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Б У Д И Т Ё Л И

„ОБЩЕСТВОТО НА ЗНАНИЕТО И ХУМАНИЗМЪТ НА XXI ВЕК“

СБОРНИК С НАУЧНИ ДОКЛАДИ
ОТ XVIII НАЦИОНАЛНА НАУЧНА КОНФЕРЕНЦИЯ
С МЕЖДУНАРОДНО УЧАСТИЕ
1 НОЕМВРИ 2020 Г.

70



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НА УНИВЕРСИТЕТА ПО БИБЛИОТЕКОЗНАНИЕ
И ИНФОРМАЦИОННИ ТЕХНОЛОГИИ



ЗА БУКВИТЕ
О ПИСМЕТЕХЪ

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THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: PROTECTION AND THE PUBLIC INTEREST IN SCIENTIFIC WORK

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Abstract: The purpose of this paper is to show the importance of the Berne Convention for the Protection of Literary and Artistic Works, for the public interest, and especially for teaching and research work. An analysis of the basic, but also all other revisions of the Bern Convention, will provide an overview of the exceptions and limitations in the area of right of citation, as well in the educational scientific field; it will explain the basic principles, but also the rights which the Convention gives, all in the direction of proving its importance to scientists and researchers whose life effort is focused on science, bringing development and well-being for humanity.

Key words: Berne Convention, Convention Reviews, Science, Education, Basic Principles.

Introduction

The Berne Convention deals with the creation of an international union for the protection of literary and artistic works, adopted in 1886, and deals with the protection of works and copyrights. It allows creators: authors, scientists, musicians, poets, painters, etc., to control how their work is used, by whom, and under which conditions. Is the result of a campaign by authors and artists to protect their copyright, in 1858, when in Brussels they met to discuss a resolution in favor of international recognition of copyright, regardless of reciprocity, without formalities and in accordance with the principle of equality between national and foreign authors. The desire and need to bring harmonized international legislation in the field of copyright has been transformed into a resolution. It is the first and foremost the basis for all other international acts in the field of intellectual protection of literary and literary works, and for the development of national legislation.

Research methodology

Research methods used are: Content analysis and Comparative method.

Basic principles and rights of the Berne Convention as protection of educational and scientific work

The basic principles of protection are set out in the Berne Convention for the Protection of Literary and Artistic Works, adopted by WIPO in 1886, ratified by the SFRY in 1975¹, and after the independence and deposition of the notification of acquisitions of rights and obligations by the Republic of Macedonia in 1993, as well as in its revisions, where, in addition to the principles, all other basic

issues of the intellectual protection of the authors are regulated. The Berne Convention was reflected in all national copyright laws of the signatory countries, including the Macedonian one, as the adopted Law on Copyright and Related Rights in the Republic of Macedonia, as follows: Law on Copyright and Related Rights Official Gazette 47/1996 and Amendments of the same from 1998, 2002, 2005 and 2007 (out of force)²; Copyright Law and Related Rights Official Gazette No. 15 of 2010, and its Amendment of the Law of 2010, Amendment of 2011, Amendments to 2013, 2015, 2016³; preparation of a new law, which will mean better transmittion of EU aquis, is underway.

Basic principles

The Berne Convention is based on basic principles and contains a number of provisions for the establishment of safe minimum protection, as well as special provisions available to developing countries. The three basic principles introduced by the Bern Convention are: the principle of national treatment, the principle of automatic protection (without formalities), the principle of independence in protection⁴.

- (a) The principle of national treatment facilitates international judicial interpretation, as well as unifies laws between countries that provide different levels of protection. Thus, works originating in one of the Member States (ie works by an author who is a national of a Member State or work published in such a State for the first time) must enjoy the same protection in each of the other Member States, just as national laws guarantee the actions of its citizens, ie a state part of the Union of the Berne Convention, it guarantees the protection of the copyrights of foreign nationals, citizens of the Member States of the Convention, who are on its territory, following them the same principles as for their citizens.
- (b) The principle of automatic protection (without formalities) means that the protection must not be conditioned by compliance with any formalities (principle of “automatic” protection). This principle prohibits Member States from requiring legal formalities from persons from other States Parties to the Convention as a precondition for copyright protection. They can impose such demands on their own citizens, although this is rarely the case. The effect of this principle is that the author of a work by a signatory country does not have to register or declare his work in any other member and be located, ie its work will be automatically protected in all these countries from the moment it is written, that is, copyright arises from the very creation of scientific work in an objective form, without the need to take legal action.
- (c) The principle of independence in protection or protection is independent of the existence of protection in the country of origin of the offense (principle of “independence” of protection). This stipulates that each Member State must give the same protection to foreign offenses as it

does to domestic offenses, even if the offenses are not protected by copyright laws of the countries of origin. If, on the other hand, the Contracting State provides a longer period of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be extended as soon as protection in the country of origin ceases, if it meets the requirements of that law.

Minimum protection standards

The minimum standards of protection provided in the Convention, in fact, ensure that national legislation does not contribute to an imbalance at the various levels of protection between states. This leads to the unification and increase of international protection. The minimum standards of protection apply to works and rights that need to be protected, as well as the duration of protection. With regard to works, protection must include “every product in the literary, scientific and artistic domain, regardless of the manner or form of its expression” (Article 2 (1) of the Convention). The principle of minimum protection standard means that the protection guaranteed to citizens by one Member State in another Member State may not be below the level of protection guaranteed by the Convention. Also, the level set out in the Convention is only minimal and each country is encouraged to adopt and envisage strengthening measures in its national legislation.

Regarding the principle of duration of protection, it means that intellectual property rights are limited in time, including scientific matters. In other words, copyright is recognized and practiced only for a period determined by law and after that period, everyone is free to use scientific work. The general rule is that protection must last until the 50th anniversary of the author’s death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection shall expire 50 years after the work has been lawfully made available to the public, unless the pseudonym leaves no doubt as to the identity of the author or if the author does not disclose his identity during that period; In the latter case, the general rule applies. Although Bern sets a minimum time limit for copyright protection, which is equal to the author’s life plus 50 years, in most cases in today’s states, the general rule is that copyright in literary, dramatic, musical or artistic works lasts a lifetime of the author, and then until 31 December, of the year, 70 years after his or her death (usually called “life plus 70”). In addition, some countries had different copyright terms that were in force before the adoption of the general rule. For example, the United States did not adopt the copyright “Life Plus” until 1978. These differences in national laws imply the fact that in some cases a particular work may still be in copyright in some countries, but outside copyright (i.e. in the public domain) in others.

Economic and moral rights

Economic rights recognize the right of the holder of the use, authorization to use or prohibition to use the work and setting conditions for its use. Economic

rights usually include: the right to reproduce (for example, making copies by digital or analogue means), the right to distribute through material copies (for example, selling, renting or lending copies), the right to communicate to the public (including public performances), public display and distribution through digital networks such as the Internet) and the right to transformation (including adaptation or translation of a text work) [1].

The Convention also provides for “moral rights“, [2] that is, the right to claim copyright to the work and the right to object to any defamation, deformation or other modification, or other offensive action in respect of the work which may harm the honor or the author’s reputation. Le Droit d’Auteur (copyright) acknowledges that the copyright holder has the right to transcend exploitative rights (access to property rights): these rights are personal, intangible and inseparable from human rights (access to natural rights). According to this view, a person is born with natural rights, although this does not necessarily mean the right to property. The first protects the person, the second what it possesses. These moral rights are accepted and they are part of the civil legal system within the European Union. These general principles include the right to paternity or attribution and the right to integrity. The right of paternity gives the author the right to choose whether to write his name in the work or to publish it anonymously or under a pseudonym. This right, which is directly related to the author’s personality, his inner self, cannot be licensed or written off. That is, the employer who hired the author to create the work, the author cannot waive this right himself, although the employer may own the copyright of the work. The right to integrity, on the other hand, protects the author’s work from any kind of modification, distortion or mutilation. It can be concluded that the justification for moral rights is related to the individual and the protection of his personality. Only the United States has questioned the provision of such rights in the Convention [3].

Reviews of the Bern Convention, restrictions and exceptions in the area of teaching and citation

The Berne Convention [4] provides for certain restrictions and exceptions to economic rights, ie cases in which protected works can be used without the approval of the copyright holder, and without payment of compensation. The goal is to strike a balance between the rights holder and the users, ie to protect the public interest in certain cases. This is provided by the three-step test, set out in Article 9 (2) of the 1967 Berlin Convention, Stockholm, with the intention of enriching the right to reproduce internationally. These restrictions and exceptions are commonly known as “free use” of protected works, and are set out in Article 9 (2) (reproduction in certain special cases), 10 (citations and use of works, by way of illustration, for teaching purposes), 10bis (reproduction of a newspaper or similar product and the use of works for the purposes of reporting on current events) and 11bis (3) (ephemeral recordings for broadcast). Examples of national application of this instrument are found in reproduction for research or teaching

purposes; libraries and archives have the right to copy cultural material; as well as the exclusion of reproduction required for administrative, parliamentary or judicial proceedings [5]. In this way, a space is created for social, cultural and economic public interest that should be balanced in terms of fair practice and justification of the goal, through a given explanation for the protection of copyright. Here we will focus on the right to quote and the part of teaching/science. Around the right to quote, the Berne Convention provides for the same in its first version in 1886, and of course revised it with the following one. Thus, the basic first version of the Convention provides for optional, flexible national legislation: Article 8 (1886) “As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the effect of the legislation of the countries of the Union, and of special arrangements existing or to be concluded between them, is not affected by the present Convention.” The Berne Convention underwent several revisions⁵.

- In Paris, 1896, an Additional Act and Interpretive Declaration were adopted: The Additional Act referred to the amendment of Articles 2, 3, 5, 7, 12 and 20, from the Convention of 9 September 1886 and the numbers 1 and 4 of The final protocol, which is an integral part of it, the Declaration on the Interpretation of Certain Provisions of the Berne Convention of 9 September 1886 and the Additional Act signed in Paris on 4 May 1896, with the addition of the Paris Convention Law, allowed developing countries to is implemented without voluntary licenses for translation and reproduction of works, in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, which is subject to payment of the fee to be determined by law.
- 1908 Berlin Act: Revised Berlin Convention for the Protection of Literary and Artistic Works. In the Berlin Act, the right to quote is set out in Article 10, where the feature of indulgence is still present, with a slight change in the words: “educational and scientific purposes” are replaced by “educational purposes or have a scientific character”, ie the original Article 10 (1908) “As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special Arrangements existing or to be concluded between them is not affected by the present Convention.“
- Rome Act of 1928: Revised International Convention for the Protection of Literary and Artistic Works. During this revision, there are no special changes in the part of the right to quote, except for a change in the one used interpretation, after the word “concluded”.
- Brussels Act of 1948: Revised International Convention for the Protection of Literary and Artistic Works. Significant changes have been

made to this revision, with the exception that it is now mandatory for “short quotes from newspaper and magazine articles“ and allowed for “excerpts from literary or artistic works in educational or scientific publications, or for chrestomathy, if such an application is justified by its purpose “or the original“ Article 10 (1948) (1) It shall be permissible in all countries of the Union to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries. (2) The right to include excerpts of literary or artistic works in educational or scientific publications, or in chrestomathies, in so far as this inclusion is justified by its purpose, shall be a matter for legislation in the countries of the Union, and for special important provisions existing or to be concluded between them. and excerpts shall be accompanied by an acknowledgment of the source and by the name of the author, if his name appears thereon. In the 1948 Brussels Review, the Berne Convention stipulates that the term of protection lasts during the author's lifetime and 50 years after his death. Exceptions are anonymous and pseudonymous works, which are calculated from the date when the work was first legally available to the public. The prescribed deadlines are minimal, which does not mean that certain countries cannot set longer deadlines for protection, for example: Germany and Austria had a term of 70 years, and Spain had a term of 80 years after the author’s death. Regarding the principle of national treatment, and regarding the deadlines for protection, we go to the rule for comparison of the deadlines, ie the rule of the shorter term. The deadline will be the one that applies in the country of origin of the crime, unless otherwise provided in the country where protection is required by law.

- Stockholm Act of 1967: Revised International Convention for the Protection of Literary and Artistic Works, including the Protocol on Developing Countries o Separately, Stockholm Revision of 1967 of the Protocol to the Convention in Bern, on Developing Countries. Given that the previous exceptions are quite restrictive, in this revision of the Convention, there is again a significant change in the section governing the right to quote, which significantly expands the use of citation for any use “provided that their preparation is compatible with fair practice, and their scope does not exceed the justification of the goal ”or original:“ Article 10 (1967) (1,3) (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries. (3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon. “It should be noted that here for the first time we meet referral to “fair practice”, which rejects the

reference “short”. With this revision, it can be said that the right to quote was liberalized, and it was introduced as a mandatory obligation according to Bern. Until the 1967 revision, there was no provision for exceptions to teaching or education, except for early versions of the right to citation, which were originally limited to the publication of scientific publications. Under this revision, Article 10 has been extended to include the permissible exception “to allow the use, to the extent that would justify the purpose, of literary or artistic works by illustration in publications, shows or audio or video recordings of instruction, provided such exploitation is compatible with fair practice “or the original“ Article 10 (1967) (2, 3) (2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice. (3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon. “The two exceptions to Article 10, for citations and for both have the standard of “fair practice” and are limited to the “justifiable goal” level. The revision of the 1967 Stockholm Berne Convention led to the expansion of copyright protection, but also to the granting of certain privileges to developing countries. Considering the social and cultural differences between developing countries and other developed countries, the Additional Protocol to the Stockholm Convention at the Berne Convention stipulates that developing countries may restrict copyright protection for the purposes of education and research. and similar. It was allowed to copy and translate the protected works without any notice to the author, provided that the author was paid a reasonable fee. Given this, this measure has met with great resistance from authors and publishers in developed countries, so the privileges of developing countries have been regulated by the Addition of the Paris Text: developing countries have been allowed to restrict the right to translation for educational purposes. science and teaching, as well as restrict the right to reproduce the uses of systematic instructions by granting a non-exclusive, non-transferable, compulsory license. The issuance of this license depends on the expiration of a certain period of time measured from the date of the first publication, and the holder of the rights must refuse to give consent for a contractual license. It is the duty to seek the consent of the copyright holder for the purpose of concluding a voluntary agreement.

Conclusion

It can be concluded that, with the emergence and its revisions over the years, the Convention has shown success in resolving intellectual property issues in the field of copyright and related rights, establishing starting points for all subsequent international acts or development of multilateral character in this area. Almost every country that is a signatory to the Convention has seen benefitted, especially the authors. It is also important to emphasize the benefits of the public interest in science and technology, according to which this convention confirms its essential importance. On the other hand, if we look today at the world's ever-growing need for intellectual protection in this area, one can easily sense the importance of expanding and upgrading copyright and related rights laws, but always keeping in mind the established principles and rights. and the grounds of the Berne Convention. In conclusion, therefore, the Berne Convention and its revisions should remain relevant to the development of intellectual property protection in the future.

Notes

¹ Law on Ratification of the Bern Convention for the Protection of Literary and Artistic Works, Official Gazette of the SFRY of March 21, 1975.

² Law on Copyright and Related Rights published in the Official Gazette 47/1996, Amendments to it from 1998, 2002, 2005 and 2007, / out of force

³ Law on Copyright and Related Rights Official Gazette No. 15 of 2010, Amendment of the Law / 2010, Amendment / 2011, Amendments / 2013/2015/2016.

⁴ World Intellectual Property Organization, GUIDE to the BERNE CONVENTION for the Protection of Literary and Artistic Works (Paris Act, 1971), GENEVA, 1978.

⁵ Teresa Nobre, Copyright and Education in Europe: 15 everyday cases in 15 countries, COMMUNIA International Association of the Digital Public Domain, April 2017, link: <https://creativecommons.org/publicdomain/zero/1.0/>.

⁶ Berne Convention for the Protection of Literary and Artistic Works Paris Act of July 24, 1971, as amended on September 28, 1979 Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979.

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