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FEATURES OF INHERITANCE OF COPYRIGHT OBJECTS

Questions regarding the inheritance of intellectual property rights in general and copyrights, in particular, are quite problematic. They are not adequately reflected neither in the current civil legislation, nor in generalizations and explanations of judicial bodies, nor in scientific literature. Perhaps this is due to the lack of clear provisions regarding the order of inheritance of these rights in the Civil Code of Ukraine and special laws in the field of copyright protection, in particular, in the Law of Ukraine "On Copyright and Related Rights".

Legal relations regarding the inheritance of copyright and related rights are subject to the general provisions on inheritance, taking into account their specific features. Thus, a necessary condition for the heirs to exercise their rights is a clear legislative regulation of the procedure for their realization. As you know, the implementation of inheritance rights includes several stages: a) discovery of inheritance; b) acceptance of inheritance; c) division of inheritance; d) execution of a certificate of the right to inheritance.

The results of intellectual and creative activity in the field of copyright and related rights are special objects of legal succession. They have specific features that distinguish them from other objects of inheritance: intangible character; are not subject to division and are carried out jointly by the heirs; operate within the term established by law. At the same time, one should distinguish objects of copyright and related rights and intellectual property as an object of inheritance.

One of the problems is that the Civil Code of Ukraine does not enshrine such a method of disposing of property rights of intellectual property as inheritance, so it is necessary to refer to a whole series of subordinate legal acts.

The peculiarity of the inheritance of copyright and related rights is that the inheritance includes only intellectual property rights to works in the field of science, literature and art, as well as property rights to performances, phonograms, videograms and programs (broadcasts) of broadcasting organizations, which are valid at the time of opening of inheritance. Therefore, it is not the object of intellectual property right itself (copyright or related rights) that is inherited, but a set of exclusive property rights to it.

Thus, property rights of intellectual property include: 1) the right to use the object of intellectual property rights; 2) the exclusive right to allow the use of the object of intellectual property rights; 3) the exclusive right to prevent the improper use of the object of intellectual property rights, including prohibiting such use; 4) other intellectual property rights established by law (Article 424 of the Civil Code of Ukraine).

Personal non-property intellectual property rights are not part of the inheritance. At the same time, protection of such rights is necessary even after the death of the creator. For this purpose, civil legislation establishes the indefinite nature of the protection of personal non-property rights to the results of intellectual and creative activity.

Thus, in copyright, the author can directly indicate the person to whom he entrusts the protection of personal non-property rights, and these powers of protection of the author's interests will be exercised throughout his life. In the absence of an indication of such a person, the protection of the author's rights is carried out by his heirs or a specially authorized state body (in case there are no heirs or when the copyright has terminated).

At the same time, part 2 of Article 29 of the Law of Ukraine "On Copyright and Related Rights" indicates that the heirs have the right to protect the authorship of the work and oppose any change of the work, as well as any other encroachment on the work that may cause damage to honor and reputation the author. According to paragraph 4 of part 1 of article 14 of the Law of Ukraine "On Copyright and Related Rights", actions of this nature are the personal non-property right of the author.

The protection of the authorship of the work by the testator gives the heirs the corresponding rights as his successors, and therefore any other encroachment on the work or in honor of the author will also violate their rights, since it will cause damage to the further publication of the work, and possibly also to the own name of the heirs, who can bear the same surname as the testator, and cause moral damage due to family relationships, etc.

At the same time, the heirs cannot appropriate the authorship of the testator, that is, mark themselves as authors and perform other actions of a personal nature.

A peculiarity of the inheritance of copyright is a kind of accompaniment of the right to use the work to the rights connected with ensuring the personal non-property rights of the author. The heir also decides the issue of publicizing the work, protects the author's reputation.

Another feature of copyright inheritance as an object of inheritance is that it is acquired by the heir for a certain period of time (Article 28 of the Law of Ukraine "On Copyright and Related Rights"), unlike other objects of inheritance. Therefore, the heir always acquires this right in a smaller volume than the author had: the right of the heir is always limited in time (which is not the case, for example, with the right of ownership).

It is also impossible to avoid such a problematic issue as the inheritance of copyrights for co-authored works. They are inherited only after the death of the last of the co-authors. The exception is works for which separate co-authorship is established. In this case, the rights of co-authors are inherited independently for each of them. However, it should be noted that today the issues of

inheritance of copyright for a work created in co-authorship are almost not regulated by law. If the deceased co-author has heirs, then the property rights to the work created in co-authorship will pass to the heirs of the co-author and will belong to the remaining co-authors jointly.

However, a situation may arise when such a transfer of rights will be impossible (in the case of the absence of an heir, deprivation of the right to inherit, refusal of inheritance, etc.).

This issue is particularly important when paying royalties to surviving co-authors. It is also not clear what happens to the fate of the remuneration of the deceased co-author. Will the shares of co-authors increase due to the share of the deceased co-author. Unfortunately, until now this issue remains open and has not been settled by the legislator.

In the legal literature, there is an opinion that the copyright of a co-author who has no heirs (both in the case of divisible and indivisible co-authorship) ceases and does not pass to other heirs. Obviously, one should agree with this opinion, since the increase of the share of each of the co-authors cannot be carried out on the basis of the rule on the increase of the share – the co-authors are not heirs.

Another problem arises with respect to the copyright of works published after the death of the author. Thus, Part 7 of Article 28 of the Law of Ukraine "On Copyright and Related Rights" provides for the case that after the death of the author, the work may be published for the first time within 30 years after the death of the author, and therefore the right to publish such a work will pass to the heirs and will be valid for 70 years from the date of its lawful publication.

The illogicality of the impossibility of publishing the author's work, which was not published during his lifetime, is also due to the interests of society, the development of culture and science, and the interests of the author himself and his descendants. It is clear that such publications should be protected from falsification, when, in pursuit of profit or sensation, they try to give authorship to a famous author for those works that he did not create.

In this regard, it is proposed to use the notarial process more widely, as a real obstacle to this. That is, the procedural means of taking measures for the protection of inherited property, in particular, the description of inherited property, will testify to the existence of relevant manuscripts or the finding of relevant information on other material media.

As for other objects of intellectual property law, the general provisions on inheritance are also applied to them, taking into account their peculiarities. The rights to obtain the corresponding security document (patent or certificate) and rights of a property nature are inherited – the exclusive right to use the corresponding object of industrial property rights (patent rights); means of individualization of participants in civil circulation, their goods and services; other (atypical) objects of intellectual property law.

Yes, unlike copyrights, patent rights are subject to registration, so they have their own specifics of inheritance. They are directly included in the inheritance, and therefore the heirs can apply for registration of the corresponding object (invention, utility model, industrial design).

The next feature of the inheritance of patent rights is the transfer of rights to the heirs only within the remaining term of the patent. Inheritance can be carried out more than once (if the heir subsequently dies), but in this case such a transfer of rights will be possible only during the validity of the patent for the relevant object (invention, utility model, industrial design).

Therefore, in case of inheritance of patent rights, the right to submit an application will be exercised by the heir, and the testator (if the property is transferred from the inventor, author) will be indicated in the application as the author of the corresponding object (invention, utility model, industrial design). Also, the heir can assign the right to submit an application to another person.

The same rules apply to other results of intellectual and creative activity.

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СПРАВЕДЛИВІСТЬ ЯК ОСНОВА ПРАВА

Справедливість є особливим феноменом, який постійно присутній в суспільному житті, нерозривно пов’язаний з людиною та її реальними можливостями самореалізації. Поняття справедливості досліджується представниками багатьох наук (філософія, право, соціологія, психологія, педагогіка та ін.) та має доволі тривалу історію. Міждисциплінарність та глибокий внутрішній потенціал цього поняття означає, що воно розуміється по-різному і не може бути однозначно визначено у прийнятній для всіх формі. Як зазначає В. Левкулич, «справедливість належить до переліку тих небагатьох факторів, які впродовж тисячоліть не втрачають своєї регулятивної значущості для життєдіяльності практично всіх культур і народів. Це зумовлено насамперед неперервною соціокультурною цінністю справедливості [1, с. 2].

Поняття справедливості аналізували великі філософи, досліджували римські юристи та теоретики права, а сформульовані ними визначення та виділені категорії та форми справедливості залишаються дійсними, їхня цінність не втрачається, про що свідчать численні посилання на їхні думки та висновки, які мають тисячолітню історію. Позачасовість висловлювань