



**THE ISSUE OF INTELLECTUAL PROPERTY RIGHTS IN THE
ADVERTISING INDUSTRY ON THE SIDE OF PLATFORMS AND
PROVIDERS**

**ВОПРОС ПРАВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В РЕКЛАМНОЙ
ИНДУСТРИИ СО СТОРОНЫ ПЛАТФОРМ И ПРОВАЙДЕРОВ**

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Abstract. This article offers an exploration of the intellectual property rights issue within the advertising industry, focusing on platforms and providers. It examines the current state of legal regulation, the practical application of intellectual property rights, and their impact on the creation, distribution, and use of advertising materials. Attention is paid to the challenges and issues faced by market participants and potential solutions to these problems.

Аннотация. В настоящей научной статье предлагается исследование проблемы прав интеллектуальной собственности в рекламной индустрии с упором на

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платформы и поставщиков. Рассматривается современное состояние правового регулирования, практическое применение прав интеллектуальной собственности, их влияние на создание, распространение и использование рекламных материалов. Уделяется внимание вызовам и проблемам, с которыми сталкиваются участники рынка, а также потенциальным решениям этих проблем.

Ключевые слова: права интеллектуальной собственности, рекламная индустрия, рекламные площадки, рекламодатели, правовое регулирование, использование рекламных материалов, защита авторских прав.

Keywords: intellectual property rights, advertising industry, advertising platforms, advertising providers, legal regulation, use of advertising materials, copyright protection.

Introduction

In recent years, the importance of intellectual property (IP) rights in the economy and society has significantly increased, especially in light of digital technology development and market globalization. The advertising industry (AInd), as one of the key segments of the modern economy, is at the intersection of these trends, making IP issues particularly relevant and complex for this area. The creation and placement of advertising materials necessitate the protection of copyright and related rights belonging to both content creators and their clients.

The aim of this paper is to provide a comprehensive analysis of the problems associated with IP rights in the AInd, on the side of both platforms and providers. It discusses how the current state of legal regulation and practical application of IP rights affects the process of creating, distributing, and using advertising materials.

Main Part

Intellectual property (IP) rights are legally protected rights over the results of intellectual activities, which include copyrights, patents, trademarks, utility models, industrial designs, and other objects [1]. These rights allow content creators to control

and derive economic benefits from the use of their work, preventing unauthorized copying and distribution without the permission of the rights holder.

Copyrights protect literary, musical, and artistic works, computer programs, databases, and other creations, while trademarks are associated with unique designations that allow consumers to distinguish the goods or services of one producer from those of another [2]. Patents grant exclusive rights to inventions, new, and useful technological solutions.

The AInd is characterized by the extensive use of various IP objects, ranging from texts and graphic images to musical works and video materials. Advertising spending in the digital advertising market is projected to reach \$740.3 billion in 2024 (fig.1).

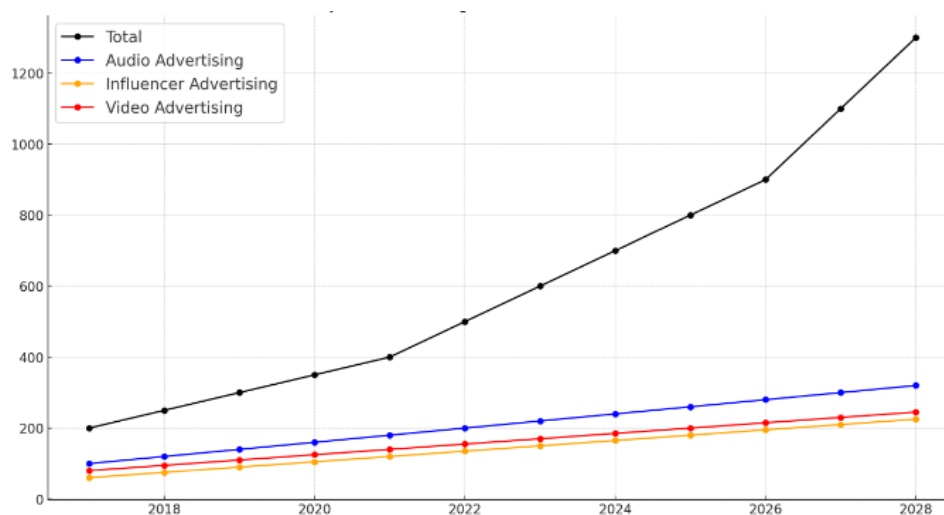


Figure 1. Advertising expenses in various directions, billions of dollars [3]

These statistics show how important it is for companies to respect IP rights in the production of advertising content in order to ensure competitive advantages in the market.

Advertising campaigns often include elements protected by copyright, as well as utilize trademarks to promote a brand. The peculiarity of the AInd is that the advertising creation process involves many participants: from advertisers who are involved in developing the campaign concept and creating advertising materials, to advertising agencies and advertising platforms (AP) that handle the placement and distribution of ads to the end consumer. Each of these participants contributes to the creation of the final product and may hold certain rights to the advertising elements.

IP rights issues in the AInd

Copyrights on advertising materials protect the creative labor of creators, granting them exclusive rights to use and distribute their works. In the context of advertising, this means that any copying or use of advertising materials without the permission of the rights holder could lead to copyright infringement. The problem is exacerbated when advertising campaigns are distributed over the internet, where controlling the use of content becomes more challenging.

In the context of market globalization and the digital economy, issues related to IP rights in the AInd become particularly significant. Table 1 illustrates differences in legislative approaches to the protection of these rights and highlights the potential consequences of their infringement for AP and suppliers in different countries.

Table 1. Comparison of legal approaches to IP rights protection in advertising across different countries

Country	Main laws and regulations	Specifics of protection in the AInd	Consequences of IP rights infringement for AP and suppliers
USA	Copyright Law of the USA, Lanham Act	Protection of trademarks and copyrights; «notice and takedown» policy for online platforms.	Legal actions with demands for damages, reputation loss, fines, and possible prohibitions on further use of materials.
Russia	Part four of the Civil Code of the Russian Federation, «On Advertising» Law	Licensing for the use of works; platform liability for hosting content that infringes copyright.	Administrative and criminal liability for copyright infringement, compensation for moral damages and losses, confiscation of counterfeit products.
European Union	Copyright Directive in the Digital Single Market, Trademark Directive	Platform obligations to check content for copyright infringements	Fines for IP rights infringement, mandatory compensation payments to rights holders, obligation to remove or block access to infringing content.

At the international level, the Berne Convention for the Protection of Literary and Artistic Works plays a crucial role, establishing the foundations for copyright protection on a global scale, as well as the Paris Convention for the Protection of Industrial Property, which deals with patents, trademarks, and geographical indications [4,5]. Additionally, the Agreement on Trade-Related Aspects of

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Intellectual Property Rights (TRIPS), which is part of the legal framework of the World Trade Organization (WTO), sets minimum standards for the protection of all forms of IP, including rights to use images, music, videos, and other media in advertising [6].

The conflict of interest between content creators and advertisers often arises from the use of IP objects without the proper consent of the rights holders or without paying the appropriate licensing fees. In this context, advertisers and advertising agencies must ensure compliance with these legislative acts by obtaining all necessary permissions to use others' intellectual outcomes in their advertising campaigns. This is aimed at protecting IP rights and preventing potential lawsuits that could lead to significant financial losses and damage to reputation.

The role and responsibility of AP

In the contemporary AInd, platforms such as Google actively contribute to enforcing IP rights compliance. These platforms have devised complex systems for automatically scrutinizing advertising content for copyright and other IP rights infringements, utilizing content recognition algorithms and matching against databases of protected works. For instance, YouTube, owned by Google, employs the Content ID system, which scans uploaded content and compares it with a database of copyrighted materials. Should the system identify a match, it automatically takes measures according to the copyright owner's choice, ranging from monetization to blocking or content removal.

To regulate IP rights infringement issues, the USA has enacted the Digital Millennium Copyright Act (DMCA), which mandates AP to implement a «notice and takedown» policy. Section 512 of the DMCA outlines the procedure whereby copyright owners can submit infringement notices for the removal or blocking of unlawfully posted content [7].

AP incorporate mechanisms to safeguard the rights of IP owners, including content licensing systems. For example, the photo agency Getty Images offers licenses for image use to advertisers, thereby ensuring their legal use in campaigns. This not only protects authors' rights but also prevents potential legal disputes.

Digital Rights Management (DRM) technologies protect copyrights by restricting how digital content can be used and shared. AP may employ DRM to control the dissemination of promotional materials, safeguarding them from unauthorized usage. Netflix, for example, uses DRM to ensure that its streaming content is accessed only by authorized subscribers in compliance with copyright laws.

User behavior analysis and machine learning algorithms are increasingly used by AP to detect suspicious activities that might indicate copyright infringement. By analyzing patterns of user interactions, platforms like Facebook can identify and prevent the unauthorized sharing of copyrighted materials.

In Russian practice, AP also take proactive measures to comply with IP rights and prevent their infringement during ad placement. A significant regulatory act governing copyright protection on the internet is the Federal Law of July 27, 2006, No. 149-FZ «On Information, Information Technologies, and Information Protection», which includes provisions concerning the obligations of search engine operators and hosting providers to remove links to illegal content at the request of copyright owners [8].

Yandex.Video employs algorithms to identify copyrighted content and ensures copyright compliance, offering authors the right to demand removal or access blocking to materials.

AP bear significant responsibility for adhering to IP norms, actively cooperating with copyright owners and integrating technological solutions for copyright protection. These actions not only support the legal interests of content creators but also contribute to the creation of a fair and transparent advertising environment.

Working with IP for advertising providers (APr)

APr are responsible for ensuring compliance with IP laws by implementing various mechanisms and adhering to established legal frameworks. They actively monitor and manage the content displayed on their platforms to prevent copyright infringement. In the context of international legislation, APr face the necessity to comply with a complex system of licensing and obtaining permissions for the use of IP objects. APr must ensure that all elements of their advertisements, including music,

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images, videos, and texts, are used legally, respecting copyright and other IP rights. This requires them to negotiate and enter into licensing agreements with rights holders or their representatives, which involves paying licensing fees and adhering to certain content usage conditions.

In the USA, the process of licensing and obtaining permissions for the use of IP, as well as resolving disputes and conflicts in the AInd, is regulated by a comprehensive set of federal laws, including the Copyright Law of the United States (Title 17 of the USA Code). This law provides copyright protection for works such as literary works, music, images, and video materials used in advertising campaigns [9].

Acquiring licenses for the use of images or text in advertising involves a comprehensive process. Initially, one must identify the copyright owner of the desired content, often through databases or copyright registries. Subsequent to identification, it's necessary to negotiate the terms of use, which may include the scope of use, duration, and financial compensation. These negotiations result in a formal licensing agreement, granting the advertiser legal permission to use the copyrighted material within the agreed parameters [10]. The meticulous adherence to these procedural steps helps prevent copyright infringement disputes, fostering a legally compliant and ethical advertising environment.

In cases of disputes related to copyright infringement in advertising, participants may resort to legal proceedings to protect their rights. International practice also includes the active use of the WIPO Arbitration and Mediation Center system, offering alternative dispute resolution methods. This serves as an effective tool for international advertising campaigns, allowing parties to avoid lengthy legal proceedings.

Legal practice

In recent years, the AInd has faced various challenges related to IP rights that require companies and marketers to pay special attention to compliance with norms and laws.

In case *Davis v. Pinterest, Inc.*, ruled by the United States District Court for the Northern District of California, January 7, 2020, considered a secondary copyright

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infringement claim filed by professional photographer and digital artist Harold Davis against Pinterest. Davis argued that Pinterest does not have a system for screening images for copyright notices or other indications of copyright ownership associated with the «pinned» images, and instead of combating copyright infringements on its platform, Pinterest actually monetizes these images. The image could have been used for advertising purposes. In this case, the potential liability of the Pinterest platform for IP infringement is being considered. The court dismissed Davis's claim for secondary copyright infringement because he failed to provide evidence that Pinterest had actual knowledge of specific instances of copyright infringement by Davis. The image could have been used for advertising purposes [11].

In the *Carlos Vela v. Deadly Doll, Inc.* case, ruled by the United States District Court for the Central District of California, July 15, 2021, deals with copyright infringement of an advertising image [12]. Photographer Carlos Vila sued the fashion company Deadly Doll after it used his photo of model Irina Shayk on Instagram without his authorization. In the photo, Shayk was wearing Deadly Doll's sweatpants featuring a large illustration of a woman with a skull in her hands. Vila had licensed the image of Shayk for reproduction, but Deadly Doll's use of the photo on their social media account led to the lawsuit. Deadly Doll countered the lawsuit, claiming Vila was the infringer for capturing their copyrighted image on the clothing without permission. The case demonstrates the complexity of copyright issues in the fashion and social media context, especially when it comes to the use of images on platforms like Instagram.

Instagram employs several sophisticated algorithms and tools to identify and address copyright infringement, ensuring the protection of IP rights across its platform. A key component of Instagram's approach to copyright enforcement is its automated content recognition system, similar to Facebook's Rights Manager. This system scans and compares uploaded content against a database of copyrighted materials to detect potential infringements automatically. In this court case, the responsibility for IP infringement lies with the APr.

Conclusion

In the digital advertising landscape, the protection of IP stands as a pivotal concern, given that advertisements are inherently multimedia creations. This intertwining of advertising content with copyright demands vigilant oversight from both platforms hosting such content and the advertisers themselves. It is imperative that these entities rigorously enforce copyright laws to deter unauthorized use and swiftly address any infringements. This responsibility not only aligns with legal obligations but also underscores a commitment to fostering a culture of innovation and respect for creators' rights. The seamless integration of copyright enforcement mechanisms ensures that the digital marketing ecosystem operates within a framework of integrity and legal compliance, promoting an environment where creativity is safeguarded and flourished.

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