ARTICLES

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Copyright. Comparative essay

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Abstract. *In this research paper, the authors conducted a comparative legal study of the concept and types of copyrights in the legislation of Russia, Great*

Britain and France. In particular, this study argues that subjective copyright represents the main content of the legal status of both the author and other right holders. Accordingly, the object of the study is the legislation of Russia, Great Britain and France, as well as the theoretical provisions revealing the features of the copyright system in the intellectual property law of the considered countries. The article reveals the peculiarities of the construction of the system of personal non-property and property rights of the author. The conducted study reveals the similarities and differences in the legislation approaches of the considered countries as to the formulation and classification of copyrights, as well as to the determination of their content.

Keywords: *copyright, copyrights, personal non-property rights, exclusive rights, property rights.*

1. Introduction

This article is devoted to a comparative analysis of the personal non-property and property rights of the author under the legislation of the Russian Federation, Great Britain and France. In the Berne Convention for the Protection of Literary and Artistic Works of 1886 (hereinafter — the Berne Convention) in accordance with Article 6bis the personal non-property rights of the author include the following: the right to demand recognition of authorship; the right to object to certain changes and other actions that violate rights. In addition, subject to certain limitations and exceptions, the Berne Convention lists certain powers that must be recognized as the author's exclusive rights. These rights include: the right to translation; the right to adaptation and arrangement of the work; the right to public performance of dramatic, musical-dramatic and musical works; the right to public reading of literary works; the right to communication to the public of performances of such works; the right to broadcast; the right to reproduce the work by any means and in any form; and the right to use the work as the basis for an audiovisual work, and the right to reproduce such a work. Great Britain and France were among the first parties to this Convention. The Russian Federation acceded much later — already in 1995. At the same time, in this article the peculiarities of the normative fixation of copyrights in the legal systems of the Russian Federation, Great Britain and France will be considered.

2. Methods

The research methodology is expressed by systemic, structural-functional, structural-logical, descriptive, institutional, comparative-legal, as well as

dialectical methods of scientific knowledge, collection, and analysis of scientific and practical material.

3. Results and discussion

The copyright law of the countries belonging to the Romano-Germanic family of laws is based on two conceptions of understanding the legal essence of subjective copyright. These concepts are generally opposed to the concept of "copyright", existing in the countries of Anglo-Saxon legal system and prevailing in countries such as the US and UK. Although it should be noted the increasing influence of the EEC on the process of copyright formation in some countries[1]. These theories of copyright have been called dualistic and monistic theories of copyright. The French copyright law is traditionally based on the dualistic concept of copyright. The copyright dichotomy pervades all French copyright law and is the legal basis on which the entire system of French copyright, as a legal institution of intellectual property law, is built. The moral and proprietary rights of the author have a very different legal regime. Thus, the property rights of the author can be limited in order to ensure the interests of society and the state, for example, for educational, informational and cultural purposes. Moral rights of the author cannot be limited under any conditions.

At the same time, it is necessary to take into account the fact that copyright in general is regarded as a special category of rights, which has an intangible nature and has its own special characteristics. Among the most important characteristics of the rights of the author of a work is their independence from the material object in which the work is expressed, so that the transfer of ownership of the thing in which the work is embodied, in accordance with Article L 111-3 of the French Intellectual Property Code (hereinafter the Code) does not entail the assignment of property rights[2]. The exceptions are the cases of posthumous publication (promulgation) of the work (art. L 123-4 of the Code). It is necessary to notice that in France for a long time the proprietary conception of copyrights had a certain success, according to which the copyright

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[1] *Annabelle Littoz-Monnet*. Copyright in the EU: droit d'auteur or right to copy? // Journal of European Public Policy. No. 13:3. 2006. Pp. 438–455.

[2] Loi n° 92–597 du 1 juillet 1992 relative au Code de la propriété intellectuelle (partie législative) [Law No. 92–597 of July 1, 1992 on the Intellectual Property Code (legislative part)] // Journal officiel de la Republique française du 3 juillet 1992 [Official Journal of the French Republic of July 3, 1992].

was recognized either as a literary property or as a special kind of property right[1].

The moral rights of the author form the basis of copyright in general. This is another difference from the system of copyright protection that exists in the United States. The emergence of proprietary copyrights on a work is in most cases directly related to the presence of moral rights in the subject. Moreover, the author's property rights are derived from moral rights. The norms of the Code, regulating the legal regime of service works, can serve as an example. Provisions of articles L111-1, L131-1 of the Code prove that French copyright law as a rule does not provide any exceptions to proprietary rights of an author (employee). Thus, the author has all the copyrights to the work created by him, regardless of the fact of the existence of an employment relationship with the employer. In contrast to other countries, in particular the Russian Federation, the author's property rights on an official work, except for some exceptions, according to Article L 111-1 of the Code, belong to the author and may be used by the employer on general grounds.

The moral rights of the author have, according to Art. L. 121-1 of the Code, the properties of timelessness, inalienability, inseparability from the personality of the author and include the right of authorship, the right to respect for his name, the right to respect for his work (right of inviolability), the right of disclosure and the right of revocation.

It must be said that the right to authorship and the right to respect for one's name are often combined under one of these names. These rights are interpreted in French law as the right to be recognized as the author of a work and the right to demand to be identified as the author of the work when using it. As noted in some sources, the right to respect for one's name is subject to certain limitations. These restrictions are that the author's right to name extends only to the use of his works, i.e., the product of his creative activity. Judicial practice also adheres to this position. Thus, the court made a decision to reject the claims of the author to the company Coca-Cola to stop the distribution in France of the drink, the name of which coincided with his name, which he used in his creative activity[2].

The right of disclosure is of the utmost importance in French copyright. The right of disclosure is a kind of starting point for the author's exercise of

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[1] *Recht P.* Le droit d'auteur, une nouvelle forme de propriété: histoire et théorie [Copyright, a new form of property: history and theory]. Paris: Éditions J. Duculot, 1969. P. 230.

[2] Cour de cassation, civile, Chambre civile 1 [Court of Cassation, Civil, Civil Division 1].10 avril 2013, 12–14.525. Publié au Bulletin I, n° 72.

his property rights. The right of disclosure is the exclusive right of the author to make his work available to the public. Thus, legal value has exactly bringing of product to information of wide layers of public. If the work was presented in a narrow circle of people, then such a presentation may not be regarded as promulgation. The significant problem from the practical point of view may be the situation when the only material carrier of the work, existing in the original, is held by one person, and the rights of disclosure belong to, for example, another author. In this case, according to Article L 111-3 of the Code, the author, and his successors in title cannot demand from the owner of the material carrier, in which the work is expressed, to provide them with this object for exercising the right of disclosure. However, in the event of an abuse of right by the owner preventing the exercise of the right of disclosure, the court may take appropriate measures in accordance with the provisions of Article L. 121-3 of the Code.

The right of revocation is the most rarely exercised copyright right. Its meaning, in terms of Article L. 121-4 of the Code, is that the author has the right to withdraw his work from circulation after its promulgation on condition of prior compensation of damages from this action to the person who obtained the right to use the work. The specificity of the right of revocation in French law is also the fact that if the author, after exercising his right of revocation, decides to make the work public again, the person who used the work before its revocation enjoys the preferential right to contract with him under the previous conditions.

Of course, the most important part of the copyright system in France is the author's property rights. Property rights of the author are characterized by their fixed-term nature, secondary to morality and the ability to be subject to agreements on the use of the work[1]. Another feature of French copyright is the absence of an extensive list of powers which would be part of the property right of the author or an equally extensive list of separate property rights. The French law traditionally proceeds from the existence of two rights of the author: the right of reproduction and the right of representation. These rights are interpreted as broadly as possible and in practice include all the powers. In any case, the exceptions to the mentioned copyright property rights are to be interpreted restrictively (L 122-5 of the Code). An example of the restrictive interpretation is the rules on the use of images of works of fine art in open

[1] *Balázs Bodó, Daniel Gervais, João Pedro Quintais.* Blockchain and smart contracts: the missing link in copyright licensing? // International Journal of Law and Information Technology. Volume 26. Issue 4. winter 2018. P. 334.

public spaces[1]. Their existence is due to the fact that "the exclusive right must be balanced with other social purposes"[2].

The right of representation is understood as the right to bring a work to the public by any means, including public display, public live performance, television broadcast, dramatic performance, etc. Thus, the right of representation covers both the cases of direct and indirect use of works and includes a variety of powers related in one way or another to the presentation of a work to the public.

In turn, the right of reproduction is connected to the fixation of the work by any means on a material medium to the public in an indirect, indirect way. An example of such use would be printing the work on any medium: photographs, plastic works, magnetic and video recordings of the work, etc.

According to the UK legislation, according to the Copyright, Designs, and Patents Act 1988 (hereinafter Copyright Act) copyright includes personal and proprietary rights[3]. The changes of the legal regulation in this field were the subject of the research of many scientists, but in this article the mentioned rights will be considered without the retrospective aspect, namely in the condition in which their legal regulation is at the moment of writing this article[4].

The property right of the author is the exclusive right to use the work as follows: copying of the work; distribution of a copy of the work to the public; rental of the work; public performance, demonstration, or playing of the work; making the work available to the public; adaptation of the work.

Copying of a literary, dramatic, musical or artistic work means reproduction of the work in any material form. With respect to an artistic work, copying includes making a copy in three dimensions of a two-dimensional work and

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[1] *Dulong de Rosnay, Mélanie and Pierre-Carl Langlais.* Public artworks and the freedom of panorama controversy: a case of Wikimedia influence // Internet Policy Review. No. 6.1 (2017). P. 6.

[2] *Cartwright, Madison*. Business conflict and international law: The political economy of copyright in the United // REGULATION & GOVERNANCE. Volume 15. Issue 1. P. 152.

[3] Copyright, Designs and Patents Act 1988 [Electronic resource] // URL: https://www.legislation.gov.uk/ukpga/1988/48/contents.

[4] *Bonadio E.* Street art, graffiti and copyright: A UK perspective // The Cambridge Handbook of Copyright in Street Art and Graffiti, 2019. Pp. 159–174; *Cook T.* UK implementation of the Copyright in the Information Society Directive // Computer Law and Security Report. No. 20 (1). 2004. Pp. 17–21; *Gadd E.* An examination of the copyright clearance activities in UK higher education // Journal of Librarianship and Information Science. No. 33 (3). 2001. Pp. 112–125; *Sykes J. R.H.* Look and feel has UK copyright protection // Computer Law and Security Report. No. 6 (4). 1990. Pp. 30–31; *Masiyakurima P.* The futility of the idea/expression dichotomy in UK copyright law // IIC International Review of Intellectual Property and Competition Law. No. 38 (5). 2007. Pp. 548–572.

making a copy in two dimensions of a three-dimensional work. Copying, in relation to a film or television broadcast, includes taking a photograph of all or any substantial part of any picture which forms part of the film or television broadcast. Copying of the typographical arrangement of a published publication means making a facsimile copy of the arrangement.

Hiring means making a copy of a work available for use under the conditions that it will or may be returned for direct or indirect economic or commercial benefit. Lending means making a copy of a work available for use under conditions that it will or may be returned, other than for direct or indirect economic or commercial benefit, through an institution accessible to the public.

Public performance of a work means its reproduction through lectures, addresses, speeches and sermons, and generally includes any mode of visual or acoustic presentation, including presentation by means of sound recording, film or broadcast of the work.

Communication to the public of a work means communication by electronic transmission and broadcasting of a work, and making the work available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

Adaptation with respect to a literary or dramatic work, other than a computer program or database, means a translation of a work; a version of a dramatic work in which it is transformed into a non-dramatic work or, as the case may be, a non-dramatic work in which it is transformed into a dramatic work; a version of a work in which the story or action is conveyed entirely or mainly through images in a form suitable for reproduction in a book, newspaper, magazine.

In the case of a computer program, adaptation means a layout or modified version of the program or a translation thereof.

In the case of a musical work, adaptation means an arrangement or transcription of the work.

Consider the personal rights of the author. First, the author's right to a name. The author of a literary, dramatic, musical, or artistic work and the director of a copyrighted film have the right to be identified as the author or director of the work. The author of a literary work (other than words intended to be sung or spoken with music) or dramatic work has the right to be identified. For example, when a work is published for commercial purposes, publicly performed or made available to the public. Thus, the author has the right to be identified on copies of a film or sound recording, including a work that is released to the public. It

also includes the right to be identified whenever a work is adapted as the author of the work from which the adaptation is made.

The next personal right of the author, guaranteed by law, is the right to object to derogatory treatment of the work.

The creator of an authored literary, dramatic, musical, or artistic work, as well as the director of a copyrighted film, have the right not to subject their work to derogatory treatment. Thus, the treatment of a work is derogatory if it amounts to perversion or distortion of the work, or is otherwise harmful to the honor or reputation of the author or director.

The next personal right is the right to object to false attribution. This is the right to prevent the false attribution of literary, dramatic, musical, or artistic works to a citizen as the author and to prevent the false attribution of a film to him as the director; in this section, "authorship" with respect to such work means a statement (express or implied) as to who the author or director is. The right in question prevents, for example, a known author being credited as the author of a story he did not write.

A fourth personal right under the UK Copyright Act is the right to privacy of certain photographs and films. This right allows someone who has commissioned a photo or film for personal and home purposes to prevent it from being published or displayed. For example, it would allow you to prohibit a photographer from posting your wedding photos on their website without your permission.

As for the right to follow, which belongs to the category of other rights of the author under the legislation of the Russian Federation, in the legislation of Great Britain it is better known as the right of resale and does not belong to the category of "other" rights of the author. This right is already enshrined in another law, namely in the Regulation on the resale right of the artist, 2006[1]. The content of this right is similar to that contained in Part Four of the Russian Civil Code, which gives authors of original works of art (including paintings, prints, sculpture, and ceramics) the right to receive a royalty each time one of their works is resold through an auction house or art market professionals[2].

According to the legislation of the Russian Federation, for the results of intellectual activity and similar means of individualization (intellectual

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[1] The Artist's Resale Right Regulations 2006 [Electronic resource] // URL: https://www.legislation.gov.uk/uksi/2006/346/contents/made?wrap=true.

[2] Grazhdanskii kodeks Rossiiskoi Federatsii (chast chetvertaya) ot 18.12.2006. No. 230-FZ [Civil Code of the Russian Federation (Part Four) of 18.12.2006. No. 230-FZ] // Parlamentskaya gazeta [The Parliamentary Newspaper]. No. 214–215. 21.12.2006.

property) by virtue of article 1226 of the Civil Code of the Russian Federation are recognized intellectual rights, which include the exclusive right, which is a property right, as well as personal non-property rights (right of authorship, right to name, right to inviolability of works, right to publicity, right to recall, right to inviolability of performance) and other rights (for example, right of succession, right of access, etc.).

The personal non-property rights of the author include: the right of authorship, the right of the author to a name, the right to inviolability of the work.

The right of authorship is the right to be recognized as the author of a work; the right of the author to a name is the right to use or allow the use of a work under one's own name, a fictitious name (pseudonym) or without a name, i.e., anonymously. These rights are inalienable and non-transferable, including when the exclusive right to a work is transferred to another person or transferred to him and when granting another person the right to use the work. The waiver of these rights is void.

The right to inviolability of a work implies the prohibition of making changes, cuts, and additions to the work, supplying illustrations, a foreword, an afterword, comments or any explanations to the work when using it, if there is no consent of the author.

When using a work after the author's death, the person who has the exclusive right to the work has the right to allow changes, cuts, or additions to the work, provided that this does not distort the author's intention and does not violate the integrity of the perception of the work and does not contradict the author's will expressly express in a will, letters, diaries, or other written form.

The Decree of the Plenum of the Supreme Court of the Russian Federation of 23.04.2019 No. 10 "On the application of Part Four of the Civil Code of the Russian Federation" clarifies the difference between the author's right to inviolability of the work and the author's right to process the work, which is one of the rights within the exclusive (proprietary) right[1].

Thus, according to this Decree, the right of inviolability concerns such modifications of a work which are not connected with creation of a new work on the basis of the existing one. Revision of a work implies creation of a new (derivative) work on the basis of an existing one. The right to process a work

[1] Postanovlenie Plenuma Verkhovnogo Suda RF ot 23.04.2019 No. 10 "O primenenii chasti chetvertoi Grazhdanskogo kodeksa Rossiiskoi Federatsii" [Resolution of the Plenum of the Supreme Court of the Russian Federation of 23.04.2019 No. 10 "On the Application of Part Four of the Civil Code of the Russian Federation"] // Rossiiskaya gazeta [The Russian Newspaper]. No. 96. 06.05.2019.

may be transferred among other rights as part of the transfer of exclusive rights under an agreement on alienation of exclusive rights in full, or granted under a licensing agreement, and may also be transferred on the grounds stipulated by law without conclusion of an agreement with the right holder (by way of inheritance, universal succession and in other cases).

In addition, the same Decree states that, when considering cases of infringement of the exclusive right to a work through the use of its processing, to satisfy the claimed claims, it must be established that one work was created on the basis of another. In this case, creation of a similar (for example, due to the fact that the same source information was used by two authors) but creatively independent work does not constitute an infringement of the exclusive right of the author of the earlier work. In this case, both works are independent objects of copyright. Thus, the court does not deny the possibility of existence of parallel creativity.

The category of "other rights" of the author includes the right of access, the right of succession, and the right to receive official remuneration. At the same time, these rights can also be referred to the category of personal rights, as they are inseparably connected with the personality of the author.

The right of access gives the author of a work of fine art the opportunity to demand from the owner of the original work the right to reproduce his work. However, the owner of the original work cannot be required to deliver the work to the author.

In addition, the author is entitled to remuneration from the seller in the form of a percentage of the resale price if he alienates the original work of fine art at each resale of the respective original, in which a legal entity or individual entrepreneur (in particular, an auctioneer) participates as an intermediary, buyer, or seller.

The exclusive (proprietary) right of the author of a work or other right holder gives the right to use the work in any form and in any way not inconsistent with the law. Legislator in part four of article 1270 of the Civil Code lists the possible ways of such use. The said article lists eleven different actions, which are the ways of using the works, each of which can be transferred separately, according to the license agreement. However, this list is not exhaustive.

These acts include, for example, the reproduction of a work, which is the making of one or more copies of the work or a part of it in any material form.

The following actions are also recognized as use of a work:

1) distribution of a work by selling or otherwise alienating its original or copies;
2) public display of a work;

3) importing an original or copies of a work for the purpose of distribution;
4) rental of an original or copy of a work;
5) public performance of a work, i.e., presentation of a work in live performance or by technical means, as well as demonstration of an audiovisual work in a place open to the public;
6) communication of a work to the public by radio or television;
7) communication to the public by cable, i.e., communication of a work to the public by radio or television, by cable, wire, optical fiber or similar means;
8) translation or other revision of a work;
9) practical implementation of an architectural, design, urban planning or landscaping project;
10) making the work available to the public in such a way that any person may access the work from any place and at any time of his own choosing (making the work available to the public).

4. Summary

Thus, the copyright of the countries under consideration is based on the concept of principled distinction of copyright into two kinds: moral (personal non-property rights of the author) the author's rights and property rights. Of course, the normative consolidation of moral rights and proprietary rights of the author has its own features in each legal system, but to a greater extent these features are due to the specific legislative technique.

5. Conclusions

The study of the copyright system in the legislation of the Russian Federation, Great Britain and France shows that this system is currently developing in line with the traditions of the dualistic concept of copyrights. At the same time, moral (personal non-property) rights of the author continue to play a decisive role and are considered as a source of property rights of the author. Property rights of the author are stated in the most general way, which gives the French jurisprudence wide opportunities to specify these rights in case of disputes.

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