

дату укладання договору прострочених зобов'язань щодо повернення (сплати) коштів або позовів про їх стягнення.

Література

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Smirnov O.G., judge,
Economic Court of the Zaporizhzhia region, Zaporizhzhia, Ukraine

ENTITIES “RIGHTS TO” TRADE SECRETS: PROBLEM ISSUES

It should be noted right away that the term “right to” trade secret is used by the author only as a conditional, which is not an exact scientific formulation, but actually represents “right of access” to trade secret. Since the meaning of the term “right of access” in relation to the specified object more accurately corresponds to both the physical nature of the content of “information as such” and the legal nature of confidential information in the form of a trade secret. Also, the legislator in the Civil Code of Ukraine gives an idea of the subject of commercial secrets as a person who legally controls such information (Article 505 of the Civil Code of Ukraine).

At the same time, the current civil legislation of Ukraine does not establish direct requirements for a person who legally controls a trade secret. But based on the analysis of the essence of the actual monopoly in relation to the specified object, it is possible to identify some requirements that the entity must meet.

Therefore, the entity to which a commercial secret may belong has a number of essential features, which are primarily determined by the specific nature of these objects. These features depend on the range of subjects, the permissible plurality of persons who legally control the trade secret and the absence of an “author”. It is implied that in relation to such an atypical object of civil law, which is a commercial secret, the right of authorship, that is, a non-property right, cannot arise. Personal non-property rights can be associated only with the name of the subject of entrepreneurial activity (legal entity), they are

related only to the circulation of property in general, but not to the commercial secret itself.

A person who legally controls a trade secret can only have a de facto monopoly over it (the right to provide access to a trade secret; to allow access to such information, to learn its content; to prohibit unlawful access, to prevent the unlawful disclosure, collection or use of a trade secret, etc.). The property “rights to” a commercial secret belong to the person who has legally designated the information as a commercial secret, unless otherwise stipulated by the contract (Article 506 of the Civil Code of Ukraine).

Accordingly, the subjects of the “right to” a trade secret can be both physical and legal entities. We are especially interested in the latter.

A legal entity is an organization created and registered in accordance with the procedure established by law (Clause 1, Article 80 of the Civil Code of Ukraine). These can be commercial organizations, public and charitable organizations.

Legal entities can be created in the form of companies, institutions and in other forms established by law (Clause 1, Article 83 of the Civil Code of Ukraine). Further, Article 83 of the Civil Code of Ukraine divides all partnerships into business and non-business. The basis of such a division is the purpose of the company’s activities.

Entrepreneurial societies carry out activities with the aim of obtaining profit and its subsequent distribution among participants, while non-entrepreneurial societies do not aim to obtain profit and distribute it.

Of course, more often a commercial secret will arise in the course of the activities of a commercial organization. Therefore, the subjects of the “right to” commercial secrets are primarily those of them that are related to commercial organizations. These are business partnerships (full partnership, limited partnership, limited or additional liability company, joint-stock company), production cooperatives, state and municipal unitary enterprises.

However, a legal entity – a non-profit organization – can also legally control a trade secret. Legal entities that are non-profit organizations (consumer cooperatives, social and religious organizations (associations), institutions, charitable and other foundations) can legally control trade secrets when it comes to information related to their authorized business activities. In the course of their activities, they can acquire knowledge that is of interest to other persons, they will be able to provide access to relevant information to these persons, especially since commercial activities are not prohibited for non-commercial organizations.

The activities of non-commercial legal entities are subject to special “control” by society. Despite the fact that non-entrepreneurial societies are allowed by law to carry out entrepreneurial activities, at the same time, their opportunities to carry out such activities are very limited. Such circumstances

limit the rights of a non-entrepreneurial company when classifying some information as confidential (commercial secret), at the same time, the same information of an entrepreneurial company can be classified as confidential information and protected in the commercial secret regime.

Non-profit organizations can be created to achieve social, charitable, cultural, educational, scientific and management goals, with the aim of protecting the health of citizens, developing physical culture and sports, managing the spiritual and other non-material needs of citizens, protecting the rights and legitimate interests of citizens and organizations, resolving disputes and conflicts, providing legal assistance, as well as for other purposes aimed at achieving public benefits.

Non-profit organizations, together with their main activity, may carry out entrepreneurial activities, unless otherwise established by law and if this activity corresponds to the purpose for which they were created and contributes to its achievement. This activity is recognized as the production of goods and services that brings profit and meets the goals of creating a non-commercial organization.

In the event of the termination of a legal entity as a result of the transfer of all its property, rights and obligations to other legal entities – successors (merger, merger, division, transformation) or as a result of the liquidation of a legal entity, it is necessary to resolve the issue of the regime of access to confidential information (trade secret). This will serve as an additional guarantee of compliance with the rights and legally protected interests of the counterparties of the legal entity being reorganized or liquidated, who have entered into an agreement on the use of such information, for example, "mixed" license agreements.

When liquidating a legal entity, the liquidation commission must decide on the procedure for accessing trade secrets.

It should be noted that any person (individual or legal entity) who has legitimately obtained confidential information (trade secret) can legally control it, and therefore can set the regime of “accessibility” or “inaccessibility” in relation to it.

A natural person who is not an individual entrepreneur can also legally control a trade secret. Such a person may legitimately acquire a “right of access” to the relevant confidential information. For example, a separate technical solution that was invented by another person and is protected as a trade secret can be used outside the framework of entrepreneurial activity. If an individual wishes to enter into a license agreement in order to acquire the ability to use this technical solution (for example, to repair his home), there is no reason to deny him from entering into such an agreement.

Along with citizens of Ukraine and domestic legal entities, foreign citizens and stateless persons may exercise a legally protected interest in trade secrets.

In relation to them, the general rules applicable in this region on the territory of Ukraine apply without any exceptions. That is, the current legislation does not establish any special restrictions on obtaining access and the ability to legally control trade secrets for foreign citizens, as well as foreign legal entities and stateless persons. They enjoy the same rights and on the same grounds as citizens of Ukraine and legal entities.

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Sokolova V.V., judge,
Kyiv Court of Appeal, Kyiv, Ukraine

THE PROBLEM OF LEGAL PROTECTION OF SOME ATYPICAL COPYRIGHT OBJECTS

In today's world, it is impossible to imagine any sphere of human life without the influence of information technologies. Various computer programs and databases are being created more and more often, including at the state level, goods are traded through the Internet, works are published, and in general, work and leisure of a person are organized.

In this regard, it is considered necessary to pay more attention to the issue of copyright enforcement of such objects as computer programs, databases, websites, etc. In addition, these issues are already before the courts, both at the national level and at the international level, in particular, the European Union (EU). Therefore, by analyzing the practice of the European Court of Justice and the practice of national courts, preliminary conclusions can be drawn.

A computer program itself is a complex object of copyright. As a general rule, computer programs are protected as literary works under the Berne Convention. The object and source codes of a computer program are a form of its expression and are therefore subject to legal protection. That is, a computer program in any form of expression that allows reproduction in various programming languages is subject to legal protection.

As you know, a computer program is a set of instructions, expressed in words, numbers, codes, diagrams or in any other form suitable for reading by a computer, which causes it to act to achieve a certain goal or result. That is, a computer program includes a number of preparatory materials and developments that lead to its creation.

But copyright does not extend to ideas, logic, processes, systems, methods of operation, mathematical concepts, even if a computer program is based on them. The functionality of a computer program, the programming language, the format of data files used in it to perform certain functions are also not a form of expression of a computer program, and therefore cannot be protected by