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To cite this article: D V Ponomareva *et al* 2020 *J. Phys.: Conf. Ser.* **1685** 012018

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Copyright and protection of scientific results: the experience of Russia, the United States and the countries of the Near East

D V Ponomareva¹, P B Maggs² and A G Barabashev¹

¹ Kutafin Moscow State Law University (MSAL), Moscow, 125993, Russian Federation

² University of Illinois College of Law, Champaign, Illinois 61820, USA

ponomad@yandex.ru, peter.b.maggs@gmail.com, alexander.barabashev@gmail.com

Abstract. In this article, the authors analyze the legal regulation of the copyright protection of the results of scientific activity in Russia, the United States and the countries of the Near East. Considerable attention is paid to the review of key regulatory acts of the states operating in the designated area, as well as international treaties affecting aspects of the copyright protection of intellectual rights in the field of science. The authors consider the main ways of protecting the scientific results by means of copyright. Special attention is paid to the analysis of the judicial practice of the states, which plays a vital role in defining approaches to the legal regulation of the scientific results. The authors emphasized the similarity and difference between the systems of copyright protection of the results of scientific activity, the role of the judiciary in the functioning of such systems. In the end the conclusion is made about the prospects for harmonization of the approaches to the legal regulation of the results of scientific activity by means of copyright. The article will be relevant to practicing lawyers, researchers, students and everyone who is interested in IP law.

1. Introduction

This article discusses protection of the results of research activity by copyright in the Russian Federation, the United States, and countries of the Near East. Copyright protection works very different ways, depending upon the differing economic interests involved in the various modes of publication of the results of such activities. In the international scholarly community, it is customary to give credit for research results to the person who achieved these results that was first to have his publication about the results accepted by a peer-reviewed journal and to cite to this first publication. However, because copyright law only protects expression, others, whether or not they personally achieved the results, are free to publish descriptions of the achievements of the person that receives credit for the first accepted publication. This is because of the limited nature of copyright protection in most countries, exemplified in the copyright legislation of the United States and the Russian Federation. Section 102(b) of the United States Copyright Act of 1976 provides:(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Paragraph 5 of Article 1259 of the Civil Code of the Russian Federation provides:



5. Copyright rights do not extend to ideas, concepts, principles, methods, procedures, systems, means, decisions of technical, organizational or other tasks, discoveries, facts, programming languages or geological information on the subsoil.

A similar limitation appears in Article 9(2) of the World Trade Organization's TRIPs:2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

The limited nature of copyright protection and the Internet revolution have had profound effects on the economics of original publication of research. Researchers in private businesses that keep their results as trade secrets or patent their results may earn very substantial royalties or profits from their research. University professors and scholars at publicly-supported research institutes, generally receive prestige, promotions, pay increases, prizes, and awards for high-quality published research. However, the journals that publish this research pay little or no royalties and sometimes even demand a publication fee. Most high-quality journals are published by private businesses that seek to maximize their profits by charging high prices for access in paper or electronic form. The result has been that many institutions worldwide have been unable to maintain first-class scientific libraries or have had to cut back other important expenditures to pay library costs. In recent years many researchers and library directors have questioned the wisdom of maintaining this expensive traditional publication system in an era when distribution of research papers on the Internet is almost cost-free [1]. Today many government agencies, universities, and research institutes that finance research have begun to require the recipients of financing to make the results of their research freely available to the public on the Internet. Of course research results on the Internet are only useful if other researchers can find them. Serious questions have arisen as to the interrelation of copyright rights and indexing by Internet search engines.

The textbook industry is based on both the limitations and the incentives of copyright law. Because the underlying knowledge embodied in research is unprotected by copyright, textbook companies are free to incorporate the knowledge in textbooks. Talented writers, whether or not they are good researchers, often earn quite large royalties from textbook publishers. The textbook publishers have been able to charge high prices, because university students are forced to buy textbooks required for their courses. The high prices of textbooks are leading to several consequences: (1) extensive circulation of pirated copies on the Internet or by student-to-student distribution; (2) arguments that exceptions in copyright law permit uncompensated use for educational purposes; (3) a growing tendency for universities and professors to distribute textbooks on the Internet for free download.

Copyright is one of the effective tools for protecting the results of scientific activity - new solutions recorded on any storage medium, including the developed designs and technologies [2]. In the Russian legal doctrine, copyright, in an objective sense, is considered as an institution of civil law that regulates legal relations associated with the creation and use (publication, performance, display, etc.) of works of science, literature or art, that is, the objective results of creative activity of people in these areas [3]. At the same time, copyright includes both non-property (moral) rights (except in the United States) of the author, which are inalienable and valid indefinitely, and property rights to use the work, which the author can transfer to other persons [4]. Most copyright laws state that an author or copyright holder has the right to authorize or deny certain actions in relation to a work [5].

Scientific works are traditionally subject to copyright. Legal protection of scientific works, which are the results of scientific activity, is carried out at the international, supranational and national levels. It should be noted that at the international level, a number of international treaties are in force, affecting both general aspects of the protection of intellectual property and those dedicated to exclusive copyright. Below are the following international treaties:

- Paris Convention for the Protection of Industrial Property of 1883;
- Universal (Geneva) Copyright Convention (as revised in 1952 and 1971);
- the 1970 WIPO Convention;

- Agreement of the CIS countries on cooperation in the protection of copyright and related rights in 1993;
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994;
- 1996 WIPO Copyright Treaty.

These international treaties are designed to provide copyright protection for various kinds of scientific works - scientific publications, developments, designs, programs, etc. The party states to the international treaties not only comply with their provisions, but also implement international legal norms into national legislation so that it meets the advanced standards for the protection of the results of scientific activities. In addition, multilateral treaties push individual states to conclude bilateral international treaties aimed at developing deeper cooperation in the field of science and technology, including the protection of scientific information.

The Russian Federation has concluded agreements with a number of states on ensuring the protection of intellectual property rights, including copyright, with states such as Austria, Armenia, Bulgaria, Hungary, Cuba, the Malagasy Republic, Poland, Slovakia, Czech Republic, and Sweden. Separately, it is worth noting the agreements concluded by the Russian Federation with the United States of America and dedicated to issues of scientific and technical cooperation between the two states. Today, the legal basis for cooperation between Russia and the United States is one interstate and three intergovernmental agreements in the field of science and technology. In addition, at the interdepartmental level (between the Ministry of Education and Science of the Russian Federation and between the Department of Commerce of the United States of America), a corresponding Memorandum of Understanding was concluded [7]. It should be noted that Russian-American international treaties often contain provisions concerning the legal regulation of intellectual property, including the distribution of rights in connection with the results of scientific and technical activities. This means the unconditional concern of the parties in the legal protection of the created intellectual property, including copyright.

Within the framework of this study, the features of copyright protection for the results of scientific activities in the Russian Federation, the United States of America and the countries of the Near East will be considered.

2. Russian legislation and law enforcement practice

The legal basis for the protection of copyright for the results of scientific activity is the Constitution of the Russian Federation (hereinafter - the Constitution) and the Civil Code of the Russian Federation (hereinafter - the Civil Code). In accordance with the first part of Article 44 of the Constitution, "everyone is guaranteed freedom of literary, artistic, scientific, technical and other types of creativity and teaching. Intellectual property is protected by law"¹. Clause 1 of Article 1225 of the Civil Code establishes that scientific works, as well as inventions, utility models, industrial designs, topology of integrated circuits are the results of intellectual activity, which are protected by law (clause 2 of Article 1225 of the Civil Code). Thus, the authors of the protected results of intellectual activity, including scientific works, should count on the protection of their works².

The Civil Code regulates in detail the specific types of intellectual copyright, which include: the exclusive right to a work (Clause 1, Clause 2, Art. 1255, Art. 1256 and 1270); the right of authorship (subparagraph 2 of paragraph 2 of Art. 1255, Art. 1257 and 1258); the author's right to a name (subparagraph 3 of paragraph 2 of article 1255); the right to inviolability of the work (subparagraph 4 of paragraph 2 of Art. 1255 and Art. 1266); the right to publish the work (subparagraph 5 of paragraph 2 of Art. 1255 and Art. 1268) and the right to recall (Art. 1269).

In order for a work of science to "claim" legal protection, it is necessary that it meets the relevant criteria for protection. First, the work must be the result of creativity (clause 7 of Art. 1259 of the Civil

¹ Constitution of the Russian Federation (adopted by popular vote on 12.12.1993 with amendments approved during a nationwide vote on 01.07.2020). Available from <http://www.pravo.gov.ru>

² Civil Code of the Russian Federation (Part Four) dated December 18, 2006 № 230-FZ. 2006; 52 (1):5496.

Code). At the same time, the Civil Code does not disclose the definition of the concept of "creative activity". This definition is disclosed in the Fundamentals of the Legislation of the Russian Federation on Culture (approved by the Supreme Council of the Russian Federation on 09.10.1992 N 3612-1). According to article 3 of the specified normative act "creative activity - the creation of cultural values and their interpretation". If we try to apply this definition to the field of science, we can assume that creative activity is the process of creating something new, previously nonexistent, of scientific significance, or a combination of previously created, already known elements. It is also important to note that a work of science (scientific article, monograph, lecture) is subject to legal protection regardless of the merits, purpose of the work, as well as the way of expression. This position of the legislator speaks of the need to avoid subjectivity in the perception of the result of scientific activity when deciding on the provision of legal protection.

Secondly, the work of science must have an objective form of expression. With regard to scientific activity, there can be many forms of expression: more often written (text, image, audio recording), less often - oral (public lecturing). The way of expression can be any, while the work is considered in two hypostases: on the one hand, the work is an intangible object, and on the other hand, it is a thing in which an intangible object is embodied. It is curious that the Russian legislator, in contrast to the established international legal practice (in particular, the 1952 Universal Copyright Convention), does not consider the material embodiment of a work (including a scientific one) as an obligatory criterion of protection. According to Russian law, the object of copyright is a work that has not yet materialized in any way. Thus, publicly announced but not yet published theses of scientific work are subject to legal protection.

These two criteria are fundamental when deciding whether to grant legal protection to a work of science. Please note that a work of science, as well as any other work, receives appropriate legal protection from the moment of its creation. And if a scientific work is not yet completed, is it copyrighted? According to Russian law, copyright objects are also unfinished works, as well as individual parts of these works (section of a scientific article, chapter of a monograph, etc.).

To ensure copyright protection for the result of scientific activity, which is a work of science, it is important to find out whether it is necessary to register the rights to such a work. The Civil Code does not assign such an obligation to the author. Unlike the sphere of patent law, when it comes to the protection of inventions, utility models and industrial designs, where registration is the condition for ensuring the protection of the result of scientific activity, in the sphere of copyright such formalities are unnecessary. Even with regard to computer programs and databases, only the right is enshrined, and not the obligation of the author to register the corresponding rights (Art. 1262 of the Civil Code). In our opinion, it seems appropriate to extend the effect of the right to register copyright in relation to scientific works. In view of the potential for a more or less objective assessment of the scientific significance of a work, the creative component, the relevance of countering plagiarism, which is so widespread in the scientific community, registration could become an effective "weapon" against copyright infringement. Individuals are the subjects of copyright.

An individual can be the subject of both original and derivative copyright. Initially, the right arises from the author himself, who directly created a scientific work. Article 1257 of the Civil Code establishes the presumption of authorship - the author is considered the one whose name is indicated on the copy of the work until proven otherwise. A scientific work may have several authors, and then we are talking about co-authorship, which is a very common phenomenon in the scientific community. If the creative contribution of each author can be determined, then we are dealing with separate co-authorship. Suffice it to recall the "technology" of writing textbooks, manuals and monographs, where each chapter, each section can have its own author. But there is also the opposite situation, in which the contribution of each author cannot be established with certainty. This is a separate co-authorship, which is less common in the scientific field, but common in the literary. As for the derivative copyright, its subjects are the legal successors of the author (heirs, contracting parties).

Let's consider in more detail the content of subjective copyright, enshrined in Russian legislation. First of all, it is worth mentioning the exclusive right. This is the main right of the author, which is of a

property nature. According to paragraph 1 of Article 1270 of the Civil Code, the author of a work or other rightholder has the exclusive right to use the work in any form and in any way that does not contradict the law (exclusive right to a work). The copyright holder can dispose of the exclusive right to a work. Clause 2 of this article lists the ways of using the work, in particular:

1) reproduction of a work, that is, the production of one or more copies of a work or part of it in any material form, including in the form of sound or video recording, the production in three dimensions of one or more copies of a two-dimensional work and in two dimensions of one or more copies three-dimensional work.

2) distribution of the work by sale or other alienation of its original or copies;

3) public display of the work, that is, any demonstration of the original or a copy of the work directly or on a screen using film, slide, television footage or other technical means, as well as the demonstration of individual frames of an audiovisual work without observing their sequence, either directly or with the help of technical means in place open to free visits, or in a place where there are a significant number of people who do not belong to the usual family circle, regardless of whether the work is perceived at the place of its display or in another place simultaneously with the demonstration of the work;

4) import of the original or copies of the work for distribution purposes;

5) broadcasting, that is, communicating the work to the public by radio or television, with the exception of cable communication.

6) communication by cable, that is, communication of the work to the public by radio or television using a cable, wire, optical fiber or similar means.

7) retransmission, that is, reception and simultaneous communication on the air (including via satellite) or by cable of a complete and unchanged radio or television transmission or its essential part, broadcast or by cable by an on-air or cable broadcasting organization;

8) translation or other processing of the work;

9) bringing the work to the public in such a way that any person can get access to the work from any place and at any time of his own choice (bringing to the public)³.

It should be noted that not all legal ways of using the work are listed above, but only those that can be applied in one way or another to objects of copyright in the field of science. The legislator deliberately left the list of ways to use the work open, which is not surprising, since scientific and technological progress often contributes to the emergence of new "high-tech" options for introducing a work into the public domain.

An exclusive right is an absolute right, which means only one thing: a work can be used by the copyright holder himself, all others can "exploit" the work only with his consent, for example, by concluding an appropriate agreement. At the same time, even from this rule there are exceptions in the form of the possibility of free use of a work, enshrined in the law, in a number of cases.

Article 1274 of the Civil Code is of enormous importance for the scientific sphere, which regulates the free use of a work for information, scientific, educational or cultural purposes. Clause 1 of this article establishes that "it is allowed without the consent of the author or other rightholder and without payment of remuneration, but with the obligatory indication of the name of the author whose work is used and the source of borrowing:

1) citation in the original and in translation for scientific, polemical, critical, informational, educational purposes, in order to reveal the creative intention of the author of legally published works in the amount justified by the purpose of citation, including the reproduction of excerpts from newspaper and magazine articles in the form of press reviews;

2) the use of legally published works and excerpts from them as illustrations in publications, radio and television broadcasts, sound and video recordings of an educational nature to the extent justified by the goal;

3) reproduction in a periodical print publication and subsequent distribution of copies of this publication, communication by air or by cable, bringing to the attention of the public the articles on

³ Civil Code of the Russian Federation (Part Four) dated December 18, 2006 № 230-FZ. 2006; 52 (1):5496.

current economic, political, social and religious issues lawfully published in periodicals, either broadcast or by cable, works of the same nature brought to the attention of the public in cases where such reproduction, communication, communication were not specifically prohibited by the author or other rightholder;

4) reproduction in a periodical print publication and subsequent distribution of copies of this publication, broadcasting or by cable, bringing publicly delivered political speeches, addresses, reports and similar works to the public in the amount justified by the informational purpose. At the same time, the authors of such works retain the right to use them in collections;

5) reproduction, distribution, communication on the air and by cable, bringing to the public in reviews of current events (in particular, by means of photography, cinematography, television and radio) works that become seen or heard during such events, to the extent justified informational purpose;

6) public performance of lawfully made public works by presenting them in a live performance, carried out without the purpose of making a profit in educational, medical, social service organizations and institutions of the penal system by employees (employees) of these organizations and institutions and persons, respectively, served by these organizations or held in these institutions;

7) recording on an electronic medium, including recording in the computer memory, and bringing to the attention of the general public the abstracts of dissertations"⁴.

In all cases referred to in article 1274, it is mandatory to indicate the name of the author and the source of borrowing (i.e., the work from which the quotation was taken must be indicated). It doesn't have to be the original piece; it is not forbidden to quote from other works, since it is often simply inevitable (for example, if the original work is lost or difficult to access). Failure to comply with this condition will mean both a violation of the personal non-property rights of the author, and at the same time - the exclusive right to the work. The method of indicating the source of borrowing should allow to unambiguously establish it.

Article 1274 permits not only the reproduction expressly specified in the relevant paragraph, but also the subsequent distribution of manufactured copies of the work.

Quotation is a permitted case of reproduction, allowed if the conditions specified in the law are met. If these conditions are not met, then there is a reproduction carried out in violation of the exclusive right to the work.

Citation is permitted only if it is carried out for the purposes indicated in the abovementioned article. Since 10/01/2014, the list of these goals has grown: educational goals and goals of disclosing the artistic intent of the author have been added here.

You cannot quote a work before its publication. It is interesting to note that in relation to the author's abstracts of dissertations, citation in practice is recognized as permissible, despite the words "as a manuscript" placed on the author's abstract. This is due to the fact that such an indication is rather a tribute to tradition, in fact, the distribution of the abstract to universities and libraries allows us to consider it as a published work. In this case, the publication must be made lawfully, i.e. with the consent of the author.

The amount of citation should be justified by its purpose. A critical analysis of a poem may involve its complete repetition; in scientific work, a large quotation may be required to accurately convey the opponent's thought, etc. Both the size of the cited work and the work in which the quotation is used should be taken into account [6].

As for the use of articles for informational purposes, it must be carried out in compliance with the following conditions:

- only legally published works can be used, and the list of possible methods of disclosure is limited: publication in a periodical print (accordingly, cases when a work was published, for example, in a book), broadcast or cable communication, communication to the public will not be included;

⁴ Civil Code of the Russian Federation (Part Four) dated December 18, 2006 № 230-FZ. 2006; 52 (1):5496.

- the list of works is limited to articles, so this will not include, for example, a story published in a magazine, a photo report. Illustrations, graphs, diagrams can be used if they are an integral part of the article, and not added as "illustrations on the topic";
- the topics of the articles used are limited - only articles on economic, political, social and religious issues;
- the main topic of the article should be current issues, i.e. related to ongoing events, processes, etc. Therefore, the publication of archival material, even on the same topic, within the framework of this limitation of the exclusive right is illegal;
- these works may be used by reproduction in a periodical printed publication (including the subsequent distribution of copies of this publication), by broadcasting or by cable, bringing to the public. Permission to freely reproduce an article in the press also means the lawfulness of the subsequent distribution of copies of it, but this does not include cases when distribution is carried out in relation to copies reproduced outside the scope of this exception (for example, made by the copyright holder himself and distributed by him in another country);
- such use should not be prohibited by the copyright holder. The prohibition can be expressed both directly in the article, and in relation to the issue of the magazine or even the mass media, resource on the Internet, etc. Based on the established practice in the latter case, the prohibition should clearly express that it concerns not only the totality of articles published in this issue of the journal as a whole, but also each article separately.

Such use assumes full use of the article. The use of article fragments is possible within the framework of the rules for citing a work [7].

A few words about the use of dissertation abstracts. It is allowed to record such objects on electronic media and make them available to the public. Thus, outside the scope of this exclusion are messages on the air or by cable, and accordingly, all cases when a person sends someone the text of the abstract (for example, by e-mail). At the same time, this rule does not limit the purpose of using the abstract, therefore, it can be used in permitted ways even for commercial purposes [8].

In addition to cases of free use of a work, another limitation of the exclusive right of the author is the period of validity of the exclusive right, which is calculated from the moment of creation of the work and terminates 70 years after the death of the author. As a general rule, this one begins to flow from January 1 of the year following the year of the author's death. Subsequently, the work becomes public domain, and any person can use it without concluding an agreement with the author's heirs and without payment of remuneration [9].

It is worth noting that the exclusive right is negotiable, it can pass to other persons under an agreement or in the order of universal succession (in the event of inheritance or of reorganization of a legal entity that is the copyright holder) [10-11].

Along with property rights, the author of a scientific work also has personal non-property rights that belong to the person as such, are non-transferable and have no validity period, therefore they are protected indefinitely. What are the personal non-property rights assigned to the author of the work?

First of all, it is worth mentioning the right of authorship, which is understood as the ability to be considered the creator of a work and therefore require the indication of the author's name in any use of the work. Article 1257 of the Civil Code of the Russian Federation establishes the presumption of authorship: a person indicated as an author on a material medium of a work or in information about it is considered an author until proven otherwise.

Secondly, the author of a work of science has the right to a name. It represents a legitimate opportunity, reserved only for the author, to indicate his own name or a pseudonym (a fictitious name) or not to indicate a name at all (to release the work anonymously). Although, in fairness, it is worth emphasizing that the use of a pseudonym or even an anonymous release of a work for the scientific field is not typical.

The author of a work of science, like any other work, should have the opportunity to bring his creation to the attention of an indefinite circle of people, to familiarize society with it. This opportunity

constitutes the right to publish the work. The methods of disclosure can be different. At the same time, legal protection extends to unpublished works. Along with the right of publication, there is also the right to withdraw a work, for example, if the work needs to be improved. Often, when realizing such an opportunity, the author will need to compensate the losses caused to the publishing house, which has already started working with the manuscript.

Finally, another personal non-property right is the right to inviolability, which is an opportunity to prevent any interference with the form of a work, because the work must exist in the form in which the author created it. After the death of the author, the legal successor gives permission to use the work, provided that this does not contradict the will of the author expressed in writing, does not distort his intention and does not violate the integrity of the perception of the work.

What should the author do in case of violation of his rights to a work of science? First of all, it should be noted that the author can always take advantage of the general measures of protection and liability provided for by the relevant articles of Chapter 69 of the Civil Code. In particular, in case of violation of an exclusive right, it is possible to recover damages or demand compensation. The amount of compensation can be determined in different ways. One of its options can be a sum of money in the range from 10 thousand to 5 million rubles, the other - a two-fold cost of copies made and used in violation of the exclusive right. There is also a third option - the recovery of the double value of the exclusive right.

Another relevant way to protect copyright is the adoption by the court of measures to restrict access to materials that contain illegally used works. This method of protection is applied, in particular, to scientific works posted on the information and communication network Internet. The procedure for the application of such measures is established by procedural legislation (in particular, Art. 144.1 of the Civil Procedure Code) and the Federal Law "On Information, Information Technologies and on Information Protection".

Let us cite a court case as an illustrative example of the possibility of using methods of protecting violated copyrights. It is indicative in terms of answering the question of whether the thoughts and ideas expressed in a scientific article fall under copyright protection. The case in the first instance was considered in the Kirovsky District Court of the City of Ufa, Republic of Bashkortostan, and later went on to the appellate court⁵.

The circumstances of the case are as follows. The Plaintiff applied to court with a claim against the Defendant on the protection of the author's exclusive rights to scientific work, indicating the following in support of the claim. The plaintiff defended his dissertation, in connection with which by the decision of the dissertation council of the Academy of Management of the Ministry of Internal Affairs of Russia he was awarded the academic degree of candidate of legal sciences. Later, in one of the Internet editions, an article was published, in which the authors exposed the defendant of plagiarism while writing and defending his thesis. Study of the author's abstract allowed the plaintiff to conclude that the plaintiff's copyrights were violated, since the defendant illegally, without the appropriate permission of the plaintiff, without reference to the author's scientific works, without paying the plaintiff royalties in his dissertation, used materials from the dissertation defended by the plaintiff. As an integral part of his dissertation, the defendant illegally used parts of the original work of the plaintiff, including through their processing, while there is a complete coincidence of the titles of both dissertations, the titles of their chapters and paragraphs, and in addition, when writing the dissertation. The defendant applied the same methods of analysis and research methodology that were used by the plaintiff when writing his dissertation, and made scientifically significant conclusions, similar to the scientifically significant conclusions made by the plaintiff when he wrote his dissertation. Since when the defendant wrote the dissertation without the appropriate permission from the plaintiff, the materials of the dissertation authored by the plaintiff were used, and the dissertation prepared by the defendant does not contain an indication of this circumstance, and the fact that the plaintiff defended a similar dissertation earlier

⁵ Appeal ruling of the Supreme Court of the Republic of Bashkortostan dated January 28, 2014 in case N 33-378 / 2014. Not officially published.

confirms the priority of his authorship, the plaintiff believed that the authorship of his work was appropriated by the defendant, which is a violation of his copyright, provided for by the Law of the Russian Federation "On Copyright and Related Rights" dated 09.07.1993 N 5351-1, which was in force during the period when the disputed legal relations of the parties arose. In connection with the above, the plaintiff asked to recognize the defendant: violated his right of authorship to scientific work - the candidate's dissertation; violating the author's right to name, disclose and protect the author's reputation; violating the author's right to protection from any distortion or other encroachment that could damage the honor and dignity of the author.

By the decision of the Kirovsky District Court of the City of Ufa, Republic of Bashkortostan, dated 06.11.2013, the Court refused to satisfy plaintiff's claims.

In his appeal the appellant raised the issue of cancellation of the contested court decision on the grounds of its illegality and groundlessness, referring to the fact that the court, when making the court decision, substantially violated the norms of substantive and procedural law.

According to Article 195 of the Civil Procedure Code of the Russian Federation, a court decision must be lawful and justified. The court justifies the decision only on the evidence that was examined at the hearing.

In accordance with the provisions of Article 155 of the Civil Procedure Code of the Russian Federation, the trial of a civil case takes place in a court session with the obligatory notification of the persons participating in the case about the time and place of the session.

As follows from the case materials, the plaintiff was not properly notified of the time and place of the court session.

In accordance with paragraph 2 of part 4 of Article 330 of the Civil Procedure Code of the Russian Federation, the decision of the court of first instance is subject to cancellation, regardless of the arguments of the appeal, presentation in the event of consideration of the case in the absence of any of the persons participating in the case and not properly notified of the time and place of the court session.

In such circumstances, the Civil Judicial Collegium of the Supreme Court of the Republic of Bashkortostan decided to proceed to the consideration of this case according to the rules of proceedings in the court of first instance, without taking into account the specifics provided for in Chapter 39 of the Civil Procedure Code of the Russian Federation "Proceedings in the Court of Appeal."

Considering this civil case, the appellate court found the following.

The plaintiff asks to recognize the defendant: violated his right of authorship to scientific work - the candidate's dissertation; violating the author's right to name, disclose and protect the author's reputation; violating the author's right to protection from any distortion or other encroachment that could damage the honor and dignity of the author. From the essence of these requirements it follows that the plaintiff believes that the defendant violated his personal non-property rights of the author of a work of science, namely, the dissertation defended by him on the date of the year, and the violation of copyright is the defendant's borrowing of parts of the original text of the dissertation of the plaintiff, including the title of the dissertation, the titles of its chapters and paragraphs.

At the same time, the plaintiff came to the conclusion that his copyright had been infringed not by comparing theses, but by comparing the abstracts of the parties, which is not the same thing.

Clause 21 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 19, 2006 N 15 "On issues arising from the courts when considering civil cases related to the application of legislation on copyright and related rights"⁶ explains that legal protection as an object of copyright rights are subject to a work expressed in an objective form, and not its content, while, ideas, methods, processes, systems, methods, concepts, principles, discoveries, facts (paragraph 4 of Article 6 of the Law of the Russian Federation "On Copyright and Related Rights") are not protected by copyright. Objects

⁶ Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.06.2006 N 15 "On the issues that the courts have arisen in the consideration of civil cases related to the application of legislation on copyright and related rights" (the document has expired). Not officially published.

of copyright may include titles of works, phrases and other parts of a work that can be used independently, are creative and original.

To confirm the existence of copyright for the dissertation, the plaintiff presented a photocopy of the diploma of the candidate of sciences, not certified in the prescribed manner, a notarized author's abstract of the plaintiff and the text of the author's abstract of the defendant, obtained from the Internet.

According to Article 12 of the Civil Code of the Russian Federation, the protection of civil-law rights is carried out by: recognition of rights; restoration of the situation that existed before the violation of the right, and suppression of actions that violate the right or create a threat of its violation; declaring a voidable transaction invalid and applying the consequences of its invalidity, applying the consequences of the invalidity of a void transaction; invalidation of the decision of the meeting; invalidation of an act of a state body or local self-government body; self-defense rights; an award to the performance of an obligation in kind; compensation for losses; collection of a penalty; compensation for moral damage; termination or change of legal relationship; non-application by the court of an act of a state body or local self-government body that is contrary to the law; and in other ways provided by law.

The plaintiff referred to the violation by the defendant of the plaintiff's copyright when the defendant wrote his dissertation, at the same time this work, expressed in an objective form - a dissertation, which by virtue of the law is subject to protection as an object of copyright, was not submitted by the plaintiff to the court.

The following circumstances are subject to proving in disputes of this category: whether the result of the plaintiff's creative activity is the fragments of their texts that coincide in the dissertations of the parties, the titles used in the works, can these parts of the text be used independently, are they not essentially a description of methods, processes, systems, ways, concepts, principles, discoveries, facts.

In order to present evidence in support of the stated claims, the plaintiff's representative filed a motion for the appointment of a forensic linguistic examination in the case, for the resolution of which it was proposed to raise the questions: is there any similarity in the materials of the abstracts of the parties? Is there a fact of borrowing materials, experimental research results and conclusions in the defendant's dissertation author's abstract from the plaintiff's dissertation, and if so, is it considered plagiarism? Is the defendant the author of the disputable part of the text of the dissertation of the plaintiff?

At the same time, having evaluated the means of evidence presented by the parties in their aggregate according to the Article 67 of the Civil Procedure Code of the Russian Federation, the judicial board concludes that the appointment of a linguistic examination is inappropriate, since a purely linguistic examination cannot give answers to the questions posed.

In accordance with part 1 of Article 56 of the Civil Procedure Code of the Russian Federation, each party must prove the circumstances to which it refers as the basis for its claims and objections, unless otherwise provided by federal law.

As follows from the explanations, given in clause 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated June 19, 2006 N 15 "On issues arising from the courts when considering civil cases related to the application of copyright and related rights legislation", the defendant is obliged to prove fulfillment of the requirements of the specified Law when using works and/or objects of related rights. Otherwise, an individual or legal entity is recognized as an infringer of copyright and/or related rights, and civil liability arises for him in accordance with the legislation of the Russian Federation; The plaintiff must confirm the fact that he owns copyright and/or related rights or the right to protect them, as well as the fact that the defendant has used these rights.

The plaintiff, in support of his arguments, referred to the use by the defendant of the same methods of analysis and research methodology, as well as to the fact that the latter made scientifically significant conclusions similar to the plaintiff, but by virtue of the provisions of the Law of the Russian Federation "On Copyright and Related Rights" ideas, methods, processes, systems, methods, concepts, principles, discoveries, facts are not objects of copyright.

Taking into account the aforementioned norms of law, the plaintiff, as a person who has applied to the court for the protection of the violated right, has the burden of proving the fact that he owns the copyright for the dissertation, as well as the fact that the defendant has used this right. At the same time,

the lack of proof of the very fact of ownership of the copyright by the plaintiff, in principle, excludes the possibility of satisfying the stated claims.

According to paragraph 5 of Article 1259 of the Civil Code of the Russian Federation, copyright does not apply to ideas, concepts, principles, methods, processes, systems, methods, solutions of technical, organizational or other problems, discoveries, facts, programming languages. Attribution of authorship to ideas expressed earlier in scientific works of other authors does not entail legal responsibility.

By virtue of the requirements of Part 1 of Article 57 of the Civil Procedure Code of the Russian Federation, evidence is presented by the parties and other persons participating in the case, the court has the right to invite them to submit additional evidence, and if it is difficult for these persons to present the necessary evidence, the court, at their request, provides assistance in collecting and requesting evidence.

Meanwhile, the original of the dissertation, about the violation of copyright by the defendant in relation to which the claim was filed, was not submitted by the plaintiff, including at the proposal of the court, there is no relevant and admissible evidence of the difficulty of submitting it to the court by the plaintiff.

In addition, the civil legal methods of copyright protection are defined by Article 49 of the aforementioned Law of the Russian Federation "On Copyright and Related Rights", which the plaintiff did not use when filing this claim with the court.

The court concluded that it was impossible to determine from these requirements, the decision on the commission of which actions aimed at protecting the violated right should be taken by the court in the event that the stated requirements were satisfied.

In addition, the panel of judges, having assessed the evidence in the case by its inner conviction, found the fact that the defendant unlawfully used parts of the original work, and also reworked the plaintiff's original work, to be unconfirmed by the case materials. Failure to prove this circumstance is a sufficient reason to dismiss the claim.

The argument of the complaint about the groundlessness of the court's refusal to satisfy the petition filed by the plaintiff's representative for the appointment of a linguistic examination in the case of the judicial collegium finds untenable, taking into account the aforementioned legal judgments.

Under the aforementioned circumstances, the panel of judges concluded that there were no legal grounds for satisfying claims for the protection of the author's exclusive rights to scientific work - the dissertation.

3. The US experience

Researchers, librarians and search engines companies in the United States largely regard copyright as a hindrance rather than an aid to the conduct of research and distribution of the results of research and are fighting to lower copyright protection.

As indicated in the initial paragraphs of this article, the Internet revolution has led to profound changes in the effects of copyright on research and to a strong reaction against the consequences copyright protection of researchers' publications. Further, Internet search engine companies have had a strong incentive and ample funds to fight in the courts to limit the effects of copyright on the indexing and retrieval of published research results. Additionally, the ever-increasing cost of university tuition has led universities to look for ways to decrease student payments to third parties.

Since adoption of the Copyright Act of 1976 and its amendments in connection with United States adherence to the Berne Convention in 1989, there have been no significant changes in the Act affecting the protection of research results. Changes have come in court decisions interpreting the Copyright Act, and in policies adopted by Federal government agencies and leading universities.

As mentioned above, §102(b) of the United States Copyright Act of 1976 provides:

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

A leading court case interpreting this provision is *Nash v. CBS, Inc.*, 899 F.2d 1537 (7th Cir. 1990). The opinion, by highly-esteemed Judge Frank Easterbrook, described the following generally-accepted historical facts.

John Dillinger, Public Enemy No. 1, died on July 22, 1934, at the Biograph Theater in Chicago. He emerged from the air conditioned movie palace into a sweltering evening accompanied by two women, one wearing a bright red dress. The "lady in red", Anna Sage, had agreed to betray his presence for \$10,000. Agents of the FBI were waiting. Alerted by Polly Hamilton, the other woman, Dillinger wheeled to fire, but it was too late. A hail of bullets cut him down, his .45 automatic unused. William C. Sullivan,

However, Judge Easterbrook pointed out that books by the plaintiff, John Nash, incorporated arguments based on Nash's research leading to a very different historical theory of the event:

Jay Robert Nash believes that Dillinger did not die at the Biograph. In *Dillinger: Dead or Alive?* (1970), and *The Dillinger Dossier* (1983), Nash maintains that Dillinger learned about the trap and dispatched Jimmy Lawrence, a small-time hoodlum who looked like him, in his stead. The FBI, mortified that its set-up had no sting, kept the switch quiet.

The defendant used the theory and many of the factual assertions in Nash's books as the basis of an episode of a television serial.

Judge Easterbrook upheld a trial court decision granting summary judgment to the defendant on the basis of the law in effect at the time of Nash's publication, which was before the effective date of the 1976 Copyright Act, but also noted that Article 102(b) of the 1976 Act had merely codified existing precedents. Judge Easterbrook stated with respect to the alleged infringement of Nash's copyright in a book entitled *The Dillinger Print*:

Because *The Dillinger Print* uses Nash's analysis of history but none of his expression, the judgment is affirmed.

The 1976 Copyright Act offered no protection for moral rights. Only extremely limited protection for works of the fine arts was provided by the amendments in connection with United States adherence to the Berne Convention. In particular, the strong protection of moral rights embodied in Article 6bis of the Berne Convention was excluded, due to United States lobbying, from the TRIPS agreement, Article 9(1) of which provides:

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

As a result, under United States law, the only effective legal protection of moral rights of authors of research results is that available from other legal principles outside copyright, such as the law concerning defamation. The leading case is *Gilliam v. American Broadcasting Companies Inc.*, 538 F.2d 14 (2nd Cir. 1976), in which the Monty Python Flying Circus obtained a remedy against a broadcaster that had censored its work by removing its famous crude and vulgar humor. While in copyright cases, a victorious plaintiff has the right to reimbursement of his legal costs in case of willful infringement, no such right exists in defamation cases. Because of the high legal costs, limited nature, and uncertainty of legal protection, researchers almost never file lawsuits against persons who falsely claim credit for their research. Most researchers, unlike the highly successful Monty Python Flying Circus, cannot afford to pay the high costs of litigation, which could easily exceed \$100,000. Thus the only real remedy is shaming and ostracism of the plagiarist by the research community.

Unlike many countries, which specifically define various exceptions to copyright protection, the United States has only a generalized exception, called the "Fair Use Doctrine." §107 of the Copyright Act provides: "§107. Limitations on exclusive rights: Fair use"

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that

section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

There has been considerable litigation concerning the applicability of the “fair use” doctrine to the following situation. Many university professors assign various original publications of research results to students. As an example, one of the readings assigned by my professor in a course on the history of science was an English translation of Albert Einstein’s famous paper on the special theory of relativity [12]. Before the advent of xerography and the Internet, the process was simple. One or more copies of each journal containing an article or each book containing a chapter assigned for the course was put behind the “reserve” desk of the university library, and students were allowed to check out a reserved item for an hour or two for use only within the library building. This approach clearly did not infringe any copyrights. Later, with the availability of cheap and rapid xerographic copies, libraries began to make multiple copies of assigned articles and chapters to put on reserve. Also, copy shops near universities began to sell packets containing articles and chapters assigned by professors. Once almost all students had Internet access, universities began to provide Internet access to various assigned materials. Publishers reacted by creating fast and simple (but not inexpensive) ways for libraries and copy shops to make licensed course packets of copies of selected readings for particular courses. Later publishers started offering to universities the opportunity to buy blanket (but not inexpensive) licenses for Internet lending of articles and books. These steps allowed the publishers to argue that universities were simply using copyrighted materials without paying for easily-available licenses, and thus were not engaged in fair use.

However, because of the cost of licenses, many copy shops continued to make and sell course packets containing unlicensed copyrighted material. More and more began to put files of assigned materials online for easy access by students. The result has been considerable litigation. Decisions in the lower courts are mixed, and the Supreme Court, which often takes cases to resolve differences in appellate court interpretation, has not given a final answer.

In *Princeton University Press v. Michigan Document Services, Inc.*, 99 F.3d 1381 (6th Cir. 1996) the court held that the practice of copy shops of making course packets of unlicensed copyrighted materials was not protected by fair use. However, in a recent case, *Cambridge University Press v. Becker*, 446 F.Supp.3d 1145 (N.D. Georgia, 2020), the court found that inclusion by a University library of single chapters from copyrighted books in an online course packet accessible by students was fair use. This decision is the latest in a series of trial and appellate court decisions on this particular dispute. It is quite likely that it will be challenged on appeal. If the decision stands, there will be little protection for individual chapters of books describing research results. On the other hand, if there remains a conflict among the various Federal appellate courts it is quite possible that the Supreme Court will take the case and make a definitive ruling.

Recently, during the coronavirus epidemic, libraries unable to lend books because of coronavirus-related restrictions have taken the position that, for the time being, circulation, without specific copyright license, of electronic copies of books in their collections is permissible fair use. Publishers are very unlikely to risk the harm to their public images that would be caused by blocking educational activity during the coronavirus crises.

The United States, under heavy lobbying from corporate copyright interests, has extended copyright terms. In particular, the Walt Disney company successfully lobbied for an extension that would protect its Mickey Mouse character created in the early 1920s. Classic motion pictures and musical recordings still are making money. However, with the steady advancement of knowledge, almost no original reports of research results produce financial returns decades after their publication.

As mentioned in the introductory paragraph, there has been a strong reaction in the United States against the monopolistic position of publishers of research results and of textbooks. A policy adopted by the United States government in 2013 would expand a previous policy requiring open access on for the results of government-funded biomedical research to apply to all research funded by major Federal Government research support agencies, but with a permitted delay of 12 months after initial publication⁷. Universities and researchers are pressing for expansion of this policy and for elimination of the 12-month delay. The United States government is considering the need for and possible means of expansion of open access⁸.

Major universities in the United States also have adopted open access policies. Harvard University's website states⁹:

In 2008, Harvard's Faculty of Arts & Sciences voted unanimously to give the Harvard a nonexclusive, irrevocable right to distribute their scholarly articles for any non-commercial purpose. In the years since, the remaining eight Harvard schools voted to establish similar open-access (OA) policies, and several research centers have joined their number.

In the words of OSC Director Peter Suber, author of *Open Access*, "The basic idea of OA is simple: Make research literature available online without price barriers and without most permission barriers."

Scholarly articles provided to the university are stored, preserved, and made freely accessible in digital form in DASH, Harvard University Library's open access repository. The repository has the institution of Harvard standing behind it to ensure its availability, longevity, and functionality.

The website of the Massachusetts Institute of Technology contains a policy adopted by unanimous vote of the faculty on 3/18/2009:

The Faculty of the Massachusetts Institute of Technology is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to the Massachusetts Institute of Technology nonexclusive permission to make available his or her scholarly articles and to exercise the copyright in those articles for the purpose of open dissemination. In legal terms, each Faculty member grants to MIT a nonexclusive, irrevocable, paid-up, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, provided that the articles are not sold for a profit, and to authorize others to do the same. The policy will apply to all scholarly articles written while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Provost or Provost's designate will waive application of the policy for a particular article upon written notification by the author, who informs MIT of the reason.

To assist the Institute in distributing the scholarly articles, as of the date of publication, each Faculty member will make available an electronic copy of his or her final version of the article at no charge to a designated representative of the Provost's Office in appropriate formats (such as PDF) specified by the Provost's Office.

The Provost's Office will make the scholarly article available to the public in an open-access repository. The Office of the Provost, in consultation with the Faculty Committee on the Library System,

⁷ Memorandum for the Heads of Executive Departments and Agencies. Increasing Access to the Results of Federally Funded Scientific Research.

⁸ Request for Information: Public Access to Peer-Reviewed Scholarly Publications, Data and Code Resulting From Federally Funded Research.

⁹ Open Access Policies. Office of Scholarly Communication of Harvard Library.

will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty. The policy is to take effect immediately; it will be reviewed after five years by the Faculty Policy Committee, with a report presented to the Faculty.

The faculty calls upon the Faculty Committee on the Library System to develop and monitor a plan for a service or mechanism that would render compliance with the policy as convenient for the faculty as possible.

Other major research has adopted similar open access policies. Indeed a university in the United States without an open access policy faces shame in the academic community. Such policies are strongly supported by professors on university faculties because the policies give the professors bargaining power in limiting the rights that they must give to publishers to obtain publication. The situation is similar to that of the United States Corrupt Practices Act, which provided criminal penalties for paying bribes in international business transactions. Many United States businesses welcomed this law because it strengthened them in resisting demands by corrupt foreign officials for bribe payments.

The open access approach is also rapidly expanding among textbooks. Professors write textbooks to use them in their own teaching, to enhance their visibility, and to earn substantial royalties. Universities are reluctant to provide support for released time and student assistants in preparing textbooks, because textbook preparation is not considered a high prestige scholarly activity and because it puts money directly in professors' pockets. Some universities have changed their policy and have begun to support professors in their preparation of textbooks on the condition that the textbooks be made publicly available at no charge¹⁰.

The economic theory of price discrimination teaches that a business with monopoly power will price its product differently in different markets [13]. This may reflect different consumer attitudes or different consumer incomes. An example is that of scholarly journal publishers that have three prices: a low price for students; a medium price for professors; and a much higher price for libraries. However, monopolists that price discriminate face a threat of "leakage" caused by sales to customers in the high price category by purchasers in the low price category.

The United States Supreme Court has struck a major blow against price discrimination by international textbook publishers. Some publishers sell identical textbooks at high prices in the United States and a lower price in developing countries where hardly anyone could afford such high prices. An enterprising professor in Thailand bought lawful copies of copyrighted science text books for low prices in Thailand and sold them in the United States at prices well below the textbook company's US prices, but well above his cost in Thailand. When he was sued by the textbook company, the United State Supreme Court found no copyright infringement because the sales in Thailand had exhausted the copyright owner's rights¹¹. (Exhaustion is often called the "first sale" doctrine in the United States, because the copyright owner's right to control reading, lending, and reselling are extinguished by the first sale of a copy of a copyright-protected work.)

Parallel to open access has been the revolution in search techniques caused by search engines such as Google, which in addition to its main search engine also has specialized search engines, <https://scholar.google.com> and <https://books.google.com>. Some years ago, in cooperation with major university and public libraries Google began a program of systematic scanning, digitization, and optical character recognition of millions of books and journals. One of the great tragedies of the ancient world was the fire that destroyed the great library of Alexandria in Egypt. Now the published works of human civilization are preserved on the backup servers of Google and of the various libraries that received electronic copies in return for making their collections available for scanning. Now everyone with access to the Internet can in seconds find and download a free copy of almost any publication whose copyright has expired. However, the lengthening of copyright terms and the vast expansion of publishing in the recent decades has meant that most publications, including almost all valuable publications in the

¹⁰ This Information Wants to Be Free: Casebooks by NYU Law IP professors are available at no charge. Available from <https://www.law.nyu.edu/news/ideas/Fromer-Sprigman-Beebe-copyright-trademark-casebooks>

¹¹ *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013).

natural sciences, are still under copyright. The role of search engines in making uncopyrighted material available, including that in open access repositories, is uncontroversial and indeed wonderful for the scholarly community. However, a number of Google's activities have led to highly contested litigation.

The Google project of scanning full library holdings led to major legal conflicts in the United States. Preservation of backup copies in case of natural disaster and preparation of copies to be used only for indexing was held by the courts to fall within the boundaries of fair use. However, Google tried to go further and came in conflict with associations representing authors and publishers¹². An attempted settlement of a suit brought against Google by associations of authors and publishers was not approved by the courts, because it would have affected the rights of authors and publishers not affiliated to the organizations that brought the case against Google. The final decision nevertheless made important inroads into copyright protection. The court held:

In sum, we conclude that: (1) Google's unauthorized digitizing of copyright-protected works, creation of a search functionality, and display of snippets from those works are non-infringing fair uses. The purpose of the copying is highly transformative, the public display of text is limited, and the revelations do not provide a significant market substitute for the protected aspects of the originals. Google's commercial nature and profit motivation do not justify denial of fair use. (2) Google's provision of digitized copies to the libraries that supplied the books, on the understanding that the libraries will use the copies in a manner consistent with the copyright law, also does not constitute infringement. Nor, on this record, is Google a contributory infringer.

While this case was before the courts, another case related to Google's project was decided. In *Authors Guild v. HathiTrust*, 755 F.3d 87 (2nd Cir. 2014), the court considered a project of major research libraries to allow full text search of their digital holdings, including both books digitized by the libraries themselves and books digitized by Google. The court held that digitizing for the purpose of full text search and for protection against disaster loss was fair use.

Other cases dealt with indexing by search engines. In *Perfect 10, Inc. v. Amazon.com Inc., & Google, Inc.* 508 F.3d 1146 (9th Cir. 2007), the court upheld Google's practices of indexing images copyrighted by Perfect 10 and of including in search results very low resolution "thumbnail" versions of the images did not violate Perfect 10's copyrights. The court also found no contributory or vicarious violations in that some of the links were to pirated copies of Perfect 10's images.

To sum up, as a result of the Internet revolution, copyright protection of reports of research results is under fire from all sides in the United States. The academic community now condemns copyright protection for research-based publication. The government, universities, and the researchers themselves are adopting policies of open access to such reports. Similar developments are appearing in textbook publication. Broad interpretation of fair use rights and of exhaustion of copyright protection are limiting the rights of copyright owners against libraries and search engines.

4. The Near East countries

Copyright is an effective tool for protecting the results of scientific activities in the Arab world.

In most Arab countries, when property copyright expires, a scientific work, with rare exceptions, goes into the public domain. Any scientist or researcher has the right to distribute, copy, translate and develop it without obtaining permission from anyone and free of charge. Of course, science can develop linearly, but in the modern world it is progressing, in our opinion, exponentially. Therefore, it is very important for scientists to have free access and legally use works that have become public domain, since they are the forerunners, elements of which are created new scientific works and discoveries.

And here the duration of the period after which a particular scientific work becomes publicly available plays a critical role, because the rate of development of science depends on its duration.

Scientific books, articles and other printed works in the countries of the Arab world are protected from the moment of their creation throughout the life of the author. But after his death, the terms of copyright protection may be different. The range is very wide. For example, it can vary from 25 years

¹² Authors Guild v. Google, 804 F.3d 202 (2nd Cir. 2016).

in Libya to 50 years in Pakistan and 70 years in Oman, which corresponds to the practice of many European countries.

Most countries in the Arab world protect books for the lifetime of the author and 50 years after his death. This is due to their specific international obligations under the WTO TRIPS agreement and the Berne Convention. Only a small number of Arab countries have a longer copyright term due to their FTAs with the United States. For example, the Oman-US Free Trade Agreement¹³.

There is an ongoing debate among the countries of the Arab world about whether countries with a short term of copyright protection should ease the plight of countries with a long term of protection by extending their short term? For the development of science, this would be a negative decision hindering its development, as mentioned above. However, the question of the duration of copyright protection also has a commercial side. Proponents of a long term copyright protection argue with the following logic: since the author of the work spent time and energy on its creation, justice requires that to protect his right and the right of his successors to receive a well-deserved income, which motivates the author to further work and research.

Opponents of this position believe that it does not matter for the author of the work whether his rights will be protected 25, 50 or 70 years after his death. However, residents of countries such as Oman and others, where copyright is protected for 70 years after the death of the author, would be at a disadvantage relative to their Arab neighbors, as they would have to wait 25 or more years longer, until universities, scientists, researchers and students can legally and free of charge use in their work, perhaps already classics, scientific works. This difference of 25 years or more can make the development of science more costly, thereby slowing down progress.

It cannot be argued that in those countries of the Arab world where copyright is protected 50 or 70 years after the death of the author, the terms of protection are ideal. Such a long time frame essentially means that scientific works created during the lifetime of one generation will become public domain only after that generation dies out. Arab copyright laws provide for certain cases where, under certain conditions, scholars and other users can use and copy works without the author's permission, but no Arab country has a concept of "fair use" and the existing exceptions do not satisfy the need modern technological use, for example through the Internet, electronic libraries and electronic copying.

Countries in the Arab world should consider deeply whether to increase the duration of copyright protection or, on the contrary, to shorten it. Will not an increase in this period affect the free access of scientists to knowledge that generates new knowledge, will it slow down the development of science and scientific and technological progress for decades?

What will win, the thirst for science to benefit society or the thirst for profit? After all, it is worth understanding that additional copyright protection will not necessarily be a key incentive for many scientists to create, and the copyright system will certainly not benefit from it.

As mentioned above, Section 102(b) of the United States Copyright Act of 1976 provides:

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Conclusion

An analysis of the legislation and law enforcement practice of the considered states allows us to conclude that the approaches to the protection of scientific activity by copyright are similar. The trend towards harmonization of systems for the protection of scientific works by copyright is dictated by the participation of an increasing number of states in international organizations specializing in intellectual property law (for example, WIPO, WTO, etc.). At the same time, it should be noted that in a number of jurisdictions (to which Russia can also be attributed) authorship and co-authorship of scientific articles and other results of scientific activity are determined not according to the norms of copyright, but

¹³ S. 3569 (109th): United States-Oman Free Trade Agreement Implementation Act. Available from <https://www.govtrack.us/congress/bills/109/s3569>

according to the moral and ethical standards prevailing in the scientific environment. It is assumed that the author of the result of scientific activity (article, hypothesis, etc.) must necessarily become a co-author, regardless of whether he took part in the preparation of the work. It should be emphasized that copyright arises not on the scientific idea or hypothesis itself, but on the form of presentation of a scientific work.

Acknowledgments

The article was prepared in the framework of the project of the Russian Foundation for Basic Research № 18-29-15022 mk 'Ways, models and problems of regulation and protection of subjective rights in the field of obtaining, using, disseminating and protecting the results of scientific activity and scientific information'.

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