

УДК 341.9

DOI: 10.37635/jnalsu.27(2).2020.49-63

Дмитро Васильович Лук'янов, Інеса Анатоліївна Шуміло,
Марія Олександрівна Лукань

*Кафедра міжнародного приватного права та порівняльного правознавства
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна*

КОЛІЗІЙНЕ РЕГУЛЮВАННЯ ТРАНСКОРДОННОГО СПАДКУВАННЯ АВТОРСЬКИХ ПРАВ

Анотація. Спадкування є одним із правових засобів які забезпечують ефективну реалізацію авторських прав, тому захист інтересів спадкодавців та їхніх правонаступників у справах транскордонного характеру є важливим завданням міжнародного приватного права. Сучасні національні системи спадкового та авторського права функціонують незалежно. Внаслідок впливу економічних, політичних та соціокультурних факторів уніфікація матеріально-правових норм цих галузей малоімовірна, тому колізійний метод регулювання залишається панівним у цій сфері. У статті висвітлені основні проблеми колізійного регулювання транскордонного спадкування авторських прав та запропоновані підходи до їх подолання. Автори приділяють увагу таким питанням як: форми прояву іноземного елемента у відносинах спадкування авторських прав; проблемам розмежування інтелектуального та спадкового статутів; особливостям застосування колізійної прив'язки «закон країни захисту»; принципу територіальності та деяким іншим. На основі проведеного аналізу, робиться висновок, що підпорядкування ключових питань спадкування авторських прав колізійним правилам інтелектуального статуту поширює на ці відносини принцип територіальності та потребу у їх мультинаціональній захисті. У статті підтримується думка науковців, які піддають критиці концепцію територіальності у питаннях охорони авторських прав, доводять її неефективність. Наприкінці роботи висловлюється думка про те, що інструментарій міжнародного приватного права дозволяє використати гнучкі підходи і не ставити знак рівності між авторським правом, що більше пов'язане з персональним статусом, та правами промислової власності, спрямованими на досягнення комерційних інтересів. Більшій гнучкості пропонується досягнути за рахунок деталізації обсягів колізійних норм та встановлення системи колізійних прив'язок, які дозволять обрати право, яке більше пов'язане з обставинами справи.

Ключові слова: міжнародне приватне право, спадковий статут, інтелектуальний статут, *lex loci protectionis*, територіальність.

Dmytro V. Lukianov, Inesa A. Shumilo, Mariia O. Lukan

*Department of International Private Law and Comparative Law
Yaroslav Mudryi National Law University
Kharkiv, Ukraine*

CONFLICT OF LAW REGULATION IN CROSS-BORDER COPYRIGHT INHERITANCE

Abstract. Inheritance is one of the legal means that ensure the effective implementation of copyright, therefore the protection of the interests of testators and their successors in cross-border

*matters is an important task of international private law. Modern national systems of inheritance and copyright operate independently. Due to the influence of economic, political and socio-cultural factors, the unification of substantive law of these industries is unlikely, so the conflict of law method of regulation remains dominant in this area. The paper highlights the main problems of conflict of law regulation of cross-border copyright inheritance and offers approaches to overcoming them. The authors address such issues as forms of manifestation of a foreign element in the relations of copyright inheritance; problems of distinguishing between intellectual and inheritance statutes; features of the application of the point of contact *lex loci protectionis*; the principle of territoriality, etc. Based on the analysis, it is concluded that the subordination of key issues of copyright inheritance to the conflict rules of the intellectual statute extends the principle of territoriality to these relations and necessitates multinational protection of these relations. The paper supports the opinion of scholars who criticise the concept of territoriality in matters of copyright protection, proving its ineffectiveness. Ultimately, the authors suggest that the tools of private international law allow for flexible approaches and do not equate copyright, which is more related to personal status, and industrial property rights, aimed at achieving commercial interests. It is proposed to achieve greater flexibility by detailing the scope of the conflict of law rules and establishing a system of conflict bindings, which will allow to choose the law that is more related to the circumstances of the case.*

Keywords: international private law, inheritance statute, intellectual statute, *lex loci protectionis*, territoriality.

INTRODUCTION

The rapid development of communication technologies, freedom of movement of goods and services radically change the forms of creation and use of the results of human intellectual activity. In the EU, USA, Japan, and South Korea, the profitability of the so-called intellectual-spending industries is growing rapidly and currently they constitute the main part of foreign trade of these countries [1], therefore some countries and the international community at large should strive to stimulate creativity and create legal conditions for the effective implementation and protection of intellectual rights of citizens.

One of the legal means that ensures the effective exercise of these rights is the ability to testate copyright to descendants and have confidence in the protection of intangible and exclusive rights *mortis causa*. But to ensure a high level of guarantees in the era of globalisation and technological revolutions is quite difficult, especially considering the intangibility of copyright, which determines many complex legal issues. Nowadays, the main role in copyright protection is played by the system of international agreements administered by the World Intellectual Property Organisation. The provisions and standards established by international treaties generally create conditions for cross-border exchange of creative results, but they do not overcome the so-called *territorial nature* of intellectual property rights. International agreements can only minimise the negative consequences of the territorial nature of intellectual property rights: to ensure access of foreigners to national legal protection systems, to guarantee minimum standards of protection, to reduce material or time costs in the registration of rights in several countries, etc. [2]. Therewith, national legal systems of copyright protection function independently of each other, and the domestic legislation of countries contains conceptual differences. National systems of inheritance law, which is one of the most conservative branches of private law and is significantly influenced by socio-cultural, socio-economic, and religious

factors, also function independently, therefore unification in this area is unlikely in the near future. The unwillingness of the vast majority of countries to unify and harmonise inheritance law clearly illustrates the state of accession to the Hague Convention on the Law Applicable to Inheritance of the Deceased of 1 August 1989, which has so far been signed by only four countries: Argentina, the Netherlands, Luxembourg, and Switzerland, and ratified only by the Netherlands¹.

When in practice emerges the matter of inheritance of copyrights abroad, scholars are faced with the intersection of such complex legal relations as inheritance and copyright, as well as with the presence of a foreign element in their actual composition. In such situations, it is impossible to overcome the labyrinths of various legal systems and complex conflict of law issues without prior analysis of such fundamental matters as the multiplicity of statutes, the territorial nature of intellectual property rights, the qualification of conflict rules, etc. The problem of cross-border inheritance of copyright, as well as intellectual property rights in general, has not been the subject of comprehensive research by domestic and foreign lawyers. Some aspects of this subject were studied in the papers of leading Ukrainian scientists A. Dovhert [2], O. Orliuk [3]; at the dissertation level, certain issues were studied in the papers of O. Karmaz [4], S. Butnik-Siverskyi [5], Ye. Beltiukova [6], etc. Among modern foreign researchers, P. Goldstein and B. Hugenholz [7] should be mentioned, a group of specialists from the Max Planck Institute for Comparative and International Private Law, headed by prof. Yu. Bazedov [8], including A. Dutta, M. Fornaiser, A. Kur and others, and Russian scientists V. Dozortsev [9], S. Krupko [10], O. Lutkov [11]. These studies are mainly focused on the international legal regulation of copyright and copyright law in individual states, individual papers in international inheritance law have a general theoretical, regional, or comparative focus, but the problem of choosing the law applicable to the relations outlined above obtained next to no coverage.

The purpose of this paper is to highlight the main problems of conflict regulation of cross-border copyright inheritance at the national and international levels and to try to identify the most effective approaches to overcoming them from the standpoint of *de lege ferenda*.

1. MATERIALS AND METHODS

The general methodological framework of this study was the dialectical-materialist method of scientific knowledge, which allowed to study the conflict of law regulation of cross-border copyright inheritance in its inseparable connection with other legal institutions, based on the case law of different countries. The authors used general scientific research methods, such as analysis and synthesis of doctrinal, statutory, and law enforcement materials; systematisation of scientific and practical approaches to the studied problems; structural and functional approach to clarifying the features of the forms of legal regulation of cross-border inheritance relations. Comparative analysis was performed for provisions of international agreements comparable in the field of regulation, for acts of legislation of individual states and the European Union, decisions of national courts in identical cases, as well as conflict of law principles of non-state regulators, typical and unique approaches

¹ Official site of the Hague Conference on Private International Law. Retrieved from <https://www.hcch.net/en/instruments/conventions/status-table/?cid=62>

to the legal regulation of cross-border inheritance of copyright were identified, and tendencies in rule-making were identified in the given subject matter.

Special legal methods of cognition were applied in the study. In particular, the historical legal method was used to study the evolution of scientific concepts of copyright and the principle of territorial protection of intellectual property rights; method of systematic interpretation of legal provisions was used to identify the features of intellectual and inheritance statutes in private international law, textual analysis of the scope and points of contact of rules governing the choice of law in inheritance and intellectual property relations complicated by foreign elements. To summarise the results of modern scientific achievements, the papers of Ukrainian and foreign scholars were analysed, special attention was paid to current dissertation research on the problems of conflict regulation of inheritance relations and intellectual property rights of Ukrainian law schools. The articles of the author's team of the Max Planck Institute for Comparative and International Private Law, which cover the problems of intellectual property law in the context of globalisation and expert opinions on draft EU legislation on the unification of inheritance and tort law; a monograph by Professor Paul Goldstein, Professor at Stanford University and Adviser to the European Commission on Intellectual Property Rights, Professor Bernt Hugenholtz of the University of Amsterdam, on contemporary issues of substantive and conflict regulation of international copyright law, including overcoming copyright protection issues. The paper pays considerable attention to the analysis of regulations of foreign countries, including the United States, Germany, Great Britain, Canada, France, Italy, etc. Crucial to the subject matter was the study of EU regulations, i.e. EU Regulation No 650/2012 of 4 July 2012 “on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession” (Rome IV)¹ and EU Regulation No 864/2007 of 11 July 2007 “On the law applicable to non-contractual obligations” (Rome II)².

Without touching on the fundamental aspects of the reform of international copyright, the paper focuses on such issues as forms of manifestation of a foreign element in the relations of copyright inheritance; problems of distinguishing between intellectual and hereditary statutes; features of the application of the point of contact *lex loci protectionis*; prospects for weakening the principle of territoriality in the settlement of cross-border inheritance of copyright, etc. It should also be noted that the format of this paper does not allow to describe all the problems that arise in this area; therefore, the study concerns the inheritance of only copyrights that do not require registration or compliance with other formalities.

¹ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. (2012, July). URL: <http://data.europa.eu/eli/reg/2012/650/oj>.

² Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). (2007, July). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2007:199:TOC>

2. RESULTS AND DISCUSSION

Inheritance of intellectual property rights has been developing for more than three hundred years. Lawyers of the 18th and 19th centuries considered the subjective right to literary and artistic works to be a real right, and in the same way it passed to heirs. The heirs had the opportunity to dispose of their work with the same freedom as the author: to republish, cede to another person, make changes, remove, etc. The freedom of the heir could be limited by a will and some mandatory rules of civil legislation [12]. A new order of inheritance has started taking shape only at the beginning of the 20th century, when the theory of exclusive rights and the theory of moral rights were gradually developed. Until the end of the last century, disputes related to cross-border copyright inheritance were isolated, but with the development of the technological environment, growing demand for intelligent products, with the emergence of new forms of turnover, the exclusive rights of authors began to be considered as highly profitable assets.

Stable profitability of commercial use of copyright and the availability of legal protection mechanisms have led to an increase in the number of litigation and cases in notarial and legal practice, as the heirs of famous artists are actively defending their rights around the world. To date, U.S. courts have heard cases of copyright inheritance for the song "*Happy Birthday to You*", which generates more than 2 million US dollars in royalties per year [13]. Litigation continues over the heirs of world-renowned painting geniuses, as copyright to works of Pablo Picasso expire in 2043, Henri Matisse – in 2024, and Auguste Renoir (co-authored with Spanish sculptor Richard Gino) – in 2043. Ukraine also has several cases related to the inheritance of copyright and their protection by heirs both within the country and in foreign jurisdictions. Among the most resonant is the case of copying without permission of the heirs of the painting "Rat on the Road" by the famous Ukrainian artist Maria Pryimachenko. An exact copy of fragments of this painting was placed on the fuselage of FinAir as a design work of the Finnish company "Marimekko", which became the basis for a copyright claim [14]. No less famous is the precedent with the porcelain statuette "Sitting Ballerina" by Ukrainian master Oksana Zhnikrup, reproduced by an American artist J. Koonsin in an installation in front of the Rockefeller Centre in New York without reference to the author of the original work of art [15]. In both cases, the rights of the heirs were protected and the personal non-proprietary rights of the authors were restored. However, for the most part, heirs do not have information about the infringement of their rights abroad, or are unable to properly protect them due to the complexity of procedures, differences and gaps in national legislation, unregulated forms of copyright exploitation in the digital environment, etc.

The specific feature of copyright inheritance is that its object constitutes a set of rights to the object, not the object itself. According to the general rule of the continental legal tradition, only the property (exclusive) rights of the authors are inherited – the right to use the work and the permission or prohibition to use the work. The moral rights of the author are inalienable and are not inherited, but the heirs have the right to protect the authorship of the work from encroachment that may damage the honour and reputation of the author. At present, it is especially important to guarantee authors and their heirs the exclusive right to grant permission for any distribution of works to the general public through wired or non-wired means of communication, to protect the right to inviolability and integrity of works published on the Internet.

2.1 Basic approaches to solving the problem of multiple statutes in cross-border copyright inheritance

Cross-border copyright inheritance constitutes a separate type of international inheritance. In the doctrine of international private law, the essence of international inheritance is considered as an act of succession that crosses the territorial boundaries of two legal orders. The paper of Ukrainian researcher Ye. Fursa contains a detailed definition of international inheritance as a “set of legal relations with a foreign element, which arise in the case of transfer of rights and obligations (inheritance) from a natural person who died (testator) to other persons (heirs) and as a result of such a transition, the latter have a set of rights and obligations within the inheritance, which are regulated by both international and national (foreign) legislation” [16]. In Ukraine, cross-border inheritance issues are governed by Section X of the Law of Ukraine “On International Private Law” (Articles 70-71), which establishes two formulas of attachment – the personal law of the testator (*lex personalis* in the form of *lex domicilii* or *lex patrie*) and the law where the property is situated (*lex rei sitae*) in relation to inheritance of immovable property¹. As for the protection of intellectual property rights with a foreign element, according to Art. 37 of the above Law, applicable is the law of the state in which the protection of these rights is required (*lex loci protectionis*).

A foreign element in intellectual property relations may occur in the form of a subject, the author (right holder) may be a foreign person in relation to the country where the results of intellectual activity are protected; in the form of a legal fact – physical acts concerning the use of the results of intellectual activity are performed abroad. As for hereditary legal relations, a foreign element can be represented therein in all known forms. In case of a combination of these relations, the following manifestations of a foreign element may be inherent therein:

- according to subject composition: the author-testator is a foreign citizen or a citizen of Ukraine permanently residing abroad; the heirs are foreigners;
- according to object: the work that is part of the hereditary mass, in any form is outside Ukraine;
- the legal fact that became the basis for the discovery of the heritage took place abroad [17].

If there is at least one of the listed features in the legal relations, it will refer to their international (cross-border) nature and the need to apply the conflict of law regulation mechanism. In case of cross-border inheritance of copyright, two types of legal relations collide, requiring independent conflict of law regulation. Such a situation in international private law is quite common and is called *plurality of statutes*, and *statute* is usually understood as the competent legal order of a country chosen based on conflict of law provisions. Thus, in this case, the intellectual and inheritance statutes intersect, thereby requiring a clear distinction. The difficulty of distinguishing between these statutes is that, at the level of national law, their scope is usually not defined. Nowadays, only EU legislation contains rules that to a greater or lesser extent reveal the scope of the chosen law on the principles of *lex successionis* (inheritance statute), *lex loci protectionis* (law of

¹ Law of Ukraine No2709-IV “On Private International Law”. (2005, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2709-15#Text>

the country of protection), *lex loci originis* (law of the country of origin). Conflict regulation of cross-border copyright inheritance is complicated not only by the problem of multiple statutes, but also by the so-called “*splitting*” of each of them. This situation differs from the plurality of statutes in that it constitutes relations of the same nature, but to which more than one legal order can be applied. In the science of international private law, to define the situation when the regulation of cross-border private relations is subject to several legal orders, the terms “*statute bifurcation*”, “*splitting of the conflict*”, or “*depeçage*” (from the French – *dépeçage*) can be used. Thus, the authors further attempt to consistently consider these issues. The hereditary statute is considered in the doctrine as a legal order determined by the provisions of international private law, to which the hereditary relations connected with several national legal systems gravitate by their nature, and which regulates them in essence. As noted above, in the vast majority of national legal systems, the scope of the inheritance statute is not defined, although there are a few exceptions. A major step forward in the development of inheritance law was EU Regulation No 650/2012 of 4 July 2012 "On jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession", this document is also known as “Rome IV”, it continued the line of so-called “Romes” (I, II, III), dedicated to the unification of private law of the EU¹.

For our study, Part 2 Article 23 of the said Regulation is significant, since it contains a unified provision on the scope of law applicable to inheritance relations. It includes the following issues: (a) the grounds, time and place of the inheritance release; (b) the identification of the beneficiaries, the shares inherited by them and, accordingly, the obligations that may be imposed on them by the deceased; (c) hereditary legal personality; (d) deprivation of inheritance and incapacity to inherit due to misconduct; (e) the transfer to heirs and waivers of property, rights, and obligations forming part of the common inheritance; (f) the powers of heirs, executors of the will, and other guardians of the estate, (g) liability for inherited debts; (h) the free share of the inheritance; mandatory share in the inheritance and other restrictions imposed on the disposal of property; (i) any obligation to return funds, to account for gifts, to provide property by way of anticipation of a hereditary share or in cases of testamentary renunciation in determining the shares of different beneficiaries; and (j) distribution of inherited property².

There is no direct indication in the text of the Rome IV Regulation³ regarding its extension to the inheritance of intellectual property rights or their exclusion from the scope of regulation of this document. But the general analysis of the text suggests the following: Regulations do not extend to definition of the nature of the rights of proprietary nature – “rights *in rem*” (item k Article 1.3 of Regulations); and establishes a rule according to which, when the domestic law of the Member States provides that certain objects or rights have a special regime of inheritance, such rules shall take precedence in application and

¹ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. (2012, July). URL: <http://data.europa.eu/eli/reg/2012/650/oj>.

² *Ibidem*, 2012

³ *Ibidem*, 2012

be considered *overriding mandatory provisions* (Article 30 of the Regulation). This approach has been the subject of debate in academia, and the agreed position is contained in a comment by a task force of the Max Planck Institute for Comparative and International Private Law on the draft text of the Rome IV Regulation of 26 March 2010. Proceeding from a careful comparative analysis of the domestic legislation of EU Member States and neighbouring countries, experts noted: “Some national laws contain an exhaustive list of persons who can inherit after the author's death, in some countries the transfer of copyright after the author's death is completely excluded or severely restricted. Such rules form an integral part of the copyright of a particular national legal system and the application of other rules on succession will interfere with the structure and content of such rules if they contain rules of succession based on the principle of *lex loci protectionis*. Therefore, the Institute proposes to exclude intellectual property rights from the scope of the Regulation insofar as they define special rules of succession. This approach ensures that a decision made with the use of the conflict of law rules will be recognised in the country where protection is sought, especially in non-EU countries” [18; 19]. Thus, the attribution of key issues of cross-border inheritance of copyright to the regulation of intellectual property, at first glance, simply solves the issue of delimitation, this allows to refer to application of the classical principle of interpretation of the *lex specialis derogat generali*, if the law on copyright protection contains special provisions as to its inheritance, they are given priority over general provisions. Therewith, issues that do not have special regulation within the framework of intellectual property rights remain within the regulation of the inheritance statute. However, the simplicity of such a distinction is imaginary, and this approach creates other inherent complications: firstly, intellectual property relations are governed by the law of the country of protection (*lex loci protectionis*), a conflict of law formula that has no single interpretation and uniform application. Secondly, there are numerous differences in domestic law on copyright inheritance, thirdly, the factor of so-called *ubiquitous copyright infringement* on the Internet is ignored, which cannot be localised by means of the aforementioned principle.

2.2 Territoriality and the *lex loci protectionis* principle

The first of the above arguments has long been the subject of debate in the science of international private law. The *lex loci protectionis* principle is considered fundamental in the choice of the right to regulate intellectual property relations with a foreign element, it is closely related to the principle of territoriality established in the Berne Convention for the Protection of Literary and Artistic Works (Article 5.2)¹. The special connection of this conflict of interest with the principle of territoriality is confirmed at the European level, in particular, in the EU Regulation “On the law applicable to non-contractual obligations” (“Rome II”)². Paragraph 26 of the Preamble states: “As regards intellectual property rights, the universally recognized *lex loci protectionis* should be maintained”. In this regard, the German researcher A. Kur wrote: “A serious argument for choosing the law of the country

¹ Berne Convention for the Protection of Literary and Artistic Works. (1971, July). URL: https://zakon.rada.gov.ua/laws/show/995_051#Text (дата звернення: 20.03.2020).

² Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). (2007, July). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2007:199:TOC>

of defence as a guiding concept is the territorial principle with its main purpose of preserving the sovereignty of the legislator over specific rules of delimitation of the scope and content of protection provided within the borders defined by international law” [19].

The introduction of the territorial principle of protection of intellectual property rights was conditioned by the economic policy of individual states, intellectual property provides de facto monopoly rights, which are necessary to stimulate investment of market participants in intellectual achievements, with state support primarily to its own citizens and organisations. Even at present, the literature contains the opinion that the territorial nature of the rights in general excludes the conflict issue and extraterritorial application of legislation in this area is impossible because it is incompatible with existing international mechanisms [20]. But with the advent of the era of globalisation, the development of the world virtual space and due to other factors, the scientific literature increasingly criticizes the territorial nature of intellectual property rights, which is currently considered as an anachronism. Prof. J. Bazedow expressly states that “intellectual property rights still remain artifacts of positive law, and exclusive rights continue to be considered as derived from the power of the sovereign” [8]. In German academic circles, over forty years ago prof. Haimo Schack, in his dissertation research on the relations between copyright and international private law, expressed the need for a universalist approach to cross-border aspects of copyright protection, which completely denies territoriality, considering such a right to be universal, as it emerges from the moment of its creation on territory of the entire Earth, is a natural right and in essence can be attributed to fundamental human rights [21]. Such approach does not recognise the territoriality-extraterritoriality dichotomy of copyright and has supporters [22].

A more compromising position was expressed by American scientists P. Goldstein, S. Symeonides, and D. Chisum [23], who argue the need for a so-called flexible approach based on modern interpretation of territoriality as “reasonable” or “elastic”. Prof. Donald Chizum, expert in patent law, noted that due to the growing interdependence of the global economy and the cost of multinational protection of intellectual property rights, “territorialism is becoming an unacceptable obstacle to international trade. The principle of territoriality requires “reconfiguration” with consideration of the features and differences of individual intellectual property rights” [23]. Online technologies are forcing the judiciary to gradually change its previously unshakable position, for example, in one case the European Court of Justice pointed to the need to strike a balance between the complexity of the national territorial nature of exclusive rights and the potentially widespread nature of infringements over the Internet. Summarising the above, the authors conclude that the principle of territoriality is increasingly criticised in the scientific literature, as noted by A. Solovyov, at this stage, “the idea of territoriality actually contradicts reality, especially in matters of copyright and related rights, where protection provided automatically from the moment of creation of the work” [25]. But at the legislative level, the principle of territoriality of intellectual property rights continues to prevail, as preference is given to the public law component of intellectual property relations and economic interests of individual states. The logical continuation of this approach and the guarantee of preventing the manifestations of extraterritoriality in conflict regulation is the preservation of strict formulas of attachment, and, above all, the *lex loci protectionis* point of contact. Therefore, it is relevant and important to clarify the issues that fall within

the scope of law, which is determined based on the above conflict of law principle, i.e. issues of intellectual statute.

Currently, the scope of the intellectual statute is not regulated, so researchers approach the analysis of case law, as well as project documents and recommendations for conflict of law regulation developed by national and international legal associations, expert groups and research institutions: leading research centres in Germany – Institute of Innovation and Competition and the Max Planck Institute for Comparative and International Private Law, the American Institute of Law, the Association of Private International Law of Korea and Japan, etc. [26-28]. Among the studied literature sources, the most detailed and convincing analysis was proposed by M. Suspitsyna in a dissertation study on the conflict of law regulation of intellectual property relations. The researcher includes the following issues in the scope of the intellectual statute:

“1) the emergence of exclusive rights, including the definition of types of individual protected results of intellectual activity and means of individualisation and rights to them; criteria for granting protection; compliance with formalities for the provision of legal protection;

2) the effect of exclusive rights, including existing restrictions on exclusive rights and their termination;

3) the ability of the right holder to dispose of the exclusive right and the form of such order;

4) non-contractual obligations in intellectual property and available remedies” [29].

As noted above, the *lex loci protectionis* point of contact of the intellectual property law is one of the most vague and ambiguous formulas. Prof. J. Bazedow addressed the complexity of the qualification of this provision in the study "Intellectual property on the world stage" [8], which provides about ten interpretations of the *lex loci protectionis* contained in legislation and case law. It can be interpreted as follows:

- the law of the State for which (or "in respect of which") protection is sought;
- the law of the state where (or "in which") protection is required;
- the law of the state under the laws of which the result of intellectual activity is protected by intellectual law, the violation of which is subject to proof;
- the law of the state with which intellectual activity has the closest connection, etc.

These differences in interpretation are crucial for case law. Previously, the binding *lex loci protectionis* point of contact was mainly understood as the law of the state where protection is required, which led to its confusion with the *lex fori* (the law of the country of the court). If the case is heard by a court of the state where the claim was filed and the copyright infringement also took place in that state, the results of the choice of law will coincide. However, if the dispute is heard in another country, such as the defendant's place of residence, the choice of law will be different, with restrictions on the copyright of the court of the country that have nothing to do with the substance of the dispute without any grounds. Therefore, foreign doctrinal sources and case law often prefer to understand the *lex loci protectionis* as the law of the country in respect of which protection is sought. Considering the strict territorial approach and appropriate conflict regulation, the recognition and enforcement of inheritance rights is complicated not only by the problems of interpretation of the conflict rule, but also by the need for multinational protection, i.e. protection in each state where the violation occurred or recognition is required. To have an

idea of the features of multinational protection, a brief analysis of the main differences between domestic legislation in this area is given below.

2.3 Conflict of law in copyright inheritance

Nowadays, there are two main models of inheritance in the world, which are based on different interpretations of the legal nature of inheritance relations. In continental Europe, inheritance is based on the principle of universal succession, known from Roman law, according to which the property passes to others unchanged as a whole at the same time, the heir is considered a continuation of the legal personality of the testator. The doctrine and practice of common law countries is based on the fact that the legal personality of the deceased disappears during the inheritance, therefore the property is administered (liquidated) under judicial supervision with the payment of debts, performance of tax and other obligations. The heirs receive only the net estate. These differences and conceptually different approaches to intellectual property also lead to differences in the legal regulation of copyright inheritance. Article 90 of the 1988 Copyright, Designs and Patents Act of the Great Britain stipulates the transfer of copyright by inheritance as personal or movable property, after the death of the author, his moral rights to the work pass to heirs (Article 95)¹. Under the 1985 Copyright Act of Canada, both moral and exclusive copyright rights can be inherited, and moral rights can be inherited by legal entities [30]. Copyright in the United States, based on the utilitarian concept, establishes only the lowest standards of moral rights of authors and to a greater extent protects the rights that have economic meaning. Article 204 of the 1976 Copyright Law of the United States regulates the transfer of ownership of copyright, including inheritance².

Among the countries of the continental legal system, the procedure of copyright inheritance is most detailed in the Code of Intellectual Property of France of July 1, 1992. Apart from the possibility of inheritance of exclusive rights, Article L.121-1 stipulates the possibility of succession in respect of personal moral rights: "The author shall have the right to respect for their name, their authorship and their work. These rights apply to their person. They are lifelong, inalienable, they are not subject to the statute of limitations. In case of the author's death, they are passed on to their heirs"³. Some researchers see a contradiction in the text of this article, because personal inalienable rights, which are inalienable in nature, are transferable and inherited. Article 28 of the German Copyright and Related Rights Act of 9 September 1965 also stipulates the possibility of transfer of copyright by inheritance, Article 30 states that the successor of the author shall have the same rights as the author, unless otherwise provided⁴.

Articles 23-24 of the Law of Italy on Copyright of April 22, 1941 establishes the scope and order of heirs of copyright, contains several provisions on the right to publish

¹ Copyright, Designs and Patents Act. (1988, November). Retrieved from <http://www.legislation.gov.uk/ukpga/1988/48/contents> (дата звернення: 25.03.2020).

² A Copyright Law of the United States. (1976, October). The U.S. Copyright Office. Retrieved from <https://web.archive.org/web/20111009143055/http://www.copyright.gov/title17/circ92.pdf>

³ Law on the Intellectual Property Code No. 92–597 of July 1, 1992. WIPO Database. France. (1992, July). Retrieved from <https://www.wipo.int/edocs/lexdocs/laws/en/fr/fr467en.pdf>

⁴ Copyright Act of 9 September 1965. Germany Federal Ministry of Justice and Consumer Protection. Retrieved from http://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html.

previously unpublished works of the testator¹. The Danish Consolidated Copyright Act of 23 October 2014 contains two sections on inheritance and debt proceedings, paragraph 61 stipulates that copyright may be subject to inheritance legislation and that the author shall have the right to give instructions to another spouse or third party on the implementation of copyright; paragraph 62 stipulates the impossibility of creditors' claims for copyright, regardless of whether they belong to the author or their successors as a result of marriage or inheritance².

The above examples suggest large differences in approaches to regulating copyright inheritance in different countries. The copyright laws of some countries thoroughly regulate the scope and lines of heirs, establish a list of rights that can be inherited and which cannot. In other states, there is only an indication that copyright is inherited, without any details of succession. The need for multinational copyright protection leads to the fact that in one state, the same persons can be recognised as the author's heirs and have the appropriate rights, and in another country – they cannot. An example of the diametrically different approaches to the heirs' exercise of the right to protect the author's non-property rights abroad is the well-known 1994 case of *Turner Entertainment Co. v. Houston*. The company defended the right to colour the black-and-white film "Asphalt Jungle", directed by J. Houston in 1950, in a US court, because it received the exclusive rights to the film. The director's foreign heirs considered colourisation a violation of the author's right to the integrity of the work, but in the United States the director is not recognised as the author of a cinematographic work, for this and other reasons, protection was denied. Instead, when a French television channel announced the rental of a painted version of *The Asphalt Jungle* and the director's heirs filed a lawsuit banning the rental, they were found to be proper plaintiffs and the claim was satisfied. Similar examples can be provided in other categories of cases: heirs' disputes of the transfer of a work to the public domain or free use, disputes over relations with companies for collective management of copyrights, distribution and use of works on the Internet, etc., where heirs in each individual case must apply for the recognition and protection of their rights to the next jurisdiction, which requires high costs in the absence of confidence in the outcome of the consideration

CONCLUSIONS

Inheritance constitutes one of the most important guarantees of the right to private property and in many countries is one of the constitutionally guaranteed human rights. The presence of a foreign element in inheritance relations, as a rule, does not reduce the level of legal protection, the established conflict mechanisms ensure the effective implementation of the inheritance rights of foreigners. But in case of cross-border copyright inheritance, there are problems with the multiplicity of statutes, the interpretation of the *lex loci protectionis*, the territorial nature of intellectual property rights and the associated need for multinational

¹ Italian Copyright Statute. Law for the Protection of Copyright and Neighbouring Rights No. 633 of April 22, 1941. WIPO Database. Italy. (1941, April). Retrieved from <https://www.wipo.int/edocs/lexdocs/laws/en/it/it211en.pdf>.

² Consolidated Act on Copyright No. 1144 of October 23 rd, 2014. (2014, October). The Ministry of Culture of Denmark. Retrieved from https://kum.dk/fileadmin/KUM/Documents/English%20website/Copyright/Act_on_Copyright_2014_Lovbekendtgørelse_nr._1144__ophavsretsloven__2014__engelsk.pdf.

protection, etc. The authors conclude that the main reason is the dominance of the doctrine of intellectual property, which was formed more than a hundred years ago under the influence of political and economic factors. At present, the author's personal inalienable rights are closely linked to human rights, and forms of exercising exclusive rights in the digital environment need to be reviewed as soon as possible, rather than trying in any way to maintain biased approaches, subjecting legal regulation to the economic interests of individual countries.

The tools of international private law allow the use of flexible approaches and do not equate copyright, which is more related to personal status, and industrial property rights, aimed at achieving commercial interests. By maximising the scope of conflict of law rules, it is possible to achieve differentiated regulation, to establish an extensive system of conflict of laws, which will allow to choose the law most closely related to the relations and appropriate to the circumstances of the case. Thus, the current mechanism of conflict of law regulation of copyright inheritance requires in-depth research and raises issues that still need to be addressed.

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Dmytro V. Lukianov

Doctor of Law, Professor
Head of the Department of International Private Law and Comparative Law
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

Inesa A. Shumilo

Candidate of Juridical Sciences, Associate Professor
Department of International Private Law and Comparative Law
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

Mariia O. Lukan

Researcher
Department of International Private Law and Comparative Law
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

Suggested Citation: Lukianov D.V., Shumilo I.A., & Lukan M.O. (2020). Conflict of law regulation in cross-border copyright inheritance. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(2), 49-63.

Submitted: 11/02/2020

Revised: 20/04/2020

Accepted: 21/05/2020