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Reforming Copyright in the Context of Exercise of the Human Right to Free Expression on the Internet: An Actual Problems of the Modern International Legal Politics

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Abstract

The authors discuss major trends in the area of reforming of copyright in the light of full exercise of internationally recognized human right to expression regarding the digital environment, especially the Internet, and demonstrate the significant situation when intellectual property rights, mainly author's exclusive rights, build a lot of troubles for the information human rights. The article also looks at the changes in the understanding the relation between copyright and the human right to freedom of expression and information on the Internet. Much attention is paid to new moments in the modern doctrine of intellectual property that is inspired by process of digitization of author's rights. There is conducted the approach to addressing copyright as one of the digital human rights resulted from property rights and right of creators to protection of their moral and economic interests. However, authors of the article departure from postulate that copyright is the human rights to a certain degree only. Moreover, this article examines the international legal approach to seeking the balance between the human right to freedom of expression, opinion and information, on the one hand, and copyright, especially as regards the Internet, on the other hand. There has been argued that key role in elaborating and adopting the principled standards in this sphere belongs to international law, including international law of human rights. In addition, the latter, as authors have ascertained, must correspond to international law of intellectual property rights, international information law, and international competition law. The study focus on various aspects of solving the problem of adapting copyright to the digital environment.

Keywords: copyright, internet, protection of intellectual property rights, human rights, freedom of expression, digital environment, information society.

Introduction

The digital progress is developing now exponentially, doing great number difficult problems for well-establish moral and legal international and national order. There are frequently shaping the

tension between new contemporary necessities, connected with expanding the digital communication, especially on the Internet, on the one hand, and the legal institutes saving the power of established order, on the other hand. The one of more significant institutes is the system of intellectual property law (IPL) tending to strong enforcement of moral and economic interests of authors, performers and inventors. However, this direction encounters with undoubted fact that the digital environment produces people's rage to communicate and to express of self, especially on the Internet.

Furthermore, in the age of ICT we can see the emergence of digital rights as a specification of international human rights in the context of digital environment arisen from using and, certainly, functioning of ICT. The range of digital rights comprises, for example, access to Internet, data protection, privacy in the digital sphere, e-communication, e-education, e-association, and right to traditional cultural expression in digital environment. These rights are granted by domestic and by international law. Thus, in last decades, the digitization has encompassed not only the civil and political rights, but also economic, cultural and social human rights. That is why we can even view therewith the process of digitization of the property recognized, as well known, in kind of human right under Article 1 of the Protocol No 1 to the European convention on human rights (ECHR) and in other international legal instruments.

As the result, the contemporary international law and its politics are challenged with a necessity to solve the numerous global problems. One of them is a full exercising of international human rights. This problem is closely associated not only with, for example, climate change, but also with the digital environment's expansion, especially the Internet as the online environment generating the new benefits and new threats for humanity. Nowadays, the Internet has become the global transboundary reality of human communication and economics needed in global governing on international legal basis.

Moreover, the exercising of international human rights, especially the right to freedom of expression (or right to freedom of expression, opinion and information), in the digital environment is being collided with such barriers as intellectual property rights (IPRs), first of all copyright. This subject matter is very considerable for the theory of international law of human rights and concurrently for the theory of author's rights. We deem that debated issues in respect to perspectives of compatibility of the human right to information and copyright should not ignore the international law approach postulating the principle of balance. The latter is a significant ideological platform for international cooperation in direction of elaborating the international standards in area of IPRs protection within international law of IP protection that would be harmonized with interests of public and individuals to have access to information contained in protected works of mind.

Methodology

The conversation of future of copyright in the digital and e-innovative environment engages rethinking the legal nature of author's rights. Both protection and enforcement of copyright in the digital environment in general and on the Internet in particularly [1], [2, pp. 548 – 589] are a new area of intellectual property theory and practice. Traditionally, protection of IPRs was connected with defending books, movies and music. However, the digital reality has become vast and total environment where author's rights are exercising now. In a way, this environment generates a renewed sense of copyright. Hence, in this context copyright may be recognized, to a certain degree, as the digital right too conformed to other digital rights, especially the human right to freedom of expression.

Taking into consideration the technological sources or, more precisely, new technological profile of copyright, we also are based on the fact of digitization of the right to expression and information. Therefore, relations between them are, from a certain future methodological perspectives, relations between digital rights that have, however, different legal nature. The first is the internationally recognized human right. The second is a mainly the sort of the right of ownership undoubtedly having a human right profile. Hence, the reforming copyright with regard to digital reality is in focus of not only international legal politics in area of IP, but also of international legal politics in area of human rights protection. The intersecting between the two is second methodological starting point of our examining the reforming copyright in the context of digital environment. Similarly, we need yet to rethink the information and expression rights at digital stage of society evolution in the light of logic of copyright evolution with regard to trends in

development of the digital environment. The recognition of approach to the right to free expression in the digital reality as designed to respect for copyright is the third methodological background of present paper.

Results

Copyright in the digital environment: more significant controversial issues

It is no secret that development of the digital environment, including the Internet, and exercising of digital human rights, chiefly the right to freedom of expression, lead down to clash with author's rights, raising radical questions what is the priority – the freedom of expression or copyright protection? [14]. In essence, issues on priority can also be viewed as core dilemma not only information society, but also as global Internet management [15]. If the Internet is regarded in general terms as the area of expression, communication and exchange of information, the enforcement of author's rights may be interpreted as repressive substance that could be addressed as a tool for interference with self-expression and the privacy respectively. For both users of the Internet and users of new information technology belonging to sphere of recoding and disseminating of copyrighted works the phenomenon fixed in words 'intellectual property' and 'copyright' is a serious encumbrance. Really, the proponents of anonymous and pirate parties, are discouraged by the strong protection and enforcement of author's rights.

Undoubtedly, the digital environment and the online-reality is not relevant to established copyright system fully. This conclusion is a quite reasonable because the copyright system has been made in other technology age. In spite of that, copyright was undergone and is being undergone now the substantive modification at the national and the international level. By the way, updating copyright yet lags behind the growth of the digital environment that, including the Internet, is more than a simple lever of achievement of different aims. It is mainly a sphere for evolving of the freedom of expression and opinion in information society, and it is no tool for exercising of copyright. Therefore, this conclusion should be taken into account as regards the problem of respect for copyright and enforcement it on the Internet. In public opinion, the Internet has become a medium of the freedom of speech, expression and information. Like the digital environment, it affects the economies, society, as well as the evolution of human rights.

The increasing of Internet landscape is closely connected with origin of numerous problem linked, in turn, with protection and exercising of essentially different rights, including copyright. The future of the Internet is directly associated with degree of rights' realization and with overcoming the contradiction between copyright and the right of expression. The solution of this conflict will mainly define the character of progress of the digital environment and future of the Internet.

Internet activists as well as users express some surprise at the strengthening of the Internet regulation with regard to IPRs enforcement. A very many people aiming at self-expression in the digital environment do not understand the relevance of IPRs protection, while they benefit from information and works of mind. As the result, infringements related to copyright on the Internet are as an illegal attempt to disregard the barriers connected with IPRs protection in process of receiving and delivering information. There are many people have a leaning to criticism of author's right on the Internet, and they are unsparing in their criticism. For network activists the Bill of digital rights, if it will be enacted, would push such rights and freedoms as the right to act and assemble in online regime, the right to access to the Internet, the right to protection of free speech, expression and information. Yet, there are a few activists that, without doubts, could include in this rights' list both author's rights and the exclusive rights of broadcasters.

We have to remind that one of widespread justifications of copyright is, for example, the economic approach. The model of modern economy provides protection of IPRs, such as author's, neighbouring and patent exclusive rights. Therefore, analysis of tensions between rights of various sorts as applied to the modern digital reality is being reduced to two models of understanding the digital environment and the Internet, such as economic and noneconomic. In accordance with first understanding, the Internet is a motor of economic development, commerce and job-creation. It is the driver of intensive economic activity. The Internet represents the sphere of economic benefits for rights holders. Thereby, the Internet economy includes intellectual property dimension. We deem that strengthening of copyright maintained by states has economic motivation.

Moreover, we must bear in mind that there is conflict between two industries that lays in foundation of addressed tensions. Content distributors is strongly attracted by free flows of

information in network but content creators intend to achievement of their economic interests. It has been strikingly demonstrated at the fora e-G8 (Paris, 2011). As discussions of e-G8 showed, interim compliance is no elaborated yet. The content industries belonging to 20th-century are moved by economic interests and try to capture created values by putting them into 'containers' of exclusive rights. In contrast, purpose of internet-companies as industry of 21st-century is florescence of information exchange but this purpose also has economic background. Thereafter, conflict of different ranges digital rights includes this industries' conflict. This conflict restrains progress of information society in some degree.

In our days, network is not only transforming to economic spheres, but also to space in which people live, communicate, seek and disseminate the information. Of course, this aspect has economic component but it is no mainspring of the information society. The Internet is mainly space of the free communication and expression on waves of information flows. Simultaneously, the Internet implies noneconomic goals connected with information exchanging for purposes of self-expression, expression of one's own opinion and receiving information. Against this background, copyright tends to gain big costs.

In current situation, there are no consensus on rules of the road for the Internet, including observation of copyright. The world society should try to make harmonized approach in this question. The achievement of this approach will promote understanding that more effective course of information and author's rights is the convergence due to renewal of comprehension of them. The e-industry and government regulation of the Internet have substantial background still connected with comprehension of author's rights as natural human rights (Europe). However, online reality, as we deem, is no the natural background for the human rights and author's rights. Hence, the world society faces need to an elaborate post-natural or digital model of different human rights, taking into account the innovative character of modern economic, social and personal development in the digital environment.

Recently, the innovative process became e-based. Intellectual property is a background of innovation, despite that is not such obvious. Author's moral and exclusive rights should be protected in the field of electronic communication. Indubitably, copyright is a condition of creativity and innovations but direct enforcement of them restricts innovation activity. That, however, must not be interpreted as a decreasing the copyright. That is clear it does not signify the necessity of rejecting copyright in the name of acceleration of innovative process. At once, the creation and use of works of mind and the protection of them are factors of development of network environment.

Indeed, the Internet is innovative sphere and copyright should promote it. The Internet possesses the unique innovative specificity. Online platform has generative nature and allows to people to create in different areas and in different ways. Incentivizing the creativity should be innovative. This proposes new models of copyright and not denies very idea of author's rights. "Copyright laws need to adapt to keep pace with digital technology they need to adapt to consumer demand and cultural practices in this global economy built on ideas and innovation. People have a legitimate expectation that their fundamental right to receive and impart information and ideas will be fostered rather than restrained by copyright" [16]. Users of creative content are interested in creative contributions and must respect the moral and economic interest of creators. As actual task is the achievement of balanced relation between the reducing of copyright infringements and the facilitating the innovations [17, P. 1345 – 1426].

Seeking proper balance between the freedom of expression and copyright in the digital environment

The contradiction between the two groups of analyzed rights appears itself at the worldwide level and demonstrates its own meaning in universal format because of the Internet has become universal reality. The regarded tension is a part of global conversation at the level of various international organizations and international forums discussing the problems of the digital development and of governing the Internet. The participants of these forums call on to seek the effective legal variants of harmonization of mentioned trends at the national and the international level. Eminently, these discussions is intended to elaborate a new paradigm of copyright in the digital environment, especially on the Internet, via appropriate modification of author's rights, namely modification of the system of limits and exceptions. It is clear that this turns back to

explore a new situation connected with subsisting of copyright and the right to expression in the digital environment.

The contradiction between analyzed rights is inspired by certain incompatibility of copyright and the digital environment, and arises from traditional models of protection of author's interests that strive to cover the non-traditional communicative sphere that is characterized by unquenched thirst for information and access to it, including information contained in copyrighted works. This circumstance is a cause of tensions between the information rights, that are universal human rights, and the author's rights.

The most challenge to the open Internet and to the openness of information came when copyright did not regard a specific of online, or digital, reality. Indeed, we can see crash of fundamentals of well-established system of copyright before of attempts to apply the latter to the online environment. As the result, there have been shaped many barriers to full exercising of digital rights. Despite that, the Internet is not another planet where author's rights, as such, is absent. The true approach presupposes that success of digital reality in general and online environment in particularly are backed by realization of interests of rights holders relevant to new stage of technology development. The system of copyright law in the non-digital environment is not similar to appropriate system of copyright law in the online sphere. However, unfounded attitude is to oppose copyright to the right to expression as a certain alien essences. It is most true to say about the imbalance misleading users and rights holders. At the same time, the initial balance is utopia. The setting up of the modern effective balance needs serious discussions and adoption of legislative acts.

Nowadays, the legal system of copyright covers digital environment but the latter often is not considered as a new landscape interested in new principles, norms and notions of both the doctrine and the legislation in area of author's rights. The digital environment resists to classical approach to author's rights. If the traditional copyright spreads oneself on the online environment, this leads to tension between author's rights and the right to information and expression.

The legal doctrine turns vividly that to address the difficult problems included into schedule of more considerable theoretic and practical issues of the information society. The system of copyright law has appeared in the non-digital environment and in the non-information society. Because some states prefer to defend the author's right but not to develop them, this system backs on the traditional idea of natural (Europe) and utilitarian (USA) essence of author's rights. The renewal of idea of copyright should take into account the renewed idea of the balance between various sorts of rights. It could be motor of reforming copyright law in respect of the digital environment, and it could be a new frontiers of changing it.

Copyright for the Internet is a part of problem of the Internet regulation, especially of the control over information flows. Providing free access to information is modern states' obligations added by obligations to provide access to the Internet for expression, assembly and association. Access to the Internet as a technical system implies access to information. The Internet is not a simple technical system. It is an intensively extending and increasing information exchange. The developing of online platforms is a lever for economic wealth. That is an important to endeavor to analyze the barriers as regards intellectual property affecting possible exchange of information. These issues refer to the problem of providing the universal Internet access through balanced regulation of author's rights in the online reality. In case of tensions between mentioned rights the access to the Internet and, accordingly, to information is a hindered too. The Internet that has not the balance of interests is no civilized Internet because of the civilized Internet has the available balance. Such quality of network means its openness.

Modern states, *inter alia*, are obligated to protect the information human rights and must to regulate the access to information. In e-development conditions, governments must not lobby only the interests of rights holders and serve to them solely. The keeping to freedom and openness of the Internet must be submit to providing the right of expression. To gain the full economic benefits of the Internet the governments must admit, to certain degree, the openness of the former.

In last decades, we can see adoption of measures designed to strong enforcement of copyright concerning the digital reality. These trends are reflected in adoption of the ACTA. The trends to increasing the copyright enforcement could be considered not only as an innovation-smothering approach, but also as an expression-smothering approach. Strengthening protection of authors' rights has a many costs. This problematic situation requires that copyright protection would correlate with promoting the right to information and expression in the digital environment.

The regulation of copyright on the Internet is a necessary. But it should not stymie the information rights granted under domestic legislation and international human rights law. The regulation of author's rights ought to follow the Hippocratic Oath: 'first do no harm'. Indeed, legal regulation of IPRs often is hindering the information rights, i.e. serves as an obstacle for receiving the information. The Internet democracy principles mean the freedom of speech and the freedom of expression. The freedom of expression also concerns the political sphere. However, such freedom also concerns copyrighted works because they are works of mind involved to political sphere. Some expressions represent the forms connected with public morals. So, France has introduced the package of laws on internal security (February, 2011) including the possibility of blocking the certain websites, such as displaying child pornography. In some cases, blocking the domain names and Internet censorship could have devastating consequences for the free speech in online environment. The strong protection of IPRs is added by content regulation that has taken place in China. That leads to control over using of content. In democratic countries, copyright enforcement is a component of such control. At the same time, this control is legally limited in democratic societies.

The states still pose as a guard of IPRs in the Internet and as principal actors of network regulation. The government intentions to regulate the Internet strongly have shown a deploying of specific model of observance the copyright. The strong enforcement of copyright is fraught with economic costs in long-term perspective. The excessive restrictions on access to information at copyright basic are the abuse the international legal principles, such as the freedom and the openness of the Internet. The problem of providing information and political rights on the Internet has self-reliant meaning and, besides, intersects with respect for copyright. From this angel, approach of USA is interesting and, simultaneously, contradictory. The cyberspace policy of the White House is to support the Internet freedom abroad and, at the same time, to support consecutively the copyright enforcement abroad too.

The Internet as an 'eighth continent' is a borderless sphere of the free expression. It is relevant for creators and users. Yet, the Internet should not threaten the information rights and author's rights. The initial recognizing the information essence and social worth of the Internet results in mean the recognizing priority of the 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" [18]. The states must not forget about priority of protection of the information rights, otherwise there can see, in case of French HADOPI, the abuse the information rights. At last years, French legislation has provided for the policy aiming at prosecution of intellectual property infringements. Amidst the states around the world, France had most draconian law of online copyright, including a famous 'three strikes law' that denies the online access for repeated offenders. After having been ruled the HADOPI unconstitutional by the French Supreme Court, the former was amended. However, the HADOPY was revoked by French Government (18 July 2013). This example has shown that government legislation policy is going to approximating to a new model of the balance. However, apart from justifying the failure of the HADOPI, some experts suggest to wait the adoption of a new law HADOPI 2, which would transfer the power to disconnect users to a judicial authority [19, P. 116].

Anyway, we has already pointed out that copyright cannot be a factor of restriction of the freedom of expression. Holding this widely recognized approach, we would like to turn once more to Report of Frank La Rue, having paid attention to cases of copyright application that infringes the right to freedom of expression. The Special Rapporteur has striven to demonstrate that disconnecting of users from access to the Internet on basis of IP law leads to a breach of the freedom of expression guaranteed by Article of 10 of the ECHR. Here has also been stated that cutting off the Internet access, including on grounds of violation of IP law, is to be recognized disproportionate because there is violation of Article 19.3 of the International Covenant on civil and political rights (ICCPR) [20]. The UN's Rapporteur also has urged States to repeal or amend existing copyright law which permit users to be disconnected from the Internet access, and to refrain from adopting such laws. As the result, copyright has been trumped in this Report.

Shortly, government policy in the age of Internet as a new a phase of the information society development faces unprecedented tasks. So, national authorities have targeted tasks not only to refrain from interferences with the freedom of expression – including the freedom of artistic and scientific expression – that are not necessary for democratic society and its development, but also

have positive obligation under international human rights law to protect this rights against by others persons or organizations. Amongst these persons are undoubtedly rights holders striving to control the information flows and self-expression attracting copyrighted content. Could it mean that protection of beneficiaries of the right to freedom of expression is protection against rights holders? It seems that it is so. However, same national authorities are obligated to protect the copyrighted works from their illegal non-authorized application. The balanced protection of the two sort of rights demands both the initial balance between copyright and the freedom of expression and the balance between appropriate interests that are protected by the ECHR and the International Covenant on economic, social and cultural rights (ICESCR).

The Internet is a new sphere of copyright and must not be as some outside limitation on the copyright law. Infringements of author's rights are a one of excesses of the online reality. States must be feared not only for direct exercising of copyright, but also for modernizing the system of author's rights. That admits to intend to the balance of copyright and the information rights via establishing the effective balance. It is obviously that digital space must not be stark trouble for copyright. At first, coinciding copyright and information rights could be presumed as aim and, simultaneously, as result of appropriate policy of the Internet regulation. Therefore, thesis by which governments should not try to establish the balance because of the technological change is a fast and should not try to resolve these problems *per se* is an ungrounded chiefly. We want stress that the balance is a one of major objectives of such policy. These objectives should be included to record of other objectives, for example, regulation of the Internet to protect children, privacy and security, and warding off monopolies.

There has been an above-mentioned storm of new Internet-related laws and regulations designed to protect copyright and internal security, as well as to block some websites in last decade. Unfortunately, given laws does not always fix the balanced relations between the two. However, realization of balanced relations will exactly affect the strengthening of democracy in information society and will allow to avoid risks of democratic chaos. In the information age, one of the law purposes (national, international, and supranational purposes) has become to avoid the collision between copyright and public information interests.

To build the balance of contradictive rights is much more difficult than to contest the IPRs. Furthermore, building of the balance is needed to avoid underestimating the importance of author's rights in order to achieve an unlimited exercise of the right to expression, opinion and information. The main problem is a necessity to overcome the conflict between IPRs, particularly copyright, and human rights, particularly the right to expression. The possible balanced relations between rights holders, on the one hand, and users, on the other hand, intend to revise copyright but not to eliminate it. At the same time, priority of copyright does not conform to information essence of the Internet. It is indispensable to renew the institutes of copyright law. However, such renewal must not be destruction of copyright that also have human rights background, since as prescribed by both article 27.2 of the Universal declaration of human rights (UDHR) and article 15(1)(c) of the ICESCR the author's interests and the author's works are protected. These human rights of authors relate to second generation of international human rights. Indeed, "persistent false distinctions between civil and political rights, and economic, social and cultural 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" [21, P. viii]. Therefore, it is significant that principle of indivisibility and inseparability of human rights must be guideline not only for reforming copyright but also for regulation of the Internet environment in general.

As it is, in modern age of e-based and net-based economy, there is need for a new model of copyright that would stimulate the new model of digital economies and information society. The protection and enforcement of copyright without intention to establishing the effective balance will be tool for to constitute the Internet in kind of territory to conquer in order to the exclusive rights would be exercised for achievement of economic interests of copyright owners solely. If copyright system will be changed, there is a chance for copyright not to be conqueror of network but to be its developing engine. At the same time, this change must covers not only economic, but also information aspect.

The achieving these aims rests on elaboration of new alternative scheme of compensating for copyright owners that can facility the access to information contained in author's works. There is need for revision the models of fair remuneration and revision the image of fairness. The way

trying to impose stronger Internet regulation and stronger enforcement of IPRs is not a proper direction for reducing analyzed tensions. The business models must sense digital environment and its design. Unfortunately, content producers have a scarcity of comprehension this obvious fact.

The increasing of legislative protection of copyright protection has attempted to satisfy the need for equitable author's remuneration. However, as we think, the rational of legal regulation of rights and interests of rights holders should yet promote the information rights. Both new schemes of compensation and new models of licensing of works' exploitation would be tremendously significant for easing the access to information. The opinion on increasing of IP enforcement is premised on the classic arguments that consider copyright to be incentivizing factor of creativity. In our vision, there should be condition when creators would not restrain information flows.

Reforming copyright in the context of international legal perspectives

In view of the global nature of issue on reforming copyright in the light of needs of the Internet-based information society, there is increasing a role of international law. Of course, the latter does provide the general and, concurrently, flexible standards of the balance between copyright and the freedom of expression. More exactly, international law provides for the principled approach that acts as a fundamental ground for resolving one of the core problems of the Internet-based information society, such as harmonization the protection of copyright and the protection of the freedom of expression.

The international law – in situation of seeking the balance between addressed rights – can promote, without exaggeration, the harmonization of diversified interests, constituting digital environment through available standards. The relations between the two sorts of rights are being shaped today under not only the national, but also international law. The regional standards of required balance are contained in instruments of the Council of Europe. In addition, supranational legal standards are contained in acts of the EU. The international, as well as supranational standards of the balance should be implemented further at the national level, including both information law and copyright law existing now in every country. With the aim of exercising the possible balance, the rights granted under national legislation need the international legal standards as certain general guideline.

The information flows now is being transformed in the transboundary context. At short, it means that achieving the steady rights' balance should be revealed at the international level. The modification of copyright and consideration it along with the right to freedom of expression and opinion presupposes that copyright can be asserted over international borders. It demands the elaboration of harmonized and reconciled multilateral approach. The evolution of copyright in the age of digital technology, including the Internet, is becoming a subject matter for international organizations' activity, for instance, the WIPO ([22]; [23, P. 197]; [24, P. 187 – 211]) and the Council of Europe elaborating the suitable standards.

We consider that these standards as basis of coordination of copyright and the freedom of expression are embodiment not only of the balance contained in international human rights law, but also of the balance underscored in the international copyright law. For example, the balance-based approach was claimed in WIPO's instruments. For example, it has been reflected in the WIPO Copyright Treaty (WCT). Its Preamble recognizes the need for maintaining the balance between rights of authors and interest of larger public, particularly education, research and access to information, as reflected in the Bern Convention (BC). Indeed, we can find in the BC large number of provisions reflecting this balance (articles – 9.2, 10.1, 10-bis.2, 11-bis.3, 13.2, 14-bis, 14.2{b}).

It is important that the WCT, aiming at development of and maintaining the protection of the rights of authors to their literary and artistic works in a manner as effective and uniform as possible, departures from recognizing such context of introducing a new international rules and clarifying already existing rules as reflected a new level of economic, social, cultural and technological development respectively. In addition, Preamble directly points out the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works. And lastly, the WCT emphasizes the outstanding significance of copyright protection as an incentive for literary and artistic creation.

In similar vein of accentuating the role of IPRs, the TRIPS discovers meaning of IPRs protection and enforcement. These “should contribute to the promotion of technological innovation and to the

transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in manner conducive to social and economic welfare, and to a balance of rights and obligations". Certainly, the TRIPS says about the protection and enforcement of the right of industrial property but the accents on role of IPRs and their protection as an incentives for development of creativity and dissemination of protected created works or products is fully obvious.

The great contribution to process of development of balanced-approach belongs to the Council of Europe. Most weighty standards have been elaborated by organization in last decades. They are contained in the instruments of 'soft' international law, such as declarations and recommendations of the Committee of ministers [25 – 30], and recommendations of the PACE, chiefly in the sphere of information, culture and education [31]. Pursuant to them, copyright should promote the free flows of information in electronic area and the access to digital forms of protected works, as well as to digital reproduction. Meanwhile, the free access is not a free of charge. That admits the retention of the right to free access to information communicated through electronic channels. Simultaneously, usage of works of mind should respect author's interests and rights.

Standards of the Council of Europe have become a special subject matter of legal studies [32] in the context of protection and enforcement of copyright in the digital environment [33]. The approach of the Council of Europe is consonant with approach of the UN's Committee on Economic, Social and Cultural Rights having issued General Comment no 17 "The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary and Artistic Production of Which He is the Author (art. 15(1) (c) of Covenant [34]. The Committee has showcased (para 22) the significance of establishing the balance between rights of creators and other rights, granted by ICESCR, and the balance between authors' interests and public interests in area of use of wide access to works (para 35). At that, the Council of Europe takes into account the EU's Directive 2001/29, setting up the balance between interests of rights holders and users as applied to the new digital environment of information society (para 3 and 31 of Preamble, Article 5(3)(d) and Article 5(3)(k)). However, as well known, the EU will revise this key Directive because it is a call of the times, namely call of forming digital single market in the context of the knowledge economic exponentially propelled. As noted by The Copyright Manifesto, the flaw of the Directive is that it has created no harmonization, hence weakening any attempt to truly distil a digital single market. The proposed solution is a harmonization based on a mandatory list of limitations and exceptions that would enable both users and business to understand their rights and obligations across the EU [35].

What is a more effective direction for solution of tensions between copyright and the right to expression and information? Copyright and the freedom of expression and information can be consistent with each another but this exacts the special legal regulation, namely regulation of system of exceptions and limitations. All the more so that the required balance is provided for under copyright limitations and exceptions. The national legislation provides for the balance via exceptions and limitations to copyright elaborated particularly by the WIPO at the level of international intellectual property law, taking into account best domestic practices [36].

Virtually, the principle of balance is directly exemplified in article 10 "Limitations and Exceptions" of the WCT. So, article 10.1 reads that Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights that have been granted to authors under this Treaty in certain special cases. These do not conflict with a normal exploitation of copyrighted works and, concurrently, do not unreasonably prejudice the legitimate authors' interests. Additionally, Article 13 of the TRIPS "Limitations and Exceptions" is like article 10.2 of the WCT. At the same time, the TRIPS says on interest of the rights holders which, in essence, may not be authors. Anyhow, regime of exceptions and limitations as detailed in the intellectual property doctrine ([37]; [38, pp. 170 – 212]; [39]; [40]) demonstrates the relative nature of copyright. "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? [41, pp. 891 – 952].

In recent years, the essential standards of exceptions have arisen in the EU. The European trends in copyright exceptions and limitations are the including them in exhaustive list. The European system of author's and neighbouring rights construes the economic rights of holders as broad as possible. That could be considered as impediment to exercise of the information rights.

However, within European Law the framework of limits amounts the fair remuneration. The point is that the problem of the conflict between considered rights is being mitigated. The copyright law really permits to use the protected work for variety of aims (for example, personal purposes), but in form of licenses. We suggest that is not an interference with exercise of the right to information. Statutory licenses provide the access to information included into protected works and the respect the rights and interests of authors and producers. Copyright and the information rights do not collide as long as the licenses make available the information under reasonable conditions.

The better leverage for making these conditions are modernization of regime of exceptions to copyright. And as for EU's resoluteness to modernize the EU's author's law, deriving from the strategy "A single market for IPRs" and the Digital Agenda for Europe, the European Commission in 2011 has set a goal to adapt the author's law to the Internet. It will be interesting the result of establishing renewal balance between copyright and the freedom of expression as applied to the Internet on basis of exceptions and limitations adapted to the reality of Internet.

Obviously, revision of exceptions and limitations on the exclusive right should be allow for position of all main stakeholders – creators, consumer associations, digital rights activists, creative users, universities, research centers, libraries. All they recognize that copyright is a coherent catalyst for innovation and creativity, if and only if it is copyright balanced with public and private interests. And then, Matthias C. Kettmann notes that an example of the ACTA allows us to come to significant statement that a certain sense of ownership of Internet-related legislation has emerged internationally that is much stronger than in certain non-Internet-related fields of regulation, such as tax law. By way of this conclusion he points out that big challenge, that both states and other stakeholders have faced, is an avenues developing clear and legitimate of participation for all relevant stakeholders in international normative process [43, P. 138].

Discussion

In last time, namely in the age of digital technology, copyright are under discussion because of emerging a various contradictions and tensions resulted from insufficient coherence of copyright, on the one hand, and the freedom of expression in the digital environment, on the other hand. The contemporary copyright debates are like flashes illuminating the contradictions of the Internet development. Therefore, it is a necessary to detail the modern approaches to relation between copyright and the human right to freedom of expression with regard to the digital environment.

There are three approaches, such as traditional, radical and reformative. First position insists on strong protection of author's right in the Internet. The radical position is discussed by piracy parties. Third position suggests the new models of realization of the interests of rights holders. In our opinion, the latter, based on the idea and the principle of balance, reflects true position understanding the copyright as an incentive of creativity. In concordance with it, IP is one of main conditions of innovative development ([3, P. 47], [4]) As Michael Gollin expressively emphasizes, "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" [5, P. xi].

The idea and, accordingly, the principle of balance gives an impetus to new stage of justification of copyright and are substantial moment of the modern intellectual property theory [6, pp. 43 – 44, 243 – 246]. It is interesting that there are creator-centred, user-centred and community-centred justifications separated out by Michael Spence [7, pp. 45 – 70]. Moreover, increasing the digital environment inspires the information approach within IP-theory and the appearance, for instance, a new model of 'authorship' [8], as well as new models of exploiting and licensing of copyrighted works.

Emphasized evolving of intellectual property doctrine and intellectual property legislation at the national and the international level is parallel to technology progress. It is exemplified in technology-based conception of intellectual property changes ([9], [10]). The modern philosophy and theory of intellectual property proceed from connection between IP and emerging technologies, especially ICT and reality of the Internet [11, pp. 234 – 271]. In this situation, the traditional justifications of IP [12, pp. 11 – 24] have been acquiring some new nuances. It is very

important in case when there is increasing the criticism and ‘intellectual property abuse’ (this term was used by David Bainbridge [13, pp. 14 – 15]).

Conclusion

As we think, emerging of sensibilities of international legal politics in the area of development of modern standards of the balance between copyright and the freedom of expression, as standards of effective copyright protection, to the universal democratic participation in normative process can open a new era of realization of copyright potential, and meaning of copyright. There need be no doubt that the world community will try to elaborate standards of effective limiting of copyright scope for public interest in information society without prejudice for meaning of IP institute that itself should be modernized in the vein of new age. Of course, there are a numerous frontal challenges to copyright to be adapted to new level of development of self-expression in information society. This can demonstrate once more the possible effectiveness of multi-stakeholder’s approach.

Shortly, the key role in elaborating and adopting the necessary standards in this sphere, undoubtedly, belongs to international law, including international human rights law. Simultaneously, the latter must correspond to the international law of IP, the international information law, and the international competition law. In sum, the balanced international law is a pillar of international standards of balanced relations between copyright and human right to freedom of expression that would promote the balanced development of digital environment. The achievement of the balanced international law in appropriate sphere is one of actual directions of international law politics success of which depends not only on coinciding of states’ positions but also on harmonization of interests of right holders and public with regard to model of further development of digital environment, especially the Internet. Simultaneously, evolving the international legal standards of relation between copyright and freedom of express as a significant direction of modern international legal politics should be regarded as on the essential focuses of the Agenda on global governing the Internet.

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Conflict of interest statement

The authors declare that they do not have any conflict of interest.

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