COPYRIGHT PROTECTION OF PHOTOGRAPHIC INFORMATION IN COMPLIANCE WITH THE NEW REGULATIONS OF THE EUROPEAN UNION

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Abstract

The current legal issue in this respect is the creation of a modern legal framework in the field of copyright and access to e-content. For several decades, photographic images have been reproduced through a digital camera, mobile phone, tablet, resulting in the end product – a digital photo that becomes an electronic content. The purpose of the present report is to clarify the essence of the photographic information, its application in the present. In the context of the reported issue, basic concepts in line with the new regulations of the European Union are analysed. Examples of good practice on protection of photo information online are outlined. As a result of the research is set, that the elaboration of strategic documents and regulatory base is the right step towards settling relations with the access to the objects of the author's content, respectively the photographic information in a digital environment. In conclusion, it is concluded that any user action affects the authors' rights, because the multitude of data on the web represents not only text, but also images and multimedia products that are copyright in the legal sense.

Keywords: photographic information, single digital market, GDPR.

1 INTRODUCTION

The creation of a modern legal framework on copyright and access to electronic content is a result of the evolution of digital technology whereby the creation, production, distribution and use of objects created as a result of human creativity are fully realized in a digital environment.


A new European Union strategy has been adopted in 2015 – a Digital Single Market Strategy (Directive of the European Parliament and of the Council on copyright in the digital single market), aimed at reducing the differences between national legal regimes on copyright and the securing of wider user access to works online. The Commission sets out three lines of intervention: digital and cross-border use in the field of education, extraction of text and data from research and cultural heritage (from institutions such as public libraries, archives, museums, and institutions connected to the film and recording heritage).

2 METHODOLOGY

This publication aims to explore, analyse and present the concept of creating a modern EU legal framework on copyright and access to e-content, as is photographic information. The subject of the study is a number of the European Parliament's Directives, with particular attention being paid to the copyright in the digital single market and the regulations relevant to photographic information in the Directive of the European Parliament and of the Council.

In order to achieve this goal, the following research tasks have been formulated: defining the concept of photographic information, differentiating its essence and its application; preparing an analysis of the main concepts in line with the new EU regulations on copyright and related rights in the context of a...
digital single market; examples of best practices on the protection of photographic information in the online environment are outlined.

3 PHOTOGRAPHIC INFORMATION – ESSENCE AND APPLICATION

Photography is a technology that results in the creation of intellectual products – photographic images. It is a graphic method that is reproducing reality, documenting and verifying events and personalities. The photographic image is the result of the creative approach of the author – photographer. Photography is part of the visual arts, and it has an emotional impact on the viewer. The burgeoning development of photography is due to innovation in technology and optics, ideological and aesthetic influences in visual arts, literature, journalism, political and cultural development of society.

Photography is one of the means used in the artistic layout of many printed publications such as books, magazines, newspapers, brochures, posters, flyers, and more. Through the Internet, multiple photographic images falling under the category of “stock photography” are becoming part of e-commerce. Photography is a method by which different objects can be reproduced, which can represent an object of cultural heritage or are part of a fund of cultural institutions such as libraries, museums and archives. Photographic images are used in the educational process as well as in research to illustrate the study material or scientific findings. Digitization, the emergence of digital cameras and vector and raster images processing software products transform the traditional photography into a digital environment, and the possibilities to manipulate the image are numerous, because the original images are an electronic file – a virtual image. The photos are present in electronic media, blogs, social networks, databases.

Photographic information can be defined not only as a creative product, but also as a commodity, and similar to literary, scientific, and fine arts, subject to copyright protection and encroachment. Photography is available to anyone who has the necessary photography device, so it can be a job, a hobby, and a free profession, but in order to be subject to copyright protection, a photographic image must meet the “artistic” criterion, meaning, to have aesthetic value.

4 COPYRIGHT PROTECTION OF PHOTOGRAPHIC INFORMATION IN ACCORDANCE TO THE NEW REGULATIONS OF THE EUROPEAN UNION

European Union law takes a position on copyright issues. A number of directives are proposed which harmonize the fundamental rights of authors, reduce discrepancies, provide the necessary degree of legal protection in the national laws of member countries of international conventions. [1]

The prepared analysis of copyright protection on photographic information is intended to summarize basic EU legislation that is related to photographic information in one way or another due to the widespread use of this method of verifying or illustrating the reality.

According to Article 2 of Directive 2001/29/EC of the European Parliament and of the Council of 22nd May 2001 on the harmonization of certain aspects of copyright – Member States may provide exceptions or limitations to the reproduction right with regard to reproduction on paper or a similar carrier taken by any photographic technique or any other process that has similar results, with exception of note sheets, under the condition that right holders receive fair compensation. [4] Therefore, the reproduction of an object by means of photographic techniques can be accomplished under certain conditions in which the author of the object to be filmed owns the copyright and is entitled to determine reward for the reproduction of the object created by him. Similar photographic images can be differentiated generally as subject photography or may be defined as photographic reproduction.

Another example of the copyright protection of photographic information is the Directive 2014/53/EU of the European Parliament and of the Council of 16th April 2014 on the harmonization of the laws of the Member States relating to making available on the market of radio equipment and repealing Directive 1999/5 / EC in the Annex V Content of Technical Documentation. It contains an explanation of the content of the technical documentation, it needs to be presented with photographs or illustrations showing the external features, marking and internal layout. [6] Photographic images that represent the appearance of a technology are also subject to copyright, because according to their genre, they belong to the so-called scientific and technical photography.
In the Directive 2014/24/EU of the European Parliament and of the Council of 26th February 2014 on public procurement and repealing Directive 2004/18/EU, there is also a text related to the use of photographic images. This legislation focuses on the award of public procurement by the authorities of the Member States, the free movement of goods, the freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equality, non-discrimination, mutual recognition, proportionality and transparency. The Directive’s Annex 3 provides an indicative list of the goods that may be used for the instructions in article 4, letter b). The list includes Photographic and Cinematographic products; optical, photographic or cinematographic, measuring, controlling or precision instruments and apparatus, medical and surgical instruments and apparatus, parts and accessories of such instruments or apparatus. [5] In the cases when a photographic method is required to have a product shot, this is done in a contractual relationship that also defines the relationship.


At first reading on the adoption of the legislative act the Directive of the European Parliament and of the Council on copyright and related rights in the digital single market and on the amending Directives 96/9/EC and 2001/29/EC in a joint statement by the Netherlands, Luxembourg, Poland, Italy, and Finland, it is mentioned that the purpose of the Directive is to improve the functioning of the internal market and to stimulate innovations, creativity, investments and the creation of new content, including in the digital environment. Currently, the final text of the Directive fails to achieve adequate results in terms of copyright and related rights in the digital single market. The Directive does not strike a balance between the protection of rights holders and the interests of citizens and companies in the EU and will lead to legal uncertainty. Estonia supports access to online content, a balanced functioning of the laws market, but there is currently no final decision on the Directive. A statement by Germany indicated support for the Directive, as revised on 13th February 2019. The idea is to ensure appropriate remuneration for artists, remove the “upload filters” whenever possible, ensure the right to express and protect the rights of the consumer, promote the development of open source technologies. On the German side, it is regrettable that no agreement has been reached on the concept of the responsibility of copyright-protected content uploading platforms. [8, 14]

A directive of the European Parliament and of the Council on copyright in the digital single market foresees the creation of a sustainable internal market, thereby contributing to the harmonization of the laws of the Member States in the area of copyright and related rights. As a result, there will be adequate legal protection for copyright works in the digital environment, promotion of innovation and creativity, creation of new digital content.

4.1 Measures to adapt exceptions and limitations to the digital and cross-border environment

The Directive of the European parliament and of the Council on Copyright in the Digital Single Market examines the restrictions and exceptions for publishers and press releases, with the aim of ensuring broader access to content, adapting exceptions to the digital and cross-border environment, achieving a well-functioning copyright market. The exceptions and limitations provided are intended to strike a balance between the rights and interests of authors and other rights holders, on the one hand, and consumer rights and interests on the other.

The second part of the Directive addresses measures to adapt exceptions and limitations to the digital and cross-border environment. This part is entrusted to the Member States of the Union to provide mandatory exceptions or limitations which allow:

- the extraction of information from text and data from scientific organizations for the purposes of scientific research (Article 3);
- the digital use of works and other objects solely for illustrating teaching (Article 4);
- cultural heritage institutions to make copies of works and other objects in their permanent collections, to the extent necessary for their preservation (Article 5).
4.1.1 Service Providers

In the fourth part of the Directive of the European parliament and of the Council on Copyright in the Digital Single Market, Article 13 introduces an obligation for information society service providers who store large volumes of works and other objects uploaded by their users and provide access to the Internet, to apply appropriate and proportionate measures to ensure the effectiveness of the agreements concluded with rights holders and to prevent their content from being offered by content providers designated by right-holders in cooperation with service providers.

Paragraph 37 of the Directive of the European Parliament and the Council on Copyright in the Digital Single Market states- In recent years, the functioning of the online content market has become more and more complicated. Online services that provide access to copyrighted content uploaded by users without the involvement of rightholders have a real boom and becomes a major source of online content access. This affects the ability of right-holders to determine whether and under what conditions their works and other objects are used, as well as their ability to receive appropriate reward in this respect.

4.1.2 Use of author's content for educational purposes

The Directive 2001/29/EC provides the use of educational content for educational purposes (to illustrate content within a learning process) to reproduce and to make publicly available content. New technologies enable the use for automated computerized analysis of information in digital form, such as text, sound, images or data, commonly referred to as “retrieving information from text and data”. Retrieval of information from text and data is carried out by scientific organizations for the purposes of scientific research. [4,12,13]

The Directive 2001/29/EC lacks clarity as to the exceptions and limitations of the use of author's content in distance learning. Therefore, the Copyright and Related Rights Directive in the digital single market foresees the introduction of legal exemptions or restrictions that are appropriate for all educational establishments provided that no commercial educational activity is carried out (Paragraph 16, The Copyright and Related Rights Directive in the Digital Single Market). According to Art. 4 the use of works and other objects within the framework of digital and cross-border non-commercial teaching activities is admissible under the following conditions: firstly – the training takes place in the premises of the educational institution or through a secure electronic network accessible to students from the educational institution. Second – the use of a work or other object is permissible provided that the source and the name of the author of the work are elucidated, unless this is impossible.

4.1.3 Institutions in the field of cultural heritage

Cultural institutions seek to provide access to a variety of copyrighted works that are with expired copyright or out of circulation. Due to the specificity of the exceptions and limitations of copyright and related rights, the EU seeks to achieve security as regards the right to use research, education and cultural heritage. In order for society to use these resources online, e-content delivery mechanisms are introduced through licensing distribution practices.

Paragraph 20 of the Directive of the European parliament and of the Council on Copyright in the Digital Single Market addresses the issue of the activities of cultural heritage institutions which have the task of protecting various objects. Institutions such as libraries, archives, museums can reproduce works and other objects in order to include them in their collections with a view to preserving them (Article 5, Preservation of Cultural Heritage). Such an exception should make it possible to make copies by means of an appropriate conservation tool, instrument or technology, such as photographic reproduction, in order to create a copy in order to preserve it. Paragraph 21 clarifies author's works or other objects – these are objects that are owned by the institution or have become part of a permanent collection of the institution as a result of a transfer of ownership or a license agreement. Therefore, these objects can be photographed, reproduced, digitized and available online. Paragraph 25 clarifies that licensing mechanisms can be used in practice for photographic works, software, sound recordings and audiovisual works, irrespective of whether they were commercial products. It is necessary at national level for Member States to introduce specific requirements and procedures in relation to the practical application of licensing mechanisms for the publication and dissemination of those objects. [7, 12, 13]
4.1.4 Press release

In paragraph 33 of the Directive of the European parliament and of the Council on Copyright in the Digital Single Market there is a text clarifying the term “press release” – it includes journalistic publications published in any media. Press publications contain mostly literary works but increasingly include other types of works and subject matter, notably photographs and videos. [7, 13, 14] For the needs of the print and electronic media, professional photo reporters working on labor relations capture photographic images used in electronic media for the purpose of event visualization. The photographer has the copyright on the photographic image, but because the photographer works for the media on a labor contract or on a honorary, economic rights are negotiated and they are usually owned by the media.

4.2 Protection of photographic information in online environment

An up-to-date legal problem over the last decade is copyright on the Internet. The Global Network is a tool for selling and delivering information in electronic form accessible to any user having a device and an Internet connection. Any action by consumers affects the authors’ right, because the dataset of the web represents not only text, but also images and multimedia products that are legally copyright-protected. In the online environment, works of science, art and literature can be used – literary, musical and audiovisual works, photographs, paintings, drawings, illustrations, maps, sketches, plans. The user uses media information, folklore works, symbols and signs, state documents that are not subject to protection. The criterion of copyright protection on a work is the existence of originality and an objective form. For a work to be original, it must be the result of the creative work of the author. Media-based fixation makes it objectionable, the work can be reproduced, copied and broadcast.

With the introduction of digital photography as a commercial product, the reproduction, distribution, storage, copying of photos takes place electronically, and their copyright protection is changed. Both copyright protection through the Act and the use of various contracts relating to the dissemination of photographic information by electronic means have begun. There are used Royalty Free License, Right Managed License, Creative Commons, Model Release, Minor Release, Property Release. Many modern photographers offer their artwork for fee or free of charge through various platforms on the Internet. Application finds the so-called microstock and stock photography. [10]

Good practice, which is applicable in some countries, is the action of National Copyright Offices in which a work is deposited or recorded, either on a hard copy or electronically. Since digital works are accessible with one click, restrictions on Internet users are required.

A “technology measure” protection is a technology, device or component that, in the normal course of its business, is intended to prevent or limit acts in respect of works or other objects protected by law which are not authorized by the copyright holder or right related to copyright as provided for by the law or the sui generis right provided in Chapter III of Directive 96/9/EC. Technological measures are considered to be “effective” when a protected work or other subject protected by law is controlled by rightholders through the use of access control or a protective process such as encryption, blurring or other transformation of the work or other subject protected by law or a copy control mechanism that achieves the goal of protection. (Article 6 (3) of Directive 2001/29/EC).

Application finds the so-called Digital Rights Management (DRM), which has two ways to manage digital rights – rights management information and use of devices for technology protection TPMS that help control access to or use of digital works. Putting rights management information can be done by tagging a copyright sign or a Digital Object Identifier (DOI); time stamp. DOI is a system that identifies works in the digital environment. Represents digital names that designate the works and provide information where they are available on the Internet. Time stamp is a label attached to the digital file that can be used to demonstrate what the status of the content is at a given time. Technical protection means can be in the form of encryption, access control or conditional access, providing low quality versions [2]. In digital photos, both access control and the provision of a low-quality original version can be used. With access control, a snapshot can be accessed, but it may not be able to copy or save.

5 CONCLUSIONS

As a result of the research it was found that the elaboration of strategic documents and normative basis is the right step towards settling relations with the access to the objects of the author’s content, respectively the photographic information in a digital environment. Any action by consumers affects
the authors' right, because the web data represents not only text, but also images and multimedia products that are legally copyright-protected.

Photographic information has a variety of applications in the online environment, it represents electronic content in e-media, blogs, social networks, databases, used by institutions in the field of cultural heritage, educational and research processes. The lack of a legal culture of society regarding copyright on photographic information leads to violations of authors' rights, even though they use the variety of online protection measures.

ACKNOWLEDGEMENTS

This paper is one of the outcomes of the research project "Event and project management for internationalization and intergenerational dialogue in the field of library and information education and research", (Contract Number NIP-2019-04, MES)

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