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The protection of Intellectual property in educational process

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Abstract

One of the main problems of professional training and educational process in Russia is the absence of copyright protection of educational courses, presentations and lectures, prepared by teachers, tutors and educators. The development of distance and e-learning only worsen the situation in Russia. A lot of people receive uncontrolled access to educational information through the Internet. The aim of the paper is to examine the existing Russian Laws and to reveal the main problems and collusions of legal regulation of intellectual property protection in education and innovation and to suggest possible solutions.

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1. Introduction

In order to make Russia a contemporary “educational-based country” and “intellectual property-based country”, it is necessary to carry out the protection of intellectual property rights on education courses and the activation of basic educational methods in secondary and high schools and universities and create a mechanism to link such activation to the educational activities and distant education.

Sustainable economic and cultural development is impossible without restructuring the national system of education. All this requires modernization of the national education system, reformation the institutional structure of the society, creation of a system of economic and judicial rules which stimulate the implementation of new methods of education including distant education and e-learning.

Russia has some specific features, it experiences the same problems as foreign countries. Russia is a very complex and diversified country – multiethnic, multi-linguistic, multi-religious, etc. Moreover, Russia occupies a huge territory with quite differentiated society and great social inequality.

Nowadays education tendencies show the alignment policy of cooperation between regions. There is a strong need in Russian regions for the creation of an institutional base, an academic network, public space in order to promote the efficient practices of the distant education and e-learning through accumulation of human resources.

In this regard, there is important to bring to the broad public wide opportunities of application practices of the e-learning and distant education. It pursues not only educational and communication purposes.

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The main problem of distant education and e-learning in Russia is the shortage of basic knowledge and experience of intellectual property protection that is necessary for efficient future development. Especially in the parts of Russia that are located a great distance from the educational centers there is the deficit of high-qualified specialists, teachers and tutors.

Intellectual property rights of lecturers and tutors are left unprotected in Russia. Existing situation causes a lot of problems because intellectual property rights protect innovations and creations and reward innovative and creative activity. Intellectual property rights are international in character and in that respect they fit in rather well with the economic reality of the global economy.

2. The problems of legal regulation of intellectual property

Intellectual property can be created by lecturer during the educational process (on lectures, tutorials, etc.) even without use of employer's (university's) facilities or assistance. This situation gives rise to a number of problems the most serious of which is the decision whom intellectual property rights will belong to. Russian Laws including Law on Education and Civil Code do not regulate the copyright relations between lecturer and the university in educational process.

Part IV of the Civil Code of Russian Federation dedicated to legal regulation of Intellectual property rights came into force in 2008. It is a first attempt of codification in Intellectual property sphere in Russia. That's why a lot of new norms appeared. Intellectual property rights protect innovations and creations and reward innovative and creative activity.

Intellectual property rights are international in character and in that respect they fit in rather well with the economic reality of the global economy.

Introduction of the Part IV of the Civil Code of the Russian Federation allowed to systematize the federal legislation on intellectual property. The basis of this system is recognition of subjective intellectual property rights for the results of intellectual activity and the means of individualization (for intellectual property) as exclusive ones (Mingaleva, & Mirskikh, 2009). However, they differ from property rights and other material rights because they are intangible, and they differ from personal non-pecuniary rights of authors and other creators of intellectual results by the fact that they become a subject of civil circulation and allow involving the objects of intellectual property into such circulation. Copyright is an exclusive right to make copies, to reproduce the work of an author. It became vital to protect the authors' rights because his work could be copied easily and in high numbers. Moral rights were created to protect the author against unfair use of his work. (Holyoak, & Torremans, 1998).

The Civil Code of Russian Federation (article 1295) stated a general rule that any work produced by an author within the scope of employment becomes the work of the employer for all copyright purposes- most importantly for purposes of depriving the author of any right to terminate the ownership by the employer. (Miller, & Davis, 2007)

Sometimes it is necessary to test whether the skill, labor and judgment invested by the employee in the creation of the work are part of the employee's normal duties (which can also be implied in the contract) or come within the special duties the employer has assigned to the employee. (Holyoak, & Torremans, 1998).

Teachers and tutors come within the definition of an employee. Employees are subject to the instructions of their employer.

Giving lectures is a part of teacher's and tutor's normal duties but he may not be instructed by the employer (university) to publish lectures or produce a book. The question is whom the content of the lecture (including generated ideas) belong to.

Lecturer is not an ordinary employee. Contract of employment underline the general principle that the first owner of the copyright in a literary work created by an employee in the course of his employment will be the employer. Agreements to the contrary are possible though (Holyoak, & Torremans, 1998).

In order to solve the problem a detailed job description is required and if the content of job changes a new description of the employee's duties should be drafted. A job description can be wide in scope. Lecturer must have the exclusive rights on manuscripts, lectures and ideas that were not specially commissioned and those that were not specially agreed at the time of commissioning or ordering work for hire.

Copyright of the lecturer will be infringed when the content of his lectures is sold or offered or exposed for sale or hire.

Copyright will not be infringed when a lecturer writes down quote from his or somebody's lecture for discussion with the students during a tutorial.

3. The problems of idea protection in educational process

During lectures, seminars and tutorials lecturer or educator can generate a lot of ideas concerning educational process, lecture's content, etc. The generation of ideas is the outcome of a *creativity activity*, which is based on the creator's stock of knowledge and experience. Knowledge can be represented as an archipelago made up of small islands that correspond to fields of knowledge that evolve independently. It is by having knowledge evolve and by bridging the gaps between the archipelago's islands that the frontiers of the conceivable can be extended (Hatchuel, 2010)

Idea is the main element of any object of intellectual property (creation, invention, innovation, etc.). But even the particular expression of an idea in Russia is left unprotected. The use of the intellectual property right will provide an income its owner and this income will encourage him to continue his innovative work. Goods perish through use while intangible property is perpetual (Holyoak, & Torremans, 1998).

Ideas are developed based on different *paths* that allow them to benefit from various contributions, evolve, be combined and divided up, and find the right intermediaries and support before materializing into successful innovations. (Cohendet, Grandadam, & Simon, 2008). In general, ideas are generated using an innovation strategy.

Some researchers come to the conclusion that *a storehouse of ideas must be created*. Such a storehouse is needed to identify the time when ideas are generated. In addition, such a storehouse is essential for idea sharing. An idea sharing culture must also be promoted, paternity must be protected and recognized, and disclosure must be valued.

Ideas are not protected by the Civil Code of the Russian Federation. Granting exclusive property rights to the creator of an idea allows him or her to appropriate much of its social value. Consequently, the incentive to create ideas aligns closely with their social value, as required for efficient innovation. The owner of an idea has the right to exclude others from using it. Excluding others from using an idea impedes their dissemination and application (Cooter, & Ulen, 2000). The recognition idea as intellectual property will make it possible to use the intellectual property rights that can provide an income to its owner. This profit will encourage the owner to continue his innovative work (Holyoak, & Torremans, 1998).

The ideas generated by lecturers and tutors during education process ought to be protected as intellectual property. The copyright ownership in this case must belong to the author of the expressed idea. But it can cause some problems with universities as employers.

4. Distance education and copyright

The development of digital technologies and Internet led to the change of copyright ownership on the content of education courses and lectures. Thanks to the Internet the content of lectures, seminars and education courses, ideas and information belonging to the teachers, educators and universities come into free access and public domain. Nobody can stop the dissemination of educational information.

All these require changing of educational methods, implementation of distance education and e-learning.

Distance education is a kind of organizing the education process by use of information and telecommunication technologies which allow receiving education information from the distance without direct personal contact with teacher or tutor. Some researchers consider distance education to be the form of additional education or professional training.

Distance education gives equal rights for the education to those who cannot come to big education centers.

Some lecturers and educators think that in distance education lectures, tutorials, seminars can be replaced by video-lectures, tests, electronic textbooks, etc. In this case the main participant of education process – teacher, tutor

can disappear. They argue about the necessity of normal educational work, workshops, seminars, tutorials, discussions.

The contemporary society is Internet integrated. But Internet integrates not only useful information, it also promotes copyright infringement. It becomes a very serious problem. Universities and lecturers cannot protect the educational information, the content of lectures and seminars, educational courses and ideas. Internet promotes unfair use of authors work. The development of distance and e-learning only worsen the situation in Russia. A lot of people receive uncontrolled access to educational information through the Internet.

The legal regulation of this situation does not exist. Up to the Civil Code of Russia information is not an object of law. Legal regulation of information relations is very weak. Part IV of the Civil Code of Russian Federation state a general principle that only author can allow the access to his work or creation through the Internet. But there are no legal guaranties on this right.

Conclusions

Universities and lecturers cannot protect the educational information, the content of lectures and seminars, educational courses and ideas. Internet promotes unfair use of authors work.

Intellectual property rights of lecturers and tutors are left unprotected in Russia. Existing situation causes a lot of problems.

Intellectual property can be created by lecturer during the educational process (on lectures, tutorials, etc.) even without use of employer's (university's) facilities or assistance.

Copyright of the lecturer will be infringed when the content of his lectures is sold or offered or exposed for sale or hire. The ideas generated by lecturers and tutors during education process ought to be protected as intellectual property.

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