

**DIFFERENCES IN THE IMPACT OF VOCABULARY PROCESSING LEVELS ON
NOUN AND VERB PROCESSING IN THE SECOND LANGUAGE AND ITS
IMPORTANCE IN TEACHING ENGLISH**

***DIFERENÇAS NO IMPACTO DOS NÍVEIS DE PROCESSAMENTO DE
VOCABULÁRIO NO PROCESSAMENTO DE SUBSTANTIVOS E VERBOS NA
SEGUNDA LÍNGUA E SUA IMPORTÂNCIA NO ENSINO DE INGLÊS***

***DIFERENCIAS EN EL IMPACTO DE LOS NIVELES DE PROCESAMIENTO DE
VOCABULARIO EN EL PROCESAMIENTO DE SUSTANTIVOS Y VERBOS EN EL
SEGUNDO IDIOMA Y SU IMPORTANCIA EN LA ENSEÑANZA DEL INGLÉS***

Maxim Valerevich VORONIN¹
Nataliia Vladimirovna KOZLOVA²
Arina Sergeevna VOROZHEVICH³

ABSTRACT: Based on the studies of language psychology, in word processing and recycling, perceptual, conceptual, syntactic coding, and phonetic patterns have been emphasized. Also, considering previous studies, theories about the sequence and synchronicity of the word processing level in phonetics, syllables, syntax, and semantics have been proposed. In this study, which was conducted with eighty-six undergraduate students of English language and literature, using the image naming test as a cognitive tool, the differences in the level of word processing in noun and verb games in the second language were investigated. According to the results of this study, in the second language, the processing of nouns is more than the level of perception, and the processing of verbs is affected by the level of regulation. As a result, teaching nouns in English makes them visible on appearance and appearance features, and in teaching verbs observation on meaningful features and characteristics.

Keywords: Language psychology. Word processing. Syllables. Syntax.

RESUMO: Com base nos estudos da psicologia da linguagem, no processamento e reciclagem de palavras, os padrões perceptuais, conceituais, sintáticos e fonéticos têm sido enfatizados. Além disso, considerando estudos anteriores, foram propostas teorias sobre a sequência e a sincronicidade do nível de processamento de palavras na fonética, sílabas, sintaxe e semântica. Neste estudo, realizado com oitenta e seis alunos de graduação de Língua e Literatura Inglesa, utilizando o teste de nomeação de imagens como ferramenta cognitiva, foram investigadas as diferenças no nível de processamento de palavras em jogos de substantivos e verbos na segunda língua. De acordo com os resultados deste estudo, na segunda língua, o processamento dos substantivos é mais do que o nível de percepção, e o processamento dos verbos é afetado pelo nível de regulação. Como resultado, ensinar substantivos em inglês os torna visíveis em termos

¹ Maxim Valerevich Voronin, Moscow State University named after M.V. Lomonosov, Candidate of Legal Sciences, Associate Professor of the, Kazan Federal University, maksim.v.voronin@mail.ru, <https://orcid.org/0000-0002-4129-2682>

² Nataliia Vladimirovna Kozlova, Moscow State University named after M.V. Lomonosov, Doctor of Legal Sciences, Professor, kozlovanv@mail.ru, <https://orcid.org/0000-0003-3671-6871>

³ Arina Sergeevna Vorozhevich, Assistant of the Department of Civil Law of the Faculty of Law of the Moscow State University named after M.V. Lomonosov, Candidate of Legal Sciences, arinavorozhevich@yandex.ru, <https://orcid.org/0000-0002-9908-2143>

de aparência e características de aparência, e ao ensinar a observação de verbos em recursos e características significativas.

Palavras-chave: *Psicologia da linguagem. Processamento de texto. Sílabas. Sintaxe.*

RESUMEN: *Con base en los estudios de la psicología del lenguaje, en el procesamiento y reciclaje de palabras, se han enfatizado los patrones perceptivos, conceptuales, sintácticos y fonéticos. Además, considerando estudios previos, se han propuesto teorías sobre la secuencia y sincronidad del nivel de procesamiento de palabras en fonética, sílabas, sintaxis y semántica. En este estudio, que se realizó con ochenta y seis estudiantes de pregrado de lengua y literatura inglesas, utilizando como herramienta cognitiva la prueba de naming de imágenes, se investigaron las diferencias en el nivel de procesamiento de palabras en juegos de sustantivos y verbos en la segunda lengua. Según los resultados de este estudio, en el segundo idioma, el procesamiento de los sustantivos supera el nivel de percepción, y el procesamiento de los verbos se ve afectado por el nivel de regulación. Como resultado, enseñar sustantivos en inglés los hace visibles en apariencia y características de apariencia, y enseñar la observación de verbos en características y características significativas.*

Palabras clave: *Psicología del lenguaje. Procesamiento de textos. Sílabas. Sintaxis.*

Introduction

The principle of exhaustion of exclusive right ensures the independence of the property right from the exclusive right to an object recognized as intellectual property. The doctrine of exhaustion (Ger. - Erschoepfung) of exclusive rights was developed abroad in the XIX century (Kohler, 1878). It is called the "first sale doctrine" and is applied to a thing in which the intellectual activity result or an object equated to it is expressed (Gavrilov, 2018). In Russia, the principle of exhaustion is enshrined in separate provisions of the Civil Code of the Russian Federation (Articles 1227, 1272, 1325, 1344, clause 6 of Article 1359, clause 6 of Article 1422, clause 6 of Article 1456, 1487 of the Civil Code of the Russian Federation (Part 4)). There is no detailed legal regulation of the exhaustion of right at the international level. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) does not address the issue of exhaustion in general. As established by Article 6, nothing in this Agreement shall be used to resolve the issue of exhaustion of intellectual property rights (Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)). According to clause 2 of Article 6 of the WIPO Copyright Treaty, the exhaustion of rights occurs after the first sale or other transfer of ownership of the work original or its copy with the author's permission (WIPO Copyright Treaty (together with "Agreed Declarations Relating to the WIPO Copyright Treaty")). The problems of implementing this principle are considered in the domestic literature mainly in relation to trademarks, to parallel imports (Pirogova, 2008). The interpretation of the concepts of national, regional and international exhaustion of trademark rights was given by the

Constitutional Court of the Russian Federation (Resolution of the Constitutional Court of the Russian Federation No. 8-P dated February 13, 2018). The application of this principle in relation to copyright objects (works) has not been sufficiently studied, although it is of great practical importance.

It seems necessary to consider the most significant problems associated with the implementation of the principle of exhaustion of exclusive rights in relation to works.

Materials and Methods

We used a dogmatic method when studying the legal norms regulating the analyzed relations. Using the functional method, we determined the functions of the exclusive right and the principle of its exhaustion. The use of the comparative legal method made it possible to identify the features of the principle of exhaustion of right in the domestic legal order in comparison with foreign experience. Using the methods of analysis and synthesis, induction and deduction, we studied the legislation and judicial practice, as well as made some theoretical conclusions. The historical method made it possible to reflect some aspects of the implementation of the principle of exhaustion of exclusive rights.

Research Results

The principle of exhaustion of exclusive right establishes the object boundaries of the exclusive right. Actions for the use and sale of work copies after the object has been lawfully introduced into civil circulation are removed from the domination field of the copyright holder. In other words, the exclusive right does not cover the distribution of work that is recorded on tangible media and is lawfully put into circulation. According to Article 1272 of the Civil Code of the Russian Federation: if the work original or its copies are lawfully introduced into civil circulation in the territory of the Russian Federation through their sale or other alienation, further distribution of the work original or its copies is allowed without the consent of the copyright holder and without paying remuneration. Similar rules are enshrined in other legal orders, for example, in Article 17 of the Law on Copyright and Related Rights of the Federal Republic of Germany (Urheberrechtsgesetz vom 9. September 1965), in Article 109 of the United States Code (Copyright Act of 1976). The Supreme Court of the Russian Federation recognized that the exhaustion of exclusive right to a work is a case of free use of a work. This is an exception to the general rule that the work may be used only by the copyright holder or with his/her consent. It applies only when it is directly established by Article 1272 of the Civil Code of the Russian Federation (Clause 96 of the Resolution of the Plenum of the Supreme

Court of the Russian Federation No. 10 dated April 23, 2019). The distribution of counterfeit copies of works is not covered by Article 1272 of the Civil Code of the Russian Federation and in any case constitutes a violation of the exclusive right to work, regardless of whether this counterfeit copy was created by the infringer himself/herself or acquired from third parties.

The withdrawal in question concerns only the authority to distribute the work copy. A subject who has rightfully acquired the work copy cannot reproduce it or bring it to the public. Some cases of free use of a work are directly established by law (Articles 1273 - 1279 of the Civil Code of the Russian Federation). Judicial practice recognizes that the principle of exhaustion of rights, which allows taking part in the work copy circulation lawfully put therein, without further consent of the copyright holder, does not endow the relationship participants with the right to use the result of intellectual activity or its copy on a tangible medium at their own discretion, without paying remuneration to the copyright holder (Review of judicial practice in cases related to the resolution of disputes over the protection of intellectual rights: approved by the Presidium of the Supreme Court of the Russian Federation on September 23, 2015). Exhaustion of right does not cover distribution in Russia of work original or its copies introduced into circulation on the territory of a foreign state, but not being put into circulation on the territory of Russia by the copyright holder himself/herself or with his/her consent. This conclusion can be made based on the interpretation of Article 1272 of the Civil Code of the Russian Federation and sub-clause 4 of clause 2 of Article 1270 of the Civil Code of the Russian Federation, according to which the import of the work original or its copies for the distribution purposes is an independent way of using the work.

The establishment of such narrow boundaries for the implementation of the principle of exhaustion of exclusive right to a work seems unreasonable. The exhaustion of copyright is one of the tools that harmonize intellectual rights to the protected object (intellectual activity result, individualization means) and property rights to the material medium in which this object is embodied. This principle serves to ensure a balance of multidirectional interests arising in relation to the work (Talita Marchione, 2018). Copyright should be calibrated so as not to provide the copyright holder with more than it is necessary to encourage the creation of new works, to make investments in their commercialization.

The economic cost of creating a work, such as a book, has two components. Firstly, the intellectual effort and time spent by the author, which does not depend on the number of copies made or sold. They may include the publisher's costs, for example, to persuade the author to prepare and hand over the manuscript, the costs for text edition, publication preparation, etc. These costs are referred to as the "cost of expression" (Posner & Landes, 2003). Secondly, the

costs for producing copies, which directly depend on the number of copies. They can be conventionally called the "cost of replication". For the publisher, a critical investment factor is the expectation that future profits will exceed the cost of expression and replication. The exclusive opportunity to sell the work copies for the first time allows the copyright holder covering his/her costs, provided that the work is of interest to the public. The costs and desired profits are included in the selling price.

Creative activity is associated not only with the material benefits, but also with many intangible benefits and advantages. To ensure the stimulating function of exclusive rights, it is enough that the copyright holder controls the work usage until the moment of the first introduction of its material carrier into circulation. Providing the copyright holder with the opportunity to control the subsequent circulation of the sold copies, to profit from their resale seems excessive. It will not become an additional incentive for creative, publishing activities, but will create conditions for a possible abuse of exclusive rights. Time and effort that can be spent on creating and distributing new works, enriching world culture will be used by unscrupulous copyright holders solely for their own material benefits. There will be obstacles for the free search and dissemination of information, access to spiritual values.

With regard to the principle of exhaustion of patent law, American scholars rightly point out that the number of patent applications filed has not decreased, but continues to grow with the introduction of the principle of exhaustion of right. There are no confirmed cases where an inventor has refused to apply for a patent on the grounds that he/she cannot profit from the subsequent product resale (Ernst, 2018). A similar conclusion can be drawn with regard to exhaustion of copyright.

At the end of the XX century, the US film industry was actively opposed to the principle of exhaustion of rights, since the filmmakers received substantial profits from the sale of video cassettes (primarily, with Hollywood films). There was a warning on the cassettes: "For home use only". The agreements with distributors included provisions prohibiting cassette rental. However, this did not keep J. Atkinson and his many followers from opening the video rental shops. Responding to outraged copyright holders, he referred to the principle of exhaustion. The filmmakers were defeated, which did not stop them from creating new films.

The video game industry has been a fierce opponent of the principle of exhaustion. The developers argued that the used video game market posed a more serious threat than piracy. It was predicted that the industry would be destroyed, if the players started reselling video games. In practice, the forecasts did not come true. It turned out that 70% of the profits received by the players from selling the video games on the secondary market were spent on buying new games.

The possibility of reselling old games provided an increasing demand for new developments, served innovative development (Perzanowski & Schultz, 2017).

The principle of exhaustion is essential to sustaining the aftermarket by making creative products more accessible to their consumers. Like other cases of free work usage, it serves the development of scientific knowledge, effective educational process. Thus, the students can sell used manuals to their younger “followers” at a low price. The exhaustion of right does not prevent the copyright holder from recovering his/her costs and receiving a fair return.

The task of law is to contribute to the progressive development of society, its moral enrichment, while respecting the interests of individuals. A similar balance between the interests of society and the creator's personality is maintained by granting the right of succession to the author, when the author, within the alienation of the fine art original, has the right to receive from the seller a percentage of the resale price at each resale, in which a legal entity or an entrepreneur participates (Article 1293 of the Civil Code of the Russian Federation). This is justified, since we are talking about the alienation of unique, single, individually defined things, the value of which usually significantly increases over time compared to the original price. The composer or writer can make a recurring contribution to the profit from the work usage. The artist does not have this opportunity, he/she cannot control subsequent transactions. He/she receives a one-time payment for his/her painting and his/her exclusive rights. At the time of alienation, the work was estimated incommensurably cheaper than the artist's creative contribution, especially unknown to the general public. Such “market failures” are overcome through the right of succession, which is recognized as an independent intellectual right (Article 1226 of the Civil Code of the Russian Federation). There is an interest of authors created to alienate the fine art works, to make them the property of society, but the author's legitimate interests are protected in receiving material rewards for their work, which has become popular with the public, at the same time.

The courts consistently suppress the practice when the violators try to justify their illegal actions by referring to the principle of exhaustion of right. The case considered by the Intellectual Property Rights Court is indicative (Resolution of the Intellectual Property Court dated 15 February 2017 in the case No. A40-233779/2015). Publishing House "Pan press" LLC filed a claim against "Accent" LLC and Producer Center "AN-film" LLC to recover compensation for violation of the exclusive right to a design work. The plaintiff obtained an exclusive license to use the artwork for the book "Anna Karenina" by L.N. Tolstoy from its authors. The controversial design work was used by the defendants in the audiovisual work "Soldiers. Back in the Ranks" in 2013. According to the defendant, book demonstration in the

film was not a violation of the plaintiff's exclusive right to the book cover design, which was an item (thing) owned by the defendant. Referring to the principle of exhaustion of right, the defendant stated that the book was lawfully acquired. The courts of three instances upheld the claimant, stating that the principle of exhaustion of right did not apply to this situation. This principle provides for the possibility of participation in civil circulation of the work copy lawfully introduced therein by the copyright holder. The defendants' actions cannot be qualified as distribution of the disputed work copy, since it was used in an audiovisual work by making it public. When creating a film scene, attention was not focused on the literary work "Anna Karenina" by L.N. Tolstoy, but on a specific object of the material world - a collector's edition of this work, in the creation of which the author's work cover design and illustrations were used. According to the scenario, both heroes participating in the scene repeatedly pay attention to the external features of the book: "collector's edition", "very expensive book". This approach is justified, since it was not about distributing a work, but about bringing it to the public, which is not covered by the exhaustion of right. The court decision is consistent with the literal interpretation of the law and the principle of balance of interests.

The opposite situations are possible, when the copyright holder wants to circumvent the principle of exhaustion of rights, trying to control subsequent transactions for the sale of work copies by including restrictive conditions in the contracts with buyers [for detailed information about such licensing strategies in patent law, see: (Vorozhevich, 2018)]. It is indicated that the acquirer has the right to use the work copy only for personal purposes, he/she can sell it only at the price set by the copyright holder. Sometimes the acquirer is imposed passive obligations not to sell, not to lend to other persons the received work copies. Such conditions are negligible, since they limit the acquirer's legal capacity, contradict the principles of contract freedom, free movement of goods and services, enshrined in Articles 1, 2, 22, 49, 421 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation (Part 1): Federal Law No. 51-FZ). Restrictions can be established only by federal law, for example, they are allowed by Article 1007 of the Civil Code of the Russian Federation in relations between the parties to an agency agreement (Civil Code of the Russian Federation (Part 2): Federal Law No. 14-FZ).

In other countries, the copyright holders seek to include similar terms in contracts, and if the acquirer does not comply with them, they claim infringement of exclusive copyright. The courts refuse to satisfy these requirements with reference to the exhaustion of right. A visible example is the case filed by the publisher against Macy's retailer to the US Supreme Court (Bobbs-Merrill Co. v. Straus, 210 U.S., 1908. 339 p). In 1904, Bobbs - Merrill publishers published "The Castaway" novel. Wishing to control retail prices, they printed a notice on each

copy of the book: "the price of this book is one net dollar. No dealer has the right to sell it at a lower price. Selling at a lower price is a copyright infringement". The merchant started selling books at 89 cents per piece. The publishers filed a claim against copyright infringement. They argued that they had the right to decide whether to sell a book or not, and therefore had the right to dictate the conditions for its subsequent sale by the buyers. The Supreme Court disagreed therewith. It stated that when the copy is sold by the publisher, it will no longer have the right to control its subsequent distribution. Copyright does not establish subsequent control of another person's property.

The case of *Impression Products, Inc. v. Lexmark International, Inc.* drew response in the legal community (*Impression Products, Inc. v. Lexmark International, Inc.*, 581 U.S., 2017). As the owner of the printer cartridge patents, Lexmark sold the Return Program cartridges at a very substantial discount and required buyers to sign an agreement that they would use the cartridge once and not use third-party refills. Impression Products purchased cartridges, refilled them overseas and imported them into the United States. Lexmark filed a claim against patent infringement, which was upheld by the court of appeal. The US Supreme Court disagreed with the decision, stating that the patentee receives remuneration by selling the product. The stimulating function of the exclusive right has been implemented, the right has been exhausted. When the product is sold, the copyright holder cannot use the patent right to restrict the product re-sale or lawful use. Refusal to file a claim against violation of the exclusive right does not deprive the plaintiff of the opportunity to file a claim against violation of the terms and conditions of the contract, but this means that the claim will be satisfied.

The case *Disney v. Redbox* is also of great interest (*Redbox Automated Retail*). Redbox was involved in the distribution of video games and films. It purchased Disney sets of DVD, Blu-ray, and digital download code from eligible vendors, split them, and sold them separately. In December 2017, Disney claimed against copyright and contract infringement by Redbox, because the kits had a notice on their packaging that "the codes are not for sale or transfer". Redbox claimed to be entitled to trade the legally acquired codes due to the "first sale doctrine". The court indicated that the buyers of bundles of goods can resell or give them away under the "first sale doctrine" in accordance with the US Copyright Law. Disney has in bad faith attempted to circumvent this rule in licensing agreements by forcing counterparties to agree that they would not exercise their "first sale doctrine" rights. According to the court, the copyright holder's actions were contrary to public order and constituted an abuse of the right. The code transfer should not be construed as the work distribution. Subsequently, the copyright holder changed the license terms, indicating that the licensee shall purchase the code in the original

packaging, that is, together with the discs. Since then, Disney has secured a ban on selling codes without other kit parts.

There is a problem of applying the principle of exhaustion of copyright to the electronic versions of works and computer programs. The principle of exhaustion of rights applies to resale of tangible media with digital objects, as was in cases of resale of cartridges, video games. Currently, this form of distribution of digital products has lost relevance, since computer programs, video games, and other content are delivered to users via the Internet. The basis for this is the license agreement. There are different business models in the online licensing market, which can be divided into three categories: 1) online stores; 2) streaming services; 3) mixed models (Jutte, 2016). Online stores (iTunes, iBooks, etc.) provide the right to receive content and subsequently have access to it without being connected to the Internet. In case of streaming services (Spotify, Netflix, Yandex.Music, etc.), a temporary work copy is created on the user's device for one-time playback only when connected to the Internet. Mixed models allow downloading content and using it while accessing the Internet (Ivanova, 2018).

A unified position on the applicability of the principle of exhaustion of right to the digital environment has not been developed in foreign legal order. In most cases, the courts do not apply this principle.

The case No. C-128/11 Oracle International Corporation v. UsedSoft GmbH is also of great interest (UsedSoft GmbH v Oracle International Corp., C-128/11, July 3, 2012 (ECJ)). UsedSoft acquired the computer program licenses from the copyright holders and granted rights under these licenses to its clients. In October 2005, it acquired the software product licenses and offered its customers to purchase rights to use these products within the framework of their existing licenses. Oracle filed a claim against UsedSoft for violation of exclusive rights to computer programs, referring to the terms and conditions of its license agreements, according to which the licensee has the right to use the program strictly for his/her own personal purposes. The EU court dismissed the claim on the grounds that the exclusive right of the copyright holder - the licensor - had been exhausted by license granting. To exhaust the right, the work copy shall be sold by the copyright holder himself/herself or with his/her permission. The term "sale" should be interpreted as broadly as possible to include all forms of work copy distribution ("product marketing"), which are accompanied by granting the right to use for a fee for an unlimited period. Downloading the computer program copy and entering into a user license agreement for that copy constitute a single whole. These two inseparable actions should be interpreted as the transfer of ownership of the computer program copy; therefore, they are

covered by the concept of "sale". The rule of exhaustion does not contain a division according to the criterion of material or non-material form of the work copy when it is sold.

The EU court decision No. C-166/15 in the case *Ranks, Vasilevics v. Microsoft* is also of great interest. Ranks sold archived backups of Microsoft's computer programs in an online store. It considered its actions to be legitimate, because there was an exhaustion of right to sell copies, although the original material carrier was destroyed. Microsoft insisted that exhaustion could only occur after the original tangible medium was sold. The EU Court upheld Microsoft's position. It proceeded on the premise that a backup copy can only be created and used to meet the needs of a single person - a legal copy purchaser. Even if the original tangible medium is destroyed or lost, such a person has no right to use this copy by resale to third parties (CJEU, *Ranks, Vasiļevičs v. Microsoft Corp.* (2016) Case C-166/15).

In the case No. C-263/18 *Nederlands Uitgeversverbond, Groep Algemene Uitgevers v. Tom Kabinet Internet BV, Tom Kabinet Holding BV, Tom Kabinet Uitgeverij BV*, the EU Court stated that the principle of exhaustion did not apply to the resale of e-books in online libraries (*Nederlands Uitgeversverbond and Groep Algemene Uitgevers v Tom Kabinet Internet BV* (C-263/18) of 19 December 2019). The associations of Dutch publishers (NUV and GAU), authorized to protect copyrights by copyright holders, have filed a claim against Tom Kabinet Holding (Dutch company), which offers an online e-book resale service ("Tom Kabinet"). The EU Court concluded that "copies" and "original and copies", which are the subject of distribution and rental rights under Articles 6 and 7 of the WIPO Copyright Treaty, refer exclusively to fixed copies that may be issued in circulation as material objects. Article 6 of the WIPO Copyright Treaty cannot cover distribution of intangible works, including e-books. Physical book and e-book are not economically and functionally equivalent.

In France, when considering the case *Valve v. UFC-Que Choisir*, the Paris Court ruled that the principle of exhaustion of copyright applies to digital copies of video games. The Court has set a precedent that the principle of exhaustion applies to digital copies of video games, including those offered on the Steam platform, since providing digital downloads is a use of distribution copyright. This requires Steam and other similar platforms to allow the transfer of a separate license key representing ownership of the game and potentially open up a secondary market for the "used" digital video games (Valve, 2019).

In the USA, the courts initially proceeded from the fact that the licensed software and other digital works are subject to exhaustion. It was emphasized that the software resale is legitimate only if it is removed from the alienator's computer after the transfer (Determann, 2018). However, in the case *Capitol Records v. ReDigi*, the court actually ruled that the first

sale doctrine (or exhaustion of rights) was not applicable in the digital realm (Vernor, 2010). ReDigi has set up a "used digital music" store. The service user could sell the music files he/she did not need by installing a special program on his/her computer that indexed the hard disk contents and made a list of songs for sale. The list included two categories of files: purchased from the iTunes store or directly from ReDigi. The list did not include copies obtained from the file-sharing networks or converted from CDs. This excluded the possibility of selling works, if legality of their acquisition was not obvious. After loading the selected songs into the user profile on the ReDigi network service, the program deleted the original copies on the device. If a similar file was downloaded by the same user to his/her computer again, the program requested to delete the file. When the tracks uploaded to the profile are sold, access to them was automatically closed to the previous owner. The new acquirer was able to store them on the same server, sell, listen or download them to any of his/her devices. The court took the side of the copyright holder, believing that the first sale concept applies only to physical objects, but not virtual ones. The defendant's actions were not only distribution, but also an object reproduction, and the principle of exhaustion of right does not apply to reproduction. Recording a composition into the computer's memory is the creation of a phonogram, that is, a reproduction that requires the copyright holder's consent. Based on the laws of physics, it is impossible to move the same "material object" through the Internet. When a file is sent from one place to another, a new material object appears.

The position of the Russian courts on this issue is difficult to predict. The doctrine is inclined to believe that the principle of exhaustion of right was originally necessary, including to ensure the availability of works. Today, the variety of online platforms allows accessing to almost any work with minimal effort. Therefore, it makes no sense to extend the principle of exhaustion of rights to electronic copies (*Capitol Records, LLC v. ReDigi Inc.*, 934 F. Supp. 2d 640 (S.D.N.Y. 2013)).

It seems that the principle of exhaustion of rights can be extended to digital versions of the work, provided that it is removed from the alienator's device. Otherwise, not only object distribution, but also object reproduction will take place. An unscrupulous person who has acquired one copy of a work (computer software, musical composition, etc.) can easily create electronic copies and sell them to other users. The users will receive an alternative source of digital objects, while the copyright holder's interests will suffer, since he/she may lose most of his/her profits. Meanwhile, it should be taken into account that the establishment of additional criteria for assessing the legality of user actions will increase the costs for dispute consideration by the courts. The courts will have to understand complex technical issues: did the defendant's

program really allow the copy being permanently deleted from his/her device after the transfer, etc. There are reasons to assert that the work recording in the computer memory can be classified as reproduction, although such actions are of a technical nature and do not form reproduction from the point of view of the Civil Code of the Russian Federation. There are other arguments against exhaustion in the digital environment. Unlike physical media, the electronic copies are not subject to wear and tear, they are identical substitutes for the copyright holder's copies. There is no additional effort or cost to exchange these copies. Therefore, the person who resells electronic versions is a full-fledged competitor of the copyright holder. There is a significant difference between the resale of tangible media and electronic versions from the standpoint of the copyright holder's capabilities. For example, books and magazines are published in limited editions. The copyright holder may not have the necessary resources to provide material copies to everyone. The ability to resell the used literature is important for the dissemination of creative work. In case of electronic versions, it will not be difficult for the copyright holder to provide electronic copies to all interested parties.

Summary

1. The exhaustion of copyright is one of the tools that harmonize intellectual rights to the protected object (intellectual activity result, individualization means) and property rights to the material medium in which this object is embodied. This principle serves to ensure a balance of multidirectional interests arising in relation to the work. The principle of exhaustion is essential to sustaining the aftermarket by making creative products more accessible to their consumers. Like other cases of free work usage, it serves the development of scientific knowledge, effective educational process.

2. The withdrawal in question concerns only the authority to distribute the work copy. A subject who has lawfully acquired a work copy cannot reproduce it, bring it to the public, including through the use in a television program, film, advertising.

3. The courts should suppress the rightholders' attempts to circumvent the principle of exhaustion of rights by imposing various restrictive conditions on the first buyers: not to resell a work copy, use it only for personal purposes, a ban on its rental. Such conditions are negligible, since they limit the acquirer's legal capacity, contradict the principles of contract freedom, free movement of goods and services. Restrictions can only be established by the federal law.

4. When securing the principle of exhaustion of rights in relation to copyright objects, the national legislators had in mind “paper” (material) copies of works. The big question is

whether this principle can be extended to digital versions of works, computer programs. Unlike physical media, the electronic copies are not subject to wear and tear, they are identical substitutes for the copyright holder's copies. There is no additional effort or cost to exchange these copies. Therefore, the person who resells electronic versions is a full-fledged competitor of the copyright holder. In this case, two solutions are possible. Radical: the principle of exhaustion applies only to “paper” (tangible) copies of the work and is not applied in the digital environment. Compromise: the principle of exhaustion of rights can be extended to digital versions of the work, provided that it is removed from the alienator's device. The latter approach involves an increase in the costs for dispute consideration by the courts, which should be attributed to its disadvantages.

Conclusion

The principle of exhaustion of right needs to be rethought from the standpoint of the actual challenges associated with the development of digital society, various unfair strategies for the exercise of exclusive rights. On the one hand, this principle is one of the effective legal instruments for suppressing the abuse of copyright and patent rights, aimed at expanding their control over the use of the intellectual property object in contradiction with the functions of the exclusive right. On the other hand, in the absence of special conditions (restrictions) for applying the principle in the digital sphere, its application can lead to a violation of the legitimate interests of rightholders, discourage them to participate in the innovative activities.

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Maxim Valerevich Voronin, Moscow State University named after M.V. Lomonosov, Candidate of Legal Sciences, Associate Professor of the, Kazan Federal University, maksim.v.voronin@mail.ru, 0000-0002-4129-2682

Nataliia Vladimirovna Kozlova, Moscow State University named after M.V. Lomonosov, Doctor of Legal Sciences, Professor, kozlovanv@mail.ru. 0000-0003-3671-6871

Arina Sergeevna Vorozhevich, Assistant of the Department of Civil Law of the Faculty of Law of the Moscow State University named after M.V. Lomonosov, Candidate of Legal Sciences, arinavorozhevich@yandex.ru. 0000-0002-9908-2143