

The concept of information product as electronic object of CIS law

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Abstract: Along with the socially maintaining and commercialization of CIS¹ cyberspace, observed arising the number of new object of law. One of them is complicated for the law “information product”, which is considered to be the commodity, property and asset. According to this process its need to clarify the questions of clear interpretation of information product and conceptual questions of compliance of information product with existing definitions of private property and intellectual property. The article also provides answers to the questions what legal framework should be chosen for the information products exchange, and what are the necessary conditions of circulation of information product in Internet.

Keywords: Information product, information goods, information property, information asset

¹ CIS (Countries of “Commonwealth of Independent States”)

In knowledge-based society, information and data becomes a very important asset in an industry on which a wide range of services is based.² The low production expenditures, simplicity to reproduce, possibility to sell the same good to many customers makes the information industry one of the most profitable form of business. For instance possible to mention India, which in 2000 exported the information products to 8 billion dollars, and in 2010 planned to reach the level of 20 billion.³ Looking back to the experts notes, we can see that already in 1986 world consumption of information products exceed trillion dollars with doubling to 1990,⁴ and world information products exchange comparing with 1990 increased tenfold times.

The information products In Internet distributed various companies, even such a famous as "Interfax", "Reuters" information agency, "All-Russian Institute of Scientific and Technology Information", "RosBiznesKonsalting" and others. By the practical impact the information becoming the substitute of great deal of traditional goods. For example instead of showing the football some people would like to download it by Internet and watch it on palm computer, or instead of buying the furniture get the manuals for making it personally etc. Information becoming the non-material asset, and a strategic resource - one of the basic wealth of the world countries, for lawful circulation of which necessary legal conditions should be founded.

The interpretation of information products in public are vague and sometimes associated with traditional goods of informational purpose (books, magazines, videotapes etc.). Coming closer to the nature of information product, its more correct interpretation supposed to be information document in electronic format directed to achievement of specialized purposes or for satisfaction of informational needs. The typical kinds of information products circulating in Internet are guidelines on production and assembly, manuals of manufacturing, business plans, drawings and designs of objects, technical and economic estimations, experts conclusions etc.

According to opinion of information industry practioneers, information products comprises the databases as complex information objects. So called electronic books eBooks (as electronic literature products despite of the fact that they cannot associated with any notions of "book") also included as the literature type of information product.

After adopting by CIS counties of uniform Information, Information Technologies and Information Protection Act, recommended by Inter-Parliament Assembly of CIS, we got the uniform definition of information product as: Documentary information, prepared according to the needs of users and intended or applied to satisfaction of needs of users.⁵

Herewith information product differs from other similar objects of the law as information services, information resources, software, which allows to consider is as separate object of law. Information product corresponds to the basic attributes of information, specifically non-material essence; not consumable; reproducible; transferable character (intensively through computer networks). Information products are widely circulated in Internet and bringing equivalent remuneration to its authors, distributors and users, which practically proves the theory of information as object of law, asset and commodity.

Despite of it, some scholars contend about absence of legal base of information product, arguing that no private property or right to information can exists at all. By opinion of O.À.Gavrilov, "the information itself can not be object of the property rights, as it represents abstract, ideal object, whereas the civil law connects property right the with

² A decade of research @ the Crossroads of law and ICT. Ed: Jos Dummortier, Frank Robben, Mark Taeymans, Larcier. Brussels. 2001 – 452.

³ Zolotuhin A. Shkrykin E. Reformer – conservator. // Novaya gazeta. Voronezh. No.23. 4 Apr. 2003.

<http://www.ng.vrn.ru/vlastimy/vlast05.shtml>

⁴ Ryzhenkova I.K. Market of information: specialties and problems of development. // The bulletin of the Moscow university. 1995. Ser.6. No.1. p.50-54.

⁵ «Federal Law of Russian Federation on participation in international information exchange» from 4 July 1996.No.85-FZ. // Collection of the legislation of Russian Federation. 1996. No.28. p.33-47.

material, material objects, with things".⁶ Thus, expressed the position that "the category of the property right can applicable only to material carriers of non-material objects (documents, information resources and systems).⁷

L.K.Tereshenko, about relationship of information and property says, that classical "triad" of rights of the proprietor having exclusive right on a thing, cannot be applied to the information. To the information the rights of possession is inapplicable, as it is impossible to physically have non-material objects. The information can be simultaneously in usage of uncountable range of the subjects, and in this connection to information the right of "usage" is inapplicable. The rights of disposal also inapplicable to the information, as, alienating the right on its usage, the seller does not lose thus of an opportunity of its further use.⁸

Against these arguments some opposite theories can be presented. For example, from the private law perspectives, the presence of same information at possession of various persons does not result collision of property right, and only creates the condition of "object with generic signs" (having identical signs in different owners contrary to the individualized object). So nothing interferes to the proprietor to own, use and dispose it (transfer or even deleting, if it is allowed from the positions of intellectual property law). Moreover, it is illegal to deny the property right of person, acquired the information lawfully by the contract with author or its authorized representative (legal owner) to possess this information. His proprietary right to have the given information also is unshakable, and does not depend on material of its carriers.

Trying to define some information only as the "intellectual property" or "private property" we are going use "one dimensional" and not always correct approach. To the information simultaneously can be applied both property right, and intellectual property right. The property right exists on the contents of the information, the form of the information is protected by the copyright law (intellectual property). The property right protects interests of the proprietor, and copyright - exclusive right of the author of information product. The author of information product and proprietor initially coincide in one person, then after transference of information product to the third persons and other lawful transition of information product to other legal owners, a group of other proprietors of information product are arises. The collisions of law and rights here are absent, and there is no obstacle for information product to be the object of law.

However, there are present some internal criteria's of the information for practical strengthening it as object of the property right are: limited, completed and identified character, which is especially the attributes of information product. It is interesting to note, that the balance of proprietor's rights on information product is shifted from traditional goods. The property right on information product created for the first time, is realized thoroughly in a form of possession, usage and disposal of information. The property right on acquired information product can exist in a form of possession, usage and limited disposal not interfering with exclusive rights of authors (developers).

Restriction of property disposal by contractual means is usual and frequently used in law-relations phenomenon. For example, well known the restriction of the disposal of information in contracts on conducting of research, construction works, franchise and others. To this list we can also refer different kinds of confidentiality agreements. The consumer of the information obtains a copy of information product, realizing his rights to know and to use the information displayed in information product in its own purposes. But proceeding of consumers rights to information, they has no right to inclusion of noted information into civil and other relations. The concrete acquired copy, can be included into his property balance, and thus the information displayed in this copy, is considered as non-material asset⁹.

According to the art.8 of Kyrgyzstan Law on Information,¹⁰ art.9 of Uzbekistan Law about information,¹¹ and art.6 of the Federal Russian Law on information,¹² "the information that belongs on a the lawful basis to the state,

⁶ Gavrilov O.A. informatization of legal system of Russia. Theoretical and practical problems. M.: «Yuridicheskaya kniga»and «CheRo», 1998.– 187 p.

⁷ Severin V.A. Legal regulation of information relations. // Yurist. 2001. No.7. p.2-10.

⁸ Tereshenko L.K. Information and property. Protection of rights of creators and users of computer software and databases. M., Russian legal academy on ministry of Justice of Russia. 1996. - 323 p.

⁹ Kopylov V.A. About model of information civil exchange. // Scientific-technical information, 1999.#5. pp.21-27.

¹⁰ Law of Kyrgyz Republic on information from 8 October 1999. No.107 // Normative Acts of Kyrgyz Republic. 1999. No.20. p.12-25.

legal entities and citizen including they associations is its property. To the lawful ways of obtaining the property rights on information product in mentioned laws defined as: creation and processing from information resources, purchase information product under the contract (including exchange, gift), inheritance of information product, or transition of property right on assignment by reorganization of the legal entity. The private property right on information product can be considered, as the right to own, use and to dispose of information product belonging to the owner. The object of the property right on information product is the right on the special arrangement of symbols, as result of the completed work.

M.M.Rassolov, defining the subjects of legal regulation of the information relations marks, that "as the information has unique qualities and properties, and for each person or legal entity it presents a basis of life and their daily activity, each man, enterprise, organization can be the proprietor of the given information"¹³. Regarding to this case, G.Hegel considers the person in indissoluble connection with belonging him property. In his opinion, the rights of the person on property is cannot be separated from him.¹⁴ Strengthening and protection of right to information as property as well as its recognition, is the significant condition of development of civilized civil-law relations in information environment.

The information products usually created on the base of existing software (usually Adobe PDF files, MS Word files, Palm Digital Media files, exe files and so on). As a rule, in order to be information product they contain valuable and original creative work. However, there are lot of information can be the result of creative work, but some of them can be out of intellectual property regime. For example in copyright it is ideas, procedures, methods, principles, systems and others; in patent law it is scientific theories and math methods, methods of organizing and management of economy, definitions, schedules, rules and inpatentables; it trade secrets it is known, or not protected information etc. Nevertheless these regimes are overlaps, and cases where information out of intellectual property regime, is exceptional rather than usual situation.

Question regarding information product is the object of intellectual property, is decided depending on the following basic conditions. All information products is possible to divide on three categories: 1. Created for the first time; 2. Transformed from real (existing) objects of the intellectual property; 3. Compiled from number of other intellectual property objects.

The uniform criteria of defining the intellectual property in world Copyright laws is: "products, published or unpublished, but taking place in any objective form...". Concerning the objective form in Copyright law further said, that the product should be expressed in oral, written or other objective form admitting an opportunity of its perception. Product, in writing or different way expressed on the material carrier (manuscript, typewriting, musical record, record with the help of means, including audio- or video recording, the fixing of the image in two dimensional or volumetric - spatial form etc.), is considered having the objective form, irrespective of its availability to the third persons"¹⁵.

Though an information product is non-material object (in electronic form) nevertheless, it is fixed in objective form in material carrier (web-server, HDD of computer, flash drive) so, information product is copyrightable. Thus, it can be marked with the symbol of the copyright protection <©>. The information product, created for the first time can include patentable information, but in order to be protected by patent law, it can only after registration in patent department of state of the applicant, as the appropriate object of a patent law with issuance of patent or certificate.

Information products of 2 group. (Transformed from real (existing) object of the intellectual property) do not require legal protection, since its material or analogue are already protected by copyright or patent law, and in connection with it, its electronic copies as well. The object of a patent law and its documentation, in purposes of convenience of transfer, can also be transformed in a form of information products, but anyway such transfer

¹¹ Law of Uzbekistan on information from 11 December 2003 No. 560-II. // " Assembly of the legislation of republic of Uzbekistan". - 2004. – No.6. p.67-71.

¹² Federal Law on information, informatization and protection of information from 20 February 1995. No.24 FZ// Assembly of legislation of Russian Federation. 1995. No.8. p.609.

¹³ Rassolov M.M. Information law. Textbook. – Moscow.: Jurist. 1999. – 400 p.

¹⁴ Hegel G.V. Philosophy of law. Moscow: Science, 1990. 326 pp.

¹⁵ Law of Kyrgyz Republic on copyrights from Jan. 14, 1998 No.6 // Normative Acts of Kyrgyz Republic. - 1998. No.2. pp.12-22.

(concession or license) be made out in compliance with the patent law which requires registration in state patent department.

Information products of group 3. (Compiled from the number of intellectual property objects) are derivative and compound products of copyright law. According to clauses of uniform Copyright law, the derivative products and the compound products are protected by the copyright irrespective of, whether are objects, on which they are based or which they include are copyrightable.

The issuance by the author its information product in Internet, which is the object of the intellectual property, sometimes associated with the action tantamount to the permission of public use of product. However, analogously to issuance of literary work by authors as the objects of its creativity in a book format, such the author of information has the right to enter into exchange his product in Internet, in a form of information product. For this occasion in Copyright law the clauses defining the "property rights" of authors is specifies that the author concerning his product possesses the exclusive rights to use of product in any form and any mode, that means the right to carry out, to permit or to forbid:

- to reproduce product;
- to distribute copies of product by any mode: to sell, to hand over in hire etc.;
- to publicly show and to execute product;
- to communicate product for the general information by cable, wires or using of other similar means and other rights.

The circulation of information products are certainly will strengthened by the fact that in international law increasingly dominating the concepts of legality of agreement concluded by electronic data interchange (EDI). According to art.5 of "Uniform Law of Electronic Trade" - "Information shall not be denied legal effect, validity or enforce - ability solely on the grounds that it is in the form of a data message".¹⁶ This law also aimed to transform into national level - reflects in domestic legislations.

New legislative initiatives in international level also support idea of giving free choice of conduct in form of contracting. According to the item 2 art. 8 of UNCITRAL "Convention on the use of electronic communications in international contracts" from 15 July 2005, "Nothing in this Convention requires a party to use or accept electronic communications, but a party's agreement to do so may be inferred from the party's conduct."¹⁷ Also amendments of civil law in CIS countries also included the norms permitting the conclusion of agreements by means of electronic data interchange (EDI).

As legal framework of circulation of information products are going to be the classical "purchase and sale" agreement mechanism. It is justified by the fact that the purpose of the circulation of information products coincides with the basic purpose of purchase and sale agreement – "exchange of diverse economic values". Indisputable advantage of the purchase and sale agreement is that the conditions this agreement is maximally developed in legislation, that allows to profoundly settle the obligations of the parties of the contract. Also purchase and sale agreement provides property rights to legal owners, which is absent in license agreements.

From the practice of Internet stores work, well known the automatic way of transferring the information product after accomplishing the payment by the buyer. Nevertheless, noted form cannot be considered as new form of contracting, because all agreed actions performed under existing standard agreement located on web-server of seller. However need to note, that the information can be the object of following traditional and normatively regulated contracts as the or services, delivery, exchange, gifting, rent, storage, insurance, assignment, franchising, will, public competition, public award etc. Moreover, the information can be the subject of the contract combining the clauses of different contracts.

¹⁶ Resolution of UN General Assembly from 16 December 1996. No.UN A/51/628 «Uniform Law on Electronic Trade».

UNCITRAL // <http://www.un.or.at/uncitral/legval.htm>

¹⁷ "Convention on the use of electronic communications in international contracts" from 15 July 2005. / UNCITRAL 38-th Session. Austria. Vienna. 4-15 July 2005. - <http://unis.univieenna.org/unis/pressrels/2005/unisl96.html>

Other types of contract though are applicable to the information products circulation in Internet, but creates restrictions for the parties of the contract, by nature of contract object (the contract on know-how transfer, authorship contract on creation of product, contract on conducting research etc.), or under the contents of the contract (cession, gifting, services, information support etc.).

It is need to specially note, that the conditions of the classical contract of at application it to the transfer of information product are essentially modified. So for example, get special importance the questions of preservation of confidentiality of object of contract, results of information use, ensuring the performance of obligations, while a risk of casual destruction, product expiry terms, the quantities of goods, losing they importance. In many respects it is connected with the features of information product, as ideal, intangible, unconsumable category.

Due to inefficiency of existing ways of ensuring the performance of obligations in Internet, the new methods of ensuring the performance of obligations effectively applicable to the circulation of information product, those in particular are electronic transaction with the protection, transfer of information product in parts and payment for the information product in parts.

The relation on circulation of information product can be totally electronic, since the basic obligations of parties of agreement (transference of goods and payments) can be done in electronic form. Especially with the development of electronic payment systems (E-gold.com Webmoney.ru Rupay.ru etc.). The total electronic nature of information product exchange relations makes the possibility to regulate and control these relations are highly difficult. From this context derives problems of taxation, preventing of socially dangerous information, restricting personal data, protecting of intellectual property etc.

Also significant guiding and protecting function in avoiding negative consequences and preservation of balance of parties interests in the contract, can ensure the model contracts on information products transfer in Internet, which introduction is need to promote. Following to the pragmatically point of view, any intellectual property, inevitably will enters into public domain (invention after the expiration of 20 years of patent protection, objects of the copyright in 50 years after death of the author, know-how's after disclosure or getting information not valuable due to development of science and technology etc.). Therefore development of information products together with non-traditional ways of its protection is of one their effective measures on maintenance property rights and benefits of intellectual property authors in Internet. Since the information product is electronically transferred by distributors for the commercial purpose, it is necessary the increase measures on its protection against non-authorized copying and distribution and other infringements of rights and legal interests of authors and legal owners.

The specialty of information product protection in Internet, is going to be slightly different from the traditional protection of information. Since the information product is aimed to giving away is to third party, the aim of its protection is directed to prevention and protection against non-authorized copying and disclosure information by third person, and also maintenance of interests of authors and proprietors of information product in Internet. So the aim of information product protection is to save its confidentiality any other party not legally binded by agreement, in conditions that information product is transferred to another person, not legally obtained information product of any other Internet user.

In the protection of information products by traditional legal ways (drawing to criminal, civil and administrative responsibility) presents difficulties which is connected with problems of jurisdiction in Internet, searching the infringers, supply of evidence etc. Therefore in connection to information objects becoming prior the non-traditional for law methods of protection as «Web-depositary», encryption of information product, program protection of information product from copying, and other general methods of internet protection as managing blacklists, certification of web-resources, ceasing to serve a web-sites distributing illegal copies of information product through the hosting provider and others.

Specialty of new non-traditional ways of protection of information product is that the specified ways:

- Mainly are measures of organizing-technical character rather than legal;
- Provides complex protection;
- Creates impossibility of infringement, rather than involving of to the legal responsibility.

Despite of indicated measures are far from legal methods, the specified ways of protection connects with the legislation through the provisions of civil law on self-defense.

The information product can be the decision of problems of internet piracy, because such transformation are:

1. Separates the intellectual property from other open access in network information;
2. Connects the intellectual property in net with its creator;
3. Gives the mechanism of connection with lawful users of information product, and according to opportunity to reveal illegal owners and users of the intellectual property in networks.

Because of impossibility to protect and maintain confidentiality of information without its protection, its necessary to ensure that they further lawful exchange taking into account conditions of low efficiency of traditional ways of protection of intellectual property in Internet. In connection with it, its need to define and introduce new – non-traditional ways of information protection applicable to electronic information transfer. It is especially important in unlimited opportunities of Internet and software, and popularity of a network piracy.

Legislation of Commonwealth of Independent States defined the “information product” as an object of property and type of trade good, which allowed for it to be freely exchanged between users, being the object of digital dealing. The business on information product issuance because of its progressive nature should operate freely as possible. But, government in this field should draw its attention to the issues having public danger, as illegal copying and distribution of creative works, producing the information products having libelous, obscene and other harmful character (for instance containing information on manufacturing drugs and weapons and so on).

The protection of confidentiality and information products is a necessary condition of its circulation in Internet and protection of rights and interests of its authors and legal owners. The lawful transfer of information product in Internet will form a certain group of the persons – legal owners of information product, separated from any others by the obligation of confidentiality protection of information product. Information products should be transferred with observance of confidentiality besides cases, when the author himself wishes to distribute it without confidentiality protection. The conditions of confidentiality should be therefore included in contents of contracts on information product transfer.

The rights of proprietor on information with limited access, not undertaken actions on protection of its information product, supposed to be unreasonable. With popularizing of impersonal character of electronic interaction, with increase of information formats and means of information display, the circulation of information product will be inevitable extended. Information product in electronic format by wide form will enter into number of the goods and objects of law, therefore for this purpose the conceptual and legal base should be founded.

Regarding the work with information products needs to be chosen the complex approach, which is connected with different regimes of different types of information. For example: Information resources → which using is not prohibited; Information product → Prohibited except of persons to whom the information product is transferred by agreement; Intellectual property → Using prohibited except of persons to whom the rights to definite actions are granted or except open accessed intellectual property; → Confidential information (Using by any person prohibited, except of owner and person who authorized by owner to do so).

In we present the stairs of information objects with grading level of protection, the information product will fill the gap between information and Intellectual property, differing them. The importance and need of information products can be formulated by necessity of having such qualitative information as intellectual property, an same accessible as information resources. Defining different regimes of information product, is highly important because only through the strengthening of intellectual property on digital content possible to ensure the intensification of information product circulation, preventing the development of its illegal forms.