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THE LEGAL EFFECT OF DIGITAL COPYRIGHT REGISTRY ENTRIES AND THEIR COMPATIBILITY WITH THE BERNE CONVENTION

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Abstract

The digitalisation of copyright management has renewed the question of whether a state may attach legal consequences to entries in a copyright registry without breaching the prohibition of formalities in Article 5(2) of the Berne Convention. This thesis examines the legal effect of registry entries in the context of Uzbekistan's Unified Database of electronic control copies established in 2022. Drawing on United States law, WIPO survey data and doctrinal scholarship, it distinguishes constitutive formalities from declaratory ones and argues that a registry entry may lawfully create a rebuttable presumption of authorship, ownership and scope of rights. The thesis proposes an amendment to Article 11 of the national Copyright Law implementing this model.

Keywords: Copyright registry; Berne Convention; formalities; rebuttable presumption; declaratory registration; rights management information; digital platform; collective management; Uzbekistan.

Аннотация

Цифровизация управления авторскими правами вновь ставит вопрос о том, может ли государство придавать юридическое значение записям в реестре авторских прав, не нарушая запрет формальностей, закреплённый в статье 5(2) Бернской конвенции. В тезисе исследуется юридическое значение



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записей реестра на примере Единой базы электронных контрольных экземпляров, созданной в Узбекистане в 2022 году. На основе анализа законодательства США, данных обзора ВОИС и доктринальных источников разграничиваются правоустанавливающие и правоподтверждающие формальности и обосновывается, что запись в реестре может правомерно создавать опровержимую презумпцию авторства, принадлежности прав и их объёма. Предлагается дополнение статьи 11 национального Закона об авторском праве, реализующее данную модель.

Ключевые слова: реестр авторских прав; Бернская конвенция; формальности; опровержимая презумпция; правоподтверждающая регистрация; информация об управлении правами; цифровая платформа; коллективное управление; Узбекистан

Introduction

The economic circulation of creative works has moved almost entirely into the digital environment. Under these conditions, reliable information about who owns which rights has become a practical precondition for exercising copyright at all. Collective management organisations cannot license or distribute what they cannot identify (Gervais, 2016), and distributed ledger projects have shown that the main obstacle to automated licensing is not technology but the absence of trustworthy rights data (Bodó et al., 2018; Finck & Moscon, 2019).

Registries are the obvious answer to this information problem, yet copyright law has a long tradition of suspicion towards them. Article 5(2) of the Berne Convention provides that the enjoyment and the exercise of rights shall not be subject to any formality. If an entry has no legal effect, nobody will populate the



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registry; if its effect is too strong, it may become a prohibited formality. The task is therefore to find the point at which a registry becomes useful without becoming a condition of protection.

The question is not abstract for Uzbekistan. Article 10 of the Law on Copyright and Related Rights states that copyright arises from the fact of creation and requires no registration or other formality, while Article 22 allows voluntary deposit of works. Cabinet of Ministers Resolution No. 469 of 22 August 2022 established a Unified Database of electronic control copies of copyright objects, and current policy envisages a single digital platform for licensing and distribution of remuneration. The legal effect of an entry in such a platform has not yet been defined. This thesis addresses that gap by answering three questions: what exactly Article 5(2) prohibits, how other systems reward registration without violating it, and what effect Uzbek law should give to registry entries.

1. The scope of the Berne prohibition

The prohibition in Article 5(2) is narrower than its wording might suggest. First, it applies to works protected under the Convention in countries other than the country of origin; Article 5(3) leaves each state free to regulate protection of its own works. Second, and more importantly, the prohibition concerns formalities on which the enjoyment or the exercise of rights depends. Ricketson and Ginsburg (2022) explain that the provision targets conditions that determine whether a right exists, can be maintained or can be enforced, not every administrative procedure connected with copyright.

Doctrine therefore distinguishes constitutive formalities from declaratory ones. A constitutive formality makes the existence, duration or enforceability of a right dependent on compliance, as registration does for patents. A declaratory formality leaves the right intact and merely provides evidence or information.



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Ginsburg (2016) shows that Berne forbids states from conditioning the existence or enforcement of rights on declaratory measures, but it does not forbid them from offering incentives to use such measures, provided that a rightholder who ignores them keeps both the right and access to a remedy. The decisive criterion is thus the legal consequence of the formality, not its existence.

This distinction allows three models of registry effect to be separated. In a constitutive model, the right arises or becomes enforceable only upon entry; this model is incompatible with Article 5(2). In a purely informational model, the entry has no legal consequence; it is compatible with Berne but offers no incentive, so registries remain empty. In a declaratory and presumptive model, the right arises from creation, while the entry creates a rebuttable presumption that shifts the burden of proof. Only the third model is both lawful and effective.

2. Comparative practice: rewarding registration without requiring it

The WIPO Survey on Voluntary Copyright Registration Systems received replies from 109 Member States, and 87 percent of them reported legal frameworks for registration, recordation of transfers or legal deposit (WIPO, 2021). The survey confirms that registration commonly creates a rebuttable presumption of authorship and fixes a date useful for proving priority of creation. Voluntary registration with evidentiary effect is therefore not an exception but the prevailing international practice.

United States law illustrates both the permissible and the controversial forms of incentive. Under 17 U.S.C. § 408(a), registration is not a condition of copyright protection, and under § 410(c) a certificate issued within five years of first publication constitutes prima facie evidence of validity and of the facts stated in it. This evidentiary rule is a classic declaratory formality. By contrast, § 411(a) requires registration before an infringement action concerning a United States



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work, and § 412 limits statutory damages and attorney's fees for unregistered works. In *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC* (2019), the Supreme Court held that registration occurs only when the Copyright Office acts on the application, while confirming that the owner holds exclusive rights from creation and may recover for infringement committed before registration. The § 411(a) requirement is tolerated under Berne only because it is confined to domestic works, and even so it has been criticised as inconsistent with the spirit of the Convention (Carducci, 2020). Detailed rules on the content of applications support this evidentiary value (U.S. Copyright Office, 2021).

A comparative study of voluntary deposit in the United States and China reaches a similar conclusion: registration is used mainly as a means of evidence in disputes, and its attractiveness depends on the procedural advantages attached to it (EUIPO, 2018). Evidentiary presumptions are therefore safe, while procedural barriers to enforcement are not.

3. The Uzbek framework

Uzbek law already contains the elements of a declaratory model. Article 10 of the Law excludes any formality for the emergence and exercise of copyright, and Article 45 repeats this rule for related rights. Article 22 provides for voluntary deposit, and Resolution No. 469 builds on it: under paragraph 5, objects accepted by a depositary are stored as electronic control copies in the Unified Database, and under paragraph 8 they are kept indefinitely. Paragraph 4 separates the concept of a copyright object from its electronic control copy, which means that the database stores an identifiable reflection of the work rather than the right itself. Paragraph 2 entrusts the technical operation of the database to the Intellectual Property Center under the Ministry of Justice, so the operator and the supervisory authority are already separated.



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Two limitations remain. First, the legal effect of an entry is not defined. Neither the Law nor the Resolution states whether data in the database may be relied on in court, and in practice authorship disputes are still resolved on the basis of publication dates, contract copies and witness testimony. Second, the content of an entry under paragraph 9 of the Resolution identifies the object, the depositing rightholder, the author, the dates and the conditions of use, but it does not record whether the rightholder is original or derivative, the shares of co-authors and co-owners, or international standard identifiers. These three elements are exactly what is needed to distribute remuneration, a function that becomes pressing in a market where five collective management organisations operate in parallel (Yakubova, 2023).

Article 58 of the Law already empowers collective management organisations to register works and contracts, and Article 64 protects information identifying the work, the rightholder and the conditions of use, including numbers and codes, against unauthorised removal or alteration. A digital registry therefore does not require a new mandate; it requires a clear rule on the legal effect of what it records.

4. A presumptive model for registry entries

On the basis of the foregoing analysis, the legal effect of an entry in the national digital registry should rest on four rules. The first rule is presumption: information recorded about the work, its author, the rightholder and the scope of transferred rights is deemed accurate unless proven otherwise. A rightholder who submits an extract from the registry need not produce further evidence of title, while the defendant may rebut the presumption by any admissible evidence. This mirrors the existing presumption of authorship based on the name appearing on copies of a work.



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The second rule is non-prejudice: the absence of an entry does not affect the emergence, exercise or protection of copyright. An unregistered author keeps the right to sue and to claim damages, including statutory compensation under Article 65 of the Law; the only consequence is that the author carries the burden of proof without the benefit of the presumption.

The third rule concerns recordation of transfers. Recording a change of rightholder should remain voluntary, but where the same right has been transferred successively to two persons, priority should be given to the transferee who recorded first. Such a rule resolves conflicts between competing acquirers and does not touch the author's enjoyment of the right, which places it outside the Berne prohibition.

The fourth rule consists of reliability safeguards. Corrections of technical errors should be distinguished from changes of substance, and a change of authors, shares or rightholder should require the consent of all interested persons or a court decision. Previous versions of an entry should be archived rather than deleted, because the evidentiary value of a registry depends on the court's ability to see its history. The operator should answer for the integrity and availability of records but not for the truth of data supplied by participants, which it cannot verify. Finally, registry data should be divided into public, restricted and closed levels so that the information function is reconciled with personal data protection.

These rules can be expressed in a single addition to Article 11 of the Law: "Information recorded in the unified digital register concerning a work, its author, the rightholder and the scope of transferred rights shall be deemed accurate unless proven otherwise. The absence of such information in the register shall not affect the emergence, exercise or protection of copyright."



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Conclusion

The analysis supports three conclusions. First, Article 5(2) of the Berne Convention prohibits constitutive formalities, meaning conditions on which the existence, maintenance or enforcement of rights depends; it does not prohibit declaratory measures that facilitate proof. The compatibility of a registry with Berne is measured by the legal consequence of an entry, not by the existence of the registry.

Second, international practice, confirmed by the WIPO survey and by United States law, shows that voluntary registration with a rebuttable evidentiary presumption is widespread and uncontroversial, whereas procedural barriers to enforcement for unregistered works remain problematic even when confined to domestic works.

Third, Uzbek law already has the institutional basis for a presumptive registry: the no-formalities rule of Article 10, voluntary deposit under Article 22, the Unified Database under Resolution No. 469 with a separate operator, the registration powers of collective management organisations under Article 58, and the protection of rights management information under Article 64. What is missing is a statutory rule on the effect of an entry and an entry content sufficient for distribution of remuneration. Adding a rebuttable presumption and a non-prejudice clause to Article 11, and supplementing the database with rightholder status, shares and international identifiers, would turn the registry into legal infrastructure for exercising copyright while keeping Uzbekistan fully within its obligations under the Berne Convention.



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