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ДОГОВІР ПРО СТВОРЕННЯ ЗА ЗАМОВЛЕННЯМ І ВИКОРИСТАННЯ ОБ'ЄКТА ПРАВА ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

Анотація. *В умовах все більшої уваги сучасного суспільства і кожного його члена до творчості, прояву своєї особистості, можливостей поширення результатів творчої діяльності за допомогою інформаційних мереж, технічних новинок, все більшої ваги та популярності набирають договори щодо розпорядження майновими правами інтелектуальної власності, що визначає актуальність обраної теми даного дослідження. Метою статті є визначення ознак договору про створення за замовленням і використання об'єкта права інтелектуальної власності та розкриття змісту нових підходів у законодавчому регулюванні відносин між замовниками та творцями об'єктів права інтелектуальної власності за договорами про створення за замовленням і використання об'єкта права інтелектуальної власності. У ході проведення дослідження, для досягнення поставленої мети, використовувались, зокрема, такі методи: формально-логічний, системно-структурний, емпіричного аналізу, догматичний та ряд інших. У даній статті аналізуються поняття та особливості договору про створення за замовленням і використання об'єкта права інтелектуальної власності, розкриваються істотні умови даного договору, його зміст, окреслюється специфіка сторін вказаного правочину. Авторами наводиться класифікація договорів щодо розпорядження майновими правами інтелектуальної власності та визначається місце договору про створення за замовленням і використання об'єкта права інтелектуальної власності серед вказаних договорів. Досліджується актуальна судово-практика стосовно договорів про створення за замовленням і використання об'єкта права інтелектуальної власності. Висвітлюються актуальні зміни у законодавстві України, що регулює порядок розподілу прав між замовником та творцем, у тому числі, на підставі договору про створення за замовленням і використання об'єкта права інтелектуальної власності. Проводиться порівняльний аналіз із попередньою редакцією окремих норм законодавства України. Наводяться власні висновки стосовно змін у законодавстві України щодо належності майнових прав інтелектуальної власності на об'єкти, створені за замовленням і подальшого розвитку договорів щодо таких об'єктів у сфері відносин інтелектуальної власності*

Ключові слова: *замовник, творець, зобов'язання, майнові права, працівник*

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AGREEMENT ON CREATION BY ORDER AND USE OF THE OBJECT OF INTELLECTUAL PROPERTY RIGHTS

Abstract. *In the conditions of increasing attention of modern society and each of its members to creativity, manifestation of their personality, opportunities to disseminate creative activities through information networks, technical innovations, increasing importance and popularity are gaining agreements on intellectual property rights of this study. The purpose of the article is to determine the characteristics of the contract for the creation and use of intellectual property rights and disclose the content of new approaches in the legislative regulation of relations between customers and creators of intellectual property rights under contracts on the creation by order and use of the object of intellectual property rights. In the course of the research, to achieve this goal, the following methods were used, in particular: formal-logical, system-structural, empirical analysis, dogmatic and a number of others. This article analyses the concepts and features of the agreement on the creation by order and use of the object of intellectual property rights, identifies the essential terms of this agreement, its content, outlines the specific features of the parties to the transaction. The authors classify the agreements on the disposal of intellectual property rights and determine the place of the agreement on the creation by order and use of the object of intellectual property rights among these agreements. Current case law on contracts for the creation and custom of the object of intellectual property rights is studied. Current changes in the legislation of Ukraine, which regulates the distribution of rights between the customer and the creator, including based on the agreement on the creation of the order and use of the object of intellectual property rights. A comparative analysis is carried out with the previous version of certain norms of the legislation of Ukraine. Own conclusions on changes in the legislation of Ukraine on the ownership of intellectual property rights to objects created by order and further development of agreements on such objects in the field of intellectual property relations*

Keywords: *customer, creator, obligations, property rights, employee*

INTRODUCTION

It is necessary to support the standpoint of scholars that the civil law of Ukraine is a special legal regulator of public relations [1, p. 138], and that the role of private law is increasing [2, p. 111], and the civil science of Ukraine has the main task of conducting research aimed at improving the current civil legislation [3, p. 53].

At one time, the 3rd President of the United States of America Thomas Jefferson noted the special nature of intellectual property, focusing on inventions that, in his opinion, could not be ordinary objects of property rights [4, p. 1].

In today's world, information and technological objects are often defined as increasingly important. In this regard, the state and business pay much attention to the recognition and protection of intellectual property [5, p. 1].

J. Hughes, notes that intellectual property should be considered as a stimulating structure that contributes to the progress of science and art [6, p. 1].

At the same time, we agree that intellectual property rights can arise for an extremely wide and diverse range of objects: from novels, computer programs, paintings, films, television broadcasts and performances, to clothing design, pharmaceuticals and genetically modified animals and plants, etc. [7, p. 1].

Information and communication technology products are indispensable tools of modern life around the world. Smartphones and laptops connect to a huge global computing infrastructure. The emergence of autonomous vehicles, products that provide virtual reality, a wide range of devices "Internet of Things" and countless other innovations suggest that these types of products will continue to play a growing role in today's global economy [8, p. 1].

Expansion and complication of economic relations lead to the transformation of the system of contracts, the emergence of new contractual forms [9, p. 130], and the function of the contract is especially relevant in cases where the legislation either does not contain legal regulation of certain relations, or legislative regulation is imperfect [10, p. 70]. The information component in contractual relations also becomes important in the conditions of information society [11, p. 85-94], especially given the fact that information in civil law is considered as a separate intangible object [12, p. 145], and the contract is the main tool for organising public relations [13, p. 35], which reflects the dynamics of social relations [14, p. 174]. At the same time, the contract is a legal fact and a form of legal relationship, and a document that fixes the rights and obligations of the parties [15, p. 115].

Agreements on the disposal of intellectual property rights is a special legal form of use of works of science, literature, art and industrial property [16, p. 890], which are becoming increasingly important in modern society.

At this stage of development of legal science, a number of works by leading scientists are devoted to issues arising in connection with the conclusion of agreements on the disposal of intellectual property rights, in particular, such as: V. Dmitryshyn "Disposal of intellectual property rights" (Kyiv, 2008), O. Zhilinkova "Contractual regulation of intellectual property relations in Ukraine and abroad" (Kyiv, 2015), A. Kodynets "Civil law regulation of binding information relations" (Kyiv, 2016), O. Yavorska "IT Law" (Lviv, 2017), Yu. Kapitsa "Unification and harmonization of legislation on the protection of intellectual property rights of EU member states and the legislation of Ukraine" (Kyiv, 2019) and others.

At the same time, some issues remain unresolved regarding the subject of agreements on the creation and use of intellectual property rights, the essential conditions of these agreements and legislative approaches to the distribution of rights between the customer and the creator.

The relevance of the research topic is thus explained by the need to analyse at the current level of civil law science and practice aspects related to the definition of the subject, content, essential conditions of contracts for the creation of custom and use of intellectual property rights. The issue of determining the parties and objects of such agreements deserves special attention.

In Ukraine, in the process of legal reform, the current legislation is being actively updated [17, p. 36], as a result, in connection with the adoption of the Law of Ukraine "On Stimulating the Development of the Digital Economy in Ukraine" of July 15, 2021 [18], new approaches were introduced in regulation of the relationship between the customer and the creator, which requires a separate study.

Considering the provisions of the current Civil Code of Ukraine of January 16, 2003 (hereinafter – the "Civil Code of Ukraine") [19], special civil legislation governing relations, arising in connection with the use of intellectual property rights, and doctrinal developments [20, p. 65-66], you can define the following system of agreements on the disposal of intellectual property rights:

1. Agreements on the transfer of exclusive intellectual property rights

This group includes, in particular:

1.1. Agreement on the transfer of exclusive intellectual property rights (Article 1113 of the Civil Code of Ukraine);

1.2. Copyright agreement on transfer (alienation) of property rights of copyright subjects (Article 31 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993) [21];

1.3. Agreement on the transfer of ownership of a trademark (Part 9 of Article 16 of the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" of December 15, 1993) [22];

1.4. Agreement on the transfer of ownership of an invention (utility model) (part 8 of Article 28 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" of December 15, 1993) [23];

1.5. Agreement on the transfer of ownership of an industrial design (Part 6 of Article 20 of the Law of Ukraine "On Protection of Industrial Design Rights" of December 15, 1993) [24].

2. Agreements on granting rights to use intellectual property rights.

This group includes, in particular:

2.1. License agreement (Article 1109 of the Civil Code of Ukraine);

2.2. Publishing agreement (Article 17 of the Law of Ukraine "On Publishing" of June 5, 1997) [25; 26, p. 107-108];

2.3. Agreement on the use (publication) of the work (Article 33 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993) [21].

3. Agreements on the creation of intellectual property rights

This group includes, in particular:

3.1. Agreement on the creation by order and use of the object of intellectual property rights (Article 1112 of the Civil Code of Ukraine) [19];

3.2. Copyright agreement (part 6 of Article 33 of the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993) [21];

3.3. Scenario contract [27, p. 239].

4. Other (“related”) agreements on the disposal of intellectual property rights

This group includes, in particular:

4.1. Agreement on the distribution of property rights to the official work (Article 16 of the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993);

4.2. Agreement between co-authors (Article 436 of the Civil Code of Ukraine; Article 13 of the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993) and others.

From the above classification it can be seen that one of the agreements on the disposal of intellectual property rights is the agreement on the creation by order and use of the object of intellectual property rights, which belongs to the group of agreements on the creation of intellectual property rights.

The purpose of this study is definition features of the agreement on the creation and use of the object of intellectual property rights and the disclosure of new approaches in the legislative regulation of relations between customers and creators of intellectual property rights under agreements on the creation and use of the object of intellectual property rights.

1. MATERIALS AND METHODS

The use of general scientific and special legal methods is carried out, including for full-fledged, comprehensive, comprehensive and complete work. Therefore, during this study, the paper used, in particular, the following methods: formal-logical, system-structural, empirical analysis, dogmatic.

The formal-logical method was used to analyse the provisions of the Civil Code of Ukraine, and other regulations governing the relationship between customer and creator. During the study, the following current regulations of Ukraine were analyzed: the Civil Code of Ukraine of January 16, 2003 [19], the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993 [21], Law of Ukraine “On Protection of Rights to Marks for Goods and Services” of December 15, 1993 [22], Law of Ukraine “On Protection of Rights to Inventions and Utility Models” of December 15, 1993 [23], Law of Ukraine “On Protection of Rights to industrial designs” of December 15, 1993 [24], the Law of Ukraine “On Publishing” of June 5, 1997 [25], and the Law of Ukraine “On Stimulating the Development of the Digital Economy in Ukraine” of July 15, 2021 [18].

The application of the system-structural method in the work made it possible to classify agreements on the disposal of intellectual property rights into four main groups: 1) agreements on the transfer of exclusive property copyrights; 2) agreements on granting rights to use objects of intellectual property rights; 3) agreements on the creation of objects of intellectual property rights, and 4) other (so-called, “related”) agreements on the disposal of intellectual property rights.

The empirical method was used to study the practical aspects of the application of certain types of agreements on the creation and use of intellectual property rights, including the analysis of current case law on these agreements of various courts of Ukraine. The legal nature of agreements on the creation and use of objects of intellectual property rights, the essential conditions, features of the subject composition and the content of these agreements are studied.

In the process of preparing a scientific article, using formal-logical and system-structural methods, and the method of empirical analysis, the authors analyzed the legislation of Ukraine governing the distribution of rights between customer and creator, both before and after the Law of Ukraine “On Stimulating the Development of the Digital Economy in Ukraine” of July 15, 2021 [18].

The application of the dogmatic method allowed making a thorough systematic analysis of the current legislation of Ukraine, which is devoted to the settlement of contractual relations with the participation of subjects of intellectual property rights in Ukraine. In the course of the study, based on the analysis of current doctrinal developments, including case law on contracts for the disposal of intellectual property rights, own conclusions were made, including the settlement of relations between the customer and the creator arising in connection with the implementation of agreements on the disposal of intellectual property rights; concerning the legal nature and features of agreements on the disposal of intellectual property rights; in terms of the

essential terms of agreements on the disposal of intellectual property rights; in respect of the parties to agreements on the disposal of intellectual property rights; in relation to the subject and object of agreements on the disposal of intellectual property rights.

2. RESULTS AND DISCUSSION

According to Article 1112 of the Civil Code of Ukraine under the agreement on the order and use of intellectual property rights, one party (creator – writer, artist, etc.) undertakes to create an intellectual property object in accordance with the requirements of the other party (customer) and in the established terms. It should be noted that along with the term enshrined in Article 1112 of the Civil Code of Ukraine, the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993 contains another concept – “copyright agreement”. Thus, Part 6 of Article 33 of the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993 stipulates that under the copyright agreement the author undertakes to create a future work in accordance with the terms of this agreement and transfer it to the customer. The contract may provide for the payment by the customer to the author of the advance as part of the royalties [21].

Based on the analysis of the above definition, it can be concluded that the design of the contract for the creation and use of intellectual property rights is similar to the contract under Article 33 of the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993, but with the difference that the subject of the contract on the creation by order and use of the object of intellectual property rights is broader. In particular, the subject of the contract on the creation and use of the object of intellectual property rights may include rights to any objects of intellectual property rights, and the subject of the copyright agreement – only the rights to the objects of copyright.

As noted in the annotation to the article, agreements on the disposal of intellectual property rights are gaining in importance and popularity. This conclusion also applies to agreements on the creation by order and use of the object of intellectual property rights and is confirmed, in particular, by the materials of current case law:

– according to the decision of the Solomyansky District Court of Kyiv of December 29, 2018 in case No. 760/24493/18 one of the evidences in the case of invalidation of the certificate of Ukraine on the mark for goods and services is an agreement to create custom design sketches [28];

– the study of the contract for the creation and use of design objects was carried out by the court in the case of copyright infringement and recovery of compensation (decision of the Shevchenkivsky District Court of Kyiv of October 17, 2018 in the case No. 761/13278/16) [29];

– the author's contract for the development of characters for an audiovisual work was studied in the case of recovery of compensation for copyright infringement (decision of the Commercial Court of Odesa region of November 25, 2019 in the case No. 916/1506/19) [30];

– according to the decision of the Desniansky District Court of Kyiv of July 20, 2021 in case No. 754/9399/20 one of the evidences in the case of copyright protection is the contract with the author on the creation of works [31];

– rights to copyright objects created in connection with the terms of the contract were investigated in the process of consideration of the case No. 910/9490/20 by the Commercial Court of Kyiv (decision of the Commercial Court of Kyiv of December 11, 2020) [32];

– the author's contract for the creation of a script for a children's television series was studied in the case of recovery of compensation for copyright infringement (decision of the Commercial Court of Kyiv of May 25, 2020 in case No. 910/2552/15) [33], etc.

Special attention should be paid to the nature and characteristics of the contract for the creation and use of the object of intellectual property rights. Based on the analysis of the structure, which is enshrined in Article 1112 of the Civil Code of Ukraine, we can conclude that the contract for the creation and use of the object of intellectual property rights is a consensual transaction, because at the time of the contract the creator undertakes to create the object intellectual property, therefore, is not able to transfer such an object at the time of the contract. With regard to the essential conditions, it should be noted that the following should be distinguished: the condition of the subject of the contract; the period during which the creator undertakes to create an object of intellectual property rights; ways and conditions of using the object of intellectual property rights.

It should also be noted that the legislation may contain essential conditions for certain types of contracts for the creation of custom and use of the object of intellectual property rights. As mentioned above, in accordance with Part 6 of Article 33 of the Law of Ukraine “On Copyright and Related Rights” of December 23, 1993, under the copyright agreement, the author undertakes to create a future work in

accordance with the terms of this agreement and transfer it to the customer; the contract may provide for the payment by the customer to the author of the advance as part of the royalties.

Therefore, based on the analysis of this rule, we can conclude that the advance payment can be made by agreement of the parties to the copyright agreement, and royalties should always be paid to the author. The author's contract may specify the specific amount of remuneration or the procedure for determining the remuneration, including the terms of its payment [34, p. 216]. The tariff of royalties for the creation of a work, among other things, can be set, for example, by calculating the cost of one page of a certain format or taking into account the cost of a certain number of printed characters in the work, etc. [35, p. 1007]. Therefore, in our opinion, the condition on the amount of royalties refers to the essential conditions of the copyright agreement of the order. As you know, the subject of civil law can independently perform certain actions permitted by objective law in order to force the obligated person to perform his duty [36, p. 91]. Part 1 of Article 1112 of the Civil Code of Ukraine states that the parties to the contract for the creation and use of the object of intellectual property rights are the creator (writer, artist, etc.) and the customer.

The Civil Code of Ukraine stipulates that the creators of the object of intellectual property rights, in particular, include the author, performer, inventor (part 1 of article 421 of the Civil Code of Ukraine). In turn, Article 1 of the Law of Ukraine "On Copyright and Related Rights" of December 23, 1993 states that the author is a natural person who has created a work through his creative work. This article also states that a performer is an actor (theater, film, etc.), singer, musician, dancer or other person who performs, sings, reads, recites, plays a musical instrument, dances or in any other way performs works of literature, art or works of folk art, circus, pop, puppet shows, pantomimes, etc., and conductor of musical and musical-dramatic works [21]. According to Article 1 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models", an inventor is a person whose intellectual, creative activity has created an invention (utility model). According to Article 1 of the Law of Ukraine "On Protection of Rights to Industrial Designs", the author is a person whose creative work created an industrial design [24].

Thus, we can draw an intermediate conclusion that the current legislation of Ukraine under the concept of "creator" means only a natural person. At the same time, we consider it necessary to state the position of O. Kulinich and L. Romanadze, who point out that if we assume that copyright regulates the relations that develop in the process of using an already created work, then to create the actual work, the party to the copyright agreement can be called only conditionally [37, p. 271]. In our opinion, this position can be supported, because, indeed, at the time of concluding the agreement on the creation and use of the object of intellectual property rights, the object of intellectual property rights does not yet exist, and it cannot be said that the person will create such an object project and, as a consequence, will become the creator.

With regard to the customer as a party to the agreement on the creation and use of the object of intellectual property rights, it should be noted that currently there are no restrictions on the number of persons who may be customers of intellectual property rights. Regarding the subject of the contract on the creation by order and use of the object of intellectual property rights, it should be noted that its subject is the obligation of the creator to create a certain object of intellectual property rights. At the same time, the object of this agreement can be almost any object of intellectual property rights that will be created in the future (literary and artistic works, computer programs, phonograms, videograms, inventions, utility models, industrial designs, plant varieties, animal breeds, etc.). Considering the practical component of preparation and implementation of agreements on the creation and use of the object of intellectual property rights, it should be emphasised that this agreement must clearly define the requirements to be met by the object of intellectual property rights. In particular, depending on the type of object, you need to specify the volume, structure, shape, genre, purpose, working title of the work, type of invention, utility model, scope of the device, requirements for the appearance of the product and more.

The issue of the content of the agreement on the creation and use of the object of intellectual property rights and the information component in such agreements deserves special attention [6, p.85-94], given that the processes of use, dissemination, storage of information contribute to information legal relations [38, p. 123]. The content of this agreement consists of the rights and obligations of the customer and the creator. Based on the analysis of actual practice of execution of agreements on creation by order and use of object of the intellectual property right it is possible to allocate such basic rights and duties of the parties of the agreement. Thus, the creator, in particular, undertakes to create an object of intellectual property rights that meets the terms agreed in the contract, the task of the customer, and transfer it in the appropriate form to the customer within the period specified in the contract. At the same time, the creator, among other things, has the right to demand payment of remuneration specified in the contract and to respect his personal non-property rights. In turn, the customer is obliged to pay the creator a fee for the creation and further use of the object of intellectual property rights, and to comply with the personal non-property rights of the creator. In addition,

first of all, the customer has the right to require the creator to create an object of intellectual property rights in accordance with the requirements specified in the contract, and to use such object in accordance with the terms of the contract.

In the process of studying the peculiarities of fulfillment of obligations under contracts for the disposal of intellectual property rights, special attention should be paid to current changes in the legislation of Ukraine governing the distribution of rights between customer and creator, including on the basis of the contract intellectual property rights, which were introduced by the Law of Ukraine “On Stimulating the Development of the Digital Economy in Ukraine” of July 15, 2021. To reflect changes in the legal regulation of relations between the customer and the creator, we present previous and current versions of the articles of the Civil Code of Ukraine (Table 1).

Table 1. Provisions of the Civil Code of Ukraine governing the distribution of rights between the customer and the creator

<p style="text-align: center;">Previous edition (before the entry into force of the Law of Ukraine “On Stimulating the Development of the Digital Economy in Ukraine” of July 15, 2021)</p>	<p style="text-align: center;">Current edition (after entry into force of the Law of Ukraine “On Stimulating the Development of the Digital Economy in Ukraine” of July 15, 2021)</p>
<p>Article 429. Intellectual property rights to the object created in connection with the implementation of the employment contract</p> <p>1. Personal intangible intellectual property rights to an object created in connection with the performance of an employment contract shall belong to the employee who created the object. In cases provided by law, certain personal non-property intellectual property rights to such an object may belong to a legal entity or individual where or where the employee works.</p> <p>2. Intellectual property rights to an object created in connection with the performance of an employment contract shall belong jointly to the employee who created the object and to the legal or natural person where or in which he works, unless otherwise established. contract.</p> <p>3. Specific features of exercising intellectual property rights to an object created in connection with the performance of an employment contract may be established by law</p>	<p>Article 429. Intellectual property rights to the object created in connection with the implementation of the employment agreement (contract)</p> <p>1. Personal intangible intellectual property rights to an object created in connection with the performance of an employment contract shall belong to the employee who created the object. In cases provided by law, certain personal non-property intellectual property rights to such an object may belong to a legal entity or individual where or where the employee works.</p> <p>2. Intellectual property rights to an object created in connection with the performance of an employment agreement (contract) shall belong to the employee who created the object and to the legal or natural person where or in which he works, jointly, if otherwise not established by this Code or agreement.</p> <p>3. Specific features of exercising intellectual property rights to an object created in connection with the performance of an employment contract may be established by law</p>
<p>Article 430. Intellectual property rights to the object created to order</p> <p>1. Personal intangible intellectual property rights to an object created by order belong to the creator of this object. In cases provided by law, certain personal intangible intellectual property rights to such an object may belong to the customer.</p> <p>2. Intellectual property rights to an object created by order shall belong to the creator of this object and the customer jointly, unless otherwise provided by contract.</p>	<p>Article 430. Intellectual property rights to the object created to order</p> <p>1. Personal non-property intellectual property rights to an object created by order belong to the creator of this object. In cases provided by law, certain personal intangible intellectual property rights to such an object may belong to the customer.</p> <p>2. Intellectual property rights to an object created by order shall belong to the creator of this object and the customer jointly, unless otherwise provided by contract or law</p>
<p>Article 440. Intellectual property rights to the work</p> <p>1. Property rights of intellectual property for a work are:</p> <p>1) the right to use the work;</p> <p>2) the exclusive right to allow the use of the work;</p> <p>3) the right to prevent the misuse of the work, including the prohibition of such use;</p> <p>4) other intellectual property rights established by law.</p> <p>2. Property rights to a work belong to its author, unless otherwise provided by contract or law.</p>	<p>Article 440. Intellectual property rights to the work</p> <p>1. Property rights of intellectual property for a work are:</p> <p>1) the right to use the work;</p> <p>2) the exclusive right to allow the use of the work;</p> <p>3) the right to prevent the misuse of the work, including the prohibition of such use;</p> <p>4) other intellectual property rights established by law.</p> <p>2. Property rights to a work belong to its author, unless otherwise provided by contract or law.</p>

	<p>3. Intellectual property rights to a work created in connection with the performance of an employment agreement (contract) shall belong to the employee who created the work and to the legal or natural person where or in which he works, jointly, unless otherwise provided by the contract or by law.</p> <p>Property rights to computer programs and (or) databases created in connection with the performance of an employment contract (contract) belong to the legal or natural person where or in which the employee who created these computer programs and (or) databases, unless otherwise provided by contract.</p> <p>A legal or natural person where or where an employee works who created a work in connection with the performance of an employment agreement (contract) acquires intellectual property rights to such work in accordance with this Code or the contract at the time following the creation of such work, unless otherwise provided by contract.</p> <p>4. Intellectual property rights to a work created by order shall belong to the customer, unless otherwise provided by contract or law.</p> <p>Intellectual property rights to a work of art created to order (except for a work specially created as part of the software) belong to its author, unless otherwise provided by contract or law.</p> <p>The customer acquires intellectual property rights to the work created by order, in accordance with the law or contract at the time following the creation of such work, unless otherwise provided by contract</p>
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Based on the analysis of the above provisions, it can be concluded that the legislator continues to adhere to the concept of joint ownership of intellectual property rights to the object created by order, the creator of this object and the customer. At the same time, it should be noted that the above law radically changed the approach to the distribution of intellectual property rights to computer programs, databases created in connection with the implementation of the employment contract (contract), including works of fine art created to order.

In particular, the following changes should be emphasised:

– As a general rule, property rights to computer programs and (or) databases created in connection with the performance of an employment contract (contract) belong to the legal or natural person where or where the employee who created these computer programmes and (or) databases works, unless otherwise provided by contract;

– as a general rule, intellectual property rights to a work created by order belong to the customer, unless otherwise provided by contract or law.

In addition, the legislator made an exception to the rule on the distribution of intellectual property rights, namely, works of art: intellectual property rights to a work of art created by order (except for a work specially created as part of software) belong to its author, unless otherwise provided by contract.

CONCLUSIONS

Proceeding from the foregoing, the conclusions can be drawn as follows.

1. Contracts for the creation and use of objects of intellectual property rights are increasingly used in practice by the subjects of civil law, as evidenced, inter alia, current case law.

2. The agreement on the creation by order and use of the object of intellectual property rights has all the hallmarks of a consensual transaction.

3. It is necessary to allocate the following essential conditions of the contract on creation by order and use of object of the intellectual property right: condition on a subject of the contract; the period during which the creator undertakes to create an object of intellectual property rights; ways and conditions of using the object of intellectual property rights.

4. At the time of concluding the contract for the creation by order and use of the object of intellectual property rights, the object of intellectual property rights does not yet exist, and it can not be said that the person will create such an object and, consequently, become a creator.

5. The subject of the contract on the creation by order and use of the object of intellectual property rights is the obligation of the creator to create a certain object of intellectual property rights.

6. The parties to the contract for the creation and use of the object of intellectual property rights must clearly define the requirements to be met by the object of intellectual property rights. Depending on the type of object, you need to specify the scope, structure, shape, genre, purpose, working title of the work, type of invention, utility model, scope of the device, requirements for the appearance of the product and more.

7. The legislation of Ukraine regulating the procedure for the distribution of rights between the customer and the creator has changed. Meanwhile, the legislator continues to adhere to the concept of joint ownership of intellectual property rights to the object created by order, the creator of this object and the customer.

8. Currently, the legislator has changed the approach to the distribution of intellectual property rights to computer programs, databases created in connection with the implementation of the employment contract (contract), as well as works, including works of fine art, created to order, which requires further testing in time and practice. As a general rule, property rights to computer programs and (or) databases created in connection with the performance of an employment contract (contract) belong to the legal entity or individual where or in which the employee who created these computer works, programmes and (or) databases. Intellectual property rights to a work created to order belong to the customer. Intellectual property rights to a work of fine art created to order (except for a work specially created as an element of software) belong to its author.

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