

Current requirements for websites in Ukraine: legal aspects

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On 16 July 2022, amendments to the Law of Ukraine "On Ensuring the Functioning of Ukrainian as the State Language" (hereinafter referred to as "the Law") will come into effect. The Law regulates the use of the state language on the internet and languages of computer programs interfaces, installed in goods. Therefore, websites must be adapted to the new requirements.

In practice, the state language requirements, as well as other requirements of the current Ukrainian legislation are often violated through the use of commercial websites, which consist in the illegal use of various types of content. This can lead to the imposition of substantial fines on the website owners, and may also pose reputational risks. All website content should therefore be checked and, in the case of non-compliance with, for example, competition or advertising laws, such breaches should be rectified in a timely manner.

1. Requirements to the language of websites

The Law of Ukraine "On Protection of Consumer Rights" stipulates that consumers have the right to necessary, accessible, accurate, and timely information about products (goods, works, or services), their quantity, quality, assortment, manufacturers (performers, sellers) in the state (Ukrainian) language if such information is available on websites.

From 16 July 2022:

- any website owned by a company registered in Ukraine must be duly adapted. It is mandatory for a Ukrainian-language interface and a Ukrainian version of a website to be available;
- the Ukrainian language version shall be the primary one, downloaded by default for users in Ukraine for all profiles in social networks (YouTube/Viber/Telegram channels, etc.) used as online representations of business entities registered in Ukraine. These requirements also apply to online information resources;
- the Ukrainian-language version of online representations of foreign companies selling their products in Ukraine may have a smaller amount of information than the main version. However, the amount of such information must be sufficient for a user from Ukraine to fully understand the purpose of such a business entity;
- mobile applications of commercial entities selling goods or providing services in Ukraine must have a user interface version in Ukrainian;
- business entities providing services for Ukrainian consumers online (online stores, web-catalogues, etc.) are obliged to have a full version in the Ukrainian language, which should be the primary one, containing the maximum amount of information and being loaded by default.

It should be noted that in addition to the state language, the information on websites, web pages (YouTube/Viber/Telegram Channels, etc.), in mobile applications may be available in other languages.

To sum up, the absence of the Ukrainian-language version of a commercial website after 16 July 2022 may constitute a violation of the requirements of the Law by the website owner.

2. Content requirements for web sites

In addition to legal requirements regarding the use of the Ukrainian language on websites, other content that constitutes objects of intellectual property rights should likewise be mentioned. Such objects should be given sufficient attention and their commercial use should be legally analysed.

In particular, this applies to the following content:

- texts, articles, announcements of advertising and informational nature;
- information about promotions, competitions, discounts;
- graphics, design;
- commercials, videos, music banners;
- advertising banners;
- images of trademarks or slogans of other right owners;
- images of individuals and well-known persons;
- personal data, etc.

When checking the content of a website, special attention should be paid to the information of advertising and informational nature, in particular, whether such information contains any signs of unfair competition. Distribution of information misleading consumers, i.e., information containing incomplete, inaccurate, or false data (origin of goods, manufacturer, seller, method of production, price, etc.) is one of the most common violations of Ukrainian legislation on protection against unfair competition.

Graphic images, pictures of individuals (well-known persons) placed on a website require a thorough analysis as pursuant to the requirements of Ukrainian legislation, to place someone else's image on a commercial website it is necessary to have the permission from the right holder. Placing an image of an individual requires their written consent. We should not forget that such consent can be withdrawn at any time (directly by the individual or his/her relatives) with a claim for further compensation of damages if the image was placed with violations of Ukrainian legislation.

It is not uncommon to see bona fide posting of informational videos on websites. The use of copyrighted works in the news (news section of a website) as well as for educational or research purposes may be regarded as bona fide. The use of such videos for commercial (advertising) purposes is, however, not considered bona fide and requires, at a minimum, a written consent-permission from the owner of the video or similar content.

Regarding trademark images posted on websites, the main criterion is the availability of the relevant permission from its rightful owner.

One of the examples of unlawful use of trademark images is the case of the Antimonopoly Committee of Ukraine (AMCU) in which a Lviv-based distillery was fined for UAH 100,000 (approx. USD 3,390) for using the designation "ABSOLUT" without the permission of Absolut company (Sweden). Since Absolut company did not give the consent for the use of their trademark this was deemed a violation of competition law, and a fine was imposed on the Ukrainian plant.

Taking the above mentioned into consideration, commercial websites and their content should be thoroughly checked for their compliance with the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as the State Language" and other regulations of the effective Ukrainian legislation. This will ensure the timely identification and elimination of possible violations. Otherwise, the website owners may face liability.

3. Liability

The Parliamentary State Language Protection Commissioner (hereinafter referred to as "The Regulator") will be in charge of dealing with complaints about violations of Ukrainian law. The Regulator will be responsible for initiating investigations of violations, drawing up protocols and imposing fines on violators.

Starting from 16 July 2022, the Regulator will be able to impose fines, including fines for executives and employees of enterprises, institutions, and organizations of all forms of ownership, as well as for other individuals violating the requirements of the Law. The Regulator will be able to levy a fine from UAH 3,400 to 8,500 (approx. USD 115 to 290), if the violation is committed for the first time. A repeated violation of the requirements of the Law will be punishable with a fine of between UAH 8,500 and UAH 11,900 (approx. USD 290 to 405).

As for the unlawful use of images of third-party trademarks on a website, the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" provides ways to protect the violated rights. In particular, it provides for criminal liability in case of violation of copyright and related rights or unlawful use of a trademark or trade (business) name.

Ukrainian legislation on protection against unfair competition envisages significant penalties for infringements. If actions of business entities are defined by law as unfair competition, this leads to the imposition of a fine in the amount of up to 5% of the company's income (proceeds) from sale of products (goods, works, services) for the last accounting year preceding the year when the fine was imposed. Persons who suffered damage as a result of actions regarded as unfair competition may also apply to court with a claim for compensation.

The AMCU bodies or persons whose rights have been violated can also apply to court with a claim for removal of goods with the unlawfully used designation of copies of products of other companies from the commercial circulation.

As for unlawful use of images of individuals on a commercial website without prior consent for such use, the owner of the commercial website may be sued by the owner of such image (the author, the actor who is depicted in the image) for damages and substantial penalties due to the unlawful use of the image for commercial purposes or for self-promotion.

One example of misuse of images is a case involving the unlawful use of images of vehicles on the website of Autotrader company. Upon inspection, it was found that CarGurus, a company being an owner of an automotive research and shopping website, had unlawfully used images belonging to Autotrader. Autotrader proved in court that it owned the copyright to some 140,000 photographic images that were displayed on the CarGurus website. Autotrader claimed compensation of approximately USD 70,000,000 in court. However, the court concluded that this amount did not correspond to the infringement and ordered the defendant (CarGurus) to pay a fine of USD 280,000.

The owner of a commercial website may be fined five times the value of the information or advertising content distributed on the website for violating Ukraine's advertising laws.

4. What to pay attention to

Each commercial website is unique and requires legal analysis not only in terms of compliance with the Law of Ukraine "On Ensuring the

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Functioning of the Ukrainian Language as the State Language", but also a number of other legislative acts.

Under the Ukrainian legislation, when creating a commercial website or using an existing website, you should adapt or develop a new Ukrainian-language version of such website before 16 July 2022, and also perform a legal analysis of the website content in order to comply with the requirements of applicable laws, in particular:

- on protection against unfair competition;
- on consumer protection;
- on personal data protection;
- on copyright and related rights;
- advertising law;

Such a legal analysis requires the involvement of an expert with practical skills, who can quickly identify potential infringements of key and vulnerable components of the website, provide appropriate recommendations for remediation, and prepare the necessary documents. If a website owner intends to use relevant content (e.g., video, music, images) that has already been uploaded by another user or rightsholder, then it is necessary to contact the rightsholder directly and arrange for authorisation.

It should be noted that it is the owner of a commercial website who is responsible for the website content. And it is the website owner who shall be fined if the AMCU or the Regulator decides that the content right holders are entitled to a compensation.