

**IDENTIFICATION OF THE INTERNET MASS MEDIA FROM THE  
VIEW OF MEDIA AND COPYRIGHT LAW DOCTRINE**

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Currently not just the process of transferring of analog works into digital occurred but the total transfer of cumulative creative component into digital form is taking place. More products exist only in digital form; the exchange of intellectual products happens via the use of digital networks. Futuristic technologies are becoming reality and a digital environment is sometimes impossible to differentiate from real life — people work, establish personal relationships, have fun there.

The main object of digital environment is information. It is the main object of any mass media too. It can be spread in different forms – messages, news, programmes, written works etc. The other distinctive feature of digital environment is the “use of new technology, enabling aggregation of an enormous amount of information on an unlimited number of people, reproduce this information at minimal costs, transmit and trade it, in a manner that does not involve costs of storage, transport etc.”<sup>1</sup> One of the modern digital networks using such technology is the Internet.

The main rule of existence of the Internet still remains the principle of free expression and exchange of information, freedom of creativity. However, the issues on the necessity of legal regulation of relations in this area are growing increasingly. After all, a freedom of creativity is often accompanied by a lack of responsibility.

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<sup>1</sup> *Privacy in the digital environment*, Haifa Center of Law and Technology Publication Series 2005, No. 7, pp. 22, 23.

At the same time television, radio and press that are considered to be the so-called “traditional” mass media are fully responsible for violations in the sphere of copyright and informational law that can happen due to their actions or the absence of the latter. The study of the nature of Internet mass media (hereinafter – IMM) is important not only from the area of the defense of violated rights but also from the position of the observance of authors’ rights whereas persons involved in creating IMM may also have the relevant copyrights that must be protected according to the provisions of the legislation of Ukraine.

Indisputable is the fact that the copyright on the Internet has the same legal protection, that is why IMM also have to bear the same responsibility as the traditional media (and the fact that trials on the copyright protection are taking place proves that the Internet free status has certain limitations), however for now in the legislation of Ukraine the legal status of IMM is not fixed. There is no answer what IMM is.

At the same time IMM can be considered to be both the object of copyright (and other intellectual property rights) – as a group of works – and as a subject of law, which uses the copyrighted materials in its work. The scientific goal of this article is to research the legal nature of IMM from the points of view of Media Legislation and the copyright legal doctrine.

Nowadays there is no united Ukrainian law that regulates the whole amount of relations in media sphere (including the protection of copyright) that takes into account all the latest achievements in this field. Laws of Ukraine, which in some way regulate the mass media, are<sup>2</sup> the following: “On Information”, “On the Information Agencies”, “On Printed Mass Media (Press) in Ukraine” (hereinafter – the Law on Press), “On Television and Radio Broadcasting” etc. The relations in the sphere of copyright are regulated by the Law of Ukraine “On Copyright and Related Rights”

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<sup>2</sup> Law of Ukraine “On Information” // Vidomosti Verkhovnoyi Rady, 1992, № 48, Art. 650; Law of Ukraine “On Television and Radio Broadcasting” // Vidomosti Verkhovnoyi Rady, 1994, № 10, Art. 4; Law of Ukraine “On Printed Mass Media (Press) in Ukraine” // Vidomosti Verkhovnoyi Rady, 1993, № 1, Art. 1; Law of Ukraine “On the Information Agencies” // Vidomosti Verkhovnoyi Rady, 1995, № 13, Art. 83.

(hereinafter – the Copyright Law).<sup>3</sup> Without a doubt, a large number of modern media products are the objects of copyright.

Nevertheless, before researching IMM through the prism of copyright there is a necessity to give an answer to the question whether any web site shall be interpreted as the mass media.

Generally, nowadays there are two approaches in identification of IMM:

- the Internet is a mass medium itself
- IMM can be classified only as a part of the Internet space

According to the first approach, supported by some scholars and legislators<sup>4</sup>, all the resources of the Internet can be considered as the mass media in so far as they give the information to an unlimited number of people.

An important argument against the recognition of the Internet as the mass media is seen also in the absence (at least in general) of characteristics of the periodicity, inherent in all traditional media <...> the periodicity (updating) of distributed messages leads to the idea of premature submission of this area to the legal regime existing for the mass media<sup>5</sup>. Moreover, nobody forbids the Internet users to post messages on their own pages, or to find out news on social networks or blogs, but can these sources of information be considered as the mass media? For example, search engines like Yandex or Yahoo display news feeds on the first pages. However, does this mean that they relate to the mass media? Obviously not, since these catalogues have completely different tasks and news feeds here are the additional service that is attractive for visitors. In addition, these feeds (with RSS technology) can be arranged on one's website. Will it be IMM after that? <sup>6</sup>

Some scholars have already made a classification of different websites.

I. Fomicheva made a detailed analysis of various web sites to confirm that not every of them could be considered to be IMM: "First of all it

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<sup>3</sup> Law of Ukraine "On Copyright and Related Rights" // Vidomosti Verkhovnoyi Rady, 1994, № 13, Art. 64.

<sup>4</sup> Merrill Morris and Christine Ogan, *The Internet as Mass Medium* <http://onlinelibrary.wiley.com/doi/10.1111/j.1083-6101.1996.tb00174.x/full>.

<sup>5</sup> Richter A. *International standards and foreign practice of regulating of journalism*. UNESCO Publishing, M., 2011, pp. 232, 233.

<sup>6</sup> A. Kalmykov, L. Kokhanova, *Web-journalism*, YUNITY-DANA, 2005, <http://www.evartist.narod.ru/text16/026.htm>.

is necessary to separate them from those resources which purpose is not information but direct service of the activities of other types (e-commerce). 'Immobility', i.e. readiness to store the information rather than to organize the news feed is inherent in electronic libraries and similar resources... There is no reason to attribute to media personal and corporate websites with the goal to create a positive image of the owner and inform about it... Incorrect to qualify as the media polemical platforms such as forums, chat, social networks... Easy to separate media from search engines – a tool for finding information online..."<sup>7</sup>

According to one<sup>8</sup> classification, web sites can be divided into:

- IMM (www.pravda.com.ua),
- corporate websites (www.acta.com.ua),
- personal websites (www.neymaroficial.com),
- advertisement sites (www.robota.uzhgorod.ua),
- online shopping web sites(www.amazon.com),
- reference sites (www.uz.gov.ua),
- Internet team works (www.pisni.org.ua),
- web site-works (www.harrypotterandthegobledoffire.com.ua),
- online communities (www.fc.volyn.net),
- portals (www.meta.ua).

In accordance with another classification<sup>9</sup>, web sites can be divided into:

- Means of communication;
- Commercial operations;
- Informational resources:
  - Libraries
  - Databases
  - IMM
  - Presentations
  - Catalogues<sup>10</sup>

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<sup>7</sup> *Internet media: theory and practice: manual for students*, M. Lukina (ed.), Aspect Press 2010, p. 60.

<sup>8</sup> Kotsarev O. *Internet-sites: functional-semantic typology*, www.philology.univer.kharkov.ua/katedras/prof\_sites/.../kots\_article\_2.pdf .

<sup>9</sup> *Internet media: theory and practice.*, *op.cit.*

<sup>10</sup> We can add one more type of web sites that were not mentioned – gaming web sites (e.g. www.heroeswm.com).

As it can be seen from the above mentioned, IMM is only a certain category from the mass of websites.

Nevertheless, before formulating the distinctive features of IMM it is necessary to see what mass media under the Ukrainian legislation are.

Thus, § 1 of Article 22 of the Law of Ukraine “On Information” provides that the mass information disseminates with the aim of its bringing to the unlimited scope of persons. However, in the next paragraph of the same article the previous definition is not used at all: “mass media” (means of mass information)<sup>11</sup> – means (media) intended for public dissemination of printed or audiovisual information. This Law does not explain what “printed or audiovisual information” is. In addition, the use of conjunction “or” between the words “printed” and “audiovisual” allows us to make a logical conclusion that one cannot simultaneously combine two means of dissemination of information.

In turn, the Law on Press in Article 1 only establishes that the printed media (press) in Ukraine refers to periodic publications and continued editions that are issued under the same title, at intervals of one or more numbers (volumes) during the year based on the state’s certificate of registration, i.e. without a strict definition.

On the contrary, the definitions of “audiovisual information” and “audiovisual media” can be found in the Law of Ukraine “On Television and Radio Broadcasting”, under Article 1 of which audiovisual information means any type of signals perceived by visual and auditory receptors of a person and identified as the data about events, facts, phenomena, processes, personal information, and also comments (ideas) about these being transmitted by using pictures and sounds. The next concept that sets this Law: audiovisual mass communication media means an agency which gives for mass consumers’ reception the audiovisual information transmitted in the form of electric signals and accepted by means of household electronic devices.

Needless to say that in the above given definitions, the Ukrainian legal doctrine completely paid no attention to the Internet<sup>12</sup>. At the same time,

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<sup>11</sup> Direct translation from the Ukrainian language.

<sup>12</sup> Moreover, the definition of this notion we can find only in the single Law of Ukraine. Under Article 1 of the Law of Ukraine “On Telecommunications”, the Internet is a worldwide informational system of universal access, which is logically connected with

for example, in accordance with Article 2 of Armenian law, information can be distributed via public telecommunication network (the networked mass media).

In this regard, it is necessary to maintain A. Stephan's comment of the term "networked edition": "according to the dictionary, 'networked' is the adjective from the 'network' and the network – this is a particular set of paths located in a certain area, lines of communication, communication channels, or similar institutions, businesses, etc., or devices connected by one system. The term 'networked' is broader and encompasses many types of communications unrelated to the operation of the Internet that is why more suitable is to use the word-group 'the Internet edition' for the media that are available on the Internet"<sup>13</sup>. The word "edition" seems to be not suitable for usage in the Ukrainian language since under the Explanatory Dictionary of the Ukrainian language "edition" refers to printed materials, products – books, printed works, periodical press etc.<sup>14</sup> The Internet is not of printed material. At the same time according to the Oxford Advanced Learner's dictionary<sup>15</sup>, edition – 1) the form in which a book is published; 2) a particular newspaper or magazine, or radio or television programme, especially one in a regular series i.e. in English this term is broader than in Ukrainian. That is why in the author's opinion it is incorrect to use the term "networked edition" in Ukrainian legislation for description of IMM because the specifics of the Internet web sites is that they make it possible to post not only a printed text or an image (photo), but also sound, video, or animation. Since a web site combines both print and audiovisual mass media, it is inappropriate to apply to the web site the norms of only the Law on Press or the Law of Ukraine "On Television and Radio Broadcasting".

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global address space and is based on the Internet protocol, defined by international standards (The Law of Ukraine "On Telecommunications" // Vidomosti Verkhovnoyi Rady, 2004, № 12, Art. 155).

<sup>13</sup> A. Shtefan, *Civil proceedings in cases against the media in defense of honor, dignity and business reputation*: thesis abstract, Kyiv, 2013, p. 25.

<sup>14</sup> *Great explanatory dictionary of the modern Ukrainian language*, V. Busel (ed.), Kyiv; Irpen: Perun 2005, p. 132.

<sup>15</sup> Oxford Advanced Learner's Dictionary, 2002, p. 370.

At the same time the easiest way to distinguish IMM is the registration, but Ukrainian legislation does not provide norms allowing this. Moreover, the State Committee for Television and Radio Broadcasting of Ukraine refused the licensing of IMM<sup>16</sup>.

This is connected with fears that such registration will limit the freedom of speech, encourage the pressure and control by the government. Per contra the supporters<sup>17</sup> of the idea of such registration substantiate that registered media have the possibilities to request the information, opportunities that gives media accreditation, a wide range of opportunities to participate in public life, i.e. all the rights and guaranties that have the traditional media.

The author supports the thought about the possibility of obtaining by IMM the status of the mass media in the case if IMM wants to do it itself.<sup>18</sup> However, the opponents of the idea of the registration say, “even voluntary registration may be the first step to controlling information online, so this step is better not to do”<sup>19</sup>.

Since the registration of IMM is not compulsory and there is no definition of this notion in special laws, there is a necessity of formulating some criteria which may allow considering one web site as IMM.

#### 1. Periodicity or updating.

This definition is absent in Ukrainian legislation but as an example it can be found in § 13 of Article 1 of the Law of the Republic of Belarus. According to it the periodicity of the mass media – the release of mass media with a specified number of times after a specified period of time. In the case of IMM this criterion may mean that the frequency of information changing on this web site should be clearly stated there, in other words clearly defined intervals of appearance of new materials on the web site. (For example, newspapers and magazines issued daily, weekly, monthly). “Web site” is more operational, so it can be said about up-to-the-minute

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<sup>16</sup> <http://watcher.com.ua/2014/06/05/derzhteleradio-vidmovylos-vid-litsenzuvannya-internet-vydannya-ta-hoche-likviduvaty-natskomisiyu-zahystu-morali/>.

<sup>17</sup> K. Afanasyeva, *Copyright law*, Kyiv: Atika 2006, pp. 222, 223.

<sup>18</sup> R. Romanov, *Internet in Ukraine in the context of human relations, society and the state*, “Freedom of expression and privacy” 2002, No 3, <http://www.minjust.gov.ua/0/24640>.

<sup>19</sup> T. Shevchenko, *A legal status of Internet media in Ukraine: problems and prospects of regulation*, <http://patent.km.ua/ukr/articles/i485> [25.02.2015].

appearance of new information. Moreover, the “dead” web site, a web site with outdated information cannot be considered as a media. Therefore, IMM, in author’s opinion, must keep an eye open for that the materials contained on the web site were updated and up to date.

## 2. Editing or moderation.

Peculiarities of the IMM lie in the fact of the changing of the nature of labor relations on the Internet because the existence of professional editorial board with traditional (or close to it) staff – editor in chief, editors, and journalists who work in the same office – today is not relevant. Stuffing of Internet web site can be done remotely, and authors of materials may not know each other in real life. For posting the latest informational material, a person does not have to have press identification or be hired as a journalist or an editor.

In the designation of an Internet web site to the media one should be guided by other criteria than for traditional media, so the presence of the editorial staff for the networked media can be considered as desirable but does not necessarily compulsory. But the absence of editorial staff does not mean the absence of the need to perform editorial functions that are simply passed on to the authors or publishers i.e. editorial functions, even if the editorial board is absent, *de facto* remain<sup>20</sup>

A moderator of a web site under certain conditions may be regarded as an editor. Web site moderation reminds editing because the moderator has the right to delete inappropriate content or material that is not consistent with the concept of the site or the legislation of Ukraine. For example, Article 28 of the Law of Ukraine “On Information” indicates that the information shall not be used to call for overthrow of the constitutional system, territorial disintegration of Ukraine, propaganda of war, violence, brutality, working up race, national, religious hostility, terrorist attacks, encroach on rights and freedoms of an individual.

## 3. Truthfulness and fairness.

This obligation is imposed on traditional media. In accordance with Part 2 of Article 26 of the Law on Press a journalist shall report to publish only credible and reliable information. The same requirement is set out in § 1 of Part 1 of Article 59 of the Law of Ukraine “On Television and

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<sup>20</sup> A. Kalmykov, L. Kokhanova, *op. cit.*



Radio Broadcasting”, according to which the broadcasting organization is obliged to distribute objective information. The web site must also adhere to this point and bear the same responsibility for its violation within the current legislation. How “proven” a resource is in most cases is determined by most of readers who make the high traffic ranking, as well as by commenting on and evaluating the content.

The author believes that IMM must also comply with this paragraph and bear the same responsibility for its violation under the current legislation.

4. Compilation of materials and / or their original selection, which primarily depends on the concept or theme of the site. The selection of information, in turn, subordinate to it.

These days stuffing of online resource with news can be done automatically due to a simple arrangement of online news feeds created by the other information resources e.g. one may use the RSS technology which enables viewing news of any IMM in whole or optionally only a portion of them, a link to the article or other data. Of course, simple placing of such news feed on the web site does not make it IMM.

Even from the standpoint of the so-called citizen journalism, this criterion is applicable. If a person posts on a web site materials from other web resources without making their own creative alternation but picking up and placing them on person’s own preferences or other criteria, in this case there will be a creative activity, namely – ordering. Of course, such activity should be carried out without infringing the copyright of others.

It is worth mentioning that most of modern blogs are personal notes, but even this form of dissemination of information today is a part of citizen journalism. In this case, this means not only the ordering and selection, but also the expression of the author’s own position on certain issues whose own range of interests determines the criteria for the selection of information materials.

It can be argued that in general the modern IMM have the certain location of information blocks and advertisement units on the page (i.e. no activity of arrangement (ordering)). In this case, the selection criterion can be deemed the selection of news according to the concept of the web site, in the term of its current character, after checking the reliability of

the information. In addition, it may be necessary to cut the news, or add a photo or video, or the link to related news.

5. Self-identification or attributing of web sites to the media especially those which have positioned themselves as the mass media.

Considering this situation, there is an offer to attribute as IMM only the projects that call themselves so, using for titles of websites' sections the traditional media terms: journal, almanac, newspaper, editorial, etc.<sup>21</sup>

It should be remembered that belonging to the media stipulates greater responsibility for the published data. Is the person willing to take on additional responsibilities as it provided in requirements to the media? Of course not, unless the owner of the online resource aims to create precisely the media. So in identifying IMM it is necessary to pay attention to the aim of creating the web site – dissemination of information or other purposes.

6. Window dressing, sc. the presence of external features that allow qualifying the web site as the mass media. The mandatory elements of IMM in author's opinion must be: information about the authors and other persons or entities that participated in the creation of this media; the title; the initial data (publisher's name, year, and contacts); the copyright symbol. On the analogy of the television a logo (brand, trade mark) may be an essential element of IMM.

However, even such a detailed analysis of the characteristics of IMM makes it impossible to establish definitively the legal status of IMM because of the variety of the legislator's approaches to the concept of "the means of mass information".

The Ukrainian Law "On press" under the periodic and continuing printed media understands editions, i.e. a product. And under the provisions of the Law of Ukraine "On Television and Radio Broadcasting" audiovisual mass communication media means an agency i.e. organization, legal unit. In other words today at the legislative level, there is a disagreement in the interpretation of the concept of the mass media – it is simultaneously both those who create media, and what they create<sup>22</sup>.

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<sup>21</sup> A. Kalmykov, L. Kokhanova, *op.cit.*

<sup>22</sup> There was an attempt to correct this situation in one of the projects of amendments to the Law on TV but it wasn't realized. See more at: <http://www.telekritika.ua/verhovna-rada/print/5136>.

With regard to types of the business legal structure of traditional media, according to the Law on Press founders of the printed media can be both individuals and legal entities, and the activity of the printed media aimed at making a profit, is the business (it means that the Ukrainian legislator allowed the possibility for non-commercial existence of the printed media). Therewith according to the Ukrainian legislation, both legal entities and individual entrepreneurs can provide business activity. Thus, based on the provisions of the Law, the printed media does not have to be an organization. Per contra according to the Law of Ukraine “On Television and Radio Broadcasting”, mass media should be an organization i.e. a legal entity.

Therefore, as it is seen from the abovementioned, the mass media does not have to be a legal entity as it is. The logical conclusion is seen that IMM can be the result of the activity of the individual and those who cooperate with them. Therefore, to the author’s mind the approach under which the mass media is a product (not an organization) as it reflected in the Law on Press seems to be more veracious.

As a product IMM is being realized in a form of a web site. At the same time the web site from the position of the copyright doctrine is more likely characterized as a database or a computer programme and works separately but not as the work integrally.

Therefore, what is web site? The dictionary explanations of this notion are following:

- Site <...> a place on the Internet where a company, an organization, a university, etc. puts information<sup>23</sup>.
- Web site <...> a place on the World Wide Web that contains information about a person, organization, etc., and that usually consists of many web pages joined by hyperlinks; a group of World Wide Web pages usually containing hyperlinks to each other and made available online by an individual, company, educational institution, government, or organization<sup>24</sup>

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<sup>23</sup> Oxford Advanced Learner’s Dictionary, 2002, p. 1109.

<sup>24</sup> The Merriam-Webster Dictionary: <http://www.merriam-webster.com/dictionary/web%20site> [25.02.2015].

As it can be seen from the definitions the web site is a “group of pages” with the information. The analogy with a book is obvious. At the same time only one of these two notions is the object of copyright now.

Nowadays in general in the legal scientific literature<sup>25</sup> web-sites are qualified as the composite works (the same as collections of works, compilations).<sup>26</sup> Meanwhile, Hungarian legal specialists offer to consider the web site as a multimedia work: the websites are interactive online multimedia works that include a combination of text, audio, still images, animation, video, and interactivity content forms. A ‘website’ is a collection of web pages, images, videos or other digital assets that is hosted on one or more web servers, usually accessible via the Internet. A web page is a document, typically written in HTML that is almost always accessible via HTTP, a protocol that transfers information from a web server to display in the user’s web browser. Web sites can be regarded as multimedia works provided that they are based on the creative activity of their creator<sup>27</sup>. The same thought can be found in Spanish legal studies<sup>28</sup>. As it can be seen from the fore-quoted examples, there are two approaches to the web-site definition – as to a collection of works (composite work)<sup>29</sup> or to a multimedia work. Logically is to make a brief comparative analysis of them. In addition, as far as many web sites are created by groups of people in the author’s opinion there is a necessity to review such category of works as the collective works too.

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<sup>25</sup> O. Pastuknov, *Copyright on the Internet*, Kyiv, 2004, p. 45; E. Morgunova, O. Ruzakova, *Copyright law. Commentary to the legislation, examples of documents, questions and answers*, Moscow, 2004, p. 46; *Intellectual property rights: scientific-practical commentary to the Civil Code of Ukraine*, M. Paladiy, N. Myronenko, V. Zharov (eds.), Kyiv: Parliamentary Publishing House 2006, p. 134.

<sup>26</sup> There is also a point of view that web-sites, virtual libraries, and computer games are multimedia works that are complex works as well. See E. Kotenko, *Multimedia product as an object of copyrights*, Moscow, 2012.

<sup>27</sup> Balzs Rtai, Peter Homoki, Gbor Polyk. *Cyber Law in Hungary*, Kluwer Law International 2010, p. 136, 137.

<sup>28</sup> Rodriguez Pardo Julian, *Copyright and Multimedia*, Kluwer Law International 2003, p. 105.

<sup>29</sup> We use the definition composite work because it is used in the official translation of the Copyright Law given by WIPO on its web site – <http://www.wipo.int/wipolex/en/profile.jsp?code=UA> [25.02.2015].

A common feature of multimedia, composite and collective works is a combination of several works (or not always works, but just certain materials) in one. At the same time the national Ukrainian legislation does not give a definition of any of them, and some of them are not mentioned at all. That is why it seems to be efficient to examine the legal nature of such works, analyze the differences and similarities of these categories of works.

Nowadays the biggest attention is given by the doctrine and legal scholars to the composite works. At the same time the Copyright Law (§ 15 of Article 8) only gives a list of the works that can be composite: the collections of works, collections of folklore versions, encyclopedias and anthologies, collections of regular data, and other composite works, provided that they result from creative work involving the selection, co-ordination or arrangement of the contents without prejudice to the copyright of works which are included thereto as the integrated parts.

In the special legal literature the following definitions are given: “composite works – works created on the base of the set of a number of works (encyclopedias, magazines, newspapers, other periodicals)”<sup>30</sup>; “composite work is a work that includes other work or parts of the works, usually without the personal participation of the authors of these works. Such works are being created through the merger of other works or parts into a new product. Such works can be considered the most common type because audiovisual and *multimedia* works, dramatic, musical and dramatic and theatrical works, databases, etc. belong to them”<sup>31</sup>; “the new work is considered to be composite if it includes a pre-existing work but without the personal participation of its author. A composite work is the property of the author who created it, under condition of preservation of the copyright to the work that was created before”.<sup>32</sup>

Moreover, composite works are liable to legal protection as the objects of copyright regardless of whether the works which they include are the objects of the copyright<sup>33</sup>.

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<sup>30</sup> O. Kulinich, L. Romanadze, *Intellectual property rights*, Phoenix 2010, p. 88.

<sup>31</sup> *Intellectual property rights, op.cit.*, p. 134.

<sup>32</sup> R. Dumas, *Literary and artistic property: copyright of France*, Moscow: International relationships, 1993, pp. 126, 127

<sup>33</sup> *Intellectual property rights, op.cit.*, p. 137.

The next term under consideration is a “collective work”. The Ukrainian legislation does not contain this definition. However, it can be found in Article 3 of the Law of Moldova “On Copyright and Related Rights”<sup>34</sup> under which the collective work means a work created by more than one natural person at the initiative and under the direction of a natural or legal person who will publish the work under his own name.

Article L.113-2 p. 20–25 of the Intellectual Property Code of France also gives the copyright protection to the collective work. “Such a creative result appears in a case if it has the contribution of different authors, each of which participates in its creation. The copyright belongs to each author – an individual – in the case of the creation of collective works. In accordance with the Intellectual Property Code of France ‘collective work in the absence of evidence of the contrary is the property of a natural or legal person under whose name it is published. This person owns the copyright’ (Article L.113-2 p. 21 of the Intellectual Property Code of France). Collective works are usually literary works, though, taking into account the current confusion of different types and genres of the art in a single object, perhaps in the future among their creators there are not only literary authors”<sup>35</sup>.

The work is considered to be collective if it was created under the initiative of a person or entity that issues, publishes and releases it under their own direction and under their own name, in which a personal creative contribution of various collaborators who are involved in its creation, is part of the overall work, and it is therefore not possible to give each author a separate right on the work as a whole<sup>36</sup>.

A bit different approach has the legislator of the USA. As defined by the Copyright Act, a collective work is any work which is made up of separate and individual works. For example, a magazine or encyclopedia would be a collective work. A collective work is one type of a compilation.

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<sup>34</sup> Law of the Republic of Moldova “On Copyright and Related Rights” № 293-XIII, 23 November 1994, <http://www.wipo.int/edocs/lexdocs/laws/en/md/md039en.pdf>.

<sup>35</sup> V. Lebed, *French copyright legislation in terms of development of European copyright*, “Right in the modern world”, <http://ecsocman.hse.ru/data/2012/06/28/1259011217/0%9F%D1%80%D0%B0%D0%B2%D0%BE%202011-4-18.pdf> [25.02.2015].

<sup>36</sup> R. Dumas. *op.cit.*, p. 120.

A compilation is any collection of preexisting materials or data which are arranged in a way that the compiled whole is an original work entitled to its own copyright protection. The difference is that with a collective work, each of the contributed materials is a protectable work on its own, whereas with a compilation, the individual contributions may not necessarily be entitled to copyright protection (for example, if they are already in the public domain)<sup>37</sup>.

In summary comparing these two types of works let us first distinguish the features that separate collective works from composite works:

- mandatory participation of two or more persons in the creation of the collective work. Composite work can be created individually;
- each of the contributed materials of a collective work is a protectable work on its own;
- a collective work can be a complex product, e.g. feature film, after the withdrawal of one of the parts of the work all the work cannot exist.

A web site not always can be a collective work because it may not contain the necessary lead of a person or an employer. For example, a blogger can create their own mass media resource using the existing sample (e.g. Wordpress) and put the information there. At least two authors (the author of computer programme and the author of information) will participate in this creation. Nevertheless, their collaboration cannot consider to be united under someone's lead with the aim to create the work.

In turn, multimedia works are the works, which are the result of the combination of two or more categories of works in one form. It makes them look like composite works, and some scholars (as it was mentioned) include multimedia works into them. However, the main difference between them is that the composite works can be the collection of works of the same type (e.g. anthology) and multimedia works cannot.

Undoubtedly, multimedia works can be created both by a team and independently. Probably this common feature allowed most of the French courts to establish the legal regime of multimedia works exactly as a col-

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<sup>37</sup> [http://www.quizlaw.com/copyrights/what\\_is\\_a\\_collective\\_work.php](http://www.quizlaw.com/copyrights/what_is_a_collective_work.php) [25.02.2015].

lective<sup>38</sup>. In turn, the collective work, as it was mentioned above, can be complex. Multimedia works too.

Nevertheless, now neither between lawyers nor in the judicial practice of different countries there is a consensus on the question of what legal regime of the multimedia works is? However, without a doubt, that modern law science accepts the existence of such category of works.

At the same time, multimedia works have their own characteristics, without which they cannot be considered to be like these. They are the following:

- a) a digital form that enables the unique, previously unimaginable physical qualities of the works. Due to digitization of works the multimedia products are able to exist<sup>39</sup>. Every multimedia work contains a computer programme as the basis for further creation, it is able to work only in digital environment;
- b) interactivity. The interactivity is usually understood as the access to a work or other information in the real time, and possibility of amending the information and / or to select one of the variants of its work predefined by the creators of the product<sup>40</sup>. I. Stamatoudi calls it “a technique for ‘reading’ such a product which makes multimedia different from conventional media and existing intellectual property works <...> Computer technology allows the user to interact with the information contained in a multimedia work by selecting the pathways that will eventually lead him to the bits of information that will serve his particular needs”<sup>41</sup>.

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<sup>38</sup> E. Kotenko, *op.cit.*, p. 22.

<sup>39</sup> The specifics of the Ukrainian language do not allow to find a precise translation for the word “digitization”. The reason for this being that this term expresses both the general tendency of producing creative works in digital environment (using digital technologies etc.) and the process, action of transformation of analogues works into digital. That is why the author proposes to use two different words to express the notions: digitization — for the tendency, and digitalizing — for the action.

<sup>40</sup> I. Vaschynets, *The civil law protection of copyright in the conditions of development of information technologies*: PhD thesis, Kyiv 2006, p. 39.

<sup>41</sup> For a more detailed analysis see: Irini A. Stamatoudi. *Copyright and Multimedia Works: a Comparative Analysis*, Cambridge 2001, p. 25.



Evidentially that multimedia work is a separate category of works with their own specific features. I. Vaschynets outlined the following common features inherent in multimedia works:

- they are objectively expressed in a digital form;
- structurally heterogeneous: consist of different types of objects (text, audio, image, animation, video);
- have internal unity, despite the structural heterogeneity of multimedia work, they are a product that functions thanks to its logically interrelated components;
- they are stored on one or more media;
- they are interactive objects and the user can in real time affect the performance of the product and choose one of the proposed options;
- for the use of multimedia objects it is required the availability of special technical devices;
- perception of these objects is performed by the user visually and aurally<sup>42</sup>.

There are no doubts that these features are suitable for the web site as well as for IMM. The user has the possibility to choose one of the offered materials and leave their comment on it in the proposed frame.

The abovementioned allows the author to support the position under which multimedia works are a separate category of works and as such category it shall have a necessary copyright protection.

There were also thoughts<sup>43</sup> that defining this term is impossible due to the fast change of modification of these types of works. In return I. Stamatoudi proposed the following definition of multimedia works – works which combine on a single medium more than one distinct kind of expression in an integrated digital format, and which allow their users, with the aid of a software tool, to manipulate the contents of the work with a substantial degree of interactivity<sup>44</sup>. In the author's opinion the Ukrainian

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<sup>42</sup> I. Vaschynets, *op.cit.*, p. 40.

<sup>43</sup> *Ibid.*

<sup>44</sup> Irini Stamatoudi. *Could multimedia works be protected as a form of audiovisual works?*, [in:] Paul Torremans (ed.) *Copyright law: a handbook of contemporary research*, Edward Elgar Publishing, 2009, p.187.

legislator can take it as the basis for including this category in Ukrainian legislation. It is also possible to provide an open list of the multimedia works which can include *inter alia* web-sites. It is worth mentioning that the current Copyright Law legislation does not have the definition of the notion “work” and it only gives the list of objects of copyright (Article 8 of the Copyright Law) so the new category can be added.

One more peculiarity of the web site as a work is that it is not completed – its creation continues, especially if it is IMM. It may cause problems with the registration of copyright (this is not obligatory under the current Ukrainian registration). The registration as IMM could help in protecting the copyrights as well, and vice versa.

## CONCLUSIONS

On the basis of the abovementioned we can deduce that:

1. IMM have some significant differences from the traditional media which is depicted not only in the presentation of the material, but in the principles of their work.
2. In general, IMM can be considered not only as a subject carrying out some activity in the mass media sphere but also as an object of copyright embodied in multimedia work.
3. There is an urgent necessity of improvement both of media legislation and legislation in the sphere of copyright.

As a result, the author formulated some requirements that IMM should possess, as a business entity (non-commercial organization etc.), and that should be reflected in the media laws. They can be divided into two groups:

1. The requirements for creation:
  - possible state registration as a business entity (as a legal entity or an individual entrepreneur);
  - possible state registration as the mass media;
  - possible state registration as an object of copyright;
  - ensuring the protection of the name (brand, logo);
2. The requirements for the activities:
  - observance of copyright (and in general intellectual rights);

- responsibility for the authenticity of information;
- adherence of the concept (the theme) of the web site;
- constant updating of information, its processing;
- availability of initial data.A

IMM is created in a form of a web site. In turn, a web-site is a multimedia work – a new category of works. That is why there is a necessity to stipulate provisions concerning multimedia works and their types in the Copyright Law. For this reason, the issue of further scientific studies of the legal regime of multimedia works and their further introduction into Ukrainian laws needs a solution.

#### SUMMARY

This scientific article is devoted to the study of the legal nature of IMM from the points of view of media laws and the copyright doctrine.

On the one hand, the Internet mass media web site can be considered as a creative work, on the other hand, from the point of view of informational legislation it is one kind of the mass media. The author gives different classifications of web sites to prove that IMM are only a part of the Internet.

There is also a reviewing of the problem of registration of IMM and a free status of the Internet. The author also made the terminological analysis of some definitions in the media legislation.

The author also formulates the criteria that help to differentiate IMM among other web sites. They are:

1. Periodicity or updating.
2. Editing or moderation.
3. Truthfulness and fairness.
4. Compilation of materials and / or their original selection, which primarily depends on the concept or theme of the site. The selection of information, in turn, subordinate to it.
5. Self-identification or attributing web sites to the media especially those which have positioned themselves as the mass media.
6. Window dressing, sc. the presence of external features that allow qualifying the web site as the mass media.

IMM in the digital environment is created in a form of web-site. In turn web-site is a group of pages combined together. This feature makes it possible to qualify them as composite works. At the same time, the digital component allows to count them as a multimedia product. That is why the author makes a comparative analysis of common and different features of multimedia, composite and collective works. As a result the conclusion was made that multimedia works (to which web site is referred) is a separate category of works, and there is a necessity to include them into Ukrainian legislation. The inclusion can be made not necessary by defining the term but as a list of types of multimedia works.