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CURRENT ISSUES OF IMPROVING THE PROTECTION OF INTELLECTUAL PROPERTY AT THE INTERNATIONAL LEVEL

Abstract. In this article, the issues of the influence of international intellectual property documents on this area will be considered on the example of some foreign countries. Let's highlight the countries of the Anglo-Saxon legal system (first of all, the United Kingdom and the United States). The internal legislation of the countries of this group has its own individual characteristics. Based on the generalization of judicial precedents, we can identify particular codifications.

Keywords: intellectual property law, copyright, patent law, World Intellectual Property Organization, Berne Convention, Paris Convention.

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АКТУАЛЬНЫЕ ВОПРОСЫ СОВЕРШЕНСТВОВАНИЯ ОХРАНЫ ОБЪЕКТОВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ НА МЕЖДУНАРОДНОМ УРОВНЕ

Аннотация. В настоящей статье будут рассмотрены вопросы влияния международных документов в области интеллектуальной собственности на данную сферу на примере некоторых зарубежных стран. Выделим страны англосаксонской системы права (прежде всего это Великобритания и США). Внутренне законодательство стран этой группы обладает своими индивидуальными особенностями. На основе обобщения судебных прецедентов можем выделить частные кодификации.

Ключевқе слова: право интеллектуальной собственности, авторское право, патентное право, Всемирная организация интеллектуальной собственности, Бернская конвенция, Парижская конвенция.

Muqumov Bobur Meliboy o‘g‘li
Toshkent davlat yuridik universiteti o‘qituvchisi

INTELLEKTUAL MULK OBYEKTLARINI XALQARO DARAJADA MUHOFAZA QILISHNI TAKOMILLASHTIRISHNING DOLZARB MASALALARI

Annotatsiya. Ushbu maqolada intellektual mulk sohasidagi xalqaro hujjatlarning ayrim xorijiy mamlakatlar misolida ushbu sohaga ta'siri masalalari ko'rib chiqiladi. Biz Anglo-sakson huquq tizimining mamlakatlarini ajratamiz (birinchi navbatda bu Buyuk Britaniya va AQSh). Ushbu guruh mamlakatlarining ichki qonunchiligi o'ziga xos xususiyatlarga ega. Sud pretsedentlarini umumlashtirish asosida biz shaxsiy kodifikatsiyalarni ajratib ko'rsatishimiz mumkin.

Kalit so'zlar: intellektual mulk huquqi, mualliflik huquqi, patent huquqi, Jahon intellektual mulk tashkiloti, Bern konvensiyasi, Parij konvensiyasi.

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It should be noted that the conclusion of multilateral international agreements has reduced the importance of bilateral ones, but, as A. Troller noted, they "did not completely push them aside"[1]: for example, agreements and declarations of reciprocity that were concluded or exchanged between the United States and the member countries of the Berne Union were of great importance before the United States joined the World Convention. Bilateral agreements can be concluded both by States not participating in multilateral agreements and by those participating in them. They can also be concluded, on the one hand, by a State party to a multilateral agreement, and on the other - by a State not participating in this agreement - no restrictions are provided in this regard.

It should be noted that, despite the existence of international legal regulation in this area, it is still extremely difficult to recognize subjective intellectual rights abroad in the understanding of private international law.

In the United States, the first state copyright laws appeared before the French and American Revolutions. The Massachusetts Law of March 17, 1789 stated that "there is no property belonging to a person more than that which is the result of his mental labor." It was soon recognized in the United States that it was necessary to adopt a federal copyright law. The U.S. Constitution granted Congress the right to "encourage the development of sciences and crafts, providing for a certain period of time to authors and inventors the exclusive right to their writings and discoveries". [2]

It should be noted that within the EU there are significant differences between approaches to the regulation of intellectual rights: the states of the Romano-German legal family traditionally adhere to the concept of natural rights, according to which intellectual property is a "natural, natural and sacred" human right to the results of his creative activity.[3] On the contrary, for the States of the Anglo–Saxon legal family, intellectual property law is a kind of property right.

A number of developing countries also have their own peculiarities and legislation: for example, in Algeria, Egypt, Iraq, Peru, and Syria, conflict of laws rules are directly contained in civil codes, as well as so-called rules on the legal status of foreign companies aimed at freeing the economies of these countries from the influence of foreign capital.[4]

Currently, the vast majority of sovereign states are struggling with problems in the field of intellectual property recognition between countries, i.e. the territorial nature of copyright is in play. It is possible to solve all this only by observing the right of each State to determine, in accordance with its cultural and economic policy, the conditions for recognizing copyrights to works by foreign citizens.

Let's list three main ways in which intellectual property rights are determined in international practice, which originally arose in one state and then received recognition in another:

1) recognition of copyrights originally originated in another country on the basis of reciprocity;

2) conclusion of bilateral agreements between States;

3) conclusion of multilateral agreements.

Historically, the practice of providing protection of the rights of foreign citizens on the basis of reciprocity has developed earlier than others, and the requirement of reciprocity was directly fixed in the domestic legislation of States.

In some countries (for example, in France, according to the law of 1852), the rights of foreigners were protected without the requirement of reciprocity. The current legislation of a number of States currently allows for the possibility of recognizing copyrights that have arisen outside the relevant State on the basis of reciprocity.[5]

Subsequently, bilateral agreements on mutual copyright protection began to be concluded: in the 19th century, and in some cases in the 20th century, bilateral obligations in the field of copyright were expressed in the form of separate articles or appendices to trade agreements; then there was a need to conclude independent bilateral agreements specifically devoted to the regulation of all or individual copyright issues in the relations between States.

At the end of the 19th century, the first multilateral agreement in the field of copyright appeared - the Berne Convention for the Protection of Literary and Artistic Works of 1886; the States that signed this convention formed the so-called Berne Union. In the middle of the XX century, the second major multilateral agreement in this area was concluded - the World Copyright Convention of 1952.

In addition to multilateral conventions of a general nature, such as the Berne and World Conventions, a number of other international agreements have also been concluded in the field of copyright and related rights:

a) of a special nature:

• The Rome Convention for the Protection of the Rights of Performing Artists, Producers of Phonograms and Broadcasting Organizations, concluded in 1961;

• The Convention on the Protection of the Interests of Producers of Phonograms from Illegal Reproduction of Their Phonograms, signed in Geneva in 1971;

• The Convention on the Dissemination of Program-Carrying Signals Transmitted via Satellites, signed in Brussels in 1974;

b) regional agreements (these are numerous Pan-American conventions, a number of European agreements, as well as an Agreement on Cooperation in the field of Copyright and Related Rights Protection signed in Moscow in 1993 by the CIS member states).[6]

The Prussian Civil Code of 1794 established that "if a subject of the king has received the right to publish a book, no one can infringe the copyright on it." The first all-German law was issued in 1837.

In Denmark and Norway, a decree passed in 1741 and in force until 1814 granted authors and their legal successors lifelong ownership of works.

In Spain, in 1762, during the reign of Charles, a copyright law was passed indicating that the privilege of publishing a book would be granted "only to its author."

In the Russian Empire, the first copyright law dates back to 1830. It concerned only literary works.

Until the first half of the 19th century, when international copyright protection first appeared, international practice did not know such categories as intellectual property or concepts comparable to it: the right of ownership (and as a result, the right to protection of such) could only apply to specific embodied works of art (paintings, sculptures, etc.).

Following the very definition of a work, it is an immaterial good: "A work as a really existing phenomenon of the world around us acts as a complex of ideas and images that have received their objective expression in a finished work", "an individual and unique reflection of objective reality"; "a work is the result of human mental activity, and the human brain can

produce only immaterial objects"- therefore, it was fundamentally wrong to identify the work and its material reification. [7]

The international legal recognition of works of literature, science and art as independent objects of protection had its historical conditionality, and the economic factor prevailed here: the widespread introduction of universities, the opening of a large number of public libraries, the further development of book trade, the expansion of the circulation of books, the widespread study of foreign languages, the possibility of free movement within Europe - all this created new the conditions for publishing, and the works of intellectual labor themselves began to meet almost all the characteristics of the product.

In 1858, at the Congress of authors of works of literature and art in Brussels (it was attended by delegates from various societies of writers, universities, scientists, lawyers from 14 countries), the idea of the need for a complete equation in the rights of foreign and national authors was officially expressed for the first time. This was followed by the so-called literary congresses in Antwerp (1861 and 1877) and in Paris (1878). At the last of them, at the suggestion of the French lawyer E. Clune, a resolution was adopted, which contained a wish to develop a convention. [8]

The developed countries of the West sought to preserve the Berne system intact. In particular, these countries include the United Kingdom, France, and Italy, the principles of which are reflected in a special declaration relating to Article XVII of the Universal Convention. This declaration, called in the literature the Clause de sauvegardedela Conventionde Berne ("protective clause in relation to the Berne Convention"), provides for the following two rules:

1) If a country withdraws from the Berne Union after January 1, 1951, the works of which it is the country of origin will not enjoy the protection provided by the Universal Convention in the countries of the Berne Union.

2) The World Copyright Convention is not applicable in relations between countries bound by the Berne Convention to the protection of works whose country of origin, according to the terms of the Berne Convention, is one of the countries of the Berne Union.

Despite the fact that the Berne and World Conventions met the requirements of the time, their provisions were constantly supplemented and revised. So the next diplomatic conference introduced 1971. I made my own adjustments in Paris. In accordance with the amendments and additions made to the Berne Convention, the range of subjects of convention protection has expanded: such protection is now provided to citizens of the countries of the Union even in cases when their work was published outside the territory of the countries of the Berne Union (and not only to persons, regardless of their nationality, whose works were first published on the territory of the countries of the Berne Union). In addition, a number of rules have been included in the text of the Berne Convention to facilitate the dissemination of translated literature for educational and scientific purposes in developing countries.

The World Convention was also supplemented with rules concerning the use of works in developing countries (they are similar to the rules introduced in the text of the Berne Convention); in addition, a rule (art. IVbis) on the reproduction, public performance and transmission of works by radio was included in it.

The World Copyright Convention (Geneva Convention, English Universal Copyright Convention) is an international agreement for the protection of copyright, operating under the patronage of UNESCO. The Convention was adopted at the Intergovernmental Copyright

Conference in Geneva on September 6, 1952 and revised in Paris on July 24, 1971. The purpose of the convention was to ensure that no country remained outside the framework of the international copyright protection system.

The World Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works declaratively prescribed and obliged all the acceding States to take certain actions aimed at protecting copyrights within the framework of national legislation.

To date, no changes or additions have been made to the official texts of the Berne and World Conventions and have not been revised.

Therefore, it is necessary to consider the impact of the Berne Convention for the Protection of Literary and Artistic Works and highlight the main points from its content, in relation to the domestic law of the State.

The Convention was supposed to provide flexibility for the Contracting Parties in the event of the retention or introduction of new exceptions in their national laws. Thus, when the Convention was created, it was assumed that its main provisions should be mandatory included in the national legislation of the participating countries in cases where the latter provides a less favorable regime for copyright holders - this manifested the desire of the creators of the Convention to unify the basic provisions of copyright.

The original idea of creating a kind of international law that would regulate the entire range of copyright relations of the participating countries in a single manner was not successful due to serious discrepancies between the laws of different states. Therefore, the conclusion of the Berne Convention, as well as subsequently the conclusion of the Universal Convention, did not lead to the creation of any uniform substantive copyright: As noted in the literature, it is not a question of creating a model law (loi-type) as a general basis for national legislation.[9]

Further steps in this direction seem to be the convergence of the legislation of various countries in the field of intellectual property, in particular, in the field of copyright protection, as well as the conclusion of new international treaties allowing to expand the list of copyright restrictions as a legal means of ensuring a fair balance of private and public interests.

Thus, contained in the modern text of the Convention and adopted at the Brussels Conference of 1948, the term of protection is determined for the author for life, as well as for the next 50 years after his death (Part 1 of Article 7). For cases where the national legislation of the country of protection provides for a longer period than 50 years, the earlier one is preserved In the editions of the Convention, the principle of comparing deadlines, and after the Stockholm Conference of 1967, this principle is only optional (Part 8 of Article 7).

Later, already at the Stockholm Conference in 1967, the 50-year term of protection was extended to works of cinematography, starting from the moment when, with the consent of the author, the work became available to the public or, if this did not happen, from the moment of creation of the work (part 2 of Article 7); there, the minimum period was introduced for works photography and applied art and is set at 25 years since the creation of the work (Part 4 of Article 7).

International copyright law distinguishes the personal and property rights of authors. The Berne Convention deals with the regulation of the personal rights of authors in Article 6 bis, adopted at a conference in Rome (1928), and then amended in 1948 in Brussels. Such rights in the Convention are understood as the right of authorship and the right to inviolability of the work.[10]

However, these documents do not define either the amount of liability or the list of liability measures that must be applied to the infringer of intellectual property rights. In fact, this has been left "at the mercy" of the legal mechanisms of individual countries in whose territory this or that offense took place.

At the moment, there is a tendency in relations between different states to strengthen international organizations of specialized scientific, technical and humanitarian fields. [11]

In relation to the Berne Union, it is characterized by:

1) The expansion and strengthening of international legal cooperation between States, involving an increasing number of participants, especially developing countries.

2) The desire to improve and modernize the structure of the existing organizations themselves, to bring it into line with the structure of other modern international organizations. [12]

3) A change in cooperation, which manifests itself in increasing the effectiveness of substantive legal norms.

4) The universalization of individual international unions.

5) By increasing their role in the system of international organizations and transforming them into a specialized agency of the United Nations.[13]

At the time of the convening of the Stockholm Conference in 1967, the need to create a new international organization was due to the fact that the organizational forms of the Berne Union were outdated.[14]

At the Stockholm Diplomatic Conference of the member States of the Paris and Berne Unions, a convention was developed and adopted, establishing a new organization. The conference was held from June 11 to July 14, 1967. It was attended by 418 delegates from 74 UN member states, as well as 100 observers from 40 international organizations. Representatives of the States decided in favor of the creation of WIPO.

It should be noted that WIPO reflects the interests of developing countries importing intellectual property. WIPO exercised its powers in relation to States in the following three groups:

1) Stimulating and improving the protection of intellectual property in the world, including improving the national legislation of various countries and providing interested States with legal and technical assistance in these matters.

2) Administrative management of existing unions, management of other unions that will be created in the field of intellectual property protection, and cooperation with other international and national organizations.

3) Information activities and international registration of a number of intellectual property objects.

Based on the above, it should be noted that international legal regulation in the field of intellectual property is especially necessary. Only coordinated and complementary measures taken not only at the national but also at the international level will make it possible to effectively exercise and protect intellectual rights when using the results of intellectual activity in information and telecommunications networks. A study of the norms of domestic and foreign legislation, as well as law enforcement practice in the field of intellectual property, shows that taking into account in national legislation the principles reflected in international legal acts (in particular, TRIPS, the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty

and other acts) is especially important to improve the effectiveness of the law enforcement process.

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