COPYRIGHT LAW IN THE MUSIC BUSINESS

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The symbiotic relationship between intellectual property law and the music industry dates back to the 1950s. Copyright law aims to balance the interests of content creators and the general public in the context of providing the widest possible access to copyrighted works[i].

In an objective sense, copyright is a right that allows you to regulate legal relations associated with the implementation (creation, use, improvement and execution) of the objective results of creative activity in the fields of science, art and literature. Thanks to the institution of copyright, relations arising in connection with the creation, recording and use (performance, editing, distribution) of musical works are regulated. There are several main tasks (functions) of copyright: First, stimulation of activities to create works of literature, science and art. Consequently, if we talk about copyright for a musical work, then one of its functions will be to encourage and induce the creation of musical works (compositions, songs), and, accordingly, encourage such activity. Second, an important task of copyright in musical works is to create the necessary conditions for the widespread use of musical works in the public interest. That is, the use of musical works for educational purposes should not be impeded by an increase in the level of protection of the rights of authors, just as it should not interfere with the desire to familiarize the audience with them. The widest viewership should have access to listening to new music.

At the moment, at the international level, a whole system of regulatory legal acts has developed, the task of which is to protect musical works. In particular, this kind of regulatory legal acts include: the WIPO Copyright Treaty, the Convention for the Protection of Producers of Phonograms Against Illegal Duplication of Their Phonograms, the Rome Convention for the

Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Beijing Treaty on Audiovisual Works. It seems rational to give a brief description of each of these normative legal acts.

The Rome Convention for the Protection of the Rights of Performers of Phonograms and Broadcasting Organizations of 1961 contains the legal definition of such subjects as performers, producers of phonograms, broadcasting organizations. For example, performers are actors, singers, musicians, dancers and performers of literary and artistic works who are entitled to enjoy protection against certain actions to which they have not given their consent, such as broadcasting and broadcasting to the public of "live" performance; recording of a "live" performance, reproduction of the recording if the original recording was made without the consent of the performer or if the reproduction is carried out for purposes other than those for which the consent was given[ii].

Producers of phonograms are understood to be persons who have been granted the right by this convention to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, "phonograms" are defined as any purely acoustic recording of performance or other sounds. If a phonogram released for commercial purposes is used for secondary use (for example, for broadcasting or communication for the public in any form), the person using the phonogram is obliged to pay a one-time fair remuneration to the performers, phonogram producers, or both. However, the Contracting States are free to exclude or restrict its application.

A broadcasting organization means any organization that has the right to authorize or prohibit certain actions, namely: retransmission of their broadcasts, recording of their broadcasts, reproduction of such recordings, public broadcasting of their television broadcasts, if such broadcasting takes place in places for access to which from the public entrance fee is charged. The Rome Convention allows for **limitations and exceptions to** the above rights in national law in relation to private use, use of short excerpts in connection with reporting on current events, short-term recordings made by broadcasters on their own equipment and for their own broadcasts, use solely for educational purposes or for scientific purposes. - research activities

and all other cases where national legislation provides for exemptions from copyright in literary and artistic works. In addition, once a performer agrees to include a performance in a visual or audiovisual recording, the performer's rights provisions will no longer be valid.

As regards the **duration of** protection, it must be at least 20 years from the end of the year in which **(i) the** fixation was made, in the case of phonograms and the performances contained therein; **(ii)** the performance has taken place - in the case of performances not contained in phonograms; **(iii)** the broadcast took place. However, national legislation, at least for phonograms and performances, increasingly provides for a 50-year term of protection[iii].

The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms was adopted in 1971 in Geneva, Switzerland. The provisions of this legal instrument include the demand for b protection of phonograms creators' interests who are nationals of States Parties to the Convention. In particular, protection is exercised against the production of duplicates of a phonogram without the consent of the producer, and the import of such duplicates into the States Parties to this Convention. In addition to the World Intellectual Property Organization, the implementation of the functions for the implementation of the norms of this regulatory legal act is also entrusted to the International Labor Organization, UNESCO.

Unlike the Rome Convention of 1961, which regulates at the international level the protection of three groups of holders of related rights (performers, producers of phonograms and broadcasting organizations), the Geneva Convention is devoted only to the protection of only producers of phonograms from certain acts that violate their interests.

From the point of view of the Rome Convention, the Geneva Convention can be considered as one of the special agreements, the possibility of concluding which is provided for in Art. 22 of the Rome Convention, according to which the states parties to the Rome Convention are entitled to conclude special agreements among themselves if such agreements provide for the granting of performers, producers of phonograms or broadcasting organizations wider rights

than those provided for by the Rome Convention, or contain other provisions that do not contradict the Rome Convention.

The protection regime provided for by the Geneva Convention contained a number of previously unknown provisions, primarily due to the desire of the creators of the Geneva Convention to make its norms more effective and to ensure the promptness of their application, as well as to create the prerequisites for the earliest possible accession to the Geneva Convention by the maximum possible number of states.

First of all, it should be noted the rejection of the principle of national treatment, traditionally recognized as fundamental in all the most significant international agreements affecting copyright and related rights. Instead of providing a national regime for the protection of the rights of foreign rightsholders, the Geneva Convention is limited to establishing the obligations of the member states to protect the interests of foreign producers of phonograms "from the production of copies of phonograms without the consent of the producer and from the importation of such copies whenever the said production or import is carried out for the purpose of their distribution to the public, as well as from the distribution of these copies to the public "(Article 2 of the Geneva Convention)[iv].

As many experts note, the Geneva Convention "contains almost no material norms and only obliges the states participating in it to take adequate measures to ensure, both at the legislative and law enforcement levels, the protection of the interests of phonogram producers from the production of phonogram copies without the consent of the producer, from the import of such copies from abroad and from their distribution to the public.

The determination of the specific legal measures by which the protection of the rights of producers of phonograms is to be ensured is entirely at the discretion of the national laws of the States parties to the Geneva Convention. These legal measures can be based both on the regime specific to the protection of related rights or various copyright concepts, as well as on the rules of protection against unfair competition or criminal sanctions.

The "flexibility" of the rules established by the Geneva Convention should, in the opinion of its creators, ensure the early accession to the Geneva Convention of states with rather significant differences in national legislation.

The next step in the protection of intellectual property rights in the music field was the adoption of the Beijing Treaty on Audiovisual Performances. The Beijing Treaty on Audiovisual Performances (hereinafter referred to as the Treaty), adopted on June 24, 2012, is a new milestone in the development of international intellectual property protection, the latest international legal document in this area, designed to draw the attention of the world community to the problem of protecting the rights of audiovisual performances performers[v].

First, I would like to note a common feature that permeates most of the provisions of the Treaty - this is its "dispositiveness", i.e., a situation in which an article establishes a right, and then a reservation is made that the Parties have the right to change or even level it in national legislation. In its most general form, the dispositiveness is enshrined in Art. 13 of the Agreement. Of course, conventions that provide for strict wording and do not allow for exceptions are rarely accepted by the international community, due to the significant differences in the legal systems of different states, unwillingness to limit sovereignty by international obligations, etc. But, despite this, the wording of this article seems to be too vague: the national legislator can sum almost anything under the concepts of “common use” and “infringement in an unreasonable manner”. In our opinion, such a legal technique does not meet the goals of adopting international acts in general, since this turns the enshrined rights into declarative ones, leads not to the harmonization of national legislation, but to the fragmentation of the legal regulation of the institution under study[vi].

The subjects of activity for the protection of musical works are:

Recording companies. Most of the commercially successful sound recordings are the result of contractual relationships between artists and record companies. Despite the fact that, depending on the legislation, the specifics of certain contracts, the task of the record company is to finance the production of sound recordings and their promotion. With rare exceptions, record companies license the sound recordings they own.

Organizations for the protection of the rights of performers. Songwriters and publishers almost do business with these kinds of organizations. Organizations for the protection of performers' rights exist in any country with a developed system for the protection of intellectual rights. For example, in the United States there are - the American Society of Composers, Authors and Publishers ("ASCAP") and Broadcast Music, Inc. ("BMI"). Combined, these two societies

protect 90 percent of all songs licensed in the United States. In addition to the large companies discussed above, there are smaller companies that specialize in the licensing of musical works outside the direct supervision of the competent government authorities. This type of company is SESAC, located in Nashville. It was founded in the 30s of the last century. Its share of the intellectual protection market in the United States of America is about five percent. The second such company is Global Music Rights (GMR). Unlike SESAC, Global music rights was created recently, in 2013[vii].

Songwriters. It is not uncommon for songwriters to enter into agreements with music publishers. These types of agreements may contain provisions whereby the publisher may pay the author a sum of money as an advance against future royalties. Among other things, the publisher carries out activities for the promotion and licensing of works by the author, collecting royalties on behalf of the songwriters. In return, the songwriter undertakes to transfer to the publisher part of the copyright for the works he created.

So, let's summarize the above. Copyright to a musical work is a complex of personal non-property and property rights belonging to a specific person - the creator of a musical work, namely the result of creative activity. The right to a musical work is "a certain set of ideas and thoughts" (as V.I. Serebrovsky wrote in his scientific works) or "a complex of images and ideas that has received its objective expression in a finished work" - a musical work (M.V. Gordon). Since a piece of music is an intangible blessing, it needs careful protection, like other results of creative activity - science, literature and art. The principles of copyright that are not enshrined in current legislation help in the implementation of protection, protection and proper observance of the rules for the use of musical works. Among them, we singled out the principles of freedom of creativity, the combination of the interests of society with the personal interests of the author, the principle of inalienability of the personal non-property rights of the creator of a work and freedom of the author's contract. Despite the fact that at present there is no strict regulation of the relations between the parties to an author's agreement, the rights of the author should come first, and respect should be shown to his will.

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