

SCTMG 2020

International Scientific Conference «Social and Cultural Transformations in the Context of Modern Globalism»

ATYPICAL RELATED RIGHTS IN THE RUSSIAN FEDERATION

Matveev Anton Gennadievich (a)*

*Corresponding author

(a) Perm State National Research University, 15, Bukireva str., 614990, Perm, Russia, la-musica@yandex.ru

Abstract

The development of intellectual property law is primarily associated with the steady growth of the list of protected objects. In the Russian Federation, both classical related rights and the right of the database manufacturer and the right of the publisher are protected. However, Russian legislation also recognizes other absolute rights outside the scope of intellectual property rights, and the question of classifying them as exclusive related rights is open. It is about the right of museums to publish museum objects and the right to cover sports events. The purpose of this study is to determine the legal nature of the right of museums to publish museum objects and the right to cover sports events, the rationale for the inclusion of these rights in the list of related rights. According to the author, the right of museums to publish museum objects and the right to cover sports events are similar to related rights by nature. These rights are not formally recognized as such, so they can now be called "atypical related rights". These rights are exclusive and property rights. Their objects (images of museum objects and recorded sporting events) have an intangible character, which is an integrating feature in intellectual property law. Functionally related to the right to publish museum objects is the right of the publisher, and related to the right to cover sports events is the exclusive right of broadcasting organizations.

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Keywords: Intellectual property, copyright, related rights, exclusive rights, the right to cover.



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1. Introduction

Intellectual property law is a dynamically developing institution. Professor B. Depoorter (2004) correctly writes that it is not difficult to describe the history of this right in one word and that this word is "expansion". the expansion of intellectual property is primarily related to the steady growth of the list of intellectual property objects. Over the past 100 years, there has been the most significant expansion of intellectual property in the field of related rights. Classical related rights include the rights of performing artists, producers of phonograms and broadcasting organizations. Recognition of these rights at the international level first took place with the adoption of the Convention for the protection of the rights of performers, producers of phonograms and broadcasting organizations of 26 October 1961 (Rome Convention).

At the turn of the 20th and 21st centuries, the list of related rights was significantly expanded. For example, European Union law has established the protection of the right of motion picture producers (the right to video recordings), the right to works first published after they have passed into the public domain, the right to critical and scientific publications of works that are in the public domain. Another right that is considered in some EU countries (Austria, Germany, Italy, Sweden), and in the Russian Federation as a related right, has become the exclusive right to investment databases. The expansion of related rights did not end there. After two years of discussion, the EU adopted a Directive on copyright and related rights in the single digital market on 17 April 2019. Article 15 of the Directive protects the related right of press publishers to use their publications online. The purpose of this right is to protect the interests of press publishers from the activities of news aggregators. The draft Directive also included the right to cover sporting events (article 12a). However, when discussing the final text of the Directive, the provisions on this right were rejected.

2. Problem Statement

The Russian Federation has established the protection of related rights under the influence of international and European law, rather than its own national traditions of intellectual property law. Classical related rights were recognized here at the end of the 20th century in connection with Russia's accession to the Rome Convention of 1961. In preparation of the fourth part of the Civil code of the Russian Federation, devoted to intellectual rights, the experience of the European Union was partly borrowed. As a result, the classical triad of related rights was supplemented by the rights of the manufacturer of the investment database and the rights of the publisher, i.e. the citizen who published the work in the public domain. However, other related rights recognized in the European Union are not protected in Russia.

Related rights are exclusive rights. Consequently, the establishment of these rights limits the public interest in the free use of the relevant objects. However, it is conceptually very difficult to establish the boundaries of the Institute of related rights. Our previous research has shown that there are several traditions of protection of these rights in the world (Matveev, 2017). Therefore, excluding classical related rights, each state independently determines which rights to protect as related rights. The belief that intellectual property law can be reduced to its basic essence still prevails in intellectual property law

(Sherman & Bently, 1999). In our opinion this idea is true for copyright and patent law, but not for related rights. Gerwais (2018) reasonably writes that there is no generally accepted conceptual definition of related rights. Indeed, the idea of related rights as rights protecting the interests of persons distributing copyrighted works does not accurately explain some related rights. For example, the activities of broadcasting organizations cannot be reduced to the distribution of literary and artistic works only, since a significant part of their broadcast consists of news and sports broadcasts, which are not copyrighted works. Even weaker is the argument for the dissemination of literary and artistic works concerning new objects of related rights, such as investment databases and press publications.

Russian legislation also recognizes other absolute rights outside the scope of intellectual property rights, and the question of classifying them as exclusive related rights is open. The first such right is the right of museums to publish museum objects and museum collections. According to Article 36 of the Federal law of May 26, 1996 "On the Museum Fund of the Russian Federation and museums in the Russian Federation" the right of the first publication of museum subjects belongs to the museum to which these museum objects are assigned. In addition, the production of fine, printed, souvenir and other replicated products using images of museum objects is carried out with the permission of the museum directorates. Thus, museums have a certain monopoly on the use of images of museum objects. Moreover, the term of this monopoly, its limitations to protect public interests, methods of protection are not established in the law.

The second right is the right to cover sports events. In paragraph 4 of Article 20 of the Federal law of December 4, 2007 "On physical culture and sports in the Russian Federation" it is established that "organizers of physical culture actions and (or) sports actions own the rights to their coverage by means of translation of the image and (or) a sound of actions by any means and (or) by means of any technologies, and also by means of implementation of record of the specified translation and (or) event photography". The duration of this right, its restrictions and methods of protection are also not established by the law.

3. Research Questions

What is the legal nature of the right of museums to publish museum objects and the right to cover sports events? Should these rights be classified as related rights? Is it reasonable to establish a limited duration of these rights and their restrictions in order to protect the public interest?

4. Purpose of the Study

The purpose of this study is to determine the legal nature of the right of museums to publish museum objects and the right to cover sports events, the rationale for the inclusion of these rights in the list of related rights.

5. Research Methods

The approaches and methods used in the study relate to the methodological apparatus of the social Sciences and, in particular, the science of civil law and intellectual property rights. Among them are: such

principles of dialectics as the development of a subject of research, its logical definiteness, historical concreteness; such general scientific approaches as genetic, system-structural, methods of the analysis and synthesis, induction and deduction, analogies; dogmatic-legal and comparative-legal methods used in jurisprudence.

The understanding of related rights and the study of their legal nature is connected with the dominant tradition of copyright in a particular legal system. Therefore, in our opinion, it is incorrect to speak about the nature and list of related rights outside of their connection with national legal traditions.

6. Findings

Both in Russia and foreign countries, museums are actively trying to prevent the free use of images of museum objects, which causes a negative reaction in society. Petri (2014) rightly notes that public museums seek to disseminate knowledge and make their collections accessible, but when it comes to images of these collections, they often follow restrictive policies. For example, the State Hermitage Museum filed a lawsuit against an individual entrepreneur to ban the use of the painting by T. Gainsborough "Lady in blue" the defendant used the monochrome logo in the activities of his designer clothing store which, in the opinion of the plaintiff, is similar to the degree of confusion with the image of the said picture T. Gainsborough. As a result, the intellectual property Court declared such use of the stylized emblem illegal (Judgment of 5 March 2015 in case No. A63-18468/2012). The court noted that the norms of the Museum legislation of the Russian Federation do not contradict the doctrine of free use of works that have passed into the public domain, but only limit the commercial use of reproductions of objects of museum collections and establish a special legal regime for such objects.

In Russian judicial practice, there is no single position on the question of which group of civil rights the right of museums to publish museum objects belongs to and whether it is possible to apply the norms of part four of the Civil code of the Russian Federation to these relations by analogy. Today we can talk about three approaches to solve the issue. In judicial acts of the trial court, the nature of the rights of museums to publish is not discussed. The general provisions of the civil code on the protection of rights, in particular for damages shall apply. The acts also referred to the fallacy of applying the legal norms of part four of Civil Code of the Russian Federation (Resolution of the Ninth arbitration court of appeal dated December 16, 2013, in the case No. A40-64830/13; the decision of the Thirteenth arbitration appeal court March 26, 2013, in the case No. A56-52447/2012). Other acts apply the provisions of articles 1250, 1252 of the civil code on the protection of intellectual and exclusive rights, but the acts don't directly refer the ownership of the right of museums to publish to the number of exclusive rights (Decision of the Sixteenth arbitration court of appeal of May 20, 2013, in the case number A63-18468/2012). The acts of the third group clearly state that article 36 of the law on museums inevitably leads to the conclusion that the museum has the exclusive right to publish and distribute catalogs and other publications (Determination of the St. Petersburg city court of April 24, 2012, No. 33-4219 / 2012).

In our opinion, the rights to publish museum objects are exclusive in the sense the concept of exclusive rights in part four of the civil code is presented. First, the object of these rights is intangible. Secondly, museums have a legal monopoly on the use of this object. Third, the right of museums to publish is a property right. Fourth, this right is referred to related rights as it is closely linked to copyright.

Thus, the considered right on all essential signs belongs to the number of the related rights. Functionally, it is related to the right of the publisher.

The duration of the right of museums to publish is not established in the legislation, therefore, it is eternal. Such regulation does not correspond to the idea of balance of interests of the right holder and society. It seems that, by analogy with the related right of the publisher, which is valid for 25 years, the term of the right of museums should also be set to 25 years. In case of recognition of the right of museums as a related right, this term should be calculated from the moment of entry into force of such a law. As to new museum objects, it is advisable to calculate this period from the moment of the first bringing of the museum object to the public. A legal basis should be established for the cases of free use of images of museum objects by citizens for personal purposes, as well as use for the development of science, culture, and education. Pandey (2004) correctly claims that it is important for the copyright and related rights regime the freedom of information and the right of access to knowledge.

The right to cover sports events, as mentioned above, is protected in Russia under a separate law. A similar pattern is observed in the law of the European Union. As noted in the study on protection of the rights of organizers of sports events, in most EU countries there is no clear regulation of the rights to sports competitions. Countries such as France, Greece, Bulgaria, Romania, Hungary have established special protection of the rights of organizers of sports events in their national laws (Cabrera, Cappello, Fontaine, & Valais, 2016). Margoni (2016) reasonably believes that, despite the lack of harmonization of sports competition rights in the European Union, legal regulation in EU countries provides good protection for investment in this industry. The EU Directive on copyright and related rights in the digital single market, adopted on first reading by the European Parliament on 12 September 2018, contained article 12a, which recognized the right to cover sports events. However, the initiative of the European Parliament did not find support in the coordination of the Directive in the European Council and the European Commission. And article 12a was deleted from the final text of the Directive.

The harmonization of the legal regime of the right to cover sports events within the EU was hindered by the fact that the approaches of EU States to the protection of this right differ significantly. The problem of the plurality of legal systems does not exist in the Russian Federation, so it is possible to establish a more definite and balanced regime of the right to coverage of sports events and officially classify this right as a related right. First, a sporting event as an object that can be used through audiovisual broadcasting is an intangible object. Secondly, the organizer is vested with the law with a legal monopoly on the coverage of sporting events. Third, the right to cover sports events is a property right. Fourthly, it is logical to refer this right to the sphere of related rights, since it is functionally linked to the related rights of broadcasting organizations. This functional relationship predetermines the fact that the features of the law regime to cover sports events should be borrowed from the legislative provisions on the right of broadcasting organizations. For example, the term of the exclusive right to cover sports events should not exceed 50 years. The law should clearly specify when the recording or broadcasting of sporting events is free. These cases include recording and playback recording sport events nationals for personal purposes, recording, playback the recording and broadcast of these events in the development of science, culture and education, recording, recording playback and broadcast of the events, their coverage in the news.

7. Conclusion

In the Russian Federation, the right of museums to publish museum objects and the right to cover sports events, which by their nature are close to related rights, are protected outside the scope of intellectual property rights. These rights are not officially recognized as such, so they can now be called "atypical related rights". By their nature, these rights are exclusive and proprietary rights. Their objects have an intangible character, which is an integrating feature in intellectual property law. The duration of these rights in the legislation of the Russian Federation is not established.

The right to publish museum objects and the right to cover sports events should be protected under Chapter 71 of the Civil code of the Russian Federation, dealing with related rights. Functionally related to the right to publish Museum objects is the right of the publisher. Therefore, the period of validity of the right of museums should be limited to 25 years. Related to the right to cover sports events is the exclusive right of broadcasters. Therefore, it is reasonable to limit the duration of the right to cover sports events to 50 years. In order to protect the public interest, legislation should limit the right of museums and the right to cover sports events. These restrictions should apply to the use of objects for personal purposes, use for the development of science, culture and education.

Acknowledgments

This study was carried out with the financial support of The Russian Foundation for basic research in the framework of scientific project No. 18-011-00628.

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