UNDERSTANDING COLLECTIVE MANAGEMENT OF COPYRIGHT IN HISTORICAL CONTEXT

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Annotation: The issues related to the history of the establishment of the institution of copyright protection, with the division of powers of collective management organizations, with the functions of organizations and their types, with the difference between collective management of copyright and such a concept as representation are touched upon. Attention is paid to some urgent problems related to the improvement of this institution, international standards for copyright protection and comparative legal analysis of national legislation, as well as the opinions of scientists from Uzbekistan and other different countries. Suggestions and recommendations were put forward of scientific and practical importance for national copyright law.

Key words: copyright, to enforce copyright, royalty, copyright and related rights collective management, public performance or display of a work.

Why is collective management necessary and on what principles should it be built? Copyright law assigns to the author of a work the exclusive right to use a work in any form and in any way, defines in an exhaustive manner the permitted limitations of this right, and also provides a mechanism for its implementation, calling a contract a means of granting the right to use a work to others and establishing requirements in relation to what this contract should be. If a work is protected by copyright, then you can get the opportunity to use it by concluding an agreement with the author or his assignee. Similar rules apply to objects of related rights.

However, such a scheme in many cases cannot be implemented in practice. In this case, we are talking about the absence of not a legal, but an actual opportunity, since some organizations, due to the nature of their activities, cannot conclude an agreement with the author (right holder) of each used work (performance, phonogram) only because there are too many of these works, and right holders , in turn, cannot do this, because their works or objects of related rights are used by a large number of users. The solution to the problem is the creation of specialized organizations that simultaneously represent the interests of a large number of right holders in relations with persons using their works (objects of related rights), i.e. collective management organizations.

The essence of collective management consists in the fact that the organizations dealing with it conclude agreements with authors and other right holders under which they assume obligations to manage these rights; on the basis of the powers granted by the right holders, collective management organizations, on their behalf, conclude contracts with persons using the works (objects of related rights); collect, distribute and pay remuneration to copyright holders; protect the rights of authors and other right holders in court; some organizations also perform social support functions for their members. At the same time, the characteristic “collective” is intended to emphasize that management is carried out simultaneously and on general terms by the rights of a large number of right holders.

Understanding collective management may be easier in a historical context. The story of the emergence of collective management has become a strange and famous fairy tale. It begins in France with the French playwright Pierre-Augustine Caron de Beaumarchais in dark Parisian theaters in the 1700s. The network of copyright societies, formed by the cultural environment of each country, gradually spread throughout the world.

Collective management of copyright has been seen as a practical and efficient way to provide compensation to creators. In Italy, the Society 'Italiana degli Autori ed Editori (SIAE) under the leadership of Barduzzi was authorized to collect taxes on theater and cinema [1, 64].

However, the development of events was not limited to the inner scene. As collective management organizations (CMOs) flourished in their own nation states, the need for international cooperation and harmonization became apparent. In 1925, Romain Kulus organized the Committee for the Organization of Congresses of Societies of Foreign Authors. This committee was created to tackle some insurmountable problems related to international issues. At about the same time, Firmen Gemieu succeeded in creating a universal theatrical society [2, 125]. Both of these initiatives led to the convening in 1926 of the founding convention of the International Confederation of Societies of Authors (CISAC) [3]. The founding members pointed to the need for each country to establish uniform principles and methods for collecting royalties and protecting works, as well as ensuring the recognition and protection of literary and artistic property [4, 597] throughout the world.

Today CISAC has 225 member societies in 118 countries, most of which license either the public performance and distribution of musical works, or the reproduction of those works. Other CISAC members license reprographics and reproduction of works of art and theater performance (so-called “great rights”). Many countries have contributed to the growth of CMOs through legislative initiatives, believing CMOs to offer a viable solution to the problem of individual licensing, collection and enforcement of copyright.

While the formation of CMOs may have once been considered revolutionary, the key role they continue to play as intermediaries in the copyright system would be more appropriately described as evolutionary. CMOs promote uniform methods for collecting and distributing royalties and negotiate licensing of works. However, licensing and royalty payments, while still important, are not the sole concerns of CMOs. Over time, the role of CMOs has evolved to enforce copyright enforcement, combat piracy, and perform various social and cultural functions [1, 99-106].

Collective management has also allowed authors to harness the power of collective bargaining to get more to use their work and negotiate in a less imbalanced manner with large multinational user groups. However, most collective schemes evaluate all works in their repertoire on the same economic basis, which may be unfair to those who create works that may have a higher value in the eyes of users.

Over the past two centuries, objects of intellectual property have actually turned into an object of trade. The creation of organizations carrying out collective management of copyright and related rights largely meets the needs of the development of the intellectual property market. The importance and necessity of such governance has been repeatedly emphasized by the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

In most cases, collective management organizations are non-profit structures; in legal terms, they can be of a private or public nature. Depending on the nature of the works presented, CMOs may also be referred to as Musical Licensing Societies (MTRs), Mechanical Rights Management Organizations (MROs), Performers' Collective Management Organizations (CMOs), or Reprographic Rights Organizations (RROs). [6, 328].

Management of related property rights, of course, has a number of features due to the fact that the rights of performers and producers of phonograms, firstly, are secondary to copyright rights, and, secondly, these rights, in comparison with copyright, to a greater extent are limited, and the objects of these rights (performances and phonograms) in some cases may be without the prior consent of the copyright holder, but with the subsequent payment of a fair remuneration to him. However, the basic principles on which the activities of related rights management organizations are based are the same as those of copyright management organizations. Therefore, all that has been said regarding the activities of organizations carrying out the collective management of copyrights will also apply to the collective management of related rights.

Of course, the practice of collective management of copyright in foreign countries is different and depends on the peculiarities of the legal system of a particular state and the established practice of legal regulation in this area. At the same time, I would like to name several general principles that do not depend on national characteristics, on which the work on collective management of copyright is based.

There are various approaches to collective management, including statutory / mandatory collective management and contract / voluntary collective management.

Typically, CMOs perform the following functions: monitors the use of works and also keeps track of where and when they are used; negotiates with users on tariffs and other conditions; issues licenses for the use

of protected works on behalf of its members and other copyright holders that it represents; collects fees and charges from users and distributes them among the owners of the rights [7, 15].

For the first time, Art. 56 of the Law of the Republic of Uzbekistan on Copyright and Related Rights (hereinafter - ZoAP). As a rule, organizations that collectively manage property rights are non-profit organizations and operate on the basis of their own charter.

In accordance with article 57 of the ZoAP, the powers to collectively manage property rights are granted directly by right holders on a voluntary basis on the basis of written agreements, as well as under relevant agreements with other (including foreign) organizations that manage property rights. Such contracts are not copyright and are not subject to the provisions of Articles of this Law [8].

As well as the author or other right holder has the right to grant the organization that manages property rights on a collective basis, under a contract, the authority to exercise its property rights, and the organization is obliged to assume the exercise of these rights on a collective basis, if the management of such rights relates to the statutory activities of this organization[9]. The decision on the amount of remuneration and the conditions for concluding an agreement with users for the use of works and objects of related rights, the method of distribution and payment of the collected remuneration and other fundamental issues of the activities of the organization managing property rights on a collective basis is carried out exclusively by the authors or other right holders collectively at the general meeting.

On the basis of the powers received from the right holders, the organization managing property rights on a collective basis concludes agreements with users for the use of works and objects of related rights. The terms of contracts must be the same for all users of the same category, determined depending on the type and volume of works used and objects of related rights. These organizations have no right to refuse to conclude an agreement with the user without sufficient grounds[10]. All possible property claims of right holders to users related to the use of their works and objects of related rights on the basis of such agreements must be settled by the organization that entered into the agreements that administers the property rights on a collective basis[11].

Collective management of property rights, especially with new high-tech methods of mass use of works, including in digital networks (including the Internet) and in the creation of multimedia products, provides advantages to all interested parties: right holders have the opportunity to most effectively exercise their property rights, users get simple a procedure for obtaining all permits required for the appropriate use of protected objects, and citizens have access to extensive information resources[12].

It should be noted that the inevitable consequence of the need to ensure the provision of comprehensive repertoires is a certain "monopoly" in the field of collective management, that is, the concentration of rights to grant "blanket licenses" to exercise extended collective management in relation to a certain way of using works under the jurisdiction of one organization or one body in each country, since there cannot be several organizations representing all "unknown right holders" with the same way of using their works or objects of related rights. It should be noted that the coordination of activities,

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