

WEB SITE AS A LEGAL CATEGORY

Intensive information and communication technology development necessitates the continuous improvement of the legislation. Significant number of terms of foreign origin connected with widespread use of Internet in the Ukrainian society has appeared during last 15 years, but they still have no clear legal definition.

Thus, the legislation does not adequately define the term "web site", whereas the term "web site" and "official web site" are used in the regulatory acts of the legislative and executive branches.

For example, the term "official web site" is used in Article 3 of the Law of Ukraine "On Regulations of the Verkhovna Rada of Ukraine." According to this act publicity of meetings of the Verkhovna Rada of Ukraine is provided through their broadcast on television and radio, publishing transcripts of meetings in official periodical and by placing information on its official web site.

Similar statements exist in many other legislative acts regulating publicity of state bodies' work. Thus, the Tax Code of Ukraine (paragraph 3 of Article 201.15) requires the tax authorities to develop and make available on its official web site a program of accounting entries in the register of issued and received tax bills in e-form and provide them with free distribution, including providing access to copy a program over the Internet. Article 36 of the Law of Ukraine "On State Land Cadastre of Ukraine" regulates the public disclosure State Land Cadastre information through the official web site of the central body of executive power on land. At the same legal order and the legal status of web sites in general and the official web sites of state bodies particularly in the Ukrainian legislation is not clearly defined.

Attempts to give a normative definition of the concept under consideration were made in the bylaws of the central executive power bodies. Act of the State Customs Service of Ukraine of July 11, 2009 № 744 departmental web site is defined as hardware and software system designed to acquaint the public with information about the activities of the State Customs Service. Obviously, this definition is not complete with any legal or technical point of view, as clearly indicated only on the functional purpose of the web site.

More detailed definition is proposed in the Order of content and technical support of the United Web portal of the executive authority, approved by joint Act of the State Committee for Information Policy, Television and Radio Broadcasting of Ukraine and State Committee for Communications and Informatization of November 25, 2002 № 327/225 25. According to this act web site is a complex of hardware and software with a unique address on the Internet and information resources at the disposal of certain entity, which are accessible for legal entities and individuals. This definition includes many essential features of the web site: technical services and information content, a unique address on the Internet, access to resources and services. However, the term "web site", in our opinion, is much more multidimensional.

Attempts to study this concept in the legal literature led to the formation of several approaches or directions in determining the legal status of web sites.

The first approach is partly reflected in the current legislation of Ukraine. The site is defined as a combination of hardware and software with a unique address on the Internet along with information resources at the disposal of a certain subject and provides access to legal entities and individuals to these information resources and other services via the Internet. This definition does not include a number of circumstances. Thus, there are different types of sites, some of which may represent only a text document or other information resources, without software support, others – a complex set of programs (services), without information components.

The second approach is based on the regulation of the legal status of the web site as the media. According to Article 22 of the Law of Ukraine "On information" media is defined as an information available in order to bring it to the general public. And the mass media are the funds intended for public dissemination of printed and audiovisual information. Since the concept of "funds" in the law does not detail, the analysis of this definition we can conclude that the web site falls under the concept of mass media. This position is held by some Ukrainian scientists. For example, D. Koziakov argues that information disseminated via the Internet, can be regarded as a mass, as it is available to the general public [1]. In addition, courts in their decisions considering the placement of computer programs, audio and video files etc on the Internet as their public disclosure. Obviously, this approach is also incomplete, since completely ignores the technical component of the concept of "Web site".

The third approach to the subjection of the individual site elements: content, design, content, etc. rules of copyright law and patent law. In support of this position shows the article 433 of the Civil Code, which states that copyright law protects other objects, in addition to just listed in law.

In a letter of the State Department of Intellectual Property Education and Science Ministry of Ukraine of January 22, 2007 № 16-14/231 indicates that the absence of copyright law definition of these concepts cannot be an obstacle to legal protection of the "web site", "web page" and "web portal" as the objects of copyright if they are products, that is, the results of human creativity.

Provisions of this letter immediately beg the conclusion that this limited approach, since it contains a clause that the web site must be the result of creative activity. But not every site is the creative product.

The fourth approach considers the web site as a single property complex, which includes all types of property intended for its operation, including information resources, electronic documents and digital works, the domain name, hosting services or data on the Internet [2, p.7]. This definition is certainly very useful from a legal point of view, because it allows combining different aspects of the legal status of the web site. However, use them in practice become impossible if the owner of the site is located and conducts its activities in one country, registers a domain name to another and web server is located in a third country.

From the above we can make several conclusions, which, in our opinion, should be considered when developing a legal regime creation and operation of web sites. First, in general terms a web site can be defined as a database available on the Internet (or intranet), which has a unique address

and is available for an unlimited number of users on the network. Second, because of the diversity of technical and informational characteristics of web sites useful to differentiate them from legally significant criteria (purpose of creation, the nature of the information posted, the presence or absence of official status) and form the legal regime of the objects in the respective directions.

Thirdly, it is clear that the regulation of relationships formed with the use of the web sites often cannot be achieved by traditional legal means and requires the creation of specific legal structures. In addition to the technical features of these objects is also due to cross-border use of Internet resources and the inability to fully extend to such jurisdiction separate state. Therefore, in our view, the prospects of legal regulation lie in the formation of the "Network law" or "Internet law".

Reference material:

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