

RELATED RIGHTS: CONCEPT, FEATURES AND LEGAL PROTECTION UNDER THE LAWS OF UZBEKISTAN AND EUROPIAN COUNTRIES

Murodiljon O. Orifjonov

Bachelor of Law, Uzbekistan, Tashkent City

mir.orifjonov@gmail.com

Akhrorkhon A. NabiraeV

Bachelor of Law, Uzbekistan, Tashkent City

akhrorkhon.nabiraeV@gmail.com

Abstract:

In the modern world, every person daily encounters the results of intellectual or creative activity, whether it is, for example, reading a famous book or listening to a popular music during a walk. Both books and music are the result of human activity, have intangible value, and, in other words, referred as the institution of copyright and related rights. In this article, we will analyze in detail the concept of related rights, as well as their characteristic features and ways of their protection. For this purpose, we will refer to the legislation and experience of both the Republic of Uzbekistan and European countries – Germany, France, and Italy, applying analytical and comparative methods. In conclusion, a number of recommendations will be given to improve Uzbek legislation.

Keywords: intellectual right, copyright, related rights, performer, producers of phonograms and broadcasting, moral defense.

INTRODUCTION

The concept of related rights in different legislation.

Before we dive into the article, it is necessary to note that related rights, based on their title, are directly related to copyright, since the objects of their protection in most cases derive from copyright. As a rule, related rights are intellectual rights to the results of performing activities, such as music, phonograms, radio, and broadcasting. Thus, related rights are aimed at protecting performers from the misuse of their performance's results.

In contrast to copyright, the term related right emerged later and began to develop relatively recently. Until the second half of the last century, the rights of performers and broadcasters were protected under copyright law, i.e. there was no concept of related right at that time. All performance and sound recording rights were protected by the Berne Convention for the Protection of Literary and Artistic Works. Attempts to create an institution separate from copyright began in the early twentieth century with the advent of the first sound recording machines, radio, and television. New technologies were damaging the reputation of performers as well as broadcasters. As a result, it was internationally decided to protect the rights of performers, recording and broadcasting organizations separate from, though remotely related

to, copyright. Thus, in 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was adopted (hereinafter referred to as the Rome Convention). With the adoption of the Rome Convention, the expression "related rights" first appeared.

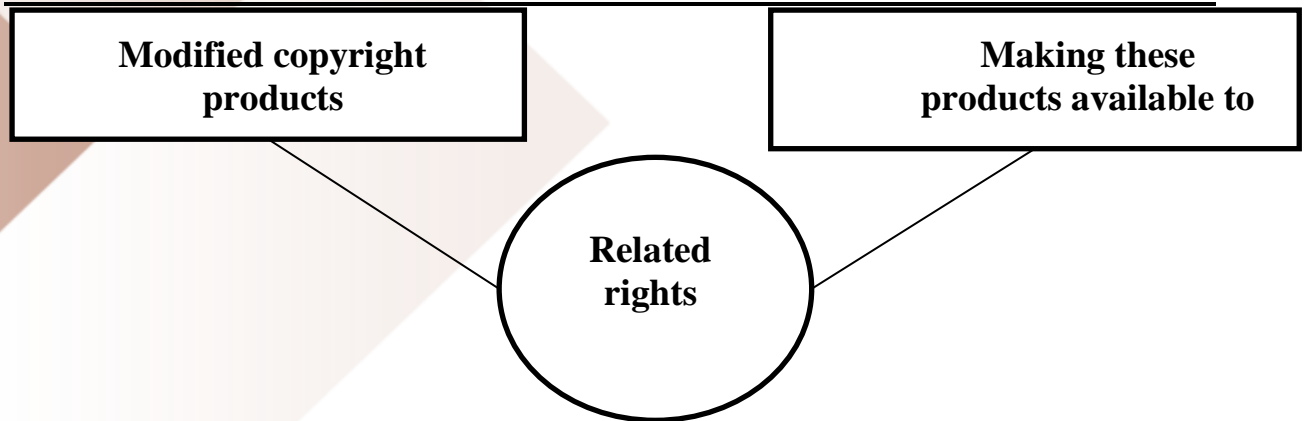
At first, the term "related rights" did not include as wide range of intellectual rights as it does today. M. Ficher, former Director of the Copyright Division of WIPO, initially claimed that related rights include the rights of phonogram producers in respect of their phonograms and the rights of broadcasting organizations in respect of their broadcasts. However, Ficher later recognized that this definition of related rights is very narrow and needs to be further expanded. At present, the concept of related rights is constantly expanding to include more and more subjects. Especially such changes are observed in European countries, which were among the first to adopt the concept of related rights in their legislative acts.

As for the normative-legal definition of the concept of "related rights", in accordance with the Legislation of the Republic of Uzbekistan, related rights are: "relations arising in connection with the creation and use of performances, phonograms, broadcasts of broadcasting or cable broadcasting organizations" [2, article 1]. This description is fully consistent with the above and the norms of international conventions.

To compare, the German Act on Copyright and Related Rights (the German Law) states: "Authors of works in the field of literature, science and art shall enjoy protection of their works in accordance with this Law" [4, article 1]. That is, the German legislation does not provide a separate definition of the concept of related rights. Nevertheless, it should be noted that in this law related rights are united in a separate chapter from copyright and the definition of related rights is based on the range of subjects of related rights specified in the legal act.

The Austrian Federal Copyright, Designs and Patents Act (the Austrian Law) provides a similar description of the concept of related rights. However, unlike the Law of Uzbekistan, the Austrian Federal Law mentions that the related right is the result of copyright and has the purpose of dissemination and communication of works to the public [3, clause 66].

Therefore, the objects of related rights in German and Austrian laws are not separate from copyright, but instead represent the result of the original works and are aimed at bringing such works to the public. For example, the performance of an author's work, the broadcasting of a television program or the photographing of a sculpture are all results that are achieved by means of works or other objects of copyright, so the former is directly related to the latter. Simplified explanation can be found below (graph 1).



Graph 1

The approach of English law to this topic is fundamentally different from the rest of the world. There is no concept of related rights in the British legislation. The protection of the rights of performers, phonogram owners and other subjects in English law is carried out at the expense of copyright or special Directives. In the Law of Great Britain "On Copyright, Patents and Industrial Designs" (the Law of Great Britain), the concept of related rights does not exist, and it is fully included in the articles of copyright law [5, article 1].

Objects of related rights in different legislation.

As mentioned above, the approach of States to the concept of "related right" has its similarities and differences and, therefore, it can be assumed that the objects of related right also have distinctive features in each State. For a detailed understanding of the differences between the objects of related rights of the above-mentioned States, consider the table below (Table 1):

Table 1 Objects of related rights in different states

Objects	Uzbeksitan	Austria	Germany	Great Britain
Music	+	+	+	+
Phonograms	+	+	+	-
radio programs	+	+	+	-
Cinematography	-	-	+	-
Photographs	-	+	+	-
Portraits	-	+	-	-
posthumous works	-	+	+	-
changes in scientific works	-	-	+	-

Based on the table above, most of the European countries with a Romano-Germanic legal system include a larger range of objects in related rights compared to Uzbekistan.

The objects of related rights protected in Uzbekistan are listed in article 44 of the Law “on copyright and related rights”, according to which the objects include performances, phonograms, and broadcasts.

The Austrian Federal Law, on the other hand, specifies more objects of protection of related rights. For example, according to paragraph 66 of the Austrian Federal Law, the objects of related rights are also performances of works, phonogram recordings, radio, and television broadcasts for the purpose of public distribution. However, in addition to these similar objects, the Federal Law, namely paragraph 73, also includes photographs as objects of related rights. Under Austrian law, photographs do not qualify as complete objects of copyright because they do not contain the author's personal contribution.

The German law gives almost similar objects of related rights, namely performances, sound recordings, video recordings as well as photographs. German and Austrian law have the same point of view in this matter; however, German law has its own peculiarity. For example, under German law, objects of related rights also include cinematography and changes in scientific works. In other words, if a mistake was made in the work of a scientist or any scientific article (which is subject to copyright), the person who corrected such a mistake will own the related rights to that scientific work. Thus, this once again emphasizes that in most European countries, related rights and copyright are not separated from each other, but on the contrary, they are linked and complement each other.

English law, as already mentioned, does not have a concept of related law. However, the Great Britain has specific directives that were adopted after the signing of the Paris Act of the Berne Convention on Performances and Phonograms. With the accession to the Paris Act, the Great Britain amended its law to include the rights of performers in a separate chapter of its law. Currently, British law still does not have articles called "related rights". However, the scholars G. Dworkin and R. Taylor, who commented on this Law, refer to performers' rights as the object of related rights [6, page 210]. Consequently, the performance of songs is probably the only object of related rights in Great Britain, and all the other objects mentioned above - phonograms, broadcasts, and photographs - belong to copyright according to English law.

Protection of related rights in different legislation.

having analyzed the basic concepts, nature and objects of related rights of Uzbekistan, Germany, Austria, and Great Britain, we should proceed to the main topic of this article, namely the protection of related rights.

To begin with the Uzbekistan, we shall take as an example a case in which the owner of related rights is an individual. The rights of an individual are protected by the Civil Code, according to which any citizen of the Republic of Uzbekistan is entitled to protect their rights, which include copyright and related rights [1, article 11]. In addition, related rights of both individuals and legal entities are protected by the Law "on copyright and related rights". Under the Law, if the holder's related rights are violated, the holder has the full right to demand:

- compensation of losses incurred by the unlawful infringement of related rights;
- restoration of the position and status that existed before the infringement;
- compensation for moral damage;
- judicial confiscation of counterfeit objects of related rights.

The Austrian Federal Law and the German Law, on the other hand, have distinctive methods of protection which have similarities and differences with the measures of protection provided for in the Uzbek legislation. Thus, the Austrian Federal Law and the German Law provide several methods of protection and restoration of violated rights as follows:

- claim for an injunction against the use of objects of related rights;
- right to receive fair remuneration;
- claim for damages;
- seizure and destruction of counterfeits.

Each of the aforementioned remedies has a detailed description of their implementation, from the beginning of a lawsuit to obtaining a judgment or compensation. It is interesting to note that the Austrian Federal Law also provides for sanctions against counterfeits, but unlike the Uzbek Law, counterfeits should not only be seized, but destroyed [3, clause 92].

Although the law of Great Britain does not have a provision regulating related rights, the law has its own specifics on the protection of copyright (related) rights, namely:

- filing a lawsuit for copyright (related) rights infringement;
- reimbursement of all damages under the lawsuit;
- the right to seize counterfeits;
- the right to object against derogatory treatment of the objects of copyright (related) rights.

A distinctive feature of English law is the provision of the so-called “moral defense”[5, article 103]. In other words, the author or performer has the right to sue if his work is insulted or humiliated.

In addition, the term for related rights in all the listed states lasts for 50 years. Most interesting here is the fact that the Great Britain does not separate copyright from related rights and provides a general term of 50 years for copyright (related) rights, while the other listed states have distinctive terms for copyrights.

Recommendations for amendments to the current legislation of the Republic of Uzbekistan based on the experience of Germany, Austria and Great Britain.

Summarizing the above, it is fair to conclude that related rights have many similarities in Uzbekistan, Austria and Germany, in other words, in countries with the Romano-Germanic legal system. The English Law does not separate related rights from copyrights. Nevertheless, it is worth noting that the objects of related rights and methods of their protection are covered more widely in European countries than in the Republic of Uzbekistan. This fact is not surprising, as Germany and Austria are progenitor countries of related rights, as they were the first to introduce such changes in their national legislation. Speaking about what could be borrowed from the experience of these foreign states, we recommend several additions to the current Laws of Uzbekistan that include:

1. Expand the range of objects of related rights. This can be achieved by adding such objects as photographs, portraits, motion pictures and changes in scientific works. It is necessary to take into account that the objects of related rights will expand, because the modern world is at the stage of rapid development. Moreover, Germany and Austria have

already successfully applied these norms in their legislation, and the expansion of objects of related rights by Uzbekistan will only benefit both lawmaking and society as a whole;

2. Expand the ways of protection of related rights. The list of ways to protect and suppress violations in the field of related rights in the Law is regulated at advanced level. However, the current legislation does not provide for the possibility of filing a lawsuit in case of infringement of related rights. Also, the laws of Germany, Austria and Great Britain describe in detail the process of filing a lawsuit and the procedure for compensation of damages. In addition, based on the experience of Great Britain, we also suggest introducing an additional measure of protection against humiliation or insult of a related right.

List of References

1. Civil code of the Republic of Uzbekistan dated 1 March 1997, as last amended of 8 November 2022 (National base of legislation No. 03/22/801/0998).
2. Law of the Republic of Uzbekistan “on copyright and related rights” No. ZRU-42 dated 20 July 2006, as last amended of 21 August 2021 (National base of legislation No. 03/21/709/0808).
3. Federal Law of Austria on Copyright in Works of Literature and Art and on Related Rights adopted 9 April 1938, Part II: Related rights, (BGBl. No. 111/1936, as last amended [BGBl. I No. 25/1998]).
4. Copyright Act of Germany dated 9 September 1965, as last amended of 1 September 2017 (Federal Law Gazette I p. 3346).
5. Copyright, Designs and Patents Act of UK, 1988, Chapter 48 (GB019EN 15/11/88).
6. Blackstone's Guide to the Copyright, Designs and Patents Act 1988. By Gerald Dworkin and Richard Taylor. (London, Blackstone Press. 1989).
7. RUDN Journal of Law. 2021. T. 25. No. 2., p. 541-561, Research Article “Related rights: conceptual approaches, definition and key features”, Natalia V. Buzova.
8. Journal of the Intellectual Property Rights Court, No. 24 June 2019, p. 54-60, Research Article “The idea of related rights and their varieties”, A.G. Matveev.