COMMON REGULATIONS ON THE LEGAL SOURCES, PRINCIPLES AND OBJECTS OF THE COPYRIGHT LAW OF RUSSIAN FEDERATION(*)

Valeriya Tyumentseva(**)
Abogada rusa

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e-mail: privatelaw@privatelaw.ru

RESUMEN

Las provisiones de la Ley mencionadas serán examinadas. Sin embargo, debe ser considerado según la ley Federal del 18 de diciembre, 2006, No. de 231 FZ "acerca de la implementación de la parte 4 del Código Civil de Federación Rusa", la ley antedicha dejará su fuerza legal simultáneamente con la entrada de la fuerza de la Parte 4 del Código Civil de Federación Rusa.

Las relaciones que desarrollan se refieren a los resultados de las actividades creadoras del propietario de Derecho de Autor son regulados por la Ley Federal de Federación Rusa No. 5351-1 "acerca del Derecho de Autor y los Derechos vecinos que fue publicado por el Alto Concilio de la Federación Rusa el 9 de julio, 1993, y entrado con fuerza el 3 de agosto del mismo año.

A pesar de las diferencias en los sistemas legales de Reino Unido y Rusia con respecto a esos sistemas legales, que a ellos son relacionados –el sistema de ley no escrita que actúa en el Reino Unido, y en el sistema legal continental que actúa en Rusia–, en tiempo actual hay una tendencia de la unificación general de la ley y la legislación en el campo de la ley del derecho de autor debido a la penetración universal de las provisiones y los principios del derecho internacional en los sistemas legales nacionales.

Palabras Clave: Derechos de Autor, Federación Rusa, Tratado, Derechos, Derecho de Propiedad Intelectual.

ABSTRACT

The relations that develop in concern with the results of the creative activities of the copyright proprietor are regulated by the Federal law of Russian Federation No. 5351-1 "About copyright and neighboring rights that was issued by the High Council of Russian Federation on the 9th of July, 1993, and entered into force on the 3rd of August of the same year.

The provisions of the abovementioned Law will be examined, however, it must be considered that according to the Federal law of the 18th of December, 2006, No. 231-FZ "About the implementation of part four of the Civil code of Russian Federation", the abovementioned law

will cease its legal force simultaneously with the entering into force of the Part four of the Civil code of Russian Federation.

Regardless of the differences in the legal systems of United Kingdom and Russia concerning those legal systems, to which they are related – the common law system that acts in United Kingdom, and the continental legal system that acts in Russia, at current time there is a tendency of the general unification of law and legislation in the field of copyright law due to the universal penetration of the provisions and principles of the international law into the national legal systems

Key words: Rights, Russian Federation, Copyright law, Treaty; Property rights of the author.

At current time, the relations that develop in concern with the results of the creative activities of the copyright proprietor are regulated by the Federal law of Russian Federation No. 5351-1 "About copyright and neighboring rights" (further along the text – the Law) that was issued by the High Council of Russian Federation on the 9th of July, 1993, and entered into force on the 3rd of August of the same year. In this article, the provisions of the abovementioned Law will be examined, however, it must be considered that according to the Federal law of the 18th of December, 2006, No. 231-FZ "About the implementation of part four of the Civil code of Russian Federation", the abovementioned law will cease its legal force simultaneously with the entering into force of the Part four of the Civil code of Russian Federation.

According to article 2 of the Law, the legislation of Russian Federation about copyright is based upon the Constitution of Russian Federation, the Civil code of Russian Federation, the abovementioned Law, the Federal law of the 23rd of September, 1992, No. 3523-1 "About the legal protection of the software for the electronic computer equipment and databases" and other federal laws. However, it must be considered that in case of a collision of the provisions of the national legislation and provisions of the international agreements of Russian Federation, according to article 15 of the Constitution of Russian Federation and article 3 of the Law, the provisions of the international agreements will be implemented.

The highest act of the national legislation of Russian Federation is the Constitution issued by the nation-wide voting on the 12th of December, 1993. It contains the main principles of the copyright law – the legal guarantees to each of the liberty of literary, artistic, scientific, technical and other types of creative work, teaching, as well as the protection of intellectual property by the law. Throughout the territory of Russian Federation, the basic international principles of copyright, regulated by the Bern Treaty on the protection of literary and artistic works of the 9th of September, 1886 (further along the text – the Treaty), are implemented, as well as the national principles of copyright law, regulated by the Law. They are as follows:

(1) citizenship principle (national principle) – according to the section "a" (1) and (2) of article 3 of the Treaty and section 2 of part 1 of article 5 of the Law, the protection is provided to the works promulgated, as well as not promulgated, the authors of

which are either citizens of the countries-participants, or resident living on their territory;

(2) territorial principle of providing legal protection – according to section "b" (1) of article 3 of the Treaty and section 1 of part 1 of article 5 of the Law, the protection is provided to the works promulgated in one of the countries-participants, or simultaneously in one of the countries-participants and in a third country, considering that the author is not a citizen of either on of the countries-participants;

(3) national regime principle – according to article 2 of the Treaty and section 1 of part 1 of article 5 of the Law, the works of the citizens of any country-participants of the Treaty, as well as works first issued on the territory of such country, are provided the same capacity and means of protection on the territory of another country-participant as the works of the authors-citizens of this country first issued on the territory of this country;

(4) principle of protection regardless of any formalities – according to section 2 of article 4 of the Treaty and part 1 of article 9 of the Law, the conduct of rights and their implementation in countries-participants of the Treaty is not connected with the enforcement of any formalities, including formalities regulated by the legislation of the country, the citizen of which the author is, as well as the country, where the work has been divulgated;

(5) principle of terminal protection – according to article 5 of the Treaty and part 1 of article 27 of the Law, according to the common rule (there are several short-term periods in concern with certain objects), the property rights of the author and his/her legal successor are kept in force, according to the provisions of the Treaty, during the period of 50 years after the death of the author, while according to the provisions of the Law, during 70 years after the death of the author;

(6) principle of providing protection in favor of the author and his/her legal successors – according to part 6 of article 2 of the Treaty, the protection of copyright is provided in favor of the author and his/her legal successors, i.e. in case of a conflict, the provisions of the Treaty are to be interpreted in favor of the author and his/her legal successors;

(7) reciprocity principle – according to section 3 of part 1 of article 5 of the Law, legal protection of the works created and kept outside of the territory of Russian Federation, is provided to the citizens of other countries according to the appropriate international treaties.

Therefore, the Law allows the implementation the national principle as well as the principle of reciprocity in concern with the non-residents. According to the common rule regulated by section 1 of part 1 of article 5 of the Law, the principle of the national regime is implemented. However, in case of direct provision in an international treaty, according to section 3 of part 1 of article 5 of the Law, the reciprocity principle will be enforced.

In concern with the principle of terminal protection of property rights of the author and hi/her successors, according to the common rule regulated by part 1 of article 27 of the Law, copyright is enforced throughout the lifetime of the author and 70 years after his/her death, apart from cases, stated by this article. This rule is implemented with an exception regulated by a special provision. So, according to paragraph 2 of part 4 of article 5 of the Law, in case of a specific international treaty being enforced, the term of enforcement of the copyright on the territory of Russian Federation may not exceed the term of enforcement of the copyright, stated in the country of origin of the work.

The promulgated by the Treaty principle of providing protection in favor of the author and his/her legal successors is not stated in the Law of Russian Federation, however, considering that the provisions of the international treaties of Russian Federation are directly enforced on the territory of Russia, this principle must also be implemented in Russia.(1)

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(1) In the Resolution of its Plenary session of the 10th of October, 2003, No. 5 the High court of Russian Federation stated that international treaties of Russian Federation, as well as generally adopted principles and provisions of the international law, are a part of its legal system, which corresponds to the part 4 of article 15 of the Constitution of Russian Federation and part 1 of article 5 of the Federal law "About international treaties of Russian Federation". It is also apparent from part 4 of article 15, part 1 of article 17 and article 18 of the Constitution of Russian Federation, that the rights and freedoms of a person, according to generally adopted principles and provisions of the international law, as well as international treaties of Russian Federation, are implemented directly on the territory of the jurisdiction of Russian Federation.

In concern with those values, which are recognized on the territory of Russian Federation as the objects of copyright law, according to article 6 of the Law, the object of copyright law is considered a work that is the result of creative activities in the field of science, literature or/and art, regardless of its purpose or worth, as well as the means of its expression. The article mentioned above regulates the types of objects, as well as the results of creative activities that are not considered object of copyright according to the Law. Therefore, the objects of the copyright law include the following:

(1) literary works (including computer software equipment);

(2) dramatic and musical-dramatic works, script works;

(3) choreographic works and pantomimes;

(4) musical works with text or without the text;

(5) audiovisual works (cinema, television, video films, slide films, transparency films and other cinema and television works);

(6) the works of art, sculpture, graphics, design, graphic pictures, comics and other works of visual arts;

(7) the works of decorative applied and graphic arts;

(8) the works of architecture, municipal engineering and gardening decorative arts;

(9) photographic works and works made in ways similar to photography;

(10) geographical, geological and other maps, plans, sketches and plastic works concerning geography, topography and other sciences;

(11) other works.

Therefore, the list of objects of copyright law is closed. This arises from the definition of the object of copyright law itself, i.e. all objects capable of receiving protection are considered works.[2] However, the Law leaves the list of works, which may be considered as objects of copyright law, open. Therefore, if a certain type of work is not listed in this article, but it corresponds with all the characteristics of a work according to the Law, this work will be recognized as an object of copyright law.

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(2) Bently L., Sherman B. Intellectual Property Rights: Copyright law/Translation from Eng. by V.L. Volfson. – SPb.: Publish house "Juridical center Press", 2004. – p. 103.

At that, as it was mentioned earlier, the form of expression of the work is not of legal importance for recognizing the rights of the author to it. The Law lists some of the types of forms, such as written, oral, audio- or video-recording, three dimensional and other forms; therefore, this list is also not exhaustive. The mentioned works may be promulgated, as well as not promulgated, originate in Russia or in other countries, the authors of which may be Russian citizens, as well as citizens of other countries or stateless persons. Having overlooked the main characteristics of the object of copyright law, it is quite difficult to formulate an exhaustive definition of an object of copyright law. Essentially, the object of copyright is a work, that corresponds with the qualities of novelty, the ability to be reproduced, having an objective form of expression and being the result of the creative activities of the author, regardless of a certain form of expression, worth and purpose of the work, the citizenship of the author, as well as the country of the origin of the work, the fact of it being promulgated and following any formalities, for example, the registration procedure.

Interesting that such an object of copyright as design(3) may receive legal protection not only as an object of copyright, but also as an registered design under the condition that the external appearance of the model corresponds to all of the abovementioned characteristics of a work. A similar concept of design works is followed in United Kingdom. Thus, in the Copyright, Designs and Patents Act of United Kingdom of 1988 (further along the text – the UK Law), designs may be not only unregistered, which are considered the objects of copyright, but also registered, i.e. registered designs. Part III of the UK Law is dedicated to designs, i.e. property rights on designs. In part 2 of article 213 of the UK Law, design is considered design of any aspect of a form or shape (internal or external) of the whole object or its part. The rights on the design belong to the author only if and when the design was fixed in design documents, or if it is realize in the subject of the design (part 6 of article 213 of the UK Law). Design incorporated into a registered design is registered at the patent office; details about it are listed in the Registry of designs. Design that does not concern manufactured products, may receive legal protection as an object of copyright in cases, when its characteristics correspond with the requirements set for artistic works in accordance with the UK Law. For registration body the main, however, not the only criterion for recognition of an object as a registered design is design documentation.

(3) The resolution of the Economic court of Moscow district of the 29th of May, 2006. Case No. **КГ–Ф40/4297–06.**

In concern with the differentiation of a design in Russian legislation as an object of copyright and/or registered design, Patent Law of Russian Federation of the 23rd of September, 1992, No. 3517-1 (further along the text – the Patent Law) recognizes a registered design as a allowable, if it meets the requirement of novelty and originality (paragraph 2 of part 1 or article 6 of the Patent Law). In an earlier edition of the Patent Law, there was a criterion of industrial applicability. The exclusion of this characteristic substantially expanded the boundaries of patentability of objects. In case a design meets the abovementioned requirements, it may be registered at the patent bureau and, therefore, obtain legal protection as a registered design. The principle difference of the legal protection of objects of copyright and registered designs concludes in the fact that protective actions in concern with the works, as objects of copyright, are directed onto the protection of the contains of the work, rather than the form of the work itself. Therefore, in order for a specific design to receive the protection as an object of copyright, it must meet the requirements of a work according to the Law, i.e. of novelty, the ability to be reproduced, having an objective form of expression and being the result of the creative activities of the author; and as a registered design it must not only meet such requirements as novelty and originality, but also must be registered according to the Patent Law.

Summoning up, it must be said that, regardless of the differences in the legal systems of United Kingdom and Russia concerning those legal systems, to which they are related – the common law system that acts in United Kingdom, and the continental legal system that acts in Russia, at current time there is a tendency of the general unification of law and legislation in the field of copyright law due to the universal penetration of the provisions and principles of the international law into the national legal systems. In particular, the conclusion may be made that there is a certain rapprochement of the systems of copyright law.(4) A vivid example of such a tendency is the Part four of the Civil code of Russian Federation, which was mentioned in this article, however, this would be an object of a new exploration and publication.

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(4) A French author Delia Lipszyc differentiates the legal systems of copyright law onto the system acting in the countries belonging to the continental legal system – droit d'auteur – and the system, acting in countries belonging to the common law system – copyright. See Lipszyc D. Copyright and neighboring rights./Translation from Fr.; preface by M. Fedotova. – M.: Ladomir, Publishing house UNESCO, 2002. – p. 35.