

SOME ASPECTS OF RUSSIAN AND BRITISH LEGISLATION IN COPYRIGHT LAW: LAWFULNESS OF CREATION AND RENDERING OF COVER-VERSIONS

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The main issue that is going to be observed is lawfulness of cover-versions. Are all types of covers illegal or not? The aim of research is to compare the legislation of the two states and to clarify whether creation of cover-versions is unlawful or it is legal. And if creation of covers is legal what conditions people should comply with not to infringe copyright.

Definitions and main knowledge about cover-versions.

Cover-version is a specific term in music. It appeared in 1966. Cover-version is a new performance or recording of a previously recorded, commercially released song or a popular song.

There are three types of cover-versions:

a. Full cover-version – the entire song is played and sung. As a rule, such kind of covers is made only by groups; otherwise it is too hard to create a full cover, because the person needs to play lots of instruments and sing.

b. Partial cover-version – the cover is made only for one instrument (e.g., for electro-guitar); this means that the person who is creating a cover is only playing one's instrument part and nothing more. Normally it is made by one person. More and more people who are learning how to play the piano or guitar are trying to make covers in the process of their education.

c. Rearrangement – a specific type of a cover-version in which the person takes one song or just music and rearranges it for one instrument. Such a cover-version is easily recognizable but it sounds in another way and despite the fact that nothing except the instrument is changed it is considered a cover-version too. But there is an opinion that rearrangement is not a type of covers – this is a new original musical composition. Majority of people suppose this to be a cover.

All cover-makers can be divided into three categories:

a. Tribute acts or bands are performers who make a living by recreating the music of one particular artist. They also have a name which is very alike to the name of original group.

b. Cover acts or bands are entertainers who perform a broad variety of crowd-pleasing material for audiences who enjoy the familiarity of hit songs.

c. Revivalist artists or bands are performers who are inspired by an entire genre of music.

Legislation on cover-versions: comparison of Russian and British legislation.

As for the legislation of the United Kingdom the Copyright, Designs and Patents Act 1988 states that sound recordings (s. 5A)¹ are under protection of this Act.

But there are lots of different articles concerning a cover-version itself.

For example, article 1270 (part 1) of Civil Code of Russian Federation² states that only a copyright holder can perform his composition, create its copies, etc.

Article 16 of The Copyright, Designs and Patents Act 1988³ contains the same provisions.

Creating a cover-version by performing a musical composition as it is – is a violation

¹ Copyright, Designs and Patents Act 1988/ UK Public General Act c. 48 - <http://www.statutelaw.gov.uk>.

² Гражданский Кодекс РФ (часть четвертая): ФЗ от 18.12.2006 N 230// Собрание законодательства РФ. – 2006. - №52. – Ст. 5496.

³ Copyright, Designs and Patents Act 1988/ UK Public General Act c. 48 - <http://www.statutelaw.gov.uk>.

of copyright under these articles both in Britain and in Russia, as the right to perform or create and distribute copies of a musical composition is a sole right of a copyright holder.

Then, if we are speaking about other types of cover-versions, it is necessary to mention that arrangement and editing without a copyright holder's consent are forbidden in Russia because such actions violate the right of integrity (which is stated in the point 4 of part 1 article 1255 and in article 1266 of Civil Code of Russian Federation)¹.

The same prohibition is provided by British legislation: article 21 of the Copyright, Designs and Patents Act 1988² states that arrangement is an infringement of copyright.

Also, one more type of cover-version was mentioned earlier: it is a partial cover. Such a cover-version is unlawful because a part of a musical composition is under protection of copyright according to article 1259 of Civil Code³.

But this article states that a part of a composition must be recognizable as a result of creative work. Otherwise it will not be protected by law. To my mind, according to this statement creation of a partial cover-version in a drums part or in a bass-guitar part is legal because nowadays it is hard to compose an original rhythm.

In British legislation a part of a musical composition is also protected by law according to articles 1 and 5 of the Copyright, Designs and Patents Act 1988⁴.

Conclusions on lawfulness of cover-versions and liability for creating and rendering of cover-versions.

On the one hand, creation of cover-versions is unlawful either in Russia or in Britain because this will be the infringement of the sole right of a copyright holder. Neither type of covers is legal unless the consent of a copyright holder is received. There is only one exception: a partial cover-version can be lawful but only if a covered part cannot be recognized as an original part of a musical composition.

When I was making my presentation, the aim was to compare legislation of Great Britain and Russian Federation. But I have come across a very unusual institution in American legal system.

In spite of the fact that the USA and the United Kingdom have one legal system in the USA there is no problem of cover-versions. Mechanical license – is a specific feature of American legal system. Mechanical license gives a holder permission to create copies of a recorded song which they did not write and/or do not have copyright over. That means that a person can take any musical composition and make any type of cover-version and this will not be infringement of copyright. As a result there are no litigations in the USA concerning creation and rendering of cover-versions.

To my mind, it is very convenient to use mechanical license because it helps to reduce the number of suits against cover-makers. Copyright holders are not against such a norm, they suppose that cover-makers advertise them and their songs by creation of cover-versions.

So, I want to point out the idea that we can adopt such a model to our legislation.

Then, moving back to Great Britain, I suppose that there is a convenient and clear structure of the Copyright, Designs and Patents Act 1988. The main advantage of the Act can be proved by the fact that one article for example states provisions concerning one infringement of copyright. Act with such a structure is easier to understand because all provisions are written in one article.

¹ Гражданский Кодекс РФ (часть четвертая): ФЗ от 18.12.2006 N 230// Собрание законодательства РФ. – 2006. - №52. – Ст. 5496.

² Copyright, Designs and Patents Act 1988/ UK Public General Act c. 48 - <http://www.statutelaw.gov.uk>.

³ Гражданский Кодекс РФ (часть четвертая): ФЗ от 18.12.2006 N 230// Собрание законодательства РФ. – 2006. - №52. – Ст. 5496.

⁴ Copyright, Designs and Patents Act 1988/ UK Public General Act c. 48 - <http://www.statutelaw.gov.uk>.

Then, it seems to me that we can adopt norms on secondary infringement like, for example, secondary infringement by allocation of equipment for public performance of the work, or playing or showing the work in public by means of apparatus. Such provisions help to defend the copyright by establishing responsibility.