

# МЕЖДУНАРОДНЫЕ ОРГАНИЗАЦИИ И РАЗВИТИЕ ОТДЕЛЬНЫХ ОТРАСЛЕЙ МПП

М.В. Шугуров

## THE TENSIONS BETWEEN INTERNATIONAL HUMAN RIGHT TO FREEDOM OF EXPRESSION AND COPYRIGHT IN DIGITAL AGE: PERSPECTIVES OF THEIR COINCIDING IN THE CONTEXT OF INTERNATIONAL LAW

*Аннотация.* Статья посвящена обоснованию международно-правового подхода к проблеме коллизии между информационными правами и копирайтом. Автор анализирует ситуацию, когда соблюдение прав интеллектуальной собственности, преимущественно авторских и смежных прав, вызывает обеспокоенность в процессе реализации таких международно признанных прав человека, как право на свободу выражения и информации. Значительное внимание уделяется новым трендам в доктрине права интеллектуальной собственности, которые детерминированы процессами дигитализации. В представленном исследовании с критических позиций рассматриваются аргументы в пользу признания охраны авторских прав в качестве прав человека. В статье содержится подробный анализ причин, в том числе экономических, дисбаланса интересов авторов и интересов общественности, особенно в сети Интернет. Делается вывод о том, что дисбаланс интересов приводит к дисбалансу прав, в результате чего затрудняется реализация принципа неделимости и взаимозависимости международно признанных прав и свобод человека. В этом контексте подчеркивается роль международного права как основы для выработки стандартов баланса авторских прав и информационных прав. При этом указывается на необходимость дальнейшего согласования между международным правом прав человека, международным информационным правом и международным правом интеллектуальной собственности.

**Ключевые слова:** Международное право, информация, авторство, глобализация, сотрудничество, ограничения, Интернет, контроль, свобода, интересы

The contemporary international law is challenged with necessity to solve host global problems. One of them is full exercising the international human rights. This problem is closely linked not only with, for example, climate change and but with the digital environment expansion, especially the Internet as online environment generating new benefits and new threats for humanity. Moreover, the exercising of international human rights in digital environment be collided with such bar as intellectual property rights, detailed in copyright. This subject matter is very considerable for the international law of human rights theory. I deem that debated issues in respect to perspectives of compatibility the two should not ignore the international law approach. The latter may

be significant platform for international cooperation in direction the elaborating international standards.

**1. Freedom of expression and copyright in system of international human rights.** In the age of IT we may see the emergence digital rights as specification of lot international human rights in context of digital environment arisen from application information and communication technologies. The range of digital rights comprises the access to Internet, data protection, privacy in digital sphere, e-communication, e-education, e-association, and right to traditional cultural expression in digital environment. These rights are also granted in domestic law. So, in last decades the digitization has encompassed not only civil and political right but

also economic, cultural and social human rights. We can see, therewith, the process of digitization the property recognized, as well known, as human right in Article 1 of the Protocol 1 to ECHR and in other international legal instruments.

The interesting opinion on digital property was expressed by A. Murray<sup>1</sup>, and attractive position concerning the virtual property in digital environment was introduced by P. de Filippi<sup>2</sup>. I mean these new trends in doctrine of right to property are relevant for digital era and are correlated with digitization intellectual property and copyright.

The development of digital environment is followed by appearance the problem of protection digital and digital-related rights under international law, in particularly international information law, international law of intellectual property, and international human rights law. I presume the author's and neighbouring rights the means of protection of which is reinforcing in digital environment are also digital rights. Therefore they are actively connecting with other digital rights. Moreover, lot digital rights are copyright-related, notably right to free expression (freedom of expression – FOE) as central human right for democratic development. In many cases there is tension between digitals rights, especially right to express and information, on the one hand, and author's rights, on the other hand. The other international human rights also are related with intellectual property in whole, for instance, right to enjoy the benefits of scientific progress and its application (REBSP)<sup>3</sup>, as well as right to culture<sup>4</sup> etc. In lot cases IPR's build the numerous troubles for realization some international human rights.

The digital progress be developed now at exponential rates, doing problematic the well-establish moral and legal order. There are often shaping the ten-

sion between new necessities and legal institutes saving its powers. One of them is a system of intellectual property law tending to strong enforcement moral and economic interests of authors, performers and inventors. However, this direction encounters with undoubted fact that digital environment produces people's rage to communicate and to express of self, especially at Net. The free expression and information at Net are spirit in which it is functioning now. Together the freedom of expression, assembly, and association online are correlated to freedom of connecting and communicating. The public opinion leans down to vision the tension between these regarded trends, but often ignoring copyright as a category of international human rights law.

Hence, in digital reality, especially in online reality of the Internet, very interesting conflict have occurred. What is substantial conflict in legal dimension of digital and online environment? There are solid arguments for evidences of sharp conflict between, on the one hand, author's rights and, on the other hand, right to expression, opinion, and information. Amidst the serious problems related to digital environment the problem of relation between fundamental human rights and copyright rises very actually and needs to special consideration. The modern legal theory of author's rights is not reluctant in respect to researching the issues on relation between the two. The increasing of attention to fully realization the two and tensions between them has been sustainable in last decades<sup>5</sup>.

Interestingly, the debates on this problem are proceeding now in, mainly, context of full exercise the right to freedom of expression and opinion. Indeed, freedom of express is more significant international human right for modern democratic information society. As D. Drahoş & B. Neamţu emphasize, «freedom of expression is one of the best known and most fundamental of human rights. A number of different explanations have been offered as to why freedom of expression is so important, and these accounts often differ as to the kinds of expression which should be protected. Nonetheless, there is broad consensus that the extent to which freedom of expression is protected

---

<sup>1</sup> Murray, A. (2010) *Information Technology Law: The Law and Society* (Oxford: Oxford University Press), pp. 84 – 88.

<sup>2</sup> Filippi, P. de *Copyright in the Digital Environment: From Intellectual Property to Virtual Property* (available at [http://www.virtualgoods.org/2009/79\\_VirtualGoods2009Book.pdf](http://www.virtualgoods.org/2009/79_VirtualGoods2009Book.pdf)).

<sup>3</sup> Donders, Y., Volodin, V. (eds.) *Human Rights in Education, Science, and Culture: Legal Development and Challenges* (Paris: UNESCO), p. 9.

<sup>4</sup> Steiner, Ch. (1998) *Intellectual Property and the Right to Culture*, in *Intellectual Property and Human Rights*, WIPO Panel Discussion to Commemorate the 50th Anniversary of the Universal Declaration of Human Rights (Geneva: WIPO).

---

<sup>5</sup> Burrell, R., Coleman, A. (2005) *Copyright Exceptions: The Digital Impact* (Cambridge: Cambridge University Press), pp. 15 – 42; Hugenholtz, P.B. (2002) *Copyright and Freedom of Expression in Europe*, in Dreyfuss, R.C. et al. (eds.) *Innovation Policy in an Information Age* (Oxford: Oxford University Press), pp. 343 – 364.

is perhaps the most basic indicator of liberal democratic society. This is because freedom of expression is considered, among other things, as an essential element of democracy itself – in order to members of democracy to deliberate properly about what the law should be requires free and open exchange of different ideas and opinions»<sup>6</sup>.

Under para. 2 of General Comment № 34 Human Rights Committee «freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for exchange and development of opinion»<sup>7</sup>. Further, para. 3 reflect that freedom of expression is a necessary condition for realization the principles of transparency and accountability these are essential for the promotion and protection of human rights. Underlined thesis is detailed in para. 4 recognizing that freedom of opinion and expression form is a basis for the full enjoyment of wide range of other human rights, including the enjoyment of the rights to freedom and assembly and association, and the exercise of the right to vote.

Scholar's interest to human right to expression is produced by mentioned-above fact that free expression serves to development of democracy. T. Mendel having worked in field of regime model for access to information around the world underlines that the questions on transparency and access are involved to a certain extent – the access to legislation and the public participation<sup>8</sup>. The access right is arising from right to freedom of expression, opinion and information.

In accordance with UN Rapporteur Frank La Rue concerning the Internet, «the right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an ‘enabler’ of other rights, including economic, social and cultural rights, such as the right to education and the right to take

part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the right to freedom of association and assembly. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights»<sup>9</sup>.

The copyright and free expression/information rights are coherent issues in context legal doctrine taking into account the specific condition for intellectual property in information era. Analyzed rights relations is the part of intellectual property theory. It is pictured in IPR's contemporary conceptions<sup>10</sup>.

The reality of conflict between the two and perspectives of their coinciding are situated by recognition of numerous debates around the nature/substance of copyright<sup>11</sup> and information rights. In addition, the freedom of expression is subject matter of information law attending to regulating of digital environment. Connections between the two rights are immediately reflected in theories of legal regulation the information. These are also reflected in the doctrine of information law because the copyright system is a part of digital environment regulating. That requires the scrutiny that was successfully undertaken by A. Murray which investigated issues of digital content and copyright, as well as copyright in the digital environment<sup>12</sup>.

Thereby, copyright is content-related to free of expression and information. This conclusion may be founded in the context of next methodological perspective. As P. Sané focuses, «many human rights

---

<sup>6</sup> *Drahoş, D., Neamţu, B.* The Rise and Evolution of Freedom of Information: Legal Regime in the European Union, *Transylvanian Review of Administrative Sciences*, 16E/2006, p. 12.

<sup>7</sup> General Comment No. 34. Article 19: Freedom of Opinion and Expression. CCCPR/C/GC/34. Human Rights Committee, 102nd session, Geneva, 11 – 29 July 2011.

<sup>8</sup> *Mendel, T.* (2008) Freedom of Information: a Comparative Legal Survey. 2nd ed. (Paris: UNESCO), p. 141.

<sup>9</sup> Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue // A/HRC/17/27, para. 22.

<sup>10</sup> *Thierer, A., Crews W.* (eds.) (2002) Copy Fights: The Future of Intellectual Property in the Information Age (Washington: Cato Institute), pp. 37 – 42, 95 – 106, 125 – 146; *Dutfield, G., Suthersanen, U.* (2008) Global Intellectual Property (Cheltenham, Northampton: Edward Elgar), pp. 226 – 230; *Bainbridge, D.* (2010) Intellectual Property. 8th ed. (Harlow: Longman), pp. 265, 28; *Colston, C., Galloway, J.* Modern Intellectual Property Law. 3rd ed. (Abingdon: Routledge), pp. 723 – 724, 763 – 769; *Efroni, Z.* (2011) Access-Right: The Future of Digital Copyright Law (Oxford: Oxford University Press).

<sup>11</sup> *Bainbridge, D.* (2010) Intellectual Property. 8th ed. (Harlow: Longman), pp. 39 – 85.

<sup>12</sup> *Murray, A.* (2010) Information Technology Law: The Law and Society (Oxford: Oxford University Press), pp. 169 – 221, 222 – 266.

can be considered as multidimensional. The right to education could be qualified as a social and cultural right as well as civil right... The right to freedom of expression is certainly a civil and political right. However it could also be considered as a cultural right?»<sup>13</sup>. Bearing in mind this approach, it will true to suggest the vision according to which copyright and information rights are intersecting and overlapping, although these are relating to different human rights generations. All that may be justified information and expression aspects of copyrighted works.

In conformity with both Article 27 Universal Declaration of human rights (UDHR) and Article 15 International Covenant of economic, social and cultural rights (ICESCR) author's interest and implicitly author's works are protected. If copyright has been recognized as the fundamental right we shouldn't so strongly oppose analyzed rights. Copyright may be examined as a human right in context of right to freedom of expression and right to creativity.

The issue on relation between idea and its expression is well-detailed in doctrine<sup>14</sup>. Indeed, creative results are more than information but they have information aspects. In my vision, access to information is comprised into access to creative works and stipulates the high level of democratic participation and cultural and scientific development. I think the right of free expression, opinion and information is integral part of the right to enjoyment the copyrighted results of science and culture. That's why information rights should respect the copyright.

The dynamic development of Net promotes to everyone to express one's opinion publically in the vast scale. It's also referring to creators. After all, creators are self-restricted in their moral and economic interests. On the one hand, they want to communicate their works to public. On the other hand, moral and economic interests are at the same time restricting these motives. On this evidence there may tell about dramatic situations. Therefore, substantial tensions also penetrate into author's motives. First, authors intend to communication their copyrighted work to public. Second, they restrained by their economic

interest and existing models of fair remuneration. In result, the internal tensions in information and expression rights, granted the authors under national and international copyright and information law, are dramatically appears. Existent copyright law restricts the author's right to disseminate the information are included into their copyrighted works.

Conforming to D. Bainbridge & Howell C., «copyright does not protect the idea but the independent expression of the idea... Copyright does not create monopolies. It is intended to prevent others, for a defined period of time, from taking unfair advantage of a person's creative efforts»<sup>15</sup>. Accordingly, idea expression is the object for protection in sphere of it exploiting. As D. Bainbridge remarks, copyright is a means of exploiting a work by owner<sup>16</sup>. The right to exploiting is transferred and granted to another within special regimes.

I deem the conflict of author's rights and right to expression are situated at conflict of different forms of expression. In light of extending expressions in digital era the scope of notion of expression needs to be adjusted within context of a new technology, especially online, platform providing capacity to express and to communicate infinitely at almost no cost. Every creative work as element Net contents may be regarded as creator's expressions. But Net is filled very numerous expressions of users which is not copyrighted works. Only in this case it's true the original approach of John Perry Barlow (famous activist of Electronic Frontier Foundation/EFF). He says, «I do not regard my expression as a form of property. Property is something that can be taken from me. If I do not have it, somebody else does. Expression is not like that. The notion that expression *is* like that is entirely a consequence of taking a system of expression and transporting it around, which was necessary before there was the Internet, which has the capacity to do this infinitely at almost no cost»<sup>17</sup>.

---

<sup>13</sup> Sané, P. Introduction in: Donders, Y., Volodin, V. (eds.) (2007) Human Rights in Education, Science, and Culture: Legal Development and Challenges (UNESCO), p. 2.

<sup>14</sup> Bainbridge, D. (2010) Intellectual Property. 8th ed. (Harlow: Longman), pp. 32, 48 – 49, 51 – 52, 88, 90 – 91.

<sup>15</sup> Bainbridge, D., Howell, C. (2010) Law Express: Intellectual Property Law. 2nd ed. (London: Longman), p. 3.

<sup>16</sup> Bainbridge, D. (2010) Intellectual Property. 8th ed. (Harlow: Longman), pp. 37 – 38.

<sup>17</sup> Anderson, Nate Copyfight EFF co-founder enters e-G8 «lion's den,» rips into lions (available at <http://arstechnica.com/tech-policy/news/2011/05/eff-co-founder-enters-copyright-lion>).

There are also conflating copyright issues with free speech. Conflating copyright issues with free speech is traditional way in which lot scientists go. The free speech is also considered as no own or form of property. «If free speech means that someone takes a video camera and makes a movie on any subject he or she wants. But when speech is defined as having copyrighted works?». At the sometimes, no one isn't considering one's opinion or attitude as object of intellectual property rights. Moreover, these opinions are placed in virtual space of Internet. What it is speak about? It's speak us about that the Internet content is not tantamount to extent of copyrighted works.

Expression is property object only in some conditions. Property is alienated that is something that can be taken from us. The expression proceeding in communicative process within network is not like creative expression tending to realization moral and economic interests of copyright owners. Creative works conclude very different information costing money.

In this light copyright is right to protection moral and economic interests of creator in process of using idea expression as independent creative works. «Copyright protects works. The owner of copyright, initially the author of the work or her employer, has the exclusive right to use the work in any one of a number ways»<sup>18</sup>. However, authors do not have monopoly over information. They are monopolists in sphere it exploiting. The information that is inherent to copyrighted works is a part of informational in total. At the same time, public and users have right of access to idea and its expression. This access-right became independent subject matter in theory of IP, having been applied to digital environment<sup>19</sup>.

So, free access to information in any forms includes such form as free access to information contained in copyrighted works. The information, contained in later, is a condition of social and person development. Ideas subsist to be used by public. That is why public is intrigued by ideas concluded in copyright works. The concept of copyright typically means having access to copyrighted work on basis

respect the author's right. Free access to copyrighted works should subsist in copyright forms.

Now the dissemination and the use of creative works take place in digital reality where they are attended by digitization. There are subsisting the concerns about exercise the information rights and the author's rights in digital environment, particularly in Internet. However, there couldn't be denied the importance of the concerns about its conciliation too. In our time the growing role of digital environment is accompanied by fears about the possibility of correlation between copyright and freedom of expression. ICT provide relevant technology opportunity for exercise the right to expression and information guaranteed under Article 19 of ICESCR and Article 10 of ECHR, and other instruments. The digital environment needs to realization new approach to regulation the information rights as well as regulation copyright and neighbouring rights. This implies that establishment due balance between mentioned rights ranges should be supply. The democratic information society demands the new approach to relation between the two.

Considering the process of the digitization international human rights and problem of its protection, we should turn to obvious intellectual property boom around the world. What are IPR's – tools or bars for digital rights exercise? Are they tools for providing environment openness or tools for numerous restrictions? These questions are central for global e-development. There are solid reasons to recognize that determination the nature of intellectual property in the age ICT may permit more fast go to new stage of digitization.

The freedom of expression and information might really be limited under copyright. This fact evokes great anxiety. It seems the anxiety has unstoppably risen up in modern democratic society. In international legal aspect the copyright is not foundation for restriction the right to free expression, opinion and information. Among exceptions R. Smith notes propaganda for war or national, racial, or religious hatred, war/public emergency, national security/public order, public health and morals, the rights and reputations of other<sup>20</sup>. In this list copyright as foundation for exceptions of free expression is absent. (See

---

<sup>18</sup> *Spence, M.* (2007) *Intellectual Property* (Oxford, New York: Oxford University Press), p. 6.

<sup>19</sup> See: *Efroni, Z.* (2011) *Access-Right: The Future of Digital Copyright Law* (Oxford: Oxford University Press).

---

<sup>20</sup> *Smith, R.K.* (2007) *Textbook on International Human Rights*. 3<sup>rd</sup> ed. (Oxford University Press), pp. 271 – 275.

also highlighting the list and scope of restricts FOE extending to Internet<sup>21</sup>). The freedom of expression has also trumped copyright in Report of the UN Special Rapporteur Frank La Rue. He concludes that the cutting off the access to Internet, in which, as well known, right to expression and information is carrying out more intensively, for goal copyright enforcement, is a disproportionate measure violating the para. 3 Article 19 of ICCPR<sup>22</sup>.

What is regarded tension – internal or external conflict? There are lots arguments what that is external conflict having form of clash human rights and copyright. One of positions says about theirs odd. In accordance with the latter the copyright is a bar to full exercise of information rights. That bar limits the access to information contained in author's works.

If to be more precise there is dual conflict. First conflict is inherent for copyright law existing at national, supranational, and international levels, concerning contradiction between author's and users interests. It implicates that purports of copyright legislation strives to reconcile contrary interests. In this case there is made the harmonization copyright system and information legislation.

It isn't difficult to see that balance exists in two forms – principle/paradigm and real legal instruments. Taking account of growth digital environment, there are needs to evolution of balance in direct to more flexible. It draws the renewal copyright system in order to be adapted to new technology shifts. In conditions of globalization digital environment and arising similar national digital cultures the world community goes to harmonization of national copyright system in particularly and intellectual property system in total. The basis of it has become supranational and international legal standards fixing general principles/approach which should be implemented at national and international levels.

But we shouldn't forget about that what deep background of first conflict is an inherent conflict in the system of international human rights, namely tension between different international human rights.

That defines central role the international legal analysis for researching this aspect.

The present day confronting IPR's and freedom of expression, including rights to free opinion and information, as well as other international human rights, raises the long-standing problems of relation between different international human rights generations. Dilemma is to find a balance for sufficient realization all international human rights. The increasing relevance for protection and promotion of digital and author's right belongs to such guarantees as the principle of balance in international human rights system whereas differences between two sets of rights, including political and civil rights, and economic, social and cultural rights are claimed. The models of relation between copyright and freedom of expression are determined by approaches having different insights to status these rights in international system of human right.

The paradigm of philosophy international human rights law denies the acceptability of contradiction between fundamental rights, belonging to one or different sets of international human rights. Under para. 5 of part No 1 Vienna Declaration and Programme of Action, «while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms». Vienna Conference on human rights (1993) defines the core principle of international human rights law such as principle of human rights universal, interrelatedness, interdependence and indivisibility.

This principle is highlighted and elucidated in modern international law doctrine<sup>23</sup>. «The indivisibility and interdependence of all human rights – civil, cultural, economic, political and social – are fundamental tenets of international human rights law, repeatedly reaffirmed, perhaps most notably at the 1993 World Conference on Human Rights. This

---

<sup>21</sup> General Comment No. 34. Article 19: Freedom of Opinion and Expression. CCCPR/C/GC/34. Human Rights Committee, 102<sup>nd</sup> session (Geneva, 11 – 29 July 2011), para. 21 – 43.

<sup>22</sup> Report of the Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue. A/HRC/17/27.

---

<sup>23</sup> See: *Winston, M.* (2000) Indivisibility and Interdependence of Human Rights, in: University of Nebraska Human Rights and Human Diversity Monograp. Series 2:1 (Lincoln: University of Nebraska); *Eide, I.* Interdependence and Indivisibility of Human Rights, in: *Donders, Y., Volodin, V.* (eds.) (2007) Human Rights in Education, Science, and Culture: Legal Developments and Challenges (UNESCO), pp. 11 – 52; *Rehman, J.* (2009) International Human Rights Law. 2nd ed. (Harlow: Logman), pp. 9 – 10.

has not always been the case. Indeed, human rights advocates had to devote immense effort to achieve the normative and the practical recognition of the interdependence of rights. Indivisibility and interdependence are central principles of human rights, as are the inherent dignity of human being, participation and gender equity»<sup>24</sup>. It may be regarded as basis for mitigation tensions between various international human rights, including tension between copyright and free expression. However, the implementation this principle is difficult problem. As P. Sané notes, «while the prioritization of one or other category of rights should have disappeared after 1993, this is unfortunately far from true»<sup>25</sup>. This conclusion is confirmed in K. Feyter & G. Pavlakos analysis<sup>26</sup> in aspect of other ranges of rights. The balancing approach to privacy is constituted in Clapham's researching<sup>27</sup>. I mean that contradiction between copyright and free express is similar case.

The right to freedom of expression including right to opinion and information as much more explored international human right<sup>28</sup> connects, as Ch. Burnett underlined, with other rights granted by ICCPR and ICESCR, and right to development<sup>29</sup>. In my opinion, expression and information rights are the grand basis for rights, granted under Article 15.1.a and Article 15.1.b of ICESCR – right of everyone to take part in cultural life (CR), and right of everyone to enjoy the benefits of scientific progress and its applications (REBSP). The tensions between FOE and copyright, granted by Article 15.1.c, produce the

tensions between CR and REBSP, on the one hand, and copyright/IPR's, on the other hand. Although, they are a relevant rights.

Analyzed agenda provides the carrying out analysis the problem of clash different international human right based on different interests in international legal context. The modern international law provides equal legal protection for international human right relating to different human rights generations. Moreover, implementation this principle faces many encumbrances at national and international levels.

The globalization of digital space, in which international human rights be fulfilled, is to be added by inherent harmonization international system of human rights. The imbalance within copyright system, being introduced by conflict between private interests of copyright owners and public interests, as well as private interest of individual users, is parallel to imbalance in international human rights system. Despite the urgency elaboration the standards reconciling copyright and free expression, this issues are seldom regarded in international legal doctrine. But the latter has to promote moving to renewal balance between international human rights belonging to differ generations. International legal idea of balance between the two is the basis for international legal standards as initial drivers of shifts in copyright and intellectual property systems.

If we will proceed from presumption unavoidable conflict between above-mentioned digital rights and IPR's, we would go to imbalance of international information law and international law of intellectual property rights. The dynamic evolving international information law connects with the elaboration the instruments safeguarding exercise the digital rights. In context of balance principle the information law must respect the copyright.

Methodology of outlining effective model balance of regarded contradictory rights should be a subject matter of the position on prohibition of rooting out the copyright from international human rights guaranteed by international law. Hence, there is shaping task to return copyright to international human rights range. If we have recognized international human rights status of copyright we should meditate on international legal status of right to intellectual property. The latter has a derivative character and arising from right to property.

---

<sup>24</sup> Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions (2005) (New York and Geneva: United Nations), p. 4.

<sup>25</sup> Sané, P. Introduction in: *Donders, Y., Volodin, V.* (eds.) (2007) *Human Rights in Education, Science, and Culture: Legal Development and Challenges* (UNESCO), p. 2.

<sup>26</sup> Feyter, K., Pavlakos, G. (eds.) (2008) *The Tension Between Group Rights and Human Rights: A Multidisciplinary Approach* (Oxford: Hart).

<sup>27</sup> Clapham, A. (2007) *Human Rights: A Very Short Introduction* (Oxford, New York: Oxford University Press), pp. 108 – 118.

<sup>28</sup> Smith, R.K. (2007) *Textbook on International Human Rights*. 3rd edition. (Oxford University Press). pp. 267 – 277; Rehman, J. (2009) *International Human Right Law*. 2<sup>nd</sup> ed. (Harlow: Logman), pp. 106 – 109.

<sup>29</sup> Burnett, Ch. (2009) *The Human Rights Committee and Freedom of Expression* (available at [http://www.ivir.nl/news/Human\\_Rights\\_Committee\\_background\\_paper.pdf](http://www.ivir.nl/news/Human_Rights_Committee_background_paper.pdf)).

The idea of balance is context that is reframes of understanding the specificity of digital human rights in its relation to IPR's. Modern legal doctrine is a space of unrestricted debates about issues on connection copyright and information right that are formed into more wide discussions on human rights and IPR's<sup>30</sup>. The central point of view is human rights approach to IPR's and, especially, to copyright. There are some conditions to recognized copyright as one of international human rights also relevant to second international right generate<sup>31</sup>. But copyright is mainly protected under national, supranational and international instrument in the field of intellectual property, but not ICESCR aiming at the protection of economic, social and cultural rights.

The recognition the copyright as human rights is presumption. Copyright, among other things, have got fundamental human rights grubs such as right to property and right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author. Therefore, more right is a human rights approach to IPR's and copyright<sup>32</sup>. Sometimes, right to protect moral and material interests of

creators is not sometimes mentioned within list of ESCR's<sup>33</sup>. In other case, it is not included to human rights catalogue.

Amid scholars and activists there is formulating the issue on clarification the obligations contained in the ICESCR. «By ratifying or acceding to the Covenant (ICESCR), States Parties freely assume a wide range of binding obligations. However, the nature of the obligations that it imposes has been the subject of controversy»<sup>34</sup>. At once, the typology of State Parties obligations has been detail elaborated in international legal doctrine and includes obligation to respect, protect, fulfill (facilitate, provide, promote) these rights<sup>35</sup>. However, there is little consensus on the scope of states obligation. As M. Dowell-Jones is arguing that «the normative composition of socio-economic rights in international law is therefore much more fluid than of civil and political rights, with states agreeing to achieve them progressively to the maximum of available resources rather than undertaking to respect and to ensure them as is the case with civil and political rights»<sup>36</sup>.

Nevertheless, if we are reasoning on states obligations in field of IPR's protection we may see numerous detailed obligations connected to it according to body of international legal instruments. The obligations under these instruments are sufficiently implemented at national legislative level. Apparently, this circumstance leads to emergence the dissonance accompanying copyright and free expression encompassing. In this meaning there difficulty in asserting that IPR's, including copyright, is marginalized rights range as other economic, social and cultural rights

<sup>30</sup> *Chapman, A., Russell, S.* (2002) *Core Obligations: a Framework for Economic, Social and Cultural Rights* (Oxford: Hart Publishing), p. 315; *Dutfield, G., Suthersanen, U.* (2008) *Global Intellectual Property Law* (Cheltenham, Northampton: Edward Elgar), pp. 213 – 233.

<sup>31</sup> *Torremans, P.* (2004) *Copyright as a Human Rights // Copyright and Human Rights Freedom – Intellectual Property – Privacy*. Ed. by P. Torremans (The Hague: Kluwer Law International), p. 5.

<sup>32</sup> *Chapman, A. R.* (2001) *Approaching Intellectual Property as a Human Rights: Obligations Related to Article 15 (I) (c) // Approaching Intellectual Property as a Human Rights*. Copyright Bulletin. Vol. XXXV. 3. (Paris: UNESCO Publishing), 2001. pp. 13 – 15; *Weissbrodt, D., Schoff, K.* (2003) *Human Rights Approach to Intellectual Property Protection: The Genesis and Application of Sub-Commission Resolution 2000/7*, in 5 *Minnesota Intellectual Property Review*, Issue 1, pp. 1 – 37; *Chapman, A. R.* (2002) *The Human Rights Implications of Intellectual Property Protection*, in 5 *Journal of International Economic Law*, Issue. 4, pp. 861 – 882; *Chapman, A. R.* *A Human Rights Perspective of Intellectual Property, Scientific Progress, and Access to The Benefits of Science* (available at <http://wipo.int/tk/en/hr/paneldiscussion/papers/pdf/chapman.pdf>); *Helfer, L.K.* (2011) *Austin G. Human Rights and Intellectual Property. Mapping the Global Interface* (Cambridge: Cambridge University Press); *Helfer, L.R.* (2007) *Toward a Human Rights Framework for Intellectual Property*, in 40 *U.C. Davis Law Review*, pp. 971 – 1038; *Yu, P. K.* (2007) *Reconceptualizing Intellectual Property Interests in a Human Rights Framework*, in 40 *U.C. Davis Law Review*, pp. 1039 – 1149.

<sup>33</sup> *Donnelly, J.* (2003) *Universal Human Rights in Theory and Practice*. 2<sup>nd</sup> ed. (N.Y. Cornell University Press), p. 24; *Donders Y., Volodin V.* (eds.) (2007) *Human Rights in Education, Science and Culture. Legal Developments and Challenges* (Aldershot: Ashgate Publishing), 2007; *Ssenyonjo, M.* *Economic, Social and Cultural Rights: an Examination of State Obligations*, in *Joseph, S., McBeth, A.* (eds.) (2010) *Research Handbook on International Human Rights Law* (Cheltenham: Edward Elgar Publishing), p. 37; *Rehman J.* (2009). *International Human Rights Law: A Practical Approach* (Harlow: Longman), pp. 149 – 165.

<sup>34</sup> *Sepúlveda, M., Sepúlveda Carmona M.* (2003) *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*. (Antwerp: Intersentia), p. 2.

<sup>35</sup> *Ibid*, pp. 209 – 245.

<sup>36</sup> *Dowell-Jones, M.* (2004) *Contextualising the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit* (Leiden: Martinus Nijhoff Publishers).



as M. Cravon stresses<sup>37</sup>. The obligations of states under Article 15.1.c of ICESCR are clear expressing and are being as an autonomous subject matter<sup>38</sup>. So, with regard to protection creators moral and material interest's the states obligations are sufficiently obvious. The right to protection works of mind is an immanent element of author's rights. This element is detailed in the massive of international legal instruments on copyright.

**2. Copyright and digital environment, especially Internet.** The contemporary copyright debates are similar a flashes illuminating contradictions of Net development. Therefore it is a necessary to detail the relation between different international human rights in digital environment. It is no secret that network development and exercise the digital right leads down to clash with author's rights. If Net has is mainly regarded as scope for expression and communication, the enforcement author's right will be interpreted as a repressive substance that may be accounted as interference to privacy. For both several users of Net and users of new technology belonging to sphere of recoding and disseminating copyrighted works the words «intellectual property» and «copyright» is damp. Really they, especially the proponents of anonymous and pirate parties, are discouraged by strong enforcement author's rights.

Digital environment, including Net, is more than simply lever for achievement of different aims. It is main sphere for evolving the freedom of expression and opinion in information society and it isn't a tool for exercises these rights. Therefore, that obstacle should be taken into account for solve of problem on copyright in Net. The key issue is to retain open Net and digital environment as a sphere of intensive information exchanging.

On public opinion, Internet has become a medium for freedom of speech, expression and information. Net, just like digital environment in whole, impacts on economies, society, and undoubtedly on evolution human rights. The increasing landscape of Internet leads to origin of the problem linked with protection

digital rights, or exercises human right, including copyright, in digital environment. The future of Net is directly connected with degree of digital rights realization and overcoming contradiction between copyright and right of expression. The solution this conflict will mainly define the character of progress the digital environment and the future of Net.

The Net activists as users express surprise at being on tending to forcing Net regulation in aspect of IPR's. A very few people aiming to self-express in digital environment don't understand the IPR's relevance though they get benefit from information and works of mind. In result, infringements related to copyright in Net is illegal attempt to disregard on barriers in process of information receiving and delivering.

There are many people who lean to criticism in respect to author's right in Net. For network activists the Bill of digital rights if it to be enacted would push such digital rights and freedoms as right to act and assemble in online regime, right to access to Net, right to protection for free speech, expression and information. There are too few activists who without doubts may include in this rights list either the author's or the neighbouring rights. Considered conflict extends to be shaped in economic conflict. The economic interests of users are frequently illegal. Content creators have oppositely legal interests. However, public fears of freedom of information because domination author's moral and exclusive rights constrict the transfer of information communicated to public domain.

I think, to build balance of contradictive right is much more difficult than to contest the IPR's. Furthermore, we have to escape to turn down the significance of author's rights for aims of unlimited exercise the right to express, opinion and information. The main problem is a necessity of overcoming the conflict between intellectual property rights, particularly copyright, and human rights, particularly right of expression. Balance between rights holders and users exact the revise copyright and not it eliminating. Exclusive copyright priority doesn't conform to information essence of Internet. There are needs to renewal institutes of system of copyright law. But renewal must not be destruction of author's rights related to second generation of international human rights. «Persistent false distinctions between civil and political rights, and economic, social and cultural

---

<sup>37</sup> *Craven, M.* (1998) *The International Covenant on Economic, Social, and Cultural Rights: a Perspective on Its Development* (Oxford: Oxford University Press).

<sup>38</sup> *Chapman, A., Russell, S.* (2002) *Core Obligations: a Framework for Economic, Social and Cultural Rights* (Oxford: Hart Publishing), pp. 309 – 320.

rights, and lack of understanding of the legal nature and content of economic, social and cultural rights have undermined effective action on economic, social and cultural rights»<sup>39</sup>.

Digital, especially online environment, are not relevant to existing copyright system. It don't might and don't must unshakeable as it has shaped in other technology age. Therefore, in last time, in age of digital technology copyright are more discussed. There are three approaches – traditional, radical and reformative approaches. First position insists on strong guard authors right in Net. Radical position represents by piracy parties. Third appoint suggests the new models realization rights holders interests in digital approach. The latter reflects the true position understanding copyright as incentive of creativity.

The contradiction between two rights appears itself at the world stage and demonstrates its means in universal format because Net becomes universal reality. This tension is part of global conversation on international forums devoted digital development and Internet governing. In practical aspect this call to seeking effective legal variants for harmonization mentioned trends at national and international levels. Eminently, these discussions intend to elaborating new paradigm of copyright in digital environment, especially Internet via appropriate available modification information and author's rights. This turns back us to explore new situation connected with subsisting copyright and expression right in digital environment.

The international law in this situation may, without exaggeration, promote the harmonization diversified interests, constituting digital environment through available standards. Relations between two rights are shaping under national and international law in today's day. Information flows were being transformed in transboundary context. At short, it means that achievement steady rights balance should be revealed at international level. Supranational legal standards are contained in acts of EC (in directives) and international legal most of all in acts of Council of Europe (in recommendation of Committee of Ministers). Also, balance should be deployed at national levels including both information law and copyright law being in every country.

The idea and, accordingly, principle of balance impules the new stage of justification the copyright that is substantial moment of intellectual property theory<sup>40</sup>. It is interesting, as I mean, creator-centred justification, user-centred justification, and community-centred justification separated out by M. Spence<sup>41</sup>. Moreover, increasing the digital environment inspires the realizing information approach into IP-theory and the appearance, for instance, new model of «authorship»<sup>42</sup>, as well as new models of exploiting and licensing.

Evolving intellectual property doctrine and intellectual property legislation at national and international levels is parallel to technology progress. It is reflected in technology-based conception of intellectual property change<sup>43</sup>. Modern philosophy and theory of intellectual property proceed from connection between IP and emerging technologies, especially IT and reality of Net<sup>44</sup>. In this situation traditional justifications of IP<sup>45</sup> have been acquiring the new nuances. It is important in the case of increasing the criticism and, moreover, «intellectual property abuse» (this term was used by D. Bainbridge<sup>46</sup>).

One of more significant justifications of international human right to copyright has become innovative approach. In concordance with it, IP is one of main condition for innovative development<sup>47</sup>. As M.

<sup>40</sup> See: *MacQueen, H., Waelde, Ch., Lauri, G., Brown, A.* (2010) *Contemporary Intellectual Property: Law and Policy* (Oxford: Oxford University Press), pp. 43 – 44, 243 – 246.

<sup>41</sup> *Spence, M.* (2007) *Intellectual Property* (Oxford, New York: Oxford University Press), pp. 45 – 70.

<sup>42</sup> *Durham, A.* (2004) *Copyright and Information Theory: Toward an Alternative Model of «Authorship»*, in *69 Brigham Young University Law Review*, pp. 101 – 160.

<sup>43</sup> *Razgaitis, R.* (2009) *Valuation and Dealmaking of Technology-Based Intellectual Property: Principles, Methods, and Tools* (New Jersey: Wiley); *Merges, R.P., Menell P.S., Lemley, M.A.* (2009) *Intellectual Property in the New Technological Age*. 5<sup>th</sup> ed.; *Merges, R.P., Menell P.S., Lemley, M.A.* (2011) *IP New Technological Age*. 2011 Statutory Supplement (N.Y.: Aspen Publisher).

<sup>44</sup> *Dutfield, G., Suthersan, U.* (2008) *Global Intellectual Property* (Cheltenham, Northampton: Edward Elgar), pp. 234 – 271.

<sup>45</sup> See: *Torremans, P.* (2010) *Intellectual Property Law* (Oxford: Oxford University Press), pp. 11 – 24.

<sup>46</sup> *Bainbridge, D.* (2010), pp. 14 – 15.

<sup>47</sup> *Poltorak, A., Lerner, P.* (2011) *Essentials of Intellectual Property: Law, Economics, and Strategy*. 2<sup>nd</sup> ed. (Hoboken: Wiley), p. 47; *Barrett, W., Price, Ch., Hunt, T.* (2008) *iProperty: Profiting from Ideas in an Age of Global Innovation* (Hoboken: Wiley).

<sup>39</sup> *Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions* (2005) (New York and Geneva: United Nations), p. viii.

Gollin expressively says, «I wrote this book with the goal of helping people understand our intellectual property system as a human endeavor, a social and economic force that drives innovation, a manifestation of creativity and trade, a sometimes crude balance between exclusivity and access, and a topic worthy of study, teaching, learning, and practice. My hope is that such understanding can lead people from crude generalities about what's good or bad the system, toward more productive pursuits like how to make it work better»<sup>48</sup>.

In last time innovation process became e-based. Intellectual property is background of innovation, despite that is not such obvious. Author's rights should be protected in the field of electronic communication. Indubitably, the copyright is a condition of creativity and innovations but direct enforcement of author's right restricts innovation activity because a latter restricts innovation activity. That, however, must not be interpreted as decreasing of copyright. That doesn't signify the necessity of rejecting copyright in the name of acceleration of innovative process. At once, the creation and use the work of mind and their protection are factor of development network environment.

Indeed, Net is innovative sphere and copyright should promote it. The Net possesses unique innovative specificity. Online platform have got generative nature and allow people to create in different areas. Incentivizing creativity should be innovative what proposes new models of copyright and not denying very idea author's rights. Users of creative content have a concern in creators contributing and must respect their moral and economic interest. The task is concluded in achievement of balance between reducing copyright infringements and promotion innovations<sup>49</sup>.

The conversation about future of copyright in digital and e-innovative environment engages a rethinking the nature of author's rights. Copyright enforcement in digital environment, in whole, and Net,

in particularly<sup>50</sup>, is new area of intellectual property theory and practice being reflected in legal theory. Traditionally, the protection of intellectual property right is connected with defending the books, movies and music with the creations of developers and entrepreneurs. Online reality becomes both vast and total environment where author's rights are exercising now. Probably that this environment generates its. In this light copyright should be recognized as digital right too and should be conformed to other digital rights. Similarly, we need yet to the rethinking information and expression rights at digital stage of society evolution. We must agree with its technology sources or at least its technology profile.

The modification of copyright and its consideration as online rights as freedom of expression and opinion presuppose that copyright in it digital form should be asserted over international borders. It demands harmonizing elaboration the multilateral and reconciled approach. For exercising possible balance digital rights granted under national legislation and information rights need to international legal standards. The evolution of copyright in age of digital technology, including the Internet, is becoming subject matter for international organizations activity, for instance, WIPO<sup>51</sup> and Council of Europe elaborating suitable standards.

Standards will be appropriate foundation for principle of balance contained in international copyright law. The balance approach was claimed in WIPO instruments. It was reflected in Copyright Treaty. Preamble recognizes the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention».

---

<sup>48</sup> Gollin, M. A. (2008) *Driving Innovation: Intellectual Property for a Dynamic World* (Cambridge: Cambridge University Press), p. XI.

<sup>49</sup> See: Lemley, M.A., Reese, A.R. (2004) *Reducing Digital Copyright Infringement Without Restricting Innovation*, in 56 *Stan. L. Rev.*, pp. 1345 – 1426.

---

<sup>50</sup> See: Stamatouidi I.A. (2010) *Copyright Enforcement and the Internet* (The Netherland: Kluwer Law International); Lemley, M. (1997) *Dealing with Overlapping Copyright on the Internet*, in 22 *U. Dayton L. Rev.*, pp. 548 – 589.

<sup>51</sup> WIPO: *The Impact of the Internet on Intellectual Property Law*. Ch. III. Copyright and Related Rights etc. (available at [http://www.wipo.int/copyright/en/e-commerce/ip\\_survey/chap3.html](http://www.wipo.int/copyright/en/e-commerce/ip_survey/chap3.html)); Ficsor, M. (1997) *Copyright for the Digital Era: The WIPO «Internet» Treaties*, in 21 *Colum – VLA J.L. & Arts 197*; Dreier, T. (1993) *Copyright Digitization: Philosophical Impacts and Practical Implications for Information Exchange in Digital Network*, in: *WIPO World Symposium on the Impact of Digital Technology on Copyright and Neighbouring Rights* ((Geneva: WIPO), pp. 187 – 211.

The great contribution to establish balance belongs to Council of Europe (CE) approach. Most weighty standards are elaborating by CE in last decades. They are included in international legal instruments in sphere information at level of «soft» international law<sup>52</sup>. Accordance to latters the copy-right should promote free flows of information in electronic area and access to digital forms of protected works as well as to digital reproduction. Meanwhile, the free access isn't a free of charge. That admits the retention the right to free access to information communicated through electronic canals. Simultaneously, usage of works of mind should respect author's interests and rights.

I mean that enforcement of copyright in Net is a core part of digital copyright law<sup>53</sup> presuming new form of balance between users and author's interests at digital environment. The digital copyright law is progressive overlapping of information and intellectual property law. It is resulting from adaptation of law to new stage of information and communication technologies, including fast Internet evolving. This is new-minted law innovation for digital age which is followed by the appearance new social norm and digital culture resisting to old copyright institutions. Intellectual property theory, notably the theory of copyright, is generating new justifications of copyright for digital age<sup>54</sup>. In whole, the digital copyright law is embodiment a process of copyright digitization.

The conflict between right's ranges have, eventually, rigorous economy basis. I have to remind on that what widespread justification of copyright is, for

example, economic approach. The model of modern economy provides protection of IPR's – author's rights, neighbouring rights and patent's rights. The analyzing confrontation is being reduced to two models of understanding the digital environment and Net – economic and noneconomic. Concordance to first understanding, Net is motor of economic development, commerce and job-creation. It is driver of economic activity. The Net represents a sphere of economic benefits for rights holders. Thereby, Net's economy includes intellectual property dimension. I deem that forcing copyright maintained by states have an economic motivation.

In the foundation of considered tension the conflict between two industries lays. Content distributors turn to free flowing information in network but content creators intended, despite that is dominant trend, to turn to achievement theirs economic interests. The conflict of interest is more deep background of contradiction between information right and copyright. It has been strikingly demonstrated at fora e-G8 (Paris, 2011) discussion and its continuation. As e-G8 showed, interim compliance is not elaborated.

The content industries belonging to 20<sup>th</sup>-century are moved by economic interests and try to capture created values by putting theirs into 'containers' of exclusive rights. The purpose of internet-companies as industry of 21<sup>st</sup>-century is florescence information exchange. Thereafter, the conflict of different ranges rights is based upon this industries conflict. On this evidence conflict between information and author's rights have deep economic sources. This conflict restrains the progress of information society.

Network is not only transforms the economic spheres but also space in which people live, communicate, seek and disseminate the information. Of course, this aspect has economic component but it is not main. The Net is mainly space of free communication and expression on waves of information flows. Simultaneously, Internet implies noneconomic goals connected with information exchange for purposes of expression oneself, expression oneself opinion and information receiving. Against this background copyright tends to gain big costs.

The key players of Net, representing such components of Net ecosystem, as manufacturing, software, telecommunications, social networks, is moving now in different directions. Despite pursuit

---

<sup>52</sup> Recommendation Rec CM (94)3 on the Promotion of Education and Awareness in the Area of Copyright and Neighbouring Rights Concerning Creativity; Recommendation of PACE 1906 (2010) «Rethinking Creative Rights for the Internet»; Declaration of the Committee of Ministers on Human Rights and the Rule of Law in the Information Society, CM(2005)56final; Recommendation CM Rec(2007)11 of the Committee of Ministers to Member States on Promoting Freedom of Expression and Information in the New Information and Communications Environment; Declaration of the Committee of Ministers on a European Policy for New Information Technologies (1999).

<sup>53</sup> *Efroni, Z.* (2011) *Access-Right: The Future of Digital Copyright Law* (Oxford: Oxford University Press); *Stokes, S.* (2009) *Digital Copyright* (Oxford: Oxford University Press); *Elkin-Koren, N.* (1988) *Copyright in Cyberspace – Rights Without Law?*, in 73 *Chicago – Kent L. Rev.* pp. 101 – 144.

<sup>54</sup> *Merges, R.P.* (2011) *Justifying Intellectual Property* (Cambridge, MA: Harvard University Press), pp. 237 – 269.

of them the different aims, they should respect digital rights, including digital copyright, and promote its exercising. However, one of shortage of internet-companies is technocratic position. They don't hold the opinion on abolition author's right in Internet but side, mainly, technology progress that would be able to solve all collision. «Technology will move faster than government, so do not legislate before you understand the consequences», said Eric Schmidt, chairman of Google, at e-G8 (Paris, 2011). «You want to tread lightly in regulating brand new industries. The trend is that incumbents will block new things... nobody who is a delegate here would want internet growth to be slowed by some stupid rule».

In proceeding situation there are no a consensus about the principles of rules of the road for the Internet, including observation the copyright. In this question world society should try to make harmonized approach. The achievement of such will promote the understanding that what more effective course of information and author's rights convergence is renewal of its comprehension. So, the industry and governments regulating the Net has substantial background connected with comprehension the author's rights as natural human rights (Europe). However, online reality, as I deem, isn't natural background for human rights.

**3. Reforming of copyright: main trends.** The legal system of copyright covers the digital environment but it often doesn't consider the new landscape, imposing to it the new principles, norms and notions. The digital environment resists to classical approach. If the traditional copyright spreads on online environment, this leads to tension between author's rights and right to information and expression.

The contradiction between the two is inspired by incompatibility copyright with digital environment and importing traditional models of defense author's interests into untraditional technology sphere characterized by unquenched thirst of information and access to it, including information containing in copyrighted works. This circumstance is the cause of tensions between information rights, which are universal human rights and which belong to authors, and author's rights.

The most challenge to open Net and to openness of information came when copyright doesn't regarded the specific of online and digital reality. Indeed, there may hear the crash foundations

of well-established system of copyright within attempts to apply it to online environment. In result, there shape lots bars for full exercise the digital rights. Despite this bars, Net isn't another planet where author's rights, as such, might not be. The true approach presupposes that success of digital reality in whole and online environment in particularly is backed by achieving the interests of rights holders relevant to new stage of technology development. The system of copyright law in non-digital environment is not similar to appropriate system of copyright law in online sphere. However, unfounded attitude is to rival the copyright and right to expression as some alien essences. It's most true to speak about imbalance misleading the users and rights holders. At the same time initial balance is utopia. The statement of modern balance is need to serious discussions and legislative acts adoption.

The legal doctrine turns vividly so as to take the core difficult problems including in the schedule more considerable theoretic and practical issues of information society. The system of copyright law has appeared in non-digital environment and in non-information society. But some states defend it but not develop this system backed on traditional idea natural (Europe) and utilitarian (US) author's rights. The renewal idea of copyright should comprise the idea of balance. It may be motor for reforming copyright law in respect of digital environment and will be new frontiers for copyright exchanging.

Copyright for Internet is a part of problem Net regulation, especially in respect to control over information flows. The providing free access to information is modern states obligations added by obligations to provide access to Net for expression, assembly and association. The access to Net as technical system implies the access to information. Net is not simply technical system. It's intensive extending and increasing the information. The developing of online platforms is a lever for economic wealth. It's important to setting the analysis of barriers, regarding intellectual property, which also impact on possible to information exchange. These issues refer to problem providing universal Internet access through balanced regulation author's rights in online reality. In case of tension between mentioned rights access to Net and, accordingly, to information is hindered too. Internet which doesn't have a balance is not civilizing Internet. Civilized

Internet has an available balance. Such quality of network means its openness.

The priority-driven essence of Internet consists in that what Net is space of freedom in particular freedom of expression, opinion and information, but it is space of intellectual property protection. After all circumstances, it doesn't mean that online reality should be neutral to respect author's rights. The infringements of copyright have mass character. The states in which system of copyright is developed emphasize prior enforcement of intellectual property. These states pose as protectors of movies, music, literature creations. They side the interests of rights holders. However, states adhere to different positions. For example, Russia inclines to recognition the copyright modernization. But for present moment the attention of leading states is not focused on this issue. Governments recognize and underline the elevating importance of Internet to humanity, comprising it as the motor for dynamic economic growth and freedom of expression. Therefore, states fear to enforcement the copyright because that concerns to interest, personal and economic, of rights owners. It is no secret that some states at European continent and also US more intend to protection of copyright than right to express. The states having developed system of copyright, for instance France, don't hesitate in question of option priority. The priority is an enforcement copyright at all.

Modern states, inter alia, are obligated to protect information human rights and must to regulate access to information. In e-development conditions governments should not lobby only the interest of rights holders and serve to them solely. The keeping to freedom and openness of Net must be submitted to providing right of expression. To gain the full economic benefits of the Internet governments must allow some degree of openness.

In last decade we may see adoption of measures intending to enforcement the copyright. The trend to forcing copyright may be considered not only as innovation-smothering approach but also as expression-smothering approach. Forcing protection the copyright has a many costs. This problematic situation requires that copyright protection would correlate with promoting right to information and expression in digital environment.

The regulation of copyright in Internet is necessary. But it shouldn't stymie the information

rights granted under law. The regulation of author's rights ought to follow Hippocratic oath «first do no harm». Indeed, the legal regulation of IPR's often is hindering the information rights. Internet democracy principles mean free of speech and free of expression. The freedom of express concerns the political sphere. However, freedom concerns to copyrighted works because they are a work of mind involved to political sphere. Some expressions represent the forms contracting to society moral. France introduces package of law on internal security (February, 2011) including the possibility of blocking certain websites, such as those displaying child pornography. In some cases the blocking domain names and internet censorship could have devastating consequences for free speech in online. The strong protection of IPR's is added the content regulation. This leads to control over it using. The enforcement copyright is a component of such control.

The states still pose as guard of IPR's in Net and as subjects of network regulation. Intentions of government to strongly regulating the Net have shown deploying the specific model of observance the copyright. In democratic states this control is legal limited. The strong enforcement copyright is fraught with economic costs in long-term perspective. The excessive restriction an access to information at copyright basic is abuse the international legal principle freedom and openness of Net. The problem of providing information and political rights in Net has self-reliant meaning. But it intersects with copyright respecting. In this aspect US approach is interesting and, simultaneously, contradictory. The cyberspace policy of White House is to support internet freedom abroad and, at the same time, is to strong support the copyright enforcement abroad too.

Internet shouldn't be either threatens for information rights or for author's rights. Information essence and social worth of Internet should recognize the priority of information rights. As Frank La Rue says, «the Internet has become a key means by which individuals can exercise their right to freedom of opinion and expression, as guaranteed article 19 of the UDHR and ICCPR»<sup>55</sup>. Internet as the «eighth continent» is a borderless sphere of free expression.

---

<sup>55</sup> Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue // A/HRC/17/27. para. 20.

It is relevant to creators and users. The state must not forget about priority of protection information right. Otherwise, there may see, in case of French HADOPI, the abuse the information rights. After being ruled unconstitutional in French Supreme Court the HADOPI law was amended. This example shows that government legislation policy is going out the approximating to new model of balance. At last years France legislation provides policy aiming to the prosecution of intellectual property infringement. Amid the states around world France have most draconian law of online copyright, including a famous «three strikes law» that would deny online access for repeated offenders.

Leading international organizations and groups, for example G8, are campaigning for rigorous observance the copyright in the digital environment, including Internet. These issues are debated on summit G8 and e-G8 in 2011. The Net was placed on agenda of Deauville G8 Summit (Deuville, 26 may 2011). G8 proclaims the expanding internet access for all, combating digital censorship and surveillance, limiting online intermediary liability, and upholding principles of Net neutrality. In Declaration openness, freedom, transparency along with non-discrimination and fair competition are reflected as widely recognized Internet principles. The observance the foundation principles pose as key factor of Net development. «These principles must continue to be an essential force behind its development»<sup>56</sup>. May add that itemizing the Net principles demonstrate the some consensus about Net-governing.

Interestingly, para. 9 of part II of Deauville Declaration 2011 stipulate that Net principles must be corresponded with principles of democratic society. «Their implementation must be included in a broader framework: that of respect for the rule of law, human rights and fundamental freedoms, the protection of intellectual property rights, which inspire life in every democratic society for the benefit of all citizens». Thereby, Deauville Declaration has attended to author's rights as one of main democratic principles. I think that is not correctly and arise from adherence to strong copyright enforcement. The intellectual property and its protection is not

key democratic principle. IPR's and theirs protection should be perceived in the capacity of legal norm and international human rights and shouldn't be fundament constituting democratic society as such.

The exaggeration a copyright was being accompanied by darkening more substantial government obligations. Such organization as «Article XIX», analyzing the G8 Deauville Declaration 2011, welcomed para. 9 of Declaration. However, organization stresses that protection of human rights should be recognized as a core principle above all others rather than only included in a framework to be balanced with of law and protection of intellectual property<sup>57</sup>. The vision of Net as a space of free expression leads to new obligations for states. This obligation should be properly express. Accordance to «Article XIX», as a global campaign for free expression, G8 leaders should properly express a clear political commitment to champion freedom of expression and the right to information on the internet, through G8 agreements and national policies.

I think the right to expression, opinion and information concretize such universal principles as openness, transparency and freedom. It generates new government commitments these should be proclaimed clearly and unequivocally. The interests of realization own opinion, self-expression and right to information are priority in process of Net development. That leads to stress the principle balance author's and information rights as special principle of the Net.

Undoubtedly, Net is a new sphere of copyright and must not be outside the law of copyright. Infringements of author's rights are one of excesses into online reality. States must be feared not only of direct exercising the copyright but also of modernizing the system of author's rights. It admits the intending to balance copyright and information rights via establishing effective balance. It is obviously that digital space must not be stark trouble for copyright. At first, the coinciding of copyright and information rights may be presumed as the aim and, simultaneously, the result of appropriate policy of Internet regulation. Therefore, thesis by which governments shouldn't try to establish the balance because technological change is fast and will resolve these problems itself is ungrounded in some degree.

---

<sup>56</sup> Deauville Declaration: Internet // (available at <http://www.g8.utoronto.ca/summit/2011deauville/2011-intemat-en.html>).

---

<sup>57</sup> Article XIX, press release 27 May 2011 (at available <http://www.article19.org>).

I think that balance is objectives of such policy. These objectives should be included to record of other objectives, for example, regulation of Internet to protect children, privacy and security, and warding off monopolies.

There has been above-mentioned storm of new Internet-related laws and regulations designed to protect authors, copyright and internal security as well as to block certain websites in last decade. Unfortunately, given laws not always fix balance between the two. The evolution of copyright should base on the principle of balance. That will affect the strengthening of democracy in information society and will allow avoiding the risk of democratic chaos. In the information age one of the law purposes (national, international, and supranational purposes) has become to avoid the collision of copyright and public information interests.

What is a right direction for solution the tensions between copyright and right to expression and information? The copyright and freedom of expression and right to information may be consistent but this exact special legal regulation. The balance is provided under copyright limitations and exceptions. Legislation provides traditional way of balance via exceptions and limits to copyright elaborated particularly by WIPO<sup>58</sup>. Institute of exceptions and limits are detailed in intellectual property doctrine<sup>59</sup>. The regimes of exceptions and limits mean relative and not absolute nature of copyright as international human rights. «Those commentators who see [conflict between copyright and FOE] as only an occasional state of affairs often hope to resolve the conflict by placing discrete limits on copyright – either in the form of constitutionally inspired «fair use» defenses

or through a more explicit First Amendment privilege – that would allow the public to receive all ideas»<sup>60</sup>.

In recent years essential standards of exceptions arose in EC<sup>61</sup>. European trends of the copyrights exceptions are including latters in exhaustive list. European Law of intellectual property construes economic rights of holders as broadly as possible. That may be considered as impediment to exercise information rights. However, within European Law framework the limits amount the fair remuneration. As result, the problem of conflict between considered rights is mitigated. The copyright law really permits the use of protected work for variety aims (for example, personal purposes), but in form of licenses. I suggest that is nor interference to exercise the right to information. Statutory licenses provide access to information included into protected works with order to respect rights and interests of authors and producers. The copyright and information rights don't collide as long as the licenses are made available the information under reasonable conditions.

So as to standards of exceptions would promote the exercise the freedom of expression and information rights, enforcement of its exhaustive list should be flexible and accommodated to public interest. There are non-traditional instruments for overcoming imbalance copyright and right of freedom expression. The elaboration and adoption standards on intellectual property are backed by concept of modern and effective balance in copyright legal system. There are evidences that in last time new composition of balancing copyright system is developing. It implies, for instance, fair use forms<sup>62</sup>.

In modern age of e-based and net-based economy there are needs to new model of copyright that would stimulate new model of digital economies and information society. Without intention to balance the enforcement the copyright will be tool for constitute the Internet as territory to conquer in order to exclusive rights would be exercise for achievement

<sup>58</sup> *Sirinelli, P.* (1999) *Exceptions and Limits to Copyright and Neighboring Rights: WIPO Document WCT – WPPT/ IMP/1.*

<sup>59</sup> See: Council of Europe: Discussion Paper on the question of Exceptions to and Limitations on Copyright and Neighbouring Rights in the Digital Era. Steering Committee on the Mass Media ((CDMM). Group of Specialists on the Protection of Rights Holders in the Media Sector // MM-S-PR (98) 7. Strasbourg, October 1998; *MacQueen, H., Waelde, Ch., Lauri, G., Brown, A.* (2010) *Contemporary Intellectual Property: Law and Policy* (Oxford: Oxford University Press), pp. 170 – 212; *Hugenholtz, P.B., Okediji, R.L.* (2008) *Conceiving an International Instrument on Limitations and Exceptions to Copyright. Final Report* (Mart, 6, 2008); *Burrell, R., Coleman, A.* (2005) *Copyright Exceptions: The Digital Impact* (Cambridge: Cambridge University Press).

<sup>60</sup> *Baker E.* (2002) *First Amendment Limits on Copyright 2002*, in *55 Vanderbilt Law Review*, pp. 891 – 952.

<sup>61</sup> See: Commission of European Communities, Amended Proposal for a European Parliament and Council Directive on the harmonization of certain aspects of copyright and related rights in the Information Society, Brussels, 21 May 1999, COM(1999) 250 final.

<sup>62</sup> *Aufderheid, P., Jaszi, P.* (2011) *Reclaiming Fair Use: How to Put Balance Back in Copyright* (Chicago: University of Chicago Press).



economic interest of copyright owners. Changed copyright system would have the chance not to be the conqueror of network but to be its developing engine. At the same time, this change must cover not only economic but also information aspect. The priority of copyright evolution is concern about human rights these should be forced in online reality.

The accomplishing these aims are rest on elaboration new alternative scheme to compensate copyright owners that should facility access to information included in author's works. We need to revision the models of fair remuneration and revision fairness image. The way trying to impose strong Net regulation and IP enforcement isn't right direct for reducing mentioned tensions. Business models must allow to sense of digital environment and it design. Unfortunately, content producers have scarcity of comprehension this obvious fact.

The increasing of legislative protection of copyright has attempted to satisfy the need for equitable remuneration for authors and contributors. However, as I mean, the rational of the legal regulation the rights and interests of rights holders should yet promote information rights. Both new schemes of compensation for copyright owners and new models of licensing work's exploitation would tremendously significant for easing the access to information. The opinion on forcing IP-enforcement rests on classic argument. It considers copyright as incentivizing factor of creativity. In my vision it should be saved in condition where creators will not restrain information flows.

Thereby, the issues concerning relation between the two comprise seriously economic aspect. Digital environment is a new economic ecosystem demanding new economic approach being discussed in DRM conception<sup>63</sup>. Unfortunately, existing system of copyright law correlates with economic models which appeared in non-digital environment. These models restrict the flourishing circulation of expression and information. That concerns also creative expression compressed by economic interests of

right holders. In some degree copyright hinders digital-related information intentions of creators. This is more actually for developed countries having the strong copyright system.

The practical coinciding regarded rights lay at level new business models and new economic strategy founding on digital economy trends<sup>64</sup>. J. Palfrey notes, «the best intellectual property strategy will be flexible... The most innovative organizations employ multiple types of uses, depending on the situation»<sup>65</sup>. Elaboration of theirs is to correlate to generate new norms of copyright and competition legislation. Now there is widely recognizing that imposing the standards of some business practices and institutional power centers that come from another era on the future, whether they are actually productive of new ideas or not, is great nonsense. In my opinion, there should say about not only adaptation the copyright to digital environment but about adaptation information legislation to need of observation the author's rights. The elaborating the model of practical coverage different interest is open process.

In sum, IPR's of creators are legal institute which should be fully recognized as unbroken lots of principles and norms correlating to new stage of technological advances creating the digital-online environment where most people are living now. Copyright law requiring the compensation is may be consistent with democratic society principles. The copyright as a restriction the right to freedom of expression and information should be considered only as non-equilibrium copyright. Copyright is to be submitted to openness as a principle of digital environment, especially Net because open Internet is a basis for democracy flourishing around the world.

The key role in elaborating and adopting principle standards in this sphere belongs to international law, including international human rights law. Simultaneously, the latter must correspond to international law of IP, international information law, and international competition law.

---

<sup>63</sup> See, for example: *Buhse, W., Wetzel, A.* (2003) Creating a Framework for Business Models for Digital Content, in *Digital Rights Management: Technology, Economic, Legal and Political Aspects* (Berlin, Heidelberg: Springer), pp. 271 – 187.

<sup>64</sup> *Ku, R.S.R.* (2002) The Creative Destruction of Copyright: Napster and the New Economics of Digital Technology, in 69 *U. Chicago L. Rev.*, pp. 263 – 342.

<sup>65</sup> *Palfrey, J.* (2011) *Intellectual Property Strategy* (Cambridge, MA: MIT Press Essential Knowledge), p. 8.

---

## Bibliography:

1. Clapham, A. (2007) *Human Rights: A Very Short Introduction* (Oxford, New York: Oxford University Press).
2. Chapman, A., Russell, S. (2002) *Core Obligations: a Framework for Economic, Social and Cultural Rights* (Oxford: Hart Publishing), pp. 309 – 320.
3. Croven, M. (1998) *The International Covenant on Economic, Social, and Cultural Rights: a Perspective on Its Development* (Oxford: Oxford University Press).
4. Donders, Y., Volodin, V. (eds.) (2007) *Human Rights in Education, Science, and Culture: Legal Development and Challenges* (Paris: UNESCO).
5. Dowell-Jones, M. (2004) *Contextualising the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit* (Leiden: Martinus Nijhoff Publishers).
6. Dutfield, G., Suthersan, U. (2008) *Global Intellectual Property* (Cheltenham, Northampton: Edward Elgar).
7. Efroni, Z. (2011) *Access-Right: The Future of Digital Copyright Law* (Oxford: Oxford University Press).
8. Hugenholtz, P.B. (2002) *Copyright and Freedom of Expression in Europe*, in Dreyfuss, R.C. et al. (eds.) *Innovation Policy in an Information Age* (Oxford: Oxford University Press), pp. 343 – 364.
9. Ku, R.S.R. (2002) *The Creative Destruction of Copyright: Napster and the New Economics of Digital Technology*, in *69 U. Chicago L. Rev.*, pp. 263 – 342.
10. Lemley, M. (1997) *Dealing with Overlapping Copyright on the Internet*, in *22 U. Dayton L. Rev.*, pp. 548 – 589.
11. Merges, R.P. (2011) *Justifying Intellectual Property* (Cambridge, MA: Harvard University Press).
12. Mendel, T. (2008) *Freedom of Information: a Comparative Legal Survey*. 2<sup>nd</sup> ed. (Paris: UNESCO).
13. Murray, A. (2010) *Information Technology Law: The Law and Society* (Oxford: Oxford University Press).
14. Sepúlveda, M., Sepúlveda Carmona M. (2003) *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*. (Antwerp: Intersentia).
15. Stamatoudi I.A. (2010) *Copyright Enforcement and the Internet* (The Netherlands: Kluwer Law International).