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## **A SOCIAL SCIENCES**

AA	PHILOSOPHY AND RELIGION
AB	HISTORY
AC	ARCHAEOLOGY, ANTHROPOLOGY, ETHNOLOGY
AD	POLITICAL SCIENCES
AE	MANAGEMENT, ADMINISTRATION AND CLERICAL WORK
AF	DOCUMENTATION, LIBRARIANSHIP, WORK WITH INFORMATION
AG	LEGAL SCIENCES
AH	ECONOMICS
AI	LINGUISTICS
AJ	LITERATURE, MASS MEDIA, AUDIO-VISUAL ACTIVITIES
AK	SPORT AND LEISURE TIME ACTIVITIES
AL	ART, ARCHITECTURE, CULTURAL HERITAGE
AM	PEDAGOGY AND EDUCATION
AN	PSYCHOLOGY
AO	SOCIOLOGY, DEMOGRAPHY
AP	MUNICIPAL, REGIONAL AND TRANSPORTATION PLANNING
AQ	SAFETY AND HEALTH PROTECTION, SAFETY IN OPERATING MACHINERY



## INTERNATIONAL LEGAL PROTECTION OF WORKS OF FINE ART AND THE EXPERIENCE OF UKRAINE

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**Abstract:** The article aims to reveal the essence of international legal protection of copyright for works of fine art and characterize copyright protection principles. In modern conditions of life, the intellectual sphere of human activity is becoming increasingly important. Being one of the primary resources of the state, this activity and the relations arising in it should be most fully regulated by legislation, primarily by legal norms, which in their totality constitute the institution of copyright. Furthermore, as a result of technical progress and the rapid development of the art market, copyright, which in the previous period extended to a very narrow circle of persons – writers, composers, artists, and other creators of works of art, representatives of culture and education, began to occupy a more important place in the system of legal regulation civil relations.

**Keywords:** Copyright, Experience of Ukraine, International legal experience, International legal protection, Legal regulation, Works of fine art.

### 1 Introduction

Copyright as an object of intellectual property has gained recognition relatively recently compared to other civil law institutions. It was started with the invention of book printing several centuries ago [9]. The distribution of book products was a very laborious and expensive process, and counterfeit products were out of the question. However, the development and improvement of scientific and technological progress [16] and the strengthening of international relations raised the international legal protection of copyright in artworks [33].

In the 18th century, issues related to copyright were not considered at the interstate level since the technical means of distributing works existed only within the state's territory [9].

Currently, intellectual property issues in international law are mainly dealt with by two international intergovernmental organizations: the World Intellectual Property Organization and the World Trade Organization, within the framework of an agreement on trade-related aspects of intellectual property rights [29].

In addition to them, there are other programs of international cooperation in the field of intellectual property, particularly programs within the framework of UNESCO [42]. World Intellectual Property Organization (WIPO) was established in 1970 to create a single global center for organizing international cooperation in intellectual property protection in all its varieties [29]. WIPO has the status of a specialized UN agency. The most critical tasks and functions of WIPO are:

- The role of performing administrative and secretarial, managerial measures;
- Cooperation in specific sectors;
- Areas of international protection of intellectual property rights.

In addition, WIPO carries out significant research work, collection, and dissemination of information, providing technical assistance to developing countries [29]. Besides, under the auspices of WIPO, work is underway to prepare and conclude multilateral treaties, etc.

### 1.1 The Works that are Under Protection by Copyright in Ukraine. General Positions

In Ukraine, copyright protection applies to such works:

- Collections of works, books, articles, brochures, collections of ordinary data, collections of folklore treatments, literary works, encyclopedias, other works that are the result of creativity;
- Music works with and without text;
- Audiovisual works;
- Jewelry, ceramics, and decorative arts;
- Lectures, sermons, addresses, and other oral works;
- Illustrations, maps, plans, sketches, and plastic works (this applies to geography, topography, architecture, and other areas of activity);
- Musical-dramatic and dramatic works, choreographic pantomimes, scenario, and works created for stage demonstration and production;
- Processing and additions to the work;
- Works of architecture, landscape gardening artworks that are the result of intellectual activity [15];
- Stage treatments of works, as well as folklore treatments, suitable for stage performance;
- Computer programs and databases [16];
- Translations for dubbing, dubbing, and subtitling of foreign works (audiovisual) [10].

It is according to the Law of Ukraine "On Copyright and Related Rights," a document regulating copyright protection and protection in Ukraine. Including copyright, registration is made for songs, programs, photographs, music, books, websites, photographic images [10].

A person encounters copyright every day, reading books, magazines, listening to audio recordings, watching video recordings [37]. And that is why copyright requires more and more protection against illegal use and violation of citizens' rights. International legal protection of copyright is dual since the generally recognized principles and norms of international law are considered domestic law standards [31].

### 2 Literature Review

The period of the post-industrial information society, the development of global communication networks, requires understanding the essence and role of copyright in protecting the public and individual interests of the participants in the relevant relations [32]. Moreover, it gave rise to the rapid growth of electronic commerce in information products, including works of art.

Works of visual art and musical and literary works are classified as traditional objects of copyright [17]. The difference between the works mentioned above of creative activity lies in the fact that the spiritual activity of the author of literary works is carried out in words, the composer – in tones and sounds, and the author of works of fine art in visual, visually perceived images on a plane and space [2].

Given the well-known analogy of these products of intellectual activity of the creators of these works, the right to a musical or literary work, the right to a piece of fine art are elements that make up a single concept of copyright [18], and the same norms of law are generally applicable to them. Thus, by examining the legal regime of works of fine art, it is possible to determine the patterns of development, advantages, and disadvantages, ways of improving modern copyright legislation, and doctrine in general [38].

The conditions of globalization and the creation of an international art market and positive results gave rise to new violations in the use of products of this sphere of intellectual

activity [5]. It is acquired on a massive scale, and the products themselves have become more vulnerable from the point of view of piracy [1, 3, 19]. These circumstances require a more careful analysis of the problems associated with the legal regulation of relations associated with creating and using works of fine art.

The above factors also predetermine the need, without being confined within the framework of the national legal system, to use the positive foreign and international legal experience [19-23]. This need is dictated, in particular, by the constantly increasing process of interconnection, interdependence, and mutual influence of states and their legal systems, the assertion of the priority of international law concerning national law.

The international legal basis for protection is the Berne Convention for the Protection of Literary and Artistic Works, adopted in 1886 (as amended in 1971) [11]. The participating States established the Berne Union to protect the rights of authors of literary and artistic works. The World Intellectual Property Organization administers it [4]. In Ukraine, these issues are dealt with by the National Intellectual Property Organization in the field of copyright and related rights protection (NIPO). The functions of NIPO are performed by a legal entity of public law (state organization), formed by the central executive authority, which ensures the formation and implementation of state policy in the field of intellectual property and determined by the Cabinet of Ministers of Ukraine.

The legal framework is also formed by the Universal Copyright Convention (Geneva, September 6, 1952; revised in Paris on July 24, 1971; entered into force for the USSR on May 27, 1973) and the Agreement on Cooperation in the Field of Protection of Copyright and Related Rights imprisoned in Moscow on September 24, 1993 [11].

The prohibition on the unrestricted use of objects of copyright, which is established in the interests of authors, right-holders, hinders the development of science, new technologies, education, and culture [6]. To avoid such consequences, states in their national laws define the so-called limits of copyright.

Recently, there are cases of unjustified confusion between the principles of the exhaustion of law and the limits of the law in the literature. At the same time, of course, the institution of exhaustion of rights is one of the most critical restrictors of exclusive rights, widely manifesting itself in various aspects [8]. Therefore, it is necessary to refer to the European experience of improving legal regulation in the field of intellectual property to understand the specifics of these principles.

European Union directives contribute to the unification of law in all acceding countries and also serve as the foundation for further lawmaking at the international level. General trends in the development of legal regulation in this area are especially noticeable on the example of the EU Directive of May 22, 2001, No. 2001/29/EU "On the harmonization of certain aspects of copyright and related rights in the information society" (hereinafter – the EU Directive of May 22, 2001), laying the foundations for the creation of a general, flexible legal system [11].

The EU Directive of May 22, 2001, gives particular attention to issues of exhaustion of rights. In particular, it is stipulated that under no circumstances the presentation of works to the general public (by air or cable broadcasting or through interactive digital networks) should be considered as a basis for their further use in civil circulation without the consent of the copyright holder. Furthermore, for cases of distribution of copies of works by sale or other transfer, it is specially stipulated that the rules on the exhaustion of rights (i.e., the possibility of further distribution of copies introduced into civil circulation without the consent of the copyright holder and without payment of remuneration to him) apply only to those copies, the first sale or other transfer of ownership of which, with the consent of the copyright holder, took place within the European Union (Article 4 of the EU Directive of May 22, 2001) [4].

French jurisprudence has made an essential contribution to the formation and formation of copyright as a civil institution. It is mainly responsible for developing the legal nature of copyright, particularly in recognition of its duality [25]. Already in the Great French Revolution era, when the new foundations of the law were approved, the concept of intellectual property appeared, and the first decrees were adopted that determined the legal status of the author's creative works, which enshrined the principles of their legal protection. However, it would be fair to say that legal research concerning the problems of distinguishing between types of property, property, etc., belonged to an earlier period, not to mention the achievements in this area of Roman jurisprudence [7]. Nevertheless, the corresponding legal concepts developed in French (ancient, medieval) law was supplemented in New Time by developing the concept of an exclusive type of property – intellectual property [9]. For more than a century and a half, the laws of 1791-93 were in force in France, which made it possible to apply them to solve chronic legal problems, up to the emergence of new technical means of reproducing and distributing works of art. In the 20th century, it became necessary to bring the legislation in the field of copyright in line with new technical achievements, such as photography, cinema, gramophone records, tape recorder, television, which expanded the species composition of copyright objects [14]. This task was solved by the famous French law of March 11, 1957, which became the basis of modern French copyright law, particularly in the 1992 – Intellectual Property Code [11].

In Ukraine, the implementation and protection of copyright are regulated by the Civil Code of Ukraine (CC), the Law of Ukraine "On Copyright and Related Rights" dated December 23, 1993 (the Copyright Law), other laws of Ukraine, as well as by-laws adopted The Cabinet of Ministers of Ukraine (CMU), the specialized State Department of Intellectual Property under the Ministry of Education and Science of Ukraine and other subjects of legislative initiative. Furthermore, separate norms for copyright protection are also contained in the Criminal Code of Ukraine (CC) [10].

Thus, the legislator assigns a separate chapter of the Civil Code to copyright, namely: Chapter 36, "Intellectual Property Rights to Literary, Artistic and Other Works (Copyright)," containing 16 articles regulating the use and protection of copyright. However, neither Chapter 36 of the Civil Code nor the Copyright Law defines copyright.

Legal scholars define copyright in an objective and subjective sense [2, 15, 38]. So, in an objective sense, copyright is a set of legal norms that regulate relations arising from the creation and use of works of science, literature, and art. In the subjective sense, copyright is a set of rights belonging to the author or his heirs in connection with the creation and use of a work of literature, science, and art [24].

### 3 Materials and Methods

This study aims to consider both positive foreign experience and trends and guidelines for the development of legal regulation of relations that are the subject of copyright in domestic legal and law enforcement activities.

The research methodology includes general scientific, unique, and private legal methods. The author's use of a combination of these methods, in particular logical, chronological, comparative-legal, and formal legal, made it possible to solve the problems posed in the study [26, 27, 30]. The novelty also lies in an integrated approach to the study of subjective copyright in works of fine art, which allows covering the legal regulation of this category both in Ukrainian legislation and in the world.

According to modern copyright legislation, a part of a work that meets the characteristics of protectability (is the result of creative activity and exists in some objective form, for example, an image or three-dimensional, etc.) is provided with legal protection [10, 17, 25, 29].

An attempt to determine the specifics of this group of objects, distinguishing it from other objects of copyright, led to the allocation of their distinctive features. Among which are their unique character (full-fledged reproduction of them in most cases is impossible, since it leads to the loss of the value features of the work, although reproduction at the same time gives them new features that make it possible to consider copies as independent works); their inseparable connection with the material carriers in which they are embodied. And as a distinctive feature of a piece of fine art, one can name the way of reflecting reality – in visual, visually perceived images on a plane and space [39].

#### 4 Results and Discussion

In international treaties, the emphasis is on the exhaustion of the right of distribution since the right of reproduction is not subject to fatigue [34-36]. The owner of the material medium can sell it, donate it, or otherwise transfer it to third parties; in this case, the copyright holder's consent to the object of copyright or related rights embodied in the product is not required [40, 41]. The operation of this principle is absolutely fair since otherwise, for any resale of goods, the copyright holder's permission should be obtained. It turns out that the material medium can be distributed as you like, but no one has the right to reproduce or copy it [13].

Undoubtedly, the institution of the international legal protection of copyright is built on certain principles that form its guiding principles, being the primary basis for their safety [40]. These principles are:

- *The principle of the author's citizenship.* Territorial restrictions disappear by the State's accession to the relevant conventions. According to the Berne Convention, protection is granted to works, both published and unpublished, whose authors are either citizens of the states party to the relevant conventions or permanently reside in their territory. Thus, the principle of the author's citizenship is realized [4];
- *The territorial principle of granting protection.* This principle applies only to the works of authors who are not citizens of the countries – parties to the conventions, i.e., the author's citizenship and the territorial principle cannot be applied simultaneously. Protection is carried out within the framework of the implementation of the territorial code in the event that the work was first published in one of the countries – parties to the relevant treaty or simultaneously in the country – party and a third state [11];
- *The principle of the national regime of protection (sometimes called the principle of assimilation).* This principle is established by Article 2 of the World Convention [11]. It means that the works of citizens of any state party to the Convention, as well as works first released on the territory of such a state, are used on the region of another state party to that the protection they grant to pieces of their authors first published on their territory. Works of foreign authors (meaning citizens of the participating states), not published, also enjoy the protection that the State provides to the unpublished works of its authors;
- *The principle of providing protection regardless of the observance of formalities.* This principle is that copyright in a work of science, literature, and art arises under the fact of its creation. For the emergence and exercise of copyright, registration of the work, other special designs of the work, or compliance with any formalities are not required. In some countries, the recognition of work as protected requires its registration, notarization, a copyright clause, or other mandatory procedures. The World Convention establishes a rule concerning to which if according to the domestic legislation of a State Party, the observance of formalities is mandatory [11]. Then the formalities shall be deemed to have been complied with concerning works of citizens of other States Parties or works first published outside the territory of this State,

provided that all copies of such works, starting from the first publication, will bear the copyright protection mark;

- *The principle of the urgent nature of protection.* This principle is due to the need to combine private and public interests in the use of products of intellectual activity, as well as their exceptional importance for the economic and cultural development of society [12];
- *The principle of exercising protection in favor of the author and his successors.* This provision is vital for the interpretation and application of all rules aimed at protecting copyright. In other words, if different variations are possible with respect to the requirements of the convention, the option that is most favorable for the author and his successors should be chosen [11].

Adherence to these principles is one of the indicators of the state of the normative regulation of copyright protection in the country. Therefore, the national legislation of each of the countries participating in international agreements must formally comply with the above principles and create effective mechanisms for their implementation in practice.

Copyright arises at the time a work is created and does not need to be formally registered. But to prove that you are the author, and even more so to protect yourself from plagiarism, you can only register your copyrights with the State Department of Intellectual Property of Ukraine, thereby providing your work with reliable legal protection. In Ukraine, about 4,000 certificates of copyright registration are issued annually. Thus, registration is a relatively reliable method of copyright protection, which is very popular. It is done for the following reasons:

A. To dispose of your copyright. To conclude an author's agreement for the transfer or delegation of rights, you need to have in your hands a confirmation of the author's rights – a certificate of copyright registration.

B. The presence of a copyright registration certificate is already a weighty argument that will warn possible pirates and plagiarists. And what is essential, the company of a state certificate allows you to confirm your copyright at any time.

C. Priority date (registration date). This is very important for copyright protection since, in Ukraine, there is a presumption of authorship – the person who first registered the copyright is considered the author of the work unless proven otherwise [10]

The features of the presumption of authorship in Ukraine are as follows:

1. The primary subject of copyright is the author of the work. In the absence of evidence to the contrary, the person indicated as the author on the original or a copy of the work (presumption of authorship) is considered the author of the work. This provision also applies if the work is published under a pseudonym that identifies the author.
2. Copyright in work arises from the fact of its creation. Therefore, for the emergence and exercise of copyright, registration of the work or any other unique design and the implementation of any other formalities is not required.
3. A person with copyright (the author of a work or any other person to whom the copyright property right to this work is legally transferred) may use the copyright protection mark to announce his rights.
4. If the work is published anonymously or under a pseudonym (unless the pseudonym uniquely identifies the author). The publisher of the work (his name or title must be noted in work) is considered the author's representative and has the right to protect the rights of the latter. This provision is valid until the author of the work discloses his name and declares his authorship.
5. The copyright holder can register his copyright in the relevant state registers. State registration of copyright and agreements concerning the author's right to work is carried out by NIPO following the procedure approved by the



Cabinet of Ministers of Ukraine. NIPO compiles and periodically publishes catalogs of all state registrations [10].

Upon completion of the registration procedure, the author receives:

- State Certificate of Copyright Registration, respected in 164 countries around the world;
- A weighty argument that will warn possible plagiarists;
- Possibility of financial and administrative penalties for illegal use of your works;
- Confidence that no one will be able to take advantage of the fruits of your labors with impunity;
- The ability to sell, partially transfer or delegate the property copyright to your works.

It should be noted that the work being registered may be filed for registration with the removal of some parts, the absence of which will not affect the identification of the work. This is an additional guarantee of the safety of the work [10].

Modern foreign and domestic copyright laws have both standard features and retain some features. The noticeable unification of copyright in many countries is primarily due to the similarity of its socio-economic and legal determinants and the requirements for compliance with international legal standards.

## 5 Conclusion

The problem of classifying works of fine art, which was not resolved at the previous stages of the development of copyright, remains relevant at the beginning of the 21st century [29]. The current legislation contains only an approximate list of types of fine arts, the classification of which is not carried out – taking into account the species composition of works of fine art proposed by the author, in this work, they are classified both by types of fine arts: works of sculpture, painting, architecture, etc. And by the level they occupy in the sphere of culture: into pieces of high (elite) art – painting, sculpture, and works of mass culture – design, comics, illustrations [32].

In addition, depending on the purpose of use: into simple and complex (heterogeneous works that form a single whole, suggesting their use for a general-purpose) [9]. The study considers synthetic works to be complex works. They appeared, among other things, due to the emergence of new (for example, design) and the modernization of existing objects of material culture, the synthesis of different principles, types, and genres of art [14, 31]. These types of art should be classified as works of fine art in those cases when, for example, we are talking about complex, pictorial, and musical works (installations, etc.) with a single author. As alternativity, they should be classified as the case of a synthesis in which there is no work of fine art.

Let us highlight the recommendations for improving the legislation:

- The place of synthetic works in the classification should be determined;
- Clearly define the status of the authors of the so-called synthetic art forms;
- The legislation should establish what rights belong to the author of such creative work, knowing that access and the right to follow are included in the list of rights of authors of works of fine art.

Considering the species composition of works of fine art, their classification, their characteristics, and differences from other objects of intellectual property, we propose the following definition of the concept of "work of fine art." The fine artwork is a product of artistic creativity and labor, embodying the artist's spiritual and meaningful intention in a sensory-material form, reflecting reality in visual, visually perceived images on a plane and space, where the structures of reality itself are recognized.

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