[RU] Supreme Court on Copyright

IRIS 2019-7:1/24

Andrei Richter
Comenius University (Bratislava)

Following its plenary meeting on 11 April 2019, the Supreme Court of the Russian Federation issued a Resolution “On the Judicial Practice Related to Part Four of the Civil Code of the Russian Federation”. Part Four of the Civil Code was adopted in 2006 and relates to the regulation of different aspects of intellectual property (see IRIS 2007-1/31).

The resolution is extensive; it has 182 paragraphs on the procedural, general and specific provisions of Part Four, such as the protection of the results of intellectual activity, the use of exclusive rights, copyright, and neighbouring rights. In particular, the court’s attention was drawn to the fact that unless the opposite is proven, all results of intellectual activity are produced in the course of creative work. In itself, the lack of novelty, uniqueness and/or originality of the result of intellectual activity cannot indicate that it was not made through creative work and is, therefore, not subject to copyright. At the same time, results achieved by technical means in the absence of the creative nature of human activity (for example, an automatic video surveillance camera which takes photographs or carries out video filming in order to fix administrative offences) are not subject to copyright (paragraph 80).

The resolution clarifies issues of liability for online informational intermediaries. It generally notes that unless the circumstances of a court case, such as information reported on the site itself, say otherwise, the site administrator is presumed to be the site owner. It was clarified that the site owner is free to determine the ways in which the site is to be used. The burden of proof that the material which represents the results of intellectual activity or means of individualization was placed therein by third parties and not the site owner, thus making the latter a mere intermediary, lies on the site owner. In the absence of such evidence, it is presumed that the site owner is the person who has directly used the relevant results of intellectual activity or means of individualization (paragraph 78).

If the site owner makes changes to the material containing the results of intellectual activity or means of individualization which has been posted by third parties, the court decision on whether the site owner remains an intermediary depends on how active s/he was in editing the posted material and/or whether s/he received income directly from the unlawful placement of such material. Substantial processing of the material and/or the receipt of income by the site

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owner may indicate that s/he is not an intermediary, but a person that directly uses the relevant intellectual property or means of individualization (paragraph 78).

The resolution explains that the results of intellectual activity and the means of individualization protected in Part Four of the Civil Code do not include, in particular, domain names, the names of non-profit organisations, nor the titles of the media outlets. Rights to these are subject to protection on the basis of the general provisions of the Civil Code on the means of protection of civil rights (paragraph 33).

It provides explanations on various aspects of the protection of fictional characters (paragraph 82). It suggests that from the copyright perspective, the Internet and other online media are not public spaces (paragraph 100). It explains that “works for hire” are created only if their creation is assigned by the employer and if the job description of the author includes making such types of works. The burden of proof lies with the employer, and the use of the employer’s materials in the process of creation may not serve as proof that the works are for hire (paragraph 104).

The explanations of the law provided by the Supreme Court in its resolutions serve as an interpretative guidance for the judges who tend to quote them in the arguments of their decisions. These explanations are, however, not binding in their nature, as the judges are independent and submit only to the Constitution and federal law (see IRIS Extra 2017-1).

О применении части четвертой Гражданского кодекса Российской Федерации

https://rg.ru/2019/05/06/postanovlenie-dok.html

Resolution of the Plenary Meeting of the Supreme Court of the Russian Federation of 23 April 2019 N 10 “On the Judicial Practice Related to Part Four of the Civil Code of the Russian Federation”

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