

SUMMARY

Key Words: property of spouses, intellectual activity, marriage., exclusive rights, means of individualization.

Subject matter: The rights of the spouses to the objects of intellectual rights created and acquired during the marriage and their material carriers

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The relevance of the research topic. Exclusive rights to the results of intellectual activity and means of individualization of goods, works and services are becoming increasingly important as intangible assets that can belong to both legal entities and individuals, including to the jointly acquired property of spouses. The IC of the Russian Federation is limited to indicating that the exclusive right to the result of intellectual activity created by one of the spouses belongs to the author of such a result. The Civil Code of the Russian Federation also provides that the exclusive right to the result of intellectual activity belonging to the author of such a result is not included in the common property of the spouses, but the income received from the use of such a result is the joint property of the spouses, unless otherwise established by the contract between them. At the legislative level, the issues of ownership of exclusive rights to the results of intellectual activity and means of individualization of goods and works have not been resolved.

The purpose of the work: identification of legal problems related to the use of objects of intellectual rights that are part of the property of spouses, and the disposal of rights to such objects, as well as the material carriers of such objects, at the current stage of development of legislation and the practice of its application, the development of theoretical provisions that reflect the essence of the legal relations that arise

Objective: analysis of the legal regime of intellectual property objects that are part of the property of the spouses, including those created and acquired during the marriage; study of the legal regulation of the disposal of exclusive rights to intellectual property objects belonging to the spouses; analysis of the procedure for obtaining and using the income of the spouses from the results of intellectual activity and means of individualization, depending on the attribution of such income to the jointly acquired or personal property of the spouses; analysis of the main legal problems related to the disposal of the exclusive right to the results of intellectual activity and means of individualization of goods, works and services that arise or are acquired during the marriage; consideration of problems related to the division in the event of divorce marriage of the jointly acquired property of the spouses, which includes exclusive rights and related material carriers; development of proposals for

The theoretical and practical significance of the research it is that the conclusions and provisions of the work can be used to further improve the current legislation regulating the rights of spouses to the objects of intellectual rights created and acquired during marriage and their material carriers, the practice of its application, the development of educational and methodological literature on the problems covered, in the process of teaching civil law courses in universities, as well as to become the basis for subsequent scientific research of the legal regime of intellectual rights in general.

Results of the study:

1. The list of jointly acquired property of spouses, established by article 34 of the Family Code of the Russian Federation, is not exhaustive. Based on the results of the study, a list of property rights and incomes was formulated that should be attributed to the joint property of the spouses in accordance with Article 34 of the Family Code of the Russian Federation.
2. When creating the result of intellectual activity in marriage, the author spouse to some extent uses the income or property of the family or the income or property of the second spouse. In addition, significant costs may be required for the registration of the transfer of rights,

maintenance of legal protection, the implementation of exclusive rights to the results of intellectual activity obtained through gratuitous transactions or acquired before marriage. In the event that the creation of a result of intellectual activity or means of individualization, obtaining or maintaining its legal protection, exercising or protecting rights to it required significant expenditures of funds that are not the personal property of the spouse-copyright holder, including if he is the author of the corresponding result, it seems advisable to provide the second spouse with the opportunity to receive a part of the income derived from the use of such a result or the disposal of the exclusive right to it, including in the event of the termination of the marriage, but without the right to authorize or prohibit the use of such a result, unless otherwise established by an agreement with its author.

3. The wording of a number of provisions of the Civil Code of the Russian Federation creates grounds for opposite conclusions. So, paragraph 3 of Article 1263 of the Civil Code of the Russian Federation provides for independent rights to remuneration arising from the composer and the author of the text of a musical work used in an audiovisual work, when such audiovisual works are publicly performed or communicated over the air or by cable, including by retransmission, then there is at any theatrical or television show. The right to remuneration provided for in paragraph 3 of Article 1263 of the Civil Code of the Russian Federation is another property right, inalienable, associated with the personality of the author, independent of exclusive rights or other property rights, and at the same time does not have any compensatory nature, in contrast to the remuneration subject payment for the reproduction of phonograms and audiovisual works for personal purposes (Article 1245 of the Civil Code of the Russian Federation), designed to compensate for the income not received by the copyright holders.

4. The inexpediency of using the concept of "joint property of spouses" in relation to property acquired by spouses during marriage has been substantiated, since such property includes, in particular, property rights, including exclusive rights that are not included in the concept of "property" in the most traditional a variant of its definition as real property, denoting the possibility of legal domination over the material objects of property rights (things). In the title of article 34 of the RF IC, the term "joint property of spouses" is used not in a legal, but in a social, economic or even everyday sense.

5. Income from labor activity in accordance with the RF IC is recognized as the common property of the spouses. The legislation has not yet resolved the question of whether the common property is the income received by the spouse from the use of personal property, for example, from the rental of an inherited apartment, income from the result of intellectual activity created by the author-spouse, or income from the result of intellectual activity or means of individualization, the owner of the exclusive right to which one of the spouses became before marriage

Recommendations:

- It seems necessary to establish in the legislation that even in cases where the exclusive right or the right to remuneration, which is part of such an exclusive right or established by special provisions of the law (Article 1245, paragraph 3 of Article 1263, Article 1293, paragraph 2 of Article 1295, Article 1326 Civil Code of the Russian Federation, etc.) are the personal property of one of the spouses, the income received during the marriage from the exercise of the exclusive right to the corresponding result of intellectual activity or the right to receive additional (compensatory or other) remuneration should be recognized as the joint property of the spouses. An exception may be payments of a targeted nature, directly related to the personality of the author, for example, compensation for moral damage caused by the violation of personal moral rights of the author.

- The exclusive right, which is jointly acquired property of the spouses, as well as a number of other property rights, cannot be classified as "property", in this connection we support the proposal of A.A. Rastorgueva who proposes to change the title of Article 34 of the RF IC, replacing the concept of "joint property of spouses" used in it with a broader concept of "common property of spouses";

- jointly acquired property should be recognized as income derived from the use of the result of intellectual activity or means of individualization, including in the case of disposing of the exclusive right to such a result or means, including the result of intellectual activity, created by the spouse-author during marriage. In connection with the above, it is necessary to introduce legal certainty regarding the regime of ownership of income received from the personal property of each of the spouses, by changing the provisions of Articles 34 and 36 of the RF IC.