

List of references

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CRIMINAL AND LEGAL PROTECTION OF COPYRIGHTS: CURRENT PROBLEMS OF ITS LEGAL ENFORCEMENT

The analysis of modern judicial practice shows the problem of determining the validity of the law on time criminal liability in the context of the interrelation between the new legal norm version and its previous one. This problem should be solved in accordance with the requirements of Part 1 of Article 5 of the Criminal Code of Ukraine, namely, the law on criminal liability, abolishing the degree of crime, mitigates criminal responsibility or otherwise improves the person status, and has a retroactive effect in time, i.e. applies to persons who committed the relevant acts before a law entry into force. However, modern changes to the Criminal Code of Ukraine aren't likely to give an opportunity for unambiguous legal assessment.

Let's consider, as an example, one of these cases. Thus, in September 2018 the members of the Scientific Advisory Board at the Supreme Court were sent a questions appeal from a judge of the Cassation Criminal Court A. Bushchenko as the following: "Does an additional criminal offense under Article 176 of the Criminal Code of Ukraine creates the introduction of the terms "camcording", "card sharing" to the article by the Law of Ukraine of March 23, 2017 No. 1977-VIII?" or "Are the acts

envisaged by the terms “camcording”, “card sharing” covered by other elements of the crimes defined in Article 176 of the Criminal Code of Ukraine?” [1] So, these issues relate to the following aspects: first, whether the new corpus delicti has been created by the amendments to the Criminal Code of Ukraine; and secondly, what is the effect of the new version of Part 1 of Article 176 of the Criminal Code of Ukraine in time.

Within the entry into force of the Law of Ukraine «On State Support to Cinematography in Ukraine», a list of types of copyright and related rights violations was clarified: among the actions there were camcording, card sharing [2]. In particular, Part 1 of the Article 50 of the Law of Ukraine «On Copyright and Related Rights» dated December 23, 1993, clause «b» was stated in the following version: «piracy in the field of copyright and (or) related rights, i.e. publication, reproduction, import into the customs territory of Ukraine, export from the customs territory of Ukraine and the distribution of counterfeit copies of works (including computer programs and databases), phonograms, videograms, illegal disclosure of programs of broadcasting organizations, camcording, card sharing, as well as Internet piracy, i.e. the commitment of any actions, that according to this article are deemed as a violation of copyright and (or) related rights with the use of the Internet «, as well as infringement of copyright and (or) related rights providing grounds for the protection of such rights, including court-related, camcording and card sharing are referred (Part 1, Article 50 of the Law of Ukraine «On Copyright and Related Rights» supplemented by clause «i»).

These changes have already caused certain discussions in scientific community [3, p.12-17; 4, p. 177-179]. As known, the normative interpretation of the concepts of “camcording” («video recording of an audiovisual work during its public demonstration in cinemas, other cinema institutions by persons located in the same premises where such a public demonstration takes place, for any purpose without the permission of the copyright holder or related rights «); and “card sharing” («providing in any form and in any way access to the program (broadcast) of the broadcasting organization, access to which is restricted by the subject of copyright and (or) related rights by the use of technical means of protection (subscriber card, code, etc.).), bypassing such technical means of protection, as a result of which the specified program (transmission) can be received or accessible without the use of technical means of protection «) proposed in Article 1 of the Law of Ukraine «On Copyright and Related Rights» and Article 17 of the Law of Ukraine «On State Support to Cinematography in Ukraine».

The abovementioned Law of Ukraine «On State Support to Cinematography in Ukraine» in Part 1 of Article 176 of the Criminal Code of Ukraine amended: the forms of committing the crime referred as independent

actions i.e. “camcording, card sharing”, “as well as the financing of such actions” i.e. “Illegal reproduction, distribution of scientific works, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcasting programs, their illegal reproduction and distribution on audio and video cassettes, floppy disks, other information carriers, camcording, card sharing or other intentional infringements of copyright and related rights, as well as the financing of such actions, if it caused material damage to a significant extent” [5].

Has the disposition of Part 1 of Article 176 of the Criminal Code of Ukraine been changed in another way? In our opinion – “no”. Analysis of the disposition of Part 1 of Article 176 of the Criminal Code of Ukraine (before the introduction of the following changes: “Illegal reproduction, distribution of scientific works, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcast programs, their illegal reproduction and distribution on audio and video cassettes, floppy disks, other information carriers, or other intentional violation of copyright and related rights, if it caused material damage to a significant extent”) allows us to state, firstly, an open list of forms of committing a crime [6, p. 374]. Secondly, the commitment of so called “camcording” is the reproduction of videograms («making one or more copies of a work, videograms, phonograms in any material form, as well as recording them for temporary or permanent storage in electronic form (including digital, optical or other form that a computer can read», in accordance with Article 1 of the Law of Ukraine “On Copyright and Related Rights”) as a form of committing an offense under Article 176 of the Criminal Code of Ukraine, and “card sharing” is another deliberate violation of copyright and related rights (property rights of broadcasting organizations are violated, in accordance with Article 41 of the Law of Ukraine “On Copyright and Related Rights”). Thus, the content of criminalized acts has been changed neither in the previous version, nor in the current one of Part 1 of Article 176 of the Criminal Code of Ukraine. Another question arises: is it possible for a person to be held liable for the very fact of the act? According to the structure the *corpus delicti*, provided by Part 1 of Article 176 of the Criminal Code of Ukraine, is known as material one (involves material damage in a significant extent). So, the proof of camcording requires the assessment of material damage to a significant extent (which seems rather doubtful), unless we can only talk about preparing for a crime. However, O. Dudorov points out that preparing for a crime of minor gravity does not lead to criminal liability [7, p. 229]. In its turn, card sharing also requires the assessment of material damage in a significant

extent (twenty times higher than the non-taxable minimum income of citizens i.e. 17620 UAH for 2018). In our opinion, it would be extremely difficult to prove this amount of damage.

Based on the foregoing, the following conclusions should be suggested:

1) the introduction of the terms “camcording”, “card sharing” by the Law of Ukraine of March 23, 2017 No. 1977-VIII to Article 176 of the Criminal Code of Ukraine does not create a completely new, additional corpus delicti stipulated in Article 176 of the Criminal Code of Ukraine;

2) the acts envisaged by the terms “camcording”, “card sharing” were covered, respectively, in other forms of committing crimes specified in Article 176 of the Criminal Code of Ukraine as the reproduction of videograms and other intentional violation of copyright and related rights.

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