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ВИДИ СПІВАВТОРСТВА ДЛЯ ОБ'ЄКТІВ АВТОРСЬКОГО ПРАВА

ВИДЫ СОАВТОРСТВА ДЛЯ ОБЪЕКТОВ АВТОРСКОГО ПРАВА

TYPES OF CO-AUTHORSHIP FOR OBJECTS OF COPYRIGHT

Анотація. Досліджено правові проблеми видів співавторства для об'єктів авторського права.

Ключові слова: співавторство, види співавторства, спільна творча праця.

Аннотация. Исследованы правовые проблемы видов соавторства для объектов авторского права.

Ключевые слова: соавторство, виды соавторства, совместная творческая работа.

Summary. This article is devoted to the study of legal problems of co-authorship types for objects of copyright rights.

Key words: co-authorship, types of co-authorship, joint creative work.

In modern conditions of development of society and of the nation as a whole there are multiplication and intellectual property rights. Especially, such creations are reflected in publicistic and creative works which practically, are expressed in co-authorship relations. Nowadays, such works are mostly created by several people and the co-authorship theory is well-known in legal studies and in the doctrines of the Institute of copyright. However, there is a problematic question if co-authorship may be used in case with finished product [1].

For example, researcher of the relationships of co-authors, V. I. Serebrovskii argued that there are not co-authorship relations if on the basis of already finished works another ones are created. However, at the same time he says that in some cases it is possible. He gives examples of co-authorship of an author of a novel and visiting playwrights who are processing a novel into a play; a composer and an author of the text, a photographer and an artist who paints a picture with a photo. In those cases, the second product was based on the first one.

The issue of recognizing the co-product of the writer and the artist is considered ambiguously. A text and pictures may be viewed as different objects of the copyright property. In those cases, V. I. Serebrovskii as an exception proposed to consider a writer and an artist as co-authors when a text and pictures to it are as one unit like picture books for children.

We should distinguish cooperation and co-authorship. Cooperation means that several authors are involved in the creation of the collective result of the creative activities on the instructions of a specific organization (the customer). This collective object belongs to the entity who gave a task to create it.

According to the norms of current legislation, the co-authors are considered to be those people who create the final product together. The copyright right in a writing that was created in co-authorship shall belong to all the co-authors regardless of whether this constitutes an indivisible whole or consists of parts, each of which has independent significance. We can speak about co-authorship only in the case if the joint efforts of several people cause creating of a single collective writing. Such a collective work is considered to be a work, if it is an indivisible whole (for example, a novel or a painting that were created by several persons) [2].

The civil-law theory recognizes two types of co-authorship:

1) when it is impossible to single out the work of each co-author. This type of co-authorship is called an undivided co-authorship. It is typical for the Copyright right but even more for the scientific and technical work;

2) when the component parts are clearly defined and it is known which of the co-authors have created this or that part. This type of co-authorship is called a separate co-authorship. For this type of cooperation there should be an agreement to work together. It may be of both forms: written and oral. Co-authorship should be voluntary.

While an undivided co-authorship takes place, an object of collective work may be used by mutual agreement of all the co-authors. However, the right of publication and other ways of using of the work, the right to apply for industrial property, belongs to all the co-authors unless otherwise was mentioned in the agreement between them. The staff of the co-authors in the scientific and technical work can be reviewed on the general application of people mentioned in the application as co-authors.

It is more difficult to determine the owner of the Copyright right in those cases when each part of the work has independent significance and can be used independently (e.g., poetry and music in a song, textbook chapters written by a team of co-authors). It is clear that a collective work cannot be created as a result of a simple mechanical connection of the authors' works. Such works should be linked so it could be perceived by the public as a single product.

In other words, changing or removing of any part of the collective work cause a corresponding change in other parts or the inability to use the product as a whole.

For example, if we exclude from the textbook on civil law any of the chapters devoted to, for example, agreements, legal persons, the statute of limitations, etc., then this tutorial is unlikely to be regarded as a complete collective work that is able to perform its functions.

Another essential condition for the emergence of co-authorship is the creation of works of joint creative work of several people. At the same time, under the overall nature of work we should consider not a general working process but a jointly achieved result.

Co-authors can work on a product together from the beginning to the end and each of them can create any separate part of the work or one can modify the result of another, etc. The fact that a work has appeared as a result of joint efforts of co-authors is important but not the form of their working process.

The most important condition of co-authorship is an inspirational contribution of people claiming authorship. Finally, existence of an agreement on co-authorship is an important requirement for the recognition of certain individuals as co-authors.

The relationship between the co-authors are determined by agreement between them. The right of publication and other use of the work as a whole belongs to all the co-authors. If a work of the co-authorship constitutes an indivisible whole, none of the authors can forbid others to publish, use in other

way or change works without sufficient reasons for that. In case of violation of the common copyright right, each of the co-authors can prove their right in a court. If a work of co-authorship consists of independent parts, each of the co-authors has the right to use the part created by him in his own way, unless otherwise is mentioned in the agreement between the co-authors.

The mechanism for implementing the co-authorship relations on the national legislation of Ukraine is rather complicated and therefore it requires changes and additions primarily to the Law of Ukraine "On Copyright and Related Rights" of rules regarding the "co-authorship" concept and its types, as well as a distinction for the legitimate boundaries of the use of works created in joint work of several people, as well as possible ways to protect the rights of the co-authors.

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