**THE ABSTRACT**

On a theme: **The сopyright rights**

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**Concept and product signs**

**The copyright extends on products of a science, the literature and the arts which are growing out of creative activity, irrespective of appointment and advantage of product, and also a way of its expression.**

The legislation does not open the maintenance of concept "product" in spite of the fact that it is basic concept of institute of the copyright. It speaks that any possible definition of concept "product" cannot to define in the exhaustive image the given object of a right protection. Attempts to make definition to concept "product" repeatedly were undertaken in the copyright theory. The most successful and, therefore, the most widespread, is the definition formulated by V.I. Serebrovskiy: «**product is a set of ideas, thoughts and the images which have received as a result of creative activity of the author the expression in accessible to perception by human feelings to the concrete form, supposing reproduction possibility**».

To be protected by the copyright, **product should be expressed in any objective form**. Product is an object ideal; it initially arises in consciousness of the author as a complex of ideas, thoughts and images, in the form of a creative plan. Until, as product not begins to exist out of consciousness of the author, does not become the independent phenomenon of an objective reality, there is no necessity legislatively to establish legal connection between the author and its product. If product cannot be used other persons, there is no subject of legal regulation for norms of the copyright. Differently, product should exist in shape which is separated from the person of the author and has got independent life.

Product can be presented in following forms:

- Written (the manuscript, typewriting, a musical notation etc.);

- Oral (public pronouncing, public execution etc.);

- video-recordings (mechanical, magnetic, digital, optical etc.);

- Images (drawing, the sketch, a picture, the plan, the drawing, cinema - a body - video-or a photoshot etc.);

- Volume-spatial (a sculpture, model, a breadboard model, a construction etc.);

- In other forms.

However not any objectively existing work is protected by the copyright. The copyright extends only for the works **which are growing out of creative activity**. As creative activity recognise the independent intellectual activity of the person directed on creation of an image of the future product and its embodiment in any objective form.

The copyright does not regulate process of creation of product. Therefore for the question decision about products crucial importance has not character of activity on product creation, and a corresponding sign of the product created as a result of this activity. A sign of that product grows out of creative activity, the majority of researchers name its novelty; some scientists use the term "originality". Novelty (originality) of product is expressed in the new maintenance, the new form of product. Thus novelty of the idea taken as a principle of product, does not influence novelty of the product from the point of view of the copyright. The same idea, the same plot can be used the different authors, however each of the products, comprising the same idea (a subject basis), reflects the person of the author and is perceived by a society as new, independent product. It is possible to tell that **any creative product is characterised by originality, novelty, originality and uniqueness**.

Granting of protection to product **does not depend on its appointment and advantage**. Advantage is understood as the various merits of product concerning its form or the maintenance: the theme urgency, art value, scientific depth, author's style etc. copyright Appointment as a whole consists not in selecting worthy products, and in providing interests of the founder of product when its product can be used other persons. By the copyright any products in which creativity and which possess the signs of object of the copyright provided by the legislation is shown should be protected.

**The products protected by the copyright**

**The approximate list of objects of the copyright** is named in Law item 7 «About the copyright both the adjacent rights» and item 993 ГК. To the products protected by the copyright, concern:

- Literary works (books, brochures, articles, etc.);

- Drama and is musical-drama products, choreography and pantomime products and others сценарные products;

- Pieces of music with the text and without the text;

- Audiovisual products (cinema - a body - video films, filmstrips both other film-and teleproducts);

- Products of a sculpture, painting, a drawing, lithograph and other products of the fine arts;

- Applied art products;

- Products of architecture, town-planning and landscape gardening art;

- Photographic products and the products received in the ways, similar to a photo;

- Cards, plans, sketches, illustrations and the plastic products concerning geography, topography and other sciences;

- Computer programs;

- Other products.

Products of all genres of fiction concern number ***of literary works***, scientific works (articles, reports, etc.), the educational literature, speeches, reports, sermons and other oral products; journalism products (articles, interview, discussions, etc.), business and personal correspondence, etc. Thus literary works can exist not only in written, but also in other objective form.

***Drama products*** are rather close to literary works. Isolation of drama products is caused by specificity of art means of expression of thoughts of the author inherent in them as in drama products the basic accent becomes on a statement of creative idea by means of monologue and dialogues of characters.

The copyright protects all kinds ***of pieces of music***. The most widespread version of pieces of music are pieces of music with the text - songs. The piece of music with the text is created in the co-authorship the composer and the poet original (i.e. not compound) product; original character of a song is predetermined by that all protected elements of a song are created by its co-authors.

The special place among objects of the copyright is occupied ***with audiovisual products***. The product consisting of a series of images connected among themselves (with support by a sound or without it), movements making impression, and intended for visual and acoustical (in case of support by a sound) perceptions is audiovisual. The cinema and other products expressed by means concern the audiovisual, similar to cinematography (television movies, video films and similar products).

The copyright protects products of all directions ***of the fine arts*** - products of painting, a drawing, a sculpture, monumental and decorative art, etc.

Fine arts products are adjoined ***by products of an applied art*** with which the legislator allocates in a separate kind of protected products. Applied character of products means, that they are intended not only for satisfaction of purely aesthetic requirements of public, but also carry out other, practical functions. Among applied art products the increasing value is got by design products. The design is an art of giving to the subject environment of aesthetic qualities surrounding the person, therefore design as a direction in an applied art, has set of displays - graphic design, industrial design, design of interiors of premises, etc.

***Architectural products*** also has the dual nature as should not only satisfy essential material requirements - to create habitation and to arrange well environment, but also to satisfy aesthetic requirements of the person. The is constructive-technical decision of buildings and constructions is subject to the right protection art, instead of. Thus the right protection extends both on appearance of object, and on the art decision internal spaces (interior).

***Products*** of all kinds ***photographic and similar to them*** concern a category of the protected - irrespective of object (a portrait, a landscape, the reporting, etc.), and also the pursued aim (professional or amateur shooting), etc.

New enough object of protection by the copyright are ***computer programs***. Computer programs grow out of creative activity. At the same time, providing protection of computer programs by norms of the copyright, the legislator inevitably faces the problems caused by specificity of the computer program as protected object as in it the maintenance (algorithm) has an unconditional priority over the form (the algorithm stated by the programming language). The Major importance for the computer program has its functionality which is predetermined by algorithm, and the program writing in this or that programming language can be indifferent for the user. Providing protection to the product form, the copyright does not protect algorithm laying in its basis. Therefore more and more actual the question on necessity of granting is represented to the computer program of special protection which, first, would consider features of object of protection and, unlike the copyright, extended not only on the form, but also on the algorithm taken as a principle the program, and, secondly, there was more operative, cheap and accessible, rather than existing system of patent protection.

Independent versions of objects of the copyright are **derivative products** and **compound products**.

Transfers concern **derivative products**, summaries, abstracts, the resume, reviews, performances, musical arrangements and other of products of a science, the literature and art. All of them admit objects of the copyright as activity on their creation has creative character. The copyright of translators and authors of other derivative products has dependent character: the author of derivative product can carry out the copyright only in the event that use of its product does not attract infringement of the rights of the author of the product taken as a principle derivative product. The copyright of the translator and authors of other derivative products does not interfere with other persons to carry out the transfers of the same products.

Collections concern **compound products** (the anthology, databases) and other products representing on selection or an arrangement of materials result of creative activity. Creative activity of the composer is expressed that it at own discretion selects a material and (or) has it on the original system. Result of creative work of the composer is the system of an arrangement of materials developed by it as the copyright of the composer does not extend on the products included in compound product, and the copyright of the composer to compound product as a whole does not interfere with other persons to carry out independent selection and an arrangement of the same materials for creation of the compound products. Therefore, a protection subject with reference to compound products is original selection and (or) an original arrangement of the picked up materials. If products protected by the copyright are included in compound product, the composer uses the copyright under condition of observance of the rights of authors of each by it of the products included in compound product.

Any result of the creativity answering by the established legislation on the copyright to criteria , will admit **object of the copyright** irrespective of, whether it is named in the list resulted above, or not.

Protection of products by the copyright arises **owing to the fact of their creation.** For occurrence and copyright realization it is not required observance of any formalities. Used for the notification about exclusive copyrights the sign on protection of the copyright (a copyright sign) and consisting of three elements - the Latin letter "With" in a circle, a name (name) of the owner of exclusive property rights and year of the first publication of product - carries out especially information function. In itself absence on a copy of product of a sign on protection of the copyright does not mean, that the given product is not protected by the copyright.

The copyright to product is not connected with the property right to material object in which product is expressed. Transfer of the property right or the possession right any material object in itself does not attract transfer of the copyright to the product expressed in this object.

**The products which are not objects of the copyright**

Concepts "product" and «object of the copyright» are not identical. The first concept is wider, as the legislation names some categories of products which, possessing all signs protected by the copyright, owing to a different sort of the reasons are deduced from sphere of its action. To products which are not protected by the copyright, concern:

- Official documents (laws, judgements, other texts of legislative, administrative and judicial character), and also their official transfers;

- The state symbols and signs (a flag, the arms, a hymn, awards, monetary and other signs);

- Products of the national creativity which authors are not known.

The copyright also does not extend on ideas, processes, systems, methods of functioning, the concept, principles, opening or easier information as those even if they are expressed, displayed, explained or embodied in product.

**Authors of products. The co-authorship**

product copyright protect author

The copyright by the general rule arises at the author. The author of product the physical person which creative activity creates product admits.

If product is created by several persons, such persons admit co-authors. **The co-authorship are the legal relations arising owing to the fact of joint creation of product by several persons**.

The law names two conditions of occurrence of the co-authorship: 1) product should be created joint work of two or more persons; 2) work of all participating in creation of product of persons should have creative character.

Joint character of work should be estimated not on joint process of work, and by in common reached result; important not that, as well as in what form co-authors, and that product has grown out of their joint efforts worked. Therefore for co-authorship occurrence the joint work understood as activity of several persons, directed on achievement of the co-ordinated result what product creation is matters. Thus joint activity does not mean its unity in time and space, and only that authors work on product together, and each of them brings the contribution to its creation.

Co-authors those who has brought the creative contribution to product creation can admit only. The person who has not brought the creative contribution to product creation, and rendered only the technical help (a manuscript set, bibliography drawing up, a portrayal of sketches, etc.) cannot admit the co-author. Essentially important that the basis of occurrence of the co-authorship are actual is represented, instead of contractual relations of persons, and any agreement, including issued in writing, has no legal value if co-authors actually have not been do joint creative work.

Distinguish two kinds of the products created in the co-authorship: the products forming one indissoluble whole, and the products consisting of parts, each of which has independent value. The product part admits having independent value if it can be used irrespective of other parts of product. Accordingly, two kinds of the co-authorship - **separate** and **unseparable** differ. The separate co-authorship takes place when collective product consists of parts, each of which has independent value and thus it is known, by whom from co-authors these parts are created. In this case each of co-authors has the right to use the part of product created by it at own discretion if other is not provided by the agreement between co-authors. At the unseparable co-authorship the product created by two or more co-authors, or represents uniform indissoluble whole, or it is impossible to allocate the contribution of the concrete co-author to collective product. Therefore the copyright to the collective product created in the unseparable co-authorship, all co-authors in common carry out. The legislator, trying to provide interests of all co-authors, establishes, that in the event that product of co-authors forms one indissoluble whole, any of co-authors has not the right without the sufficient bases on that to forbid product use.

The principle of the joint order product does not interfere with authors to enter into among themselves the agreement defining a procedure of the rights concerning collective product. By the legal nature the agreement of co-authors is one of versions of contracts on an order of using the right, similar to the contract of proprietors on an order of use of property.

**Office products**

The law of Byelorussia «About the copyright and the adjacent rights» defines office product as **the product created as performance of the office task or official duties**.

The law does not contain accurate definition of sphere in which norms about office products are applied. Nevertheless, it is possible to say that the concept "office" can be used only with reference to the products created within the limits of labour relations. The legislator uses the term "employer", definition to which is given in the Labour code of Byelorussia. According to item 1 ТК the employer is legal or the physical person to whom the legislation gives the right of the conclusion and the termination of the labour contract with the worker. Besides, the legislator uses concepts "official duties" and «the office task» which are applied in labour relations.

The first possible basis of a recognition of object of the copyright office is that its creation is included into official duties of the worker. The current legislation does not give that direct definition, that such "official duties". The labour code uses concept «office position of the worker» at definition of the term "post". Thus office position of the worker is defined by circle of its duties, the official rights and character of responsibility. Proceeding from it, it is possible to put an equal-sign between concepts "official duties" and «official duties». In turn, official duties assume presence of labour relations which should be issued the labour contract; in the labour contract or in duty regulations official duties of the worker also should be fixed. Thus, the status office can receive product in the event that its creation is included into labour duties of the author.

The law «About the copyright and the adjacent rights» establishes **a special legal status** concerning office products. The personal non-property rights to the product created as performance of the office task or official duties (office product), belong to the author. Property rights on office product belong to the employer if the contract between it and the author does not provide other.

As follows from norm of item 14 of the Law, the presumption of an accessory of property rights on office product to the employer can be denied conditions of the prisoner between it and the author of the contract. The employer and the author in the labour contract (contract) can establish, that property rights on office product in full arise at the author; in this case its legal regime will not differ from a legal regime of the product created outside the limits of labor relations, and to the employer interested in its use, it will be necessary to conclude the author's contract with the worker. Property rights according to the agreement will be divided between the worker and the employer (on ways of use of product or territory on which the right will be carried out).

The law limits the author of office product in possibility to take advantage of the personal non-property rights belonging to it. In the event that the owner of property rights on office product is the employer, the author has not the right interfere with promulgation such intergovernmental cooperation administrative Besides, the author of office product cannot to carry out the right to a response also.

The recognition of property copyrights to office product for the employer deprives of the author of such product of the right to reception of compensation both the employer, and the third parties.

**The literature**

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