Properties of the Results of Intellectual Activity

A. S. Vasilyev*

Department of Civil Law, Institute of Private Law, Ural State Law University, 620137 Yekaterinburg, Russia
**Corresponding author. Email: celenam1@yandex.ru*

ABSTRACT
The article discusses some features of intellectual property rights, which, according to the author, determine or should determine the features of legal regulation in the relevant field. The author reveals that the main motives that guide both the legislator in the formation of legal regimes for the results of intellectual activity, and the law enforcement officer in assessing the content of the established rules, lie in the sphere of Economics. The researcher reveals that the most significant properties of intellectual property objects are those properties that determine the ability of the object to participate in civil turnover. At the same time, the author notes how the actual characteristics of the results of intellectual activity are ignored, for example, in the field of copyright, related to such a property as artistic value. This approach leads to an underestimation of the requirements for qualifying the results of intellectual activity as subject to legal protection. Accordingly, this approach leads to an unjustified establishment of legal protection for mediocre, not able to benefit society, and in some cases the rightholder as well, intellectual property objects with fairly wide boundaries of the rights of the rightholder, which are ultimately implemented improperly. Excess marketability of the exclusive right is assessed as the main negative trend. The researcher makes an assumption in the context of copyright that further refusal to take into account the natural properties of this type of intellectual activity results in the long term can lead to a decline in the General cultural level of society. The author defines as a particular result of the dominant economic motives in the formation of legal regimes for the results of intellectual activity ignoring the results of scientific activity by its nature not capable of participation in civil turnover, but conceivable to protect the result of intellectual activity. The author offers a number of solutions to the problems posed in the article on the basis of the analysis.
Keywords: *objects of civil rights, results of scientific activity, intellectual property, results of intellectual activity, copyright*

1. INTRODUCTION

Private law initially has civil relations as the main priority of the subject of regulation and is limited in the methods of knowledge by the tools of legal science and, more recently, by economic analysis. Private law is inherently incapable of using appropriate research tools in the context of intellectual property results and, above all, copyright objects. This circumstance is obvious, first of all, from the content of the discussion on the qualification of intellectual property results as subject to legal protection by means of copyright. Scientific discourse on this issue is focused around the composition of features of copyright objects, which allow to distinguish such objects among all the results of intellectual activity [1–3].

Having considered its task completed, jurisprudence is excluded from further investigation of the meaning of such signs. A thorough review of the points of view on this issue and properly justified conclusions can be found, for example, in the publications of A.V. Kashanin [4]. The problem of "measuring" such features is not the subject of close attention of legal science, the assessment of legal consequences, for example, the degree of creative efforts of the author is clearly beyond the questions of qualification of the results of intellectual activity, in legal research is not found. So, V.I. Serebrovsky did not continue the reasoning in this context. He stated that "the level of creative activity can be different" [5].

The question of "measuring" a creative attribute for the purpose of determining legal consequences is not raised in the literature. The value of a creative attribute is found in very rare publications on this topic if the interests of individual participants in civil turnover are affected. Thus, Y. V. Matskevich writes: "As for the point of view of copyright compliance, prevention of serious financial violations when using budgetary and extra-budgetary funds for the purchase of works of art, objective evaluation of purchased works for public and private collections, the criteria for evaluating works of art are simply necessary. Especially in conditions when the art market is at a stage of insufficiently high development" [6].

The thematic of legal protection forms and the system of results of intellectual activity is the subject of numerous publications and studies [7–10]. At the same time, it is noteworthy that almost all studies are focused on issues related to the circulation and protection of such civil rights objects, and the results of intellectual activity are analyzed

exclusively in the context of turnover needs. However, there have always been original, other, let us say, more elevated goals and objectives, which are achieved by such results, and which, as we see, are largely ignored by both legal science and the rule of law.

2. PROBLEM STATEMENT

It seems that the intellectual property right can have not only the maintenance of turnover as its goal, but also other tasks related to the qualities and characteristics of the results of intellectual activity, which are rather indifferent to the economy, but are important for the cultural and scientific development of society. It seems that, let's call it a non-commodity approach, it will not only change the vector of legal regulation, but also reveal other results of intellectual activity worthy of legal protection.

2.1. Research Questions

The study discusses in general terms the problem associated with the need to take into account the properties and characteristics of the results of intellectual activity, which are not fully significant for the participation of those in turnover.

2.2. Purpose of the Study

The author defines the following research objective: to identify the problems of the properties and characteristics of the results of intellectual activity of non-commodity properties, the recognition price of which is a matter of preserving the real nature of such objects of civil rights.

2.3. Research Method

The methods used in this research are universal scientific research methods (generalization, abstraction, formalization, analysis, synthesis) as well as specific legal research methods (technical, contrastive-comparative, etc.).

3. RESULTS

The development of modern civilization, based on the selection of various kinds of objects from the surrounding world, has come to a standstill. Almost everything that could be assigned has already been assigned and shared. The contemplative stage of development, if not over, has certainly exhausted the source of inspiration. Such factors affected the economic component of the development of society, and law, in turn, responded to the changes.

The most liquid objects of civil rights are fictitious phenomena, at present. Man has become the creator of his own world, in fact. Money, securities, various kinds of property rights, results of intellectual activity do not have an objective reflection in nature, and if they do, then such a reflection is only a way of fixing, a form of expression, and are intended solely to allow our bodies to perceive the feelings of such a fictitious object of civil rights.

The results of intellectual activity constitute a special group among all objects of civil rights created by man. Since only the results of intellectual activity are truly created and valuable in themselves, unlike, for example, money, regardless of the universal conventional recognition of such a value. We consider such a statement obvious. At the same time, we single out two main essential factors that determine the subsequent presentation:

1. The economy and civil turnover were not the source of the appearance of the results of intellectual activity (or for the most part, they were not). The economy and civil turnover only picked up these results.

2. The history of recognition by private law of the results of intellectual activity is extremely short, which predetermines the unknown, unexplored many aspects of the existence of these results. Hereinafter, the appeal to the results of intellectual activity in the context of the participation of the latter in civil circulation is nothing more than a deliberate simplification. Naturally, the relevant property rights are involved in the civil circulation, and not the objects themselves.

The format of this article suggests a problem statement rather than a solution.

3.1. What are the results of intellectual activity, what are their properties?

The main, most ancient object of rights is things. They have been known to man for a long time, they appeared initially in the environment of the “law” of the natural in the context of the unwritten, and then they moved to the stage of positive law. Humanity, including lawyers as a part of humanity, has accumulated over such a long period of time at the genetic level the idea that there are things. The properties of things are taken for granted, a kind of well-known facts. The model of a thing established by positive law is based on this practically a priori knowledge [11, 12].

However, humanity, and especially lawyers, is not particularly familiar with new objects, which, of course, include all the results of intellectual activity, without exception. In general, the positive legal life of many objects of civil rights is extremely short, which did not allow accumulating sufficient experience.

There are several significant shortcomings in assessing the legal nature and features of the results of intellectual activity and, accordingly, the applicable mechanisms of legal regulation. These shortcomings are caused by the hyperbolization of the commodity properties of property rights in relation to such results.

"Exclusive rights may be contrary to their inner essence ... relegated to the simplest form of goods…" [13] – so the participants of the scientific event determined in 2011 the nearest sad future, which, unfortunately, is already close. Lawyers and merchants are poorly versed in the actual essence of phenomena and see exclusive rights primarily as a product that can sell very well. This led to an explication of the properties of familiar products on the results of intellectual activity.

3.2. Natural-physical defect of perception of the results of intellectual activity

What are the results of intellectual activity, for example, objects of copyright? Indeed, copyright objects have their own structural elements, "bricks", of which they are composed and which, unfortunately, are often not only not analyzed, but not even detected. Many people think of themselves as specialists in respect of all objects of civil rights, including objects of intellectual rights, staying in the illusion of awareness, for the most part based on material and commodity baggage of knowledge. For example, a loan in relation to a musical work is defined based on "sounds like", a work of fine art, or a design – "looks like". Meanwhile, we must take into account that, for example, a musical work consists of notes, and in order to establish whether a phonogram is a copy of the work, it is necessary to decompose the latter into notes and relate it to the original, and not to perceive it with the organs of hearing. Such a tactile primitive approach to determining the essence of the results of intellectual activity in a methodology applicable exclusively to things and based on the senses is not quite a good solution.

At the same time, it will be an inaccurate statement that a positive law and practice of its application completely ignore the nature of the results of intellectual activity. "Positive law will be the way we read it". This expression belongs to S. A. Stepanov: this is a paraphrase that does not distort the meaning of what was said, from a speech on March 21, 2014 at the section "Civil Law Reform: Results and Prospects" at the Interregional Conference "Actual Issues of Legislation".

It is precisely this methodological premise that, when considering specific disputes, it is possible to come to the understanding that considering the essential features of the results of intellectual activity is simply inevitable. The parody case, considered by the Presidium of the Supreme Commercial Court of the Russian Federation, is an interesting act of this understanding of the law. The Court was forced to understand when assessing the circumstances of this case, what is a work and what is a parody and what they are "made of" [14].

The author believes that the assumption that lawyers should come to terms with the fact that the definition of essential characteristics is beyond the scope of jurisprudence is true. We emphasize that we are talking about identifying characteristics, and not about creating a positive model of the object of civil rights. Jurisprudence does not and cannot have tools, mechanisms of such a study, which means that you should turn to real experts in the relevant field of knowledge. We have no doubt that it is the particular features of the structural elements of the results of intellectual activity that should determine the characteristics of the legal regime and the specifics of law enforcement [15, 16].

What we see at present is nothing more than a consequence of the consistent organic development of positive law, if not banal luck. It so happened that the basic principles, norms of positive law that determine the legal regime of the results of intellectual activity, allow, when read correctly, to apply the rules of behavior established by them in accordance with the properties of the results of intellectual activity. But whether these rules are always read correctly and correctly applied in accordance with the real essence of the results of intellectual activity – the answer is obvious.

3.3. Non-commodity characteristics of the results of intellectual activity

Unfortunately, the results of intellectual activity lose the properties of intelligence. A huge number of phenomena that can hardly be called intellectual are now included in the so-called "intellectual property".

How often do lawyers and courts ask themselves about the quality of works based on their actual properties when determining the legal consequences of certain actions in relation to works? Almost never. The main criterion for assessing the consequences is marketable; in particular, the potential loss of the copyright holder is the main measure of the amount of compensation for violation of the exclusive right.

At the same time, we believe that it is worth asking a question about the reasons why the real non-commodity properties of works are ignored. Is it fair that mediocre, low creativity can and should be protected with the same degree of intensity as actual real masterpieces? And this is what happens. In any case, in the Russian practice of law enforcement, there are no judicial acts in which the style of presentation of the work, artistic ideas, the implementation of the laws of the genre and other components of the work are analyzed, and then the amount of compensation is justified on the basis of these present properties.

Students of law schools in Russia no longer study aesthetics, but intensively study the economic analysis of law, the usefulness of which in relation to certain sub-sectors of private law is not in doubt. But is it fully applicable to intellectual property law? The author of this article sincerely does not understand how it is possible to work with copyright law without having a scientific systematic understanding of the beautiful [17].

The "commodity orientation" of understanding the law, the "commodity" of the worldview of lawyers leads to the opposite result for intellectual property – the law actually encourages the creation of mediocre works in the artistic sense. This approach has the unfortunate consequence of

reducing the overall level of cultural development of society, and also makes a "significant contribution" to the destruction of real art, which can cause the best that is in human nature.

Unfortunately, we assume that true intelligence perishes under the weight of commodity perception. Second-rate, useless fakes hit intellectual property, and all this has an essential reason – marketability. We believe that "material" marketability in its current form, content, in principle, contradicts the actual nature of the results of intellectual activity.

Further escalation of the commodity and economic characteristics of copyright objects can lead in the long term to a significant decline in the cultural level of society as a whole. Private law is undoubtedly the most powerful tool for regulating public relations. It is this law that has brought to life an entire branch of the economy based on the turnover of intellectual property rights. It is this instrument – private law –that has created the basis for the development of modern civilization, no matter how pathetic it sounds.

However, the same tool will be destructive if applied incorrectly. We see this scenario in the context of copyright objects. Tools for evaluating the natural (as in "resulting from nature") properties of copyright objects are not found in the current version of the regulatory regulation and assessment of its content. This ultimately discourages the creation of works of art. Attempts to influence the creative sphere with public law instruments through the creation of various kinds of funds, the provision of grants, to finance creative activity, as practice shows, are ineffective; they are not able to detect a creative personality.

It is private law that contains not yet identified, but effective ways to stimulate creativity. And such tools are exactly in the plane of qualification of copyright objects. Maintaining the current state of the content of copyright laws, suppressing actual art, with a high enough degree of probability, will lead to the "thunder" of Ray Bradbury, which will certainly "break out".

3.4. Gott ist tot (F.W. Nietzsche)

Copyright appeared as a tool to reward the creator, but has now turned its back on the creator. Tools that were intended specifically for a creative, cloud-dwelling personality are used today by entities that have nothing to do with creativity. It is hypocritical to call a copyright law, it is "publishing", "producer", whatever, but not copyright. The use of the term "industrial property" is very revealing in this context – crudely, but honestly. But how beautiful and quite different from the point of view of the policy of law sounded – "**inventive law**". It may be a play on words, or it may be an indicator of the general relationship of our and the world law and order to the person-creator.

Such an approach substantially distorts the notion of intellectual property. What interest does the non-author-copyright holder have – only commodity. Such a non-author is indifferent to the real value of the result of intellectual activity, the great and good that these results can bear. The non-author-copyright holder only needs marketability, and marketability does not always ensure a positive impact of the result of intellectual activity on the world around them.

A huge gulf exists between the capabilities of the author of the result of intellectual activity and the capabilities of individuals who directly implement developments that use intellectual property and receive income from this. The actual content of the concept of "intelligence" has been replaced by the term "innovation" in the wake of the general desire to introduce innovations.

Completely incompetent both from the legal and economic point of view, authors who have no idea about their own rights and opportunities often become deceived managers, for whom the real value is the results of their activities (profit). Meanwhile, we must remember that effective managers and companies are not capable of creating the result of intellectual activity, and the actual legislation on intellectual property rights should be aimed primarily at encouraging the author to create such a result. In fact, we neutralize the possibility of creation if we leave the author incompetent in legal, economic, financial matters, alone with businesspersons, who are served by lawyers, economists, and financiers.

It is obvious that the failure of the results of scientific activities to participate in civil turnover, the inability to qualify such as goods, which can rated and are acceptable to establish a monopoly of the particular person are the main reasons why research results are not recognized by positive law as protected results of intellectual activity. How justified is this decision? It is obvious that private law is not only a tool for organizing civil turnover, but can also perform other tasks, in particular, to stimulate the creation of scientific results that are not allowed to participate in turnover, but that give a useful effect for society as a whole.

4. CONCLUSION

We see as a priority a number of tasks at this stage of the development of intellectual property law [18, 19].

First of all, it is necessary to reconcile the imposed marketability and the real qualities of the results of intellectual activity. At a minimum, along with marketable properties, the natural, real properties of the results of intellectual activity must be taken into account.

We must reconsider the approach, according to which the necessary property for qualifying the result of intellectual activity as subject to legal protection is the ability to participate in civil circulation. We believe that the mere existence of the result of intellectual activity is a sufficient basis for raising the question of the possibility of its legal protection and the development of an appropriate legal form, which does not have to be connected with the participation of rights to such a result in civil circulation. We assume that the development of a form of legal protection of the results of scientific activity is the most urgent. A simple recognition of the legal position of a

scientist or a research team can stimulate creative activity and bring positive results.

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