

Overview of Supreme Court practice: How to protect copyright and neighbouring rights on the Internet

On 29 May 2024, the Supreme Court approved the [Review*](#) of judicial practice in cases related to protecting copyright and neighbouring rights from Internet infringements (the "Review").

The Supreme Court included 41 cases in the Review, grouped into eight sections. Below, we present the conclusions that, in our opinion, were significant and which were included in the Review.

1. Recognition of rights to objects of copyright and neighbouring rights

Once again, the conclusion was confirmed that the rights to modify (in the case under consideration, the modification of a sculpture) can be protected independently and separately from the rights to the main work.

A case was also mentioned in which the issue of using a retelling/summary of a work was considered. In that case, the court concluded that the retelling is a modification of the work and is allowed only with the consent of the copyright holder.

2. Use of work and objects of neighbouring rights on the Internet

In this section, the Supreme Court, among other things, collected important conclusions regarding the ways in which a work is used on the Internet. The court confirmed the already existing rule that the availability of a work on the Internet is not a basis for its further free use.

The court noted that each method of use constitutes an independent right, in particular:

- Granting the right to distribute a song on the Internet ≠ consent to include the song in an audiovisual work planned to be posted on the Internet;
- Granting the right to use an article in a printed publication does not entail granting the right to use this article in other ways, including publication on the Internet;
- Granting the right to use a photo on a particular site does not grant permission to use that photo on other sites.

The Supreme Court also recalled important rules for correct citation on the Internet:

- 1) The name of the author and the source of citations must be indicated in relation to each work used;
- 2) A person will not be exempt from liability when quoting a work without indicating information about the author, with reference to the absence of such information in the source of citation;
- 3) When quoting, the name of the author and the source from which the work is borrowed must be indicated in the place where the quotation is placed in a readable form.

3. Owner of a website on the Internet; information intermediaries

The Supreme Court urges that the nature of the website owner's business and the terms and conditions of use of the website be considered in determining the infringer.

Thus, information intermediaries may include:

- a person who has posted a hyperlink to a site containing an object of copyright/neighbouring rights on their website;
- the owner of the mobile application.

And, conversely, website owners who receive income from the sale and/or advertising of objects of copyright/neighbouring rights illegally placed on the website may not be recognised as information intermediaries.

4. Determining the amount of compensation for infringement of exclusive rights

The Supreme Court points out that when determining the amount of compensation for the illegal use of an object on the Internet, among other things, the following are taken into account:

- the traffic and profitability of the site on which this object was used;
- the duration of the period of use of the object on the site;
- the nature of the defendant's activities, including the systematic nature of such violations.

The Supreme Court also talks about cases when several actions committed by the infringer will be qualified by the court as one infringement, in particular:

- 1) repeated unlawful posting of photos on several sites and/or pages of the site, covered by the infringer's single intention;
- 2) unlawful reproduction of a work is a necessary and integral element of the subsequent unlawful communication of this work to the public (has no independent economic significance);
- 3) illegal use of a work in respect of which copyright information has been removed/changed by an unidentified person (the latter is taken into account when determining the amount of compensation);
- 4) an offer for the sale of counterfeit tangible media and its sale, regardless of whether they are carried out in the same place or in different places;
- 5) unlawful use of the object in several consecutive ways by different persons, if such persons have proved that they acted jointly.

Regarding the unlawful downloading of objects of copyright/neighbouring law, the Supreme Court points out that each download of a copy of a work constitutes an independent infringement, and the provision of the opportunity to download a work may be recognised as one continuing infringement. At the same time, the number of downloads can be considered when determining the amount of compensation.

5. Other methods of protecting copyright and neighbouring rights

Within the framework of this section, the Supreme Court draws attention to the fact that the moral rights of authors are also subject to protection, and a compensation for moral damage may be recovered for their infringement (even if the author has transferred the exclusive right to a third party).

If objects of copyright/neighbouring rights are illegally sold on a site, a claim regarding the suppression of actions that infringe the rights of their owner may be filed, among other things, against the site owner and/or the domain administrator.

6. Limitation period

The limitation period for a claim for compensation for copyright infringement on the Internet begins from the day the owner of the rights reveals such an infringement and information about the proper defendant. In addition, if the infringer claims that the limitation period applies, the court has the right to recover compensation from him for a period of no more than three years prior to the date the claim is filed.

7. Issues in applying procedural law

If an individual files several claims regarding infringement of copyright/neighbouring rights on different Internet resources, the owner of which is one person, the court may combine such cases into one proceeding.

The Supreme Court also once again drew attention to the admissibility of screenshots certified by a party as evidence if they contain the address of the Internet page and the exact date and time of their receipt.

8. Adoption of preliminary interim measures in accordance with Article 144.1 of the Civil Procedure Code of the Russian Federation

The Supreme Court points out that in order to take preliminary interim measures under Article 144.1 of the Civil Procedure Code of the Russian Federation, the applicant must provide evidence of their exclusive rights to the illegally used object, as well as of the fact of this object's use on the Internet. At the same time, the court has the right to satisfy the application in the absence of information about the address of the defendant.

We recommend that you take into account the conclusions specified in the Review when assessing your risks as a copyright holder or information intermediary, as well as when using copyright and neighbouring rights on the Internet.

* *In Russian*

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