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THE HISTORY OF INTELLECTUAL PROPERTY RIGHTS REGULATION IN AZERBAIJAN

In terms of relations with the state, rights and freedoms are divided into two categories: human rights and civil rights. Human rights are the right to be born as human beings regardless of their political affiliation with the state. In this sense, rights are universal and belong to any individual, irrespective of other factors. Human rights are available not depending on their state regardless of their legal status. Civil rights are formed on the basis of political and legal relations with the state, recognition by the state, and legislation. Right to intellectual property, freedom of labor is a group of rights and freedoms, regardless of citizenship. Natural rights belong to individuals regardless of time and place. In the 17th century, the British philosopher John Locke suggested that intellectual property should be regarded as the natural right of humans, not as a law¹.

Intellectual property rights include rights to works, performances, phonograms, broadcasting organizations' applications, integrated circuits topologies, data collections, folklore samples, inventions, useful models, industrial designs, trademarks and geographical indications, which are the object of copyright². Intellectual property rights are exclusive rights granted to their authors and right holders for the purpose of protecting the results of their mental activity. Intellectual property rights do not allow other persons to use the product of creative activity without the consent of the holder of intellectual property³. In the modern world, those conditioning the development of intellectual property are the knowledge and skills and the level of human capital and intelligence. This is explained by the fact that intellectual property is a phenomenon derived from existing knowledge and resulting in new knowledge⁴.

The modern activity context of intellectual property, its place in the economy and in the society creates the necessity of changing our thinking style and mentality about the role and place of intellectual property. On the other hand, in a modern globalizing environment, there is a necessity for the development of society and improvement of existing standards in the regulation of existing social relations, which requires a new approach to intellectual property rights. In modern times, the main objective of the intellectual property institute is to stimulate the development of the national economy⁵. In the 21st century, which is period of innovation and knowledge-based economy, intellectual property rights are increasingly of economic importance. The share of the copyrighted industry in GDP is only 7–8 percent in developed countries. One of the typical features of globalization is the positive impact of the advent of new technologies and innovations. As WIPO Director-General F. Carrey noted, in the future, international architecture and form of intellectual property will become more and more inadequate by technology and its inevitable management⁶.

Azerbaijan is a country with ancient and rich culture. There are rich traditions related to the preservation and promotion of spiritual culture traditions, intellectual property, creative achievements. The intellect, the most important wealth of the nation, is always based on creativity as its source. Creative, scientific, literary and artistic works have played a pivotal role in promoting human culture throughout history, and their preservation has led to cultural reproduction. From this point of view, it is necessary to note the centuries-old traditions of the Azerbaijani people. As you know, Gutenberg's discovery of the printing method is the beginning of the formation of modern copyright. Creation of rights to the results of intellectual activity has been shaped in the XV century, with the development of society and technical progress, on the one hand, the economic significance of the consequences of the activity of the radicalism, on the other, the simplification of copying of works of art and technology⁷. At that time, the books were published in a large scale in the Republic of Venice. Thanks to the active foreign relations of the countries of Ak Koyunlu and Safavid states with the Western European countries, especially the Republic of Venice, the work of the Azerbaijani author was published in 1594 in Rome in the "Medichi" printing house. This book was Tahriri-Oqilidis, which was written in 1248 by the great Azerbaijani scientist Nasreddin Tusi and was the best textbook on geometry and algebra in Asian and Eastern countries in the XIX century and in the case of manuscripts since 1248. This work was later re-published in 1598 in Medichi printing-house, then translated into Latin and re-published in 1657 in London. This book was used as a textbook in European schools until our time⁸. From the XVII century, in the Safavid era, which has been actively promoting book publishing, copyright in Azerbaijan was adopted in modern terms and its regulation was carried out under ordinary law. In the Safavid State, the book was first published in the Azerbaijani language in the 18th century, and then by the lithography method in Tabriz, and the first book published in Azerbaijani was "Leyli and Majnun" work by M. Fuzuli⁹. Apparently, the history of copyright and book publishing in Azerbaijan is about five centuries. Professor Kamran Imanov notes that these organic relationships "from the creator, author to manuscript, book", "from manuscript, and book to the copyright" demonstrate the importance of copyright in creativity¹⁰. Creativity products have put into action the human culture. Legislative acts protecting the rights of creative individuals have also emerged as a necessary condition for the preservation of national heritage".

Modern copyrights of Azerbaijan have been completed and enriched with Latin and Anglo-Saxon legal traditions and the best practices of WIPO and developed countries. It is undeniable that the modern world economy is based on intellectual property, and intellectual property is the main locomotive of the economy. The fundamental changes in the knowledge and culture functions of the late twentieth century and the possibilities of the digital XXI century have led to the sharp expansion of the scale of the use of intellectual activity. Creative products of human mind have become one of the most important types of economic turnover. With the introduction of modern information technologies, increasing the value of information in a globalized world, and the dynamic development of production and consumer relationships, the content of intellectual property also expands, significantly different from previous periods.

According to Article 27 of the Universal Declaration of Human Rights, “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”¹¹.

States Parties should take measures aimed at protecting, developing and disseminating science and culture so that people can exercise these rights. States Parties undertake to respect all rights necessary for scientific research and creative activities¹².

In this regard, to ensure the effective functioning, sustainable development and transparency of the intellectual property area, the protection of the cultural heritage of the Azerbaijani people, the fight against Armenian plagiarism, the role of the creative industry in the modern economy and the information society based on copyright and related rights, expansion, overall intellectual property protection and development is one of the priorities of state policy in the Republic of Azerbaijan. “Nowadays, development in the world is not based on natural resources, but on knowledge and modern technology. That is why we are trying to turn natural resources into human capital – these words of President Ilham Aliyev is the indicator of the importance given to the innovation industry and intellectual property in the Republic of Azerbaijan¹³.

Stimulating the intellectual activity in the non-oil sector development process in the Republic of Azerbaijan, the protection of the intellectual property rights by the state affirms that the state enjoys great respect for human rights and freedoms, as well as fostering favorable conditions for the development of the real economic sector. As it is known, the non-oil sector of the economy covers a wide range of activities, such as the production of goods, works and services, in line with people’s market economy principles. The outcome of mental activity in this process, obtaining quality new products in the fields of science, engineering and other fields, establishment of new products in line with the demands of consumers are the significant measures in taken in the field of development. Historically, the protection of intellectual property rights, the results of mental activity in the economy, in the non-oil sector, has greatly contributed to the development of human personality, society and the state. Intellectual property protection promotes economic growth, encourages technological innovation initiatives, while also promoting investment opportunities and promoting new jobs for country’s citizens. The economic importance of intellectual property for Azerbaijan, which is rapidly developing in the economy, is undoubtedly. Providing favorable conditions for the development of science and society at the expense of intellectual property potential, transforming intellectual property into a powerful tool for the development of knowledge-based economy supports the competitive economy and emphasizes the importance of broader use of intellectual property potential for the development of information society. On the other hand, the role of intellectual property in attracting foreign investment is undeniable. Azerbaijan embarks on innovative development, which is an important part of the new economic policy. Therefore, in recent years, the role of intellectual property has significantly increased in the development of the Azerbaijani economy, and special attention has been paid to ensuring the realization of intellectual property rights and the reforms undertaken in recent years meeting modern challenges and the policy of “Azerbaijan model” stands on the basis of the economic achievements as well as achievements in the field of economic intellectual property¹⁴. The “Azerbaijan model” is an innovative development model that stimulates the development of business environment and investment¹⁵, and it is no coincidence that the index of Azerbaijan in the World Bank “Doing Business 2018” report (Doing Business 2018) has risen 32 steps to 25th place among 190 countries of the world. At the same time, it was declared that Azerbaijan is one of the 10 reformist countries and is the third and largest reformist country in the world¹⁶. Also, according to the Global Competitiveness Report for 2017–2018, the World Economic Forum (Davos) ranked Azerbaijan in the 35th place among 140 countries by raising 2 steps¹⁷. According to the Davos Economic Forum’s “Inclusive Development Index-2018,” our country ranks third in developing countries and is ranked # 1 in the South Caucasus in the sub-index “Intellectual Property Institutions”, among the top three in the CIS¹⁸. While Azerbaijan ranked 71 in 2016–2017 for sub-index of “Protection of Intellectual Property”, it ranked in 37th place in 2018, gaining 79th place among 146 countries for knowledge economy, in the 86th place for global innovations in 2017 and 42nd place for innovative development¹⁹.

Legislative acts protecting and defending the rights of creative individuals have also emerged as a necessary condition for the preservation of national heritage, cultural traditions and identity. The creation of a strong and independent cultural industry depends on the existence of such laws. The constitutional legal recognition of intellectual property rights in the Republic of Azerbaijan was first established by the Constitution dated November 12, 1995. Article 30 of the Constitution of the Republic of Azerbaijan, which states the importance of these rights in the third chapter, “Everyone has the right to intellectual property”. Copyright, the right to invention and other types of intellectual property are protected by law”²⁰. Apparently, the Constitution guarantees the protection of intellectual pro-

erty rights, and, as seen from these constitutional-legal norms, the legislation clearly defines the scope of rights and intellectual property protected by law. It should be noted that the Constitution of the Republic of Azerbaijan adopted when Azerbaijan was in the content of the Soviet Union did not stipulate intellectual property rights. For this reason, the definition of intellectual property issues in the current Constitution is considered to be a progressive norm. Determining the right of intellectual property rights in the Constitution directly indicates the constitutional legal value of the right of intellectual property, the importance of the state and the importance of people. It affects the various fields of life, including economic, cultural, scientific, and human life in the activities of the state and society. The constitutional legal protection of the right to intellectual property is the system of integrated measures defined by the Constitution being the supreme law of the state and the sectoral legislative acts adopted based on it, applied in order to ensure implementation of intellectual property rights, various forms of legal remedies (self-defense, judicial protection, international protection, etc.) and providing for legislative, organizational, technical and other methods.

The Constitution of the Republic of Azerbaijan also stipulates the following norms on intellectual property rights:

- a) the principle of the recognition and protection of the intellectual property right by law (Article 30);
- b) the principle of participation in cultural life, the use of cultural institutions and cultural values (Article 40);
- c) the principle of ensuring free exercise of the freedom of creativity and different types of creativity (Article 51);
- d) the principle of the recognition and protection of fundamental human rights and freedoms applicable to intellectual property rights: the principle of human rights and freedoms being inviolable, unbreakable and integral (Article 24.1), the right of everyone to defend their rights and freedoms by means and methods not prohibited by law and the principle of state's guaranteeing the rights and freedoms of everybody (Article 26.1), the principle of guaranteeing free entrepreneurship and the principle of not allowing monopoly, unfair competition in economic relations (Article 15.2), grounds for safeguards and restriction of freedom of opinion and expression (Article 47).
- e) The principle of identifying authorities and responsibilities of state bodies in the field of legal regulation of intellectual property rights (Article 71.1, Article 94.1.13)
- f) The principle of protection of fundamental rights and freedoms and guarantees (Article 26, Article 57, Article 60, Article 71)²¹.

The recognition of the freedom of intellectual activity and the right to intellectual property is one of the driving factors in the development of science, technology, culture, economics and other fields, as well as material and spiritual life, human personality and society. The constitutional norm of "the copyright, the right to invention and other forms of intellectual property rights are protected by law" protected" while declaring that all types of intellectual property rights are protected by law, obliges legislators to adopt special laws aimed at protecting human and citizen's rights and freedoms.

In this regard, in 1995, the legislative system connected with protection of intellectual property was improved, normative-legal base was established in Azerbaijan Republic that joined to WIPO, it has joined to all international conventions and agreements in the direction of protection of intellectual property and adaptation of legislation to international standards, bilateral agreements were concluded with regional states, institutional oversight mechanisms for the protection of intellectual property rights have been established²².

The Constitution of the Republic of Azerbaijan dated 12 November 1995, the AR Constitution Law dated 24 December 2002 "On the regulation of the exercise of human rights and freedoms in the Republic of Azerbaijan", Law of the Republic of Azerbaijan "On Copyright and Related Rights" dated June 5, 1996, the Law of the Republic of Azerbaijan "On Selection Achievements" dated November 15, 1996, "Law on Patent" of June 10, 1997, Law of the Republic of Azerbaijan "On Trademarks and Geographical Indicators" dated June 12, 1998, the law of the Republic of Azerbaijan "On Legal Protection of Integrated Circuits Topology" dated May 31, 2002, the Law of the Republic of Azerbaijan "On Legal Protection of Azerbaijani Folklore Samples" dated May 16, 2003, the law of Azerbaijan Republic "On the Protection and Development of Azerbaijani Carpet Art" dated December 7, 2004, the Law of the Republic of Azerbaijan "on provision of Intellectual Property Rights and combating piracy" dated May 22, 2012, the Law of the Republic of Azerbaijan "On Legal Protection of Data Collections" dated September 14, 2014 and other national and international legislative acts are important legal sources in the field of intellectual property protection in the Republic of Azerbaijan. It should be noted that the Law on Legal Protection of Integrated Circuit Topology adopted in 2002 was the first law in the CIS, and the Law on the Legal Protection of Azerbaijani Folklore Samples adopted in 2003 in Eastern Europe and Asia. In addition to the Law on Legal Protection of Data Collections, adopted in 2004, we see that Azerbaijan is currently the state having the richest legislative base in the CIS.

One of the main directions of the intellectual property right is a copyright. In the modern world, no boundary can prevent the spread of creative works. Therefore, the copyright became such a field that its center point is in each part of the world and has no circle. All these are of utmost importance in the development of international trading of cultural blessings and such mutual performance security must be provided²³. By enacting Law on "Copyrights and Related Rights" in 1996 Azerbaijan was one of countries first created legislative base in this field in the former USSR. This law approved the principles of legal state building that declared by the government as a first Act in the field of copyright in the Azerbaijani history. This Act strengthens main directions of public policy in the field of copyright, regulates relations among the authors (holders of the right), works and users and provided the national legislative base of copyright. The following main directions of the Act were defined:

1. Encouraging and stimulating creative performance regarding to creating scientific, literal and art works and increasing nation's sentimental values;

2. Establishment of legislative base providing definition and protection of copyrights on the basis of advanced international experience;
3. Establishment of public administration in the field of copyright and related rights;
4. Protection of copyrights of the national right holders in the territory of other countries by developing international relations²⁴.

The most important feature of this Act consists: it completely revoked postulates of the “Soviet copyright” that was established on the basis of unequal relations principle among the creators and users of the work and more properly can be called “right of using works”. In the legislation of the new copyright, firstly, the judgement of the old “the author is not a holder of his/her work, he/she is only its author” leaning on the dogmas “non-assignment of the author’s property rights” and “using freely published works with or without payment” was routed. In this Act another thesis of “Parties’ (author – user) will is not independent but limited” was refused. According to that provision the utmost strict regulation of the content of the author contracts with honorarium rates that confirmed publicly limited the copyrights of the work creators. The Act is based on the “continental” notion on the copyright as a “personal” right in comparison with the commercial directed anglo-saxon “copyright”.

The other important factor is a protection of the spiritual rights of the creative persons and it is also considered the main issue of the continental view. Principles accepted in the Act are conforming to the copyright of the European countries. This is of great importance from the standpoint of the Azerbaijan law being in harmony and unity with the European law. The Act also confirms rights related with the copyright – rights of the singers, phonogram producers and programme organizers (radio and TV).

This is a positive event providing the copyright legislation system including “supporters on creativity” all together. Furthermore, validity period of copyright for 70 years after the death of the author confirmed, proportional payment method was considered that is more suitable for the other right holders²⁵. By referring to legislation only minimum limit of the payment is regulated by law and noted that payment methods are defined by means of negotiations between the right holders and the users of their works. According to the Decision No 38 dated 2 May 1997 of the Cabinet of the Azerbaijan Republic and on the basis of the following government decisions minimum rate limits were defined on different types of works, sample forms of the copyright contracts were confirmed, methods of voluntary registration of works and issuance of certificates for their registration and other issues playing important role in the application of copyright legislation were regulated.

The role of the government may not be limited only by working out the legislative norms for right defense and protection, as well as international provision of the intellectual property in the modern world. Some new functions are added to these traditional functions now. First of these are the linking functions in relation with the organization managing the property rights of the copyright and related right holders collectively. Government’s withholding its own linking role may lead to increase of breaches. Because, any such organization considers possible to represent all right holders and requesting some fee from the users. Moreover, the absence of the linking role impedes the normal work of the organizations implementing collective management by law. Implementing the linking role is considered in the law of copyright and this role may be strengthened more provided applying licensing system to the activity of gathering honorarium. Such experience is available in most of the developed countries (France, FRG, Spain and others). Establishment and activity of collective management on property rights in those countries is dependent from the permission obtained from the special public authority.

One of the other linking and regulating functions of the government is related with organizing and provision of mechanism of voluntary registration of works. This lawful activity is also implemented by a special authority. It should be noted that though any work is protected from the moment of its creation, law system of some countries offer facilities for persons doing some works – registering their works with regard to the protection of their rights. Beginning from the entitlement presumption and notification to the third parties about their responsibilities for sanctioned usage up to the privileges given for registration including payment great amount of compensation to the claimant for breach of this right comparing with non-registered work are the utmost important conditions for the protection of copyright.

In addition, this creates initial condition for archiving registered works as well as electronic archiving, for management both works and their rights and for organizing catalogues and database serving to international operative exchange of information. One of the urgent issues that regulated under the AR Law on “Copyrights and related rights” is the management of using works belonging to the community (government). Works belonging to the community may be freely used without giving author honorarium except for the cases under the second item of this article. Works concerned to the public wealth of the Azerbaijani authors can be declared as the wealth of state as defined by the executive body and special payments may be determined to use them. Honorarium calculated for using the works as declared the public wealth is transferred to the state budget of the Azerbaijan Republic (Article 27).

Various provisions about the copyright are given in some laws like AR Law on “Ownership activity”, “About Culture”, “Cinematography”, “Architectural activity”, “City planning”, “Advertisement”, “Publish work” and others.

According to the Azerbaijan Republic Law on “The Achievements of Selection” dated 15 November 1996, selection achievements mean plant sorts, animal types, their hybrids, lines, crosses and clones useful for the society and created as a result of selection. The issues of responsibilities and disputes are regulated for breach of law on selection achievements like expertise of selection achievements, test and general confirmation rules, test of selection achievement for differentness, similarity and stability, copyright and patent right for selection achievements, protection of the subjects, rights and benefits of selection achievements, protection of selection achievements, issuing

usage permission and licenses for selection achievements, public protection and public award in selection activity, international cooperation in selection field and selection achievements are regulated in the Act. According to law patent is a document confirming accepting selection achievements as an invention, protection and exceptional right on this invention²⁶. Intellectual property on scientific, literal and art works is formed from the moment of creation of these results of the mental activity and objective expression as defined by legislation. Invention useful model, patent right for industrial sample act as legal fact for the public registration of these objects for recognition and protection of intellectual rights on the selection achievements.

Azerbaijan Republic Law on “Patent Right” dated 10 June 1997 regulates property relations and private non-proprietary relations with regard to legal protection and usage of creating inventions, useful models and industrial samples. According to Law patent is a protection document issued by the relevant executive body for inventions, useful models and industrial samples. Patent confirms the authority and initial rights for inventions, useful models and industrial samples and provides special rights to use them. Patentability conditions, the author and owner of patent, right to use the inventions, useful models and industrial samples, breach of patent rights, issuing the claim paper and obtaining patent, patenting of inventions, useful models and industrial samples on the foreign countries are given in this Law consisting of seven chapters and 44 articles²⁷.

AR Law on “Trademarks and geographical guidelines” dated 12 June 1998 consists of six chapters and 35 articles. Marks registered as trademarks, absolute grounds to withhold the registration of trademark, marks registered as geographical guideline, registration of Trademarks and geographical guidelines, use of Trademarks and geographical guidelines, termination of legal protection of Trademarks and geographical guidelines, provisions like legal protection of Trademarks and geographical guidelines are defined in the Act²⁸.

According to the AR Law on “Legal protection of integral scheme topologies” dated 31 May 2002 integral scheme means electronic data implementing fully or partially certain electronic scheme functions consisting of relations of elements and interelements prepared integrally under the base and (or) in the base volume while integral scheme topologies mean spatial-geometric location of elements and interelements relation that reflected in the base. Furthermore, issues of legal protection of topologies and rights for topology, assigning property right for topology to the other individuals or legal persons, protection term of the exceptional right for using topology, protection of right for topology, protection of rights for topology in the foreign countries are reflected in the Act²⁹.

One of the main legislative, linking and regulative functions of the state is protection of folklore, folk art under the legal bases. Folklore as called “archeology of the human spirit” rightfully as a cultural heritage not only provides the cultural specificity of ethnos, but also acts as the national worth, cultural wealth of all of the world. Though folklore expressions are not the objects of the copyright, their protection can be provided within the “works belonging to the community (public) property”. Moreover, active works of WIPO and UNESCO in recent years gives base to consider that national legislations offered with regard to the special protection (“sui generis”) of international mean and folklore shall become the reality of the international and national legislations in recent times.

Azerbaijan Republic Law on “Legal protection of Azerbaijani folklore expressions” was accepted on 16 May 2003. This Law regulates relations regarding with the provision of protection, usage and defense of the national folklore expressions of the Azerbaijan’s cultural heritage as a special type of the intellectual property. This law on protection of folklore expressions being the sensitive themes of the cultural heritage is the first law on the Eastern Europe and CIS. As to Law Azerbaijani folklore expressions mean rhetoric samples that created verbally, folk music, games and dances, folk art and applied art samples (in material or non-material form) as well as other folk art samples reflecting Azerbaijan nation, their traditional–literal worths, world outlook, hopes and dreams, characteristic features of literal heritage³⁰.

Folklore expressions, main directions of the public policy in the field of protection of folklore expressions, rules of using folklore expressions, violations while using folklore expressions, protection of intellectual property right for folklore samples, legal protection of folklore samples in the foreign countries are defined in the Law. At present, Azerbaijan Mugham, Ashug art, carpet-making, Tar playing and other cultural heritage samples are included into the list of UNESCO and under the international protection. Moreover, projects are carrying out in the direction of protection, improvement and delivering to the future nations of folklore expressions, establishing legislative base providing legal protection of folklore expressions, creating opportunity for international cooperation with the purpose of legal protection of folklore expressions belonging to Azerbaijan nation in the foreign countries. It should be specially notes that not only the national monuments, but also monuments, national folklore expressions belonging to the other nations are protected and cared in Azerbaijan. For instance, Russian, Jewish Churches are also protected as cultural heritage samples in Azerbaijan. Needless to say that all the national-cultural wealth within the territory of Azerbaijan belong to it. This means that there is objective relation to the cultural heritage samples, folklore art here.

According to the Azerbaijan Republic Law on “Legal protection of Information collections” dated 14 September 2004 information collection means objective form of presentation of works, data and other materials that worked out in systematic or methodic way and that may be obtained electronically or by other means. As to Law, protection by the copyright refers to the objectively disclosed and non-disclosed information collection regardless of its assignment and worth³¹. Issue, expiry and protection term of property rights for the legally protected information collection, official registration and illegal usage of information collection, defense of rights for information collection and responsibility issues for illegal usage of information collection are regulated by this law.

According to the subjects human rights and freedoms are classified in two groups being rights of the physical and legal persons: Rights of the physical persons are rights that everybody is entitled. Rights of legal persons are

rights belonging to certain group of people and realized by their joint activity. Intellectual property Rights are rights for works, performances, phonograms, programmes of broadcasting organizations, integral scheme topologies, information collections, folklore expressions (traditional cultural expressions), inventions, useful models, industrial samples, trademarks and geographic guidelines being the object of the copyright. AR Law on “Enforcement of intellectual property rights and fight against piracy” dated 22 May 2012 is accepted with the purpose of regulating relations arising with regard to provision of the protection of intellectual property, protection of interests of the owners of intellectual property rights and law breaches in this field, as well as preventing illegal production and spread of copies of the intellectual property objects and in general with the purpose of provision of intellectual property rights according to the requirements of constitutional legal norms on recognition and legal protection of intellectual property rights.

This Law is a special source on protection of intellectual property rights. According to Law the holder of intellectual property rights (right holder) – is a physical or legal person that intellectual property rights belong as well as is Azerbaijan Republic in relation with folklore expressions (traditional cultural expressions) (Article 1.0.2)³². As it seems from the abovementioned norm in Azerbaijan Republic the subject of intellectual property rights are physical or legal persons, while the special subject is Azerbaijan Republic. The first chapter of AR Law on “Provision of intellectual property rights and fight against piracy” dated 22 May 2012 consists of the general provisions and included intellectual property rights, holder of intellectual property rights, audiovisual work, computer program, information collection, pirate product, piracy, counterfeit product notions. In the second chapter civil-legal and administrative procedures and remedies that applied during breach of intellectual property rights (compensation, measures arising from the court decision, measures for satisfying the claim) are given.

Measures defined by the Law on “Enforcement of intellectual property rights and fight against piracy” are directed to the enforcement and protection of the holders of intellectual property rights and in case of breach of intellectual property rights are applied under certain legislation (Article 2.1)³³. Moreover, urgent control function of state must be indicated with regard to provision of rights. It is mentioned in the Article 10 of the Law that measures on protection of intellectual property rights in the customs border, also measures with the purpose of preventing piracy or import (export) of counterfeit copies are applied under the regulations defined by the Customs Code of the Azerbaijan Republic³⁴. As provision of following the rights is one of the main part of intellectual property legislation (any, the worthiest intellectual property system is considered imperfect for the holders if intellectual property rights if it is not powerful to provide defense of its own rights) special requirements are forwarded to the public linking function in the field of rights satisfaction.

Special fight programmes against piracy, systematization of law breaches, joint activity of certain ministry and departments in the base of authority, monitoring of the market, broadcast and results of claims in the court instances play important role here. From this standpoint in the said Law using codes of unique digits (identification numbers), sticking control marks, responsibility issues for illegal use of copies of copyright and related rights (audiovisual work, phonogram, computer program, information collection, book) and control marks are defined with the purpose of legal protection of copyright and related rights within the frame of measure taken against production and disclose of copyright and related rights copies by means of piracy.

In the Law norms on protection of intellectual property rights are defined and additional sources are shown for regulating issues not considered in the legislation as The Constitution of the Azerbaijan Republic, Azerbaijan Republic Laws on “Copyright and Related Rights”, “Patent”, “Trademarks and geographical guidelines”, “Legal protection of Information Collections”, “Legal protection of integral scheme topologies”, “Legal protection of Azerbaijan folklore expressions”, other normative acts and international agreements that Azerbaijan Republic is a party.

In the strategic route map on the main sectors of the national economy that is confirmed by the decree of the President of the Azerbaijan Republic dated 6 December 2016 issued as development of intellectual property, creative industry are given. In the Development Conception “Azerbaijan 2020: look into the future” confirmed by the decree of the President of the Azerbaijan Republic in 2012 formation of “knowledge economy”, support to scientific potential and innovation activity, provision of long-term continuous economic development, encourage of results of intellectual activity, creating suitable conditions for investment to innovation and creativity and continuous development of creative economy basing on the intellectual property, taking measures to increase its share in the gross domestic product of the country, development of information-communication technologies and provision transition to information society, improvement of legislation are considered as priority directions³⁵.

As it seems, AR Laws on “Copyrights and related rights”, “Selection achievements”, “Patent”, “Trademarks and Geographical guidelines”, “Legal protection of Integral Scheme Topologies”, “Legal protection of Azerbaijan folklore expressions”, “Enforcement of Intellectual Property Rights and fight against piracy, AR Law on “Accepting Cooperation Programme between Azerbaijan Republic Government and World Intellectual Property Organization” dated 3 March 2006, AR Law on “Confirmation with special judgement of Understanding on cooperation in the field of preventing infringements of intellectual property rights ” and other Laws of Azerbaijan Republic, The Order of the President of the Azerbaijan Republic on “Acceptance of the National Action Plan on defense of human rights in the Azerbaijan Republic” “The National Action Programme in the field of increasing efficiency of defense of human rights and freedoms in the Azerbaijan Republic”, Decisions of Plenum of the Supreme Court of the Azerbaijan Republic, “World Human Rights Declaration”, “International Convention on economic, social and cultural rights”, “International Covenant on Civil and Political Rights” and other international Conventions and acts on defense of human rights and intellectual property rights are considered normative-legal base for defense of intellectual property rights in the Azerbaijan Republic.

Generally, legislation of the Azerbaijan Republic on intellectual property rights is of complex character like in all developed countries and covers provisions of public, administrative, financial labour and criminal rights.

The worth belonging to the intellectual property right being one of the main human rights and freedoms, impact to the development of people and society necessitates widening the cooperation of the governments and international organizations in the field of intellectual property right in globalized world. One of the traditional functions of each country is a wide international cooperation creating opportunity to provide national protection of the rights of the national authors internationally and rights international authors within the country. According to the international norms rights of participation in the cultural life, using and applying achievements of scientific development, protection of spiritual and material interests being the result of scientific, literal and artistic creativity which he/she is the author are recognized.

The participated governments have to take actions directed to protection, development and spread of science and culture with the purpose of people executing these rights and respect to all necessary rights for scientific researches and creative activities.

Using the international experience in the field of copyright, taking into account the national traditions and features and interests of all parties are of special importance. Thus Azerbaijan government takes active part in the international cooperation in the field of intellectual property. Being a democratic, legal and worldwide state Azerbaijan Republic almost joined to all international conventions and understandings, became member of many international organizations of universal and regional character and signed bilateral agreements with the region states in the direction of protection of the intellectual property and conforming legislation to the international standards.

Azerbaijan government included the international agreements that it is a party to its legislative system and defined implementing international obligations as a duty. Thus, Understandings on “Cooperation in the field of protection of the copyright and related rights” between the “Azerbaijan Republic Government and Uzbekistan Republic Government” dated 1997, “between Azerbaijan Republic Government and Kazakhstan Republic Government” dated 1999, “between Azerbaijan Republic Government and The Cabinet of Ukraine” dated 2002, “between Azerbaijan Republic Government and Turkish Republic Government” dated 2005 and “between Azerbaijan Republic Government and Tajikistan Republic Government” can be indicated as a sample to the bilateral and multilateral agreements in the direction of widening international cooperation in the field of protection of intellectual property rights.

In addition, Understanding on cooperation in the field of protection of Copyright and related rights dated 1993 within the frame of protection of copyright within CIS countries, Understanding between Azerbaijan Republic Copyrights Agency and Russian Author’s Society in the field of mutual contribution and management of property rights of the authors collectively dated 2001 and Understanding on “cooperation of the states being party of the Commonwealth of Independent States in the fight against the crimes in the field of computer information” in 2004 and “Cooperation Programme between the Azerbaijan Republic Government and World Intellectual Property Organization” in 2006 can be mentioned.

The Republic of Azerbaijan that has joined to the WIPO in 1995 continues its participation in the Universal Copyright Convention from 1997. Azerbaijan has joined to the Berne Convention for the Protection of Literary and Artistic Works (1998), the Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (2001), WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome 1961), Paris Convention and Madrid Agreement “for the International registration of Marks”. Generally, the Republic of Azerbaijan has joined generally to 9 Treaties and Agreements of the World Intellectual Property Organization. According to the Article 1 of the Cooperation Programme dated 30 May 2006 concluded between the Azerbaijan Republic Government and World Intellectual Property Organization (WIPO), strengthening the role of intellectual property in relevant fields of scientific, technological, cultural and economic activities carried out by various business entities in the territory of the Republic of Azerbaijan was determined as one of the purposes of the cooperation programme³⁶.

One of the important duties in the direction of the protection and development of the intellectual property rights in the Republic of Azerbaijan is also the harmonization of national legislation with the European directives³⁷. The Republic of Azerbaijan has established partnership relations with the European Patent Organization and has joined to the Eurasian Patent Convention and to several treaties and agreements of the organization. The Republic of Azerbaijan is one of four CIS countries, which the European Union cooperated for “TACIS – Intellectual property” Program. Within the framework of this program, several meetings of the String Commission and Anti-Piracy Commission for Copyright was held, also Local “Author” calculation network was created in the Intellectual Property Agency. Together with the “TACIS – Intellectual property” Program, many international and national seminar-symposium on the protection of audiovisual works of the Ministries of Culture, Justice and Youth, Sports and Tourism, copyright protection issues, youth and copyright problems were held³⁸.

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Резюме

Сафаров А.Т. Історія регулювання прав інтелектуальної власності в Азербайджані.

Сучасне становище у сфері інтелектуальної власності, її місце в економіці й у суспільстві створює необхідність зміни способу нашого мислення і ментальності стосовно ролі й місця інтелектуальної власності. У XXI столітті, який є періодом інновацій та економіки, заснованій на знаннях, права інтелектуальної власності набувають все більшого економічного значення. Інтелект, найважливіше багатство нації, зокрема азербайджанської, завжди базується на творчості як своєму джерелі. В Азербайджані є багаті традиції, пов’язані зі збереженням і популяризацією духовних традицій культури, інтелектуальної власності, творчих досягнень.

Ключові слова: інтелектуальна власність, охорона прав інтелектуальної власності, історія правового регулювання, авторське право, культурне життя.

Резюме

Сафаров А.Т. История регулирования прав интеллектуальной собственности в Азербайджане.

Современное положение в сфере интеллектуальной собственности, ее место в экономике и в обществе создает необходимость изменения образа нашего мышления и ментальности относительно роли и места интеллектуальной собственности.

В XXI веке, который является периодом инноваций и экономики, основанной на знаниях, права интеллектуальной собственности приобретают все большее экономическое значение. Интеллект, самое важное богатство нации, в частности азербайджанской, всегда базируется на творчестве как своему источнику. В Азербайджане есть богатые традиции, связанные с сохранением и популяризацией духовных традиций культуры, интеллектуальной собственности, творческих достижений.

Ключевые слова: интеллектуальная собственность, охрана прав интеллектуальной собственности, история правового регулирования, авторское право, культурная жизнь.

Summary

Safarov A. The history of intellectual property rights regulation in Azerbaijan.

The modern activity context of intellectual property, its place in the economy and in the society creates the necessity of changing our thinking style and mentality about the role and place of intellectual property. In the 21st century, which is period of innovation and knowledge-based economy, intellectual property rights are increasingly of economic importance. The intellect, the most important wealth of the nation, notably Azerbaijani, is always based on creativity as its source. In Azerbaijan there are rich traditions related to the preservation and promotion of spiritual culture traditions, intellectual property, creative achievements.

Key words: intellectual property, intellectual property rights protection, history of legal regulation, copyright, cultural life.

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К.О. ВОРОНЦОВА

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СПАДКУВАННЯ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ У СФЕРІ ОХОРОНИ ЗДОРОВ'Я

Спадкове право як підгалузь цивільного права завжди було предметом юридичного інтересу науковців. Із розвитком суспільних відносин виникають нові об'єкти, які належать особі, право власності на які може переходити у порядку спадкування. Не зважаючи на те, що питання спадкування прав інтелектуальної власності досліджувалось вченими, на сьогодні залишається чимало невирішених питань, що потребують подальшого дослідження.

Спадкуванню прав інтелектуальної власності присвячені роботи таких вчених, як О.В. Басай, С.О. Бутнік-Сіверський, С.О. Довгий, В.О. Жаров, В.О. Зайчук, О.П. Орлюк, О.А. Підпригора, С.Я. Фурса та інших.

Метою статті є дослідження правовідносин, що виникають з приводу спадкування прав інтелектуальної власності у сфері охорони здоров'я.

Цивільний кодекс України (далі – «ЦК України») у ст. 1216 визначає спадкування як перехід прав та обов'язків (спадщини) від фізичної особи, яка померла (спадкодавця), до інших осіб (спадкоємців)¹. Відповідно до ч. 1 ст. 178 ЦК України результати інтелектуальної, творчої діяльності, як об'єкти цивільних прав, можуть вільно переходити від однієї особи до іншої в порядку спадкування або іншим чином, якщо вони не вилучені з цивільного обороту, або не обмежені в обороті, або не є невід'ємними від фізичної чи юридичної особи.

До складу спадщини входять усі права та обов'язки, що належали спадкодавцеві на момент відкриття спадщини і не припинилися внаслідок його смерті. Не входять до складу спадщини права та обов'язки, що нерозривно пов'язані з особою спадкодавця, зокрема особисті немайнові права (ст. ст. 1218, 1219 ЦК України).

Згідно з ч. 1, 3 ст. 1296 ЦК України спадкоємець, який прийняв спадщину, може одержати свідоцтво про право на спадщину. Відсутність свідоцтва про право на спадщину не позбавляє спадкоємця права на спадщину, оскільки спадщина належить спадкоємцям з моменту її прийняття, але факт передання виключних майнових прав інтелектуальної власності, які відповідно до ЦК України або іншого закону є чинними після їх державної реєстрації, підлягає державній реєстрації (ч. 2 ст. 1114 ЦК України).

Оформлення спадкових прав на об'єкти інтелектуальної власності здійснюється відповідно до спеціального законодавства та залежить від того чи іншого об'єкта інтелектуальної власності.

На відміну від ст. 435 ЦК України, яка суб'єктами авторського права називає автора твору, а також інших фізичних та юридичних осіб, які набули прав на твори відповідно до договору або закону, Закон України «Про авторське право та суміжні права»² до суб'єктів авторського права відносить авторів, їх спадкоємців та осіб, яким автори чи їх спадкоємці передали свої авторські майнові права. У ст. 29 цього закону законодавець, з одного боку, закріплює можливість переходу до спадкоємців лише майнових прав, а, з іншого, закріплює норму, відповідно до якої наділяє спадкоємців таким особистим немайновим правом, як право захищати авторство на твір і протидіяти перекрученню, спотворенню чи іншій зміні твору, а також будь-якому іншому посяганню на твір, що може завдати шкоди честі та репутації автора.