

SOME PROBLEM ASPECTS OF THE LEGAL NATURE OF DOMAIN NAMES

In the modern information age, innovations and the latest technologies, in particular, telecommunications, play an increasingly important role in the world economy. A few decades ago, the main problem of communication was the speed of information transfer. So, to transfer data from one part of the world to another, it was necessary to spend several days, or even months. In today's conditions, such a problem does not exist. Using the Internet, the information transfer operation takes a fraction of a second. Instead, against the background of the absence of communication borders, one of the problems of the modern world of information technologies is orientation in the Internet space, because sometimes finding the necessary information on the Internet is not such a simple matter.

TCP/IP (Transmission Control Protocol/Internet Protocol) technology is one of the technologies on the basis of which data is transmitted on the Internet. Network addresses (IP addresses) and symbolic (domain) names are used to identify network interfaces in the TCP/IP stack. An IP address is the address of a computer or other node on the network that uniquely identifies it.

Currently, the main percentage of IP addresses exist in the IPv4 format and are a 32-bit number written as four decimal numbers with a value between 0 and 255. A computer's IP address in IPv4 format might look like this: «185.13.5.43». It is clear that there can be quite a lot of variations of IP addresses, but not more than 4 billion 294 million 967 thousand 296 (2 to the 32nd power).

With the increase in the number of Internet users, there was a need to expand the address space, in connection with which IP addresses in the IPv6 format are introduced, which, unlike IP addresses in the IPv4 format, are represented in the form of a 128-bit number ($3,4 \times 10^{38}$ addresses), which written as eight groups of four hexadecimal digits, for example «2001:0db8:11a3:09d7:1f34:8a2e:07a0:765d».

In the eighties, inventors developed the Domain Name System (DNS), which automatically resolves difficult-to-perceive IP addresses into understandable verbal (symbolic) designations - domain names - to simplify remembering addresses and finding the necessary resources on the Internet. So, for example, the IP address «185.13.5.43» corresponds to the domain name «www.ndiiv.org.ua».

At the legislative level in Ukraine, a domain name is defined as a name used to address computers and resources on the Internet [1]. At the same time, the legal regulation of the domain name is almost limited to the definition of the latter and separate mentions in the legislation regarding the objects of other legal relations. Such a situation contributes to the emergence of conflicts between owners of domain names and objects of intellectual property rights that may be contained in domain names and requires regulation at the legislative level.

In modern society, there are legal relations regarding the acquisition, ownership, and termination of rights to domain names. Due to the absence in most countries of the world, in particular in Ukraine, of special legal norms that would regulate these legal relations, in order to resolve the issue of the application of certain legal norms regarding domain names, the study of the legal nature of the latter acquires great importance. In turn, in order to clarify the legal nature of domain names, it is necessary to identify their main, essential features and to establish the connection of the latter with the relevant legal norms.

In legal doctrine, it is customary to attribute domain names to objects of civil rights. However, the opinion of scientists regarding the legal nature of domain names is not unanimous. Some scientists believe that domain names do not contain the properties inherent in objects of intellectual property rights and equate them with ordinary details used in document circulation. Others insist on classifying the domain name as an object of intellectual property rights, while operating, in particular, on the properties of the domain name to transform into means of individualization and perform their separate functions.

Depending on the content load of the domain name and the use of intellectual property rights in it, it can perform both the function of identifying information resources (as specified in the legislation), and the function of identifying legal entities and individuals, goods or services on the Internet. In the latter case, in our opinion, it is not excluded that domain names are objects of intellectual property rights, in particular, means of individualization.

Since in Ukraine the domain name does not have stable legal protection and legislative regulation, in order to highlight certain aspects of the legal nature of domain names, it is necessary to turn to countries with European experience. Thus, in December 2017, the Supreme Court of Sweden established that a domain name is property, the right to which can be lost [2].

The case concerned the seizure under the Swedish Copyright Act of the domain names “thepiratebay.se” and “piratebay.se” from their owners, who, as a result of a high-profile trial in 2009–2010, were sentenced to prison and pay huge fines for infringement copyright.

Since the sites continued to operate despite the conviction, the prosecutor filed a lawsuit to confiscate the domain names. On appeal, the Swedish

Supreme Court, referring to legal doctrine and international case law, decided that domain names are covered by the property regime, as the ownership of a domain name can be an economically valuable asset, has the same functions as trademarks and can be alienated.

Summarizing the above, the following conclusions can be reached.

A domain name can perform separate functions of objects of intellectual property rights on the Internet, in particular, means of individualization.

The list of objects of intellectual property rights in the Civil Code of Ukraine is not exhaustive, therefore, under certain conditions, domain names cannot be excluded as objects of intellectual property rights.

There is no unanimous opinion regarding the definition of the place of domain names among objects of civil rights, and therefore the legal nature of domain names requires further research, and the legislation of Ukraine – systemic changes regarding the definition of the legal regime of domain names.

References

1. On protection of rights to signs for goods and services: Law of Ukraine N 3689-XII dated 15.12.1993. URL: <http://zakon0.rada.gov.ua/laws/show/3689-12>.

2. Brann. The Swedish Supreme Court rules that The Pirate Bay domain name is property that can be forfeited. URL: <https://www.brann.se/en/2018/01/15/the-swedish-supreme-court-rules-that-the-pirate-bay-domain-name-is-property-that-can-be-forfeited/>.

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ПРО БЕЗПІДСТАВНІСТЬ СКАСУВАННЯ ТВОРЧИХ ВІДПУСТОК

27 грудня 2022 року було зареєстровано законороект № 8313 «Про внесення змін до деяких законодавчих актів України щодо впорядкування надання та використання відпусток, а також інших питань» [1] (далі – Проєкт 8313), положення якого, на нашу думку, мають дискусійний характер. Аналіз Проєкту 8313 дозволяє автору ствердитися у думці, що вкотре здійснена спроба вирішити питання співвідношення (переваги) ринкових і соціальних засад у регулюванні трудових відносин не на користь останніх. Так, однією з новацій зазначеного законопроєкту є виключення норм щодо творчих відпусток. Варто зауважити, що автори Проєкту 8313 не знайшли за необхідне окремо обґрунтувати доцільність та необхідність пропонуваного виключення. З пояснювальної записки до законопроєкту, у якій нормотворці доводять необхідність його прийняття,