



**The script work in the
complex object of copyrights**

THE SCRIPT WORK IN THE COMPLEX OBJECT OF COPYRIGHTS

EL TRABAJO DEL SCRIPT Y EL PROPÓSITO COMPLEJO DE LOS DERECHOS DE AUTOR.

ABSTRACT

In article the questions connected with features of the civil mode of the scenario work as a part of difficult objects of author's rights, such as audiovisual works are investigated (movies, film formats and others). The author in detail considers questions of concepts of the scenario work and a difficult object of author's rights. At the same time the special-purpose character of creation of the scenario work as object of an author's right, namely, for use as a part of difficult objects of author's rights reveals, the interconditionality of concepts, existence of two-level system of author's rights concerning a difficult object, namely, the rights for a difficult object, and the rights to results of intellectual activity which were used during creation of a difficult intellectual property item is proved.

KEYWORDS: scenario work, difficult object of author's rights, result of intellectual activity, civil protection of author's rights.

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RESUMEN

En el artículo se conectan las preguntas relacionadas con las características del escenario de trabajo y la sociedad civil, y los difíciles propósitos de los derechos de autor, como pasa con las obras audiovisuales (películas, formatos de películas y otros). El autor revisa en detalle las cuestiones de conceptos del escenario de trabajo y el difícil propósito de los derechos de autor. Al mismo tiempo, el propósito especial de la creación funciona como propósito del derecho de autor, es decir, para su uso como parte de los objetivos de los derechos del autor, revela la intercondicionalidad de los conceptos, la existencia de un sistema de dos niveles de autoría. los derechos relacionados con un objeto complicado, a saber, los derechos para un objeto peculiar, y los derechos a los resultados de la actividad intelectual que se utilizaron durante la creación de un elemento difícil de propiedad intelectual.

PALABRAS CLAVE: escenario de trabajo, objeto difícil de los derechos de autor, resultado de la actividad intelectual, protección civil de los derechos de autor.

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INTRODUCTION

Now the industry of production of cinema and other difficult objects of author's rights promptly develops in the conditions of technical innovations, and together with development of creation of difficult objects also dynamic movement happens in the sphere of scenario art as a result of which the scenario work which is an object of an author's right is created. Due to such tendencies in the Russian Federation active work on formation and improvement of the legislation in the sphere of protection of intellectual property is carried out, including the legislation directed to protection of the rights for scenario works including when using these objects of author's rights as a part of difficult objects.

RESEARCH METHODS

The methodology of a research is based on such general scientific methods of a research as comparison and the analysis, synthesis.

RESEARCH RESULTS

Forward and dynamic development of civil circulation determines and undoubtedly demands flexibility and accounting of social needs for civil registration of the public relations personifying progressive innovations. The special attention of the legislator is concentrated in creation, renovation of civil designs (civil forms) demanded by society, its participants for the purpose of every possible ensuring realization of the legitimate inte-

rests and the subjective rights characterizing their civil status belonging to subjects. It is necessary to refer category of a difficult object in civil law to those civil designs generally and category of a difficult object of author's rights, in particular.

Still V.A. Dozortsev noted that the category of a difficult object of the subjective rights – it is a logical social and adaptive consequence of progress in the art, technical sphere and also directly result of progress of a legal thought. The Soviet civilian called a phenomenon “a difficult complex object”¹ also pointed to some “was ripened”, its readiness for legal “crystallization” and registration of a concept within rules of law in the form of a design concrete de jure².

The category of a difficult object in the semantic value can apply for the general civil meaning. So, within the domestic civil doctrine absolutely fairly carry difficult things as objects of rights in rem which are understood as things to difficult objects of the subjective civil rights³, consisting of several other functionally connected things owing to action of Art. 134 of the Civil code of the Russian Federation⁴.

Directly terminology a difficult object is used by the legislator in Art. 1240 of the Civil code of the Russian Federation⁵, and within this statute there is no normative definition of the studied concept, the law only contains the instruction on what a difficult object includes several protected results of intellectual activity which, properly to add, can be allocated with own civil mode.

Besides it is necessary to pay attention that the category a difficult object of the civil rights is a design which scientific research has no developed and comprehensive character. There are only fragmentary scientific researches in the field of the exclusive rights, complex judgment of the mentioned legal pheno-

1. Dozortsev V. A. *Intellectual rights: Concept. System. Problems of codification. Collection of articles. M, 2005. Page 153.*

2. *See: in the same place. Page 146-147, 153.*

Ambaryan A.G. *Difficult objects of author's rights//IS. Author's right and allied rights. 2017. No. 4. Page 7 - 14.*

3. *Civil code of the Russian Federation (part one) of 30.11.1994 No. 51-FZ (edition of 29.12.2017)//Russian Federation Code. 1994. No. 32, Art. 3301.*

4. *The civil code of the Russian Federation (part fourth) of 18.12.2006 No. 230-FZ (an edition of 01.07.2017) (with amendment and additional, intro. in force from 01.01.2018)//the Russian Federation Code. 2006. No. 52 (1 h), Art. 5496.*

5. *Dozortsev V. A. Intellectual rights: Concept. System. Problems of codification: Comp articles / Issled. center of private law. M, 2003. Page 146-147.*

menon of a difficult object of the civil rights was not made now yet.

So, investigating difficult objects of author's rights, V.A. Dozortsev noted that the legal regime of such uniform, but difficult, complex and multilayered result consisting of a set of diverse objects has to have essential features. The multilayered intellectual product exists in general, includes all components, without any of them it is absent objectively though many elements can be used and separately, separately⁶.

Complexity, synthetic character of a number of objects of author's rights it was observed by N.A. Raygorodsky during the analysis of a legal essence of works which acted as result of joint work of several authors⁷. To the specified judgment also modern theorists come. Conclusions that a difficult object of author's rights should be considered through a prism of creative cooperation of several persons of law as which fruits organizational and technical unity of the diverse creative deposits connected in a complete independent object of author's rights will act are repeatedly drawn⁸.

For example, O.V. Kondakova, pointing out difficult character of the audiovisual work, notes that it represents the synthetic, uniting in itself various forms of art, a creative product⁹, emphasizing with that unity of that result of synergetics of objects of author's rights as which a difficult object of such rights acts.

On the specified sign of unity (whole) which as it was already told above, is typical for a difficult object it is specified in the Conclusion of the Research center of private law concerning interpretation and possible application of separate provisions of a part of the fourth of the Civil code of the Russian Federation¹⁰.

It is necessary to consider that such combination of results of several authors assumes need of ordering and establishment of system of the rights of their owners as on the ideas which are directly created by them embodied in those results of creativity which unite in a difficult object of author's rights, separately on each work, and on a difficult object in general. In the latter case will specially be allocated the person who organized creation of a difficult object which owing to Art. 1240 of the Civil code of the Russian Federation and will act as the owner concerning a difficult object.

Feature of the civil mode of a difficult object of author's rights concerning the subject list of authorized persons it was repeatedly mentioned in special literature¹¹.

We believe that the complex subject structure in the studied case represents a logical consequence of versatility of a difficult object of author's rights in a consequence of synthesis of separate objects of the author's rights belonging to different persons. Besides, the specified unification of objects of author's rights generates absolutely independent object which cannot be equated in the civil mode to any object, from those several author's rights, united in a difficult object. In this regard the specialist program in determination of the civil status of the person who organized creation of a difficult object which as it was stated above, is an owner of the intellectual rights for a difficult object in general according to a statute of Art. 1240 of the Civil code of the Russian Federation is represented natural and consecutive.

It is necessary to pay attention that the terminology used by the legislator in Art. 1240 of the Civil code of the Russian Federation "the person who organized creation of a difficult object" is not allocated with standard disclosure of own contents, there is no inter-

6. Dozortsev V. A. *Intellectual rights: Concept. System. Problems of codification: Comp articles / Issled. center of private law. M., 2003. Page 146-147.*

7. Raygorodsky N.A. *An author's right on the piece of screen. L., 1958. Page 39.*

8. Radominova A.O. *Civil regulation of creation and use of audiovisual works: history and present: Autoref Thesis PhD Law, M., 2012. Page 7; Nikiforova I.N. Difficult objects and works with plurality of authors: Autoref Thesis PhD Law, M., 2012. Page 8.*

9. Kondakova O.V. *The audiovisual work as an object of an author's right by the legislation of Republic of Belarus: Autoref. PhD Law, Minsk, 2012. Page 5.*

10. See: *The conclusion of the Research center of private law concerning interpretation and possible application of separate provisions of a part of the fourth of the Civil code of the Russian Federation//the Messenger of civil law. 2007. No. 3. Page 124.*

11. Grin E.S. *Author's rights on a multimedia product. M, Avenue. 2015. Page 105; Intellectual property right: Text-book / E.S. Grin, V.O. Kalyatin, S.V. Mikhaylov, etc.; under a general edition of L.A. Novoselova. M.: Statute, 2017. T. 2: Author's right. Page 214; Ambaryan A.G. *Difficult objects of author's rights. Page 11.**

pretation of the design offered de jure, its any correlation with the existing types of subjects of the civil rights in general. In this regard we believe that it is necessary to agree with the opinion expressed in the doctrine that both the physical, and legal entity can act as that subject. At the same time, the mention in the law on the person singular also makes a certain legal sense. In this case the legislator seeks to create and creates the legal effect allowing "to facilitate" civil circulation of the rights for a difficult object, using it regarding the characteristic of its civil legal regime. Besides, the concept of a difficult object of author's rights itself loses constructive value, in case of investment of authors (owners) of works who were included in a difficult object, the rights for a difficult object¹².

We consider, to above told it is necessary to add that isolation of the status of the person who organized creation of a difficult object, just and is reached by refusal of the legislator of mixture of the rights characterizing position of the authors the work demanded during creation of a difficult object, and his owner for the purpose of direct formation and systematization of the civil mode of a difficult object of author's rights in general.

Thus, it should be noted existence of two-level system of the intellectual rights of their owners within civil the mode of a difficult object of author's rights. The first level assumes existence of the civil mode on a difficult object of author's rights where the person who organized creation of a difficult object acts as the owner, the second level is connected with the civil modes of objects of the author's rights created by certain persons independently and included in a difficult object during its creation.

The mode of the scenario work as a part of a difficult object of author's rights is especially distinguished from the civil modes of objects of author's rights of the second level.

The scenario work depending on an art form can be various composite model "... the ideas, thoughts and images which received as a result of creative activity of the author the

expression in available to perception by human feelings to the concrete form allowing a possibility of reproduction¹³..."

As A.P. Sergeyev "specified ... in the ballet the scenario represents detailed statement of a plot with the description of all dancing and mimic numbers, at cinema the scenario is, as a matter of fact, the dramaturgic work ...". The scenario at cinema "... is created taking into account such means of expression of cinema as the plan and installation, taking into account opportunities of free change of time and the scene of action, broad coverage of historical events, simultaneous development of parallel subject lines, etc ... Besides, the scenario has to meet the productive and economic requirements of cinema"¹⁴.

Thus, using lexical approach to interpretation of the studied term, the scenario work can be interpreted as the work of drama, literary character (work of art) intended for audio and also visual perception by the viewer.

It is necessary to point out the following characteristic features of the scenario work as object of author's rights.

First, the scenario work, being an independent object of author's rights, represents result of intellectual activity, creativity of his author, having the objective form of expression to which due civil protection is provided.

Secondly, the scenario work can have signs of primacy, originality, or to have character of derivativeness.

Thirdly, in the scenario work the definite purpose is implemented. The scenario work is created to become the making link united in a new difficult object of author's rights. It becomes published in its framework.

The purpose which is stated above caused some polemic in special literature on whether the scenario work is an independent object of author's rights. However within the Soviet civil law it was noted that the civil mode of the scenario assumes establishment of author's rights on it, in connection with the creative

12. Ambaryan A.G. *Difficult objects of author's rights*. Page 9.

13. Serebrovsky V.I. *Questions of the Soviet author's right*. M, Publishing house of Academy of Sciences of the USSR, 1956. Page 32.

14. Sergeyev A.P. *Intellectual property right in the Russian Federation*. Textbook. The edition second processed and added. M.: PBOYuL Grizhenko E.M., 2001. With 515.

nature of activities of the author for his creation¹⁵. Now at the standard level the question of granting author's rights to the persons creating the scenario according to Art. 1259 of the Civil code of the Russian Federation is resolved.

It is necessary to specify that inclusion of the scenario work in a difficult object of author's rights assumes realization by the scriptwriter of the right to use own work belonging to it in civil circulation. However such use has some features.


Follows from literal reading of Art. 1240 of the Civil code of the Russian Federation that the result of intellectual activity can be used as a part of a difficult object. At the same time, we consider that in this case there is some dichotomy of legal result at creation of the difficult object of author's rights including the scenario work. On the one hand, there is an implementation of the right of the author on introduction of the scenario work to civil circulation: the legislator in Art. 1240 of the specified code directly decides the addressing the contract on alienation of the exclusive right or the license contract as to the form mediating the relations between the person who organized creation of a difficult object and owners of the exclusive rights to the corresponding results of intellectual activity, for example, the scenario. On the other hand, creation of a difficult object of author's rights is impossible without inclusion of other protected results of intellectual activity as a result of which there is something new, having signs of objects of author's rights, and subject to civil protection. The unification of different independent objects of author's rights presents a constructive component of the concept of a difficult object to a difficult object, and has to be interpreted only in the context of creation, creation of earlier not existing unique object which should be qualified as the Civil code of the Russian Federation, difficult as Art. 1240.

CONCLUSION

Thus, the scenario work represents result intellectual, created for the purpose of its use within a difficult object of author's rights. The special-purpose character of creation of the scenario work for its inclusion in a framework of a difficult object of author's rights

causes a direct connection and determination in definition of the civil mode of the scenario work with the civil mode of a difficult object of author's rights.

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