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THE SYSTEM OF LEGISLATION OF THE REPUBLIC OF AZERBAIJAN IN THE FIELD OF PROTECTION OF COPYRIGHT AND RELATED RIGHTS

The copyright has a great cultural, humanitarian, economic significance. So, the portion of industry basing only on the copyright constitutes 7,3 % in the world economy¹. The protection of copyrights creates an opportunity for protection of cultural heritage, wide spread of cultural values in the society and emergence of new creative samples.

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"². This provision of the Constitution provides creative independence, creates a legal base for protection of all works of science, literature and art being the result of creative activity not depending on arrangement, value, content, also form and method of expression, as well as creates full liberty and independence opportunity for creative persons in selection of subject, genre and form by protecting any creative result. The Constitution Republic of Azerbaijan guarantees the protection of intellectual property 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 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.

As a democratic, legal and worldwide state, the state of Azerbaijan was a member of the World Intellectual Property Organization in 1995, joined to all international convention and treaties in the direction of protection of copyrights and related rights and coordination of legislation with international standards, it was a member of many universal and regional character international organizations, also concluded bilateral contracts with region states. The state of Azerbaijan included international contracts, which are supported by it, in the legislative system, created the normative-legal base, formed institutional supervision mechanisms in the field of protection of copyrights and related rights and determined fulfillment of international liabilities as a duty³. We must note when we speak about legislative system in the field of protection of copyrights and related rights in the Republic of Azerbaijan that, in accordance with the Law of the Republic of Azerbaijan on "Copyrights and related rights" dated 1996, the legislation of Azerbaijan Republic on Copyrights and related rights consists of the Constitution of Azerbaijan Republic, Civil Code, this law, other appropriate normative legal acts and supported international contracts⁴.

Copyright is one of the most important aspects of intellectual property law. 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 provided⁵. In this regard, the international contracts in the field of copyrights and related rights bear an important significance in regard to protection of these rights. Azerbaijan Republic joined to the Berne Convention for the Protection of Literary and Artistic Works dated 9 September 1886 (Paris Act dated 24 July 1971 amended on 28 September 1979) on 27 November 1998, the International

Convention signed in Roma city on the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations on 10 May 2005, the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Geneva on 29 October 1971) on 16 February 2001, the "WIPO Copyright Treaty" on 30 September 2005, the WIPO Performances and Phonograms Treaty on 30 September 2005, the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled on 12 June 2018. Generally, the Republic of Azerbaijan has joined 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 programme⁶.

The state of Azerbaijan took part actively in international cooperation in the field of intellectual property and joined to many regional contracts in the field of copyrights and related rights. The Agreement on "Cooperation in the field of protection of copyright and related rights" (24 September 1993, Moscow city) concluded by presence of CIS countries as international contract concluded at regional level, where the state of Azerbaijan joined, the Agreement on "Cooperation of the Member States of the Commonwealth of Independent States in Combating Computer Crimes (01 June 2001, Minsk city) aims to cooperate and create legal grounds for it in order to provide efficiently the combating computer crimes, to reveal crimes and to conduct investigation.

Bilateral treaties also have important significance in the direction of protection of copyrights and related rights. As a result of just such treaties, copyrights and related rights are protecting reliably in close regions. So, there are national, cultural, religious and other common values in the most cases in the states located in adjacent or close regions, in this regard, there may be similar music, creative works, etc. and there are problems in determination of initial author. In this regard, the Government of Azerbaijan concluded treaties with many region states in the direction of protection of copyrights and related rights. 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 The Cabinet of Ukraine" dated 2002, "between Azerbaijan Republic Government and Turkish Republic Government" dated 2005, "between Azerbaijan Republic Government and Tajikistan Republic Government" dated 2012, "between Azerbaijan Republic Government and Turkmenistan Republic Government" dated 2017, "between Azerbaijan Republic Government and Kazakhstan Republic Government" dated 2017, Agreement between the Copyright Agency of the Republic of Azerbaijan and the Russian Copyright Society in the field of collective management of mutual property rights and mutual assistance dated 2001 and Memorandum of Understanding on Cooperation between the Government of the Republic of Azerbaijan and the World Intellectual Property Organization dated 2018 can be indicated as a sample to the bilateral agreements in the direction of widening international cooperation in the field of protection of copyright and related rights.

The protection of cultural heritage belonging to the people of Azerbaijan, fight against Armenian plagiarism, increase of the role of creative industry basing on the copyrights in modern economy and its impact to information society, improvement of legislation in this field is one of the priority directions of public policy in the Republic of Azerbaijan. One of the important duties in the direction of protection and development of copyrights and related rights in the Republic of Azerbaijan is coordination of national legislation to international standards, contracts and treaties, also European directives. In this regard, the process of improvement of legislation in the fields of copyrights and related rights is realized successfully.

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 relations⁷.

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"⁸.

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 Euro-

pean 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 holders. 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 regulated⁹.

On kind of intellectual property protected with copyrights is non-traditional intellectual property. Non-traditional intellectual property means integral scheme topologies, data collection and examples of folklore. These kinds of intellectual property are protected with special protection right. 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. The below mentioned spatial and geometric placement of integral scheme elements and the collection of inter-element relations is called as topology of integral scheme. The legal protection is concerned only the original topologies. 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 Act. Exclusive rights to use the topology are valid for a period of 10 years¹⁰.

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. It is impossible to provide the legal protection of folklore with copyrights and there is a need for special protection. 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 heritage¹¹.

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 protection¹². 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 worth. 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. The holder (holders) of exclusive right or producer for data collections, also date collection protected with special protection right may register it officially in the Copyright Agency during validity period of rights (excluding data collection keeping the information concerning the state secret in itself)¹³.

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 samp-

les, 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)¹⁴. 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). 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 Republic. 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.

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.

We must note the Order of the President of the Republic of Azerbaijan about application of the Law No 580-IIIQD dated 1 April of the Republic of Azerbaijan on “Making of amendments and additions to the Law of the Azerbaijan Republic about “Copyrights and related rights” dated 07 May 2008, also legislative system of the Republic of Azerbaijan, Order about “Making of amendments to the “Regulations on Copyright Agency of the Republic of Azerbaijan” confirmed under Order No 287 dated 30 August 2005 of the President of the Republic of Azerbaijan dated 15 March 2013, Order about “Making of amendments to the “Regulations on Copyright Agency of the Republic of Azerbaijan” confirmed under Order No 287 dated 30 August 2005 of the President of the Republic of Azerbaijan dated 28 October 2013 and Order of the President of the Republic of Azerbaijan about provision of activity of Intellectual Property Agency of the Republic of Azerbaijan dated 30 July 2018 in the field of copyrights and related rights¹⁵.

Also, the following Decisions of the Cabinet of Ministers of the Republic of Azerbaijan constitute the normative legal base in the field of copyrights and related rights: the Decision on approval of the “Rules for the determination, distribution and payment of the minimum amount of royalties for the reproduction of audiovisual works and phonograms for personal purposes without income” dated 24 August 2007, the Decision on approval of the “Rules for registration (accreditation) of organizations managing the property rights of authors and owners of related rights on a collective basis” dated 22 September 2011, the Decision on approval of the “Rules for allowing natural and legal entities of foreign countries to use the samples of Azerbaijani Folklore for commercial purposes outside the Republic of Azerbaijan and approval of amount of fee for its use” dated 20 October 2011, the Decision on approval of the “Rules for use of means obtained from issue of control marks and international standard identification numbers and publication of report about use of those means” dated 18 January 2013 on approval of Decision about “Rules for customs control over the movement of goods containing intellectual property objects across the customs border” dated 28 December 2012, the Decision on approval of the “Rules for issue of international standard identification numbers” and “Amount of fee for issue of international standard identification numbers” dated 14 March 2013, the Decision on approval of the “Rules for form, accounting, use and issue of control mark” dated 9 June 2014, the Decision on approval of the “Rules for declaring works as state property” and the “List of authors whose works are declared state property and films which are declared state property” dated 7 May 2019¹⁶.

By considering modern development trends in the field of copyrights and related rights, the copyright legislation of Azerbaijan is constantly developing and improving. The creative industry basing on copyrights is developing rapidly. One of the problems in the legislation in the field of protection of copyrights is a problem of protection of copyrights on the internet. Internet became to virtual market of intellectual property. 50 percentage of information posted on the internet network is preserved with intellectual property rights¹⁷. Three of each four goods sold in the order of e-commerce are the objects of copyrights and related rights. Internet gives an opportunity to users to cross

natural borders of the states easily and Internet creates an opportunity for use of creative works of authors. In general, the growth rate of normative legal regulation related to the protection of copyright on the Internet lags behind the speed of the Internet. As a result, authors can't benefit from conclusions of their intellectual works and the creative stimulus falls. In this regard, the draft bills about protection of copyrights on the internet and protection of rights of broadcasting organizations are developing in the Republic of Azerbaijan. On the whole, the legislation of the Republic of Azerbaijan on intellectual property bears complex character as in all developed countries and covers the provisions of state, administrative, financial, labor and criminal law.

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Резюме

Сафаров А.Т. Система законодавства Азербайджанської Республіки в галузі захисту авторських і суміжних прав.

Законодавство, яке захищає права творчих людей, відіграє важливу роль в захисті національної спадщини, культурних традицій і самобутності країни. Створення сильної, незалежної культурної індустрії залежить від наявності таких законів. Визнання авторських прав в Азербайджанській Республіці на конституційно-правовому рівні вперше було закріплено в Конституції від 12 листопада 1995 р. Конституція прямо гарантує захист авторських прав і визначає обсяг прав та інтелектуальної власності, що охороняються законом. Однією з традиційних функцій кожної держави є широке міжнародне співробітництво, яке дозволяє гарантувати, що права національних авторів не захищені за кордоном, а права іноземних авторів дома на національному рівні. Відповідно до міжнародних норм визнається право кожної людини брати участь у культурному житті, отримувати вигоду і застосовувати досягнення наукового прогресу, захищати духовні й матеріальні інтереси, що впливають з його наукової, художньої та літературної діяльності. Відповідно до Закону Азербайджанської Республіки про авторське право і суміжні права 1996 року законодавство Азербайджанської Республіки про авторське право і суміжні права складається з Конституції Азербайджанської Республіки, Цивільного кодексу, цього Закону, інших відповідних нормативних правових актів і міжнародних договорів. Азербайджанська Республіка, яка стала членом ВОІВ у 1995 р., вдосконалила систему захисту авторських прав, створила нормативну базу, приєдналася практично до всіх міжнародних конвенцій та угод щодо захисту інтелектуальної власності та гармонізації законодавства до міжнародних стандартів, а також із країнами регіону. укладені двосторонні угоди, сформовані інституційні механізми контролю у сфері захисту прав інтелектуальної власності. Основною метою тут є ефективний захист прав авторів літературних і художніх творів рівним і однаковим чином на міжнародному рівні.

Ключові слова: авторське право, міжнародне авторське право, цифрове авторське право, суміжні права, автор, інтелектуальна власність, права інтелектуальної власності, права людини, законодавство, Інтернет, творча свобода, комп'ютерна інформація, топографії інтегральних мікросхем, захист прав на топологію, система законодавства.

Резюме

Сафаров А.Т. Система законодательства Азербайджанской Республики в области защиты авторских и смежных прав.

Законодательство, защищающее права творческих людей, играет важную роль в защите национального наследия, культурных традиций и самобытности страны. Создание сильной, независимой культурной индустрии зависит от наличия таких законов. Признание авторских прав в Азербайджанской Республике на конституционно-правовом уровне впервые было закреплено в Конституции от 12 ноября 1995 года. Конституция напрямую гарантирует защиту авторских прав и определяет объем прав и интеллектуальной собственности, охраняемых законом. Одной из традиционных функций каждого государства является широкое международное сотрудничество, которое позволяет гарантировать, что права национальных авторов не защищены за границей, а права иностранных авторов дома на национальном уровне. В соответствии с международными нормами признается право каждого человека участвовать в культурной жизни, извлекать выгоду и применять достижения научно-го прогресса, защищать духовные и материальные интересы, вытекающие из его научной, художественной и литературной деятельности. В соответствии с Законом Азербайджанской Республики об авторском праве и смежных правах 1996 года законодательство Азербайджанской Республики об авторском праве и смежных правах состоит из Конституции Азербайджанской Республики, Гражданского кодекса, настоящего Закона, других соответствующих нормативных правовых актов и международных договоров. Азербайджанская Республика, которая стала членом ВОИС в 1995 году, усовершенствовала систему защиты авторских прав, создала нормативную базу, присоединилась практически ко всем международным конвенциям и соглашениям по защите интеллектуальной собственности и гармонизации законодательства с международными стандартами, а также со

странами региона. заключены двусторонние соглашения, сформированы институциональные механизмы контроля в сфере защиты прав интеллектуальной собственности. Основной целью здесь является эффективная защита прав авторов литературных и художественных произведений равным и единообразным образом на международном уровне.

Ключевые слова: авторское право, международное авторское право, цифровое авторское право, смежные права, автор, интеллектуальная собственность, права интеллектуальной собственности, права человека, законодательство, Интернет, творческая свобода, компьютерная информация, топологии интегральных микросхем, защита прав на топологию, система законодательства.

Summary

Azer Tofiq Safarov. The system of legislation of the Republic of Azerbaijan in the field of protection of copyright and related rights.

Legislation protecting the rights of creative people plays an important role in protecting national heritage, cultural traditions and the identity of the country. The creation of a strong, independent cultural industry depends on the existence of such laws. Constitutional and legal aspects of copyright in the Republic of Azerbaijan Recognition was first enshrined in the Constitution of 12 November 1995. The Constitution directly guarantees the protection of copyright and specifies the scope of rights and intellectual property protected by law. One of the traditional functions of each state is extensive international cooperation, which creates conditions for ensuring that the rights of national authors are not protected abroad and the rights of foreign authors at home at the national level. According to international norms, the right of every person to participate in cultural life, to benefit from and apply the achievements of scientific progress, and to protect the spiritual and material interests resulting from his scientific, artistic and literary work is recognized. According to the Law of the Republic of Azerbaijan on Copyright and Related Rights of 1996, the legislation of the Republic of Azerbaijan on Copyright and Related Rights consists of the Constitution of the Republic of Azerbaijan, the Civil Code, this law, other relevant normative legal acts and international treaties. The Republic of Azerbaijan, which became a member of WIPO in 1995, has improved the system of copyright protection, created a regulatory framework, acceded to almost all international conventions and agreements on the protection of intellectual property and harmonization of legislation with international standards, as well as with countries in the region. bilateral agreements have been concluded, and institutional control mechanisms have been established in the field of protection of intellectual property rights. The main goal here is to effectively protect the rights of authors of literary and artistic works in an equal and uniform manner at the international level.

Key words: copyright law, international copyright law, digital copyright, related rights, author, intellectual property, intellectual property right, human rights, legislation, The Internet, creative freedom, computer information, Integrated circuit topologies, protection of rights to topology, system of legislation.

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ПРАВОВА ДИФЕРЕНЦІАЦІЯ ПРИ ВІТЧИЗНЯНОМУ ЗАКОНОДАВЧОМУ ДЕФОЛТІ У СФЕРІ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ НА ЛІКАРСЬКІ ЗАСОБИ

Постановка проблеми. Кризь призму реалій пандемічного сьогодення аргументовано вбачається пріоритетність питання безпеки, ефективності і якості лікарських засобів та надзвичайна важливість їх доступності як окремо для кожної людини, так і в цілому для системи охорони здоров'я України. Динамічність інтелектуальної власності – сфери з юридичною оболонкою та нестимульованою ззовні економічною сутністю, рухома інноваційним потенціалом, безперечно, потребує належного законодавчого врегулювання.

Вочевидь, імплементація міжнародних нормативно-правових актів щодо інтелектуальної власності на лікарські засоби у вітчизняне законодавство, що відбувалася протягом майже 30 років, виявилася більш трансферентною, ніж трансформаційною. Зрозуміло, що для адаптації законодавчих норм Європейського Союзу, носіїв колосального практичного досвіду у неординарній галузі права – інтелектуальній власності на лікарські засоби, до законодавства України, – необхідна ідентифікована стала правова платформа.

Відтак, окрім імplementованих у національне законодавство міжнародних норм системи права Європейського Співтовариства, існуюча система правового контролю й захисту інтелектуального продукту у фармацевтиці в Україні складається із Конституції України (документ № 254к/96-ВР від 28 червня 1996 р.)¹, кодексів (зокрема, Цивільного кодексу України (документ № 435-IV від 16 січня 2003 р.))², законів (зокрема, Закону України (№ 123/96-ВР від 4 квітня 1996 р.) «Про лікарські засоби»³, Закону України «Основи законодавства України про охорону здоров'я» (№ 2801-ХІІ від 19 листопада 1992 р.))⁴, підзаконних нормативних актів, прийнятих центральними органами виконавчої державної влади (зокрема, Міністерством охорони здоров'я України), вказує на узагальненість нормативно-правової форми і відсутність цілковитої законодавчої ясності, що призводить до спірних питань при впровадженні та використанні об'єктів інтелектуальної власності на лікарські засоби.

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