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LEGAL ADJUSTING OF RELATIONS OF CO-AUTHORSHIP UNDER THE LAWS OF UKRAINE AND OF THE RUSSIAN FEDERATION

Separate objects of copyright sufficiently often come forward as a result of collaboration of a few creators (authors). The proper legal adjusting of intellectual property relations, that arise up between the coauthors has not only important theoretical but also practical value, as allows to determine both the terms of collaboration of the coauthors and their mutual relations with the third persons in relation to disposing of intellectual property rights. In fact improper determination of the basic principles of the use of co-authorship the object on the stage of its creation subsequently results in numerous disputes between the coauthors, connected with giving permissions on the use of such objects to other persons.

The separation of the legal relationships as to the coauthors participation among other authorial legal relationships is conditioned by the features of their subject composition. One of the parts of such legal relationships is the coauthors or the coauthor, as the individuals who have the same rights on the same object of intellectual ownership right. The possibility of the use of intellectual property, object created by the coauthors, and the terms of such use depend on the type of co-authorship (separate, indivisible). However along with the features conditioned by the type of co-authorship, legal principles of authorial relations adjusting as to the coauthors participation depend on the grounds of their origin, subject composition.

With researching the relations of co-authorship the attention is mainly paid to the terms of creation of works by a few authors in the field of copyright and adjacent rights. However the general creative labor exists not only in the field of copyright. The objects of industrial property are often the object of general labor of a few inventors. Therefore the adjusting of co-authorship of relations has an important value both

in the field of copyright and in the field of industrial ownership right.

In Ukraine the relations of co-authorship are regulated by different normative-legal acts, in particular by the Laws of Ukraine «On Copyright and adjacent Rights», «On Protection of Rights to Inventions and Utility Models» etc.

In the Russian Federation the basic principles of co-authorship are determined in the Civil code of the Russian Federation.

Taking into account the importance of the proper relations adjusting, that arise up in the field of creation and the use of objects of intellectual ownership right realization of comparative analysis of the legislation of Ukraine and the Russian Federation on the rights that belong to the coauthors is actual.

The problem questions of co-authorship were investigated in the labours: V. A. Dozortsev, O. V. Zilinkova, M. Yo. Kirilova, S. M. Kleimenova, R. B. Shishka etc.

At the same time, the attention has been mainly paid to highlighting of separate aspects of co-authorship. Thus by the question of adjusting of co-authorship relations under the laws of the Russian Federation and the comparative analysis with adjustment of relevant relations under the legislation of Ukraine hasn't been highlighted widely enough.

The aim of the article is to determinate common and distinct provisions in the legal adjusting of relations of co-authorship under the legislation of Ukraine and the Russian Federation and the analysis of legislation and it's his application.

The Civil Code of Ukraine stipulates the general grounds of origin of co-authorship. Thus in accordance with article 436 of the Civil code of Ukraine a copyright work created in co-authorship belongs to the coauthors jointly, regardless of whether such work is one indivisible whole or compose of parts,

each of can have even self-importance. A part of the work created in co-authorship is recognized as having independent significance, if it can be used regardless of other parts of this work. Each of the co-authors retains its the copyright on the part of work, that has an independent significance.

The part third paragraph of the Article 436 of the Civil code of Ukraine stipulates that relations between the coauthors can be determined by an agreement. In case of absence of such an agreement the copyright on work comes true by all coauthors jointly.

To determine the co-authorship, and accordingly, the rights of authorship for individuals who participate the creation of creative output, certain terms are required:

1) there must be the creative result made by joint work of the coauthors, it must be a single unit, i.e. one can not exist without the parts as a whole;

2) there must be a common creative collaboration of authors (technical assistance is not co-authorship);

3) the result of creative intellectual work of the coauthors it must be objectively expressed in signs, sounds and in any other form that is possible to understand;

4) there must be an agreement on joint work;

5) at separate co-authorship each of the coauthors retains a copyright on the part, however it is just the result of co-creative activity;

6) co-authorship must be voluntary [1, p. 444].

Some scientists support the position according to which the origin of co-authorship at the creative revision of work is assumed. However this view seems to us wrong, as in this case you should talk about the creation of a new work. As an example, it is possible to bring a decision on the claim of the heirs of poet R. to R. and the authors of a popular musical comedy text the «Sevastopol waltz». A poet R. was the author of the known song the «Sevastopol waltz». A musical comedy was afterwards created under the same name, thus in the text there were used terms from a song. Heir R., based on this, required to admit R. by the coauthor of a musical comedy. Considering this case, the Supreme Court reasonably concluded, that in this case two creative independent works denied the claim.

Depending on the characteristics of work, as the final result of coauthors' work, they distinguish two types of co-authorship: separate and indivisible. The type of co-authorship affects the terms and condition of the use of work of intellectual ownership rights by each of the coauthors. The sign of indivisible co-authorship, that characterizes it, is the impossibility to select of part of every author, and, as a result, all the authors of such work have copyright

powers on the entire piece as a whole and on every part of it. The product in this case is an indivisible whole, when it is impossible to divide it not in physical sense, but in accordance with the positions of the Civil law [1, p. 118]. Such works are found in literature (for example, novels I. Ilf and E. Petrov), in painting (for example, a picture I. Repin and I. Aivazovsky «Pushkin in the Crimea»), in science (for example, a monograph of B. S. Antimonova and K. A. Fleyshts «Copyright»).

The terms of the work use depending on the type of the co-authorship defined by the Law of Ukraine «On copyright and Related rights» (p. 13). Thus, if a work created in the co-authorship forms one indissoluble unit, then none of the coauthors without sufficient grounds may not deny others permission to publish or otherwise use or work modification. If a work of in co-authorship consists of parts, each of which has independent significance, then each of the coauthors has right to use the part of work created by him in its sole discretion, unless otherwise provided by an agreement between the coauthors.

V. A. Dozortsev considers that creating work by joint creative labour of a few authors the main thing is not practical realization of joint work, but creation of a single work: these persons could work on work not only not jointly, but even without an agreement with each other, quite independently. It is important, that a single product was the result of the creative work of each of the coauthors, even though some of these are not aimed at creating a work in co-authorship [2, p. 50].

It should be noted that in practice a written agreement between the coauthors is not always concluded, although in future it can result in numerous disputes. First of all it concerns the disposal of property rights in a work created by the coauthors. In fact in the absence of agreements recorded in the contract, each of the coauthors begins to dispose his work, independently giving third parties the right to use, it without getting with the consent of other coauthors.

Here are the positions of scientists to conclude contracts between the coauthors:

Thus, M. Ya. Marked Kirilova noted that in a number of cases co-authorship can arise up in the absence of agreement. For example, co-authorship can be established in the judicial order, when though there was no prior consent, but in fact the work was the result of the creative activity of two or more persons.

E. P. Gavrilov said that co-authorship arises up from the creation of collective work. For the emergence of co-authorship the permission or agreement of the coauthors is not needed. He considers that

a conclusion of treaty between the coauthors about the use of the work is a necessary.

The fact that between the coauthors quite often there are disputes about the proper use of their work, testifies the existent judicial practice.

As stated in the news letter of the Supreme Economic Court of Ukraine on June, 30 in 2009 № 01-08/411/1 «On the practical Application by Economic Courts of law on the protection of intellectual property (based on cases heard in cassation by the Supreme Economic Court of Ukraine), by itself, the fact of belonging copyright of the work created in co-authorship, does not indicate all coauthors (article 13 of the Law of Ukraine «On Copyright and Related Rights) the insignificance of the transaction for further assignment of rights on work by one of the authors to other people [3].

Position of the Supreme Economic Court on the orders to a work created in co-authorship, is that each of the coauthors has a right on the discretion to use the part of work that has independent value, however disposing of work as a whole is stipulated by mutual consent of all coauthors. Thus, authorial agreement on the use of the work created in co-authorship, as well as an agreement on the transfer of the management of exclusive copyright property rights on joint work must be executed with all the coauthors of this work regardless of whether co-authorship is indivisible (when the object of their content can be personalized), or co-authorship can be divided into separate parts authorship of the work. Signing the agreement on the same order copyrights on joint work only one of authors is possible if the latter authorization from other coauthors is available [4].

Unlike Ukraine, the Russian Federation with the adoption of book 4 of the Civil Code, sanctified to the right of intellectual ownership, the majority of special laws that regulated the relations of intellectual property invalid. Including repealed the law on copyright and related rights. In this regard the main act, that regulates relations arising up between the coauthors, is the Civil Code of the Russian Federation.

In accordance with the Civil Code of the Russian Federation (article 1258) a work of in co-authorship is used by the coauthors jointly and the agreement between them provides otherwise. If such work constitutes an indivisible whole none of the coauthors may without sufficient grounds forbid the use of such work. Part of the work, the use of which may be independent of other parts, i.e. the part that has an independent significance can be used by its author at his the discretion, and the agreement between the coauthors provides otherwise [5].

Thus under the laws of the Russian Federation separate and indivisible co-authorship can be also distinguished.

In relation to separate co-authorship the following regulations operate: first, about the joint use of work as a whole, unless otherwise provided by the agreement of the parties. Secondly, each of the coauthors has the own discretion to use part of the work, that has an independent value and created only to them, that is if this part was the result only of his work (even if the other coauthors in any way gave him a «uncreative» assistance). That is these standards do not abolish each other, but are in the mutual complement, by setting to use both work as a whole and its separate parts taking into account separate character of the co-authorship. Thirdly, the agreement between the coauthors may provide other terms of the use of work as a whole and its separate parts. Thus, coauthors can authorize one of the coauthors to use the work created by their joint creative effort. Whether the coauthors may decide that one of them without the consent of other coauthors is not right to use the part that has independent value created [6].

In addition to the general principles for the creation and use of works by the coauthors, the Civil Code of the Russian Federation also establishes the right of the coauthors to protect of their rights. In accordance with p.4 article 1258 Code of each of the coauthors has a right to take measures in relation to protect their rights, including when the work created by the coauthors constitutes an indivisible whole.

Regarding the provisions of p. 4 article 1258 V. A. Khokhlov notes, that it is important to give an answer for a question, of how widely one should understand the expression «takes measures to protect their rights», in particular, it concerns violations of the exclusive rights of authors like relationship when filing a claim, as in case of a cash sum. If, for example, one of the coauthors got a sum by way of compensation for moral harm (Art 151, 1251, 1301 CC of the Russian Federation), he has received no obligation to pass to the coauthor half of it. And because in this way, that in this case his personal right is protected and that is why, the other coauthor can not consider an event as violation of own rights. Finally, nothing prevents the other coauthor from presenting an independent claim. Otherwise one should estimate the situation in case of violation of the right route, the amount of possible penalty is maximum, common to all the coauthors. In case of violation of the exclusive rights obtained by one of the coauthors the sum must be distributed in accordance with p. 3 article 1229 CC of the Russian Federation (i. e. share equally) [7, p. 169].

Commenting p. 4 article 1258 of the Civil Code of the Russian Federation, P. V. Stepanov notes, that this provision must be interpreted widely: each of the coauthors can protect the rights both in respect of the work as a whole and the part that he created and has independent significance (at separate co-authorship) [6].

A. S. Vasiliev on to p. 4 article 1258 of the Civil Code of the Russian Federation states that the application of the above provision it should be based on the following: in accordance with the rules of procedural law a person is may apply to the court to protect violated rights or legally protected interest, accordingly, one of the coauthors of the work created in separate co-authorship may not go to court to demand the protection of such a work, the author of witch he is not. In addition, with respect to moral rights one should assume that an author has the right to protect only the moral rights in relation to work, but in any way not unproperty rights of the other coauthor. If an author appeals to demand the protection of the infringed rights and it is established that his rights to corresponding offences have not been violated, then he should be dewed the claim as an improper plaintiff (for example, if at the publication of a work the name of the coauthor who is not a plaintiff in case has been distorted). In the protection of property rights the coauthors are so called family «the creditors», if one of the rights, foreseen by article 1270 CC of the Russian Federation is violated, one of the coauthors has a right to stop such violation regardless of the will of other coauthors. In each of these cases courts should discuss a question about involvement of all the coauthors to participate in the

case as a third party, if the later do not express a desire to act as co-plaintiffs [8].

Based on the above provisions we conclude that each of the coauthors has a right to protect his appropriate copyrights in the work in case of violation:

Firstly, by third parties (at the illegal use of work without the consent of other coauthors);

Secondly, by coauthors (granting the right to use the work without the consent of the coauthor, not an indication of a person as a coauthor etc.).

Thus, it should be taken into account, which rights of the coauthor have been violated because it affects not only methods of defense, that he may choose, but also basing on the provision of the Civil Code of the Russian Federation the need for distribution of the received consideration between other coauthors.

Thus under the laws of Ukraine and the Russian Federation there are two types of co-authorship (separate and indivisible), depending on what the terms of the collaborative work, and also disposing of copyrights, are determined by each of the coauthors. In addition, the Civil Code of the Russian Federation establishes the right of each of the coauthors to protect their rights. However, the analysis of legislation, methods of protection and consequences of such protection depend on many factors, in particular: method of violation of copyrights, the type of rights that affected the work, the work the rights on witch have been violated (a work as a whole or its part).

An agreement, to avoid disputes should be combed, between the coauthors in which the terms of work and its further use by each of the coauthors should be determined.

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SUMMARY

Ulyanova G.O., Kirilyuk A.V. Legal adjusting of relations of co-authorship under the laws of Ukraine and of the Russian Federation. — Article.

The article considers the terms of creation of works by the coauthors under the law of Ukraine and of the Russian Federation. The order of intellectual ownership rights on the works created by coauthors has been determined.

Keywords: co-authorship, coauthor, separate co-authorship, indivisible co-authorship.

