Internet and the Problem of Intellectual Property

Introduction
Computer technologies have been developing rapidly. The Internet gives great opportunities to consumers and gives access to wide information resources. It is a global information space and, as a result, a new type of social relations has formed. The complexity and diversity of relations in the sphere of the commercial and industrial use of results of intellectual activity have been increasing for a long time. As is well known, basic sources of law, which regulate social relations, are: treaties, national legislation, court decisions, custom. At present there are no treaties concerning Internet use, judicial practice and national legislation has only just been developing. As for customs, they are quite diverse and contradictory. In Russia, there are no court decisions concerning Internet and information technologies and there are some gaps in intellectual property legislation. I will here argue that it is possible and necessary to protect the intellectual property in the field of the Internet in Russia under existing conditions.

Intellectual Property Legislation in Russia
The process of drafting the intellectual property legislation in Russia began in 1990, when G. Bush and M. Gorbatchev signed the trade agreement, in which making of four laws on intellectual property and unification of Russian, American, and European legislations were provided. In 1992-93 the Law “On the Legal Protection of Computer Programs and Databases”, the Law “On Copyright and Neighboring Rights”, the Patent Law, the Law “On Trade Marks and Appellations of Origin” were issued. Russia participates in several treaties such as The Bern Convention for the Protection of Literary and Artistic Works, The Universal Convention, and The Stockholm Convention on the Establishment of the World Intellectual Property Organization. Foregoing laws were drafted in accordance with EC Directive of 1991 and were tested in WIPO. So much time has passed since then and certainly legislation needs improving. But we should use existing legislation as well as possible.

Russian legislation defines intellectual property as “the information, the results of the intellectual activity, including exclusive rights to them”. There are the following rights: author’s right, rights to publication, reproduction, and circulation. In different combinations these rights constitute either Copyright or Industrial Property.

Intellectual Property in the Internet
The problem of intellectual property in the Internet generally concerns domain names and copyright objects. The legal status of domain names is not defined, but its function corresponds to functions of trademark. So some conflicts arise between owners of trade marks and persons who have registered other’s trade marks as their own domain names. There are plenty of court decisions concerning cybersquatting in foreign countries, but there are none in Russia, because there is no proper
legislation. Trademarks law does not apply to this subject. Hoppers has recently appeared in Runet. New rules of registration of second level domain names in Runet came into effect from the 1st of June 2000. The new procedure should ensure accountability of applicants and prevent cybersquatting. Besides, legislature should determine the legal status of domain names to give opportunity to owners bringing claims.

Another problem of intellectual property in the field of the Internet is copyright. A lot of on-line materials are used with breach of copyright. Electronic copy is indistinguishable from original. Everybody can make a copy of material located on a not-for-profit web-site. It is difficult to trace and stop illegal use of author’s creations and establish whose material was the earliest.

There are two approaches to that problem. Followers of the first one assert that copyright observance in Web is impossible due to the availability of TCP/IP protocol and the essence of Internet as an open to general use system. A lot of people hold that point of view. Another approach is based on the strict observance of the law and has less of followers (mainly among lawyers). Obviously, copyright observance stimulates authors to creative work and finally promotes social progress. So protection of copyright is necessary in the field of Internet as well as in others.

Problems generally arise when publishing works, use of frames, hyperlinks, and meta-tags.

Copyright appeared by virtue of the fact of the creation of a work. Copyright mark is used for notification. It would be a good thing to put the mark on the page as watermark to prevent the illegal copying. Another good idea is establishment of Web-depositary for CD-ROMs containing the information on record from web-site. Date of deposit can help authors to prove the priority. These measures are not used in practice, at least in Russia (because of their technical complication, I suppose). In fact, there are no effective potentialities to prevent the breach of copyright in the field of Internet. But there are effective sanctions for the protection of copyright, which can be applied to creations in electronic form.

According to existing Russian legislation an author whose right has been breached may bring a civil suit and demand to acknowledge his rights, to restore the prior situation and to stop the damage from an infringer, and claim for damages. Besides, the court may impose a fine on infringer. These civil actions are based on the copyright law.

The problem is that none of the authors has brought claims yet. There are some reasons for that phenomenon. First, many authors aren’t informed about their rights and they are not sure that the court is able to protect them. Unfortunately, it is common in Russia. Second, it’s difficult to decide the case of intellectual property because of their complication. It is difficult to offer evidence of breach in Web. Generally judges have no experience in the field of information technologies.

It would be a good thing if providers controlled copyright observance as it is common in USA. The first case of self-regulation in Russia occurred last year. Provider Company “Petersburg Link” declares that clients must refer to origin. In case of breach of this provision provider may cancel an agreement.

The Russian Internet Academy was recently established. Its members declare that it is possible to introduce order in Russian Internet by self-regulation.
Their open letter to the Russian Government was published by the newsagent PRIME-TASS.

Summary
In conclusion I’d like to note that Russian legislation and Runet has its specific character determined by social, political, and economic situation. Legislation needs improving. The Third Part of the Civil Code of Russia is just being elaborated. It contains rules regulating the use of intellectual property. The European Union has elaborated 5 directives aimed at improving the participating country’s legislation in the field of copyright law. World Trade Organization made an international agreement on the trade right of intellectual property (TRIPs). The agreement provided international standards as applied to civil measures of protection of copyright as well as to measures of criminal law and administrative law. As some of the experts noted, a lot of provisions of the Civil Code draft don’t meet international standards and what is more, the draft is worse than present intellectual property legislation.

In spite of that there are some measures that can be taken to protect copyright in Runet:

- Elaborating recommendations to show advantages of lawful use of intellectual property objects. There are already some web-sites containing information and advice addressed to authors.
- Elaborating recommendations concerning information technologies and intellectual property to judges. There are not many lawyers experienced in information technologies, so it would be a good thing to elaborate appropriate educational discipline and courses.
- Proper application of existing law and gradual drafting of a new branch of law is necessary. Lawyers need to find legal mechanisms that can ensure legal regulation of information relations. The new legal rules should reflect the problems of the development of the Internet in Russia.

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