



## Copyright offenses and their classification: national and international experience

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### ABSTRACT

Issues of copyright and related rights infringement as well as liability are analyzed in this article in the framework of modern world and Uzbekistan in particular.

### KEYWORDS

Copyright, related rights, administrative liability, criminal liability, counterfeiting, copyright infringement.

### INTRODUCTION

Legal protection to intellectual property objects, care and protection of the rights of the rights holders plays an important role in innovation and economic development of any country. Violation of copyright and related rights is primarily assessed as a civil offense, in which civil law methods of protection are used.

Copyright and related rights in Uzbekistan are now regulated by Laws “On Copyright and Related Rights” (July 20, 2006, No. ZRU-42) and “On legal protection of computer programs and databases” (1994 May 6, No. 1060-XII).

Violation of copyright and related rights is stated in Article 62 of the Law On Copyright and Related Rights according to which:

- Violation of personal non-property rights of authors;
- Violation of executor's rights to protect his name and prevent from different performance or any other infringement;
- Repetition, distribution or other use (with exceptions) of copyright or related rights object without contract with owner of the right;
- Violation of payment requirements in cases provided by this Law;
- Excessive use of copyright or related rights object received under a contract with the owner;
- Other infringement forms of copyright and related rights shall be considered as violation.

Copies of copyright or related rights objects that are reproduced or distributed in violation of copyright and related rights are considered counterfeit copies. According to the Law on Copyright and Related Rights, import of copyright or related rights objects is also considered counterfeit if it comes from a country, law of which suspended protection of such rights or no protection imposed [1].

In turn, according to the Law "On legal protection of computer programs and databases", the author of the computer program or database and other rights holders are empowered to:

- Recognition of their rights;
- Require restoration of conditions existed before the violation and termination of

actions that violate or threaten to violate the law;

- Damage compensation, including the amount of income illegally received by offender;
- Compensation in the amount from twenty to one thousand times of the basic calculation amount, determined by the relevant court decision, instead of compensation for the damage caused by benefited offender;
- Demand other measures related to the protection of their rights to be taken in accordance with the legislation.

The author of a computer program or database and other right holders may apply to the appropriate court to have their rights protected. The court may order confiscation and destruction of copies of software or databases created in violation of copyright. Materials and equipment used to obtain such copies may be transferred to the budget by a court decision or, at the request of the plaintiff, at the expense of compensation[2].

The fact that a defined amount of compensation to be imposed by a court is not indicated in the Law on Copyright and Related Rights Law at present makes in many cases courts reject authors' suits aimed at the recovery of lost profits.

According to the statistics, in 2014-2018, the number of criminal cases under Article 149 of the Criminal Code of the Republic of Uzbekistan amounted to 26, of which 20 were convicted and 6 cases were terminated.

It should be noted that the majority of appeals to the Intellectual Property Agency from authors or right holders are related to the

payment of their royalties. These types of appeals can be directly divided into the following 2 types.

1. Non-timely payment of royalties assigned to author(s) by customers;
2. Copyright fees payable to authors Payment of royalties at a lower interest rate than the minimum rates approved by the Decree of the President of the Republic of Uzbekistan No. PP-3201 dated August 14, 2017.

Meanwhile, Intellectual Property Agency is given the following powers according to the Presidential Decree No. PP-4380 dated July, 1, 2019 “On measures of creating Intellectual Property Agency under the Ministry of Justice of the Republic of Uzbekistan”:

- Conducting research on compliance with the requirements of the intellectual property legislation in the activities of government agencies, enterprises, institutions and other organizations;
- make mandatory submissions to the heads of government agencies, enterprises, institutions and other organizations on the elimination of identified violations, causes and conditions that allow them;
- written warning of officials to prevent violations of the legislation in the field of intellectual property;
- imposing administrative penalties against officials for violation in the field of intellectual property law by state bodies, enterprises, institutions and others.

In particular, the Law of the Republic of Uzbekistan No. ZRU-534 of May 2, 2019 introduced measures of liability for infringement of copyright and related rights

into the Code of Administrative Liability for the first time [3].

According to the amendments, unlawful use of copyright or related rights, as well as duplication, distribution, dissemination of counterfeit copies of works or related rights, or copies of works or related rights, their manufacturers, places of production, as well as copyright misrepresentation of the owners of rights and related rights, confiscation of counterfeit copies of works and objects of related rights, as well as materials and equipment used for their reproduction and distribution, and other offenses, from one to five times the minimum wage for citizens and officials; - a fine of five to ten times.

If similar offenses are committed within one year after the imposition of an administrative penalty, the citizens shall be deprived of five times the minimum wage by confiscating counterfeit copies of works and objects of related rights, as well as materials and equipment used for their reproduction and distribution and other offenses. up to ten times, and officials - from ten to twenty times.

Currently, our country is moving forward to becoming a member of the World Trade Organization. One of the first requirements for membership in this international organization is accession of IPA to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). One of the main requirements of this agreement is that the legislation strengthens the measures of administrative and criminal liability for violations in the field of intellectual property [4]. In addition, the 301st Special Report, traditionally published annually by the US Department of Commerce characterized Uzbekistan's inadequate protection of

intellectual property, particularly copyright and related rights.[5].

According to the above, today Uzbekistan has two important tasks:

- First, to strengthen the responsibility for illegal use of intellectual property;
- Second, to bring national legislation on the protection of intellectual property in line with international rules and regulations.

Experience and practice of Switzerland, the Netherlands, Sweden, the Kingdom of Denmark, the People's Republic of China, Estonia, the Russian Federation, the Republic of Belarus, Ukraine and Kazakhstan in studying the definition of copyright and related rights in administrative liability legislation is also studied.

According to the researchers, in world practice, the damage caused by the circulation of illegal intellectual property is divided into the following types:

- Negative impact on the external image of the country and deterioration of investment climate;
- Damage to the products of copyright holders;
- Damage to the economy as a result of non-receipt of taxes and other payments to the budget and extra-budgetary funds of the state;
- A source of funding for organized crime [6].

Establishing liability helps to strengthen the protection of exclusive rights of intellectual property owners, to prevent and control circulation of counterfeit products, to harmonize the rules and regulations in the field

of intellectual property with international regulations and plays an important motivating role in the development of fair competition in science, literature and art.

In the Criminal Code of the Russian Federation, if the copyright infringement causes significant damage to the author or other right holder is punished by a fine of up to two hundred thousand rubles (more than 27 million soums), or 18 months of withholding from the defendant's monthly salary, or other income, or up to 480 hours of forced labor, or imprisonment for up to six months.

If the above illegal actions were committed by a group of individuals or an organized group, or in a very large amount, or using their official position, up to five years of forced labor, up to six years of imprisonment and a fine of up to five hundred thousand rubles or up to three years' salary or a penalty is imposed in conjunction with or without addition of the defendant's other income. Under Russian law, a large amount of damage caused by the use of copies of phonograms or works or objects of copyright and related rights is estimated at up to one hundred thousand rubles, and a very large amount - up to one million rubles (more than 138 million soums) .[7].

The Criminal Code of the Republic of Belarus also imposes a penalty of coercion or copyright, community service, a fine or up to two years of correctional labor. Illegal use or distribution of copyright and related rights shall be punishable by a fine of up to three years 'imprisonment or up to two years' imprisonment if the same act is committed again within one year after the imposition of an administrative penalty or a large amount of income is obtained as a result of that act.

In the Republic of Belarus, as well as in the legislation of the Russian Federation, these illegal acts are punishable by a fine or imprisonment for a term of up to five years, restriction of freedom or imprisonment if committed by a group of individuals or an organized group or by using their official position.[8].

Georgia's criminal law provides a fine or up to two years' imprisonment for embezzlement or forcible co-authorship. Repeated commission of this act is punishable by up to 3 years of imprisonment or up to 3 years of imprisonment.[9].

The experience of these countries in establishing liability for copyright infringement, as well as prevalence of copyright infringement through telecommunications network today, require reconsideration of the norms of our current criminal law and its harmonization with international experience. In particular, it is necessary to include separate articles in the Criminal Code for violation of copyright and related rights. At the same time, it is necessary to increase the liability for infringement of copyright and related rights.

For this purpose, application of criminal sanctions is desirable in the Criminal Code for illegal use of works or objects of related rights, as well as reproduction, distribution, bringing to the public awareness of counterfeit copies of works or objects of related rights, or indication of false information on copies of works or objects of related rights about their manufacturers, places of their production, as well as copyright and related rights holders.

It should be noted that confiscation of counterfeit copies of copyright and related rights is set by Article 66 of the Law "On Copyright and Related Rights" and Article 16 of the Berne Convention for the Protection of Literary and Artistic Works.

Based on the above, it is necessary to develop a well-thought-out and robust public policy to ensure the protection of copyright and related rights. At the same time, law enforcement agencies are also unable to take action to eliminate all counterfeit products on the market. Another major reason for this is the lack of staff in the judiciary, the prosecutor's office and other competent bodies.

Ensuring copyright protection is one of the most actual and important issues for many countries around the world today. In this context, establishing liability for violation of copyright and related rights is of special importance in strengthening guarantees of rights and legal interests of the copyright owners in the society.

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