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WEBSITE REGULATORY LAWS OF THE USA

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Purpose: *the provisions and features of US law in relation to the regulation of websites and to suggest provisions useful for incorporation into Ukrainian legislation in the field of Internet regulation.* ***The methodological basis*** *of the research comprises philosophical, ideological, general scientific and special methods.* ***Results:*** *the American legislation in the field of regulation of copyright protection relations in general on the Internet and on websites in particular was shown as one of the most successful. Also the author found out that there a lot of blanks as to this issue in Ukrainian legislation. The author suggested for the lawmaker of our state to adopt the experience of American colleagues in regulating the legal relations related to electronic resources.* ***Discussion:*** *improvement of the national legislation in the sphere of Internet regulation on the example of acts of the USA; search for actions to be taken while dealing with the website regulation.*

Keywords: *website; Internet regulation; Internet governance; Copyright Law; Digital Millennium Act; protection of the rights of the website owner.*

Problem statement and its relevance. Maybe the most progressive and stringent methods of regulation of relations arising on the Internet, and in particular regarding websites, has the country known as the United States of America.

Most of the United States regulations in this area are aimed at specifying the object of legal protection and at the earliest possible elimination of copyright infringement on the Web, if any, as well as assisting individuals who could inadvertently lead to initiation of their actions. Such normative acts can become a good source for Ukrainian legislation in the field of website regulation.

Analysis of research and publications. The issue was studied by J. Samuels, B. Sasso, I. Schegolev, A. Vlasenko and other scientists.

Purpose of the article. By this article the author wants to reveal the provisions and features of US law correlating with the regulation of websites and to suggest provisions which seem to be useful for incorporation into Ukrainian legislation regarding the regulation of the Internet.

The presentation of the main material. In 1976 a federal law on copyright was adopted, which, among other things, provided for fair use (the term «Fair Use» - a doctrine that allows the free use of copyrighted materials subject to certain conditions) of materials related to reprography. Fair use defines free photocopying in order to:

– educate (for example, reproduction for the use of copies in the classroom) (Article 107);

– training or research (Article 107);

– make free photocopies by libraries and archives (Article 108).

But, according to Art. 108g, the reproduction or distribution of these copies of the materials should be made without the intention to obtain direct or indirect commercial profit by distributing a large number of copies or phonograms made from the same material, without the systematic reproduction or distribution of such copies or phonograms [1].

However, with the development of the digital age, this normative act has ceased to satisfy the needs for regulating Internet relations. That is why, on May 14, 1998, the Digital Millennium Copyright Act was adopted in the United States (the «Digital Law on Copyright»). This law may also be referred to as the «Digital Millennium Copyright Act».

This Act was developed to implement the 1996 WIPO Agreements on Copyright and On Performances and Phonograms. Currently, it is the most progressive document adopted to streamline the legal regulation of the use of the Internet [2]. Therefore, according to the author of the study, it requires a more detailed consideration.

One of the most important provisions of the Law is that all copyright objects placed on the Internet are subject to protection. Nevertheless, if it is proved that the person who violated the relevant rights did not know that her actions were a corresponding violation, then she will be released from liability. At the same time, only those that are unique in their kind are considered to be objects of copyright. In this context, we should recall the American concept of «transformativeness», according to which protection is provided only to the original works, while the picture or content of the website is, as a rule, only a copy or part of the work.

In this regard, the landmark decision of the court is Feist Publications v. Rural Telephone Service 499 US 340 (1991), which recognized that with respect to compilations or works that do not correspond to the original, copyright infringement cannot be recognized. This decision, accordingly, was recognized that only the original work is protected by copyright, and not copies, on the Internet [3].

If a copyright violation is revealed on any site, DMCA provides 3 ways to report such actions: by letter; by telegram; by E-mail.

If, within a reasonable time, the recipient of such a message does not delete the disputed object of copyright, then the rules on liability for violation can be applied to it, and the communication provider will have to start actions to remove the violator from the network.

In general, the DMCA is divided into five sections. From the point of view of the topic of the article, Sections II and IV of it require our attention.

Section II of the DMCA adds a new paragraph No. 512 to the Copyright Act, on the creation of four new types of limitations on liability for copyright infringement by providers. Restrictions are based on the following four categories of provider behavior:

– temporary digital communications systems;

– system caching;

– information that is constantly stored in the system or networks as directed by users;

– tools for determining the location of information.

Thus, a service provider is not responsible for monetary pleasure or a remedy in the form of an injunction or otherwise a right of justice, for copyright infringement due to the transfer, tracing or provision by the supplier of connections for systems or networks or the transfer of materials to data systems and networks controlled or operated by the service provider or on its behalf, or as a result of the intermediate and temporary storage of this material in the course of these actions, if:

1) the transfer of material is initiated by a person, is not a service provider, or is carried out at the direction of such a person;

2) the transfer, tracing or provision of connections, or storage is carried out using an automatic process without sampling the material by the service provider;

3) the service provider does not select the recipients of the material, except as a spontaneous reaction to the request of another person;

4) during this interim and temporary storage, the service provider does not save copies of the material in the system or network in a way that is usually accessible to any person other than the intended recipients, while such a copy is not stored in the system or network in a way that is usually available for such intended recipients longer than reasonably necessary to transmit, trace, or secure connections; and

5) material is transmitted through a system or network without changing its content.

Paragraph 512 (b) («System Caching») limits the liability of service providers to store for a limited time a copy of material that was distributed on the Internet by a person who is not a provider and then transferred to another subscriber. The service provider reserves the material in such a way that, upon subsequent requests, the same material can be obtained by transferring the copy made, rather than extracting the material from the original source. The advantage of this approach is that it reduces the throughput of

the service provider and reduces the latency of the following requests. On the other hand, this can lead to the provision of outdated information to subscribers, thereby depriving the site of accurate «momentary» information.

The restriction applies to acts of intermediate and temporary storage of such measures carried out through an automatic manufacturing process in order to make the relevant material available to subscribers. To do this, the following conditions must be met:

– the content of the material should remain unchanged;

– the service provider must take appropriate actions to restore, reload or otherwise update the material when it is determined by the person who provided the material online;

– the provider should not interfere with a technology that returns "current" information to a person who has posted material if such technology meets certain requirements specified in paragraph C (i);

– the provider must restrict access to the material in accordance with the terms of access (for example, password protection) entered by the person who posted the material;

– any material provided online without the permission of the copyright holder should be immediately removed or blocked by the provider as soon as he receives a message about such a violation.

Clause (c) limits the liability of service providers for material illegally posted on the site on their systems. In order for the restriction to be lawful, the following conditions must be met:

– the provider is practically not knowledgeable that the material or activity on its use constitutes a violation;

– the provider does not receive material remuneration possible due to such illegal actions, if he has the right and ability to control such activities;

– after receiving a proper report of cases of violation, the provider must promptly take measures to block access to the material.

Paragraph 512 (d) refers to hyperlinks in Internet directories, search engines, etc. Thus, the service provider is not responsible for copyright infringement due to sending or connecting the user with an interactive position by the provider, contains material, is a violation or legal action using information location tools, including a directory, index, links, index, or hypertext link. In this case, requirements similar to those listed in paragraphs 512 (c) [4, p. 13].

Section IV deals with a different provision. Thus, Paragraph 401 (b) discloses a list of obligations of the Copyright Office as:

– advising Congress on copyright issues and providing information and assistance to relevant departments with similar issues;

– participation in meetings of international intergovernmental organizations on issues related to copyright;

– research and regulation of relevant programs related to copyright and the like.

Paragraph 403 which is dedicated to distance learning mainly carried out by posting relevant materials on specialized websites, is also noteworthy.

According to paragraph 404, non-profit libraries and archives have the right to create up to three copies of materials that can be digital, provided that digital copies are NOT available to the public outside the library [4, p. 14-16].

To effectively combat copyright infringement on the Internet and at the request of the DMCA, Google has created a corresponding page in the bowels of its website that sets out instructions for actions to be taken to combat infringement.

According to the employees of the corporation, having considered a situation that may be considered a violation of copyright, they can remove or hide the content of a website that is protected by copyright and (or) otherwise restrict access to it. At the same time, Google informs the alleged violator or owner of the site with counterfeit content.

Further, a report of violations in respect of which appropriate action has been taken is documented. Sometimes a message may be sent to the non-profit organization Chilling Effects, which publishes such complaints, removing personal information from them.

To file a copyright infringement notice, Google suggests filling out a form to remove content from a search engine on the corporation's website. At the same time, Google notes the possibility of attracting a person, filed a complaint to liability for the losses

caused if his statement of violations does not correspond to reality [5]. So, for example, Diebold had to pay such expenses and fees to Online Policy Group lawyers in the amount of more than 100 thousand US dollars for sending a message about the violation with the requirement to remove materials from the site that it considered copyrighted. But in the course of the case it was proved that such content is protected by the doctrine of fair use [6].

The following data should be indicated in the violation report:

– works for which copyright is violated;

– material of a site that infringes copyrights;

– search queries where Google refers to pages that violate copyright, as well as the URLs of such pages in the search results;

– name (name) and contact details of the applicant;

– information about the means of communication with the owner of the site whose materials infringe on copyrights;

– confirmation of the integrity of the statement;

Signature under the application is required.

Compared with the DMCA, the Stop Online Piracy Act (SOPA), submitted to the House of Representatives on October 26, 2011 by L. Smith, is more profitable. The main postulate of SOPA is the following: «copyright infringement is a serious crime, and, therefore, it is necessary to deal with it severely». Indeed, if the bill is passed, the copyright holders will have an unprecedented right to close sites that were noticed in the illegal distribution of works, block their domains, and seize financial assets of the owner companies.

According to the Act on the termination of online piracy, any participant in the Internet (providers, search services, etc.), after an appeal by the copyright holder, is obliged to stop providing services to the resource that is accused of ponline piracy and to stop any interaction with him. In the case of unclear requirements, the indicated counterparties will be recognized by his partners [7].

Under the bill, unauthorized streaming or other distribution of copyrighted content is recognized as a criminal offense for which a penalty of imprisonment of up to 5 years is prescribed. If Internet companies voluntarily and on their own initiative take measures against the website-violators, then they are endowed with immunity from prosecution [8].

Opponents of the SOPA point out that the bill violates the First Amendment to the US Constitution by introducing censorship on the Web, thereby limiting freedom of speech and the development of the Internet.

No less stringent as to the terms of envisaged measures to counter copyright infringement on the Web is the Protect Intellectual Property Act (PIPA) 2011 (the Law on Preventing Real Network Threats to Economic Creativity and Intellectual Property Theft). According to the act, it should be considered an offense to distribute illegal copies of copyright objects and to develop and use technologies to overcome technical means of protecting such rights. The act also covers websites whose main activity is to participate in or facilitate such activities.

The main purpose of the bill is to prevent illegal actions associated with websites that are registered abroad. PIPA allows the U.S. Department of Justice and eligible copyright holders to sue forfeiture of property, even in the absence of a thorough investigation, or if the owner of the resource cannot be found.

In this case, the US Attorney General must send a message to the defendant. Further, after receiving appropriate sanctions, it is possible to oblige financial institutions to stop money transfers, Internet providers - to block violators, and search engines - to remove relevant websites from search results. DNS servers will need to immediately stop accessing the IP address of the intruder website.

The rest of the norms are about exemption from liability in connection with the implementation of prohibitive measures or with their voluntary use, about the procedure for appealing and changing a court order, etc. - repeat the norms of SOPA [9].

In contrast to these «hard» bills in December 2011, the Online Protection and Enforcement of Digital Trade Act (OPEN Act) was introduced in the US Congress.

Its main difference from SOPA and PIPA is that it does not allow blocking sites, removing domain names and stopping visitors from accessing the Network to prevent discrimination of user interests. The

main purpose of the OPEN Act is to stop the receipt of illegal benefits by dishonest website owners. To achieve this goal, copyright holders may require a ban on financial transactions by such sites and their income from advertising [10].

The so-called Cyber Intelligence Sharing and Protection Act (CISPA), introduced by the US Congress on November 30, 2011, can be considered an alternative to SOPA and PIPA. CISPA is designed to counter cybercrime his idea is to simplify the process of exchanging data on cyberthreats between government and commercial organizations.

Conclusion. So, we can conclude that the American legislation in the field of regulation of copyright protection relations in general on the Internet and on websites in particular is one of the most successful, and the relations themselves are regulated in detail. In the United States, unlike most countries in the world where the protection of AP on the Internet is applied by analogy with the protection of other objects, a special law is in force, the rules of which partially regulate the protection of car rights on the Internet.

Most United States regulations in this area focus on specifics. So, we can conclude that the American legislation in the field of regulation of copyright protection relations in general on the Internet and on websites in particular is one of the most successful, and the relations themselves are regulated in detail. In the United States, unlike most countries in the world where the protection of AP on the Internet is applied by analogy with the protection of other objects, a special law is in force, the rules of which partially regulate the protection of car rights on the Internet.

Most of the United States regulations in this area are aimed at specifying the object of legal protection and at the earliest possible elimination of copyright infringement on the Web, if any, as well as assisting individuals who could inadvertently lead to initiation of their actions. And only if the guilty person refuses to terminate the relevant actions, they will be recognized as an offense. This suggests a fairly compromise way of regulating the relevant relations arising in connection with the use of the website, and, therefore, the most successful, for example, in comparison with the «draconian» norms of the French Khadobi. The author of the thesis study considers it appropriate for the lawmaker of our state to adopt the experience of American colleagues in regulating the legal relations of relations related to electronic resources.

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ЗАКОНОДАВЧІ АКТИ США У СФЕРІ РЕГУЛЮВАННЯ ВЕБ-САЙТІВ

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Одними з найбільш прогресивних та суворих норм щодо регулювання відносин, які виникають у мережі Інтернет, і зокрема під час використання веб-ресурсів, характеризується законодавство країни Сполучені Штати Америки. Більшість нормативних актів США в цій сфері спрямовані на визначення об'єкта правового захисту та скоріше усунення порушення авторських прав у мережі, якщо такі мають місце, а також на надання допомоги особам, які можуть ненавмисно ініціювати подібні дії. Такі закони можуть стати відмінним джерелом для нашого національного законодавства в сфері регулювання веб-ресурсів.

Визначне місце в своїй статті автор надає Закону про захист авторських прав у цифрову епоху. Цей нормативно-правовий був розроблений для реалізації Угод ВОІВ 1996 року. Навіть зараз це досить прогресивний документ, прийнятий для впорядкування правового регулювання використання мережі Інтернет. Автором у статті також згадується американська концепція «трансформації», яка декларує надання захисту лише оригінальним роботам, тоді як зображення або контент сайту, зазвичай, є лише копією або частиною роботи.

У статті автор хоче розкрити положення та особливості законодавства США, пов'язані з регулюванням веб-сайтів, і запропонувати положення, які можуть виявитися корисними для включення в українське законодавство, що стосується регулювання Інтернету. Цю проблему досліджували Дж. Самуельс, Б. Сассо, І. Щоголєв, А. Власенко та інші вчені.

***Метою** написання даної статті стало вивчення сутності та положень нормативно-правових актів Сполучених Штатів Америки, які регулюють відносини з приводу використання мережі Інтернет і безпосередньо веб-сайтів. Автор спробує знайти серед таких положень дієві норми, які варто інкорпорувати в українське законодавство з метою кращого врегулювання суперечок у зазначеній діджитал-сфері. **Методологічну основу дослідження** склали філософські, ідеологічні, загальнонаукові та спеціальні методи.*

***Результатом дослідження** став аналіз наявних норм законодавчих актів США, які регулюють проблеми в середовищі використання Інтернету і безпосередньо веб-сайтів. **Дискусія** в статті торкнеться вдосконалення національного законодавства в сфері інтернет-регулювання, а також пошуку нормативних положень в іноземному законодавстві, які необхідно взяти за основу при розробці відповідних норм українських актів.*

***Ключові слова:** веб-сайт; регулювання інтернету; управління інтернетом; закон про авторське право; закон про цифрове тисячоліття; захист прав власника сайту.*