ISSUES OF COMPLETING THE FORMALITIES FOR GRANTING COPYRIGHT PROTECTION TO BELARUSIAN NATIONALS IN FOREIGN COUNTRIES

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In the vast majority of states, copyrights of foreign nationals are recognized only when those states participate in international agreements or on the basis of reciprocity. In the countries that are parties to the Universal Copyright Convention of 1952, protection is granted to the works of Belarusian authors first published in our country after May 27, 1973. In addition, in countries with which there are bilateral agreements, protection is granted on the basis of those agreements and in accordance with their terms. In the countries which are parties to the 1952 Universal Convention, the works of our authors are subject both to the rules of that Convention and, by virtue of the principle of national treatment, to the rules of local law [2].

After the Republic of Belarus joined the Berne Convention (in 1997), the circle of countries in which the works of Belarusian authors are protected has widened and the conditions of such protection have become more uniform.

Speaking about the provisions of the Universal Convention, it is necessary to note that it establishes a mechanism to overcome the obligations of some countries to perform the so-called formalities in order to recognize a person's copyright in a protected work.

The Convention does not require countries whose national laws provide for formalities as a prerequisite for copyright protection to waive them [2, art. III]. However, as far as foreigners are concerned, whatever the requirements imposed by national laws, they shall be deemed to have been fulfilled with respect to any protected work first published outside the territory of that State if, from the first publication of that work, all its copies issued with the author's or other copyright holder's permission bear the mark (C) accompanied by the name of the copyright holder and the year (indication of day and month is not mandatory) of first publication.

It should be noted, however, that the Convention distinguishes between formalities of a substantive nature, those without which copyright cannot arise, and those of a procedural, relating to the exercise of rights of protection. An indicative list of formalities of the first kind includes the deposit of copies, registration, notarial certification of publication, payment of fees, and making or issuing of copies of the work in the territory of a given State [2, art. III]. The Convention, however, does not prevent contracting states from requiring that a person taking part in an action be entitled to procedural rules in the interest of the court proceedings, such as the participation in the action, on behalf of the plaintiff, of a lawyer admitted to practice in that state or the deposit of a copy of the work in court or in an administrative authority, or in both at the same time. However, if the plaintiff has been refused on procedural

grounds, he or she may reapply to the court, after due process of law. However, none of the aforementioned claims can be brought against a national of another contracting state, unless such a claim is brought against a national of the state where protection is sought.

Finally, the Convention allows member countries to require completion of formalities and other conditions for acquiring and enforcing copyright for all works first published in their territory, and for works by domestic authors, regardless of the place of publication. For example, if a foreign citizen lives in Belarus and first publishes his work here, he must comply with Belarusian formalities, if any, to have his rights recognized in Belarus, and foreign formalities to have his rights recognized abroad. Moreover, a situation may arise where an author who first publishes a work in his country, but does not comply with the domestic formalities, does not acquire copyright in his country, but enjoys it in all other participating countries, provided that he has complied with the rules of the convention.

Will now take a closer look at the formality's provisions using the example of US law and court practice, as advocates of different types of formalities. Formality refers to compliance with procedures (or set of procedures) defined by national law, failure to comply with which leads to the loss or non-recognition of copyright.

Copyright law in the US is governed by the Copyright Act of 1976. The use of the copyright mark is no longer required by US law, although it is often seen as beneficial. This requirement was abolished when the United States acceded to the Berne Convention, in force as of March 1, 1989 [3].

The use of the mark can be important because it informs the public that the work is copyrighted, identifies the copyright owner and reflects the year of first publication. In addition, in the case of copyright infringement of a copyrighted work, copies of which bear the appropriate copyright mark, and where the defendant had access to those copies, in an action for copyright infringement, the defence of that defendant cannot rely on inadvertent infringement to mitigate actual or statutory damages, except as provided for in the Copyright Act. Unintentional infringement occurs when the infringer did not realise that the work was protected.

The mark must contain all of the following three elements:

1. The symbol © (the letter C enclosed in a circle), or the word «Copyright»;

2. The year of the first publication of the work. In case of collections or derivative works that include material published earlier it is sufficient to mention the year of first publication of the collection or derivative work;

3. The name of the copyright holder. The name of the copyright owner, or an abbreviation by which the name is recognised, or a known alternative designation of the owner [3, art. 401].

For example: © 2023 Katherine Kishkevich.

The copyright mark must be affixed to copies in such a way as to «give accessible notice of a copyright claim». The three elements of the mark should normally stand together on copies.

It is also possible to comply with the formalities in the US by registering the work. Copyright registration is essentially the legal assignment of copyright to a

particular person, whether the author or the rights holder (individual or entity). Currently, copyright registration is a legal formality designed to provide a public record of the basic facts of private copyright. Registration is not a condition for copyright protection. Although registration is not a requirement for protection, the US Copyright Act 1976 provides separate incentives or advantages for the purpose of encouraging copyright owners to register [3].

Among the advantages are the following:

- Registration establishes a public record of the copyright claim.
- Before an infringement claim can be registered in court, registration is required for works released in the US and for foreign works released in a country not party to the Berne Convention.
- If registration is made before publication or within 5 years of publication, it will establish a «prima facie» (based on first impression) proof in court of the validity of the copyright and the facts stated in the certificate.
- If the registration is made within 3 months after the publication of the work, the copyright owner is granted the statutory damages, also court costs and expenses [3, art. 412]. Otherwise, only reimbursement of actual losses and income is granted.
- Registration allows the copyright owner to make a record of registration with the US Customs Service to protect against the exportation of illegal copies.

It should be noted that registration is appropriate in the case of legal protection of computer programmes. The first computer program was applied for in the US on 30 November 1961 and registered as copyrighted work in June 1964. According to s.405(a) and s.408(a) of the Act, registration of a computer program is not a prerequisite for copyright protection. However, most computer programs commercially distributed in the US are pre-registered because of a number of benefits (some of which have been listed above) that result from registration:

- Registration involves making an official entry in a special Register of Computer Programs;
- Without prior registration, no copyright infringement lawsuit may be brought against an object, except in copyright infringement lawsuits against works protected under the Berne Convention and not created in the US;
- If a computer program is registered within five years from the date of its publication, the registration serves as primary evidence of the validity of the copyright in the court;
- If a computer program is registered prior to copyright infringement (or within three months of its publication if copyright infringement occurs after its publication), the copyright holder is exempted from paying court costs or related fees.

Registration requires the proper completion of an application (registration form), payment of a fee, and deposit of the material (submission of the source code or part thereof) at the U.S. Copyright Office at the Library of Congress.

Documents can submitted both in paper form and online. But online registration is easier and cheaper (online – the registration fee will be $35 or $55; on paper – $85).

The copyright registration process normally takes six to ten weeks. An additional fee of $800 per application is charged for expedited registration [1].

Thus, if a computer program is created or implemented in the US by a citizen of the Republic of Belarus, or if there are concerns that copyright infringement will be committed in the US and/or by a US resident, it is advisable to consider registering the computer program with the Copyright Office at the US Library of Congress.

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