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Proving an authorship of a work in a civil procedure of the Russian Federation:

scientific and practical aspects

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A scientific and practical relevance of the topic based on a generally accepted (including in Russia) legal position that the copyright of a work of science, literature and art arises from the moment of creation of such works, without any registration needs or compliance with other kind of formalities (subparagraph 4 paragraph 1259 of the Civil Code of the Russian Federation [1]). In this regard, in case of a legal dispute about the authorship of a work, for the real author it is not so easy to prove the truth of their position and protect their rights.

Due to the fact that an evidence law within a science and practice of a civil procedure is the essential, every partial solution involving issues of proof and evidence, inevitably reflects on law enforcement [2]. In our opinion, a proving stage virtually is the most complicated and sophisticated within legal proceedings in cases concerning a protection of intellectual property rights. It is completely applies to categories of cases on disputing the authorship of works. In this article we will try to reveal some useful practical ways of proving the fact of an authorship.

The most commonly accepted and effective ways to prove the marked fact, presently, are:

1. A notarization of the fact of authorship;
2. A deposit of works in specialized organizations;
3. Self mailing of the work to author's address;
4. A publication of an information about a creation of a work and (or) the publication of the work itself in official sources of an information.

A notarization of an authorship is one of the main tools in litigation and proving in cases of copyright protection [3]. Among all forms of rights' protection (judicial, arbitral, administrative, public, etc.) notarial form occupies a special place. Its specificity is that it is quite reasonably characterized as "an art and a public institution whereby different transactions and different actions are taken in public and credible form [4]. The essence of a notarization of the fact of authorship is to conduct such notarial procedures, as a certification of the time of documents' presentation (manuscripts, photographs, layouts, drawings, print designs, etc.), a certification of a signature of the bearer, an adoption of the original copy of a work for safekeeping (art. art. 85, 80, 97 of Fundamental Principles of Legislation of the Russian Federation on the Notariat [5] respectively). Usage of these procedures will legitimately contribute to establish the date of creation of the work, so eventually and its author as well.

Depositing of works of science, literature or art is currently offered by many organizations, both commercial and non-commercial. But courts mostly deny recognizing such objects as valid evidence of the fact of authorship because of doubts about the status of such organizations. The exception is the deposition in Russian authors' society which is active since 1993 and having a strong reputation for the protection of copyright in Russia. A policy of this procedure is stipulated in the RAS' intellectual activity results deposit regulations, which is posted on the official website of the organization [6]. As a result of such deposition the author is given a special certificate that includes all necessary evidentiary information about the copyright object and its creator.

Self mailing of a work to author's address can be called as a kind of practical trick in the proving process of an authorship. The envelope that is received via the mail from the author themselves would not be opened and, but if necessary, would be used in litigation as a case material. An evidentiary value thus would be to have a stamp of the post office with the date of the correspondence, which reflects, firstly, the actual existence of disputed work on the specified date, and secondly, the physical possession of the work by the recipient in that particular period of time. This document fits a requirement of a reliability of the evidence because, legally it is created by the official state agency - Russian Post, which activity is regulated by the Federal Act No. 176 "On postal communications" [7] of 17 July 1999 and a number of bylaw regulations.

A publication of an information about a creation of a work and (or) the publication of the work itself can also be mentioned as an effective way of proving the authorship. But it is very important to choose a reliable, reputable source that the court had no reason to distrust. The options might be: prominent media, professional magazines, scientific papers, books etc.

The above-described practical ways can help authors to choose the most appropriate and effective procedural tools and to prove the authorship of works of science, literature or art, via fixing the date of priority of a creation of such works by a specific person. At the same time, it should be noted that all these methods produced solely by practice of law, i.e., they are not directly regulated by law, and therefore they should be carefully reviewed by courts for compliance with all civil procedural law requirements to evidence.

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