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REGARDING THE EXERCISE OF SUBJECTIVE COPYRIGHT ON A COMPUTER PROGRAM AND DATABASE: PROBLEM ASPECTS

With the development of information technologies, new non-typical objects of copyright appear, which have their own characteristics and properties, different from classic (typical) objects of copyright. Increasingly, various databases are being created, including at the state level, goods are traded on the Internet, works are published, and people's work and leisure are organized. This is especially relevant in modern conditions. In this regard, it is considered necessary to pay more attention to the issue of exercising subjective copyright on such objects as computer programs, databases, websites, etc. In addition, these issues are already before the courts, both at the national level and at the international level, in particular the European Union.

As for a computer program, it is a complex object of copyright. As you know, a computer program is a set of instructions, expressed in words, numbers, codes, diagrams or in any other form, suitable for reading by a computer, which put it into action to achieve a certain goal or result. That is, a computer program includes a number of preparatory materials and developments that lead to its creation. But copyright does not extend to ideas, logic, processes, systems, methods of operation, mathematical concepts, even if a computer program is based on them. However, functionally complete program elements created and used to develop certain software may be separate objects of copyright.

In the practice of the Court of the European Union (hereinafter – the EU), the question of whether the graphic interface of a computer program belongs to the objects of copyright has already arisen. Resolving the issue, the EU Court came to the conclusion that the interface is not a form of expression of a computer program and, accordingly, is not subject to legal protection as an object of copyright - a computer program. However, the EU Court pointed out that in case of originality, such an object can be subject to legal protection as a work and protected by copyright.

In this regard, scientific circles have already expressed an opinion about the

feasibility of registering certain elements of such objects as the program code, without which the functioning of the program is impossible.

In one of the decisions, the EU Court pointed out that if the functionality of a computer program was protected by copyright, it would lead to the monopolization of ideas and would have a negative impact on technical progress and industrial development. And you can't disagree with that. Therefore, in our opinion, such a specific object of copyright law as a computer program requires both specific regulation of the legal relations associated with it, as well as the unity of judicial practice in the implementation of rights protection, which forces a clear understanding of this object. object of copyright and its components.

Another well-known atypical object of copyright is a database. At the current stage of the development of society, databases began to be used both among private individuals and at the state level in the form of state authorities, and mainly in electronic form via the Internet.

As you know, a database is a collection of works, data or any other independent information in an arbitrary form, including electronic, the selection and arrangement of electronic parts of which and its arrangement are the result of creative work, and the constituent parts of which are available individually and can be found using a special search engine based on electronic means (computer) or by other means. The peculiarity of such an object of copyright is that the structure of the database falls under legal protection, and not its content or content elements.

From the point of view of copyright, a database is a composite (complex) work.

This circumstance causes two important consequences:

- firstly, the database has a complex content, as it is formed from a number of independent objects (a work, data or any other independent information). At the same time, it is necessary to take into account the possibility of the existence of independent rights to individual objects (work, data or any other independent information). Rights to the database are independent of rights to the data or materials included in it. Termination of rights to all or part of such data or materials (works or any other independent information) does not mean termination of rights to the database and vice versa. The owner of the exclusive right to the database is obliged, when using the database, to respect the rights of the persons who own the rights to the specified materials (works, data or any other independent information);

- secondly, determines the scope of the copyright on the database as a whole. With respect to a database, copyright applies to the selection (selection), arrangement or arrangement of data or materials (works or any other independent information). The author must specifically select the data or materials for the database from a large array and/or show some originality in

the arrangement of the materials within the database. It is in this that the creative nature of the database author's activity should be manifested. The nature of the data and materials included in the database is not important for the evaluation of this circumstance.

The presence or absence of a creative element from a legal point of view does not matter for the emergence of the right of a database compiler (*sui generis*), for him, the "creative" but "economic" characteristic of a person's activity is important. The criterion of creativity is not used to assess the protectionability of the database in relation to the right of the compiler (producer) of the database (*sui generis*). Instead, another criterion is introduced: a significant contribution (investment) to its creation, which can be determined quantitatively and qualitatively, as well as certain requirements for the selection (selection), location and arrangement of materials in the database.

The need to prove a significant contribution rests with the compiler (producer) of the database created as a result of such a contribution. As possible methods of determining "substantial contribution", the author suggests either using the principle of British law, "what is worth copying is worth protecting", or by evaluating a significant part of the newly created database, which arose as a result of changing the existing database.

The first principle means that when the database created by the work of the compiler (producer) through selection and arrangement is worth copying (copies are copied and copies of the data compilation (database) are sold on the market), then the contribution of the compiler (producer) to the creation of the database can be recognized essential.

The second principle is based on the fact that it is possible to qualify any part of the database as essential on the basis that its unauthorized use can cause significant potential or actual damages to the compiler (producer) of the database.

When determining significant costs, costs for: acquisition of materials (works, data or any other independent information) for the purpose of including them in the database will be taken into account; verification of materials (works, data or any other independent information), their clarification and addition; any processing of materials (works, data or any other independent information), including changing the presentation format of materials (works, data or any other independent information), translation into another language, etc.; submission of materials (works, data or any other independent information), i.e. proofreading, editorial, technical, design work, inclusion of comments, explanations, instructions, etc.

In addition, it is necessary to take into account that the assessment of investments in the creation of a database refers to costs both for the database as a whole and for individual materials (works, data or any other independent information).

The compiler (producer) of the database is the person who organized the creation of the database and work with the selection (selection), location and arrangement of its constituent materials (works, data, or any other independent information). It does not matter who actually carried out the work of selection (selection), location and arrangement of its constituent materials (works, data, or any other independent information), their processing, database formation, etc., it is important only who organized it, more precisely, on whose behalf the database is created.

The author of the database has such personal non-property rights as the right of authorship, the right to the author's name, the right to inviolability of the database, the right to make the database public. Each of these actions must be authorized by the author. The definition of the object is ensured by granting the author the right to the inviolability of the work, the definition of the object by introducing the right of authorship and the right to the name, finally, the author gets the opportunity to control the availability of the work to society by means of the right of publication and the right of withdrawal.

In turn, the exclusive copyright on a database means the right to use this object by its author (or the person who owns the copyright), as well as a general prohibition on all other persons to carry out certain actions in relation to this object and to ensure the possibility for a person, which owns the copyright, allow others to perform certain actions in relation to the database.

By their nature, websites are close to databases, which are also a collection of data, electronic (digital) information, other objects of copyright and (or) related rights, etc., interconnected and structured within the web address site and (or) the account of the owner of this website, which are accessed through the Internet address, which may consist of a domain name, directory or call records, and (or) a numerical address according to the Internet protocol. A website is a complex object of copyright, it contains such components as software, information content and a unique domain name, each of which can also be a separate object of copyright. Particular attention should be paid to the information content (content) of the site, which may consist of various specially selected and arranged in a certain way other works that can be used with the help of a certain computer program, which is also an element of the site. In each specific case, a question may arise regarding the ownership of the copyright objects of both the site as a whole and its individual parts. It should be noted that the practice of national courts already has examples of cases where the subject of the dispute is a website or its components. And therefore, the specified issue requires in-depth research with the aim of forming a unified law enforcement practice.