PROOF OF AUTHORSHIP IN THE RUSSIAN FEDERATION

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Abstract.Despite the presumption of authorship, according to which authorship is recognized to be trustworthy until proven otherwise, there are frequent situations where authorship can be challenged. In these cases, they must prove their authorship. These actions can be performed for various purposes: to achieve material benefits or to popularize one's personality. In other words, plagiarism takes place. The paper discusses various pieces of evidence which can be used as a justification for authorship of a particular copyright object. Some decisions of the Russian courts on this issue are analysed and the pieces of evidence that are recognized as reliable and sufficient to confirm authorship are highlighted. The guidelines of the highest courts in this area are reviewed. It is noted that the need to prove authorship arises in connection with the lack of formal registration of copyright, which creates difficulties when considering disputes about contesting authorship. In addition, the paper considers the types of responsibility for misappropriation of authorship as the main methods of combating plagiarism: civil law, administrative, criminal. Some of the most common varieties of plagiarism are highlighted.

Key words: Russian copyright, personal non-property rights, authorship, subject matters of copyright, contesting authorship.

1 Introduction

In accordance with article 1265 of the Civil Code of the Russian Federation, the right of authorship means the right to be recognized as the author of the work and the right of the author to the name is the right to use or allow the use of the work under his/her own name, under an assumed name (pseudonym) or without indicating a name, that is, anonymously. This right is inalienable and non-transferable, including upon transfer to another person or transfer to him/her of the exclusive right to a product and upon granting to another person the right to use the work. The waiver of copyright and the right to a name is void.

Thus, the author's personal non-property rights are inalienable and imprescriptible rights that are not subject to valuation. Personal non-property rights are a legal connection between a work and its author. Personal rights do not depend on the property rights to the work and the copyright is retained even after the transfer of property rights (Novoselova & Ruzakova, 2017).

However, there may be cases where the personal non-property right in question is violated. These actions can be performed for various purposes: to achieve material benefits or to popularize one's personality. In other words, plagiarism takes place. In these cases, a faithful author needs evidence in order to confirm his/her authorship (Sergeev, 2000: Eisvandi et al, 2015).

For example, a decree No. 9 of the USSR Supreme Court Plenum dated December 19, 1967, was in force in the USSR "On the Practice of Consideration by Courts of Disputes Arising from Copyright". In paragraph 11 of this decree, it was stated that "when considering cases on disputes arising from copyright, judges must request copyright agreements and other written evidence from the parties for inclusion to the case. If a dispute is connected with illegal borrowing from other people's works, copies of these works and comparison tables of coincidences should be attached to the case. Similar tables should also be requested for disputes about authorship or co-authorship. In necessary cases, taking into account the nature of the disputed legal relationship, other evidence must also be requested, in particular, credentials about the movement of the manuscript" (Roka, 2017).

To date, this resolution has lost its force, so it seems advisable to consider what at this point in time can be assessed by the court as a sufficient justification for authorship of certain types of copyright objects.

2 Methods

In paragraph 42 of the Decree No. 5 of the Russian Federation Supreme Court Plenum and the Decree No. 29 of the Russian Federation Supreme Arbitration Court Plenum dated March 26, 2009 "On Some Issues Arising in Connection with the Enforcement of Part Four of the Civil Code of the Russian Federation", it was stipulated that when a court considered the copyright protection case it is necessary to proceed from the fact that unless otherwise proved, the author of the work (the owner of the exclusive right to the work) is the person indicated as such on the copy of the work. Moreover, the need to study other evidence can arise only if the authorship of the person in the work is disputed. It should be noted that the above normative legal act has lost force in connection with the adoption of the Resolution of the Russian Federation Supreme Court Plenum dated April 23, 2019 No. 10 "On the application of part four of the Civil Code of the Russian Federation" (hereinafter - the Resolution of the Plenum No. 10). Given the above circumstance, we turn to this decision.

In Paragraph 110 of the Decree by Plenum No. 10 it is specifically noted that to date, an exhaustive list of evidence of authorship has not been consolidated in Russian legislation. Also, this list has not been developed by judicial practice. This means that in each individual case, the court may take into account various evidence of authorship. The aforementioned resolution states that, for example, the authorship of a particular person in a photograph may be indicated, inter alia, by the submission by that person of an unprocessed version of the photograph. In addition, in accordance with the legal position set out in paragraph 14 of the Decree No. 15 of the Russian Federation Supreme Court Plenum dated June 19, 2006 "On issues that arose in courts when considering civil cases related to the application of copyright law and related rights", a complainant must confirm the fact that he/she holds copyright and (or) related rights or the right to protect them, as well as the fact of the use of these rights by the defendant (Flanagin et al, 1998: Mullakhmetov et al, 2018).

The following circumstances may be cited as evidence of authorship. So, for example, in the Decree of the Supreme Court of the Russian Federation dated 06.06.2018 No. 306-ES17-11916 in case No. A65-12234 / 2016, the fact that the photo was posted on a personal blog in the public domain was taken into account as proof of authorship, taking into account which, the court acknowledged that there was every reason to confirm that the author's rights to the controversial photograph belong to him.

Noteworthy is the position of the court in the Resolution of the Court of Intellectual Rights dated 05.02.2019 No. C01-812 / 2018 in the case No. A05-10382 / 2017. The court pointed out that the controversial photographs were created using a specific digital camera, the Canon EOS 60D, with a unique serial number for the camera. Based on the results of establishing the circumstances of the acquisition of the said camera, the court concluded that it belongs to the complainant, whose right as being the author of the work was violated. The foregoing led to the court's conclusion that "those circumstances (the camera belonged to the complainant, the complainant's training in photographing in 2010) together confirm that the complainant is the author of the controversial photographs" (Cicutto, 2008).

Similar evidence was taken into account by the Altai Regional Court in court decision No. 33-1924 / 2019 of 02.27.2019. However, in addition to the above evidence, the authorship was additionally confirmed by the presence of photographs from the same series with the complainant (García-Santillán et al, 2019).

Of interest is the judicial decision of the Omsk Regional Court dated November 15, 2017 No. 33-7501 / 2017. A citizen filed a lawsuit against the Federal State-Owned Enterprise "Russian State Circus Company" on the establishment of a fact of violation of the author's right to the inviolability of a work of architecture and imposing a duty to restore the author's original creative plan.

The complainant justified his claim by the fact that he participated in the development of the project of improved planning and decoration of the Omsk circus building. The complainant argued that as a result of the development of the interior design and the improved decoration of the circus building, an independent work of architecture was created, which, according to article 475 of the Civil Code of 1964, was attributed to the subject of copyright.

In 2016, during the reconstruction of the Omsk circus building, changes were made that were not agreed with the complainant and were not approved by him. According to the complainant, in the process of preparing project documentation and carrying out construction work, not only the right to the inviolability of the work, but also the right of the author to exercise copyright control, and the right to exercise supervision during construction work was violated, since the complainant was not involved in copyright control and Authorial Supervision, and was deprived of the possibility of taking measures to prevent violations of the right to the inviolability of a work of architecture.

In support of his authorship, the complainant referred to the fact that information about his customizing in the creation of the project for the Omsk circus building is of a well-known nature and “does not need proof”. In addition to that, according to the official website of the Omsk branch of the Federal Fiscal Enterprise “Russian State Circus Company”, the complainant participated in the creation of the Omsk circus building, his “contribution to personalizing the building, which is the recognition of claims by the defendant,” is noted. The complainant also referred to the testimony of the witness which confirmed the existence of the Omsk circus project in an improved finishing version and the complainant co-authored in the development of the project. The complainant referred to the fact that, according to judicial practice, the information contained in the “Great Soviet Encyclopedia“ is considered reliable and is used by courts in making decisions. In continuation of the justification of his innocence, the complainant argued that "the indisputable evidence confirming the existence of the project for improved decoration of the Omsk city circus is the fundamental differences between the project of linking the circus building, developed in 1966 by the architect and the actual building of the Omsk city circus."

The court came to the conclusion that the relevant evidence could be copies of the copyright agreement, documents detailing the job assignment, as well as the original projects, drawings, sketches and layouts indicating a different architectural solution compared to the standard project, the author of which the complainant is indicated. The complainant did not provide evidence that there was a consolidated order to create a group of architects in 1969 to develop a project for improved planning and decoration of the Omsk city circus building, in which there was a complainant, as well as the availability of documents that could be used to make changes to the typical building design complainant or co-authored with other architects. In connection with the foregoing, the court rejected to accept extract from the Soviet Encyclopedia printed materials, and the complainant’s album of creative works as admissible and reliable evidence confirming the complainant’s copyright. As well as the data on the complainant’s participation in improving the model design of the circus building, reflected in the media, cannot indicate by themselves the occurrence of his copyright to the project of an improved layout and decoration of the building.

With regard to computer programs, paragraph 109 of the Resolution of the Plenum No. 10 indicates that the certificate of registration of the computer program confirms the authorship until the contrary is proved. This suggests that when a court considers copyright protection, it should be based on the fact that, unless proven otherwise, the author of the work is the person indicated as such on the original or a copy of the work or otherwise in accordance with paragraph 1 of Article 1300 of the Russian Federation Civil Code (Article 1257 of the Civil Code of the Russian Federation), in the Register of Computer Programs or in the Register of Databases (clause 6 of Article 1262 of the Russian Federation Civil Code).

3 Results and Discussion

The need for proof of authorship arises due to the lack of formal registration of copyright. As correctly noted by L.A. Novoselova, "…in practice, it is often necessary to prove authorship (to deny the authorship of another person) and to have other copyrights in relation to the work." She sees one of the solutions to the problem considered in this paper in "creating and ensuring the functioning of systems for registering and recording copyright".

The same circumstance has been pointed by A.P. Sergeev, who noted that "proving a violation of the right of authorship for a work of art is more complicated in a certain sense than in cases of violation of the rights for a patent holder." In addition, he highlighted situations such as that, firstly, “works could be created independently of each other,” and secondly, “both works could have their source in work that is in the public domain.”

There are three types of liability for misappropriation of authorship in accordance with Russian law according to civil law, administrative law, and criminal law (Suleimanov et al, 2018).

Civil liability is enshrined in article 1251 “Protection of personal non-property rights” from the Civil Code of the Russian Federation. So, if there is a violation of the author’s personal non-property rights, they are protected by the following actions: recognition of the right, restoration of the situation that existed before the violation of the law, suppression of actions that violate the right or threaten its violation, compensation for moral damage, publication of the court decision on the admitted violation.

Administrative responsibility is provided for in article 7.12 of the Code of Administrative Offenses "Violation of copyright and related rights, inventive and patent rights." Assignment of authorship in accordance with this article may entail the imposition of an administrative fine on citizens in the amount of one thousand five hundred to two thousand roubles; from ten thousand to twenty thousand roubles for officials; and from thirty thousand to forty thousand roubles for legal entities (Parkin, 2004).

In accordance with Article 146 of the Criminal Code of the Russian Federation, four types of punishments are provided for misappropriation of authorship (plagiarism), if this act caused major damage to the author or another copyright holder: fine, correctional labour, compulsory community service, and arrest.

4 Summary

It should be noted that Russia is actively fighting plagiarism. This is evidenced not only by the above review of the types of responsibility that is provided for misappropriation of authorship but also by a number of other actions. So, on October 30, 2018, Federal Law No. 383-FZ was adopted, which amended the Federal Law “On Advertising”. In accordance with paragraph 10 of Article 7 of this law, advertising of services for the preparation and writing of final qualifying works, scientific reports on the main results of prepared scientific qualification works (dissertations), and other works provided by state system of scientific certification or necessary for students to pass intermediate or final certification is prohibited.

Certainly, the problem of plagiarism is widespread not only in Russia but throughout the world. The world's first attempt to fight plagiarism was made in 1992 in the United States by the Office of Research Integrity (ORI). The next was in 1997 in the UK by the Committee of Publication Ethics (COPE). These organizations provided guidelines for research, scientific integrity, and a set of principles for identifying plagiarism.

Yam Bahadur Roka identifies several types of plagiarism: deliberate plagiarism, mosaic plagiarism, and self-plagiarism.

Mosaic plagiarism occurs when a new author uses an original work, paraphrasing the sentences to give it a new look without the recognition of the original author. Self-plagiarism occurs when an author adds new data to previously published material and presents it as new without reference to a previously published material.

5 Conclusion

Thus, to date, an exhaustive list of authorship pieces of evidence has not been consolidated in Russian legislation. Also, this list has not been developed by judicial practice. This means that in each individual case, the court may take into account different pieces of evidence of authorship.

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