servers, web chats, hyperlinks, e-mail, search engines, etc.).
In conclusion, it should be said that the use of information and telecommunication networks, including the Internet, today not only acts as one of the factors in the development of the information society, but also significantly affects the commercialization of exclusive rights. In this regard, it is necessary to improve the existing legal norms for more successful implementation and protection of intellectual property rights in the digital environment. That is why many scholars predict the concept of exclusive rights that is familiar to us, they put forward the ideas of a global license, an inclusive mechanism for the realization of intellectual rights, etc. It is clear that the efforts of different countries in this area need to be combined, therefore, unification of intellectual property law is necessary. It will allow all over the world, recognize the need to establish additional prohibitions aimed at combating intellectual property violations, create new powers designed to use these rights on the Internet, unify providers' liability standards, introduce new restrictions on exclusive rights, and carry out detailed regulation of technical protection means and other measures to improve the effectiveness of intellectual property laws on the Internet. Attempts to find a solution to these problems are made both in international and in national legislation.

6. RESEARCH PROSPECTS

It should be noted that, despite the existence of international legal regulation in this area, it is still extremely difficult to recognize and protect intellectual rights abroad in the understanding of private international

law, and in the context of digitalization it leads to legal uncertainty.
In order to increase the efficiency of commercialization of exclusive rights and protection of intellectual property rights on the Internet and to counteract violations of intellectual rights, it seems appropriate to conclude an international agreement that unifies the system of legal remedies to combat violations of these rights in the digital environment and the conditions of exemption from liability.

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