

System of Protection of Copyright in International Private Law

Isanov Ulugbek H

Independent researcher Tashkent State Law University

bigboss7@mail.ru

Abstract

The international system of copyright protection is a complex mechanism, which is based on, first of all, the Berne Convention "On Protection of Literary and Artistic Works" in its numerous editions.

Until the middle of last century, the concept of "copyright" did not exist as such, the title could apply only to specific materialized works of art (paintings, sculptures, etc.). But since the middle of the XIX century becomes an independent copyright ownership. Creating universities, public libraries, the development of the book trade, foreign languages, the ability to move freely within Europe, book circulation expansion - all this has created new conditions for the publishing industry, has turned into a profitable place capital facilities, and intellectual works steel meet all featured product.

"The writer is a productive worker, not because it produces ideas, but because it enriches the bookseller, published his writings, that is, it is productive to the extent that is an employee of a capitalist." Karl Marx¹.

"Berne Convention" On the Protection of Literary and Artistic Works "in 1886. The painstaking work to create a legal instrument for the protection of copyright was launched in Brussels in 1858 at the Congress held there the authors of literary and artistic works. This was followed by congresses in Antwerp (1861 and 1877) and Paris (1878), from 1883, the work was continued in Berne, where in 1886 after three diplomatic conferences had produced an international agreement dubbed the Berne Convention for the Protection of Literary and Artistic works. This agreement was signed by ten states: Belgium, Great Britain, Spain, Italy, Liberia, Haiti, Tunisia, France and Switzerland. In September 1887, delegates of these countries

(with the exception of Liberia) exchanged the instruments of ratification, in accordance with Article 20 of the Convention entered into force three months later, that is, December 5, 1887. Berne Convention of 1886 contains a part with the so-called main, that is substantive and administrative regulations. All of its substantive provisions were subject to mandatory inclusion in national legislation of member countries in cases where national legislation less favorable to copyright owners. In this was manifested the desire to unify the creators of the convention the main provisions of the copyright.

One of the most important rules, developed in Bern in 1886, was to provide the owner of the copyright is not possible to carry out the formalities in the countries where protection is sought, provided that it complied with those in their own country (st.2-3).

At a conference in 1886 it was announced the creation of the Berne Union member countries and selected international bureau of the Union. Also, the rules of the accession of new states to the Convention have been provided, the order of its change, etc. Simultaneously, additional paper and the final report were adopted. Additional Article upheld all bilateral treaties that established a high level of copyright protection. The protocol also contained an explanation of certain provisions of the Convention.

April 15, 1896 in Paris, the first conference to amend the Convention in 1886. By the time the convention joined by four countries: Luxembourg (1888), Monaco (1889), Montenegro (1893) and Norway (1896). The conference was attended by Member States except observers from 14 countries: Argentina, Bolivia, Bulgaria, Brazil, Denmark, Guatemala, Greece, Colombia, Mexico, Peru, Portugal, Romania, the USA and Sweden. Among the innovations of 1896 should be attributed primarily to the inclusion of the concept of

¹ K. Marx and F. Engels. T.26, Part 1, p. 139.

convention publications and defining it as "the release of copies." Thus the presentation and performance of dramatic, dramatic-musical and musical works, the exhibition of works of art did not relate to the publication. Among the most important changes should also include clarification and to Article 3, according to which the protection provided to works first published in a member state of the Convention, even if, when the author was a citizen of a country not a member of the Berne Union. Thus, the territorial principle of the Convention remained unchanged, however, the focus was shifted from the publisher to the author of the work.

The next stage of the Berne Convention was the Berlin Conference of 1908. By the time the convention was joined by four States: Japan (1899), Sweden (1901), Denmark (1903) and Liberia (1908). In addition to the Member States at the conference sent their delegates to 19 more countries. The result of the conference was almost a complete overhaul of the main provisions of the previous conferences. The new edition contains 30 articles, and its major novels treat four problems:

1) The text of the Convention of 1886 puts the protection of copyright in relation to the conditions and the formalities provided for in the country of first publication. At the Berlin conference, it was decided to abandon all formality, even if they exist in the country of first publication.

2) The Berlin Convention text more fully defined and expanded the range of objects of protection to include the work of choreography and mime, film, photography and architecture. Moreover, the new text recognized composers right for permission to adapt their products to the execution of mechanical reproduction apparatus and the public performance of these tools. It usually contains a clause that member countries legislation may establish special conditions for its use.

3) rules governing the transfer of the right has been extended. The Berlin Conference recognized their validity throughout the life of the copyright act without any restrictions. Rules Convention 1896 were canceled, except in

cases where a country will express the wish to preserve them.

4) The Conference of 1908 established a copyright term of 50 years, calculated from the date of death. However, this rule shall not be binding, as allowed differences in terms of copyright protection, determined by the law of the country where protection is sought, provided that the term of protection shall not exceed the amount specified in the country of origin of the work. The Convention has identified more clearly the notion of literary and artistic works, and consolidated the position that they should be protected in all member countries must reflect this in national legislation, if any, has not been done before. And finally, in the 1908 Convention were recognized as the author's right of reproduction, publication and presentation of his work in the film.

By this time, two more new states have joined the Convention: Portugal (1911) and the Netherlands (1912).

The Additional Protocol in 1914 the text of which was proposed by the UK, was aimed at a regime of restrictions established by the convention. It was created so-called "clause of reprisals", which found a place in the subsequent text of the Convention. Clause establishes the possibility for the participating countries to restrict the protection of the rights of authors who are not and do not reside in its territory, provided that nationals of the State which they are the authors, are not in the Berne Union, and do not provide sufficient protection to the authors of the member countries of the Convention.

This provision, in practice, been applied only once, during the Second World War, when the United Kingdom to apply it in respect of the citizens of those countries with which it was at war.

During the period from 1914 to 1928, the Convention has the following States: Austria, Brazil, Bulgaria, Hungary, Greece, Lebanon, Morocco, Poland, Romania, Syria, Czechoslovakia, Estonia, as well as the newly independent dominions of Great Britain,

Australia, Ireland, New Zealand and South Africa.

The following convention has been concluded in the Rome Conference, which took place in a period of rapid development of media and communication, typical of the early twentieth century. This is particularly reflected in the recognition of the protection of the rights of authors in the translation of their works by radio (Article 11 bis), the expansion of the objects of protection, recognition of the so-called personal rights of the author, etc .. The level of copyright protection under the convention concluded in Rome, was increased due to the inclusion of oral literary works (lectures, speeches, sermons, etc.) in the range of works protected by Article 2. The truth is more paper (2 bis) The state provides the right to exclude wholly or partly from the objects of protection policy papers and speeches, uttered during a statutory or public meetings or in the courts, as well as to determine the conditions under which lectures, sermons and speeches can be used press.

Among the most important novels of the Rome text of the Berne Convention should include recognition of the so-called personal rights of the author, who saved him and the alienation of property rights (publication, publishing, production, etc.).

It should be noted that the recognition of the individual rights of the Berne Convention was received without enthusiasm representatives of the movie industry, and later and television, especially in the US. This was due to the fact that this industry is mainly used to create independent works of cinema and television films and thus interested in the possibility of more free to change someone's work, adapting it to their needs.

After the Second World War in Europe to resume work in the field of international copyright. Berne Convention for the newly significant changes in Brussels in 1948. The main objective of the conference was to achieve a complete unification of the rules of the Convention and national legislation, as well as take into account the new conditions of scientific and technological development.

The unification of the rules of the convention has been achieved by strengthening the principle of its primacy over national law.

Among the conferences, amending and supplementing the Berne Convention, the Stockholm Conference in 1967 has a special place.

By the time the international arena, a large number of developing countries with their specific needs and problems to be urgently addressed. They sought to reduce the Berne Convention level of protection of copyright, to get better access to appropriate works of science and culture. Having achieved a high level of copyright protection in Brussels, their owners in the developed capitalist countries fear this trend and strongly opposed to it. Moreover, they were ready to narrow the boundaries of the Berne Union while maintaining the same level of copyright protection, as otherwise they threatened with a clear economic loser.

The result of a complex struggle at the conference between the two main trends in international copyright law was the protocol, reflecting to some extent the pressing problems of developing countries and provide them with a significant advantage in comparison with the previous text. Moreover, a number of his proposals was a new approach to copyright, unknown to Stockholm.

The most significant changes achieved during the Stockholm conference should include:

- 1) improvement of the criteria of the convention and the definition of the concepts of country of origin and publishing;
- 2) recognition of the right of reproduction;
- 3) a special regime of Motion Picture and similar products (television films, etc.);
- 4) extension of the personal rights of the author (personal rights exist independently of the economic rights, and even after their alienation);
- 5) expansion of the term of protection of copyright (the Conference has not taken the path of a direct increase in the 50-year term of protection. But at the same time it approved the special resolution that encourages the desire of

some countries to develop a special agreement on the application between the life expectancy of more than established fifty years, calculated from the date of death);

6) Convention for the first time established the protection of folklore (Article 15, paragraph 4, item \ n "a")..;

Berne Union has united many countries really turned into quite a powerful international structure of protection of rights of authors, as well as industrialists and traders operating in this field. But it can not be called global. The fact that the world simultaneously with the Berne Union to develop other interstate Union copyright laws. Despite the differences, fundamental differences between the American and the Berne international copyright protection in general, there are almost no systems.²

The basis of the development of the inter-American copyright protection system was laid down by the Convention on literary and artistic property which was signed in Montevideo in 1889. In addition it was also concluded:

Convention on Literary and Artistic Property (Mexico City, 1902).

Convention for the protection of patents for inventions, industrial designs and models, trademarks, brands and literary and artistic property (Rio de Janeiro, 1906).

Convention on literary and artistic property protection (Buenos Aires, 1910).

Convention for the Protection of Literary and Artistic Property, revised at the VI Pan-American conference (Havana, 1928).

Inter-American Convention on Copyright in literary, scientific and artistic works (Washington 1946).

The main disadvantage of all these conventions is the lack of the United States. Although this country has taken an active part in the preparation of the Inter-American Convention on Copyright in literary, scientific and artistic works, adopted in Washington in 1946, it has not ratified the text, most likely it was due to the unwillingness of the United States to make changes to their domestic legislation. Which provides an advantageous

position of the state in relation to the protection of copyrights.

States Parties of both unions have expressed their interest in joining the two unions. In this connection, even at the Rome Conference in 1928 raised the question of the desirability of the development of a single convention for all continents. This commitment is reflected in the decisions of the IX session of the League of Nations, in accordance with which was started the study on the possibility of developing a common agreement on the international protection of copyright by comparing Berne and American systems. Similar measures have been adopted and the American Union in 1931, which invited for this purpose, the executive committee of the American Institute of International Law.

VII International Conference of American States in 1933 approved the draft Convention taking into account the situation of both systems.

At the XV in 1934 session of the League of Nations it was awarded the efforts made to unify the two systems to either merge the two conventions (the Havana and Rome) or create a new one, which would replace the existing ones.

The Executive Body of the Berne Union, taking into account the existing differences between the conventions, considered that their merging is not possible. Therefore, it recognized the advisability of elaborating a new convention with the provisions of the Havana and Rome. a draft of the agreement has been established, but the outbreak of the Second World War did not allow to complete the creation of a new convention.

After another change of the Berne Convention in Brussels, the international system of copyright protection continued to be an effective legal instrument at the disposal of the main capitalist countries of Western Europe, as well as some developed countries of Asia and America. Its main drawback in the eyes of major publishers and booksellers was the absence of the United States, which refused to join the Berne Union in connection with the fact that the level of copyright protection under

² Y.G. Matveev "The international conventions on copyright." M.1987.

the Convention was too high in comparison with the domestic law. However, the US book market was the largest among the capitalist states. The American printing industry with its huge production capacity felt cramped in the national borders. The total number of workers employed in this industry in the early 50's, has exceeded 470 thousand. People with an annual income of 6 billion. Dollars, which exceeded the amount of such industries as coal, gas, electric, and banking. However, exporting its print products in other countries, knigopromyshlenniki and traders have suffered significant losses due to the fact that the work is first published in the United States, do not enjoy the protection of their borders. These circumstances determined the US desire to join the international system for the protection of copyright.

Thus, speaking about the reasons for the adoption of Universal Copyright Convention, it should be borne in mind above all the desire for the United States and, in addition, the interest shown by a number of other countries, who would like to see in an international convention agreement with the fewest number of mandatory conditions and formalities.

Work on the development of a new convention started in 1948 and took three years. By 1951, the draft convention, which was submitted to the diplomatic conference in 1952 moreover was prepared as was repeatedly emphasized at various levels, not put and not allowed to work on the project at no complicated theoretical problems. The only problem, is seriously concerned about working on the project, was reduced to how to solve the problem of standing unchanged national legislations of the future Member States.

Universal Copyright Convention adopted at held in Geneva in September 1952, the Intergovernmental Conference with the participation of 50 countries. The Convention entered into force in September 1955.

Geneva Copyright Convention opens the preamble which does not contain the provisions of a regulatory nature. It is notable, however, that it contains a general declaration of commitment of countries participating in the

conference to create an international legal instrument acceptable to the widest possible range of countries and aimed at facilitating the dissemination of works of intellectual creativity for a better international understanding. The preamble stressed that the Universal Convention is created in addition to the already existing international agreements Berne and Inter-American Convention and does not affect them. In this case, evidence of the desire of representatives of Western developed countries, particularly the UK, Italy, France, leave intact the Berne system.

The problem of the settlement of relations between the new Convention and existing bilateral agreements and a lot of focus on art. 17, 18, 19 and the Declaration attached to the article. 17 of the Convention. Here are regulated by two problems:

a) the protection of the Berne Union from competing influence of the World Convention establishing some sort of sanctions against countries that left the Berne Union and acceding countries to the World Convention of the Berne Union.

b) establish procedures for the application of the Universal Copyright Convention countries of the Berne Union.

Article 17 emphasizes that the Universal Convention does not intend in any way affect the position of the Berne Convention and the membership in the Union created by it. As many commentators World Convention, from a legal point of view, this section is declaratory in nature and does not establish specific; rights and obligations. His appearance in the text due to the desire of some countries once again remind you that the rules of the Berne Convention, and are in the Berne Union membership exclusively an internal affair of the member countries of the Union.

The main legal burden to establish links between Berne and the Universal Convention shall be appended to Article 17 of the Declaration, which, in accordance with Art. 17 is an integral part of the Convention and has legal significance for the states that are members of the Berne Union as of January 1, 1951, or those who joined him later.

In accordance with the Declaration of the product, area of origin which is released from the Berne Union after 1 January 1951 does not enjoy the protection provided by the World Convention in the Union. We recall in this regard that, in accordance with the Brussels text of the Berne Convention in the country of origin of an unpublished work is the country of nationality of the author, and for published work - the country of first publication.

Analyzing the provisions of the Declaration, in particular, should pay attention to the fact that these provisions essentially impose obligations on countries to bypass their regional sovereignty, which was one of the main reasons for the rejection of accession to the World Convention in many countries.

On the strengthening of the Berne Union, and the second rule is aimed Declaration establish procedures to implement the provisions of the Universal Copyright Convention countries of the Union. The Declaration states that the Universal Convention should not apply to the relationship between the countries members of the Berne Union when talking about the works of the country of origin is a country of the Union. Thus, if we are talking about the protection of Italian works in France (both the participating countries, as the Berne Union and the Universal Copyright Convention), only the provisions of the Berne can be used for this purpose, rather than the Universal Copyright Convention. However, when it comes to the French work, first published in the United States, Italy in protecting works of French authors should use the provisions of the Universal Copyright Convention. But here there is a controversial situation: if we follow the literal sense, it is possible to imagine a case where the work, the countries of origin which will be those who have joined the various texts of the Berne Convention, will not enjoy any protection under the Berne Convention, nor in the World.

It seems that to interpret this rule declaration should be such that the provisions of the Berne and Universal Copyright Convention does not apply only to those works,

the country of origin is bound by the text of the Berne Convention.

The relationship between the World and the inter-American conventions on copyright are regulated by Art. 18, which stresses that the Universal Convention does not affect the inter-American conventions and agreements. In accordance with this article, in the event of differences between the provisions of existing or future inter-American conventions or one of the existing or future agreements on the one hand, and the provisions of the Universal Copyright Convention, on the other hand, will have the advantage of the latest on the conclusion of the time of the convention or the last on the conclusion of the agreement. Currently, all the Latin American conventions and agreements previously concluded World, so the rules of the latter have priority in the event of discrepancies in the legal regulation. Several other principle applies in the relations between the World Convention to all other bilateral and multilateral agreements that exist between two or more Member States at the time of entry into force of the Convention, which does not abrogate the agreement. In case of any discrepancies between the provisions of existing agreements with the provisions of the Universal Copyright Convention priority is given to the latest regulations. In this case, as in the case of relations Inter-American Convention, the right of any product under existing conventions or agreements are not affected. Speaking about the priority of the provisions of the Universal Copyright Convention in the case of conflict with the rules of the American Convention (Article 18) or other bilateral or multilateral agreements (Article 19), pre-existing, it should be noted that the very condition of possibility of differences creates the ground for interpretation.

1. In the first case, Article 18 and 19 may give rise to interpretation, according to which the provisions of the Convention must be applied under the condition that the result of the application of the legal regime proposed by any agreement is different on either side of the result of the application of the Convention

regime. For example, if previous agreement does not protect a particular product and the World Convention recognizes it, and the latter should be applied. Or, conversely, if the pre-existing agreement provides for the protection and the Universal Convention is not, then it is also subject to the application, thus eliminating previously-existing protection.

2. The second option comes down to the interpretation of that case, the differences in the results of the application of the provisions of previous agreements and the provisions of the Universal Copyright Convention latter applied only in the case if they give the author a more favorable legal regime. Under this interpretation, if a previous agreement provides for the protection of a specific product, and the Universal Convention does not do so, its provisions do not apply, because its regime is less favorable for the author.

3. The third interpretation is based on the use of so-called "incompatibility" principle means that for the application of the rules of the agreement concluded later required the presence of a direct reference to the denial of the previous rules. So, if the rule contains a Universal Convention on the Conservation of any work, and the previous agreement did not provide, then, of course, the provisions of the Convention shall apply. But if the previous agreement provides protection and Universal Convention is not, it is necessary to ascertain whether it contains a direct reference to the failure to provide protection. And only in this case it is possible to apply the Convention. But if that is not a direct reference, the provisions of the previous agreement, as they do not conflict with the provisions of the Convention.

Considering the problem of interpretation of the rules of the relationship between the provisions of the Universal Copyright Convention with other treaties and agreements, it should be emphasized that the provisions of the Convention are worded in such a way that, in practice, all three interpretations lead to the same result in connection with the proclamation of the principle of national treatment to the basic principle of the Convention, especially since the Universal Convention does not affect

the acquired rights to any work on the convention or agreement in force in the Contracting States prior to the entry into force of the Universal Copyright Convention to the present dispute on the interpretation of Art. 17 and 19 does not arise.

Having selected your basic rule for safeguarding the interests of copyright owners the principle of national treatment, the World Convention contains a number of substantive rules, the presence of which ensures the necessary minimum of copyright protection in the participating countries. These standards include securing translation rights and the establishment of minimum twenty-five years the term of protection. Assigned to the owner of the copyright powers translation right. The Convention has adopted a new, not found in the international practice of the method of limiting that right through the issue, under certain circumstances, the so-called "compulsory license" to translate. And another case of restrictions of the principle of national treatment deserves special attention, it is a mechanism to overcome the existing in some countries, the obligation to perform the so-called face zainterësovannyh formalities for recognition of his copyright on the protected work.

Concluding consideration of the main provisions of Universal Copyright Convention, it should be emphasized two important points.

1. Reservations to the Convention are not permitted. Thus, the countries acceding to the Convention, accepts all its provisions, without exception.

2. All disputes between the States Parties to the Convention concerning the interpretation or application of it is not authorized by the parties, be referred to the International Court of Justice

Each State acceding to the Convention, is obliged to take in accordance with its Constitution, the measures necessary to ensure the application of the Convention. In any case, it is understood that the acceding State should

be able under the domestic law to apply the provisions of the Convention at the time of deposit of the accession to the Convention documents. Such an obligation is imposed on

the State when depositing its instrument of accession to the Convention, and not to its entry into force in the territory of that State.