Intellectual Property Law: Origin and Development as an Institute of Constitutional-Legal Regulation

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ABSTRACT
The article discusses the history of the establishment of intellectual property law as an institution of constitutional legal regulation in Europe and the USA. The author tried to analyze in brief form the need for the emergence of the institute under study. Based on the study of the history of the origin and development of intellectual property law, it is concluded that legislative regulation is necessary due to the fact that this contributes to the achievement of not only the economic, but also the social progress. The study was conducted taking into account the historical features of the formation of the institute of intellectual property in Europe and the United States of America. Comparative legal research allowed the authors to formulate more precise conclusions about the content of intellectual property rights and the limits of its validity, some aspects of its application. The historical analysis of the institute of intellectual property, in turn, allowed us to establish the features of legal regulation of intellectual property rights in national legal systems. According to the authors, intellectual property rights should be regulated at the level of the basic law (Constitution) of countries, as well as international legal acts.
Keywords: *intellectual property, constitutional principles, copyright, Queen Anne Statute*

1. INTRODUCTION

The history of the formation and development of intellectual property as an object of legislative regulation, which went through certain stages in its development, is of great importance for the further detailed study of aspects of constitutional legal regulation of intellectual property law. At the same time, it should be stipulated in advance that the intellectual property law is most developed within the framework of civil law, and therefore, our study is cross-sectoral in nature, involving scientific works in the field of civil law and other branches of law.

Ancient Greece, the Roman Empire, medieval Europe were not burdened by protection of intellectual property. This was most likely due to the fact that paintings were usually painted on the walls (frescoes), and books were copied in the absence of technical equipment by entire monasteries. Moreover, the work could be copied countless times and this was not controlled by anyone, and the author did not receive remuneration from such copying and distribution of copies of his work. There was no book market as such, and the one that existed was very small and closed.

In such circumstances, the authors, with all their desire, could not determine the circulation of their works, and most of the authors, in view of their early death, did not have any heirs.

One interesting fact from that era is noted by I.A. Pokrovsky: in the era of classical Rome, a poem written on someone else's writing material, or a picture painted on someone else's blackboard, belonged to the owners of these materials, and not to the author. And although such a norm already seemed absurd at that time, was subsequently repealed, in the Justinian Code there was no talk of any kind of copyright [1, p. 133].

The very concept of copyright, according to some scholars, has always existed, appearing at the earliest stages of history, but it was not reflected in the legislation [2, p. 8-9]. For example, M.A. Fedotov, in the preface to the textbook *I.A. Gemini and K.B. Leont'ev* writes that in the State Hermitage there is an ancient Greek vase dated 500 BC, on which it says "Heschilos made. Epictetus painted" [3, p. 3]. Thus, according to the author, the ancient masters secured their right to a work of art, and plagiarism in ancient Greece and Rome was recognized as a dishonest act [4].

As V. Veinke noted, "borrowing another person's work was considered morally reprehensible in ancient times, and distortion of the work was condemned by public opinion in ancient Greece and Rome, and much earlier in India" [5, p.15].

It seems very interesting that in the 15th century in the Venetian Republic, as I.V. Ponkin wrote, with reference to a number of other authors (for example, [22]), there was already a formally structured "copyright system where norms were permanently applied, concerning copyright for inventions that did not interact with the existed then monopolies" [22, p. 125]. As a disadvantage, the author points out the fragility of such rights, which, moreover, could be transferred to other persons.

In the theory of intellectual property law, some authors suggest that the first known literary sources that mention

intellectual property law and issues of its protection date back to 500 BC; it is about granting a long-term monopoly on the creation of some culinary delicacies to the cooks of the Greek colony of Sybaris [22, p. 124].

2. MATERIAL AND METHODS

In conducting this research, the authors used such legal and historical comparative methods. The study was conducted by examining the legal acts of European countries and the United States of America.

3. RESULTS AND DISCUSSION

It is well known that the authors got not just fame from their works, but also a certain income, respectively, they defended their rights to authorship. Ancient Roman and Greek authors understood that the publication and use of a work affects both their intellectual interests and personal rights. And, apparently, for this reason, the treatises of the famous philosophers of China and Ancient Greece, preserved under their real names, are accessible to the modern researcher.

But, despite this, the author of a work has the right that boils down only to the ownership of the original work. As D. Liptsik notes, the author, creating a "literary or artistic work, acted as the owner of the manuscript or sculpture he created, which he could sell (alienate) like any other material valuable" [6, p. 28].

It should be noted that, despite the numerous statements that the age of intellectual property rights is estimated at millennia, it was still rather ethical in nature, without being legally formalized in any way. And all the cited examples of the existence of intellectual property rights and copyright are isolated cases of manifestation of public rather than private interest, since the authors did not have any subjective rights to their works.

In the Middle Ages, before the first law on the protection of copyrights appeared, the interests of authors and their successors were protected by granting privileges to the monarch, who provided protection to individual publishers and manufacturers. For example, John of Utah, a native of Flemish, was granted a patent for the production of stained glass for windows at Eton College by the English king Henry VI in 1449, which is considered the oldest patent in England. Naturally, at that time, despite the privileges, the author did not have to talk about any requirements by the author.

The practice of granting privileges to works of art was quite rare due to the fact that many scientists and people of art held the view that their creations are divine knowledge, and they are only guides. And, based on this promise, they considered it sinful to claim their rights to their works.

Unfortunately, the names of the first inventors and authors of books have not been preserved by history, but it is generally accepted that Ancient Egypt is the birthplace of the book. But the highest development of ancient publishing and printing were reached in Athens, where the original literary work was made by the author himself or by scribes under his supervision. Copies were then copied from the original; this was done sometimes without the author's control, which often led to distortions and conjecture of the scribe.

Most scholars associate the emergence and development of copyright with the development of printing technology: with the advent of printing presses, circulation art appears, which gives rise to piracy, and, accordingly, the question arises of the need for legislative regulation of the protection of intellectual property rights.

Although the printing technique was created in China and Korea much earlier than in Europe, only the invention of Johannes Gutenberg gave impetus to the distribution of printed works and from that moment a decisive period in the history of intellectual property law began. Naturally, the new phenomenon needed legal regulation. S.A. On this occasion, Babkin notes that "intellectual property law is nothing but the first (and main) prerequisite for public recognition of labor invested in an intangible result and for giving, in a sense, economically artificial, value to this result" [7, p. 109].

In the framework of state legal regulation, the first mention of intellectual property dates back to the middle of the XIII century. and are associated with the appearance of the first regulatory act, which introduced requirements for manufacturers to identify their products [8].

For example, in 1266, for each baker, the English parliament established the obligation to identify a product with a certain sign. However, as V.M. notes Melnikov, the normative regulation of the use of trademarks was a rare phenomenon until the industrial revolution [9, p. 3]. In Russia, the Law (the royal manifesto) of June 17, 1812, "On the privileges of various inventions and discoveries in the arts and crafts" was the first normative act aimed at protecting intellectual property.

Regarding other categories of intellectual property, as noted above, already in the days of Ancient Greece the importance of works of literature and art was recognized, which should have been brought to the public in an undistorted form. It should be noted that most of the masterpieces up to the end of the XVIII century were created thanks to the support of private individuals who paid for the creation of a work that became the property of the customer. So, for example, Karl Bryullov created his painting *The Last Day of Pompeii* by order of the philanthropist, representative of the Demidov clan, Anatoly Nikolaevich Demidov, who later gifted this painting to tsar Nicholas I.

With the development of civilization and the growing influence of the bourgeoisie, the emergence of the need to trade the results of intellectual activity, the established system of privileges gradually began to be replaced by laws. Finally, on March 19, 1474, the economic component of creative activity got its legal form: for the first time in the Charter adopted in Venice, the author and his successors were entitled to monopolize the use of works and technical inventions that belong to them for a period specified by the Charter [10].

The next step was the first copyright law in England - the *Statute of Queen Anne*, which appeared in 1710 as the starting point for the formation of this institution. The *Statute* contained the most important principle of copyright, which protected the published work from unauthorized duplication: "the author of any book or books already composed and not printed, and not published, or his future successor or assignees, has the exclusive right to print and reprint such a book on a period of up to fourteen years, which starts from the date of the first publication of the work" [10].

The Statute also provided an opportunity to extend this period during the author's life for another 14 years: "after the specified fourteen-year period, the exclusive right to print or dispose of copies must be returned to their authors, if they are alive, for another fourteen-year period" [10]. And although, as K.O. Ilnitsky notes, the statute "was not a copyright law in the literal sense, since the very concept of" copyright "did not exist in it [11, p. 132], it confirmed the rights of authors and publishers. Having existed for more than a hundred years, Queen Anne's statute of 1710 was repealed by the Copyright Act of 1814, which recognized the authors' exclusive right to publish throughout his life [12].

Naturally, the issues of the formation and development of copyright did not pass by other countries of Europe and the USA. Such an intensive development of copyright is connected with the desire to use the fruits of intellectual activity and the need to acquire the rights to publish a work, to stage various dramatic works, and to use inventions in the field of technology in the production. Trade in intellectual property products and intellectual property rights themselves has become massive.

A large role in the formation of copyright belongs to French law. Thus, thanks to the initiative and efforts of Pierre Augustin Caron Beaumarchais on January 13, 1791, the Constituent Assembly recognized copyright, subsequently ratified by Louis XVI [13].

The law of January 19, 1791 granted the authors of dramatic works the right to present their works throughout their lives and another five years after death in the interests of their dependents. The disadvantage of the law of 1791 was that it did not provide the rights of authors of literary and other works, although there was a need for their protection, and the copyright term set by it was short, as a result of which, at the next stage, on the proposal of de Lokanal, the Law of July 24, 1793, which included authors of all genres among the subjects of copyright, allowing the use of copyright to resolve all issues arising in this field, and extended the term of protection to ten years after death.

The law of 1793 for the first time included painting, graphics and engravings in the list of protected objects. In addition, this law provided one important condition for literary works – depositing a copy of the work to public libraries [14].

The law was valid until new technical means of reproducing and distributing works of art appeared [15, p. 5]. And finally, in 1866, a new Law was passed that extended the term of copyright protection to 50 years after death.

In the USA, the idea of copyright as the "most sacred form of property" was voiced at the legislative level already in the 16th century, almost from the time of the founding of the USA, though only in a few states [9].

At the initial stage, here, as in European countries, "there was a reception of the main provisions of the sources of copyright of England" [16], in particular, the "Queen Anne Statute", the significance and progressive nature of which are highly appreciated by copyright specialists in the United States, as the first normative act in the history of the formation of intellectual property law, which recognized the rights of the author [17].

The first law passed in the United States was the Connecticut State Law "On Supporting the Development of Literary Creativity and the Encouragement of Authors of Works" of January 29, 1783. A number of other states passed similar laws protecting authors' rights for a period of 14 to 21 years with the right to renew in some cases [18, p. 20].

The history of copyright in the United States is also interesting in that it was the first time that a proposal was made at the constitutional level to secure intellectual property rights.

It began as early as 1787, when representatives of the states of Virginia (James Madison) and South Carolina (Charles Pinckney) proposed empowering Congress to "promote the advancement of science and the beneficial arts" by including in the Constitution of the United States a paragraph on Congress's ability to provide copyright and patent protection .

As a result, Section 8 of Article I appeared in the US Constitution in paragraph 8, according to which the right was assigned to Congress "to promote the development of science and useful crafts, securing for a certain period of time for authors and inventors exclusive rights to their compositions and discoveries;" [19]. This item subsequently became the basis of a dual copyright protection system, since, along with the US federal copyright law of 1790, there were parallel state laws adopted on the basis of common law rules that have developed in each particular state [20].

4. CONCLUSION

Attention should be paid to such an important point as the lack of attention in the United States to the regulation of publisher rights. According to A.A. Tatarnikova, "from the point of view of the legislator, the rights of the publisher were a continuation of the rights of the author, and therefore, only the rights of the author needed to be regulated" [21], which leads to the fact that "the legislators in the USA took into account only two interest - the author and society" [16].

Thus, the tendency of the formation of intellectual property law as a part of the legislative policy of any state, as one of the constitutional principles that contribute to the achievement of not only the economic, but also the social process of society, is clearly traced.

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