

<sup>10</sup> Info Act 26. § (1) és 28. § (1)

<sup>11</sup> e.g. *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, no. 39534/07, 28 November 2013.

<sup>12</sup> European Commission versus Technische Glaswerke Ilmenau GmbH, C-139/07.P., ECLI:EU:C:2010:376; Európai Bizottság kontra The Bavarian Lager Co. Ltd., C-28/08.P., ECLI:EU:C:2010:378; Kingdom of Sweden versus Association de la presse internationale ASBL (API) and European Commission, Association de la presse internationale ASBL (API) versus European Commission and European Commission versus Association de la presse internationale ASBL (API), C 514/07. P., C 528/07. P. és C 532/07. P. sz. consolidated cases, ECLI:EU:C:2010:541.

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### SOME ASPECTS OF PROTECTION OF COPYRIGHTS ON THE INTERNET

In the modern age, the Internet is an invaluable means of getting information and extending connections across the globe. Development of the information networks has gradually converted the world to a single space of information and communication. The global network develops at a rapid pace. Currently, the number of Internet users across the globe is nearly 2 billion, and thousands of new users connect to the network every day [11, p. 2]. The Internet enables us to get information in a rapid, easy and cheaper way and analyze and transmit it. The Internet is the cheapest means of communication for getting, copying and disseminating information and is accessible to everyone across the globe. As F. Harry, the Director General of the General Assembly of WIPO said, the Internet has currently turned into a global sphere and provides unique conditions for the developing countries to take part in the digital market [5].

A number of scientific, literary and art works, films, phonograms, photos and computer applications have been accessible a digital form via the Internet. Major infringements of the Internet network are related to copyrights. It is observed that, such problems related to copyright infringement as changing, copying, selling, disseminating and duplicating the new works emerging in relation to protection of copyrights increase rapidly related to the development of the Internet and the ICT. Among the most noticeable problems are the rapid development of the information communication technologies and, in this regard, the protection of copyrights in the networks and the Internet. Thus, the Internet has emerged as a technology which assumes as much importance as J. Gutenberg's book printing machine for copyrights besides, a new type of public relations—the Internet relations and online communication emerged. The society faced the problem at the time when information was circulated in a digital form and the available regulations failed to suffice for regulation of newly established public relations [12, p. 25]. On the other hand, the pace of development of normative legal regulation concerning the protection of copyrights on the Internet lags behind the speed of the Internet (18, p. 53). Another important point worth noting is that the specifications of the Internet have not been taken into account in most of the laws directed to protection of copyrights.

Different works, technological applications, audio-video works, different texts and such other forms of intellectual property disseminating via the ICT can also be mentioned, some of which are the objects of the copyright. The Internet services and platforms within the Web-2.0 framework, such as Wikipedia, Facebook, MySpace and the platforms, such as YouTube, Flickr blogs (Twitter), Peering networks P2P, file sharing networks (Bit Torrent), which are used for user content expand connections for information exchange, that is to say facilitate the violation of copyrights. The statistic data estimates that, 59 % of mobile graphics of users per day across the globe is concerned with videos. Approximately 151 million people watch video in “Google” and more than 5 billion photos are shared on “Facebook” social network every day. The videonews uploaded in YouTube is around 2,5 mln/h [17, p. 3].

Moreover, the Internet acts as the nuclear of information that provides connection among the information networks belonging to different organizations in the modern world [11, p. 2]. Therefore, the protection of objects which are the output of scientific activity on the Internet, within the intellectual property rights are of special importance and we believe that, this problem should be considered in the context of the Internet regulation.

To clarify the solutions of the foregoing problem, we will focus our research on answers of a few questions: What are the problems regarding the copyrights on the Internet? For what reasons, the existing copyrights remain unprotected in the Internet space?

As it seems, ICT develops both technically and in scope. As a result of development of the digital technologies and expansion of the Internet network, the intellectual property objects have exposed to changes. In this regard, the problems caused by the copyright infringements on the Internet are, first and foremost, related to the properties of the global network (globalization, exterritoriality, accessibility for everyone, interactivity, anonymity and so forth) (16. p. 22) It should be noted that, copyrights are violated when the works published on the Internet are changed, duplicated, sold, disseminated, copied, exorbitantly shortened or edited in most cases and such problem proliferates in relation to development of the Internet and ICT. According to John Perry Barlow, one of the founders of “Electronic Frontier Foundation”, electronic information is like wine and the copyrights regime is like to protect the glass.

But there is no glass in the Internet, so the copyrights regime is to protect the works physically identified as a book. Barlow believes that information and knowledge require milieu of freedom [20, p. 8].

Today, the Internet has gained the highest opportunities without any legal regulations and henceforth there is no need to any legal regulation. The following directions can be mentioned regarding copyright infringement on the Internet network: piracy and illegal use of domain names in the virtual space. Pirates (producers of contrafact copies) generate incomes in large quantities with no costs from the intellectual property objects and as a result, authors are discouraged. Copyrights infringement is still a problem in the software and the loss caused thereby amounts to billion dollars. Besides, the International Chamber of Commerce forecasts that, if no radical measures are taken against piracy and contrafaction, the worth of damage to the world economy will be more than 1,7 billion US dollars in 2017, which means loss of 2,5 million job places every year. The application of musical content in the digital network is followed by 95 % piracy. In the end of the first decade of the XXI century, according to WIPO estimations, more than 40 billion music files have been shared illegally among users, which led the piracy to 95 % [5].

As a result, the authors cannot take benefit from the output of their intellectual property and on the other hand, they cannot bring any claims against the offenders or believe that such claims produce no results. The Internet possesses abundant and invaluable opportunities for fast replication of the copies of the works with almost no costs. Because the digital copyrights cannot be protected in an effective way, the conception of traditional copyrights has lost its importance. Therefore, another problem for the authors and right holders arising when intellectual property rights and especially copyrights take a place in the cyberspace is that, on one hand, though copyrights are not duly protected, abundant opportunities are provided for authors to share and realize their works, while on the other hand, scientists and researchers are left with limited opportunities to gain proceeds from the sale of their works, which deprives them of material stimulation and poses a danger for the moral and creative interests of the authors. So the authors lose enthusiasm in creativity. As a result, the copyright infringements on the Internet network causes material and moral damage to the authors. The specialists also suggest that, two various motives lie at the bottom of the copyright infringement on the Internet: first of all, the urge to gain profits and secondly, the urge to share and learn [20, p.7].

Another problem is that, the national and international laws related to protection of copyrights on the Internet have not been developed enough. So it can be concluded that, it is not possible to protect the copyrights on the Internet. Is it really so? How can the copyrights be protected on the Internet? How to provide the royalties to be paid to author? What opportunities of the Internet and regulations can be used to solve the problem?

The conducted researches suggest that, the new technologies pave the way for solution of this problem [13]. A special program gives an opportunity to locate a code in the electronic documents via modern technologies, which results in entire loss of the document in the cases when they are illegally used (printed, copied or sent). Furthermore, the commercial sites possess efficient technical control systems which enable us to follow and prevent the users from using any material illegally. However, a number of problems still remain in this field for some reasons [6, 7].

Scientists and specialists have brought forward some ideas in a few directions regarding the copyrights on the Internet. Generally, a few tendencies are followed regarding the protection of copyrights in the digital network and the use of works via the Internet (theoretical views). A group of specialists suggests that, copyrights on the Internet should be abandoned and use the works freely only referring to the author. Another group believes that, copyright objects can be used freely on the Internet provided that the author shall be provided with a certain amount of remuneration. One of the specialists U. Fisher recommended alternative system of contribution in return of free use of the works and suggested following the use of works via an identifier received from the state authority for registration of the work and digital rights, withholding some funds as a tax for entry into digital resources and distributing such funds among authors for their rating [4, p. 20–25]. Of the specialists, A. Dolginin, B. Budnikin and N. Mikhalkov have supported the idea of model which considers the taxation. The third group of scientists and researches believe that, user rights should be made strict by being limited. We reckon that, the most acceptable one of the suggested solutions is the ideas of the second group. In such case, it will be possible to use the works on the Internet by paying royalties to the author and with no permission, which is deemed to be the fairer and proper approach. On the other hand, the reasons we do not agree to the opinions of the third group specialists are that, it can lead to a confrontation with the users' right to get information in some cases while on the other hand the limitation of such rights and tightening of the regulations cannot be deemed acceptable in the Internet space [17]. The other group of specialists has brought forward an interesting idea based on which, they suggest that information should be distinguished as commercial and non-commercial purposes. If information is used for commercial (personal benefit) purposes, the author should be paid royalties in such case or otherwise, if information is shared publicly not forgetting any benefit or profit, then no royalties should be paid to the author [19, p. 60].

Based on the foregoing, it can be concluded that, the features of protection of copyrights on the Internet are first related to legal nature of the Internet and secondly, legal relations in the Internet network. In this regard, no state of the world was ready for a fast change, so they are now not able to react adequately to such a change. As a result of our researches, it should be noted that, copyrights in the global network can be protected by different methods, which necessitates taking of both legal and technical measures [10, 14]. Copyright is a national right. Protection of copyrights puts the national systems in danger. It should also be considered that, the regulation of using the Internet as a common resource of usage cannot expose to any limitations under the national laws [8, p. 17]. On the other hand, when the problem covers a few states, that is when such rights are established (the work is registered in a country) in a country and are violated in another country, it gets difficult to provide protection. At this point, it should be considered that there may be distinctions in internal legal regulations, provisions and protection mechanisms of different

states in which copyrights are established and (or) used. Though this issue should be paid attention in most of international-legal acts related to information exchange in this or another manner, the development of laws in terms of intellectual property lags behind the speed of the Internet. According to the results of the conducted researches, it was found that, the regulations of other countries than the USA and the EU countries on protection of copyrights on the Internet are still in the initial stage of their development [9, p. 388]. But this is not related to ignorance to the properties of the Internet. On the other hand, the specific properties of the Internet have not been taken into account in the legislative measures related to regulation of the Internet. Therefore, the problem related to protection of copyrights remains as a complicated problem. Because the conception of traditional copyrights is affected as a result of fast development of the Internet, the provision of unification of the mechanism of protection of copyrights on the Internet is of special importance. In this regard, the role of international cooperation for protection of different rights in global network is undeniable and this is one of the most important points for solution of the problem.

Considering the legal provisions of the solution of the problem it should be mentioned that, this issue has always been in the spotlight in national and international level. A number of conventions and agreements which envisions the cooperation of states have been approved in this respect. In this sense, TRIPS agreement has not changed the international agreements existing long ago, but has led to protection of copyrights in an extensive and active form. The TRIPS agreement signed almost by all states has been a giant step taken for protection of intellectual copyrights and the specific articles regarding the computer programs have been mentioned in the agreement. According to the 10th article which deals with computer programs and data compilation, computer programs are protected in accordance with the Bern convention as literary works in both initial text and code of object. The compilations of data and other materials, reading of them by machine or in another form, choice among them or correction to their content shall be protected as an output of creative labor [1, p. 410].

Upon “Copyright” directive dated May 22, 2001 of the European Union and other acts, the European Union has taken both legal and institutional measures for generalization and harmonization of practices in the member countries in this field.

One of the important documents approved in the regional level for protection of different rights on the Internet is “Directive on copyrights for works used online on control of digital rights and on collective management of related rights” adopted by the European Parliament on the eve of the 45th anniversary of establishment of the Internet in 2014.

The countries which chose integration into EU make efforts to correspond the national laws to certain aspects of copyrights No. 2001/29EC of the European Parliament and Union and the regulations of Directive on harmonization of related rights in the information society. The directive reflects some important provisions directed at implementation of national legislation of the member countries. The right holders are divided into 5 categories in the Directive “On copyrights in the Information society”: authors, performers, phonogram producers, audiovisual work producers and broadcasting organization. The main purpose of the project is to protect rights in the digital network via legislation and management system [5].

Saule Tlevlessova, the head of the sector for the Caucasus, Central Asian and Eastern European countries of the department of developed WIP countries with transition economy, has told that, there is a contradiction between the openness of the Internet and provision of accessibility for users to the digitized works and the protection of rights of authors and rightholders. This can lead to conflict of interest and violation of rights”. To have a common ground, it is recommended that the World Intellectual Property Organization should apply to all member states and every state should suggest projects on the basis of the national laws [17].

Generally, what should the authors do when authorship rights are violated on the Internet and what responsibilities are provided for such violation? First and foremost, if an author has found out a fact that his works are used or names of his works are changed without his consent, he can directly and immediately apply to the management (administrator) of the site for prevention of succ copyright infringements (indicating the infringement). To apply to the site management regarding copyright infringements, first of all, there should be a base of proofs [14]. But depending on the degree of violations, the author may bring a claim in a civil manner in the court, as well as file a complaint to court in the manner specified by administrative and criminal procedural legislation. Along with civil responsibility measures we mentioned for copyright infringements, administrative and criminal responsibility has been prescribed by legislation. On the other hand, though the protection of copyrights on the Internet is of complex nature, it does not suffice to protect the copyrights. Moreover, considering the fact that everybody has a right to get and to share the information, they cannot be deprived of such rights [2, p. 218; 3, p. 71].

Thus, generalizing the foregoing, it can be concluded that, the activity regarding the protection of copyrights on the Internet can be characterized as below:

1. Works are globalized in an electronic environment. The Internet is a world of freedom and it does not require the limitation of its development by extremely legal or technical regulations.
2. The works can be easily copied or shared on the Internet. In such case it is almost not possible to notice difference between the original and the copy of the work. The Internet enables especially using the creative labor of authors via weak protection systems.
3. The limits of such protection regarding Web pages or their content have not been determined yet.
4. It still remains difficult to specify offences and offenders directed over the Internet to the rights and to prevent such offences.
5. Regarding the development of the ICT, the conception of traditional copyright has lost its actuality.
6. Copyrights of any work and user’s copyrights are provided by different national laws.

7. Legal and technical base of struggle for protection of copyrights on the Internet is weak, the regulations related to protection of copyrights on the Internet lags behind the speed of the Internet and protection of copyrights on the Internet and national and international regulations have not been sufficiently developed, which still remains as a serious problem.

8. Copyrights are rapidly changing. The Internet is a common source of usage which cannot expose to any limitations by national regulations. Another important point worth noting is that the specifications of the Internet have not been taken into account in most of the laws directed to protection of copyrights.

9. Legal base has not been fully formed in any country of the world. The regulations of the states in terms of copyrights and considering of such regulations as unchangeable and imperative by them has brought about obstacles in the international cooperation. We believe that, the digital copyrights on the Internet should be protected by technical and sort of program tools. On the other hand, the development of the ICT makes necessary the establishment of new protection systems. To identify copyrights on the Internet and protect them, it is necessary to take legal measures and support such acts technologically. Considering the global features of the Internet, it is necessary to provide the unification of national laws regarding the intellectual property of different countries in relation to digital copyrights, the most efficient means of which is to conclude regional and bilateral agreements.

<sup>1</sup> *Cullet, Philippe*. "Human Rights and Intellectual Property Protection in the TRIPs Era", *Human Rights Quarterly*, 2007. Vol. 29, pp. 403–430.

<sup>2</sup> *Heins, Volker*. "Human Rights, Intellectual Property, and Struggles for Recognition", *Human Rights Review*, 2008. Vol. 9, pp. 213–232.

<sup>3</sup> Kurbalija J., *Internet Governance*, Published by DiploFoundation, Geneva, 2014, 212 pp.

<sup>4</sup> *William Fisher*. "Promises to keep: Technology, Law and the Future of entertainment" Stanford, Stanford University Press, 2004, 340 pp. ISBN.

<sup>5</sup> <http://www.wipo.int/lisbon/en/general/>

<sup>6</sup> Авторские права в интернете / Обучение / Центр. – [http://www.itlt.edu.nstu.ru/copyright\\_internet.php](http://www.itlt.edu.nstu.ru/copyright_internet.php)

<sup>7</sup> Авторское право и Интернет. Библиотека I2R. Вопросы авторского права. – [www.i2r.ru](http://www.i2r.ru)

<sup>8</sup> *Бабкин С. А.* Интеллектуальная собственность в сети Интернет. – М.: АО «Центр ЮрИнфоР», 2005. – 215 с.

<sup>9</sup> *Дозорцев В. А.* Интеллектуальные права: Понятие. Система. Задачи кодификации. Сборник статей/ Исследовательский центр частного права. – М.: Статут, 2005. – 416 с. – ISBN 5-8354-0168-X.

<sup>10</sup> Защита прав в Интернете, восемь шагов. – [http://www.copyright.ru/documents/zashita\\_prav\\_internet/](http://www.copyright.ru/documents/zashita_prav_internet/)

<sup>11</sup> *Казанцев С. Я., Згадзай О. Э.* Концепция Авторские права и их защита в сети интернет. Журнал Вестник Казанского юридического института МВД России. – Выпуск № 1/2010.

<sup>12</sup> *Рассолов И. М.* Право и Интернет. Теоретические проблемы. – М.: Норма, 2009. – 383 с.

<sup>13</sup> *Якова Т. С.* Авторское право в интернете: швейцарский опыт. Электронный научный журнал «Медиаскоп». Выпуск № 4, 2012 г. – <http://www.mediascope.ru/node/1237>

<sup>14</sup> 6 способов защиты авторского права. 2013. – <https://habrahabr.ru/company/lendwings/blog/189338/>

<sup>15</sup> *Əliquliyev R. M., Mahmudov R. Ş.* Internet mühitində intellektual mülkiyyət hüquqlarının qorunması məsələləri. *Ekspress-informasiya. İnformasiya cəmiyyəti seriyası*, Bakı, "İnformasiya Texnologiyaları" nəşriyyatı, 2010, 60 s.

<sup>16</sup> *Əliquliyev R. M., Ağayev N. B., Aliquliyev R. M.* Plagiatçılıqla mübarizənin elmi və texnoloji əsasları: təkamül yolu və müasir vəziyyət. *İnformasiya texnologiyaları problemləri*. Bakı. – 2014. – № 1. – 18–25. <http://jpit.az/storage/files/article/76b60127f521b9de98ea5c5e3b730b21.pdf>

<sup>17</sup> *İmanov K. S.* "İnternet və müəlliflik hüququ: maraqların toqquşması və kompromisin axtarışı". Azərbaycan Respublikası Müəllif Hüquqları Agentliyi. Bakı, 2016. "Exo" ictimai-siyasi qəzetinin 24 yanvar 2015-ci il tarixli 14-cü (3411) nömrəsi

<sup>18</sup> *Mahmudov R. Ş.* Internetin tənzimlənməsinin aktual məsələləri. AMEA İnformasiya Texnologiyaları İnstitutu, İnformasiya cəmiyyəti problemləri, Bakı, 2010. № 2, <http://jpit.az/storage/files/article/b84eb3b27c4ea6b356340cba6b40dd63.pdf>

<sup>19</sup> *Məcidli S.* Internet hüququ və etikası. Dərs vəsaiti. Bakı. Avropaya İnteqrasiya Mərkəzi. Bakı. 2015. 222 s. [www.e-integration.az/framework/INTERNET%20HUQUQU.pdf](http://www.e-integration.az/framework/INTERNET%20HUQUQU.pdf)

<sup>20</sup> *Acun, Ramazan*. "İnternet ve Telif Hakları". *Bilgi Dünyası*, 1(2000), 5–26. <http://yunus.hacettepe.edu.tr/~acun/InternetTelif.pdf>

<sup>21</sup> Internet Alan Adı (Domain Name) Haklarının Korunması. *Sefer Oğuz*. 2014. 511 s. <http://www.legalkitavevi.com/sefer-oguz/internet-alan-adi-domainname-haklarinin-korunmasi-.htm>

<sup>22</sup> Internet ve Telif Hakları <http://blog.milliyet.com.tr/internette-telifhaklari/Blog/?BlogNo=132842>

## Резюме

### **Сафаров А. Т. Деякі аспекти захисту авторських прав в Інтернеті.**

Захист авторських прав в Інтернеті й отримання авторами гонорарів за їхню інтелектуальну власність є актуальними проблемами в усьому світі у зв'язку з тим, що захист цифрових прав авторів традиційними методами не є ефективним, концепція традиційних авторських прав втратила свою актуальність. До правопорушень у сфері авторських прав у мережі Інтернет належать піратство й незаконне використання доменів у віртуальному просторі. Зазначено, що законодавства країн щодо захисту авторських прав в Інтернеті, за винятком США і країн Євросоюзу, перебувають на стадії розвитку. З іншого боку, темп розвитку нормативно-правового регулювання щодо захисту авторських прав в Інтернеті відстає від швидкості самого Інтернету. Які можливості Інтернету та законодавства слід використовувати, щоб домогтися вирішення даної проблеми? У результаті проведених досліджень було встановлено, що нові технології дають можливість вирішити ці проблеми й вжити різні правові заходи та підтримувати дані технологічні акти з метою визначення та захисту авторських прав в Інтернеті. Тому можна дійти висновку, що з огляду на глобальні властивості Інтернету, слід уніфікувати національні законодавства щодо авторських прав різних країн. Найефективнішим засобом цього є регіональні й двосторонні угоди.

**Ключові слова:** авторське право, суміжні права, інтелектуальна власність, права інтелектуальної власності, автор, плагіат, піратський продукт, піратство, інтернет, авторське право в інтернеті, гармонізація, підроблена копія, доменне ім'я, права людини, культурні права.

#### Резюме

**Сафаров А. Т. Некоторые аспекты защиты авторских прав в Интернете.**

Защита авторских прав в Интернете и получение авторами гонораров за их интеллектуальную собственность являются актуальными проблемами во всем мире в связи с тем, что защита цифровых прав авторов традиционными методами не является эффективной, концепция традиционных авторских прав потеряла свою актуальность. К правонарушениям в сфере авторских прав в сети Интернет относятся пиратство и незаконное использование доменов в виртуальном пространстве. Отмечается, что, за исключением США и стран Евросоюза, законодательства остальных стран относительно защиты авторских прав в Интернете все еще находятся на стадии развития. С другой стороны, темп развития нормативно-правового регулирования относительно защиты авторских прав в Интернете отстает от скорости самого Интернета. Используя какие возможности Интернета и законодательства, можно добиться решения данной проблемы? В результате проведенных исследований было установлено, что новые технологии дают возможность решить эти проблемы и необходимо предпринять различные правовые меры и поддерживать данные технологические акты с целью определения и защиты авторских прав в интернете. Потому можно прийти к заключению, что учитывая глобальные свойства Интернета, необходимо унифицировать национальные законодательства относительно авторских прав различных стран. Самым эффективным средством этого являются региональные и двусторонние соглашения.

**Ключевые слова:** авторское право, смежных правах, интеллектуальная собственность, права интеллектуальной собственности, автор, плагиат, пиратский продукт, пиратство, интернет, авторское право в интернете, гармонизация, поддельная копия, доменное имя, права человека, культурные права.

#### Summary

**Safarov A. Some aspects of protection of copyrights on the Internet.**

Among the current problems across the globe are protection of copyrights on the Internet and failure of authors to get royalty for their intellectual property. Because the authors' digital copyrights cannot be protected by traditional means effectively, the conception of traditional copyrights has lost its actuality. The following directions can be mentioned regarding copyright infringement on the Internet network: piracy and illegal use of domain names in the virtual space. It is highlighted that, the regulations of other countries than the USA and the EU countries on protection of copyrights on the Internet are still in the initial stage of their development. What is more, the pace of development of normative legal regulations related to protection of copyrights on the Internet lags behind the Internet speed. What means of the Internet and the regulations can be utilized to address the problem? The conducted researches suggest that, the new technologies pave the way for solution of this problem. It is necessary to take various legal measures and support such acts to determine and protect the copyrights on the Internet. Finally, in consideration of the global properties of the Internet, it is concluded that, unification of the regulations of different countries regarding the copyrights has become necessary, of which the most efficient tool is regional and bilateral agreements.

**Key words:** copyright, related rights, intellectual property, intellectual property right, author, plagiarism, pirated product, piracy, internet, copyright in the Internet, harmonization, counterfeit copy, domain name, human rights, cultural rights.