

FEATURES OF COMPENSATION FOR PROPERTY AND MORAL DAMAGE CAUSED BY VIOLATION OF A CONTRACTUAL OBLIGATION TO DISPOSE OF PROPERTY RIGHTS TO OBJECTS OF RELATED RIGHTS

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Annotation. This paper raises the issue of compensation for property and moral damage caused by a violation of the contractual obligation to dispose of property rights to objects of related rights from an unusual aspect, namely, the fact that according to the provisions of Clause 3, Part 2, Article 53 of the relevant Law of Ukraine “On Copyright and Related Rights”, in fact, issues of compensation for moral and property damage can be addressed only in connection with such forms of disposal of property rights to objects of related rights that provide for the granting of a property right for use (the author emphasizes that, in his opinion, it is the property right for use in a certain way/ways that is granted, and not the object of related rights itself, since according to the current legislation of Ukraine, the object of intellectual property rights and the property right to it are separated from each other). The appeal in connection with such forms of disposal of property rights to objects of related rights, which provide for the transfer (alienation) of property rights, remains outside the scope of the above-mentioned provision. In connection with which, the author proposes in the work an updated version of clause 3, part 2, article 53 of the relevant Law of Ukraine “On Copyright and Related Rights” by means of a corresponding addition and forms of disposal of property rights to objects of related rights, which also provide for the transfer (alienation) of property rights. For this purpose, the author conducted a thorough analysis, in particular, of such forms of disposal of property rights to objects of related rights as an employment contract (contract) - in terms of the distribution of property rights to an official object of related rights, a contract for the creation by order and use of an object of related rights, another contract (it is meant that another contract as a form of disposal is provided for in accordance with the provisions of the current legislation of Ukraine, due to the fact that the list of forms of disposal is not exhaustive). Why else did the author of the work conduct such a thorough analysis of the forms of disposal? It was conducted in order to demonstrate that not only do there exist other forms of disposal, in addition to granting a property right for use, but also to demonstrate that a property right, including to objects of related rights, can still be transferred not completely (partially), that is, in certain ways, thus, being as if split.

A separate aspect raised in the work and actually the main one is the issue of the uncertainty of the identity of the creator of related rights, the depersonalization of such a person, by not including him in the composition of the subjects of related rights. And how can a person who is the creator of a particular related right apply for compensation for moral or property damage caused by a violation of the contractual obligation to dispose of property rights to objects of related rights, being uncertain, although according to the provisions of the current legislation of Ukraine, for example, personal non-property rights to an object, including related rights, created by an employee belong to him. In connection with the above, the author conducts a corresponding thorough analysis with a proposal also to make changes to the current wording of Part 1 of Article 55 of the relevant Law of Ukraine “On Copyright and Related Rights” in order to be consistent with the provisions of Articles 41, 54 of the Constitution of Ukraine.

Key words: creator, objects of related rights, subjects of related rights, forms of disposal of property rights to objects of related rights, depersonalization of the creator’s person.

1. Introduction.

According to Art. 13 of the Civil Code of Ukraine (hereinafter referred to as the Code) "1. A person exercises civil rights within the limits granted to him by a contract or acts of civil legislation. 2. When exercising his rights, a person is obliged to refrain from actions that could violate the rights of other persons, cause harm to the environment or cultural heritage. 3. Actions of a person committed with the intention of causing harm to another person, as well as abuse of rights in other forms, are not allowed. 4. When exercising civil rights, a person must adhere to the moral principles of society. 5. The use of civil rights for the purpose of unlawfully restricting competition, abuse of a monopoly position in the market, as well as unfair competition are not allowed. 6. In the event of a person failing to comply with the requirements established by parts two to five of this article when exercising his rights, the court may oblige him to cease abusing his rights, as well as apply other consequences established by law" [1].

According to the content of Article 15 of the Code "1. Every person has the right to protection of his civil right in the event of its violation, non-recognition or challenge. 2. Every person has the right to protection of his interest, which does not contradict the general principles of civil legislation" [1].

According to the content of Article 16 of the Code "1. Every person has the right to apply to the court for protection of his personal non-property right or property right and interest. 2. The methods of protection of civil rights and interests may be: 1) recognition of the right; 2) recognition of the transaction as invalid; 3) termination of the action that violates the right; 4) restoration of the situation that existed before the violation; 5) forced performance of the obligation in kind; 6) change of legal relationship; 7) termination of legal relationship; 8) compensation for losses and other methods of compensation for property damage; 9) compensation for moral (non-property) damage; 10) recognition as illegal the decisions, actions or inaction of state authorities, authorities of the Autonomous Republic of Crimea or local self-government bodies, their officials and employees. The court may protect a civil right or interest in another way established by a contract or law or by the court in cases specified by law. 3. The court may refuse to protect a civil right or interest of a person in the event of his violation of the provisions of parts two to five of Article 13 of this Code" [1].

According to Clause 3, Part 2, Article 53 of the Law of Ukraine "On Copyright and Related Rights" (hereinafter referred to as the Law) "2. Violation of personal non-property and/or property copyright and related rights is, in particular: 3) use of an object of copyright or an object of related rights, if such actions do not fall under the cases of free use of objects of copyright or objects of related rights provided for by this Law, with the permission of the subject of such rights, but in violation of the conditions under which such permission was granted (exceeding the circulation stipulated by the contract, use of the object in a manner not stipulated by the contract, violation of the terms of a public license, etc.);" [2]. That is, in fact, the above provision refers to cases of violation of the contractual obligation to dispose of property rights to objects of related rights. But can we talk about the fact that a violation of a contractual obligation to dispose of property rights to objects of related rights is possible only when concluding agreements on the granting of property rights to an object of related rights for use? Probably not. It seems that a violation of a contractual obligation in the field of disposal of property rights to objects of related rights is also possible when concluding agreements when transferring (alienating) such a property right. So, the first problematic issue that we encounter when considering the features of compensation for property and moral damage caused by a violation of a contractual obligation to dispose of property rights to objects of related rights is the failure to take into account the above-mentioned clause 3, part 2, article 53 of the Law of all forms of disposal provided for by the same Law. Thus, according to part 1, article 48 of the Law "1. Disposal of property rights to copyright objects or objects of related rights may be carried out on the basis of: 1) an employment contract (contract) - in terms of the conditions for the distribution of property rights to a service work or service performance, service phonogram, service videogram; 2) an agreement on the creation to order and use of a copyright object or object of related rights; 3) an agreement on the transfer (alienation) of property rights to a copyright object or object of related rights; 4) a license agreement for the use of a copyright object or object of related rights; 5) a public license for the use of a copyright object or object of related rights; 6) another transaction for the disposal of property rights to a copyright object or object of related rights. The terms of transactions regarding the disposal of property rights to copyright objects or objects of related rights regarding

the transfer (alienation) or granting of permission to use (license) regarding the property right for fair remuneration, provided for in Part Three of Article 12, Part Three of Article 38, Part Three of Article 39, Part Three of Article 40 of this Law, are null and void" [2].

Why, in our opinion, is the disregard of all the above-mentioned forms of disposal and what is it connected with? In addition to the usual lacuna, in our opinion, such disregard is connected with the legislator's vision of the composition of subjects of related rights, the main drawback of which we consider to be the absence of the actual identity of the creator who creates this or that object of related rights, the depersonalization of such a person. To date, the composition of subjects of related rights is enshrined in Part 2 of Article 35 of the Law, namely "2. Subjects of related rights are: 1) the performer (the primary subject of related rights to perform), the heirs of the performer and other individuals or legal entities who have acquired property rights to perform on the basis of a contract or law; 2) the producer of the phonogram (the primary subject of related rights to the phonogram), the heirs (successors) of the producer of the phonogram and other individuals or legal entities who have acquired property rights to the phonogram on the basis of a contract or law; 3) the producer of the videogram (the primary subject of related rights to the videogram), the heirs (successors) of the producer of the videogram and other individuals or legal entities who have acquired property rights to the videogram on the basis of a contract or law; 4) the broadcasting organization (the primary subject of related rights to the program of the broadcasting organization), the successors of the broadcasting organization and other individuals or legal entities who have acquired property rights to the program of the broadcasting organization on the basis of a contract or law" [2].

In order to demonstrate the correctness of the judgment we have stated above, we will turn to such a form of disposal of property rights to objects of related rights as an employment contract (contract) in terms of the distribution of property rights to the created service object of related rights.

Thus, according to Part 1, 2 of Article 14 of the Law "1. Personal non-property copyrights to a service work belong to the employee whose creative work created such a work. 2. Property rights to a service work are transferred to the employer from the moment of the creation of the service work in full, unless otherwise provided by this Law, an employment contract (contract) or another agreement on property rights to a service work concluded between the employee (author) and the employer. If property rights to the work are transferred to the employer, the employee who is the author of the service work has the right to remuneration. If the employee's job duties directly involve the creation of official works of the relevant types, the author's remuneration for the creation and use of such works, as well as for the transfer of rights to them, may be included in the employee's salary in accordance with the agreement between the employee and the employer" [2]. From the above, it follows that the person who created the official object of related rights, as a general rule, as if loses his property rights to the created official object of related rights. At the same time, can we say that such an actual transfer (alienation) of property rights always occurs with the observance of the rights of the person who is the creator? We would like to think that yes, but we can certainly assume that this does not always happen in practice. The non-inclusion of this type of agreement in the field of disposal of property rights to objects of related rights in the content of clause 3, part 2 of Art. 53 of the Law automatically deprives the possibility of considering a potential breach of contractual obligations under this type of contract, and accordingly, of considering the issue of compensation for moral and property damage. We note that, in our opinion, an employment contract (contract) in the field of disposal of property rights to created service objects of related rights is essentially an agreement on the transfer (alienation) of property rights to a created service object of related rights.

If we return to the analysis of the subject composition, we can see that the individual as the creator is not reflected anywhere, except for the performer. What does this say? This indicates that the phonogram is created by the phonogram producer, the videogram is created by the videogram producer, the program of the broadcasting organization is created by the broadcasting organization as primary subjects without the "alleged" actual participation of the person who is the creator of the above-mentioned objects.

At the same time, if we analyze the contract itself on the transfer (alienation) of property rights, including objects of related rights, it is clear that property rights can be transferred, for example, not to all methods of using such property rights and, accordingly, violations are possible in this aspect as well.

Thus, according to Part 1 of Article 49 of the Law "1. The subject of copyright or related rights may transfer (alienate) his property rights to the object of copyright or related rights, provided for in accordance with Part One of Article 12, Part One of Article 38, Part One of Article 39, Part One of Article 40 of this Law, to any other person in full on the territory of all states of the world or partially for certain methods of use on the territory of certain states of the world, or for all methods of use on the territory of certain states of the world. In the event of transfer (alienation) of property rights to the object of copyright or related rights, property rights in part to the extent not provided for in the agreement shall be deemed not to have been transferred (alienated). The subject of an agreement on the transfer (alienation) of property rights to the objects of copyright and related rights may not be objects and property rights that did not exist at the time of conclusion of the agreement" [2].

In view of the above-mentioned norm, we note that in our opinion, the very understanding of the employment contract (contract) is dissonant with the understanding of the contract on the transfer (alienation) of property rights to the object of related rights. In the future, we consider it appropriate to replace the employment contract (contract) in terms of the distribution of property rights to the created service object of related rights with a new form of contract - a contract on the transfer (alienation) of property rights to the created service object of copyright and/or related rights.

Subsequently, the failure to take into account in clause 3, part 2, article 53 of the Law all forms of disposal of property rights, including objects of related rights, was reflected in other norms of the relevant Law. Let us consider these norms.

Thus, according to Part 1 of Article 55 of the Law "1. For the protection of copyright or related rights, as well as rights of a special kind (*sui generis*), the following have the right to apply to the court and other bodies in accordance with their competence in accordance with the established procedure: 1) copyright holders or related rights holders to protect their copyright or related rights; 2) persons who have been granted the exclusive right to use copyright objects and/or related rights objects and/or who have the right to receive a share of the remuneration for the use of copyright objects and/or related rights objects, to protect their rights and/or legally protected interests within the framework of an agreement with a copyright holder or related rights holder from unlawful encroachments by any third party on the rights of such licensee or the rights of the recipient of a share of the said remuneration; 3) collective management organizations in accordance with the instructions of rightholders-counterparties for voluntary collective management in accordance with the Law of Ukraine "On Effective Management of Property Rights of Rightholders in the Field of Copyright and (or) Related Rights" taking into account the scope of their activities specified in the register of collective management organizations; 4) accredited collective management organizations taking into account the scope of their accreditation specified in the register of collective management organizations; 5) persons who own a special kind of right (*sui generis*)" [2]. Thus, analyzing the above-mentioned norm, we can see in the continuation of our consideration of the composition of subjects of related rights that a person who directly created a particular object of related rights and is essentially its creator is deprived of the opportunity to apply for civil law protection due to his non-inclusion in the composition of subjects of related rights. Does the reader of this work not find a paradoxical situation in which a person who is the creator of an object of related rights is both undefined, impersonal and deprived of the opportunity to protect his violated related rights? The answer is, in our opinion, quite shocking. Since it turns out that such a person who creates "as if" does not exist, and therefore his right as a subject cannot be violated because he is not included in the composition of subjects of related rights.

The relevance of the aspect raised by us above is especially acute in the context of the fact that according to the Constitution of Ukraine, Art. 41 "Everyone has the right to own, use and dispose of his property, the results of his intellectual, creative activity. The right to private property is acquired in the manner prescribed by law. No one may be unlawfully deprived of the right to property. The right to private property is inviolable. Forced alienation of private property rights may be applied only as an exception for reasons of public necessity, on the grounds and in the manner established by law, and subject to prior and full compensation for their value. Forced alienation of such objects with subsequent full compensation for their value is permitted only in conditions of war or a state of emergency. Confiscation of property may be applied exclusively by court decision in cases, to the extent and in the manner established by law. The use of property may not harm the rights, freedoms and dignity of citizens, the interests of society, or worsen the ecological situation and natural qualities of the land" [3]. According

to Art. 54 of the Constitution of Ukraine "Citizens are guaranteed freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyrights, moral and material interests arising in connection with various types of intellectual activity. Every citizen has the right to the results of his intellectual, creative activity; no one may use or distribute them without his consent, with exceptions established by law. The state promotes the development of science, the establishment of scientific ties between Ukraine and the world community. Cultural heritage is protected by law. The state ensures the preservation of historical monuments and other objects of cultural value, takes measures to return to Ukraine the cultural values of the people that are outside its borders" [3].

Returning to the consideration of Article 55 of the Law, namely Part 2, we note that according to this provision "2. The persons specified in Part One of this Article have the right to apply to the court for protection of copyright and/or related rights with any claims not prohibited by law, in particular for: 1) recognition of copyright or related rights; 2) restoration of the situation that existed before the violation; 3) cessation and/or prohibition of actions that violate copyright and/or related rights or create a threat of their violation; 4) collection of remuneration provided for by the legislation on copyright and related rights; 5) compensation for moral damage; 6) compensation for losses caused by violation of copyright or related rights, including lost profits, or recovery of income received by the infringer as a result of his violation of copyright or related rights, or recovery of compensation; 7) termination of preparatory actions for the violation of copyright and/or related rights, including by suspending customs procedures, if there are grounds to believe that pirated copies of works, phonograms, videograms, means of circumventing technological means of protection of copyright objects and/or related rights objects, etc. may be passed into or from the customs territory of Ukraine; 8) publication at the expense of the violator in the mass media of data on committed violations of copyright and/or related rights and court decisions regarding these violations; 9) taking other measures provided for by law related to the protection of copyright and/or related rights" [2]. Based on the above provision, as well as Part 1 of Art. 55 of the Law, it follows that persons who are creators of objects of related rights, for example, when creating service objects of related rights, as a general rule, are deprived of the opportunity to apply to the court for compensation for both moral and material damage, right?

We will devote our attention to a more detailed consideration of the issue raised, as well as the issues raised above, in the presentation of the main material.

2. Analysis of recent research and publications.

Issues related to the topic of the study were previously studied by such scientists as Shimon S. I., Stefan A. S., Yakubivsky I. E. and others. However, the issue of compensation for property and moral damage caused by violation of the contractual obligation to dispose of property rights to objects of related rights due to the absence of the person who created the object of related rights in accordance with the current legislation of Ukraine, as well as the failure to take into account all the forms of disposal of property rights to objects of related rights provided for by the current legislation, has not been studied before, and therefore the presented study is perhaps the first in this aspect.

3. Purpose of the study.

The purpose of the study of this work is to identify problematic aspects of compensation for property and moral damage caused by violation of the contractual obligation to dispose of property rights to objects of related rights, as well as to develop ways to overcome them by making proposals for amendments to the current versions of the relevant legislation of Ukraine. Thus, the main problematic aspect that we highlight is the absence of the person of the creator of the object of related rights, the depersonalization of such a person, and accordingly the deprivation of the opportunity to apply for compensation for property and moral damage, as well as a narrow presentation of the forms of disposal of property rights to objects of related rights without taking into account contracts under which the transfer (alienation) of property rights to objects of related rights occurs in accordance with clause 3 part 2 of article 53 of the Law of Ukraine "On Copyright and Related Rights".

4. Presentation of the main material.

Let's begin the consideration of the main material by considering the forms of disposal of property rights, including objects of related rights from the already mentioned part 1 of Article 48 of the relevant Law. Thus, according to this norm "1. Disposal of property rights to objects of copyright or objects of related rights may be carried out on the basis of: 1) an employment contract (contract) - in terms of the conditions for the distribution of property rights to a service work or service performance, service phonogram, service videogram; 2) an agreement on the creation to order and use of an object of copyright or an object of related rights; 3) an agreement on the transfer (alienation) of property rights to an object of copyright or an object of related rights; 4) a license agreement for the use of an object of copyright or an object of related rights; 5) a public license to use an object of copyright or an object of related rights; 6) another transaction on the disposal of property rights to an object of copyright or an object of related rights. The terms of transactions on the disposal of property rights to objects of copyright or objects of related rights regarding the transfer (alienation) or granting of permission to use (license) in relation to the property right for fair remuneration, provided for in Part Three of Article 12, Part Three of Article 38, Part Three of Article 39, Part Three of Article 40 of this Law, are null and void" [2].

According to the provisions of the Code, namely Part 1 of Article 1107 "1. Disposal of property rights to intellectual property is carried out on the basis of the following transactions: 1) a license to use an object of intellectual property rights; 2) a license agreement; 3) an agreement on the creation to order and use of an object of intellectual property rights; 4) an agreement on the transfer of exclusive property rights to intellectual property; 5) another transaction on the disposal of property rights to intellectual property" [1].

That is, both the provisions of the relevant Law and the provisions of the Code provide, in fact, if we classify them, two groups of agreements on the disposal of property rights to objects, including related rights. One of which is actually made up of agreements on the transfer (alienation) of property rights to objects of related rights. According to the opinion of the author of this work, this group, taking into account the above-mentioned provisions, includes such forms of disposal as an employment contract (contract) - in terms of the conditions for the distribution of property rights to service objects of related rights (the author's position on the fact that this contract by its legal nature is an agreement on the transfer (alienation) of property rights is given above in the statement of the problem), an agreement on the creation to order and use of an object of related rights, an agreement on the transfer (alienation) of property rights to an object of related rights, another transaction on the disposal of property rights to an object of related rights. It is considered appropriate to additionally explain the author's position on such a form of disposal as an agreement on the creation to order and use of an object of related rights in the context of its classification as a group of agreements on the transfer (alienation) of property rights to objects of related rights.

Thus, according to Art. 1112 of the Code "1. Under a contract for the creation by order and use of an object of intellectual property rights, one party (the creator - a writer, artist, etc.) undertakes to create an object of intellectual property rights in accordance with the requirements of the other party (the customer) and within the established period. 2 The contract for the creation by order and use of an object of intellectual property rights must determine the methods and conditions of use of this object by the customer. 3. The original work of fine art created by order shall become the property of the customer. In this case, the intellectual property rights to such a work shall remain with its author, unless otherwise established by the contract or law. 4. The terms of the contract for the creation by order and use of an object of intellectual property rights that restrict the right of the creator of this object to create other objects shall be null and void" [1].

According to Art. 15 of the relevant Law "1. Personal non-property copyrights to a work created to order belong to the author. 2. Property rights to a work created to order pass to the customer from the moment of creation of the work in its entirety, unless otherwise provided for by the order contract. Property rights to intellectual property to a work of fine art created to order (except for a work specially created as an element of a computer program) belong to its author, unless otherwise provided for by the contract or law. 3. If property rights to a work pass to the customer, the author has the right to remuneration. 4. The customer has the right to make changes to the work created to order, to accompany it with illustrations, prefaces, afterwords, etc., unless otherwise provided for by the order contract" [2].

As we can see from the above provisions of the Code and the relevant Law, there is a certain contradiction between them. This contradiction lies in the fact that according to the relevant Law, property rights are transferred, as a general rule, to the customer in full from the moment of creation of the work. According to the provisions of the Code, this type of contract must determine the conditions and methods of use, including the object of related rights created by order. In our opinion, the determination of the methods and conditions of use of the object cannot concern the fact that the object of related rights created by order and the property right to use in certain ways is actually granted for use. In our opinion, this contradicts the internal logic of this contract, since in order to obtain the property right to use, including the object of related rights, there are such civil constructions as a license agreement, a public license.

The main problem of this form of disposition is that according to the provisions of the relevant Law, as a general rule, we are talking about the automatic transfer of property rights from the moment of creation in full. Let us ask ourselves the question, can a situation arise in practice when payment is not made for a commissioned object of related rights or between the customer and the creator of related rights it is agreed that property rights will be transferred only for certain methods of use? It is certain that the situations we have indicated can take place.

We will also briefly note why we have classified another transaction on the disposal of property rights to an object of related rights according to the classification proposed by the author to the group of agreements on the transfer (alienation) of property rights to an object of related rights. This is due to the fact that the list of forms of disposal of property rights, including to objects of related rights, is not exhaustive, neither under the relevant Law nor under the Code, and accordingly, it is possible to use other civil law constructions of agreements to regulate relations in the field of intellectual property. Moreover, according to Art. 6 of the Code "1. The parties have the right to conclude a contract that is not provided for by acts of civil legislation, but complies with the general principles of civil legislation. 2. The parties have the right to regulate in a contract that is provided for by acts of civil legislation, their relations that are not regulated by these acts. 3. The parties to the contract may depart from the provisions of acts of civil legislation and regulate their relations at their own discretion. The parties to the contract may not depart from the provisions of acts of civil legislation, if these acts expressly state this, as well as if the binding nature of the provisions of acts of civil legislation for the parties follows from their content or from the essence of the relations between the parties. 4. The provisions of parts one, two and three of this article shall also apply to unilateral transactions" [1].

Taking into account the above argumentation, we believe that the failure to include such a wide range of agreements, namely an employment contract (contract) - in terms of the conditions for the distribution of property rights to service objects of related rights, an agreement on the creation to order and use of an object of related rights, an agreement on the transfer (alienation) of property rights to an object of related rights, another transaction on the disposal of property rights to an object of related rights, as well as the failure to take into account that the transfer (alienation) may occur partially in relation to certain methods of use, currently significantly reduces the possibilities, if not makes it impossible, to compensate for property and moral damage caused by the violation of the contractual obligation to dispose of property rights to objects of related rights, taking into account the content of clause 3, part 2, article 53 of the relevant Law, given by the author in the statement of the problem. In this regard, it is considered appropriate to make appropriate changes to the current version of the specified norm by supplementing it.

Speaking about the second problematic aspect raised by the author of the work, namely the depersonalization of the creator of related rights and his failure to include him in the composition of related rights subjects, we note the following.

The first logical question that arises is the question of why this is possible? In our opinion, this is due to the not entirely correct understanding that if a certain object of intellectual property rights, including the object of related rights, is created using modern technical devices, then the creative component is lost. But here, it is necessary to understand that the objects of related rights are distinguished from sui generis objects under current legislation and the main distinction lies precisely in the fact that when creating sui generis objects, the participation of the creator is excluded. And if, nevertheless, such participation is not excluded when creating objects of related rights, then can we speak of such participation being purely technical? Certainly not. Although, of course, technical

workers also participate in the creation of objects of related rights. But at the same time, there are also creators, artists, whose participation cannot be leveled either. For example, can each phonogram make a performer world-famous? Certainly not. And what about such an object of related rights as a program of a broadcasting organization? Doesn't a whole galaxy of artists sometimes work on the creation of this object of related rights? Certainly, it works.

Currently, subjects of related rights are represented by the following composition according to Part 2 of Article 35 of the relevant Law "2. The subjects of related rights are: 1) the performer (the primary subject of related rights to the performance), the performer's heirs and other individuals or legal entities who have acquired property rights to the performance on the basis of a contract or law; 2) the phonogram producer (the primary subject of related rights to the phonogram), the heirs (successors) of the phonogram producer and other individuals or legal entities who have acquired property rights to the phonogram on the basis of a contract or law; 3) the videogram producer (the primary subject of related rights to the videogram), the heirs (successors) of the videogram producer and other individuals or legal entities who have acquired property rights to the videogram on the basis of a contract or law; 4) broadcasting organization (the primary subject of related rights to the broadcasting organization's program), successors of the broadcasting organization and other individuals or legal entities that have acquired property rights to the broadcasting organization's program on the basis of a contract or law" [2].

According to Part 1 of Article 33 of the Law, "1. A non-original object generated by a computer program is an object that differs from existing similar objects and is created as a result of the functioning of a computer program without the direct participation of an individual in the creation of this object. Works created by individuals using computer technologies are not considered non-original objects generated by a computer program" [2].

Why is it important to make changes to the subject composition? Because this issue is of primary importance in compensating for property and moral damage caused by a violation of the contractual obligation to dispose of property rights to objects of related rights, and today the rights of the creators of such objects are not protected, since they are not defined as creators.

It is considered appropriate that the changes proposed by the author below be in line with the rethinking of the moment of emergence of related rights, since currently, according to Part 1 of Article 36 of the Law, "1. Related rights arise as a result of the fact of: 1) each performance; 2) production of a phonogram; 3) production of a videogram; 4) first broadcast of a program by a broadcasting organization" [2]. Summarizing all of the above, we note that the depersonalization of the creator's person when creating objects of related rights goes beyond compensation for moral and property damage caused by a violation of the contractual obligation to dispose of property rights to objects of related rights, since the list of requirements with which, in particular, subjects of related rights can apply to the court for protection of their related rights is quite broad and is not exhaustive according to Part 2 of Article 55 of the Law. The introduction of the changes we have provided below to the current versions of the articles will allow them to be brought into line with the content of Part 1 of Article 15 of the Code "1. Every person has the right to protection of his civil right in case of violation, non-recognition or challenge" [1], which we cited in the statement of the problem, as well as such articles of the Constitution of Ukraine as 41 and 54 (also cited above in the statement of the problem) especially in the context of such forms of disposal of property rights to objects of related rights as an employment contract (contract) - in terms of the conditions for the distribution of property rights to an official object of related rights and an agreement on the creation by order and use of an object of related rights.

A separate issue, which, in the author's opinion, has the right to a separate scientific study in continuation of the topic of the publication, is the issue of the relationship between the personal non-property rights of an employee to an official work, the personal non-property rights of the author to a work created to order in terms of compensation for property and moral damage caused by a violation of the contractual obligation to dispose of property rights in connection with the problematic aspects raised in the work. Moreover, as already noted in the text of the work, according to Part 1 of Article 14 of the Law "1. Personal non-property copyright to an official work belongs to the employee whose creative work created the work" [2], Part 1 of Article 15 of the Law "1. Personal non-property copyright to a work created to order belongs to the author" [2].

5. Conclusions.

Based on the above, the author proposes to supplement clause 3 of part 2 of article 53 of the relevant Law. The current wording is as follows: “3) use of an object of copyright or an object of related rights, if such actions do not fall under the cases of free use of objects of copyright or objects of related rights provided for by this Law, with the permission of the subject of such rights, but in violation of the conditions under which such permission was granted (exceeding the circulation stipulated by the contract, use of the object in a manner not stipulated by the contract, violation of the terms of a public license, etc.);” [2]. The above-mentioned current wording is proposed to be supplemented as follows - use of an object of copyright or an object of related rights, if such actions do not fall under the cases of free use of objects of copyright or objects of related rights provided for by this Law, with the permission of the subject of such rights, but in violation of the conditions under which such permission was granted (exceeding the circulation stipulated by the contract, use of the object in a manner not stipulated by the contract, violation of the terms of a public license, etc.) or use of an object of copyright or an object of related rights in ways not specified in agreements on the transfer (alienation) of property rights to objects of copyright or objects of related rights.

It is proposed to amend Part 1 of Art. 55 of the relevant Law by including in its content the creators of copyright objects and/or objects of related rights and accordingly state it as follows: 1. For the protection of copyright or related rights, as well as rights of a special kind (*sui generis*), the following have the right to apply to the court and other bodies in accordance with their competence in the established procedure: 1) creators of copyright objects and/or objects of related rights; 2) subjects of copyright or subjects of related rights to protect their copyright or related rights; 3) persons who have been granted the exclusive right to use copyright objects and/or objects of related rights and/or who have the right to receive a share of the remuneration for the use of copyright objects and/or objects of related rights, to protect their rights and/or legally protected interests within the framework of an agreement with a copyright holder or a subject of related rights from unlawful encroachments by any third party on the rights of such a licensee or the rights of the recipient of a share of the said remuneration; 4) collective management organizations in accordance with the instructions of rightholders-counterparts for voluntary collective management in accordance with the Law of Ukraine “On Effective Management of Property Rights of Rightholders in the Field of Copyright and/or Related Rights” taking into account the scope of their activities specified in the register of collective management organizations; 5) accredited collective management organizations taking into account the scope of their accreditation specified in the register of collective management organizations; 6) persons who own a right of a special kind (*sui generis*)”.

References:

1. Civil Code of Ukraine URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text> [in Ukrainian]
2. Law of Ukraine “On Copyright and Related Rights” URL: <https://zakon.rada.gov.ua/laws/show/2811-20#Text> [in Ukrainian]
3. Constitution of Ukraine URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian]

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