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Calculation Of Material And Moral Damage Caused To The Author Of The Composition

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ABSTRACT

It is known that the protection of intellectual property rights and rights to it is an important factor in the development of this sector, increasing its investment attractiveness. After all, the formation of a class of intellectual property owners and the development of the necessary legal framework pose new challenges to the legal science as a topical issue today.

KEYWORDS

Measures, civil rights, moral damage, material damage, intellectual property, value, intangible assets, scientific and technical.

INTRODUCTION

At a meeting chaired by the President of the Republic of Uzbekistan Sh. Mirziyoyev on October 12, 2020 on measures to improve the protection of intellectual property, special attention was paid to connecting patent holders and researchers with various business entities, their cooperation [1].

Violation of intellectual property rights also has a direct negative impact on their commercialization. The commercialization of intellectual property has led countries such as the United States, Japan, China, Germany, Switzerland, and Singapore to become world leaders in terms of industrial development. An example of this is the widespread use of innovative technologies in 60-70% of the industry in these countries today.

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THE MAIN FINDINGS AND RESEARCH

One of the important normative legal acts is the Resolution of the President of the Republic of Uzbekistan dated July 14, 2018 No PD (presidential decree) -3855 "On additional measures to increase the effectiveness of commercialization of the results of scientific and scientific-technical activities." In this resolution, a large-scale work is being carried out in the country to ensure the effective use of available financial and material resources to create favorable conditions for the implementation of scientific and technological activities, scientific and technological and innovative development. It is recognized that the analysis of the practical application of the results of scientific and technical activities indicates the existence of systemic problems in the process of their creation, legal protection and implementation [2].

Article 1031 of the Civil Code of the Republic of Uzbekistan defines the general list of legally protected objects of intellectual property, and this article aims to cover the calculation of material and moral damage to the author of the work.

The methods of protection of civil rights (Article 11 of the Civil Code) provide for such methods as compensation for general damage, recovery of penalties, as well as the protection of exclusive rights to intellectual property:

- By confiscating the material objects on which the exclusive rights were violated, as well as the material objects created as a result of such violation;
- By compulsorily publishing information about the violation and entering into it the information on to whom the violated right belongs;
- In other ways provided by law.

Part 3 of Article 1041 of the Civil Code stipulates that absolute rights are protected in other ways provided by law. In particular, the Law on Copyright and Related Rights

Pursuant to Article 65, compensation (compensation) may be applied instead of indemnification under the absolute rights protection instrument. Depending on the nature of the offense and the degree of guilt of the offender, the compensation shall be applied regardless of the fact of damage, taking into account the habits of business conduct.

The complexity of the valuation of intellectual property depends primarily on the difficulties in quantifying the results of their commercial use at different stages of development, industrial application or use, and the impact of many factors in different directions.

According to paragraph 12 of the Rules for Compensation of Employees for Damages Caused by Injuries, Occupational Diseases or Other Injuries to Health in connection with the performance of their duties, copyright is included in the victim's lost wages [3]. This requires resolving the issue of the author's inability to receive the fee due to damages.

The issue of damages has been studied in various areas of jurisprudence. The main focus is on the direct civil approach.

According to Akramkhodjaeva, instead of compensating for the damage, the infringer may claim the benefit received by the infringer as a result of copyright infringement. In this

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case, penalty is used instead of recovering damages or recovering profits in their favor. The imposition of such a penalty also applies in case of violation of the rights to computer programs. These opportunities relieve the legal entity from the obligation to prove the amount of damages [4, p 13]. In contrast to this view, O. Okyulov, in most cases, the recognition of an absolute right is a necessary condition for the application of another method of protection. In particular, in order to recover damages related to the misuse of a work, the plaintiff must prove the existence of copyright in respect of that work [5, p. 108].

According to K. Mekhmanov, compensation should be a liability of a shareholder (optional) nature; it is advisable to use two alternative forms of compensation for the victim - the recovery of damages or the recovery of a fixed amount of compensation in the absence of the possibility of claiming the benefit received by the offender [6, p. 144].

A.M. Erdelevsky, studying the problems of moral damage, believes that it is necessary to determine the amount of compensation for moral damage based on the degree of danger of the offense, that is, depending on the sanction provided for in the criminal law for this or that offense. It also suggests a category of "base level" of non-pecuniary damage. This figure suggests that it depends on the level of suffering that the victim has suffered as a result of the severe damage inflicted [7, p. 87].

B.Khamrokulov said that the decision of the Plenum of the Civil Code and the Supreme Court of the Republic of Uzbekistan dated April 28, 2000 № 7 "On some issues of application of the law on compensation for non-pecuniary damage" did not provide a definition of guilt, despite the fact that draws attention [8, p. 17].

At this point, although the authors focus on the general aspects of moral damage, the definition of its amount or concept in the Civil Code and legislation, the definition of material and moral damage to the author of the work does not specify which aspects to focus on.

Intellectual property is manifested as a separate asset with a specific value. Intellectual property valuation can be conducted for a variety of purposes, each of which is reflected in four basic concepts of valuation:

Market value: the basis of market value - arises from the assumption that in case the comparable property has a certain price, it is possible to dispose of the property at similar prices;

Replacement cost: the value of intellectual property for the owner is often determined on the basis of the owner's position on the replacement value, based on the price in the negotiated transactions;

Fair value concept: a value that, by its very nature, expresses a desire to be fair to both parties. This concept, in turn, implies that an agreement (not in the open market) entered into in this regard has binding legal force for both the seller and the buyer. This is important for the potential buyer or seller - in determining the optimal price of the transaction, for the lender - in deciding to provide a loan, for the insurance company - in covering the loss;

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Investment value: the liquidation value of an existing enterprise and the value of intellectual property in it are determined based on factors that directly affect the value of the enterprise's assets [9].

National standards have a comparative approach, a cost approach, an income approach. A comparative approach is a set of methods of estimating the value of an asset based on a comparison of the asset being valued with such an asset when there is information about the transaction or bid price with similar assets. The comparative approach is based on the principle of substitution.

The income approach, on the other hand, involves estimating the value of an item of property, plant and equipment by bringing the expected future income from the item to the present value. When the income approach is used, the value of an asset is determined by the value of the income or cash flows or savings incurred as a result of its use.

The cost approach is a set of methods of estimating the value of an appraised object based on determining the cost required to restore or replace it, taking into account the obsolescence of the appraised object. To replace this property, it is possible to create a copy of the original property or other property that can provide the same utility.

This approach makes it possible to obtain a measure of value by calculating the cost of replacing or reproducing an asset and applying discounts to physical and other appropriate depreciation types.

Based on the results obtained under each approach, the final amount of the value of the object of evaluation is determined, which is the generalization of the values obtained using different approaches and methods of evaluation [10].

Valuation of intellectual property is often done for the following purposes:

- Determination of the value of the share in the authorized capital;
- Inventory and economic circulation of intangible assets;
- Optimization of taxation;
- Lending in exchange for the pledge of exclusive rights;
- Attracting investors;
- Settlement of disputes, including disputes over the damage caused by the violation of rights to intangible assets;
- Granting or licensing rights to intangible assets;
- Obtaining tax benefits in the use of industrial property;
- Determining the value of the license;
- Determine the share of profit.

The advantage of commercialization of intellectual property is that it provides the following opportunities to the entrepreneur who owns intellectual property:

- Accounting for value added in the cost of goods produced by the enterprise;
- Additional income from the sale of licenses (licensing);
- To benefit from the sale of exclusive rights to intellectual property;
- Compensation for damage caused as a result of illegal use of the exclusive right to intellectual property [11].

The Resolution of the President of the Republic of Uzbekistan dated May 7, 2018 PD-

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3698 "On additional measures to improve the mechanisms of introduction of innovations in industries and sectors of the economy" provides for the establishment of units of commercialization of scientific and innovative developments in higher education.

Before starting to develop and organize the production of scientific and technical products, it is necessary to conduct an initial assessment of their competitiveness. Marketing and patent research make a significant contribution to this task.

Necessary conditions for the commercialization of the results of scientific and technical activities:

- Documentary confirmation of the fact of creation of the result;
- Existence of rights to the results of scientific and technical activity;
- Assessment of the competitiveness of high-tech products obtained using the results of scientific and technical activities;
- Such as assessing the value of rights to results in scientific and technical activities.

Patent dispute insurance is a relatively new phenomenon, and the insurance scheme is an offer of services provided by large insurance companies in the private sector. The cost of such insurance services is high and cannot be used by small and medium-sized businesses, especially micro-firms and the majority of small businesses. In this regard, there are various models on the market, ranging from reimbursement of the amount set for legal advice in the European markets in particular, to other court costs, as well as damages and liabilities arising from breach of contract by contract agents.

Ensuring the protection of intellectual property and its formation according to the types of protected rights is recognized as an effective model for managing the process of commercialization of intellectual property. These include, for example, patents, utility models, industrial designs, trademarks, engineering, rationalization proposals, trade secrets, business reputation, goodwill, and so on. Such protection may take the form of controlling the use of intellectual property and identifying infringements, examining, assessing damages, restoring intellectual property rights, controlling potential financial proceeds on claims, and so on.

In the experience of foreign countries in the field of intellectual property protection, it is not necessary to have information about the existence of guilt in damages. In this case, it is enough to know the existence of the offense, and this situation can lead to additional damages. Article 13 (1) of European Union Directive 2004/48 also provides for additional damages, taking into account "income received unfairly by the offender" [12].

Compensation is also not directly related to the imposition of a penalty. In this case, the courts may decide to recover additional damages if the actual damage caused to the plaintiff is not sufficient for compensation [13].

If we look at the experience of the CIS countries, the generalization of the jurisprudence on the protection of intellectual property disputes is reflected in the practice of giving guidance in this regard. In particular, the decision of the Plenum of the Supreme Court of the Russian Federation dated April 23, 2019 № 10 "On the application of the

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fourth part of the Civil Code of the Russian Federation." It also covers general issues of intellectual property protection. For example, the site owner independently determines the order of use of the site, so if the results of intellectual activity on the site or means of individualization are posted by third parties and not by the site owner, the site owner is responsible for proving it [14].

The normative decision of the Supreme Court of the Republic of Kazakhstan dated December 25, 2007 № 11 "On the application by courts of certain provisions of the Law on Protection of Copyright and Related Rights" was adopted. The decision of the Plenum addresses issues related to the correct application of certain provisions of the legislation on the protection of copyright and related rights in judicial practice [15].

The decision of the Supreme Court of the Republic of Belarus № 9 of September 28, 2005 "On some issues of application of the legislation in civil cases related to the protection of the right to a trademark and service mark" was adopted. This Plenum resolution explains to the Judicial Board of the Supreme Court of the Republic of Belarus on Intellectual Property that in dealing with intellectual property rights should be considered in full compliance with the Constitution and legislation, and how to apply the laws governing this area [16].

It should be noted that in the Republic of Uzbekistan, due to the relatively small number of disputes in this area, no generalizations and no explanations were given to individual courts at the level of the Plenum.

Below we focus on the analysis of existing judicial practice in our country. On April 2, 2019, the author signed a copyright agreement № 63-2019. Clause 1.2 of the contract stipulates that the author must pay for the creative work, and clause 4.3 stipulates that a separate contract must be concluded with the author after the publication of the book for the copyright fee. However, no separate agreement has been reached.

Also, the contract violated the requirements of the Resolution of the President of the Republic of Uzbekistan dated 14.08.2017 PD-3201 "On measures to further develop the activities of cultural and art organizations, creative associations and the media, to create additional conditions to encourage workers." As a result, the citizen was not paid 50,212,166 soums.

In this case, Article 356 of the Civil Code stipulates that the performance of the contract is paid at a price agreed by the parties. In cases provided by law, there is a violation of the Civil Code on the application of prices (tariffs, tariffs, rates, etc.) set or regulated by the relevant authorities.

Clause 4.2 of the agreement stipulates that after the publication of the submitted work, the author's pen fee will be set at 1,200,000 soums, of which 30% will be paid, and the remaining 70% will be paid after the purchase of the last copy of the published book.

The court found that the work consists of 258 pages, 48 lines on each page, 48 lines multiplied by 258 pages, 12384 lines, the number of lines (column a-paragraph 6 of the work "Poetry" for works up to 5000 copies) with a coefficient of 0.02 and 202730 soums

(2018 50,212,166.40 soums when multiplied by the minimum wage for the year).

Therefore, paragraph 4.2 of the "Copyright Agreement" was declared invalid and a decision was made to charge the author a royalty of 50,212,166 soums [17].

Ensuring justice in the calculation of material and moral damage inflicted on the author of the work, the existence of effective legal mechanisms depends not only on the perfection of the law. The problem of their implementation or the improvement of law enforcement practice has become a topical issue today. It should be noted that this problem is relevant not only for us, but also for many developed and developing countries.

The development of legislation on intellectual property rights, its system of protection methods should be carried out in conjunction with the improvement of the legal framework and judicial practice in this area, the expansion of critical analysis. To this end, the further development of scientific research in the field, the study of issues such as the rich legislative experience of developed countries in this area, the comparative analysis of judicial practice.

It is important to use law enforcement methods when calculating damage to intellectual property. At the same time, it is necessary to specify the restorative and preventive methods of law enforcement. Recognition of copyright, compensation, compensation, etc. are used as a method of restoring the right. Methods to prevent violations include the destruction of counterfeit copies, the liquidation of a legal entity, and the announcement of a court decision on the offense.

When calculating the material and moral damage caused to the author of the work, it should be borne in mind that it can harm not only the author, but also the right holder, the state and society. At the same time, the damage to the state and society is reflected in the non-receipt of taxes and other levies in the state budget and other funds, damage to the country's reputation, loss of investment attractiveness. Also, the rules on compensation for material and moral damage to the health of consumers should be reflected in the legislation.

In calculating the damage, it is necessary to determine the market value of goods, works and services, to take into account the loss of property, damage or impairment of its value due to the offense, as well as losses (lost profits) that may be received in civil proceedings.

CONCLUSION

It is necessary to change the approach to the assessment of intellectual property objects that are not used to obtain commercial benefits, mainly used in solving environmental, social, scientific or educational problems, as the only approach to assessing their market value is the cost approach. It is the market value of the intellectual property object that should be the main criterion in recovering damages. It is expedient to provide this norm in Chapter 6 of the Intangible Assets Valuation (MBS № 9), which is annex 3 to the Unified National Valuation Standard of the Republic of Uzbekistan, in the "Features of valuation of individual objects."

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