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Enhancing the Protection of Copyright and Related Rights on the Internet



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Introduction

It is now impossible to imagine everyday life without the Internet. The advent of new technologies poses new challenges in ensuring the protection of intellectual property rights.

The number of infringements on the Internet in respect of objects of copyright and related rights – literary and musical works, films, television series, telecasts, computer games, websites, – is strongly increased in many cases. The so-called “online piracy” does not stop being a “pain in the neck” for rights holders of media-content.

The situation is complicated by the fact that it is often impossible to establish the identity of an infringer while dealing with the illegal reproduction, use and distribution of copyright and related rights objects. The infringer can be located anywhere in the world due to the technical aspects of the Internet functioning. Anonymization and decentralization have become inherent features of modern infringers. This problem has become dramatic for rights holders worldwide and it requires rethinking of legal approach to the classical mechanism of the protection of intellectual property (exclusive) rights and the introduction of new, effective methods in addressing infringements of such rights. » page 2



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Anti-piracy law and new schemes of infringers

In fact, the first major step towards the enhancement of legal strategies in addressing infringements of exclusive rights on the Internet was the adoption of Federal Law of July 2, 2013 No. 187-FZ “On Amendments to Certain Laws of the Russian Federation Concerning the Protection of Intellectual Rights in Information and Telecommunications Networks” (hereinafter – “Anti-Piracy Law”). The Anti-Piracy Law was initially aimed at protection of video content, including films and television series, and it created a real opportunity to promptly apply a preliminary injunctive relief and block pirated video content by appealing to the Moscow City Court (hereinafter referred to as the “MCC”). The practice of applying the Anti-Piracy Law during the first “testing” period of its operation (from 2013 to 2015) demonstrated high effectiveness of judicial enforcement of copyright and related rights to audiovisual works on the Internet. Crucially, the responsibility of information intermediaries provided by the amendments to the Civil Code of the Russian Federation has become a solution to the problem of the objective impossibility of identifying individuals who illegally post and distribute content on the Internet. In this regard, regular interaction with hosting providers at the pre-trial stage of settlement of such disputes allowed rights holders to successfully achieve termination of infringement of exclusive rights in many cases without appealing to MCC.

The attractiveness of the Russian legitimate digital content market has significantly increased due to the subsequent distribution of the Anti-Piracy Law to the other objects of copyright and related rights, with the exception of photographs. The number of judicial rulings issued by MCC in favor of rights holders is increasing every year. In particular, it is confirmed by the recent statistics published by the Federal Service for Supervision of Communications, Information Technology and Mass Media (hereinafter – “Roskomnadzor”), which also participates in this category of cases and technically provides blocking of illegal content.

However, the refusal to surrender and stop the illegal distribution of media content, forced the infringers to look for some new ways to bypass the blocking of Internet resources. As a result, rights holders faced new, complex problems in practice.

First of all, there was a problem caused by the technical ability to transfer the blocked content to another website, including a similar domain name. Since the judgement of MCC in this category of cases is usually made against a particular website with a certain domain name, the infringer can create a so-called “mirroring website” (i.e. a copy of the blocked site) after the issued injunction. This makes it necessary for the rights holder to re-initiate litigation against the same infringer (or a third person acting “under his instructions”) by filing another lawsuit to MCC. Thus, the creation of “mirroring websites” allowed infringers to freely get around the blockage of the original pirated Internet resources without infringing the law and preventing rights holders from effective protection of their exclusive rights on the Internet.

On the other hand, the situation was complicated by the active use of anonymizers and VPN technologies. Infringers extensively used them to route Internet traffic through foreign servers, going the round of the blocking of pirated content, while the owners of such technologies and programs were not obliged to ensure the inability to access blocked websites in

Russia. The use of these unique “work-around” technologies together with saving links to blocked websites and providing relevant information by search engines significantly reduced the effectiveness of execution of court decisions issued by MCC in favor of rights holders.

Another set of laws

The response to the above practical problems was the adoption of two very important laws that offered rights holders viable tools to address infringements of copyright and related rights on the Internet, namely:

- Federal Law No. 156-FZ of July 1, 2017 “On Amendments to the Federal Law “On Information, Information Technologies and Information Protection” (hereinafter – “Law on Mirrors”) (entered into force on October 1, 2017);
- Federal Law No. 276-FZ of July 29, 2017 “On Amendments to the Federal Law “On Information, Information Technologies and Information Protection” (hereinafter – “Law on Anonymizers”) (entered into force on November 1, 2017).

These laws were incorporated into the valid set of legal rules of Federal Law No. 149-FZ of July 27, 2006 “On Information, Information Technologies, and Data Protection” (hereinafter – “Law on Information”) regulating the existing procedure for protection of copyright and related rights on the Internet.

Breaking the mirrors

First of all, the Law on Mirrors introduces the concept of “a copy of the blocked website”. It is understood as a site that is similar to the degree of confusion with the site on the Internet, access to which is limited by the decision of MCC in connection with the repeated and improper use of information containing objects of copyright and (or) related rights or information necessary for their receipt using information and telecommunication networks, including the Internet (cl. 1, Art. 15.6-1 of the Law on Information).

Importantly, the Law on Mirrors prohibits the placement of copies of blocked websites, as well as the promotion of such copies by search engines. Also, the Law on Mirrors provides for a special, simplified procedure for restricting the access to “mirroring websites” and ceasing the provision of information about domain names and URLs related to copies of blocked websites (without the need for a new action with MCC).

In particular, the rights holder, who identifies a copy of the blocked website during monitoring of the situation after the execution of the court decision on limitation of access to the infringing website, gets a chance to apply to the Ministry of Telecom and Mass Communications of the Russian Federation (hereinafter – “Minsvyaz”) with the information about the detection of “mirroring website”. When the relevant information is received, Minsvyaz undertakes the following sequence of actions – within 24 hours:

- issues a motivated decision on recognition of the website as a copy of the blocked website, in the order established by the Government of the Russian Federation;
- sends a motivated decision on recognition of the website as a copy of the blocked website in the electronic form (in Russian and English) to the owner of the copy of the blocked website, in the order established by Minsvyaz;
- sends a motivated decision on recognition of the website as a copy of the blocked website to Roskomnadzor through the interaction system.

In its turn, within 24 hours from the moment of receipt of the motivated decision from Minsvyaz, Roskomnadzor:

- determines the hosting provider or other person providing a copy of the blocked website;
- sends an electronic notification (in Russian and English) of a motivated decision issued by Minsvyaz, on recognition of the website as a copy of the blocked website to the hosting provider or the owner of the copy of the blocked website;
- fixes the date and time of dispatch of the above notification in the relevant information system;
- sends a claim through the interaction system to telecom operators to take measures to restrict access to a copy of the blocked website; the relevant communication operator should restrict access to the copy of the blocked website within 24 hours from the receipt of the specified claim;
- sends the electronic claim to stop providing information about the domain name and the URL related to the copy of the blocked website to operators of search engines distributing advertising on the Internet that is aimed at attracting the attention of consumers located on the territory of the Russian Federation; the respective operator of the search system should stop providing information about the domain name and the URL related to the copy of the blocked website within 24 hours from the receipt of the specified claim.

Also, the Law on Mirrors allows Roskomnadzor, within 24 hours from the receipt of the relevant court decision of MCC through the interaction system, to send through the interaction system a claim to communication operators to take measures to permanently restrict access to the website on which the information containing objects of copyright and (or) related rights, or information required for their receipt using the Internet, was repeatedly and improperly posted.

The information on copies of blocked websites is published on the official website of Roskomnadzor. This allows tracking the blocked infringements of exclusive rights and maintaining certain statistics for these categories of cases.

If there is similarity – there is no dispute

In addition to the adopted Law on Mirrors, the Decree No. 1225 of the Government of the Russian Federation of October 7, 2017 further approved the “Rules for the Adoption of a Motivated Decision on Recognition of a Website as a Copy of the Blocked Website” (hereinafter – the “Rules”).

The Rules specify a procedure of issuing a motivated decision by Minsvyaz on recognition of a website a resource that is being confusingly similar to the website access to which is restricted by the decision of MCC in connection with the repeated and improper use of information containing the objects of copyright and (or) related rights, or the information necessary for their receipt, using the Internet.

In particular, a motivated decision is issued by Minsvyaz within 24 hours involving of specialists (experts) empowered to carry out an expert evaluation of information on the detection of a copy of the blocked website. The total number of experts involved in the evaluation of this information should be at least 3 persons. The list of experts is determined by the Minister of Telecom and Mass Communications of the Russian Federation (or his/her deputy) (cl. 3 of the Rules).

A motivated decision of Minsvyaz should contain a domain name of a copy of the blocked website, as well as the

grounds for making such a decision by indication of the criteria specified in Cl. 4 of the Rules.

Anonymity is not for bypassing the blocks!

In the explanatory note to the draft law on anonymizers, a special attention was paid to the lack of a statutory “prohibition to use technologies that allow access to information resources blocked in Russia”. Meanwhile, the Law on Anonymizers resolved the problem and proposed a new, unique mechanism by which the use of anonymizers and other similar technologies (e.g. VPN, TOR) is not allowed to access websites that have been restricted legally in the Russian Federation – including websites blocked by the decisions of MCC for repeated infringement of copyright and (or) related rights.

More specifically, in the order established by the Law on Anonymizers, the owners of anonymizers and other similar technologies gain access to the specialized information resource of Roskomnadzor, which contains a list of blocked websites and information on them (the federal governmental information system – hereinafter – as “FGIS”), and are required to limit access to the prohibited websites at the request of Roskomnadzor. In the event of non-compliance with the requirements of Roskomnadzor to prohibit the use of anonymizers and other similar technologies, the owner may face restriction of access to its information resource on the territory of the Russian Federation.

Likewise, at the request of Roskomnadzor, the operators of search engines, which distribute the advertising on the Internet aimed at attraction of the attention of consumers in the territory of the Russian Federation, including the advertising promoting any prohibited information, are also obliged to connect to the FGIS system and to stop providing links to the blocked information resources.

Comment

Recently, the Law on Information has undergone many significant and viable changes, including in the context of legal protection and enforcement of intellectual property (exclusive) rights in the digital environment. It is encouraging that the legislator closely follows the development of the information technology and the use of information in Russia, while preventing the use of such technologies and information to the detriment of the interests of rights holders, as well as the national interests of the country and state security. It is obvious that the enactment of the Law on Mirrors and the Law on Anonymizers will make it much easier and more efficient to address infringements of copyright and related rights on the Internet. We do hope that the practice in this area will continue to emerge in favor of bona fide owners and suppliers of media-content.

Events

(conferences, seminars, news)

8.02.2018 // LONDON

Ilya Goryachev, Senior Lawyer (Gorodissky & Partners, Moscow), attended the 2nd International Conference “Pharma and Biotech IP Summit 2018” held by IAM (Globe Business Media Group) in London. The Conference covered existent approaches to evaluation of patentability in the context of court decisions, operation of the Unified Patent Court in Europe considering Brexit, and other topical IP issues in pharma and biotech fields of Europe, USA and Canada and gathered over 50 participants.

31.01.2018 // ST.PETERSBURG



Photo: The Forum

Viktor Stankovsky, Partner, Russian & Eurasian Patent Attorney, Regional Director (Gorodissky & Partners, St. Petersburg), spoke on “IP in a new technology order” at the 9th Annual Legal Forum “Results of 2017: law and business” held by the Kommersant publishing house in St. Petersburg. The Forum gathered over 200 participants and summarized the outcomes of lawmaking activities and defined their impact on business.

23-25.01.2018 // BANGALORE

Vladimir Biriulin, Partner, Head of Legal Practice (Gorodissky & Partners, Moscow), and Anand Saini, Regional Director (Gorodissky & Partners, Dubna), attended the 10th Global IP Convention where Vladimir spoke on “Protection and Enforcement of Trademarks in various jurisdiction”. The Conference was held by the Institute of International Trade in Bangalore, India. The Convention covered a wide range of topics including: innova-

tions used in self-driving vehicles; IPR protection in the Internet of things; artificial intelligence & intellectual property, and gathered 450 participants from over 30 countries.

23.01.2018 // PARIS

Valery Medvedev, Managing Partner, Russian & Eurasian Patent Attorney, Yury Kuznetsov, Partner, Russian & Eurasian Patent Attorney, Head of Patent Practice, Viacheslav Rybchak, Partner, Trademark & Design Attorney, Konstantin Zenov, Russian & Eurasian Patent Attorney, and Sergey Vasiliev, PhD, Senior Lawyer (all from Gorodissky & Partners, Moscow), attended Innovation & IP Forum in Paris. Yury Kuznetsov organized and successfully moderated Workshop “The IP Directors View: Building a Different Relationship with IP Agents” which gathered over 70 participants and caused a vivid discussion.

15.12.2017 // PERM

Nikita Maltsev, Senior Lawyer (Gorodissky & Partners, Perm), was awarded as a laureate in a “Debut” nomination of the XV Lawyers Club Awards. The Lawyers Club Awards is a significant reward of the legal community in Perm Region recognizing the social merit of the laureates, and one of the most festive and significant public events for Perm lawyers.



Photo: Nikita Maltsev



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