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THEORETICAL AND LEGAL DEFINITION OF CAMCORDING, CARDSHARING AND PIRACY AS SPECIAL TYPES OF INFRINGEMENTS OF COPYRIGHT AND RELATED RIGHTS

Анотація

У статті аналізуються поняття «камкординг», «кардшейрінг» та «піратство», які на сьогодні займають вагоме місце в структурі прав інтелектуальної власності. Визначається, що поняття камкординг (англ. camcording) походить від слова камкордер (англ. Camcorder), що означає «відеокамера з вбудованим відеомagnetофоном». Також, досліджено поняття кардшейрінгу, яке, як стає зрозумілим, відбувається у разі усунення або деактивації технічних засобів захисту, які забезпечують доступ до відповідної програми організації мовлення за допомогою паролю. І доведено, що по суті кардшейрінг є різновидом обходу технічних засобів захисту – пристроїв та/або розробок, призначених для створення технологічної перешкоди порушенню авторського права і/або суміжних прав при сприйнятті та/або копіюванні захищених (закодованих) записів у фонограмах (відеограмах) і передачах організацій мовлення чи для контролю доступу до використання об'єктів авторського права і суміжних прав. Розглянуто поняття «піратство», яке по своїй суті ототожнюється з контрафакцією, але істотно відрізняється.

Ключові слова: камкординг, кардшейрінг, піратство, контрафакція, технічні засоби захисту, фонограми, відеограми, передачі організацій мовлення, організації мовлення.

Annotation

The article analyzes the concepts of "camcording", "cardsharing" and "piracy", which currently occupy an important place in the structure of intellectual property rights. It is defined that the concept of camcording comes from the word camcorder, which means

"camera with built-in VCR". Precisely because such a camera can be easily brought to the cinema and unnoticed to make a video, the process of recording the film during its screening and began to be called camcording. It is determined that it is not enough to simply ban camcording, such a ban will not be effective without everyone being aware of what camcording is, why it is banned, and the responsibility for its commission. Therefore, general awareness can be spread through social advertising, pre-movie trailers, movie ads and other public places. Also, the concept of cardsharing is explored, which, as it becomes clear, occurs in the case of removal or deactivation of technical means of protection that provide access to the appropriate program of speech broadcasting with a password. If the password is disclosed, unscrupulous persons who do not belong to the rights holders illegally gain access to the broadcasting program. And it is proved that in fact cardsharing is a kind of circumvention of technical means of protection - devices and / or developments designed to create a technological barrier to infringement of copyright and / or related rights in the perception and / or copying of protected (encrypted) records in phonograms (videos) and broadcasts or to control access to the use of copyright and related rights. The concept of "piracy" is considered, which in essence is identified with counterfeiting, but differs significantly.

In summary, the author proposes to regulate the conceptual apparatus of "camcording", "cardsharing" and "piracy", by clarifying and agreeing among themselves. Also, due to the lack of public awareness of terminology, it is necessary to conduct large-scale work to spread awareness among citizens about such violations of Ukrainian law on copyright and related rights, as well as their consequences.

Key words: *camcording, cardsharing, piracy, counterfeiting, technical means of protection, phonograms, videograms, broadcasts of broadcasting organizations, broadcasting organizations.*

Camcording, cardsharing and piracy currently occupy an important place in the structure of intellectual property rights, as the field of cinema is growing every year, and violations from unscrupulous viewers in the form of piracy (illegal video recording) do not disappear.

Until recently, these concepts did not contain clear definitions, and their definitions were proposed by scientists at their own discretion. Also, the term "camcording" was mentioned only in the Draft Law on Amendments to Certain Legislative Acts of Ukraine on the Regulation of Copyright and Related Rights № 6523 of 15.06.2010 [1], which was never adopted, although it was adopted. in the first reading. And after the entry into force of the Law of Ukraine "On State Support of Cinematography in Ukraine" from 23.03.2017 № 1977-VIII the list of types of infringements of copyright and related rights was expanded and new concepts such as camcording and cardsharing in the Law of Ukraine "On Copyright and Related Rights". [2] Also, with the introduction of these concepts, the term "piracy" was expanded. Of course, these concepts have become new to national law, and therefore insufficiently studied and researched, so we set ourselves the goal of researching these legal concepts, as well as their practical application in the modern legal field.

In general, the issue of legal regulation of intellectual property rights has been studied by many leading scholars, among them O. Pidpryor, O. Sviatotsky, R. Stefanchuk, O. Kharitonov, S. Kharitonov, A. Stefan and others.

According to A. Volos, the terms "camcording" and "cardsharing" are borrowed, not common in general everyday communication or professional communication of lawyers. Moreover, they are rare in the legislation of other states. [3]

In general, the concept of camcording comes from the word camcorder, which means "camcorder with built-in VCR". Precisely because such a camera can be easily brought to the cinema and unnoticed to make a video, the process of recording the film during its screening and began to be called camcording.

As stated in Art. 1 of the Law of Ukraine "On Copyright and Related Rights", as well as in Art. 17 of the Law of Ukraine "On State Support of Cinematography in Ukraine", **camcording** - video recording of an audiovisual work during its public demonstration in cinemas, other cinemas to persons who are in the same room where such a public demonstration, for any purpose without permission the subject of copyright or related rights.

That is, with the help of **camcording**, a copy of the work is created with a video recording of a public demonstration of this work. As such video is not authorized by the copyright holder, the relevant copy of the work is counterfeit and reproduced in violation of copyright.

It follows that a **camcorder** is a person who illegally uses video - photo recorders to play a film during its demonstration.

Camcording is usually done for economic gain - copies of films are quickly distributed on the Internet for mass reproduction around the world. This not only causes significant damage to the creators of audiovisual works (in the form of lost profits), but also affects the state's economy, because the budget is not replenished by taxes on legal sales. In addition, organized crime groups are often involved in the distribution of illegal video footage. [3]

It becomes clear that the motivation of the legislator in including the term "camcording" in the legislation of Ukraine has a very objective explanation. Of course, making changes to the legislation alone is not enough. The new norms must have a clear and effective mechanism for their implementation and effective deterrents to violating the law. Most citizens do not understand how negatively camcording affects filmmakers, as well as related industries (cinemas, distributors, advertising agencies), camcording also affects jobs in Ukraine. Moreover, the general public does not know what the term "camcording" means.

According to many people, the unauthorized recording of films in the cinema is their "job". Such activities reduce the number of people who watch movies in cinemas, and thus damage the owner of the rights to this audiovisual work. Such a recording of films does not bring the audience the expected satisfaction, as it is usually of very low quality. In this regard, we can say that camcording is a negative phenomenon and does not deserve to exist [4].

Given the above, it is clear that it is not enough to simply ban camcording, such a ban will not be effective without everyone being aware of what camcording is, why it is banned, and the responsibility for its commission. General awareness can be spread through social advertising, pre-movie trailers, movie ads and other public places.

Cardsharing, in turn, is the provision in any form and in any way of access to the program (transmission) of the broadcasting organization, access to which is restricted by the subject of copyright and (or) related rights using technical means of protection

(subscriber card, code, etc.), bypassing such technical means of protection, as a result of which the specified program (transmission) may be perceived or otherwise available without the use of technical means of protection. [5]

That is, cardsharing occurs in the case of removal or deactivation of technical means of protection that provide access to the appropriate program of broadcasting with a password. If the password is disclosed, unscrupulous persons who do not belong to the rights holders illegally gain access to the broadcasting program. In essence, cardsharing is a form of circumvention of technical means of protection - devices and / or developments designed to create a technological barrier to infringement of copyright and / or related rights in the perception and / or copying of protected (encrypted) recordings in phonograms (videograms) and broadcasts. to control access to the use of copyright and related rights. [6]

Cardsharing is quite common in Europe, because within one country you can receive a signal from many satellites, but there is no possibility to legally use the service of pay-TV due to lack of licenses for broadcasters from other countries. This led to the emergence of Cardsharing groups on the Internet, in which each member of the group had to share his subscriber card with other members, and instead gained access to all channels available through the subscriber cards of all other participants. Other groups are also created, in which one person buys several different subscriber cards, and the other participants pay a small fee to the owner for access to the cards. Thus, cardsharing may or may not have a commercial purpose. Cardsharing can also be used to watch pay-per-view channels on multiple TVs in the same home, using a home LAN. Often, a contract between a consumer and a service provider explicitly prohibits such cardsharing. If such actions are not permitted by the contract, the person who committed them is subject to criminal liability under the laws of Ukraine. With cardsharing, the cost of viewing by the end user is several times lower, while the owner of the copyright to the program (transmission) of the broadcasting organization receives almost no profit. The anonymity provided by the Internet is very attractive to criminals involved in cardsharing, as it is difficult to identify offenders and bring them to justice. It is almost impossible to track those who gain access, but those who provide access can be tracked through their IP address, because the receiver (or computer) that provides access to the card must have special software installed, and this the receiver must have a permanent unique IP address so that other receivers can access it. [3]

As for piracy, in accordance with Art. 50 of the Law of Ukraine "On Copyright and Related Rights" **piracy** in the field of copyright and (or) related rights - publication, reproduction, import into the customs territory of Ukraine, export from the customs territory of Ukraine and distribution of counterfeit copies of works (including computer programs and databases), phonograms, videograms, illegal disclosure of programs of broadcasting organizations, camcorders, cardsharing, and Internet piracy, ie the commission of any actions that are recognized as infringing copyright and (or) related rights under this article Internet. [2]

That is, the concept of "piracy" is essentially identified with counterfeiting, but differs significantly. Counterfeiting is the production or reproduction of phonograms, videograms, etc. without the permission of the rights subject. Piracy, in turn, is not the reproduction itself, but the distribution of counterfeit copies, their import or export. And

camcording and cardsharing are included in the concept of piracy, although they are separate types of violations.

Therefore, the study of the term piracy should establish the relationship between piracy and counterfeiting, determine whether piracy is indeed illegal disclosure of programs of broadcasting organizations, camcording, cardsharing, analyze whether it is correct to understand Internet piracy as committing any act in accordance with Art. . 50 of the Law are recognized as infringement of copyright and / or related rights, using the Internet.

As we see, all three concepts have different legal characteristics, basis and subject. But at the same time, the definitions are insufficiently refined, which is the main drawback for their application.

Thus, with regard to cardsharing and camcording, it should be noted that the same actions are recognized as a separate type of infringement of copyright and related rights in paragraph 1) of Part 1 of Art. 50 of the Law. The law does not specify what is the difference between piracy in the form of camcording (cardsharing) and actual camcording (cardsharing). As justified above, cardsharing is a kind of circumvention of technical means of protection, which is an independent violation of paragraph e) of Part 1 of Art. 50 of the Law. The possibility of further illegal distribution of programs of broadcasting organizations arises due to previous cardsharing, but it itself is not related to piracy. [6]

Responsible for camcording, cardsharing and piracy.

Of course, any actions related to camcording, cardsharing and piracy should not go unpunished, so according to Art. 176 of the Criminal Code of Ukraine illegal reproduction, distribution of works of science, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcasting programs, their illegal reproduction and distribution on audio and video cassettes, diskettes, other media, camcording, cardsharing or other intentional infringement of copyright and related rights, as well as financing such actions, if it caused significant material damage - punishable by a fine of two hundred to one thousand tax-free minimum incomes or correctional labor for up to two years, or imprisonment for the same term.

The same acts, if committed repeatedly, or by prior conspiracy by a group of persons, or caused material damage in a large amount - shall be punishable by a fine of one thousand to two thousand non-taxable minimum incomes or correctional labor for up to two years or imprisonment for a term from two to five years.

Actions provided for in parts one or two of this article, committed by an official using official position or an organized group, or if they caused material damage in a particularly large amount - shall be punishable by a fine of two thousand to three thousand non-taxable minimum incomes or imprisonment from three to six years, with deprivation of the right to hold certain positions or engage in certain activities for up to three years or without such. [7]

The following countermeasures should be noted:

- placement of posters, posters with a warning about the prohibition of unauthorized video and photo recording, which are placed in cinemas;
- criminal liability for camcording;
- training of cinema staff in prevention measures and actions in detecting the facts of camcording;
- demonstration of an anti-camcorder video and announcement of an audio clip before the beginning of film screenings;

- the use of night vision devices (PNB) and stationary rotating night vision cameras with infrared searchlights by employees of cinemas and / or security structures to detect camcorders during film screenings;
- use of special envelopes (packages, etc.) for mobile phones, smartphones, other gadgets with recording device capabilities, during the screening of pre-premiere movies
- implementation of the Target Program of measures to detect the facts of camcording in cinemas, which aims to encourage the detection of camcording;
- Encouraging the audience in case they find violators who make an illegal film recording during the session.

Conclusions

Given the above, we can conclude:

First, camcording and cardsharing are not sufficiently regulated concepts, which sometimes try to cover various and even mutually exclusive phenomena, and have very limited legal regulation in the legislation of Ukraine, so they need more detailed and comprehensive study.

Secondly, the definition of piracy, as amended by the current legislation, has become even more imperfect than in the previous version of the Law.

Third, the list of all types of violations, their conceptual framework and conditions of application should be clarified and agreed upon.

Fourth, due to the lack of public awareness of terminology, it is necessary to conduct large-scale work to spread awareness among citizens about such violations of Ukrainian copyright law and related rights, as well as their consequences.

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