



XORIJIY TILLARNI O'QITISHDA INNOVATSION YONDASHUVLAR NAZARIYANING AMALIYOTGA TATBIQI

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INTELLECTUAL PROPERTY PROBLEMS FACED IN SOCIETY

Akhmedova Durдона,
Student of Gulistan State University

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The rapid development of information and communication networks and their rapid penetration into social life encourage creators to take necessary measures to ensure adequate protection of absolute rights to their works. It is known that in recent years the human need for information and information has reached a higher level than ever before. Especially as a result of the extensive development of the Internet and telecommunication networks, the related processes are becoming more important. After all, such processes cannot be imagined without the participation of copyright objects. In turn, it is important to legally regulate the use of copyright objects. The technical method of management and protection of works on the basis of contract can be included as legal mechanisms of control over the use of works and their inclusion in civil transactions in a different way. Today, we can clearly see that the concepts of Internet and telecommunication and their related relations have penetrated into almost all aspects of social relations, and this can be clearly seen in civil-legal, criminal-legal and public-legal relations.

Lack of contractual relationship for using works in virtual environment

If we pay attention to the creation of norms, be it criminal legislation or civil legislation, the latest changes and additions are related to telecommunication networks. In particular, this can be seen in Article 3 of the Law of the Republic of Uzbekistan "On Copyright and Related Rights", adopted in a new version in 2006. The previous version of this law did not contain the term "publicity". It is well known that public communication is the transmission of works or related rights objects by means of wires or wireless means of communication to the public in such a way that users of telecommunication systems can use them at any place and at any time of their choice. Such concepts did not exist in the previous version of this law. The most important aspect of copyright is related to exclusive rights. Article 19 of the above-mentioned law provides a classification of these rights, and it is noteworthy that these actions (translation, reproduction, distribution, communication, public display, etc.) can be carried out directly using telecommunication networks.¹

¹ Yuldashov Abdumumin. "O'zbekiston Respublikasining xususiy mulki, aloqa va axborot sohasidagi normativ-huquqiy hujjatlardagi mualliflik huquqini muhofaza qilish qoidalarini takomillashtirish masalalari." Yurist axborotnomasi 2.5 (2022): 58-64..



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It should be noted that work on the creation of international norms in this direction began much earlier, and that Uzbekistan is also a member of a number of international agreements in this field. In particular, in 1996, the World Intellectual Property Organization (WIPO) and its member states adopted the "World Intellectual Property Organization Copyright Agreement" and the "World Intellectual Property Organization Agreement on Performances and Phonograms" in order to ensure the protection of the works of authors and rights holders in the digital environment. was done. For information, it should be noted that Uzbekistan joined the above two international agreements on February 16, 2019. According to Article 11 of the "WIPO Copyright Treaty", the contracting parties shall provide appropriate legal protection and effective means aimed at preventing the circumvention of existing technical means used by authors and restricting actions that do not authorize their work in connection with the exercise of their rights under this treaty or the Berne Convention. The norm in this content is taken from Article 18 of the "Treaty on Performances and Phonograms of the World Intellectual Property Organization" regarding its application to performers and producers of phonograms who are subjects of related rights.

Provisions aimed at restricting attempts to bypass technical means such as the above are included in the national legislation of countries that have signed the above "internet agreements" of the WIPO. The United States was the first to incorporate this provision into its legislation, with the Copyright Act of 1998 and the European Union Copyright Directive of 2001. In the United States, persons who violate this restriction are subject to civil and criminal liability. The main reason why the above two international documents are called "internet agreement" is related to the extensive development of this network and its penetration into all aspects of social life. From this point of view, by the 90s of the 20th century, there was a need to protect copyright not only in other telecommunication networks, but also on the Internet. At this point, it is worth noting which communication and information technologies are included in the list of telecommunication networks. These are:

- computer networks;
- telephone networks;
- radio networks;
- television networks.

In the recently adopted legislation on intellectual property rights in Uzbekistan, special attention is paid to the connection of this field with the telecommunications network. For example, the decision PQ-221 of the President of the Republic of



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Uzbekistan dated April 26, 2022 "On additional measures for the further development of the field of intellectual property" defined the following important tasks for the protection of copyright and related rights in the field of telecommunications. **Although a number of regulatory documents on telecommunications have been issued, the introduction of new procedures for legal protection of copyright and related rights objects (blockchain) remains on the sidelines. As a result, the legal regulation of contractual relations for the use of works in the virtual environment has not been improved.**

Take, for example, in foreign countries there is special websites which [BeatsByMantra.com](https://www.beatsbymantra.com) is the official website for music producer Mantra. Mantra specializes in making Pop Beats, Hip Hop Beats, Trap Beats, beats with hooks an... <https://www.beatsbymantra.com/licensing-info>.

If we compare the world system in the field of intellectual property and the system in our country, there is a big difference. In particular, people living in Europe, North and South America and other regions will have the right to use the music they want to listen to or the movie they want to watch through their mobile devices only after paying the copyright fee. In our country, this situation is completely different, i.e., instead of paying copyright for the use of the intellectual property object (music, poetry, audio-visual work, phonogram, etc.), the author can use different TV channels or social networks. (You Tube, Facebook, Instagram, Tik Tok, Telegram) and shows the product of his creation to the public.

Lack of expertise in determining the presumption of authorship during the court proceedings

It is known that in order for any person to be the author of a work written by himself, it is not required to prove that he wrote the work or to release it from an official publication. Also, this theory is referred to as the presumption of authorship in legislation and is also reflected in Law of the Republic of Uzbekistan № ZRU-42, Article 10:

"The copyright in a work of science, literature, and art shall arise by virtue of the fact of its creation. No any registration of a work or compliance with any other formalities shall be required for the occurrence and exercise of copyright.

The person indicated as the author on the original or a copy of a work shall be deemed to be its author, unless proven otherwise."

However, some problematic situations are emerging in court proceedings regarding the protection of copyright and related rights. For example, the Society for the Protection of Copyright and Related Rights of the Republic of Uzbekistan



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(UZAVTOR) received an application for protection of copyright from citizen A. The content of the application is that the poem "Savdo" written by citizen A in 2009 was performed in public by citizen B in 2010 without his consent. The problem here is that even though citizen A wrote the poem himself, he did not publish it in the official publication, although there is no such requirement in the law. On the one hand, citizen A is not obliged to publish the poem, but how can he prove to the court that he wrote the work himself? Artist B is also currently bringing a hard copy of the poem, which citizen A also has. In this situation, the lack of basic evidence for judges can lead to a wrong decision. If there are special expertises in determining the author's rights, they can determine what year the poem was written on paper. As a result, the quality of cases considered at court sessions can be improved.

Concepts of judges on the field of intellectual property

In recent years, the concepts of intellectual property have been increasingly widely used in legislation, literature, mass media and in practice in our country, and contradictions within this field are being highlighted. This direction had its important place in the international sphere a long time ago. Along with the rapid development of the international economy, the importance of intellectual property rights is increasing, as well as the registration of intellectual property objects and the number of registered objects is growing significantly every year. At the same time, the increase in their number leads to an increase in the number of disputes related to intellectual property. It is important to talk about the establishment of alternative dispute resolution methods for intellectual property disputes that some countries have created or are creating. Along with the development of intellectual property, disputes in this area are also increasing. According to the information provided by the Intellectual Property Agency under the Ministry of Justice, court proceedings related to intellectual property disputes have increased sharply in recent years. These disputes are mainly resolved through court proceedings.

On October 10, 2022, in the Andijan inter-district court for civil cases, in the interests of Khamdam Sobibrov, a member of the plaintiff "Society for the Protection of Copyright and Related Rights of the Republic of Uzbekistan", an organization that manages property rights on a collective basis. Against the defendant "MO'JIZA SAVDO PLUS" LLC, to put an end to copyright infringement, compensation (compensation) for copyright infringement and a court session was held regarding the application for recovery of moral damages.

In other words, his music was shown in public without the author's consent on the television of "MO'JIZA SAVDO PLUS" LLC, which is considered a public



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catering venue. The plaintiff, that is, the Society for the Protection of Copyright and Related Rights of the Republic of Uzbekistan, demanded compensation and recovery of 30,000,000 soums from the defendant in favor of the author, as well as "Tentakcham" and "March 20" sung by the defendant. According to the decision of the above court session, the claim of the organization managing property rights on a collective basis - the Society for the Protection of Copyright and Related Rights of the Republic of Uzbekistan was satisfied. According to the court's decision, it was decided to collect 30,000,000 soums of moral damages from the defendant "MO'JIZA SAVDO PLUS" LLC. Dissatisfied with this decision, the defendant "MO'JIZA SAVDO PLUS" LLC filed an appeal, stating that the court of first instance considered the case one-sidedly, that the circumstances of the case were not fully and objectively studied, the defendant "MO'JIZA SAVDO PLUS" LLC belongs to the city of Andijan, A. Temur street 9, restaurant under the XXXXXXXXXX brand, 1 sq.m. area with a monitor where the singer was installed, was leased to "SMART MEDI SERVICE" LLC operating at 1-a address, Bodomzor, Tashkent city, Yunusabad district, on October 1, 2018. stating that the contract was concluded for an indefinite period and is legally valid, that the main activity of "SMART MEDI SERVICE" LLC is to install monitors in buildings, to play popular music works and music videos, etc. requested to reject the claim by its decision. The important point is that the lease agreement was concluded in 2020, but the Andijan branch of " MO'JIZA SAVDO PLUS " LLC started its activity in 2021. The Appellate Body shall:

"According to the above requirement of the law, the fine should be collected from the offender, but the defendant did not present to the court the evidence confirming that he actually committed the offense for which liability is provided by the law, the nature of the offense and the degree of guilt of the offender. However, the violation of copyright and similar rights is defined by the law as an administrative offense and the fact that this offense was committed should be confirmed by the fact that the person was brought to administrative responsibility.

However, Article 1041 of the Civil Code of the Republic of Uzbekistan states the following:

"Legal entities and individuals, except in the cases stipulated in this Law, shall be entitled to use the work only under a contract with the rightholder or any other authorized person, including under a contract with organizations managing property rights on a collective basis or — in their absence — under a contract with an organization performing the functions and duties of these organizations.



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The author's exclusive rights to use a work shall mean the right to perform or authorize the following actions:

reproduction of the work (right of reproduction);

distribution of the original or copies of the work by sale or other transfer of ownership (right of distribution);

communication of the work to the general public (right of communication to the general public);

renting out the original or copies of the work (right to rent out);

importing copies of the work for the purpose of distribution, including the copies produced with the permission of the exclusive rights owner (right of import);

communication of the work to the general public by broadcasting via wire (cable) or other similar means (right of communication via cable);

redoing, arrangement or other revision of the work (right of revision);

public demonstration of the work (right of public demonstration);

public performance of the work (right of public performance);

communication of the work to the general public by broadcasting via wireless transmission (right of broadcasting);

translation of the work (right of translation);

repeated communication of the work to the general public, if such communication is made by another organization and not by the organization that originally made the communication (right of repeated communication to the general public). A work shall be deemed to have been used regardless of the fact whether it has been used for the purpose of deriving income or its use was not aimed at such a purpose.”

In Law of the Republic of Uzbekistan № ZRU-42, Article 65:

“compensation for losses in the amount of unreceived income, which the rightholder would have received under normal conditions of civil circulation, if his/her right was not violated. If the violator has received income as a result of violation of copyright or related rights, the rightholders shall have the right to demand compensation along with other losses of lost profits in the amount not less than these profits;

payment of compensation in the amount from twenty to one thousand base reference value in lieu of damages paid regardless of the fact of infliction of losses, based on the nature of the violation and the degree of fault of the violator, taking into account the custom of business turnover”



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Incorporation of the limits of the amount of compensation into the legislation through the above norm it can be said that it served as an important basis for determining the measure of responsibility for the courts. After all, such a norm did not exist before, and there were almost no cases of determining compensation by the courts.

The plaintiff was dissatisfied with the appellate decision and filed a cassation appeal. Currently, a cassation case is being considered on this issue.

In the age the globalization of everything—the privatization of anything else, the government should add some kinds of laws which belongs to the intellectual property law.

Conclusion

Based on the above, copyright in Uzbekistan in recent years the number of disputed cases is increasing. This is a direction in itself institutions (organizations that manage property rights on a collective basis) are actively working and creators understand their rights. At the same time, it should be noted that a number of reforms are being implemented in Uzbekistan to ensure the protection of the property rights of authors and copyright holders. In particular, this includes ensuring the legal rights and interests of authors, related rights holders and other rights holders, as well as the fair collection of their royalties.

In addition, nowadays, the scope of using information transmission networks is expanding a lot. In this direction, it is necessary to take appropriate measures from the point of view of security and protection. Protection of the right is one of the most important factors of its protection and provision. According to practice, any right can be implemented only if it is reinforced by a protection mechanism. In general, it is necessary to develop a well-thought-out and solid state policy on ensuring the protection of copyright and related rights in Uzbekistan.

In order to further improve the protection of copyright, it is necessary to carry out reforms in the following directions in Uzbekistan:

- the objects of copyright and related rights introduction of new procedures of legal protection (blockchain);
- introduction of special expertise for copyright and related rights objects;
- to retrain judges in the field of intellectual property in order to resolve intellectual property disputes fairly.

We believe that the correct and systematic implementation of these proposals will ensure the protection of copyright, and through this, creators leads to the payment of appropriate fees for his work and the development of culture and art



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based on the rules of copyright. These aspects directly correspond to the rules and principles of international norms (in particular, the TRIPS Agreement).

Referens:

1. Berne Convention for the Protection of Literary and Artistic Works (1886)
2. WIPO Copyright Treaty (WCT), 1996
3. The Law of the Republic of Uzbekistan "On Copyright and Related Rights" (2006, amended version)
4. Digital Millennium Copyright Act (DMCA), 1998 (United States)