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## COMPUTER GAME CHARACTER AS AN OBJECT OF INTELLECTUAL PROPERTY

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*Currently, the computer game industry is going through a period of intensive development, and as a result – there arise questions on the legal regime of a computer game or its separate elements (graphics, music, script, characters). This article will consider the legal regime of computer games, doctrinal approaches to the definition of the legal regime of a character of a computer game, analyzed judicial practice on the topic of research.*

**Introductory part.** In the course of analysing legal doctrine and judicial practice 4 main, possible options for the qualification of relations arising in connection with the turnover of virtual objects were identified:

1. Non-interference of the legislation into this kind of relationship;
2. Application of analogy - using the rules of property law and property rights for treating virtual objects;
3. Qualifying these relationships in the context of existing license and other agreements;
4. Considering objects of virtual property as "other property" and applying to these relations the rules on the relevant types of contracts, torts and unjust enrichment [1].

**Main part.** If we talk about the national legislation of the Republic of Belarus, the issues of intellectual property in the Republic of Belarus are regulated by the Constitution of the Republic of Belarus, the Civil code and the Law of the Republic of Belarus "On copyright and related rights" dated May 17, 2011 No. 262-3. There is no term "computer character" or "computer game" in these normative legal acts, the legislation provides only the category of "computer program", which is protected as a literary work, correspondingly, it falls under copyright protection. Under the computer game, some authors understand "organized in accordance with the rules of the game art virtual space, using for the organization of the gameplay computer program" [2]. From this it follows that a "computer game" is included in the category of "computer program", but what about the computer character? Despite the uncertainty and lack of elaboration of the legal regime of a computer character in the Belarusian practice, there is already a precedent when the couple in the divorce divided a computer character. According to the lawyer of one of the parties, the account in the popular online game was created by the husband, but periodically the character was played by the wife, the family money was spent on the account. Finally, the divorce raised the question of who will own the account further. As a result, as part of the out-of-court peaceful settlement of the division of property, the husband agreed to pay his wife half the value of the character and left the account in his property [3]. This situation only confirms the need to develop legal norms in this area.

In civil law theory there is no general opinion about what kind of objects of civil law include a computer game. For example, in the United States, doctrinal developments have come to the conclusion that virtual objects are intangible objects of a special kind, occupying an intermediate position between intellectual property and classical objects of property rights. Therefore, it is proposed to carry out the regulation applying by analogy the rules on the right of ownership.

The problem of recognizing a computer character as an independent object of civil law is also to clarify the existence of the fact of creativity in its production. Many scientists argue about whether a computer character is the result of creative activity. French courts, for example, based on the law on the protection of literary and artistic property of 11 March 1957, did not consider computer games as objects of copyright. For instance, one decision stated that a simple game such as Pengo could not be considered a protected result of intellectual activity because its components (e.g. character, background) did not have any signs of originality [2]. In the future, the courts began to determine the legal nature of computer games as computer programs (computer programs). At the same time, the difference between the object under consideration and the audiovisual work was justified: 1) the elements of the game created with the help of computer technologies are not sufficiently original; 2) in this object there is an element of the user's influence on it. Thus, the court Of appeal of Frankfurt in one of the decisions ruled that the above-mentioned game Pengo is not original enough to qualify it as an audiovisual work, while indicating that it is a software which makes images appear and disappear on the screen. The same court's decision in another case notes that the fact that users interact with the game,

resulting in different images, makes it impossible to qualify it as a film, since the latter consists of a certain sequence of images.

As shown by the above foreign experience, the game was recognized by a computer program, since such a characteristic was applicable at the very beginning of the development of the gaming industry, when objects were created with the help of a computer and did not have distinct color components that claim copyright protection, for example, as in the game Pong (1972) [2]. But it's too late, game developers are starting to incorporate into their games of different creative elements: scripts, artworks (landscapes), etc. This issue is also complicated by the fact that when creating an image of a computer character involved a considerable number of people (writers, graphic designers, voice directors, etc.). But in fact, the copyright will belong directly to the company-developer of the game, and thus the creative contribution of individual participants in the process of creating an image of a computer character remains without legal protection. However, there is an opinion that the ownership of a computer character belongs to the players who spent their time and money on the development of this character. Although it is obvious that the creators of the game spent much more time producing a character, than the player, who was already directly involved in its development.

Another criterion for distinguishing a computer character as an independent object of copyright is its existence in an objective form. The law provides an approximate list of ways of objective expression: written (manuscript, typewriting, musical notation, etc.); oral (public speaking, public performance, etc.); sound or video (mechanical, magnetic, digital, optical, etc.); image (drawing, sketch, picture, map, plan, drawing, film, television, video, photo frame, etc.); three - dimensional (sculpture, model, layout, construction, etc.); electronic, including digital; and other forms. In this case, the existence of a computer character is provided by an electronic (digital) form.

The law also prescribes such a condition for the recognition of the object of copyright as the possibility of independent use. Under the independent use is understood the possibility to use components independently from the other parts of this work [4]. It is obvious that the use of the character for other purposes outside the computer game is not possible. There are also discussions about the possibility of using the character outside a computer game. Some scientists believe that this is completely impossible, and some talk about using the image of a computer character, for example, for advertising purposes, etc.

**Conclusion.** Summing up and analyzing all the above mentioned facts, it should be noted that at the moment the legal regime of the computer character is not sufficiently defined, although, in modern realities and the rapid development of the world, it is necessary to develop normative legal norms that would regulate the legal status of the computer character and computer game in general in detail. Also, in addition to the regulatory norms, it is necessary to work out mechanisms for the protection of rights in the field of creation and use of computer games and characters. At the moment, there are not so many precedents in the Republic of Belarus, the subjects of which would be computer characters, but their presence fully confirms the relevance of this issue.

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