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*S. Tulibayev*¹

¹Al-Farabi Kazakh National University, Almaty, Kazakhstan

**THE SIGNIFICANCE OF WIPO-ADMINISTERED TREATIES FOR
THE COPYRIGHT'S PROTECTION IN THE REPUBLIC OF
KAZAKHSTAN**

Abstract. This article discusses the important role of the provisions of the conventions and treaties of the World Intellectual Property Organization in the field of copyright protection in the Republic of Kazakhstan. It presents the obligations imposed by the WIPO-administered treaties on the Republic of Kazakhstan, which were signed or ratified in order to develop national legislation and increase the level of legal protection of authors. The article explains the need for accession to WIPO conventions. The article considers the activities of Kazakhstan in the implementation of the provisions of the conventions, including the implementation of relevant meetings.

Keywords: copyright, Kazakhstan, legislation, WIPO, international treaties.

Аннотация. Данная статья рассматривает важную роль положений конвенций Всемирной организации интеллектуальной собственности в области защиты авторских прав в Республике Казахстан. В ней представлены обязанности возлагаемые конвенциями ВОИС на Республику Казахстан, которые были подписаны или ратифицированы в целях развития национального законодательства и повышения уровня правовой защиты авторов. Разъясняется необходимость присоединения к конвенциям ВОИС. Статья рассматривает деятельность Казахстана по реализации положений конвенций, включая проведение соответствующих мероприятий.

Ключевые слова: авторское право, Казахстан, законодательство, ВОИС, международные договора.

Аңдатпа. Бұл мақалада Дүниежүзілік зияткерлік меншік ұйымының Қазақстан Республикасындағы авторлық құқықты қорғау саласындағы конвенцияларының ережелерінің маңызды рөлі қарастырылады. Онда ұлттық заңнаманы дамыту және авторлардың

құқықтық қорғалу деңгейін арттыру мақсатында қол қойылған немесе ратификацияланған ДЗМҰ-ның Қазақстан Республикасына жүктелген міндеттері көрсетілген. ДЗМҰ конвенцияларына қосылу қажеттілігін түсіндіреді. Мақалада Қазақстанның конвенциялардың ережелерін орындау, оның ішінде тиісті іс-шараларды жүзеге асырудағы қызметі қарастырылады.

Түйін сөздер: авторлық құқық, Қазақстан, заңнама, ДЗМҰ, халықаралық шарттар.

Introduction

Copyright protection is necessary elements of intellectual property legislation in any state. One can say that copyright protection is the effective legal measure for raising investor confidence. Effective copyright protection in the contemporary world has to be achieved by global cooperation between states, because it has ties with international trade, scientific and cultural cooperation between states. In order to express readiness for the collaboration on copyright issues, states, including Kazakhstan, sign international treaties. However, the real expression of effective cooperation is not the mere signing of international documents, but coherent implementation of obligations in accordance with the spirit and letter of international instruments. The fulfilment of obligations can take the form of: reforms in the national legal systems; the provision of required information; the establishing and maintenance of standards, regimes; the conduct of scientific conferences, seminars and researches in the course of joint programs of various kinds, and so on.

Research methods

The conducted research activity applies several methods of scientific knowledge, such as analysis, synthesis, comparison, deduction, and induction. The set of methods has been applied throughout the research.

The first and cornerstone WIPO convention that Kazakhstan applied is the Convention Establishing the World Intellectual Property Organization. Kazakhstan accessed the WIPO Convention by issuing the Declaration of continued application on 16 February 1993 [1]. According to WIPO database the date of entry into force was given as 25 December 1991. The provisions established by WIPO in this Convention include certain obligations to be carries by its member states and organisation by itself. In accordance with the Article 4, the WIPO is obliged to promote the development of measures that harmonize national legislations of member states; to provide legal-technical assistance to those member states that require it; to collect and share data on intellectual property, including copyright; to promote intellectual property

studies and publish the results of research; to share information about international registration of intellectual property.

The binding obligations for WIPO's member states in the WIPO Convention are basically only the timely contribution to WIPO's budget and the fulfilment of obligations established by the WIPO-administered treaties. Therefore, the WIPO Convention is the cornerstone of cooperation processes between the Republic of Kazakhstan and WIPO on copyright matters [2].

Kazakhstan authorities pay attention to comply with the WIPO Convention for the development of national legislations. The absence of intellectual property protection can be considered as high risk level and so halt the activities of entrepreneurs in Kazakhstan.

The high level of copyright protection can develop following branches of internal and external business strategy necessary for the national economy overall: the development of SMEs; the maintenance of the copyright protection of computer programs within company by application of necessary physical and contractual defence mechanisms. All of these methods are to be considered as valuable copyright management knowledge that can be obtained within mutual cooperation with WIPO.

Copyright is necessary to protect the commercial interests of legal entities and persons against unauthorised downloads. In contemporary digital economy of Kazakhstan, another need for the application of copyright is the rising need for the protection of logos, art works, original databases, written material on web sites, platforms. Therefore, it is necessary to pay attention for the activity of national law enforcement bodies of and the process of intellectual property rights registration.

Berne Convention for the Protection of Literary and Artistic Works was signed on 9 September 1886, entered into force on 5 December 1887. The last adopted amendment to the Berne Convention was made on 28 September 1979, and, it entered into force on 19 November 1984.

Kazakhstan accessed the Berne Convention on 12 April 1999. It entered into force for Kazakhstan on 12 April 1999. On that date, Kazakhstan has become a member of the International Union for the Protection of Literary and Artistic Works. Berne Convention provides three basic principles on the copyright protection of works. Basically, they are: copyright does not require formalities for the adequate protection; the protection does not depend on the availability of the protection in the country of origin of the work; the protection in the all contracting parties of the Berne Convention has to be the same [3].

Copyrighted works in accordance with the Berne Convention is any work in literary, scientific and artistic field expressed in any form. The Berne Convention established minimum standards like the list of exclusive rights of

authorisation, the establishment of moral rights and the duration of protection. It should be also noted that the Berne Convention introduced the limitations on economic rights of authors called free uses. The Paris Act of Berne Convention 1971 allows the translation and reproduce of works without proper authorisation for the certain educational needs. Nevertheless, the remunerations have to be paid to authors.

The Berne Convention as other WIPO treaties is aimed for the development of national legal systems. It provides cooperation and assistance for the copyright development, so it imposes certain obligations to the contracting parties including the Republic of Kazakhstan. The provisions are binding, and in order to be successful in copyright protection, Kazakhstan has to apply them all.

According to the Article 2(6), Kazakhstan has to provide copyright protection to the objects of the Berne Convention. The protection should be provided as to authors and their successors. In accordance with the Article 36(1), Kazakhstan has to apply all required, necessary measures to ensure the effective implementation of the Berne Convention's provisions. In accordance with the Article 25(4a) Kazakhstan acknowledged itself as the class VII, establishing own level of contribution to the budget of WIPO. Class VII means one fixed unit of payment.

The Berne Convention influences the legislation of the CIS member-states, as well as the Republic of Kazakhstan's copyright law. General principles established by the Berne Convention, including the exclusive rights of authorisation, are now a part of the WIPO Copyright treaty, the TRIPS Agreement. The Berne Convention's provisions are priority not only for Kazakhstan, but for overall global community. Consequently, it is powerful tool for harmonization and unification of legal norms of world community.

While the copyright is granted upon the creation of original object of art, and it does not require official registration process to be conducted, some authors use the services of regional organisations that issue registration certificates of original works. Whereas the registration of original work is not necessary to do, it can be useful for the litigation process.

Concerning the Kazakhstan performance, it is necessary to mention that in order to provide successful protection for copyrighted objects Kazakhstan respect copyright of original works created before 1973, when USSR has signed the Berne Convention [4, p. 18]. Analysis of documents related to the International Union for the Protection of Literary and Artistic Works shows that Kazakhstan has participated in many conferences, meetings with aim to develop own copyright legislation. Kazakhstan has conducted bilateral cooperation meetings on copyright development, for example, with Germany

[5]. Another reason for participation in meetings, which are held under auspice of WIPO, is to analyse of foreign experience and adoption of it in national legislation while taking into account own specifics.

The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms was signed on 29 October 1971, and entered into force on 18 April 1973. Kazakhstan accessed the Phonograms Convention on 3 May 2001. It entered into force for Kazakhstan on 3 August 2001. This Convention differs from the majority of other WIPO treaties because its administrative functions are executed jointly by WIPO, ILO and UNESCO [6].

The Phonograms Convention is aimed on the protection of any form of aural fixation from making of copies and distribution of it within the borders of contracting state without proper authorisation of the owner of phonogram producer rights. The protection that lasts for at least 20 years from the date of fixation can be obtained by any producer of phonogram, who is national of contracting state of the Phonograms Convention. The Phonograms Convention introduces the limitations to the phonogram producer rights in the form compulsory licenses. Nevertheless, it is possible if the contracting state needs duplicates for educational and research purposes, and, state limits the distribution within its borders and pay the necessary remunerations.

The provisions of the Phonograms Convention establishing certain obligations to Kazakhstan are enshrined in the Article 2 especially highlighting the fact that Kazakhstan has to protect the foreign producers of phonograms by prohibiting importation of the illegal duplicates of phonograms if the purpose of importation is distribution to the public. The Article 9(4) notes that Kazakhstan being bound to the Phonograms Convention is obliged to implement the provisions of the Convention in its national legislation.

Kazakhstan pays particular attention to the protection of exclusive rights of phonogram producer. This right belongs to the group of copyrights, which is necessary for the maintenance of successful climate over the territory of the Republic of Kazakhstan. Kazakhstan has participated in numerous scientific and special conference with aim to develop own legislation on the performers' rights. Kazakhstan has participated in the framework of cooperation between WIPO-members, including sessions of the International Union for the Protection of Literary and Artistic Works.

Kazakhstan considers the successful protection of producer exclusive rights as a method to attract new investors on Kazakhstan's market. Global Innovation Index 2019 report on Kazakhstan performance shows that Kazakhstan has a potential for further development of related rights, including

exclusive rights on phonograms' production [7]. Therefore, Kazakhstan has to develop the cooperation with WIPO further.

WIPO Copyright Treaty was signed on 20 December 1996, and entered into force on 6 March 2002. Kazakhstan ratified the WCT on 12 August 2004, and, it entered into force for Kazakhstan on 12 November 2004 [8].

The provisions of the WIPO Copyright Treaty enlarge the copyright protection of the Berne Convention. The treaty introduces the copyright protection of computer programs and databases. Nevertheless, databases have to be a form of original intellectual creation.

In addition to the provisions of the Berne Convention, the WIPO Copyright Treaty introduces the right of distribution, the right of rental and the right to communication to the public. Along with the Berne Convention the WCT established the minimum length of protection of work is 50 years for any form of creation. However, it should be noted that photographic images and applied art, in according to the Berne Convention, have the minimum term of 25 years.

WIPO Copyright Treaty encompasses the three step test that evaluates and checks the legality of reasons of state, which has introduced the exceptions and limitations in accordance with the Article 9 (2) of the Berne Convention [8]. WIPO Copyright Treaty as other WIPO treaties is aimed for the development of national systems in the respect to IP protection. It provides cooperation and assistance for the copyright, so it imposes certain binding obligations to the Republic of Kazakhstan.

The WCT imposes obligations to be executed by the Republic of Kazakhstan, including the effective ways of ensuring the copyright protection. In accordance with the Article 18 Kazakhstan assumes all obligations of the WCT, including the adaption of all necessary measures to ensure the application of the WCT in the national legislation. Kazakhstan has to effectively prevent and deter infringement of rights protected by the WCT. In accordance with the Article 11, Kazakhstan has obligations concerning the effective protection against the evasion of technological measures used by authors in order to protect their works against illegal acts.

Kazakhstan has to carry out the obligations concerning rights management information as they are provided in the Article 12. This article means that Kazakhstan has to prevent and suppress actions aimed to unauthorised remove of electronic rights management information or unauthorised distribution of works that have illegally dispossessed of electronic management information.

Analysis of official documentation issued in the framework of International Union for the Protection of Literary and Artistic Works shows

that Kazakhstan has participated in many conferences, meetings with aim to develop own legislation. Kazakhstan has experience of conducting multilateral cooperation conferences on copyright development of Central Asian region with its international partners.

It rather important to participate in meetings, which are held under auspice of WIPO, in order to conduct analysis of foreign experience and adoption of it in national legislation while taking into account national specifics. The Republic of Kazakhstan has rather large experience of cooperation with its international partners, including scientific conferences with aim to develop effective IP rights protection system. Kazakhstan's official patent office can adopt the experience of its partners across the globe, if it is necessary for enhancing IPRs registration system.

Not only for Kazakhstan, but for any WIPO's member-state, it is suggested to participate in cooperation processes, which are held under auspice of IGOs, such as WTO, in order to exchange experience on the main issues of national legislation systems on IPRs.

The WCT's provisions for the copyright protection are important for the further improvement of investment climate. The copyright allows the protection of software, which is can be crucial for the protection of innovations in the information technology sphere of Kazakhstan.

As the state that pays attention to the development and support of innovation, Kazakhstan aims for the further development of cooperation ties with WIPO for the protection of IPRs, including copyright. Kazakhstan has respect and will promote the application of WCT's provisions. Kazakhstan has conducted the researches on the development of copyright within its borders. It also has researched the IPRs protection in respect to commercial activities, including copyright protection issues within the framework of WTO's research programs.

WIPO Performances and Phonograms Treaty was adopted on 20 December 1996, and entered into force for Kazakhstan on 20 May 2002. Kazakhstan ratified the WPPT on 12 August 2004. It entered into force for Kazakhstan on 12 November 2004 [9].

The WPPT is the international tool aimed on the protection of IP rights of phonograms' producers and performers. Same as the WCT, it was established in order to adapt the Berne Convention's provisions to the development of technologies, and arsing digital challenges. It should be noted that in the framework of the WPPT that phonograms do not mean audiovisual works. The WPPT enlists the specific economic and moral rights to performers and producers, including the right to monetary compensation for use of the any types of original works for commercial purposes [9].

The WPPT imposed obligations that are similar to obligations of WCT such as obligations concerning technological measures and obligations concerning rights management information. According to the Article 27, The Republic of Kazakhstan has to apply all obligations, which are imposed by the WIPO Performances and Phonograms Treaty, including the obligation to provide national treatment to nationals of other contracting states while taking into account the reservations made by those states.

The WPPT, as WIPO Copyright Treaty, encompasses the three step test that evaluates and checks the legality of reasons of state, which has introduced the exceptions and limitations in accordance with the Article 9(2) of the Berne Convention. The analysis of documentation of International Union for the Protection of Literary and Artistic Works shows that Kazakhstan has participated in many conferences, meetings with aim to develop own legislation. Kazakhstan has valuable experience of conducting multilateral cooperation conferences on related rights development of Central Asian region with its international partners. The results of these conferences lead to the subsequent changes and adoption of new methods of related rights protection.

It rather important to participate in meetings, which are held under auspice of WIPO, in order to conduct analysis of foreign experience and adoption of it in national legislation while taking into account specifics of national IP legislation system.

The WPPT's obligations are important for the further development of investment potential of the Republic of Kazakhstan. The legal scholars of the WIPO's member-states are working on harmonisation and unification of legal norms, concerning the relevant protection of copyright and related rights, on the basis of provisions established by the WPPT.

It should be noted that Kazakhstan as a state that is one of the leaders in Central Asian region in application of modern technologies, has to pay attention to the provisions of WPPT. In order to apply provision of WPPT in the most effective and resource efficient way, Kazakhstan supports the maintenance of official meeting concerning the application of WPPT provisions in foreign states.

The activities conducted in the framework of cooperation with international partners are related to various aspects of joint mutual relationships, including the maintenance of professional cooperation between relevant authority bodies of government that provide the registration of IP rights.

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations was adopted on 26 October 1961, and entered into force on 18 May 1964. Kazakhstan accessed the Rome

Convention on 30 March 2012. It entered into force for Kazakhstan on 30 June 2012. The provisions of the Rome Convention are about the protection of several rights of performers, the producers of phonograms, and broadcasting organisation. The Rome Convention established minimum duration of protection equal to 20 years [10]. However, the WPPT offers 50 years of protection. Same as the Phonograms Convention it is administered jointly by the WIPO and ILO and UNESCO.

It should be noted that even if the Rome Convention, the Phonograms Convention and the WPPT protects the same objects the provisions of these international tools are different. The provisions of the Rome Convention are binding, and in order to be successful in the protection of related rights, Kazakhstan has to apply them all. According to the Article 26, Kazakhstan has to apply all necessary measures in order to fulfil obligations imposed by this Convention.

Kazakhstan's officials are the active participants of many scientific meetings conferences within the multilateral cooperation between member-states of the Rome Convention. The conducted meetings are useful for the further development of national IP rights legislation, due to the exchange of practices between member-states of WIPO.

Kazakhstan can apply necessary knowledge on the enhanced protection of related rights in its IPRs protection practices. It is become possible only with guidance of WIPO regulations and applying WIPO's services that suggest necessary changes and amendments of national legislation with respect to national legislation characteristic features. It is necessary attend all educational meetings on the application of the Rome Convention's provisions, which are held by WIPO, because it will be helpful for the development of the knowledge and skills of national IP official agencies' human resources.

One can say that on the basis of conducted research by WIPO and Kazakhstan, it can be suggested that Kazakhstan will remain one of the regional leaders in its region on the provision of strong IPRs protection. Consequently it is the factor that is appreciated by investors. The only legal cooperation with WIPO that will benefit Kazakhstan is active cooperation on all levels. The main reason for cooperation with WIPO concerning the related rights protection is the knowledge, valuable experience that has been collected by WIPO since its establishment.

Kazakhstan has participated in many conferences, meetings with aim to develop own legislation within the framework of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Kazakhstan has experience of conducting multilateral cooperation conferences on related rights development of Central Asian region

with its international partners. It is rather important to participate in meetings, which are held under the auspice of WIPO, in order to conduct analysis of foreign experience and adoption of it in national legislation while considering main issues of national legislation system on related rights protection.

The obligations and rights enshrined in the Rome Convention are important for the further development of investment potential of the Republic of Kazakhstan. The scholars and officials from national IPRs protection bodies of the WIPO's member-states are working on harmonisation and unification of legal norms, concerning the relevant protection of related rights, on the basis of provisions established by the Rome Convention.

It should be mentioned that Kazakhstan is one of the states that tries to apply modern technologies in legislation, has to pay attention to the provisions of the Rome Convention, in order to maintain effective legal protection of the related rights. The related rights as the rights of great commercial importance have to be protected as a part of national foreign investment protection system. In order to apply provision of the Rome Convention in the most effective approach, Kazakhstan supports the maintenance of official meetings concerning the application of the Rome Convention's provisions in foreign states.

Conclusion

The protection of copyright has great importance for the Republic of Kazakhstan. Therefore, in order to establish effective legal protection Kazakhstan refers to international cooperation within the framework of international treaties of World Intellectual Property Organisation. Active participation and cooperation of Kazakhstan in the development of universal policy on copyright has proven to be effective for the development of own national legislation.

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