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## **FEATURES OF DOMAIN DISPUTE CONSIDERATION**

Domain names have a complex legal nature for they are similar to trade marks (service signs), commercial (company) names, natural person's name and that often Snstitute leads to legal collisions related to the rights for domain names and other similar objects of intellectual property law. This causes different application of legislation by courts in this sphere.

In Ukraine, legal practice in the sphere of domain disputes is not yet widespread, however, every year the number is gradually growing. It may be related to the fact that solving domain disputes requires special knowledge in the sphere of exact sciences and information technologies. In fact, this is the most difficult issue for both the parties to the domain dispute, and the intermediaries trying to regulate it.

The position is open to discussion for even the court (or another person, or body) do not require an obligatory expert's opinion to prove the claims or objections of the parties when hearing cases of this kind. We consider that special knowledge in this case should be understood in a different way: what is meant is the technical understanding of the web site's functioning, differentiation of the technical functions of the registrant, registrar, and administrator of the Internet addressing space, technical possibilities to change the web site's owner, etc. A judge or a lawyer can have general technical knowledge, but it will be difficult to understand the technical details of some issues correctly.

Despite the availability of two forms of protection of infringement of rights (jurisdictional and non jurisdictional), the most widespread and the most effective mechanism of protecting intellectual property rights in the context of domain disputes are judicial proceedings. However, one can apply Alternative Dispute Resolution methods as well.

Taking into account the novelty of cases related to domain disputes, Ukrainian courts are practically not ready to hear them for the national legislation does not regulate the concrete procedure of hearing domain disputes

by any of the mechanisms of protecting infringed rights (including judicial protection), and there is no Uniform Dispute Resolution Policy (UDRP) to resolve domain disputes for the .UA domain zone.

Thus, judicial protection of rights related to the use of domain names has some problems that are manifested in many aspects. Let us dwell on some of them.

Let us define court jurisdiction of domain disputes. Most often, such disputes in Ukraine arise on the basis of protection of rights for a trade mark (service sign) and commercial (company) name, that is why they are heard in commercial courts, as a rule, at the location of the registrant of the domain name. Other cases of this kind are heard in courts of general jurisdiction.

It might be easier to prove that somebody illegally uses another person's commercial (company) name in the domain name because the intellectual property right for the commercial (company) name is valid from the moment it is first used and is protected without obligatory application for it or its registration irrespective of the fact whether the commercial (company) name is part of the trade mark (service sign).

However, in this case the court can ask the person who claims his rights were infringed to prove he really uses the commercial (company) name. The evidence to prove the validity of using the commercial (company) name is determined separately in each particular case.

One should also pay attention to the people participating in domain disputes. Usually, they are the administrator, the registrant, and the registrar of domain names.

A separate issue in domain disputes is the choice of defendants for the majority of domain disputes are aimed at cancelling the delegation of the domain name with its further registration on the legal rightsholder.

Thus, with the proper parties to the litigation arising due to registration and the use of domain names, the participants are: 1) *plaintiff* - a person whose rights are infringed (in most cases – the owner of the trade mark (service sign) that is the same or easily confusable with the name used in the domain); 2) *defendant*: 1) user of the delegated domain names, i.e. a person in whose interests the domain name was registered with the use of disputable trade marks (service signs) – registrant; 2) registrar in case registrant and registrar are represented by one person; 3) *third party*: registrar as a subject who in case of claim adjustment shall perform actions to execute the resolution (cancellation of registration, change of domain holder, etc.).

There are discussions to involve the administrator as a defendant or a third party to participate in the disputes.

However, acquisition by a person of a processual status of a defendant, according to the law, is related not to the availability of jural relationships between the parties and the corresponding obligation of the defendant to

perform certain actions in favour of the defendant or to forbear from their execution to protect and realize the rights and legal interests of the plaintiff, but only to the fact of bringing of a suit to the person.

At the same time, a proper defendant in the case is only a person having obligations to the plaintiff under the circumstances that form the subject of the claim. In other cases, claim adjustment is impossible for the defendant has no obligations to the plaintiff to stop infringing his rights and legal interests for he is not the person to be accountable for the disputable jural relationships.

Thus, in case the court ascertains that an action was brought in against the wrong party that has to be liable to the plaintiff in a material and jural relationship, then the court with the claimant's approval changes the wrong defendant for the competent one or disallows the claim due to absence of legal foundation.

Therefore, administrator's role as a defendant in domain disputes is still not fully determined.

Besides the parties, procedural participants of the court hearing include third parties without independent demands and with independent demands (are equal to a plaintiff) on the subject of the dispute. Moreover, third parties without independent demands include people whose rights and obligations in relation to one of the parties can be influenced by the court's decision.

Secondly, there arise difficulties in the process of presenting evidence in domain disputes. Preparation of argumentation for this type of disputes has a lot of specific peculiarities and details.

Thus, in the process of hearing domain disputes by the national courts it is very important to pay special attention to the fact that the analysis of legislative provisions leads one to the conclusion that taking into account the legal matter of the trade mark (service sign), an obligatory condition of using the sign is its use with reference to the goods and services it was registered for.

Correspondingly, the specific nature of the Internet as a sphere of functioning of domain names, as some researchers claim, leads to the fact that traditional means of evidence often become non-effective to record significant facts to resolve disputes; and vice versa, non-traditional means of evidence (e.g. documents in electronic form, e-mails) can characterize the state of jural relationships of the parties to the dispute in the best way. However, courts are very careful with this kind of evidence.

Thus, video and audio records of the investigation process can be used as evidence by any of the vested interests of the site that is known to be infringing copyright or adjacent laws; this record on an electronic or other medium (computer hard drive, floppy disk, laser sensing system disc, other information medium) is submitted to the court specifying when, who and under what circumstances made the record and then it can be used as a *corpus delicti* in the case. Written evidence can also be certificates obtained from providers and

network search services.

Print-outs from Internet web sites cannot serve as evidence in a case. However, if the relevant documents were issued or attested by an institution or a specially authorized person having the power to do so according to an established form, adhibited by an official stamp on the territory of one of the member states of CIS, then in compliance with article 6 of the Treaty on the order of resolving disputes, related to performing economic activity of 20.03.1992 they have the evidential force of official documents on the territory of Ukraine.

Taking into account the number of issues that are to be cleared up, one may conclude that courts in the course of settling disputes courts do not have to restrict themselves to expert reports in the expertise they prescribe, but also determine in each particular case whether the court expert trespassed beyond his powers.

Court practice testifies to the fact that court experts often undertake the resolution of legal issues, though only the court has the power to do so.

Furthermore, in the process of hearing domain disputes to prevent the evidence of infringement of rights being destroyed the plaintiff should present a statement of claim and apply for a security for a claim.

Only owners of registered trade marks (service signs) can protect infringed rights related to the use of the domain name.

In the process of the research we have come to the conclusion that neither native legislation, nor native justice are ready to hear cases related to domain disputes. In practice, courts face the problem of determining judicial jurisdiction and fail to apply the norms of international law. The plaintiff faces the problem of identification of the defendant, there are difficulties in evidence and the necessity to apply for a security for a claim. Most often, the plaintiff is only the owner of the registered trade mark (service sign).

One can overcome the available problems of judicial proceedings on domain disputes by improving the procedure of registration of domain names, thus making it impossible to infringe the rights of brand owners, of civil circulation participants, goods and services, and in case these rights are infringed it will lay the legal foundation to involve the registrant as a defendant together with other offenders.

No doubt, absence of adequate legislative regulation, incompetence of judges and other participants of the trial in the technical aspects, delegation, re-delegation, as well as functioning of domain names complicates the efficient hearing of cases. National courts, especially trial courts most often do factual errors having no necessary special technical knowledge that is essential in this sphere. That is why it seems plausible to introduce to court hearings on domain disputes relevant IT specialists who will give qualified findings on the case. Furthermore, judges have to ascertain in each particular case whether an expert

goes beyond his powers.

UDC 347.78 (043.2)

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## **A ROBOT ARTIST? TRENDS IN THE COPYRIGHT PROTECTION FOR AI-GENERATED WORKS IN THE EUROPEAN UNION**

With the advancement of technology, AI no longer serves solely as an assistant to human activity. It is also capable of doing what was previously considered exclusively human prerogative – to write music, paintings, poetry, and even create computer games. For example, AI wrote a play for a theatre in the Czech Republic [1], created a painting in the style of Rembrandt as part of «The Next Rembrandt» project in the Netherlands [2], and recently even 'participated' in the first Eurovision for songs written by artificial intelligence [3]. Themselves, these creations may well fall under the modern interpretation of the criteria for copyright-protected works. However, the question then arises whether AI could be granted the same rights as a human when it comes to the EU copyrights framework.

First of all, it is worth clarifying what artificial intelligence means. Unfortunately, there is no single definition for this term. This paper is using the definition enshrined in 2018 Communication «Artificial Intelligence for Europe», where AI means «systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals.» [4]. Using the approach of Kalin Hristov [5], this study defines two main categories of the works produced using artificial intelligence: AI-assisted and AI-generated works. The first category includes works that were developed under the close attention of the creator of the machine, and here AI played only a supporting role, being a tool for completing the task. This research focuses on the second category of work autonomously created by AI, with the least possible human intervention, as, for example, the creations described in the previous paragraph.

So, what is the situation with copyright protection for non-human creations in the EU today? What happens to the works generated by machines? The problem already starts with applying the concept of authorship and originality requirements to the AI.

It should be noted that at the EU level, a single document has not yet been developed that would regulate relations in the field of AI and intellectual property rights, not to mention even the settlement of general matters regarding