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CONTENT

INTELLECTUAL PROPERTY OF INFORMATION RESOURCES IN INTERNET. LEGAL AND ORGANIZATIONAL MECHANISMS FOR INTELLECTUAL PROPERTY ENSURING

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Abstract

The purpose of this article is to present the legal and organizational mechanisms of ensuring intellectual property (IP) rights in Internet. In this paper I would like to concentrate on four main things, so I have divided it in four parts.
To start with I will describe intellectual property as all. Then I'll mention the main possible ways of acquiring the right to use works in cyberspace as an individual contract. After that I'll define the collective management of rights and finally I'll summarize my paper with Creative Commons licenses for open access.

Keywords: *Intellectual Property, Copyright, Individual contract, Creative Commons licenses*

1. Short Introduction of Intellectual Property

By itself Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Generally speaking, intellectual property law aims to safeguard creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. Intellectual property is traditionally divided into two main branches, "literary and artistic property" and "industrial property"

The areas mentioned as works of science, literacy and art belong to ***the copyright branch*** of intellectual property, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, architectural designs and two

new object of copyright such as software and databases. According T. Todorova "Copyright influences on the possession, control and dissemination of knowledge.", so it is a very important part for the social development and prosperity.

The areas mentioned as performances of performing artists, phonograms and broadcasts are usually called "***related rights***" those are, rights related to copyright.

The areas mentioned as inventions, utility models, industrial designs, trademarks and geographical indications are part of the ***industrial property branch*** of intellectual property.

For the present purposes it is helpful to explore the distinction between industrial property and copyright in terms of the basic difference between inventions and literary and artistic works.

The first big difference between copyright and industrial property is that copyright protects only ***the form of expression of ideas,*** not the ideas themselves. Opposite of the copyright industrial property protects ***the ideas as such.***

The second difference between copyright and industrial property is the duration of protection. Duration of copyright protection is about ***50 years + author's life*** according ***the Bern Convention*** and ***70 years + according the Bulgaria copyright law.*** So copyright law protects the owner of property rights against those who copy or otherwise take and use the form in which the original work was expressed by the author. So a created work is considered protected ***as soon as it exists,*** and a public register of copyright protected works is not necessary.

The duration of protection of industrial property is definitely not as long as copyright's protection and it's necessary to be registered in an official public register and it's between 5 and 20 years.

The second difference between them is ***the state registration***. Copyright doesn't need to be registered because it arises automatically, whereas industrial property must be registered according the present legislative system.

In modern practice is accepted the author of a work to give permission to use his work against a fee, such authorization is given usually by contract. This is the way that the authors can derive economic benefit from their creative work.

The possible ways of acquiring the right to use works in Internet are by ***an Individual contract or by Organizations for Collective management of rights and by Creative Commons licenses for open access.***

2. Individual contract (author's contracts)

Contracts in which ***one side is the copyright holder*** and ***the other is the user***, and the transfer is subject to some degree and under certain conditions of the right of use a work are called individual or author's contracts.

If the authors decide to manage their rights individually, then they connect to an Internet content provider and contract with him.

In order to determine this contract by copyright, it must contain the following specific features:

- ✓ ***subject of the contract,*** which may be only a transfer of copyright power / copyright powers relating to various sources of information which are objects of intellectual property;
- ✓ ***duration of the contract*** – the duration of such type of contracts can not exceed 10 years.

In fact, these two specificities copyright treaties differ from all other contracts.

Under the provisions of Article 36, paragraph 1 of the Bulgarian Copyright Act by the contract for use of the work, the author grants the user exclusive or nonexclusive right to use created by him work, under certain conditions and remuneration. In the context of the Web this means that if a contract between the author and provider of Internet content specifically stated that he gave certain exclusive rights, only the particular provider (and anyone else) can use this right the way of the time and territory, which are agreed.

When a contract between author and content provider on the Internet is not with an agreed period, it is assumed that powers are ceded to three years. In cases where territory is not specified, it is believed that this is the country where is the seat of the provider.

According to national legislation the contract can not be concluded for a period longer than ten years, nor can it grant the right to use all the works that the author would create during his lifetime.

Since copyright is inherently onerous contracts in the contract between author and content provider must be agreed remuneration to the author. The latter can be determined as part of the revenues generated by the user due to the powers exercised over the work (eg use "online") or single (global) amount. By law, both parties may agree to other means of payment, and to combine both of these.

If the fee when it was agreed as a lump sum, then obviously disproportionate to the revenues generated by the content provider on the Internet, the author has every right to ask further increase above the originally agreed amount. When the parties do not agree to pay, the dispute shall be decided by the court of justice.

3. Collective management of rights

Another alternative for the author provided for in the Bulgarian Copyright Act (BCA), is ***Collective management of rights.*** It's expressed in enabling the author to join the organization for collective management of rights, which grant the right to negotiate the use of his works in one or more ways to collect fees due. The purpose of these organizations is through a voluntary association of authors from a particular industry to negotiate with users globally, not individually.

Organization for collective management of rights is one that cumulatively satisfies on both conditions referred to in Article 40, Paragraph 1 of the BCA, namely:

- ✓ has received from its members the right to negotiate about the use of their works with users;
- ✓ to collect and distribute among its members received remuneration under these contracts. (Art. 40, par. 1 by Bulgarian copyright Act).

By these two requirements the legislature has added an opportunity for submission to judicial and administrative bodies entrusted with the protection of its management rights. But by itself, without the presence of those two signs, this sign is not sufficient to legitimize an organization such as art. 40 of the BCA.

There is no organization for collective administration of rights that can not refuse to accept a member who holds the rights which it manages. It would not be proper, however, be considered members of the users themselves works because when negotiating conditions for transfer of copyright namely users stand on the other side of the negotiations.

There are two types of contracts concluded by any organization for collective management of rights. One of them is with the authors (its members) and the other - with the users. With each member and each user is negotiated individually. On this basis, respectively, two groups of relationships emerge. The first one comprises three arrangements combined into one contract, namely:

- ✓ for membership in the company;
- ✓ for order;
- ✓ for representation.

Organization acts on behalf of its members or "if the trustee acts on behalf of his client as a proxy, rights and obligations under the transactions that it concludes with third parties arising directly for the client." (Bulgarian Obligations and Contracts Act, art. 292, par.1)

The second group includes relations contracts concluded with users' organizations. These are typical copyright treaties under Art. 36 of the BCA.

As was mentioned yet, the law entitles the collective management of rights to represent its members before the court in defense of their management entrusted to their rights. Also, according to Art. 40, par. 7, these organizations have the right to represent their related organizations from abroad, which have concluded mutual representation agreements and their members, to all judicial and administrative bodies to protect those entrusted to their management of their rights. Moreover, concerns the organization may take its own name and any legal action to protect these rights.

The legal system of collective management of copyright based on the following five principles:

1) Specialized organization, which protects the copyrighted works is formed;

2) The holder of copyright voluntary transfer to the organization his/her property rights over the work;

3) Users of such works receive permission by the organization to use all objects guarded by the company;

4) Users pay the organization a fixed amount to use the secured sites by it;

5) The organization distributes these allowances and pay of his predecessor agreed remuneration.

It is unfortunate that although we have one of the most advanced laws on copyright and related rights in Europe, our mass population manifests lack of respect for the work of the author. It is considered that cyberspace is a space and everything in site, can be taken free of charge, use, copy, and the fight against piracy is condemned as anti-free flow of information.

In recent years made considerable efforts by some institutions in the country to be changed attitude towards intellectual property. This is a process that requires a longer period of time as it affects certain cultural habits and mentality.

4. Contracts Creative Commons (Creative Commons License) for Open Access – history and types

In the last decade was created an additional opportunity to use the Internet works, so called ***free use of works.*** The author himself is able to decide that doesn't want to use the full amount of rights that gives Copyright law. This author could declare by which rights he denies in free text. However not every author knows, legal terminology and can determine exactly which of the rights to refuse. Therefore in 2001 in the U.S. ***were created several contracts that authors can attach to their works to express their will***

not be used by all, but only from certain rights which the law gives them. These contracts are so called ***"Creative Commons" (CC).*** One of the main characteristics of the contracts "Creative Commons" in all its varieties is that the use of copyright protects the author's name, something that is essential in artistic and scientific communities [3, p. 45].

Creative Commons is a non-profit organization based in San Francisco, California, USA, whose purpose is to increase the creative content in society in the field of culture, education and science. It was founded in 2001 by its founder Lawrence Lessig who is a professor at Stanford University in the USA As he wrote in his blog, "the initiative began as a reaction against the continued expansion of the scope of copyright and to support the free software movement." It is this organization has developed CC contracts, which are free to the public the first Creative commons licenses date from 2002 [1].

This type of contracts offer free and easy to use legal tools that give right of everyone, whether an individual artist, a large company or institution, a simple standardized way to pre-clarification of their copyright in their creative works.

If the cores of most copyright laws stand play "all rights reserved", especially for contracts Creative Commons is that "some rights reserved". For example, all types of contracts CC enable users to freely copy, distribute, publicly display or otherwise use the work for non-commercial purposes. Applying such a contract, the author does not give up their copyright, but simply gives some of society under certain conditions [2].

CC first contracts were awarded in December 2002. In 2011 a study conducted by Creative Commons monitor has shown that there are about 54 million works licensed under the terms of the CC licenses.

They have already become a global phenomenon, they are translated into the languages of dozens countries, including Bulgarian and Croatian. The translation is not mechanical; it contracts to adopt domestic law of the country. For widespread use of contracts and contributes the fact that they are well adapted for use on the Internet. When the contract is attached to the work in the digital environment, it is associated with a code which is recognizable for Internet search engines. This makes it easy to find free Internet works.

CC contracts are extremely valuable in education and science, an example of their potential in education is the fact that more prestigious educational institutions and public records chose to publish their scientific publications in terms of these contracts, such as Harvard University, The archive "Bio Med Central" Public Library of Science (Public library of science – PloS), site of the Public Prosecution of the Republic of Bulgaria, the site of the President of the Republic of Bulgaria and many others.

Fig.1. Example of publication according the CC contract of The Public Library of Science.

Main types of contracts Creative Commons

Publication under the CC license is extremely easy. Authors should choose a set of conditions that would like to put on their copyright works. CC license is composed of four clauses presented in tabular in the table 1, according which artists / authors can combine according their choice.

Table 1. Clauses of the contracts KK

by Attribution	**sa** Share Alike	**nc** Noncommercial	**nd** No Derivative Works
The author allows others to copy, distribute, perform and illustrate its copyrighted work – and derivatives of it – only if they recognize his authorship.	The author allows others to distribute derivative of his work only under a license identical to the contract governing the original work.	The author allows others to copy, distribute, perform, and illustrate his original work – and derivatives of it, but only for non-commercial purposes.	The author allows others to copy, distribute, illustrate and perform only exact copies of his work, but not its derivatives.

Four clauses can be combined into licenses with the exception of the second – "Share" and the fourth – "No Derivative" that are incompatible with one another.

Authors can license their creative works at www.creativecommons.org with 2 steps:

1. To choose terms that would like to join the CC license;
2. Based on their choice the organization Creative commons license gives them a license that clearly defines how users can use copyright work in the cyberspace.

Currently the authors are able to choose between the six contract Creative commons, which may contain a different combination of terms shown in the table 2:

Table 2. Basic types of contracts CC

1				Attribution
2				Attribution – Share Alike
3				Attribution – No Derivative Works
4				Attribution – Noncommercial
5				Attribution – Noncommercial – Share Alike
6				Attribution – Noncommercial – No Derivative Works

This types of contract are one of the approaches that are able to meet the challenges of emerging technologies and able to respond adequately to the needs of the modern information society. Thanks CC author contracts will no longer be faced with the need to monitor for each form of exploitation of his work and can make those priorities which constitute economic reason to create new works and to focus attention on them. All other forms of exploitation for which the author himself considered that a more further supporting the promotional nature and will be free for users.

To summarize, there can draw the following conclusions: agreements Resort is one of the forms that could relieve the already conservative system in which copyright works. Given the monopoly of copyright, which means that no one could use a copyrighted work without permission of the author,

the CC contracts are trying to break the traditional scheme and reverse this principle, the use of the work is authorized except what the author is expressly forbidden.

In my opinion this kind of property is really very important for the innovation and it plays an important role in facilitating the process of taking innovative technology to the market place.

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