



Features of legal protection of photographs as objects of copyright on the Internet

Características de protección legal de fotografías como objetos con Derechos de Autor en Internet

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ABSTRACT:

The features of the legal regime of photographic images as objects of copyright in their use in the information and telecommunication network of the Internet are analyzed in this article. The analysis of the norms of the Russian legislation and the legislation of individual states is conducted; the peculiarities of legal protection of photographs as objects of copyright and as works of art are disclosed. Various aspects of judicial practice on the most typical violations of exclusive rights to photographs are considered, including the determination of the circumstances that affect the minimum and the maximum amounts of compensation and recommendations for assessment of providers' actions. The issues of free use and the features of copyright protection arising from the use of photographs on the Internet are discussed. The special role of information intermediaries in protection of the copyright holders and their responsibility in revealing and assessing the facts of violations of rights to photographic works on the Internet is disclosed.

RESUMEN:

The features of the legal regime of photographic images as objects of copyright in their use in the information and telecommunication network of the Internet are analyzed in this article. The analysis of the norms of the Russian legislation and the legislation of individual states is conducted; the peculiarities of legal protection of photographs as objects of copyright and as works of art are disclosed. Various aspects of judicial practice on the most typical violations of exclusive rights to photographs are considered, including the determination of the circumstances that affect the minimum and the maximum amounts of compensation and recommendations for assessment of providers' actions. The issues of free use and the features of copyright protection arising from the use of photographs on the Internet are discussed. The special role of information intermediaries in protection of the copyright holders and their responsibility in revealing and assessing the facts of violations of rights to photographic works on the Internet is disclosed.

1. Introduction

In accordance with Paragraph 1 of Article 259 of the Civil Code of the Russian Federation (Russian Gazette, 2006), the objects of copyright are the works of science, literature and art, regardless of the purpose and dignity of the work, as well as the way of its expression.

The same article of the Civil Code of the Russian Federation establishes a list of objects of copyright. In accordance with the established list, the objects of copyright include photographic works and the works obtained in ways similar to photography.

A similar approach to legal protection of photographs is typical not only for Russia, but also for other states. So, in the UK (*Copyright, Designs and Patents Act, 1988*), France (*Code de la propriété intellectuelle (version consolidée au 9 octobre 2016), 1992*) and Germany (*Gesetz über Urheberrecht und verwandte Schutzrechte, 1965*), photographic images are also recognized as copyright protection objects. Under the laws of Brazil, the photographs and the works obtained in a similar way are also classified as copyright objects (Law on Copyright and Neighboring Rights, Article 7.VII) (*República Federativa do Brasil. Brazil: Law No. 9610, 1998*). Regarding the law enforcement practice, when applying the norms of copyright legislation, the courts proceed from the fact that a photographic work is created by the creative work of the photographer.

However, in the legislation of some states such a presumption is absent, and a photograph is not always recognized as a work of art. In a number of countries, the extension of the copyright standards to photographs is due to the fulfillment of certain conditions provided for by law. Thus, under the Copyright Act of the United States of America (*U.S. Copyright Act, 1976*) the works of fine art are the photographs taken for exhibition purposes that exist in a single copy signed by the author or exist in a limited edition (200 copies or less), also signed and numbered by the author. In French law for a long time there was a rule, stating that for a copyright protection, a photograph should have characteristics of a work of art or a document (before the reform of 1985).

Thus, in a number of countries the photographic images are delineated into the photographic works, which are a variety of works of art recognized as the objects of copyright, and so-called "simple photographs" that are not recognized as such objects.

2. Methods

The most effective methods for the purposes of studying the features of legal protection of photographs as copyright objects on the Internet are the methods of formal legal interpretation of the legal norms of various federal laws of the Russian Federation and the norms of the national legislation of individual states, the comparative legal method, which made it possible to compare the legal norms, governing the public relations, associated with the creation and use of the photographs. During the preparation of the article, such scientific methods as the system analysis, the analogy method, the empirical method of studying the legislation, the logical and formal-legal methods were used, which allowed systematizing the obtained data, drawing the conclusions and describing the results obtained for their further use.

In contrast to Paragraph 1 of Article 6 of the previous law of the Russian Federation "On Copyright and Related Rights", Article 1259 of the Civil Code of the Russian Federation contains no indication that the work should be the result of creative activity, because the criteria for creativity cannot be accurately determined. It is assumed that any work is of creative nature (otherwise it is not a work). This position is reflected in the definition of the author as a citizen who creates a work by his creative activity (Article 1257 of the Civil Code of the Russian Federation). Thus, photographic works are supposed to be creative, until proven otherwise. The

burden of such proof lies on the person using the photographic work (in particular, on the media) in accordance with Paragraph 3 of Article 1250 of the Civil Code of the Russian Federation, which states that the absence of fault is to be proved by a person who has violated the intellectual rights.

3. Results

Based on the analysis of the law enforcement practice, it can be concluded that currently the most common way of violation of the exclusive right to a photograph is to reproduce, without the consent of the right holder, the photographic images with bringing these works to the public on the Internet, including the social networks, on the pages of the web sites, etc. The main condition for such "bringing to the public" is the provision of the opportunity to access the work from any place and at any time to any person out of preference.

In accordance with Article 1301 of the Civil Code of the Russian Federation, in cases of violation of the exclusive right to a work, the author or other copyright holder at his own and sole discretion has the right to demand payment of compensation instead of reimbursement for losses from the violator. This compensation is applied along with the use of other applicable methods of protection and liability measures established by the Civil Code of the Russian Federation (Articles 1250, 1252 and 1253). The minimum and maximum amounts of compensation are established by Article 1301 of the Civil Code of the Russian Federation:

- 1) from ten thousand rubles to five million rubles, as determined at the discretion of the court on the basis of the nature of the violation;
- 2) in the double amount of the cost of counterfeit copies of the work;
- 3) twice the amount of the right to use the work, as determined on the basis of the price, which under comparable circumstances is usually levied for the lawful use of the work in the way that the violator used.

At the same time, the Constitutional Court of the Russian Federation, stated in the Decree of 13 December 2016, that in determining the amount of compensation payable to the copyright holder in the event of violation of the rights to several intellectual property objects by an individual entrepreneur in the course of performance of the entrepreneurial activity by a single action, taking into account actual circumstances of a particular case, the total amount of compensation should be determined below the minimum limit established by these statutes, if the amount of compensation calculated according to the Article 1301 of the Civil Code of the Russian Federation, given the possibility of its reduction, many times exceeds the amount of losses caused to the right holder (with the fact that these losses can be calculated with a reasonable degree of reliability, and their excess should be proved by the respondent) and if the circumstances of the case testify, in particular, the fact that the offense was committed by an individual entrepreneur for the first time and that the use of the objects of intellectual property, the rights to which belong to the third parties, with the violation of these rights was not an essential part of his entrepreneurial activity and was not rude.

Thus, this rule is very flexible, since the amount of compensation varies according to the nature of the violation, and the copyright holder has the right to choose the way to protect his exclusive right to the work. Since it is not possible to describe all types of violations of this right in the law, the specific amount of compensation in each case of violation of the exclusive right is determined by a court decision. If the absence of a creative component of a photograph is proved, it can not be recognized as an object of copyright, an exclusive right to it will not arise, therefore, the norm of the Article 1301 of the Civil Code of the Russian Federation on payment of compensation for violation of the exclusive right to a work is not applicable.

As with other objects of copyright in respect of photographic images, the free use is permitted, the list of grounds of which is exhaustive. Thus, in accordance with the Article 1272 of the Civil Code, the distribution of the original or copies of the work without any consent of the copyright holder and without paying him the remuneration is allowed if the original or copies of the work

are legally introduced into civil circulation in the territory of the Russian Federation by selling them or alienating them, i.e. the "exhaustion of rights" takes place.

As for the citation, the rules of it are stipulated in the Article 1274 of the Civil Code of the Russian Federation on the free use of the work for information, scientific, educational or cultural purposes. According to the paragraph 1 of this Article, it is allowed without the consent of the author or other copyright holder and without payment of remuneration, but with the obligatory indication of the name of the author of the work used, and the source of borrowing:

- 1) citations in the original and in translation, in scientific, polemical, critical, informational, educational purposes, in order to disclose the creative intention of the author of legitimately released works to the extent justified by the purpose of citing, including the reproduction of excerpts from newspaper and magazine articles in the form of press reviews,
- 2) the use of legitimately released works and excerpts from them as illustrations in publications, radio and television broadcasts, sound and video recordings of educational character in a volume justified by the set goal.

These norms apply to all objects of copyright, including photographic works, so there is hardly a need for a special rule on citing photographs in the mass media, the main thing in the production of which is the text.

Paragraph 1 of Article 1265 of the Civil Code of the Russian Federation is applied to the indication of the name of the author on the work, according to which the author is entitled to use or to authorize the use of the work under his own name, under an assumed name (pseudonym) or without attribution, that is, anonymously. This right is inalienable and indelible, including conveyance or transfer of the exclusive right to work to another person or granting to another person the right to use the work. The waiver of it is insignificant. In this regard, it is not possible to compel the photographers to indicate their names on their works.

As with other objects of copyright, the free use of photographic images for personal, informational, scientific or cultural purposes, for illustrative purposes, in reviews of current events and also in other cases is possible when the work located in a place open for free access is reproduced, broadcasted or cabled, not being the main object of these actions. Thus, when making a report from the scene of events, sometimes it is very difficult to avoid demonstrating a work that can be located in the place of an event, while the condition for application of the norm of Article 1276 of the Civil Code of the Russian Federation is that the main object of reproduction is the corresponding event, and not the work located in the same place. Herewith, Article 1276 of the Civil Code of the Russian Federation is not applicable to the use of images for commercial purposes.

The attribution of the web sites to such places is of special interest. So, in the ruling of the Supreme Court of the Russian Federation of September 22, 2014 No. 117-APG14-2 (Decision of the Supreme Court of the Russian Federation No. 117-APG14, 2014), it is determined that the work published on the web site is an object located in a place open to free access, if the access to it does not require input of any registration data (for example, login, password, etc.), and if the work is not the main object of reproduction. In general, the use of photographic works on the Internet is one of the main problems of the copyright holders. This is due both to the extraterritorial nature of the network itself and to the multitude of the subjects involved in the protection of rights.

A special place among them is occupied by the "information intermediary" that appeared in Russian legislation with the adoption of the Federal Law of July 2, 2013 No. 187-FZ "On Amending Individual Legislative Acts of the Russian Federation on Protection of the Intellectual Rights in Information and Telecommunications Networks" (unofficially referred to as the "anti-piracy law") The appearance of such a subject in the legislation was expected. Paragraph 2.5 of Section VII "Legislation on the rights to the results of intellectual activity and means of individualization (intellectual rights)" of the "Concept of the Development of Civil Legislation of the Russian Federation" (approved by the decision of the Council under the President of the

Russian Federation on Codification and Improvement of Civil Legislation of October 7, 2009) has stated: "One of the most important issues, without the solution of which it is impossible to provide effective protection of the results of intellectual activity in the information and telecommunications networks, is the determination of the conditions for bringing the persons, providing the access to the information and telecommunications network, the operation of resources in the network and the placement of relevant objects (providers), to responsibility. To the extent that it is possible to implement it within the jurisdiction of the Russian Federation, it is advisable to provide for the responsibility of the provider for placement the corresponding result of the intellectual activity in the network without the consent of the copyright holder, but only if the conditions for the application of such responsibility are clearly defined in the law. In this case, copyright holders will be guaranteed to have an effective tool to suppress the violations of their rights, since the provider will be obliged to respond promptly to their claims under the threat of prosecution for violation of the exclusive right. At the same time, the provider will be sufficiently protected against the unreasonable claims, since all mandatory actions will be known to him in advance".

The need for a legislative solution to this problem was also prompted by the judicial practice. The starting point in the issue of bringing the providers to responsibility can be considered a legal position expressed by the Supreme Arbitration Court of the Russian Federation in 2008 on the dispute between "Kontent & Pravo" OOO (the owner of the exclusive rights to use and to dispose of some musical works) and "Masterhost" ZAO, which provided hosting provider services to the owner of the web site www.zaycev.net. The Presidium of the Supreme Arbitration Court of the Russian Federation concluded that the provider is not responsible for the transmitted information unless it initiates its transfer, selects the recipient of the information and does not affect the integrity of the transmitted information. At the same time, it is necessary to take into account the preventive measures to combat the violations committed using the services rendered by the provider, stipulated by the contracts concluded with the customers (Decision of the Presidium of the Supreme Arbitration Court of the Russian Federation No. 10962/08, 2008). With reference to this decision of the Presidium of the Supreme Arbitration Court of the Russian Federation, the Federal Arbitration Court of the Central District, in the course of settlement of a similar dispute on the claim of "Top 7" OOO to "Kompyuternie Tekhnologii" OOO (the subject of the dispute was the publishing of the photographic work, the rights to which belonged to the plaintiff, on the web site www.izumrud.brk.ru) in the Decision of the Federal Arbitration Court of the Central District of February 11, 2011 on the case No. A09-3432/10 did not agree with the conclusions of the first two instances and did not satisfy the claims of the claimant (Sergo & Ivanova 2013).

4. Discussion

The foregoing has been developed in the Decision of the Presidium of the Supreme Arbitration Court of the Russian Federation of November 1, 2011 No. 6672/11: "According to this legal position (Decision of the Presidium of the Supreme Arbitration Court of the Russian Federation No. 10962/08, 2008), the courts should take into account the degree of involvement of the provider in the process of transferring, storing and processing the information, the ability to monitor and change its content. The provider is not responsible for the transmitted information, if it does not initiate its transfer, does not select the recipient of the information, does not affect its integrity, and also takes measures to prevent the use of the objects of exclusive rights without the consent of the copyright holder.

When considering the similar cases, the courts are required to check: whether the provider received the profits from the activities related to the use of the exclusive rights of other entities that were carried out by the persons using the services of this provider; whether there are restrictions on the amount of information being posted, its availability for an indefinite number of users; whether the user agreement contains the obligation of the user to comply with the legislation of the Russian Federation when posting the content and the unconditional right of

the provider to remove the illegally posted content; the lack of technological conditions (programs) that contribute to the violation of the exclusive rights, as well as the availability of special effective programs to prevent, track or remove the counterfeit works posted.

The courts should also evaluate the provider's actions taken to remove, block the disputable content or the access of the violator to the web site upon the receipt of the notice of the right holder on the fact of violation of exclusive rights, as well as in case of another opportunity to learn (including from a broad discussion in the media) about the use of its Internet resource in violation of the exclusive rights of third parties. In the absence during a reasonable period of time of the actions of the provider aimed at suppression of such violations, or in the event of his passive behavior, demonstrative and public dissociation from the subject matter of the content, the court may recognize the presence of the provider's fault in the admitted offense and bring him to justice.

Considering modern development of the Internet, such legal position is also applicable to the owners of social and file-sharing Internet resources when bringing them to responsibility.

The opinion of the Constitutional Court of the Russian Federation on the problem under consideration is expressed as follows: "According to the subparagraph 2 "a" of the Joint Declaration on Freedom of Expression and the Internet (adopted on June 1, 2011 by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Representative of the Organization for Security and Cooperation in Europe (OSCE) on freedom of the media, the Special Rapporteur on freedom of expression of the Organization of American States (OAS) and the Special Rapporteur on freedom of expression and free access to information of the African Commission on Human and Peoples' Rights), no person, providing only technical Internet services, such as provision of the access, retrieval, transmission or caching of the information, should be liable for the content created by other persons, distributed through these services, if that person did not make changes to it and did not refuse to comply with a court decision to remove this content in cases where it has the possibility to do it" (p. 3 of the Constitutional Court of the Russian Federation Decision No. 18-P of July 9, 2013).

However, the authors of the "anti-piracy law" went far beyond the foregoing, and the introduced Article 1253.1 of the Civil Code of the Russian Federation "Features of liability of the information intermediary" covers several groups of entities (while the "provider" itself has been lost):

- the persons performing the transfer of materials in information and telecommunication networks, including the Internet,
- the persons providing the opportunity to publish materials or information required to obtain them with the use of information and telecommunication networks, including in the Internet,
- the persons providing the access to materials in information and telecommunications networks, including the Internet.

The initially implicated idea to protect in this way the backbone providers (communication operators, transferring the content to the Internet) and the hosting providers (persons who offer the ability to publish the content on the Internet) that are few and previously were easily identifiable as the subjects that carry out licensed species of activities, has over time been greatly expanded by the judicial practice.

This is due in part to the vagueness of the wording of the law, and partly to the widespread format of the Internet sites that do not have their own unique content, but are oriented to the indexing of the existing one (different search services) and to the user-generated content (UGC is an established term meaning the content of the site created by the users): social networks, blogs, forums, etc.

The above is reflected in the Federal Law of July 27, 2006 No. 149-FZ (edited on July 21, 2014) "On Information, Information Technologies and Information Protection", where it is determined

that "the owner of the site on the Internet is a person who independently and at its discretion determines the procedure for using the site on the Internet, including the procedure for publishing of the information on such a web site".

Today, the norm on the immunity of the "informational intermediate" (Art. 1253.1 of the Civil Code of the Russian Federation) is actively used by many subjects, using the Internet in their work. It is used not only by classic hosting providers, but also by search engines, advertising platforms, file-sharing services and others. Despite the fact that Article 1253.1 of the Civil Code of the Russian Federation entered into force on August 1, 2013, it has been applied to the legal relationships earlier. For example: "As established by the court of appeal and confirmed by the case files, the resource tracksflow.com is a music search service, that is, the information intermediary in the sense of Paragraph 2 of Article 1253.1 of the Civil Code of the Russian Federation, which follows from the nature of the web site itself and the procedure for assessment to the music files found by it and from the content of the User Agreement.

At the same time, the Intellectual Property Court notes that Article 1253.1 of the Civil Code of the Russian Federation was introduced by the Federal Law of July 2, 2013 No. 187-FZ and entered into force on August 1, 2013. This norm does not have an inverse force, due to which it cannot be directly applied to the disputable legal relations. However, the appealed decision of the appellate court corresponds to the legal positions previously worked out by the Supreme Arbitration Court of the Russian Federation, which are the basis of this rule" (Decision of the Court on Intellectual Rights No. S01-729/2014 on the case No. A40-118714/2013, 2015).

The norm of Article 1253.1 of the Civil Code of the Russian Federation suited not only domestic, but also foreign companies. A well-known video hosting YouTube used Article 1253.1 of the Civil Code of the Russian Federation for protection in the Russian court: "As part of the claims against YouTube, the courts concluded that taking into account Article 6 of the Civil Code of the Russian Federation, the provisions of the subparagraph 3 of Paragraph 2 of Article 1253.1 of the Civil Code of the Russian Federation, introduced by the Federal Law No. 187-FZ of July 2, 2013 "On Amendments to Certain Legislative Acts of the Russian Federation on the Protection of Intellectual Rights in Information and Telecommunications Networks", according to which the information intermediary carrying out the transfer of material into information telecommunication networks is responsible for infringement of the intellectual rights if he knew or should have known that the use of the corresponding results of the intellectual activity or means of individualization by the person initiating the transfer of material containing the corresponding result of intellectual activity or means of individualization is unjustified, are applicable to the actions of this company. Taking into account that YouTube cannot be held responsible for filling the freely accessible video hosting with video files, performed by other persons, and considering that the defendant had already responded to the plaintiff's notice of violation of the exclusive rights and blocked the content in question, the courts noted that the plaintiff's claim to YouTube is in fact an attempt to transfer to the information intermediary the obligation to monitor the third parties' activities, to identify the content and to detect the violations" (Decision of the Court on Intellectual Rights No. S01-524/2015 on the case No. A40-66554/2014, 2015).

It is worth noting that for individual services, the conscientiousness of the participants in the dispute and the development of the defendant's service to combat copyright infringement were carefully analyzed by the courts. So, in the Decision of the Court of Intellectual Rights of April 24, 2015 No. C01-251/2015 on the case No. A40-150342/2013 it is stated: "It was established by the Court that in order to ensure the compliance of the users of the site with the current legislation and to prevent any violation of the rights and interests of third parties on the web site, the following general measures were taken on the web site:

- 1) the user agreement prohibits publishing the illegal content on the web site and the publishing of the work on the web site could not be allowed without the adoption of the user agreement,

- 2) the multiple interfaces of the web site remind users of the inadmissibility of illegal content

publishing;

3) the restrictions on the volume of file uploads are established;

4) the web site has a special support service that accepts and processes the claims from third parties with respect to user content,

5) after receipt of the claim and confirmation of the existence of the illegal user content, such content is immediately deleted, and

6) the user agreement provides for the unconditional right of the web site to remove illegal content,

7) the software and hardware complex provides special administrative interfaces for removal of the illegal user generated content,

8) special administrative programs allow deleting content not in a single place on the site, but in all of its "copies" distributed among users,

9) special administrative programs allow preventing the download of the content completely identical to that removed by the complaint of the complainant,

10) the user agreement grants an unconditional right to the web site to remove or to block the user publishing the illegal content;

11) various systems logging the activity of the user on the web site, in most cases, allow detecting a specific user who has published the illegal content, as well as determining his credentials, including UID (user ID), IP addresses (that is, a unique network address of the node in the computer network from which the access to the web site was made), and in some cases other data allowing to establish a specific user of the site".

It is worth noting that in the same case the court pointed out: "Creation by the participants of the turnover of the technological conditions enabling the content sharing between the users of the site, as well as the duty of the site administrators to gather the information to identify the user and to perform the independent analysis of the information transmitted via it by the users, is not required by law" (Decision of the Court on Intellectual Rights No. C01-251/2015 on the case No. A40-150342/2013, 2015)

Currently, in the judicial practice the norms on the information intermediary are used by a variety of services, but not all of them are agreed by the courts. Usually, the courts recognize the owners of the search services as the "information intermediaries" ("Google" LLC, "Tsifrovaya laboratoriya" OOO), content storage sites ("Vkontakte" OOO, "Mail.ru" OOO), hosting services ("RSIC" OOO).

In general, forced to precede the legislator, various "information intermediaries" (owners of the social networks, blogs, forums, etc.) based on foreign experience develop their systems to resolve the conflicts between the copyright holders and the users, trying to distance themselves from participants of the conflict.

The idea of a balanced protection of the rights of copyright holders and users was developed in the Federal Law No. 149-FZ of July 27, 2006 (as amended on December 31, 2014) "On Information, Information Technologies and Information Protection" (hereinafter, the Federal Law "On Information"), where the interaction of the parties is carried out in accordance with Article 15.7 "Extra-judicial measures to stop the violation of copyright and (or) related rights in information and telecommunications networks, including the Internet, taken at the request of the copyright holder".

Unfortunately, Article 1253.1 of the Civil Code of the Russian Federation does not provide such a balance. A good idea, corresponding to the global trend, was not well implemented in the Civil Code of the Russian Federation. Obviously, the norm provides opportunities for abuse on both sides: an unscrupulous person may appear as a "copyright holder" to demand the removal of some content from the provider's website, and the owner of almost any site can justify the position that he is the information intermediary, and therefore all requirements to the violator

of the copyright must be addressed to the (possibly non-existent) virtual user.

The pre-trial settlement, embodied in Article 15.7 of the Federal Law "On Information", provides that, in case the copyright holder finds on the Internet a web site, on which, without his permission or other legal basis, the information containing the copyright and (or) related rights objects or the information required for their obtaining using the information and telecommunication networks, including the Internet, is entitled to send to the owner of the web site in writing or in electronic form a claim on the violation of the copyright and (or) related rights (hereinafter, the claim).

According to the law, such a claim must contain the information about the copyright holder; the information about the object of copyright and (or) related rights, published on the web site on the Internet without permission of the copyright holder or other legal basis; the indication of the domain name and/or the network address of the web site on the Internet, on which, without the permission of the copyright holder or other legal basis, the information containing the object of the copyright and (or) related rights or the information necessary for its obtaining using the Internet; the indication of the rights of the copyright holder to the object of copyright and/or related rights or the information necessary to receive it using the Internet or other legal basis; the indication of the lack of permission of the copyright holder to publish the information on the website on the Internet containing the copyright and/or related rights or the information necessary to receive it using the Internet.

In case of incompleteness of information, inaccuracies or mistakes in the claim, within twenty four hours from the receipt of the claim the Internet web site owner is entitled to notify the claimant on the required clarification of the information provided. The said notice may be sent once to the claimant. Then, within twenty-four hours from the receipt of the notification referred to above, the claimant shall take measures aimed at filling in the information missing, elimination of the errors and inaccuracies, and file the complete information to the web site owner.

Then, within twenty-four hours from the receipt of the application or the information specified by the claimant (in the case of sending the notice mentioned above to the claimant), the owner of the web site removes the information, indicated by the copyright holder.

However, if the owner of the Internet web site has the evidence supporting the validity of publishing on the Internet web site belonging to him of the information containing objects of copyright and (or) related rights, or the information needed to obtain it using the Internet, the owner of the web site has the right not to take the provided measures and is obliged to send the appropriate notification to the claimant with the application of the specified evidence.

By proposing such a formalized procedure, the norm would have to be in demand, because the copyright holder must be interested in tools to remove quickly the infringing content, and the Internet web site owner must be interested in the possibility of peaceful pre-trial settlement of the dispute.

In practice, it became clear that this norm is not perfect; it can be seen by its content. In addition, in the absence of an obligation to comply with such a mechanism for pre-trial settlement, the parties are not interested in it. Moreover, the copyright holder is interested in blocking illegal content, using Article 144.1 of the Code of Civil Procedure of the Russian Federation and in claiming the compensation for copyright infringement (Article 1301 of the Civil Code of the Russian Federation) or violation of the related rights (Article 1311 of the Civil Code of the Russian Federation).

Thus, neither Article 15.7 of the Federal Law "On Information" nor Article 1253.1 of the Civil Code of the Russian Federation or their tandem can be considered a successful solution to the problems of the participants in the relationship. Moreover, the judicial practice of application of Article 1253.1 of the Civil Code of the Russian Federation today is unique: for example, the system of arbitration courts applies this Article not only to the providers, but also to the various search engines, social networks, other resources containing the user-generated content, but, on

the other hand, the Moscow City Court, sometimes does not apply it even in obvious cases, recognizing the hosting providers as the violators of the copyright.

5. Conclusion

Thus, the main problems of protection of the copyright to photographic works should be recognized as the difficulty in detection of the fact of offense, especially in the case of processing of the copies of photographs using special software; the complexity of prompt suppression of the unlawful actions, as well as in determination of the legality or illegality of use of the photographic images on the Internet. At the same time, despite the revealed shortcomings, the current legislation gives the holder of the copyright to photographic works the effective means of protection of their rights, which, unfortunately, are rarely used to the fullest extent.

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