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Essentials Of The Criminal Protection Of Intellectual Property In The Republic Of Uzbekistan: Legal Analysis Of Acts Offending Objects Of Intellectual Property

Khakimova Kamola

Lecturer At The Department Of Court, Law Enforcement Agencies And Advocacy
Tashkent State University Of Law, Uzbekistan

ABSTRACT

The article examines the features of criminal liability for violation of intellectual property rights. The author examines in detail the classification of objects of intellectual property, as a result of which the range of objects that are subject to criminal protection is determined. The author also analyzes the act qualifying as plagiarism and coercion to co-authorship. As a result of the study, it is proposed to criminalize a number of acts that cause significant damage not only to the copyright holder, but also to the consumer and the state.

KEYWORDS

Intellectual Property Rights, Criminal Liability, Criminal Protection, Plagiarism, Coercion To Co-Authorship, Copyright Holder, Individual Non-Property Rights, Property Rights, Industrial Property, Inventive Law, Trade Marks, Criminalization, Consumes, International Organizations, Means Of Individualization Of Participants In Civil Circulation, Civil Law, Intellectual Activity, Violence, Co-Authorship, Corpus Delicti, The Right To An Author's Name, Public Danger.

INTRODUCTION

According to the article 1031 of the Civil Code of the Republic of Uzbekistan, objects of intellectual property are divided into two main

groups - the results of intellectual activity (copyright and related right) and means of individualization of participants in civil

circulation, goods, works and services (industrial property). For criminal measures, the definition of specific objects of intellectual property is necessary, since this allows solving the following tasks:

- 1) Find out the powers of authors and copyright holders in relation to each object;
- 2) In accordance with the classification and taking into account other factors, determine the types of crimes against intellectual property.

The public danger of acts against intellectual property is expressed in the fact that the rights to the results of intellectual activity and the industrial property are violated; copyright holders do not receive their sufficient reward, therefore, the incentive for further creative activity decreases; the copyright holder spending certain financial resources to create an intellectual product, does not receive the expected profit from its commercial applying; state rights are violated, since it does not receive tax revenues from the legal use of the results of intellectual activity and equivalent to them industrial property [1, p.48]. In the Republic of Uzbekistan legal responsibility is provided in order to prevent this public danger, especially criminal liability under article 149 of the Criminal Code.

MAINPART

At the first reviewing the Article 149 of the Criminal Code of the Republic of Uzbekistan, one gets the impression of its simplicity of application, but in practice there are problems. Disposition of Article 149 of the Criminal Code of the Republic of Uzbekistan is blanket, as the result, in order to understand the essence of

copyright and inventive rights, it is necessary to refer to civil law. Making comparative analysis of this article and the provisions of the Civil Code, we can say that in terms of content the crime "Violation of copyright and inventive rights", it is a illegal act that violates the individual non-property rights of the author, copyright holder or inventor. As it is known from the theory of criminal law, the corpus delicti consists of four essential elements: the object, the objective side, the subject and the subjective side, in accordance with this, a legal analysis of this article is carried out.

Relations that have arisen in the sphere of realization of individual non-property rights are considered to be the direct object of the crime. The reason for making such assumption became the meaning of the article. According to article 1033 of the Civil Code of the Republic of Uzbekistan, the authors of the results of intellectual activity own individual non-property (copyrights, the right to an author's name, the right to promulgation and others) and property rights (exclusive rights to use a work, invention in any form and any means). Consequently, considering that article 149 of the Criminal Code cover the criminal liability for «attribution of authorship, coercion to co-authorship, and disclosure without the consent of the author of information about objects before their official publication ...», it is concluded that the direct object of this crime is individual non-property rights - copyright and disclosure.

The property (exclusive) rights of the author, inventor (use, distribute, apply) are not subject to criminal protection, violation of such rights consider administrative responsibility, especially under the Articles 1771 and 1772 of

the Code of Administrative Responsibility of the Republic of Uzbekistan.

The subject of the crime, provided for in Article 149 of the Criminal Code of the Republic of Uzbekistan, deserves close attention. In the opinion of N. I. Korzhansky, “criminal influence on an object in terms of its social significance has varieties, which scientists combine into several groups: a) a change in the social status or economic purpose of the subject; b) change in its physical features; c) change in appearance; d) making an object, thing” [2, p.58]. The case of a crime against copyright and inventive rights does not apply to the above classification, since the criminal most often does not change the type or content of this work, the original of the work does not suffer, only the legal author changes.

In accordance with the commentary to the Criminal Code of the Republic of Uzbekistan, M.Kh. Rustambaev considers objects of intellectual property to be the subject of this crime [3, p.179]. Based on the title of the article, one should disagree with the professor's opinion, since the concept of “objects of intellectual property” is broader than copyright and inventive law.

Depending on the creative contribution to the obtained result of intellectual activity, objects can be divided into two groups of objects:

Results of intellectual activity: Copyright – artistic and scientific works; related rights – cover literary, performance and broadcasts; objects of inventive and patent law - breeding achievements; topology of integrated circuits; production secrets (know-how);

Industrial property - means of individualization: trademarks, service marks; appellations of

origin of goods; commercial designations [4, p. 337-338].

Consequently, works of authorship, being objects of intellectual property, are not means of individualization, and a trademark, being objects of intellectual property, do not belong to the results of intellectual activity - objects of copyright and inventive rights. Trademarks are independent objects of intellectual property - objects of industrial property, not copyright (related) rights [5].

Thus, the indication in Article 149 of the Criminal Code of the Republic of Uzbekistan of the generalized concept of "objects of intellectual property", when the title of the article has a specific relation only to some objects of intellectual property - copyright and inventive law, contributes to the appearance the following questions:

Is it possible to extend the action of this article to another category of intellectual property objects, as a means of individualization?

Can the creator of other intellectual property objects use criminal legal protection?

After analyzing the norms of civil legislation related to copyright and inventive rights, only the objects of these rights should be considered as the subject of a crime (Article 149 of the Criminal Code of the Republic of Uzbekistan), namely, according to Article 1041 of the Civil Code of the Republic of Uzbekistan, copyright applies to works of science, literature, arts that are the result of creative activity, regardless of the purpose and dignity of the work, as well as the way of its expression. Objects of copyright include only those that are provided for by Article 1042 of the Civil Code of the Republic of Uzbekistan:

literary works (literary - artistic, scientific, educational, etc.)[6].

Regarding inventive rights, according to Article 1082 of the Civil Code of the Republic of Uzbekistan, objects can be considered an invention, utility model and industrial design for which a patent has been issued. Unlike copyright, inventive law deals not with works of science, art, literature, but with the technical side of creative activity - various devices, methods, technological inventions, etc. Industrial designs include the artistic design of a product, which determines its appearance [7].

Based on the foregoing, the range of subjects of the crime includes: objects of copyright in accordance with Article 1042 of the Civil Code - someone else's scientific, literary, musical or artistic work, and objects of inventive law in accordance with Article 1082 of the Civil Code - invention, utility model and industrial design.

The objective side of the crime provided for in Article 149 of the Criminal Code of the Republic of Uzbekistan is expressed in a number of illegal actions. The corpus delicti is formal, since an act qualified as trespassing the object protected by this norm will be recognized as criminal from the moment it was committed, that is, for the onset of criminal liability, the consequences are not important, it is enough to commit the actions specified in the norm. Criminal liability under this article occurs for attribution of authorship (plagiarism), coercion to co-authorship, and disclosure of information about objects without the permit of the author.

The Act of the Republic of Uzbekistan "On Copyright and Related Rights" does not use

the term plagiarism, it is also absent in other supreme and regulatory legal acts. Professor Ya.A. Kantorovich determines plagiarism as "borrowing from someone else's work of thoughts, ideas without the application of own creative initiative"[8, p.65]. It is necessary to take into account that the types of acts associated with the appropriation of authorship include: declaring oneself as the author of someone else's work, releasing someone else's work (in full or in part) under one's own name, publishing under one's own name a work created in co-authorship with other persons, without specifying their names, consequently plagiarism is a violation of the right of authorship, not the right to a name. According to Article 18 of the above Act, the author of a work belongs to the right of authorship, therefore, attribution of authorship is the illegal recognition by the author of someone else's work. An elementary example can be considered a copied text from someone else's work, and present it in the work under own name.

The next act for which criminal liability is provided under Article 149 of the Criminal Code of the Republic of Uzbekistan is coercion to co-authorship. There is co-authorship in both copyright and inventive law. Co-authorship is possible if the work is created by joint work, as well as with co-authorship, copyrights are jointly owned by several citizens (co-authors). However, co-authorship should be distinguished from other types of collaboration of two or more persons. In particular, co-authorship differs from technical cooperation between the author and the persons who typeset the text, typeset the book, cooperation between the author and the translator of a work into another language [9]. Moreover, the relationship between the

co-authors of the inventive right objects is determined by an agreement between them, given that non-creative assistance in the creation of an invention does not entail co-authorship.

Coercion to co-authorship means exerting influence in any way (including through violence, threats of the onset of consequences unfavorable for the victim) in order to obtain his consent to the inclusion of other persons (who did not make a personal creative contribution to the creation of the intellectual property objects specified in this article) in co-authors of finished creative works or developed inventions, that is, conclude an agreement that allows these persons to obtain copyright. The structure of coercion necessarily includes such elements as a targeted impact on the free will of a person and the presentation of a criminal requirement to the behavior of the victim [10, p.72]. The methods of influence can be very different, however, in cases where coercion to co-authorship is accompanied by the use of violence directed against the life, health or freedom of the victim, the act should be classified in aggregate - according to article 149 of the Criminal Code of the Republic of Uzbekistan, and according to the corresponding articles of the Criminal Code of the Republic of Uzbekistan, depending on the circumstances and the resulting consequences. Thus, coercion comes out in such an impact on the victim that significantly limits the freedom of his expression of will, which is associated with the complete submission of the will of the victim, leaving him in a hopeless situation when there is no choice of behavior other than that demanded by the offender. According to V.D. Larichev and B.L. Tereshchenko, a frequent example of coercion

to co-authorship can be - a proposal to the author to include in the list of co-authors of other persons, primarily managers or heads of office under the threat of demotion, not providing legal types of rewards for the work done, promises to provide encouragement [11, p.32].

Disclosure of information about objects without the permit of the author copyright and inventive law prior to their official registration or publication should be understood as the transfer and dissemination of information about these objects (content of formulas, structure, functional features) to third parties by publishing speeches at conferences in the media or by other means. This action is widespread today, since the social life of people is associated with information technologies, which creates a threat to the confidentiality of any information.

CONCLUSION

In conclusion, it should be noted that this article does not cover the entire spectrum of violations of intellectual property rights, which today inflict massive material and moral damage to the copyright holder, society, consumers and the image of the state. Having analyzed the above, taking into account the socio-economic conditionality of the criminalization of certain acts in the field of intellectual property, the priorities of the economic policy of the Republic of Uzbekistan, it is proposed to create a norms providing criminal liability for illegal use of objects of copyright and inventive law, taking into account the damage caused (on a large and especially large scale), where the direct object of the crime will be public relations for the implementation of the property rights of the

rightholder. This proposed norm should be placed in part 2 of Article 149 of the Criminal Code of the Republic of Uzbekistan. Moreover, taking into account the requirements of international norms, the conditions for Uzbekistan's joining the ranks of participants in international economic and trade organizations (WTO), as well as the increased incidence of infringement of trademarks and their high public danger, it is proposed to criminalize the illegal use of means of individualization (industrial property), entailing damage in large and especially large size, placing the norm in the head of the Criminal Code related to crimes in the field of economic activity.

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