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Research Article

ISSUES OF RESPONSIBILITY IN THE FIELD OF INTELLECTUAL PROPERTY

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ABSTRACT

This article analyses the specifics of resolving disputes on liability for violations of intellectual property rights under the legislation of the Republic of Uzbekistan. The authors separately studied the specifics of resolving issues of property liability in civil and economic courts, public law disputes in administrative courts, as well as administrative offenses and crimes in criminal courts. Based on the analysis, the authors note the importance of 1) specialization of courts; 2) the use of alternative dispute resolution measures; 3) improving the system of execution of court decisions; 4) the use of an integrated approach to solving problems of responsibility on the Internet.

KEYWORDS

Exclusive rights, legal liability, right holder, Internet, property dispute, crime.

INTRODUCTION

Today, significant work is being carried out in the Republic of Uzbekistan to reform the system of intellectual property protection, to protect the legitimate interests of authors and right holders. In particular, the legislative framework in this area has been formed and the state policy is being effectively implemented. As a result of the improvement of public

administration in the field of intellectual property, the Ministry of Justice of the Republic of Uzbekistan has made significant progress in recent years in ensuring the implementation of a unified state policy in the field of intellectual property, legal protection of intellectual property objects, implementation of measures to

ensure consistent and uniform practice of applying legislation in this area.

The current legislation of the Republic of Uzbekistan provides for comprehensive measures to protect intellectual property – all types of civil rights protection can be attributed to them. In the last three years, these measures have been radically improved. Thus, since 2019, a mechanism has been introduced to terminate prematurely in whole or in part, invalidate a law enforcement document for an intellectual property object solely based on a court decision, and measures have been taken for pre-trial settlement of disputes in the Appeals Council of the Ministry of Justice of the Republic of Uzbekistan. In the new edition of the Civil Procedure Code, the court was presented with the possibility of allowing immediate execution in full or in part of the decision to award remuneration due to the author for the use of the results of his intellectual activity. In the Economic Procedural Code of the Republic of Uzbekistan, disputes on violation of property rights to intellectual property and means of individualization of participants in civil turnover, goods, works and services were classified as economic disputes. In accordance with Articles 10, 11 and 1040 of the Civil Code of the Republic of Uzbekistan, ways of protecting intellectual property rights are provided, among which judicial protection of rights is of particular importance. In general, intellectual property protection involves:

1. Civil courts and economic courts – on civil liability issues. The development of economic relations, the expansion of the scale of trade turnover and the provision of services dictate the need to protect the economic interests of economic entities, as well as individuals (authors and right holders). Especially intellectual property in the implementation of activities by economic entities has a significant role. As a rule, the

owner of the exclusive right to an intellectual property object has the right to transfer this right to another person in whole or in part, to allow another person to use the intellectual property object and has the right to dispose of it in another way, if this does not contradict the rules of the Civil Code of the Republic of Uzbekistan and other laws. Violation of this requirement entails civil liability. In turn, when creating an official intellectual property object, relevant disputes may arise between an employee and an employer. These and other disputes between individuals are resolved within the framework of civil proceedings.

Economic courts, on the other hand, consider disputes between economic entities related to intellectual property (for example, disputes arising from non-performance of a license agreement). If we pay attention to the statistical data for the period from 2019 to the first quarter of 2023, the economic courts of the Republic of Uzbekistan considered 220 cases in the field of intellectual property, in 124 cases the claims were satisfied, that is, the fact of committing a civil offense was recognized.

2. Administrative courts – on issues of public liability. As is known, objects of patent law (inventions, utility models, industrial designs), breeding achievements (new plant varieties, new animal breeds), trademarks and service marks, appellations of origin of goods, geographical indications receive legal protection after receiving the relevant document certifying the rights to the intellectual property object (patent, certificate). In some cases, refusal to register intellectual property rights does not allow potential right holders to protect their rights and defend legitimate interests. In this case, the applicant, upon receiving a refusal to register and issue a law enforcement document, may appeal the decision of the Ministry of Justice of the Republic

of Uzbekistan to the Appeal Council of the Ministry of Justice of the Republic of Uzbekistan.

In case of dissatisfaction with the decision of the Appeal Board, the applicant has the right to appeal to the administrative court. Consequently, administrative legal proceedings are the final instance of resolving a public dispute related to intellectual property objects, namely, they reflect the essence of public legal responsibility. According to statistics, the administrative courts of the Republic of Uzbekistan considered 87 disputes from 2019 to the first quarter of 2023, 43 of them satisfied the applicants' claims, that is, the fact of public liability was recognized.

3. Criminal courts – issues of administrative or criminal liability. The application of civil liability for violations of the rights of authors and right holders does not exclude the possibility of applying administrative-legal or criminal liability measures for these violations. According to the norms of the Code of the Republic of Uzbekistan on administrative responsibility and the Criminal Code of the Republic of Uzbekistan, administrative offenses and crimes in the field of intellectual property are considered by criminal courts. At the same time, criminal courts protect the interests of intellectual property owners from encroachments, in particular from:

illegal use of someone else's trademark, service mark, appellation of origin or confusingly similar designations for similar goods (services) or illegal use of someone else's brand name (Article 177 of the Code on administrative responsibility);

illegal use of works or objects of related rights, as well as reproduction, distribution, making available to the public counterfeit copies of works or objects of related rights or specifying false information on copies of works or objects of related rights about their

manufacturers, about the places of their production, as well as about the holders of copyright and related rights (Article 1771 of the Code on administrative responsibility);

unauthorized manufacture, application, import, offer for sale, sale, other introduction into civil circulation or storage for this purpose of a product or product containing a corresponding patented invention, utility model, industrial design, as well as the application of a method protected by a patent for an invention, or introduction into civil circulation or storage for this purpose of a product, manufactured directly by a method protected by a patent for an invention (Article 1772 of the Code on administrative responsibility);

attribution of authorship, coercion to co-authorship of intellectual property objects, as well as disclosure of information about these objects without the author's consent before their official registration or publication (Article 149 of the Criminal Code).

It should be noted that counterfeit copies of works and objects of related rights, as well as materials and equipment used for their manufacture and reproduction, and other instruments of committing an offense are subject to confiscation in court in accordance with the legislation on administrative responsibility.

As we can see, the system of intellectual property protection is well organized in Uzbekistan: the examination of intellectual property and other procedures are effectively carried out; the facts of the offense are recognized. However, judicial protection of intellectual property remains a painful issue. Until now, the judicial practice on the protection of property rights has not been fully formed. The existing experience in resolving legal disputes concerning trademarks is not sufficient. The courts do not consider

cases on disputes concerning copyright and industrial property. In this regard, the issues of cardinal improvement of this area is important. The reform of the system of judicial protection of intellectual property received a new impetus with the adoption of the Decree of the President of the Republic of Uzbekistan dated January 28, 2021 № DP-4965 “On measures to improve the system of protection of intellectual property objects”. By this decree, the Supreme Court, the Ministry of Justice and the Antimonopoly Committee, with the involvement of international experts, were instructed to develop a training program for judges in the field of intellectual property. At the same time, it is planned to introduce a system of training judges in practice. Special attention was paid to the creation, with the assistance of international organizations, of an in-depth training program for judges considering disputes in the field of intellectual property.

The above is one of the first steps to strengthen the mechanism of judicial protection, the improvement of which in the future can be carried out in the following ways:

Firstly, the possible specialization of courts in the resolution of disputes in the field of intellectual property, in particular the creation of special courts for the protection of intellectual property. According to the International Intellectual Property Institute, there is a growing number of countries in the world where specialized courts for the protection of intellectual property are being created. Such a step is interpreted as the implementation of the obligation under the TRIPS Agreement and entry into the WTO. In the United States, there is a special court (appellate) to resolve patent disputes and disputes arising from trademarks. A similar procedure exists in Mexico. In Japan, there is a Supreme Intellectual Property Court,

which operates in six prefects, carrying out judicial protection of copyright and industrial property. Since 2008, the Regional Intellectual Property Court has started its work in Mexico. In some countries, for example, China has been testing specialized intellectual property courts since 2010.

The advantage of creating specialized courts is to ensure uniform judicial practice, ensure the professionalism of judges, and increase the effectiveness of the protection of intellectual property rights.

Secondly, it is necessary to expand the mechanisms of alternative ways of resolving disputes in the field of intellectual property – mediation, negotiations, conciliation. The adopted general legislative acts in the field of alternative dispute resolution may also be involved in the protection of intellectual property objects. The activity of a mediator or mediator in resolving a dispute in the field of intellectual property will certainly help to reduce the number of offenses related to intellectual property, improve the legal culture regarding the treatment of intellectual property, and create an atmosphere of respect for intellectual property in society.

Thirdly, the system of enforcement of court decisions on intellectual property should be improved. A court decision is effective precisely if it is possible to execute it, which also applies to intellectual property. When discussing the creation of a specialized intellectual property court, it is necessary to specify the rules for the execution of court decisions on intellectual property, taking into account the specifics of the area under consideration (for example, the execution of a court decision on a compulsory license in case of refusal of voluntary execution, the specification of the powers of state executors). According to article 56 of the Law of the Republic of Uzbekistan “On the

execution of judicial acts and acts of other bodies”, the procedure for the realization of rights to the results of intellectual activity and means of individualization are determined by the Cabinet of Ministers of the Republic of Uzbekistan. Therefore, it is necessary to determine the mechanism for implementing enforcement proceedings in cases related to intellectual property within the framework of the decision of the Government of the Republic of Uzbekistan.

Fourthly, close attention should be paid to resolving disputes on liability for infringement of intellectual property rights on the Internet. Today, the Internet has created unprecedented conditions for accelerating the flow of information and information exchange. The dissemination of information in a virtual environment, in particular on various mobile platforms and social networks, has caused an objective need to protect intellectual property objects, primarily copyright objects on the Internet, including social networks. In this regard, the legislation should separately fix the obligations of Internet service providers and bloggers when placing intellectual property objects in order to minimize the risk of copyright infringement. A prerequisite for this is to define the responsibilities of bloggers and website owners. In addition, it is necessary to specify the procedure and conditions for concluding and the content of the User Agreement in social networks, taking into account the protection of the rights of authors and right holders.

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