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CONTRACTUAL LEGAL RELATIONS IN COPYRIGHT LAW

Анотація. *Робота присвячена питанням визначення договірним правовідносинам в авторському праві. Визначається правова охорона інтелектуальної власності, складові питання процесу її створення. Зосереджено увагу на тому, що нинішні проблеми у сфері захисту авторських прав виникають у результаті низької правової свідомості авторів, що і призводить до проблем у регулюванні відносин переходу майнових прав автора до іншого суб'єкта відносин. Досліджені найпоширеніші договори в регулюванні авторських правовідносин.*

Ключові слова. *Авторський договір; договірні правовідносини в авторському праві; ліцензійний договір; класифікація договірних правовідносин; автори творів літератури, мистецтва, науки; спадкоємці авторів.*

Annotation*. The work is devoted to the issues of defining contractual legal relations in copyright law. Legal protection of intellectual property, constituent issues of the process of its creation are defined. Attention is focused on the fact that the current problems in the field of copyright protection arise as a result of low legal awareness of authors, which leads to problems in regulating the relationship of the transfer of the author's property rights to another subject of the relationship. The most common contracts in the regulation of author's legal relations have been studied. It is established that the author of the original work has the right to authorize his work by giving permission for its translation to another person with the right to review the translation and then approve or disapprove it. By becoming a party to an author's contract, both the author and the translator of an authorized (i.e., author-approved) translation have independent rights and obligations. In practice, special attention is paid to the so-called "intermediate translations", when translations made from the original into another language are used, which become the basis for creating a translation into another language. The author also reveals the significance of the user, which can be specialized organizations, primarily such as publishing houses, theaters, film studios, TV studios, etc. The author also focuses on contracts that provide for individual orders for one's own needs of works of science and art, which are considered contractual in judicial practice. These can be subcontracts for engineering design services for a private house. At the same time, the author notes that one should not forget that nowadays citizens can engage in the reproduction and distribution of works as an independent type of entrepreneurial activity. And at the end of his research, the author determines that from contracts regarding the disposal of property rights of intellectual property, it is necessary to distinguish contracts that, although they provide for the disposal of the specified rights, but this is not the main result to which they are aimed (a contract of pledge of property rights of intellectual property, a contract simple partnership, etc.), as well as mixed contracts that contain elements of disposal of property rights of intellectual property (a contract for the sale of an enterprise as a single property complex, a production contract, etc.).*

Keywords. *Copyright agreement; contractual legal relations in copyright law; license agreement; classification of contractual relations; authors of works of literature, art, science; heirs of the authors.*

Formulation of the problem in general. The system of legal protection of intellectual property was created for the development of the economy of Ukraine, and intellectual property law in this context is one of the components of this process. That is why all the efforts of society and the state should be aimed at preserving and growing the nation's intellectual potential. At the same time, the main subject of legal relations in the intellectual property protection system should be the creator directly.[1] And as it becomes clear, for the results of intellectual activity to be creative in order for them to be able, in accordance with the second paragraph of the second part of Art. 11 of the Civil Code of Ukraine to become the basis for the emergence of intellectual property legal relations, it follows that they can arise only as a result of transactions such as the conclusion of contracts. The basis of such relations is contractual obligations in the field of copyright. It is they who ensure the implementation, regulation, protection and protection of personal property and non-property rights of the subjects of copyright relations.

One of the methods of alienation of intellectual property rights is the conclusion of certain types of contracts, which are primarily copyright contracts. In the system of contractual obligations, author's contracts are quite new, which leads to the need for their further research and correction of problems with the application of current legislation. There are many definitions of the term copyright contract. An author's contract should be considered one of the types of civil law contract, where the author transfers or grants exclusive rights to distribution, publication, printing of works of art, science, literature, etc.

Analysis of the latest scientific research on the topic. Contractual legal relations in copyright remain the subject of research by many leading civilian scientists, such as: G.O. Androschuk, O.E. Avramova, O.B. Butnik-Siverskyi, V. Bazhanov, T.M. Vakhoneva, O.V. Dzera, O.V. Zhilinkova, V.V. Zaborovskyi, Y.O. Zayika, A.A. Ketrar, N.S. Kuznetsova, O.O. Kakhovych, O.P. Orlyuk, O.D. Svyatocki, O.I. Kharitonova, I.I. Shkirya, I.E. Yakubovskyi. The study of the works of these scientists made it possible to assess the state of the researched problem, identify and analyze the issues that have arisen at the current stage in this field.

The purpose of the research is to carry out a deep analysis of the essence and features of contractual legal relations in copyright based on a detailed study of legislation, practice and theory, approaches of scientists.

To achieve this goal, the following tasks were set and solved:

- define the concept and structure of copyright contracts;
- to carry out the classification of contractual legal relations in copyright law, including determining the most common ones;
- consider and research certain contradictory types of contractual legal relations in copyright law, as well as responsibility for non-fulfillment or violation of the copyright contract.

The object of the study is civil legal relations arising in connection with the conclusion of copyright contracts.

The subject of the study is contractual legal relations in copyright law.

Presenting main material. The theoretical and practical problem of contractual legal relations in copyright law is due to the rapid development and improvement of copyright relations in Ukraine and the world, therefore it needs proper legal regulation and provision.

The Constitution of Ukraine clearly states that every citizen has the right to the results of his intellectual and creative activity; no one can use or distribute them without his consent, with exceptions established by law [2]. At the same time, the right of a citizen to carry out creative activity requires the consistency and consistency of the system of current legal norms that regulate copyright relations. In this regard, provisions on the protection and protection of copyright in Ukraine are enshrined in legislative acts, namely, the Civil Code of Ukraine, the Law of Ukraine "On Copyright and Related Rights", the Law of Ukraine "On Publishing Matters", etc. The protection of copyright is also regulated by international normative acts, namely, the World Copyright Convention (1952), the Berne Convention for the Protection of Literary and Artistic Works (1886), the World Intellectual Property Organization (1967), the Directive on Copyright on a Single digital market of the European Union.

A detailed study of the history of the origin and development of copyright made it clear, first of all, that the copyright contract is a means of protecting the interests of authors and publishers, that is, it is the main legal form that regulates the relationship between authors (or other persons who have copyright) and users, regarding the implementation of copyright to the work. [3].

The history of copyright goes back to very ancient times. Its emergence is connected primarily with the emergence of censorship and the division of the cultural heritage of antiquity and the Middle Ages. In Europe, it all began in 1557 with the Statute of Queen Mary I, which gave publishers the right to publish a book they had already published (no matter whether it was new or long-known), provided that it was approved by the official censor. However, the authors remained out of the spotlight. Therefore, of course, the "Statute of Queen Anne", which entered into force in 1710, is considered the first copyright law. According to the "Statute", the author received the exclusive right to publish his work for 14 years (he could transfer this right to the publisher). It was the publisher's exclusive right to publish a registered book, that is, the right of this publisher to publish copies of this book. Accordingly, this is where the English term - copyright (this book is copyright), which today in a broad sense means copyright, became established in global legal literature and legislation. [4].

That is, it can be clearly determined that the relationship between the author and the user arises on the basis of their agreed actions, and the norms governing such relationships originate precisely from the English law on copyright. [3].

When we are talking about the coherence of the actions of the subjects of any legal relationship, which are aimed directly at the emergence of rights and obligations for such subjects, then we have to consider the contractual construction of the legal relationship, and in this case, the construction of the civil law contract, since the subject such relations include property and non-property rights of the author. [5].

From the theory of civil law, we characterize a contract as a written or oral agreement, a condition of mutual obligations of the parties. Speaking about the contract, it is important to note that we are talking about a mixed legal form that can be applied to various social relations, due to which the creation and application of the contract has been going on for several millennia.

Tony Honoré points out that contracts in everyday life are important for several reasons: firstly, in many areas of life, making a contract with an opponent is the only alternative to starting a fight, and secondly, contracts represent an opportunity to bind people to do something in the future [6].

Moving on to the consideration of copyright contracts, it should be noted that they are one of the most complex contracts in the field of civil law. But, without exception, all the requirements of civil law apply to them, including the functions and principles of the contract.

Article 31 of the Law of Ukraine "On Copyright and Related Rights" contains a provision according to which the author's property rights may be fully or partially transferred (assigned) by the author or another person holding the copyright to another person. The transfer of property rights of the author (or other person who has the copyright) is formalized by an author's contract. [7].

Therefore, from the above, in the Law, an author's contract is understood as a contract according to which one party (the author or another person) transfers property rights to the other party to the contract.

However, many scientists provide a scientific definition of the author's contract, which differ among themselves. V.A. Dozortsev defines that "under the copyright contract, one party - the author grants the right to the other party - the user, to use the work or dispose of the work, in one or another volume, and the user undertakes to pay the author a fee for using the work, or granting the right to dispose of it". [8].

I.V. Savelieva defines that "the author's contract is a contract on the use by the organization of the work of science, literature and art created by the author in accordance with the cultural needs of society while observing the personal non-property and property rights of the author." [9].

According to A.A. Ketrar an author's contract is an agreement between the author of a work of science, literature and art or another person who has a copyright, on the one hand, and the user, on the other hand, according to which the author (or other right holder) undertakes to transfer (provide) to the user, fully or partially the property right to use the work, in the specified way, with compliance with all essential conditions, within the specified period, and the user undertakes to use the work in accordance with the right transferred (granted) to him. [3].

O.A. Pidopryhora also expressed an important opinion., namely: that an author's contract is considered an agreement between the author or his legal successors and other persons to perform any actions in accordance with the law regarding the possession, use and disposal of the work. [10]. This definition of the concept of "author's contract", based on its name, indicates only that the parties concluded an agreement regarding property rights of intellectual property on the object of copyright [11].

The opinion of A.O. Kodynets also deserves attention., who believes that the author's contract is a type of civil law contract aimed at acquiring, changing or terminating civil rights and obligations to objects of intellectual property [12], and Y.O. Zayika, who points out that the author's contract is the legal form that allows the author to exercise his rights to the publication of the work, to its distribution, to inviolability, etc. It is on the basis of copyright contracts that relationships between authors and organizations that publish their works are built. [13].

The last three given definitions most fully reveal the essence of the author's contract, reflect the essential conditions of the author's contracts and their subject composition, and not only characterize them from the point of view of the transfer of ownership of the object of intellectual property. [14].

Having reached a conclusion, we can say that the majority of scientists and civilians reduce their perception of the concept of "author's contract" purely to the contractual form of use of the work. G.I. Myroniuk also came to this opinion, who indicates that the contractual form of use of the work ensures the implementation and protection of both the personal and property rights of the author. It is also in the interests of users, since they acquire certain rights that others do not have, and in this connection can recover their costs related to the reproduction and distribution of works and receive income. [15].

According to all legally established requirements, the author's contract must meet them. After all, without essential conditions and requisites, the contract will be considered invalid, as it does not comply with the Law and the Civil Code of Ukraine. Therefore, all trade unions and publishing houses should have a copy of the author's contract already prepared, drawn up legally correctly. But today it is difficult to find a typical form of an author's contract, because they do not have a normative character and are only a recommended sample for future parties (participants).

According to Part 1 of Art. 638 of the Civil Code of Ukraine, a contract is concluded if the parties have reached agreement on all essential terms of the contract in the proper form. [16]. The essential terms of the contract are terms about the subject of the contract, terms defined by law as essential or necessary for contracts of this type, as well as all those terms on which agreement must be reached at the request of at least one of the parties.

Before concluding the contract, you must learn all the details from the future participants, this is the subject of the contract, the terms of the contract, the price, the rights and obligations of the parties, because this is the correct procedure for concluding the contract.

The parties to the author's contract are the author, on the one hand, and the organization that prepares and publishes the work, on the other. In general, the subjects of the author's contract are the author and the users of the work. The parties to the contract can be absolutely all subjects of copyright, namely:

1) authors of works of science, literature and art;

2) heirs of the authors;

3) persons to whom authors or their heirs have transferred their copyright property rights (successors).

From this follows one of the features of the author's contract, that the authors can be both Ukrainian and foreign citizens. In those cases, when the author of the work is an adult natural person with legal capacity, he independently concludes the author's contract on his own behalf, has the right to sign and is a party to it. When a work is created by a minor (up to 14 years) or an incapacitated person, parents and guardians conclude copyright contracts on their behalf. Such authors can independently exercise only personal non-property rights (Part 1, Clause 2, Article 31 of the Civil Code of Ukraine). Minor authors who have incomplete civil capacity between the ages of 14 and 18 exercise their property rights independently (Part 1, Clause 2, Article 32 of the Civil Code of Ukraine), and, accordingly, conclude authorship contracts. [17].

Copyright for a work arises from the creator due to the fact of its creation. In most cases, works of science, literature, and art are created by one person, but sometimes by two or more, that is, by the joint creative work of several co-authors. If two or more authors jointly create a work, the relationship between them is called co-authorship.

The civil law theory provides for two types of co-authorship:

a) inseparable co-authorship – when it is impossible to separate the work of each co-author;

b) separate co-authorship – when the constituent parts are clearly defined and it is known which of the co-authors wrote this or that part.

Co-authorship is possible when creating any works. Certain conditions are necessary for its recognition:

1. The integrity of the work - that is, the work created by the joint creative work of co-authors must be a single whole, such that it cannot exist as a whole without its component parts.

2. Creative nature of joint work of co-authors. If one tells the story, his views, and the other writes it down, this is not co-authorship.

3. Availability of an agreement on joint work on the work. In case of separate co-authorship, each of the co-authors retains the copyright for his part. At the same time, he is a co-author of the work as a whole.

4. Co-authorship must be voluntary.

5. Fair distribution of royalties for co-authored works. The remuneration for the use of the work belongs to the co-authors in equal parts, unless the agreement provides otherwise.

In the case of undivided co-authorship, the work may be used only with the joint consent of all co-authors. However, the right to publish and otherwise use the work belongs equally to all co-authors. One co-author may not, without sufficient grounds, refuse permission to others to publish, otherwise use, or modify the work. In case of violation of joint copyright, each co-author can prove his right in court.

The one who provided technical assistance to the author (printers, draughtsmen, stenographers, etc.) is not recognized as a co-author, and therefore also a subject of copyright. [18].

Translators and compilers can be a party to an author's contract. In the process of their work, they usually do not create original works, but their work is entirely dependent on the original, and in the author's contract these copyright subjects are designated by the word "author". If the author of the work independently carries out the translation into another language, then he is the author and the translator, therefore he acquires the copyright of various objects, for example, he has a separate copyright for the literary work created by him and for its translation. [19].

The author of the original work has the right to authorize his work by giving permission for its translation to another person with the right to review the translation and subsequently approve or disapprove it. By becoming a party to an author's contract, both the author and the translator of an authorized (i.e., author-approved) translation have independent rights and obligations. In practice, special attention is paid to the so-called "intermediate translations", when translations made from the original into another language are used, which become the basis for creating a translation into another language. For example, an original work in English has been translated into Russian. The Russian translation is then used to translate into Ukrainian. So the translation into Russian will be an "intermediate translation", but at the same time it is the original in relation to the translation from it. To use an intermediate translation, the consent of its author is required. [19].

In accordance with Part 5 of Article 32 of the Law of Ukraine "On Copyright and Related Rights", organizations of collective management of property rights of copyright subjects can be a party to an author's contract on behalf of the author, this norm emphasizes that the right to transfer to any persons is not excluded rights to use works belong to collective management organizations, to which the subject of copyright has transferred the authority to use and manage his property right.

The second party to the author's contract is the user. The user can be specialized organizations, primarily such as publishing houses, theaters, film studios, TV studios, etc. The relevant organizations have defined functions, which include the implementation of publishing, theatrical and performance, exhibition and other similar activities. Legal entities that are parties to the author's contract may have different organizational and legal forms and are created on the basis of different forms of ownership. [20].

One interesting point arises from this, nowhere is there a clear indication that the second party must be exclusively a legal entity. But it still boils down to one thing, only specialized organizations, i.e. legal entities, can be subjects. And contracts that provide for individual orders for one's own needs of works of science and art are considered contractual in judicial practice. These can be subcontracts for engineering design services for a private house. However, it should not be forgotten that nowadays citizens can engage in the reproduction and

distribution of works as an independent type of business activity. In these cases, such persons must enter into not contractual, but copyright contracts, the result of which is the acquisition in full of all rights and obligations of the user.

The property rights transferred by the author of the work to the user (customer) of this work shall be considered the subject of the copyright contract. This definition of the subject of the author's contract is confirmed by Part 2 of Art. 32 of the Law of Ukraine "On Copyright and Related Rights", which states that the transfer of the right to use the work to other persons can be carried out on the basis of an author's contract on the transfer of the exclusive right to use the work or on the basis of the author's contract on the transfer of the non-exclusive right to use the work. In addition, Part 8 of Art. 33 of the specified Law determines that all property rights to use the work, which are transferred under the copyright agreement, must be defined in it.

Property rights not specified in the copyright agreement as transferred by the subject of the copyright are considered as not transferred and retained by the subject. This further confirms that the subject of the copyright contract is not the work, but the property rights associated with the possibility of its use in various ways.

Property rights, as the subject of the author's contract, must be clearly defined in it, since the subject is an essential condition of the author's contract. Article 31 of the Law of Ukraine "On Copyright and Related Rights" indicates that the property rights transferred under the copyright contract must be specified in it, and those property rights that are not specified in the copyright contract as alienable are considered not transferred . After all, this norm exists in order to protect the rights and "nerves" of the authors of works from unlawful appropriation of their rights, and calls for clearly prescribing and defining the scope of rights that it deems necessary, but in compliance with the norms of legislation.

In Art. 15 of the Law of Ukraine "On Copyright and Related Rights" provides a list (albeit non-exhaustive) of the main property rights of authors and defines the main ways of using the work. All these rights, as well as other property rights defined by the parties to the copyright contract, may be the subject of the copyright contract. The subject of an author's contract may be the granting of the right to reproduce works, to public performance and public notification of works, to public demonstration and public display of works, to republish works, to translate works, to rework, adapt, arrange and other similar changes to works, inclusion of works as constituent parts of anthologies, anthologies, encyclopedias, distribution of works, leasing, etc. Therefore, the indication in the author's contract of this or that method of use of the specified work and the author's permission for the use of this work by another person is quite sufficient to consider that the condition on the subject of the contract has been fulfilled. Granting permission to use the work is carried out by indicating the exclusivity or non-exclusivity of the rights being transferred. [21].

When concluding an author's contract, the parties must reach an agreement regarding the rights that are transferred under it and, accordingly, constitute its subject. The Law of Ukraine "On Copyright and Related Rights" indicates that the subject of an agreement on the transfer of rights to use a work cannot be rights that did not exist at the time of the conclusion of the agreement (Part 3, Article 33). The essence of the specified rule is that it is not possible to transfer the right to use the work in those ways or in those forms that are still unknown, but may appear in the future. [22].

According to Part 6 of Art. 33 of the Law of Ukraine "On Copyright and Related Rights", under the copyright contract of the order, the author undertakes to create a work in the future in accordance with the terms of this contract and transfer it to the customer. In this case, we are talking about a work that will be created in the future and that must meet the characteristics clearly discussed by the parties and fixed by the contract. Under such a contract, the customer may provide an advance payment to the author as part of the author's fee. [20].

According to Part 7 of Art. 33 of the Law of Ukraine "On Copyright and Related Rights" states that the terms of the contract, which limit the author's right to create future works on the subject specified in the contract or in the specified field, are invalid. This prohibition is intended to preserve and protect the rights of the authors regarding the works, as they may create in the future during their lifetime.

Part 4 of Art. 33 of the Law of Ukraine "On Copyright and Related Rights" specifies that relevant departments and creative unions can develop standard copyright contracts (sample copyright contracts). The availability of such samples significantly speeds up the procedure for drawing up copyright contracts in various areas of their use.

One of the main problems of the author's contract is that the absence of a mandatory written form of the author's contract leads to a lack of guarantees from the performer and a violation of the author's rights.

According to Part 2 of Art. 33 of the Law of Ukraine "On Copyright and Related Rights", an agreement on the transfer of rights to use works is considered concluded if the parties have reached agreement on all essential conditions (term of validity of the agreement; method of use of the work; territory covered by the transferred right; size and order payment of royalties; other conditions on which an agreement must be reached at the request of one of the parties).

The price of the author's contract is the author's remuneration (author's fee), which the user must pay to the author of the work for acquiring the right to use the work in a certain way, defined by the author's contract. According to Art. 33 (paragraph 2, part 2) of the Law of Ukraine "On Copyright and Related Rights", the copyright fee is determined in the contract in the form of a percentage of the income received from the use of the work, or in the form of a fixed amount or in another way. At the same time, the author's remuneration rates cannot be lower than the minimum rates established by the Cabinet of Ministers of Ukraine.

By agreement, the parties to the author's contract determine the method of calculation and payment of the author's fee, thereby determining the price of the contract. At the same time, the parties can establish a single percentage according to the contract, according to which the author's fee is calculated, or they can differentiate it for certain methods and scope of use of the work. [23].

The current legislation, setting minimum rates of copyright fees, tries to protect the property rights of the authors of works, therefore, their copyright fees should not be lower than established by the Cabinet of Ministers of Ukraine. The specified minimum rates are fixed by the Resolution "On approval of minimum rates of remuneration (royalties) for the use of objects of copyright and related rights". [24].

The said Decree defines the minimum rates of author's remuneration (royalty) for public performance, public display, public notification of works of science, literature and art; for reproduction and publication of works recorded in phonograms and videograms; for the use and reproduction of works of architecture; for reproduction and publication of copies of works of scientific, artistic and other literature, etc. In addition, the Regulation determines the minimum rates of remuneration (royalty) to performers for public notification of performances; producers of phonograms and videograms for public notification or retransmission, etc. Minimum rates established by law quite often serve as a kind of reference point for determining by the parties to the author's contract the size of the author's remuneration and the procedure for its calculation.

The term of the author's contract is a period of time during which the author cedes his property rights to another person - the user of the work. However, in addition to the term for which certain property rights are transferred, the author's contract may contain other terms. For example, it can be the terms of submitting a sketch in an art order contract; deadlines for submission by the author to the customer of a certain part of the work; terms related to the payment of copyright fees; terms related to the fulfillment by the parties of their obligations under the contract. [25].

While studying our topic, we should pay attention to certain types of author's contracts. Yes, according to Art. 1107 of the Civil Code of Ukraine, we can distinguish the following types of copyright contracts:

- a license to use the object of intellectual property rights;
- license agreement;
- an agreement on the creation to order and use of an object of intellectual property rights;
- agreement on the transfer of exclusive intellectual property rights;
- another agreement on the disposition of property rights of intellectual property.

The main types of contracts in the field of copyright are provided for by the Law of Ukraine "On Copyright and Related Rights". According to this law, copyright contracts can be distinguished, in particular:

- the agreement on the distribution of property rights to the official work (Article 16 of the Law);
- contract between co-authors of the work (Article 13 of the Law);
- an agreement on the transfer (alienation) of property rights of subjects of copyright and related rights (articles 31, 39-41 of the Law);
- an agreement on the transfer of the exclusive (non-exclusive) right to use objects of copyright and related rights (Articles 32, 39-41 of the Law);

- order contract (Article 33 of the Law);

- agreement on collective management of property rights of subjects of copyright and related rights (Article 48 of the Law);

- an agreement between a collective management organization and a person who uses objects of copyright and related rights (Articles 32, 48 of the Law);

- an agreement on the payment of deductions by manufacturers and importers of equipment and material media, with the use of which it is possible to reproduce works and performances recorded in phonograms and videograms at home (Article 42 of the Law);

- an agreement on the payment of remuneration for the use of phonograms, videograms, their copies and recorded performances recorded for commercial purposes (Article 43 of the Law);

- other agreements in the field of copyright and related rights.

The types of copyright contracts include a publishing contract, manuscript deposit contract, script contract, staging contract, artistic commission contract, public performance contract, contract for use in the industry of works of decorative and applied art, etc.

A publishing contract is one of the most common types of copyright contracts. According to this contract, any literary, musical or dramatic works are published and republished. The author's right allows to reproduce his work in material form by means of large-scale copying of copies of the work.

In the contract, the author must unequivocally confirm that the copyright belongs to him and that he has not made any orders regarding it that would contradict the current legislation or the terms of the contract. Such a disclaimer must also apply to any other material used in the work. If the author offers illustrative material that does not belong to him, he must warn this publisher. [26].

The duration of publication of a work quite often leads to premature aging of the information that makes up its content. This applies mainly to scientific works. In addition, the high cost of publishing such a work, the need to convey scientific or scientific and technical information as soon as possible to interested persons necessitated the search for another, different from publishing, way of conveying information to a wide range of readers. This method was found in the form of depositing the manuscript of the work without publishing it. A properly designed work is transferred to a specific organization for safekeeping for the purpose of viewing the work by anyone who wishes to do so. This form of information was called "depositing", a new type of copyright appeared contract, which has not yet been thoroughly investigated. There is no regulatory act that would regulate depository relations. [27].

The object of the contract is also abstracts of articles, reviews, monographs, collections of scientific works, materials of conferences, congresses, meetings, symposia, etc., of a highly specialized nature, which may not be expedient to publish in the usual printing method. The special features of these objects are their handwritten form and highly specialized nature. However, it is worth keeping in mind that the publishing process is not only long, but also quite expensive, which significantly limits the possibilities of both authors and organizations (scientific, educational, etc.). However, the need to publish a work is sometimes quite acute. That's when escrow comes in handy. At the same time, the author reserves the right to publish this work. It is also important that the deposit of a work is one of the forms of publication, or publication (release of a work into the world).

As for the script contract, it is concluded in those cases when it is necessary to regulate relations related to the use of the text, according to which the shooting of a TV film, motion picture, radio or television program, etc. Usually, the literary script is used modified. It serves as the basis for the creation of a television film, motion picture, television broadcast, radio broadcast, etc., and the conclusion of a script contract precisely and is intended to allow the use of a literary script to be modified. The parties to the script contract are the author of the literary work (screenplay), who is always a natural person, and the customer, who can be both a natural person and a legal entity. According to the script contract, the author undertakes to transfer or create and transfer to the customer a script for the creation of another result of creative activity within a specified period, and the customer is obliged to review the work, approve it and accept it, as well as pay the specified fee or reject it and demand revision. The object of the contract is a literary script, which must meet the requirements of the contract. The specifics of the script are usually defined in the creative application drawn up by the customer and containing the definition of the main idea of the script, its genre, storyline, etc. The author can transfer both published and unpublished works

under a script contract. Script users are more interested in having unpublished scripts delivered to them. The script contract comes into effect after it is signed by the parties. The rights and obligations of the parties defined in the scenario contract constitute the content of the contract. When creating a work, the author must respect his copyright. The author has the right and is obliged to participate in the realization of his work. [28].

The production contract is a consensual agreement based on which the author transfers or undertakes to create and transfer to the entertainment organization a dramatic, musical or musical-dramatic, choreographic or pantomime work, and the production organization undertakes to carry out the production and public performance of the work (release it into the world) and pay the author the contractual remuneration. The objects of the performance contract are dramatic, musical, musical-scenic, choreographic and pantomime works both created at the time of conclusion of the contract and not yet created. The subjects of the performance contract are the author-creator of the stage work and the relevant entertainment organization. If the work is created by several authors (the author of the libretto of the opera and the composer), the subjects of the performance contract are the authors of all the constituent parts of the work.

Instead, the public performance contract allows the use of literary, musical, dramatic and other works by performing them or transmitting them to the public on the air or by cable, both directly and with the help of various technical means. According to the contract of public performance, the author (his legal successor) of a literary, dramatic, musical and other work allows or authorizes a certain organization to carry out a public display or public performance of his work. The relevant organization organizes a public performance with the help of its performers, by recording or broadcasting on air or cable, etc. and pays the other party a royalty, the amount of which is set either as a fixed amount or depends on the amount of profit received. Public performance contracts are most often concluded by organizations of collective management of property rights of copyright subjects.

The issue of distinguishing the author's contract from the employment contract and the civil contract of employment remains relevant. The Law of Ukraine "On Copyright and Related Rights" (Article 16) enshrines the copyright for official works and notes that the exclusive property right to official works belongs to the employer, unless otherwise stipulated by the employment contract (contract) and (or) civil law contract between the author and the employer. [28].

Summarizing the types of copyright contracts, it can be said that the legislation of Ukraine does not have a classification of copyright contracts depending on the type of work and the way of its use, in connection with which in the future problems arise in the legal regulation of relations under the copyright contract. In our opinion, this issue should be legislated, because it will simplify the work of the judicial system and authors, while protecting their violated property rights.

As you know, the person who owns the property rights of intellectual property has the exclusive right to allow the use of the result of creative activity by other persons. In the field of intellectual property objects, the need for a quick transfer of rights with a clearly defined scope of rights to be transferred objectively determined the emergence of such forms as a license agreement and a license. In accordance with Article 1109 of the Civil Code of Ukraine, under a license agreement, one party (licensor) grants the other party (licensee) permission to use the object of intellectual property rights (license) on the terms determined by mutual agreement of the parties, taking into account the requirements of this Code and other laws. At the same time, it is necessary to take into account the provisions of both the Central Committee of Ukraine and the special law that regulates relations arising in connection with the very object in respect of which the contract is concluded. This is quite natural, since the Central Committee of Ukraine contains general provisions regarding all objects of intellectual property, and specifics are specified in special normative acts. [29].

The Central Committee of Ukraine expanded the scope of application of the license agreement. If the special legislation on intellectual property distinguishes between an author's contract in the field of copyright and a license agreement in the field of industrial property, then the Central Committee of Ukraine enshrines a universal construction of the license agreement, which applies both to objects of copyright and to objects of industrial property. [30].

The advantages of concluding license agreements regarding the disposal of property rights of intellectual property are also that:

1) the licensor remains the owner of the intellectual property object;

2) the possibility of limiting the transferred rights (by scope of rights, territory, term);

3) the possibility of concluding an unlimited number of license agreements in the case of a non-exclusive license;

4) the possibility of parallel use of the object of intellectual property rights together with licensees;

5) the possibility of choosing the optimal fee for issuing a license (royalty, lump sum payment or their combination);

6) the possibility of issuing a sublicense. [31].

The license agreement is connected precisely with the use of the object of intellectual property rights (obtaining useful economic properties from such use), as well as with its limited distribution - in the form of the possibility (if provided by the agreement) of further issuing a sublicense for the corresponding result of intellectual activity and (or) means of individualization. [32].

With regard to the specifics of the application of the license agreement and the resolution of disputes, a certain judicial practice has developed and explanations have been provided by the Supreme Administrative Court [33]. Yes, questions about the civil-legal status of the license still cause difficulties. In most cases, it is considered as part of the license agreement. Thus, the Supreme Administrative Court of Ukraine in its decision dated May 21, 2013 indicated that the exclusive license is the subject of a license agreement concluded between the company "Lagrion Limited" (CYPRUS, NICOSIA) and "SOLDEX LIMITED" (British Virgin Islands, Tortola) for the use of commercial marks, which in turn, in accordance with the norms of Art. Art. 1107-1109 of the Civil Code of Ukraine is a contract on the disposal of intellectual property rights [34].

Thus, by its civil-law nature, a license is a unilateral act that certifies the licensor's intention to grant authority to use the object of intellectual property to the extent specified by the license. Therefore, in the case of its registration as a separate document, for the validity of the license it is sufficient for the licensor's will to grant the rights to use the result of creativity to another person. In this case, the consent of the licensee is not required. However, if the license is a component of another civil law contract, giving it legal force requires the will of both parties to the contract. [35].

In accordance with Article 1113 of the Civil Code of Ukraine, under a contract on the transfer of exclusive property rights to intellectual property, one party (a person who has exclusive property rights) transfers these rights to the other party in part or in full in accordance with the law and under the conditions determined by the contract. The conclusion of the agreement on the transfer of exclusive intellectual property rights does not affect the license agreements that were concluded earlier. The terms of the contract on the transfer of exclusive property rights of intellectual property, which worsen the situation of the creator of the corresponding object or his heirs compared to the situation provided for by this Code and other laws, as well as limit the right of the creator to create other objects, are null and void. The subject of the contract on the transfer of exclusive intellectual property rights is exclusive property rights to the object of intellectual property rights. Exclusive property rights of intellectual property mean the monopoly of the subject of the intellectual property right on the use of the object of this right. [36]

R.E. Annan notes that the agreement on the transfer of exclusive intellectual property rights provides for an irrevocable transfer, that is, the alienation of exclusive intellectual property rights to another person. Thus, the person who transferred the corresponding exclusive intellectual property rights under the contract ceases to be the subject of the rights that were transferred [31].

A. Kodinets, analyzing the features of the contract on the transfer of exclusive intellectual property rights, drew attention to the identification of this contract in the Central Committee of Ukraine (Article 1113). In particular, the author noted that since the Central Committee of Ukraine does not classify all property rights of intellectual property as exclusive, the expediency of including a wording on the transfer of exclusive property rights to indicate the contract is quite questionable. Article 424 of the Civil Code of Ukraine does not refer to the group of exclusive rights, in particular, the right to use the object of intellectual property rights, and also indicates the existence of other property rights established by law, which may also not have an exclusive nature. Based on this wording of the name of the contract, it can be concluded that non-exclusive property rights to an object of intellectual property cannot be the subject of this contract [37].

V.M. Kryzhna, providing the legal characteristics of the specified contract, draws attention to the fact that when concluding a contract on the transfer of exclusive intellectual property rights, the rights are alienated, that is, transferred irrevocably. In this regard, the person to whom exclusive property rights have been transferred becomes the legal successor. Therefore, all rights and obligations regarding the object of intellectual property are transferred to it. In particular, the conclusion of an agreement on the transfer of exclusive intellectual property rights does not affect license agreements that were concluded earlier. In addition, the author notes that the fact that the specified contract contains wording that a person can transfer exclusive property rights in part or in full does not mean that only one of the powers, such as the right to use, can be transferred. In this case, despite the name, there would actually be a license agreement. The possibility of partial transfer of rights to an object of intellectual property is not universal, but exists only in the presence of specifics of certain objects of intellectual property [38].

The agreement on the transfer of exclusive property rights of intellectual property is not concluded with certain types of objects of intellectual property rights for which the Central Committee of Ukraine has not established exclusive rights. So, for example, this applies to a scientific discovery, the content of subjective rights to which does not include exclusive property rights (Article 458 of the Civil Code of Ukraine). In addition, the objects of exclusive property rights are not geographical indication (Article 503 of the Civil Code of Ukraine), commercial (brand) name (Article 490 of the Civil Code of Ukraine).

Noted that the agreement on the transfer of exclusive intellectual property rights, depending on the conditions defined in the agreement, can be embodied in various contractual and legal forms. For example, in the contract of sale, that is, the implementation of property rights of intellectual property on a paid basis is meant. Free transfer of such rights will be inherent in the gift contract. In the case of acquisition of exclusive property rights of intellectual property as a result of exchange for a similar object or the result of works or services, it may be a mine, contract or service contract. Property rights of intellectual property can be the subject of a pledge agreement, as well as a contribution to the authorized capital of a legal entity [31].

The method of use of the work and the territory to which the right applies, as essential conditions of the contract on the transfer of exclusive intellectual property rights, must be agreed upon by the parties. At the same time, the methods of use can be absolutely diverse - both those that are provided for by the law and those that are not established by it. However, the use of the object of intellectual property cannot be carried out with a purpose and in a way that directly contradicts the current legislation. The territory covered by an exclusive right may be limited by a person who has exclusive property rights [40].

The amount and procedure for payment of the copyright fee is determined by the agreement on the transfer of exclusive intellectual property rights. Such remuneration can be made in the form of a one-time (lump sum) payment, or deductions for each sold copy or each use of the work (royalty), or combined payments [40]. Although, as a rule, the payment depends on the contractual model chosen by the subjects of the contractual relationship and involves a one-time consideration for the transferred property rights. This contract can be both paid and free.

The agreement on the transfer of exclusive intellectual property rights shall be concluded in writing. In contrast to the license agreement, the agreement on the transfer of exclusive property rights in most cases, with the exception of the author's agreement, is subject to mandatory state registration. According to Article 1114 of the Civil Code of Ukraine, contracts regarding the disposal of property rights of intellectual property are not subject to mandatory state registration, but it can be carried out at the request of one of the parties to the contract. The absence of state registration does not affect the validity of rights. According to Part 2 of Article 1114 of the Civil Code of Ukraine, the fact of transfer of exclusive property rights to intellectual property, which in accordance with this Code or another law are valid after their state registration, is subject to state registration. It is these requirements that apply to the contract on the transfer of exclusive intellectual property rights to an invention, utility model, industrial design, trademark, layout of an integrated microcircuit, plant variety or animal breed. In this case, the contract is valid only from the moment of its state registration in the State Department of Intellectual Property of Ukraine. [36].

Of course, a copyright agreement is a great tool to use to transfer any intellectual property rights in a work from one entity to another. During the study of the author's contract, it became clear that it has an aleatoric

character. Its risk arises already at the conclusion of the contract, continues to exist during execution and until the moment of termination. When developing the content of the author's contract, experts try to do everything possible to ensure that the current legal norms are not violated, the property rights of the author are not violated, and that this contract is still successful. When performing an author's contract, the process of creating creative products may slow down (the author's illness, lack of creative inspiration, etc.) or stop altogether (the author's death). It should be reminded once again that relations under copyright contracts are of a strictly personal nature and the replacement of the party in the obligation is inadmissible, since the ordered products can be performed only by a specific person who has the abilities and (or) special knowledge to perform them. Even if the author's work is completed in a timely manner, according to all general indicators, the relation to it always has signs of subjective evaluation, that is, its perception by the customer and other persons can have a completely different character, which depends on the personality of the customer, his tastes and ideas about the future result [41].

Taking this into account, it is necessary to pay attention to the responsibility for non-fulfillment or deviation from the terms of the author's contract, which can be established in two ways: 1) directly by the author's contract; 2) in accordance with the legislative procedure. So, in our opinion, the responsibility for the violation of the author's contract arising within the scope of the concluded contract is the most important. That is, we can say that in case of violation of the author's contract, the parties can bear two types of liability: contractual and non-contractual. However, if special liability provisions are fixed in the contract, then they have priority application in relation to statutory provisions, and this is contractual liability. Here we deviate from the traditional understanding of contractual liability, which is usually understood as liability arising in cases of non-fulfillment or improper fulfillment of an obligation arising from the contract and add that its special conditions, dimensions and other characteristics are determined and fixed by the contract and have priority not right in application. Violation of an obligation that arises not from the grounds provided for in the contract, but for other grounds, entails non-contractual liability and, accordingly, it is brought to bear solely on the basis of the norms of current legislation. Thus, the difference between contractual and non-contractual liability is that contractual liability arises not only in cases provided for by law, but also in cases provided for by the terms of the contract. When concluding a contract, the parties have the right not only to increase liability compared to that established by law, but also to reduce its size [42].

Violation of the terms of copyright contracts is a common phenomenon in legal practice. The reasons are primarily misinterpretation of current legislation, incorrect application of legal norms, bad faith of the parties and a low level of legal culture, especially in relations between authors and persons who use author's works for profit [41].

Since the responsibility for non-fulfillment of the author's contract is a civil liability, any violations of contractual obligations by the parties to the author's contract lead to the application of many general rules on liability for breach of obligation. The application of the general provisions on liability for breach of obligation is carried out in those cases when it is not fully regulated by specific copyright contracts and in cases when its individual provisions cannot be established contractually. When concluding an author's contract with a plurality of persons on the author's side, i.e. when co-authoring, all co-authors have obligations to the customer. Therefore, non-fulfillment or improper fulfillment of the author's contract by one or several co-authors leads to practical difficulties in the legal regulation of the liability of such participants in the author's relationship. All issues of such liability, in connection with their non-regulation by special legislation, are resolved based on general civil law norms on liability for non-fulfillment of obligations. The customer has the full right to terminate the author's contract if at least one of the co-authors fails to fulfill their obligations. If several authors have fulfilled their obligations in part of the obligations assumed under the contract, then acceptance by the customer of their fulfillment of the obligation is possible only after his consent to change the author's contract and, first of all, the requirements for the object. A significant problem of holding authors responsible for co-authorship is determining the type of responsibility that should be applied to them. Analyzing the legal nature of authorship relations and the content of the norms of the current legislation, it seems that it is more appropriate to apply partial responsibility, regardless of the type of co-authorship (separate or non-separate). Thus, in the case of a joint and several obligation, the creditor has the right to demand the fulfillment of the obligation in part or in full both from all debtors together and from any of them separately (Article 543 of the Civil Code of Ukraine). The essence of

the object of the author's contract excludes such a possibility. In addition, it is possible to bring to partial responsibility only those co-authors who committed a breach of obligation, since, according to the general rule, the absence of fault excludes responsibility [1].

Of course, the author's responsibility as a party to the author's contract is determined directly by the author's contract itself. But at the same time, the parties in the process of concluding the contract determine:

1) types of sanctions applied for non-performance or improper performance of the author's contract (unilateral termination of the author's contract; return of the fee received by the author; obligation to compensate for damages; payment of a penalty, etc.);

2) conditions for the application of sanctions (independent application of sanctions; application of sanctions with simultaneous termination of the contract; increase in the amount of compensation depending on the form of guilt of the author as a party to the contract, etc.) [41].

The existence of damages and lost profit shall be proved by the party to the contract to whom they were caused. The damages of the user and the customer of the author's work may consist of the costs of preparing the work for publication; in the costs of materials necessary for the author to create a work to order; in non-receipt or underreceipt of income due to the fault of the author when using the work by the user (forgotten profit). The illegality of the author's behavior involves the author's actions (inaction) related to the violation of a contractual obligation. In this case, the basis for prosecution is non-fulfillment or improper fulfillment by the author of the duties assigned to him by the author's contract. The causal relationship between the author's illegal behavior and the occurrence of harmful consequences lies in the relationship between the authors' improper performance or non-fulfilment of their duties and the consequences that occurred as a result of such actions [43].

Features of bringing users to responsibility, as another party to the author's contract, are determined by separate provisions of the contract and general norms of civil legislation. Specific violations as grounds for bringing users to civil liability should be defined in the author's contract. The following types of violations of the author's contract are considered the most typical and widespread:

1) violation of the obligation to use the work;

2) damage or loss by the user of the work or the material medium on which the work is recorded;

3) violation of the personal non-property right of the author to preserve the integrity of the work;

4) transferring the right to use the work to third parties without the permission of the author, etc. [41].

If the parties cannot independently resolve the dispute regarding copyright infringement and protection, then in accordance with Part 3 of Art. 34 of the Law of Ukraine "On Copyright and Related Rights", disputes regarding liability for non-fulfillment of the terms of copyright contracts are resolved in court.

The subject of review in copyright infringement cases may be claims for: recovery of compensation for property copyright infringement; debt collection under the commercial concession contract; debt collection under license agreements; the obligation to stop improper use of the mark for goods and services.

But it should be noted that judicial practice, as a set of court decisions, is not a source of law. Each judge, deciding a case for which there is judicial practice, is not bound by the conclusions made by other courts in similar cases. He makes a decision based on his inner conviction, which was formed as a result of a legal assessment of the circumstances of the case established by the court. However, judicial practice reflects trends in the interpretation and application of legislation and may indirectly affect decisions in each individual case. Therefore, the study and analysis of the practice of courts at different levels is certainly appropriate and useful [1].

Conclusions.

Taking into account the above, it can be said that liability for non-fulfillment or violation of the author's contract is a type of civil liability, the grounds and forms of which are regulated by the author's contract and the norms of the current legislation of Ukraine, and provides for the application of sanctions in the event of a violation of the terms of the contractual relationship by the parties, with the aim of restoring violated property right. It is necessary to improve the system of protection of property rights in case of violation of copyright, and to develop in more detail the measures that can be applied to the offender. But at the same time, it should be noted that current problems in the field of copyright protection arise as a result of low legal awareness of authors, which leads to problems in regulating the transfer of the author's property rights to another subject of the relationship. It is precisely in order to monitor and legally protect this that lawmakers proposed a copyright agreement that can

be defended or challenged in court. Author's contract is a generalized concept that covers the transfer by the author of property rights to the object of copyright.

There are three clear essential conditions for copyright contracts - subject, price and term. However, there are differences and exceptions to the author's contract in such types of contracts as the creation-to-order contract, the employment contract, and the subcontract. Therefore, the list of essential conditions can be expanded.

When concluding an author's contract, it is extremely important to carefully list all the wishes and requirements of the author. It is also important to check the subjects of contractual relations to whom the authors transfer their property rights. In addition, one of the main problems of the author's contract is that the absence of a mandatory written form of the author's contract leads to a lack of guarantees from the performer and a violation of the author's rights.

As it became clear, the most common contract in the field of intellectual property is a license contract. In modern national legislation, the use of a license agreement is divided according to the scope of its application to objects of copyright or objects of industrial property rights.

The question of the elements of the subject matter of the author's contract remains relevant. Sometimes contractual relations regarding creative works are established between the authors of these works and persons who acquire the rights to the works not for their further use for commercial purposes, but to satisfy their own needs (order for artistic decoration of the interior, creation of a monument, painting of a portrait etc). The mentioned contracts do not in any way contradict the current legislation, but they are no longer authorial, but contractual in nature, although the creative result itself is, of course, protected by the norms of copyright.

It should also be noted that contracts regarding the disposition of property rights of intellectual property should be distinguished from contracts that, although they provide for the disposition of the specified rights, but this is not the main result to which they are aimed (an agreement on the pledge of property rights of intellectual property, a contract of a simple partnership, etc.), as well as mixed contracts that contain elements of disposal of property rights of intellectual property (a contract for the sale of an enterprise as a single property complex, a production contract, etc.).

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