

MECHANISMS OF THE LEGAL REGULATION OF INTELLECTUAL PROPERTY RIGHTS IN MASS-MEDIA AND INTERNET.

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Summary: Urgency and significance of considering the problem, related to legal measures of fighting violations of intellectual property right in mass-media and global Internet network is explained by the priority directions of internal and external policy of many countries, including Republic of Kazakhstan, which are aimed at development and improvement of public relations in the sphere of providing protection for all kinds of creative activity, rights and freedoms of the individual and citizen, guaranteed by the Constitution.

Keyword: intellectual property, right, mass-media, global Internet, network, demonstrating, dynamical, growth of crimes

In the context of joining International organizations, multilateral international agreements, which have mandatory requirement for equal protection of intellectual property right for both domestic and foreign authors, anticipating entrance of the Republic of Kazakhstan to the World Trade Organization (WTO), very actual is the problem of improving measures, aimed at fighting problems of legal protection of intellectual property, in particular, providing their legal protection, preventing crimes in the spheres of using results of intellectual activity, in mass media and Internet.

In the process of uncontrolled use of results of intellectual activity, the immeasurable damage is done to the development of the economy of the state, as well as to the authors and legal proprietors, that fundamentally contradicts with the constitutional principles of building democratic state.

Public relations, arising in the process of creating and using the objects of intellectual property, are predominantly regulated by civil and administrative legislation. However, the world practice shows, that existing civil, legal and administrative measures are insufficient for proper protection of intellectual property rights, do not reduce cases of violating these rights, and vice-versa create possibilities of evading responsibility for such type of violations. The analysis of practice of applying legal norms on violations of intellectual property right shows this, demonstrating dynamical growth of crimes, related to violation of intellectual property right, including those, occurring in mass-media and Internet. In this article, the author reveals the problems of protecting intellectual property rights in mass-media and Internet, and ways to solve them.

Almost all types of intellectual property are used in the media and the Internet: copyright and related rights, objects of patent rights, inventions, and other types. However, the protection of intellectual property rights in the mass media and the Internet is not completely ensured, there is no clearly developed mechanisms to protect intellectual property rights in this area. Violations in the media and the Internet apply to both print and on audio, video, television, radio and electronic media. "Violations in video business are often organized; making them "pirates" use transnational links, smuggle "pirate" copies of films in Russia". [1]

Radical changes in the information relations of the society are primarily associated with the use of global computer networks, primarily, information network of the Internet. Feature of the Internet is that it was created as a basically open system providing free and anonymous access to information resources. [2]

Criminalization of the information sphere is reflected in the emergence of new types and forms of high-tech crimes involving the use of the latest achievements of science and technology. The distinguishing feature of this type of crime is the use of new information and telecommunications technologies, inventive use of new methods and techniques of criminal activity, the growth of criminal professionalism. [3]

Spread of crime in the media and the Internet acquires a global scale and covers various areas of social activities, including copyright and related rights, as well as other intellectual property rights.

Russian scientists: Kantorovich Ya.A., Pylenko A.A., Shershenevich G.F. were involved in copyright protection in the pre-revolutionary period.

Asinovsky M.N., Belilovsky A.N., Druchok G.N., Zenkin N.M., Ihsanov U.K., Ihsanov E.U., Garibyan A.D., Kamyshev V.M., Melnik E.F., Namengenov K.S., Nosov V.D., Omelchenko A.I., Rassokhin V., Salman I.G., Skripko Ye.Ya., Sharahmetov Sh. G., Chertkov V.P., Tytskaya G.I., Yurchenko A.K. and other were involved in the intellectual property rights protection in the Soviet period.

Works of leading domestic and foreign scholars and professionals were devoted to legal relations in the sphere of intellectual property. Among foreign authors whose works are devoted to their legal regulation, should be called Alekseyev A.A., Asfendiyarov B.M., Bliznets I.A., Boguslavsky M.M., Vaksberg A.I., Vengerov A.B., Vitaliev G.V., Gavrilov E.P., Garibyan A.M., Gordon M.V., Gringolts I.A., Dozortsev V.A., Illarionov T.I., Jonas V.Ya., Ioffe O.S., Kaitmazova B.V., Kalyagin V.O., Kamyshev V.G., Kirillova M.Ya., Koretsky V.I., Krasavchikov O.A., Krasavchikova L.O., Matveyev Yu.G., Mamiyof I.E., Nikitina M.I., Ryasentseva V.A., Savelyev I.V., Sergeyev A.P., Serebrovsky VI etc.

Some questions of criminal liability for committed crimes were mentioned in works of some Russian scientists and practitioners as: Bliznets I.A., Bondarev V.N., Dem'yanenko E.V., Dvoryankin O.A., Zavidov B.D., Zlotya V.P., Kovalenko A.A., Larichev V.D., Logvinov Yu.V., Silonov I.A., Spirin G.M., Stupnikov A.G., Tereshchenko B.L., Truntsevsky Yu.V., Chukovskaya Ye.E., Shcherba S.P. and other authors.

In the Republic of Kazakhstan Abuova R.J., Aligozhin B.K., Amangeldi A.A., Askarov A.I., Beysembina K.E., Ihsanov E.U., Ihsanov U.K., Kaudyrov T.E., Namengenov K.N., Sakhipova N.N., and Kapyshev A.E. were involved in separate issues of intellectual property civil protection.

Along with this, the analysis of literature on this subject leads to the conclusion that the issues of complex prevention of crime in the media, the Internet, as well as in the field of intellectual property were not considered in full.

Currently in Kazakhstan, after independence, number of legal documents governing the intellectual property rights protection were adopted: The Constitution of Kazakhstan, the Criminal Code, the Civil Code, the Code of Administrative Offences, the Law "On Copyright and Related Rights", "Patent Law of the Republic of Kazakhstan", "On Legal Protection of Integrated Circuits Topographies", "On protection of Selection Achievements", "On the Media". International instruments: Convention Establishing the World Intellectual Property Organization (WIPO) on July 14, 1967, the Berne Convention for the Protection of Literary and Artistic Works (as amended in 1972), and the Madrid Agreement on International Registration of Marks dated 1891 etc.

The desire of countries to be a member of the World Trade Organization (WTO) imposes compliance with a number of requirements: legislation corresponding to TRIPS, i.e. the to the minimum current requirements; Intellectual Property Office, staffed and well equipped to provide protection of intellectual property; judicial system - well-prepared, impartial and transparent, the authoritative to impose bans, fines and other penalties;

Police - well-trained, transparent in its operations, the authoritative to impose penalties, can recognize and seize counterfeit products; customs - well-trained, equipped with the equipment and having the knowledge to recognize and seize counterfeit goods at the border; corps of lawyers in the private sector, including private investigation and agents able to cooperate with authorities who are able to recognize counterfeit products and producers; associations and unions of producers and rights owners, other persons, specializing in intellectual property matters [4, p. 24].

Currently illegal use of intellectual activity by different business structures, including the media and the Internet, causing great damage not only to the authors, creators and performers of intellectual property, but also a significant damage to the state, as the state budget does not receive taxes for the production, use and trafficking in counterfeit goods. "In the CIS member states level of counterfeit goods ranging from 73% to 94% (Ukraine - 90%, Belarus - 94, Kyrgyzstan - 86, Georgia - 73 %, the latter two countries are members of the WTO), and in countries such as U.S., Britain, France, the Czech Republic it is less than 10 %, Finland and Italy - 10-25%, Poland and Brazil - 25-50%" [5, p. 61].

The various ways of pre-trial protection of the right holder have spread in some foreign countries. The most interesting way to protect the copyright holder has been developed in the Anglo-Saxon system. Such tool as "Anton Piller order" became widely known. Its essence lies in the fact that at the request of the right holder, the court may issue an order authorizing that person to inspect the facility where it believes committed acts that violate his exclusive rights.

Another well-known tool is "Mareva injunction", which is aimed at restricting the defendant in property disposal, including the intellectual, which may be required to satisfy the claim.

The third important tool is "Norwich Pharmacalaction", important in conducting business activities abroad. First, this way of protection was applied in 1972 in Norwich Pharmacal case, when the claimant asked the customs authorities to disclose confidential information about individuals, importing into the country medicines containing an ingredient patented by him [6, p. 433].

Choosing way of intellectual property rights protecting, it is better to look at many years of experience

and best practices for dealing with violations of intellectual property rights of those countries that can be attributed to countries with high economic development and the most developed industry intellectual property.

As world experience of intellectual property industry shows, a significant role in the economic development of civilized nations belongs to the legal protection of intellectual property. One of the leading countries in the world for all positions in the scope of application and protection of intellectual property, including in the media and the Internet is the United States.

Creation of legislation in the field of intellectual property protection in the United States was observed after the War of Independence (1775-1783), when the U.S. Congress passed a resolution recommending ensuring copyright protection in a number of states. Later, in 1787 in the U.S. Constitution was recorded a provision stating that the U.S. Constitution gives Congress the power “to promote the progress of science and useful arts, by guaranteeing to authors and inventors the exclusive right to their works of art and invention for a certain period of time”.

United States is the first state to take steps to protect their intellectual property at the international level. Special section 1303 Section 301 of the General Law on Trade and Competition, adopted by Congress in 1988, provides for the identification of countries that violate the rights of Americans to intellectual property. At the turn of the twenty-first century American intellectual property industry, in particular copyright, is one of the largest and fastest growing sectors of the U.S. economy. In 1991, all kinds of copyright industry: software industry, cinema, television and video industry, the industry of music and sound recordings, publishing industry and others have provided 325 billion dollars on value added, or about 5.5 % of GDP. In this aspect, the copyright industry is investing in the U.S. economy more than any single manufacturing sector, including the production of aircrafts and their spare parts, primary metals, metal products, electronic equipment, industrial equipment, food and related products, chemicals and allied products.

Copyright industry creates jobs faster than many of the leading sectors of the economy. Now the U.S. copyright industry employs more workers than such industries as aeronautics, automotive, steel, pharmaceutical, textile, etc.

Currently in the United States there is a law “On Copyright”, which is a federal law. Court prosecutes criminally violation of this law, when committed intentionally, in order to obtain commercial advantage or private financial benefit.

American Cinematic Association (ACA) is engaged in fight against “piracy” in the United States in the production and distribution of films and videotapes. American Recording Industry Association (ARIA) protects the products of its member companies through fighting against pirated recordings at the level of production, distribution and retailing.

National Association of Music Publishers (NAMM) represents the interests of more than 500 U.S. companies, who are the owners, managers or administrators of copyright in musical works. The Association participates in numerous lawsuits, protecting the rights of music publishers and protecting the legal principles in the field of copyright.

Business Software Alliance (BSA), which represents the interests of major U.S. companies that manufacture about 75 % of software packages in the world tirelessly fights against “piracy”, which annually brings industry losses of \$ 2.2 billion. BSA activities in fighting against “piracy” include lawsuits, sudden raids and audit companies.

Huge money is involved in the field of copyright industry. With the development of information and other high technologies, this trend will increase. That is why the U.S. is taking strict measures for the elimination of “piracy” as within their own country and abroad. The U.S. government is ready to break even on the trade and industrial relations with those countries that do not comply with the legal protection of intellectual property [7, pp. 12-199].

U.S. law makes the protection of intellectual property as one of the criteria that are used to assess countries' rights to receive economic benefits under the U.S. Generalized System of Preferences and the Caribbean Initiative. In addition, U.S. trade laws provide for an annual review of other countries' legislation, regulating the protection of intellectual property rights through penalties. In 1988, an amendment was made to the U.S. trade law, which allowed the U.S. government to respond to inadequate or ineffective protection of intellectual property rights [8, p. 39].

Strengthening the protection of intellectual property rights in countries with high-tech industries, stricter patent regime had a positive impact not only on the economy of these countries, but also in other spheres of public life. In 1996, Brazil adopted a very good patent law. Since then the country has attracted new investments

in the amount of from 1.7 to 2.2 bln. Dollars in high-tech industries, especially concentrated in the pharmaceutical sector. In Japan, where patent protection of pharmaceuticals was not until 1978, also felt the sharp rise of U.S. investment in pharmaceutical R & D - from 135, 8 million Dollars in 1985 to 505.5 million Dollars in 1994. Similarly, countries that strengthened patent protection for pharmaceuticals, achieved impressive growth in the national pharmaceutical industry. Italy has introduced a strong patent protection of pharmaceuticals in 1978. The same year only 123 billion lire were invested in local pharmaceutical R&D. And just in ten years, these investments have increased to 592.3 bln. lire and continue to grow. Mexico has strengthened the system of patent protection in 1991. As a result, investments in R&D, and in enterprises for production of medicines has increased a total of 41 million Dollars in 1990 to 103 million Dollars just three years later [9, p. 90].

Analysis of legal mechanisms for intellectual property rights protection in Kazakhstan shows that the effectiveness of the measures is not sufficient [10, pp. 97-101]. One of challenges is intellectual property rights protection in computer systems, the World Wide Web. Increasing concern in recent years is the protection of intellectual property rights in the use of pharmaceuticals, as in this case, in the use of counterfeit drugs, which are usually made of poor quality, as a result - does great harm to public health, and sometimes leads to death.

To solve these problems of the intellectual property legal protection in the Internet, the media, in our opinion, it is necessary to take the following measures:

1. Use a positive experience dealing with violations of intellectual property rights of foreign countries with developed intellectual property industry.
2. Harmonize domestic standards in the licensing, use, protection and security of intellectual property with international.
3. Improve technical measures for the intellectual property rights protection, to develop non-reproducible identification features of original and licensed products.
4. Organize training among law enforcement staff in the field of intellectual property rights protection.

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