

## Newsletter

### *New practice review of the Intellectual Property Court of Russia on databases and software*

January 21<sup>st</sup>, 2022

Dear Ladies and Gentlemen,

At the end of 2021, the Intellectual Property Rights Court published the new [Practice Review on the issues regarding the application of the Civil Code of the Russian Federation, on the legal protection of software and databases](#) (in Russian only).

The Review presents the well-established positions of the Court on the disputes practice regarding databases and software.

Below, you may find brief conclusions on the main positions reflected in the Review:

- **Software registration with Rospatent can be challenged**

Only a formal examination is carried out when registering software with Rospatent. Therefore, the presumption of the software author, or owner, validity, generated by the registration, can be challenged in Court, including in a dispute on the infringement of an exclusive right.

- **Comparison of source codes – the main proof of use of a code**

Examination of the source codes of the compared software may be sufficient to conclude the use, or non-use, of the software code as a part of other software. Insignificant differences in the source codes do not, by themselves, exclude the conclusion that the defendant used the plaintiff's software. However, the similarity of the purposes and functions of the software are only supplementary arguments, in proving of use.

- **Elimination of the software protection safeguards is a modification**

A person's action to remove the software protection safeguards amounts to the modification of the software. In this case, such modification of the software, and its subsequent use, constitute a single infringement under Article 1301 of the Russian Civil Code.

- **The employer is responsible for pirated software**

Employers are liable if pirated software is found on their computers, regardless of whether the software was installed at their discretion, unless they prove that the software was not used by employees, in their work activities.

- **The person who organized the creation of the database shall be considered the producer of the database**

The fact of filling in the database does not affect the fact of establishing the existence of the database producer's exclusive rights. The subjective intentions of the person to invest directly in the database also do not have legal consequences, when recognizing a person as the database producer. Only the actual incurring of substantial costs for database creation is a key factor.

- **A base of social network users can be recognized as a database**

If the user base of a social network is objectively represented and contains a collection of independent materials about users of a social network systematized, in a way that these materials can be found and processed by a computer, such a database of users can be recognized as a database.

- **Evidentiary issues in disputes regarding database and software**

The Court indicated the possibility of using special knowledge, including specialist advice, expert opinions, and other evidence. Such evidence may be used to prove the use/non-use of the software, to establish the content of the database and the fact of extraction of its materials and their subsequent use.

- Unlawful extraction of database materials cannot simultaneously be an infringement of normal use of the non-substantial part of the database.

In the first case, the infringement represents a set of the following actions: extraction (transfer of the whole content of the database, or its substantial part to another tangible medium) and the subsequent use, without the permission of the copyright holder (Art. 1334 of the Russian Civil Code).

In the second case, the infringement represents a repeated extraction, or use of a non-substantial part of the database, if it contradicts its normal use and infringes the legitimate interests of its producer (Art. 1335.1 Russian Civil Code).

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If you have any questions,  
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