

Copyright Protection on YouTube and Instagram

Hanna V Kolisnykova^{1*}
Oksana V Lekhkar¹

¹Yaroslav Mudryi National Law University, Ukraine

Abstract

The topic of the research derives from the very rapid development of the information technology, which leads to the constant digitization of data and placement of the results of the person's creative activity on the Internet both directly - through personal web sites, and through the use of special platforms created for the rapid exchange of information and its maximum distribution. Another factor is the increase in number of lawsuits filed to obtain copyright protection through stopping the violation and compensating the losses incurred by users of the Instagram network and YouTube video hosting.

Keywords: Copyright, Copyright protection, Video sharing, Using networking service, Piracy, Infringement of copyright, Copyright license.

Introduction

In the modern era of globalization, the development of information technology becomes of particular importance, since it promotes global social integration, accelerates the exchange of information, and, on the other hand, requires the unified system of values platform development, when the interests of society will be ensured exclusively through the prism of the interests of each individual member of the community. One of the areas where copyright law is applicable is the activity on the Internet - a global information system of general access that is logically linked to the global address space and is based on Internet protocol defined by international standards [1].

According to the principles set by the World Intellectual Property Organization (WIPO), copyright law is usually understood as "the law protecting the right of any author to be recognized as creator, reproduce this work, distribute it or bring it to the general public in any way and means, as well as the exclusive right to grant permission to others to use the work in any manner" [2].

In an objective sense, copyright, as a sub-sector of intellectual property rights, is a civil law institute that regulates a certain external and internal affinity category of relations associated with the creation and use of works of literature, science, and art. In the subjective sense, copyright is a set of rights that belong to a particular author or his successors and other copyright subjects in connection with the creation and use of a work of science, literature and art [3].

The definition of objects of copyright by the Article 433 p.6 of the Civil Code of Ukraine also refers to works that have an electronic appearance [4].

Materials and Methods

Copyright in Ukraine is governed by the Civil Code of Ukraine and the Law of Ukraine "On Copyright and Related Rights." According to the recent additions, placing a work digitally on the Internet is considered

Article Information

Article Type: Opinion

Article Number: SJASR-172

Received Date: 09 September, 2018

Accepted Date: 20 September, 2018

Published Date: 26 September, 2018

***Corresponding author:** Dr. Hanna V Kolisnykova, Yaroslav Mudryi National Law University, Ukraine. Email: annakolisnikova@gmail.com

Citation: Kolisnykova HV, Lekhkar OV (2018) Copyright Protection on YouTube and Instagram. Sch J Appl Sci Res. Vol: 1, Issu: 6 (68-68).

Copyright: © 2018 Kolisnykova HV, et al. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

to be the publication of the work or its distribution and therefore requires the permission of the copyright owner. Placing copies of a work or a part thereof without the permission of the author is a violation of the Law and may be appealed in court with the claim for compensation for moral damage and material damage [5].

This research deals with the ways and limits of copyright protection on the Internet, in particular when using the service of the video hosting of YouTube and the social network Instagram. The purpose of the study is to improve the range of optimal measures aimed at the effective protection of the rights of the author of the creative product while using the video hosting service of YouTube, the social network Instagram and determining the criteria for the lawful use of copyrighted content without the consent of the subject of copyright.

Results and Discussion

The rights of the person who created the work as a result of his creative activity and for the purpose of distributing it using the Internet network, are subject to protection on a general basis.

However, this method of disseminating information stipulates the specific ways of protecting the rights of the subject of copyright. Protection is carried out in several stages: protection at the stage to the violation (preventive measures) and protection at the stage after the violation (search operation, intruder detection) [6].

The first step of the protection as the task of the applicable restrictions is to prevent the violation of the rights of the author by means of:

- Limited functionality - authors distribute programs that are unable to print documents or store them in computer memory;
- "Time bomb" - the author distributes a complete copyright object, but sets a date after which access to it will be impossible;
- Copy protection; the author limits the number of times copied;
- Cryptographic envelopes - the work is encrypted so it is only possible to access it with the key to the cipher;
- Contract-agreements "through-click" - concluded through Internet by the author granting the permission to use the works;
- Special precautions: preliminary publication of the material by traditional non-digital means, confirmation of the existence of the work on a certain date, notarization of the date of creation of the work, recording on an electronic medium and placing in a digital archive or web depository;
- Clearing centers - the author grants the center the right to license their rights to the work; the center accepts the payment from the user and transfers it to the copyright holder.
- At the second stage of copyright protection, the task of the

activities is to identify cases of their violation:

- Agents are computer programs that automatically perform predefined commands, for example, to search for counterfeit copies of works;
- Steganography - a process of concealing information in files and setting, for example, a "watermark" referring to the author of the work, which is proof of the authorship of this person regarding this work;
- "Lighthouse" is a special label that is placed in the product and works during unauthorized use, providing an opportunity to find the infringer;
- Use of codewords.

The peculiarities of platforms for disseminating information through the social network Instagram and video hosting YouTube determine the specific character of copyright infringements, and therefore require the development of adequate optimal protection measures. First, before becoming a user of these platforms, the person must join the specified community by recognizing and following the established rules of use of the service.

With the use of the service YouTube provides a list of works that are subject to copyright protection, namely: audiovisual works, TV shows, movies and online video; sound recordings and musical compositions; written works - lectures, articles, books, musical compositions; visual works

- Paintings, posters, announcements; video games and computer software; dramatic works - plays and musicals (Copyright on YouTube, 2018) [7].

Also, it should be noted that ideas, facts and intangible processes do not fall under copyright protection. In order to obtain the protection by copyright the work must be primarily original and placed on a physical medium.

Instagram, in its turn, is a social service for the exchange of photo and video files, which may also be complemented by publicly announced copyright texts.

The rules for joining these platforms indicate that under certain circumstances the user can use copyrighted work without violating the owner's rights. Under the YouTube terms, this can be done in two cases: upon obtaining permission from the right holder and with "honest use".

In the first case, the user must obtain the author's permission to use before downloading your content. The service automatically checks the content for copyright infringement (using the Google ID algorithm that was developed for YouTube - Content ID), detects violations and alerts the person about it. If the system has detected a violation, then in accordance with the established procedure, the person has the right to appeal, which should indicate the permission granted by the right holder, after which the system will flag the video as not infringing the copyright. Minor copyright violations result in a ban on monetization (remuneration for views) for this video. Systematic violations result in the final blocking of the account without the possibility of its restoration.

With “honest use” - the service specifies the period within which copyrighted materials under certain conditions can be used without the permission of the owner of these rights (YouTube Help, 2018) [8].

As a general rule, YouTube copyright is governed by the law of the host country from which the video was uploaded, but it also states that in the event of a conflict, the case will be dealt with by one of the US courts (YouTube Help, 2018) [8].

In the United States, while conducting a bona fide analysis, judges consider the following four factors in the context of each case.

- In the first place, this is the originality of the work on which the courts pay special attention, and also whether such use is “informational”. That is, the court establishes or changes such use of the original intention or content of the work or simply copies the original. The use of videos for commercial purposes is rarely considered fair, although it may be that the video is monetized and at the same time protected by the principle of fair use.
- The origin of the copyrighted work - the use of materials from original documentary works has a greater chance of being honest than using exclusively artistic works.
- The volume and significance of the used part of the work, as compared to the whole copyright works. Borrowing small pieces of material from the original work is more likely to be considered fair use than borrowing large parts. However, in some cases, even a small borrowing can violate the principle of fair use, if it is the very “essence” of the work.
- Implications of using a copyrighted work for a potential market or its available cost. Use that prevents the copyright owner from earning revenue from the original work is likely not fair use. In this case, courts can make exceptions, for example, for parodies.

YouTube service receives many requests for removal of video from the copyright holders. Sometimes these requests relate to videos that seem to be an obvious example of fair use. As noted in court judgments, before filing a video removal request, the copyright owner should check whether the use of his work in the video is in good faith. That is why there is a procedure for requesting a copyright holder asking the user to verify the alleged fairness of the content for which the removal request is required.

In exceptional cases, the service invites video authors to engage in a new initiative that protects the best examples of fair use of content on YouTube from copyright removal requests. As part of this initiative, YouTube will cover legal costs (up to \$ 1 million) for those authors whose videos fall under the fair use rule if a copyright infringement action has been filed on the basis of a removal request. It allows authors to protect the rights to their videos, and to all other consumers - to learn more about the meaning and limitations of the doctrine of fair use (YouTube Help, 2018) [8].

Piracy concerns not only the unauthorized use of video materials, but also photographic works that are an

independent object of copyright protection, and which users use the Instagram network.

The discovery of the use of photographs without the consent of the author on the Internet is rather difficult from a technical point of view, and the Instagram service emphasizes in its rules that it is allowed to publish only materials that do not violate the rights of any person to the result of intellectual and creative activity (In Germany photo of food on Instagram can be a violation, 2016) [9].

At present, the Instagram service offers the only effective mechanism that protects the interests of the author - the lack of technical ability to download a photo directly from the network, save this photo only in the Screenshot mode - a photo screen of the monitor with the image reproduced on it and indication of output data. However, the rights of those authors whose photos came to the Internet from other sources remain unprotected, since the Instagram network has no effective mechanisms for verifying the authorship of materials published by users.

Therefore, there is a general presumption that the author of the photograph is an individual with whose creative work it was created. It is prohibited to reproduce and modify a photographic work without the author’s consent in any case except in cases where it is necessary for educational purposes or in order to cover an important event, provided that the author of the work and the source of his publication will be indicated (Law of Ukraine “On Copyright and Related Rights”, 2001) [10].

Unlike photos distributed on the Desktop, and for which there are currently no effective technical verification algorithms, video files that are distributed by this network have recently received additional protection. The social network Facebook that owns the service Instagram has launched a tool called “Rights Manager”, which helps content custodians deal with the problem of free download. The new tool allows video authors to set a set of parameters that prevent theft of content from infringing copyright and its placement on other sites (How does Facebook protect copyright and trademark rights, 2018) [11].

Today, Facebook’s business pages and celebrities can freely use videos from other pages to build their audience. It really hurts the creators of such videos. In August last year, Facebook said they were going to deal with this problem. As a result of the application, the “Rights Manager” tool, which is somewhat similar to the Content ID system in the YouTube service, was developed.

In addition, attention should be paid to multi-dimensional copyright relationships when using the Workbook service. On the one hand, Instagram protects the rights of the author in relations with other persons - network users, but on the other side, there is a rule that all users of the service join at the registration on the network, according to which each user of the service Instagram provides the latter with a non-exclusive license to use the entire content, which is published on the network, including outside of the service with the right to transfer this right to third parties, on terms of royalty and for the whole term of copyright (Instagram:

Terms of Use,2018) [12].

Recently, the social network Instagram is trying to move away from the role of an arbitrator in disputed copyright issues between users and stresses the need for a written permission to use a work (license) from the author before publishing inappropriate material (YouTube Help,2018) [8].

As with the analysis of violations in the YouTube service, cases of fair use of materials in Instagram, which are almost identical and which are also enshrined in the Terms of Service, are similarly fixed. The Network establishes a procedure for challenging the illegal use of works without the consent of the copyright holder by filling out a special form placed on the specified platform. The Instagram administration receives a copyright infringement notice and immediately or after some time after the check it removes the post for which the complaint was received and sends a message with the name of the real author of the photo and its email address. In the future the user can contact the owner of the photo and solve all the necessary issues. If there are a few complaints about non-compliance with a single unscrupulous user, his account may be blocked. Complaints may also apply to the video content and even the music used in this video (Instagram: Terms of Use, 2018) [12].

Conclusion

Summing up, it can be noted that the protection of copyright on the Internet when using special platforms for the exchange of information is a complex task that can only be solved by combining effective technical and legal instruments.

First and foremost, it requires the development of special functional programs for tracking maliciously used content, its rapid removal and blocking of offender accounts; and, in addition, the introduction of legal procedures for the rapid processing of complaints of copyright infringement and appeals against them, the definition of clear criteria for the lawful use of the work without the consent of the author.

A further study in a separate research requires the protection of trademark rights, especially in view of the increase in the number of sales using the Internet network, in particular, it concerns counterfeit goods (Instagram: Terms of Use,2018) [12] as well as the ratio of the copyright of the owner of the photo and copyright to the object depicted in photo (Recommendations on ensuring the legitimacy of creation and use of photographic works, 2018) [13].

The following conclusions can be drawn based on the analytical research conducted:

- means of copyright protection on the Internet are divided

into those aimed at preventing copyright infringement and those aimed at finding violations;

- Under certain circumstances it is possible to use a copyrighted work without violating the owner's rights - this can be done in two cases: upon obtaining permission from the rights holder and with "fair use";
- Four criteria for fair use: the originality of a new work, the origin of a copyrighted work, the volume and significance of the used part, as compared to all copyrighted works, the effects of the use of a potential market or the value of a copyrighted work;
- YouTube and Instagram services provide algorithms in their systems capable of detecting a song or video the user does not have rights for; there are no such algorithms for photographs;
- copyright is considered in the context of "the author - other users", "the author - the network of Instagram", "the author - the subject, depicted in the photo \ video", "the author - the author who has the rights to the object, shown in the photo \ video";
- Instagram protects users' copyright by responding to complaints and blocking certain content in their account or blocking their entire account.

References

1. <http://zakon4.rada.gov.ua/laws/show/1280-15>
2. WIPO-Administered Treaties (1886) Bern Convention on the Protection of Literary and Artistic Works. Geneva: WIPO / No. 287 (R).
3. Shishka RB (2004) Protection of intellectual property rights: the copyright-law aspect. -the author's abstract of the doctoral dissertation, University of Ukraine.
4. <http://zakon3.rada.gov.ua/laws/show/435-15>
5. Raycheva D (2015) Protection of copyright in the Internet - access to the resource.
6. Rymarenko IV (2015) Protection of Australian rights and works hosted on the Internet - access mode.
7. <https://www.youtube.com/yt/about/copyright/#support-and-troubleshooting>
8. <https://www.youtube.com/>
9. https://www.anwalt.de/rechtstipps/foodporn-geniesst-das-essen-urheberrechtsschutz_072037.html
10. <http://zakon5.rada.gov.ua/laws/show/3792-12>
11. <https://kodex.ua/ru/news/113-yak-facebook-zahischae-avtorski-prava-ta-prava-na-torgovelnu-mark>
12. <https://r-facebook.com/help/instagram/126382350847838?helpref=related&ref=related>
13. <http://www.me.gov.ua/Documents/Print?lang=uk-UA&id=33cec514-d70e-4df5-adbc-c9fba22daea8>