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Protecting copyright in the Internet age: The Kazakhstani perspective

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Abstract: Copyright is granted to authors and right holders of literary, artistic, musical and other creative works since the creation of such works. It should be noted that some fundamental legal frameworks such as the Berne Convention, World Intellectual Property Organization (WIPO) treaties, and the Kazakhstani law on «Copyright and Related Rights» have all been imposed to recognize and protect the rights of authors and right holders globally and internationally. The advent of digital technologies such as the internet, mobile phones, e-book, social networks and others has created an opportunity for the public to make, reproduce and distribute copyrighted works easier, cheaper and faster. However, apart from above opportunities, digitization has also brought complicated issues such as plagiarism, piracy for copyright protection where ordinary users have started to copy and distribute without the authorization of authors. Moreover, it has been noted that the existing national copyright regime appears to be ineffective to solve the challenges. The paper aims to analyze the current situation of copyright protection in Kazakhstan by addressing a question of whether national legal framework can handle digital copyright violation. The novelty of this article is to introduce some legislative and technological measures such as the liability of information intermediaries, blockchain and watermarking, Digital Rights Management (DRM) technologies to enhance copyright protection in the digital environment. To address the above issues, the author will mainly take some essential legal methods such as dialectical, system-structural, comparative-legal, and formal legal.

Key words: copyright, copyright infringement, internet, information intermediary, blockchain technology, watermarking technology, DRM

Introduction

Digital technology and electronic networks offer a valuable opportunity to serve the public interest by improving access to electronic resources for education, research, and leisure. Furthermore, this technology supports the simultaneous use of online materials by multiple users and facilitates remote search capabilities, making territorial and geographical boundaries less relevant when accessing information [1].

Moreover, digital landscape has created new intellectual property objects such as computer graphics, e-books, software, database and others [2]. At times, technological advancements are so significant that they shake the very foundations of an entire legal framework. Peer-to-peer (P2P) file-sharing platforms like Napster, Gnutella, KaZaA, Grokster, and Freenet are merely indicators of a series of innovations that have triggered a transformative shift in the principles of copyright law [2].

It should be noted that digital technologies have constantly impacted on copyright law. This effect can be seen that digitization makes easy, cheap and excellent copy of copyrighted works and allows rapid, global distribution of such works through electronic networks [2].

However, this innovation has introduced unique challenges for copyright holders, particularly by enabling the unauthorized uploading and distribution of copyrighted works without the required licenses, permissions, or legal justification.

Being as a part of intellectual property rights, copyright is granted to the authors of literary, artistic and musical works since they are first created. Under the Berne Convention, this right applies regardless of whether the work is published, as long as it fulfills the fundamental criteria of originality, fixation, and reciprocity.

Copyright is a term used to explain the part of intellectual property that regulates the creation and use of a range of creative works such as music, movie, books, and software [3]. Creative works regulated by copyright and related rights must be in an original, and intangible form as an idea itself cannot be protected by copyright [4]. In other words, to apply copyright, works must be recorded or written down [5]. In addition, intangible property protected by copyright is unique in that it appears automatically and for the advantage of right holders [3].

Copyright law is a concept adopted from the protection of global IP [6]. In essence, it is a branch of law that regulates the rights of authors whose creative works such as literary works, artistic works, dramatic works, musical works, and other products are obliged to be protected by copyright. Moreover, such rights are respected by international agreements as well as the national laws of most states around the world. It is noteworthy that the legal recognition and respect of rights of authors will lead to the motivation of intellectual creativity among the public. Therefore, the main goal of copyright law is to encourage right holders with an idea to create more original works by granting them rights over their creations [7]. So it is plausible to indicate that copyright law is the law that regulates copyright and its enforcement and management.

As mentioned above, the quick development of digital technologies and the internet has led to online copyright infringement which, in turn, has become a serious issue. Illegal streaming, downloading, or sharing copyrighted works on the internet and social networks without authorization and license raises a huge concern and challenge for copyright owners and

authors [8]. This issue appears to be common in the Central Asia, including Kazakhstan and the reason for this as some scholars indicate is weak legal framework and inadequate enforcement mechanisms. The paper aims to evaluate critical legal issues surrounding online copyright violation in Kazakhstan and examine some potential ways to enhance copyright protection in the state.

Materials and methods

The research methodology entails a review of current periodicals, online materials, and legislative and regulatory acts, focusing on copyright protection issues in the digital environment. In developing this article, a combination of general scientific and specialized research methods was applied. The authors have mainly relied on some essential legal methods such as dialectical, system-structural, comparative-legal, and formal legal.

The research draws on the works of notable foreign scholars, including L.Bently, B.Klein, L.Edwards, G.Moss, I.Atanasova, A.Mathur, A.Savelyev and others.

Discussion

It is worth to note that digitization is defined as the translation of information into an online format and some indicate that it is the shift media technology from analogue to digital. The advent of the internet has provided the public with many benefits from easy access to the network to rapid and widespread distribution of information. From copyright perspective, it can be seen that digitization altered the way that copyrighted works could be assessed, exploited, controlled and used and therefore it raised a question to review the key principles and process concerning copyright law [5]. According to Atanasova, four factors of digital technologies have hugely impacted on copyright protection: ease of copying, ease of distribution or sharing information, the enlarged storage of online devices and the cheap way of reproduction of copyrighted works [2].

Ease of reproduction: Digital works can be reproduced quickly, at little to no cost, and without quality loss. Each copy can be replicated endlessly, allowing one digital copy to serve millions of users;

Ease of dissemination: Digital technology enables information to spread quickly across networks, often going viral in a short time, regardless of its accuracy. This, combined with the ease of duplication, allows a single digital copy to be replicated and distributed globally within minutes;

Cheap storage of devices: Digital technology allows vast amounts of data to be stored in small spaces, with storage devices becoming increasingly efficient each year. For example, entire libraries can be stored on personal computers, and creative works like music and documents can be compressed without quality loss. This has significantly impacted industries like music [2].

Since new technologies have caused a serious threat to copyright law, it also emerged a huge debate in the public to solve the issue surrounding online copyright violation. At the current condition, many right holders or authors consider to combat digital piracy by bringing lawsuit

to each individuals. However, this approach seems to be ineffective or even unrealistic due to the scale of the internet, since the practice shows a such approach is time-consuming and expensive to track each user [9].

It should be noted that in the cyberspace all IP rights, especially, copyright appears to be the most vulnerable before the infringement than in traditional environment. Therefore, infringement issues are one of the biggest challenges for copyright protection. Apart from allowing the exact copy of original works, digital technologies also let the users to edit and adapt works, where in most cases it makes difficult to distinguish original works from edited ones. So, the internet and digital technologies create more issues for authors to control the use and storage of their creative works [10].

It is common to see the public who uses and shares copyrighted works freely without regard for restrictions and permissions. For many of them, everything which is found on the net seems to free and belongs nobody.

It should be noted that there are various types of copyright infringement in digital landscape:

- 1) downloading the objects of digital media such as video, photos, e-books, songs and others without the license or permission;
- 2) reposting copyrighted works on the internet or the social networks;
- 3) sharing copyrighted works in form of PDF or music to friends, users through social media platforms;
- 4) circumventing digitally protected works;
- 5) using digital works without proper citation or acknowledgement;
- 6) copying CD contents for commercial exploitation and other actions [2].

It should be mentioned that the first global response to copyright protection was the Berne Convention for protection of literary and artistic works of 1886. The Convention mostly relied on three principles such as principle of national treatment, principle of automatic protection, and principle of independence of protection. Moreover, thanks to this Convention, copyright owners were introduced by some exclusive rights such as the right to translate, the right to make adaptations, the right to perform before the public, the right to communicate to the public and so on. The Berne Convention also at first time introduced moral rights where the author has the right to claim authorship and the right to object to any mutilation, deformation or other illegal actions. The Convention provides some limitations or exceptions on economic rights where copyrighted works can be exploited without the permission of right holders and authors. These limitations are generally named as «free uses» in copyright law [11].

However, the Convention failed to address copyright abuse in the digital environment. As above said, the rise of the internet has triggered the mass unlawful copy and distribution of copyrighted works such as audio-video files, photos, articles, books and others items. Thus, this situation has raised a question on the necessity of changes on the existing legal framework to combat digital piracy. As a result of these digital challenges, the WIPO Copyright Treaty (WCT), and WIPO Performances and Phonograms Treaty (WPPT) were adopted to handle copyright violation in the cyberspace.

The WCT is an agreement designed to enhance the Berne Convention by specifically addressing copyright protection in the digital environment. Often referred to as the «Internet Treaty», its

main goal is to safeguard the distribution of digital content online. It requires member countries to uphold certain rights pertinent to digital communications, such as granting authors exclusive rights to communicate, rent, and reproduce their works, including enabling downloads from websites. Although many copyright laws already cover these rights, the WCT makes it clear that authors should receive these protections as a matter of necessity. Additionally, the WCT aligns with most copyright laws by ensuring a protection term of 50 years for digital works [12].

WCT also emphasizes that member states should establish effective legal remedies to prevent the circumvention of technological protections that authors use to secure their rights. It calls for penalties against individuals who alter or remove copyright management information added by the copyright holder. This stance acknowledges the limitations of relying solely on technology to protect copyrighted works, given rapid advancements in technology that make protective measures vulnerable to skilled manipulation. Consequently, it is essential to support these technological protections with legal safeguards to maintain the meaningful exercise of copyright, especially in the digital environment where new users require strengthened measures against technological tampering [12].

The WPPT, similar to the WCT, was created to complement the Rome Convention by specifically protecting the rights of filmmakers, actors, artists, and musicians, collectively recognized as performers under the treaty. It also safeguards the rights of creators of digital audio recordings distributed online. The WPPT's primary aim is to ensure the protection of rights related to the storage, transmission, and distribution of digital performances and phonograms, along with anti-circumvention measures. Reflecting these principles, the U.S. Congress enacted the Digital Millennium Copyright Act (DMCA) in 1998, which, among other provisions, criminalized acts of copyright circumvention [12].

Atanasova claims that both treaties which intended to address digital technologies also facilitated copyright and related rights to be adapted to the challenges of digital environment. This effort resulted in the adoption of 2001 Copyright Directive (the Information Society Directive) in Europe and DMCA in the US [2].

The legal framework for copyright protection in Kazakhstan is the law of the Republic of Kazakhstan, «On Copyright and Related Rights». Up until 2022, there had been over 20 amendments, with most amendments being made to meet new challenges [13]. One of these challenges was copyright violation issues which are mostly committed on the internet.

No country has laws governing legal relations in the global network, allowing users to freely control, copy, and distribute copyrighted material without oversight. The global nature of the Internet makes it nearly impossible to enforce restrictions, leading to frequent copyright infringements that are often difficult or futile to address [14].

According to art. 49 of the Law on Copyright and Related Rights, there are the following methods of protecting copyright: recognition of rights; restoration of the situation prior to the violation; prevention of infringing actions; compensation for damages, including lost profits; recovery of income earned by the infringer; payment of compensation ranging from one hundred to fifteen thousand monthly calculated indices, or double the value of the infringing copies or usage rights, as determined by the court. The court sets the compensation amount instead of calculating losses or income recovery. The law also indicates that other measures could be taken

to protect the rights of copyright owners [13]. In addition to the above methods of protection, authors or rights holders have the right to demand moral damages from copyright infringers.

Given the copyright protection in the cyberspace, a professor Idrysheva offers the legal regulation of information intermediaries in Kazakhstan. The scholar claims that despite the fact that social relations with the participation of providers emerged almost 30 years ago and are dynamically developed, there is still no legal status of providers in Kazakhstani legislations. According to a Russian practice, information intermediaries are defined as 1) a person who transfers a content to the information telecommunication network (ITN), including the internet; 2) a person who posts material or information necessary to obtain it using the ITN; 3) a person providing the opportunity to access the material on this network. Apart from the norms about the definition and types of service providers, and their liability in copyright law, Idrysheva also suggests to introduce the following norms:

- providers are required to obtain authorization from individuals before posting materials on an internet resource. In cases where text works are submitted under another person's name (as per Article 15 of the Civil Code of the Republic of Kazakhstan), providers must refuse to accept such materials;
- publish on the internet resource guidelines for copying or reprinting uploaded texts, including automatic insertion of a source link when content is copied;
- post a warning about the presence of certain copyright holders/authors of the content posted on the site [15].

Despite these methods of copyright protection, there is the lack of judicial practice on copyright violation on the digital landscape because of the following reasons: authors often hesitate to sue for rights protection due to fears of litigation; difficulties in gathering and documenting evidence; a lack of technical and legal knowledge among the public, and inadequate qualifications of lawyers in internet technology [14].

Some argue that copyright cases do not reach court because there is no organized market for copyright work in Kazakhstan. For example, local singers make money mostly from concerts and wedding parties, and not from albums, while in the US and UK, singers usually make high profits by selling their albums [16].

The advent of the internet has resulted in many copyright violation issues in Kazakhstan, too. For example, a photographer Zolotukhin from Almaty city has been already combating copyright infringement for five years. He claims that within these years the situation has not been dramatically changed due to the mass copyright abuse. According to Google sources, the photographer has a photo which has been infringed 5500 times [17]. In recent judicial cases, Mr. Zolotukhin has gotten over 2 million tenge for copyright violation. According to the case, some photos of the photographer were infringed by local companies from 2016 to 2019 years. Despite the fact that the defendants refused the claim by arguing that the photos were taken from open source where there was no information allowing to identify the author, the court decided the case in favor of the claimant, since there was no an author contract between parties [18].

The common issues related to copyright abuse on the digital landscape is plagiarism. Plagiarism involves publishing another person's work, either in whole or in part, under the

name of someone who is not the original author on the internet. It also includes falsifying, altering, or deleting information – especially in electronic form – related to rights management, without the consent of the copyright holders or the individuals responsible for managing these rights.

One of the high-profile lawsuits related to plagiarism in Kazakhstan was the case of web series named as «5:32». A claimant, Mr. Dzaldinov brought lawsuit against LTD «Salem Social Media» and required to get around 15 000 monthly calculation index(MCI) (one MCI is 3 692 tenge) for plagiarism issues and 300 mln tenge as a compensation for moral damage. Later, the court found out that the screenwriters of the web series, indeed plagiarized some facts and stories from the claimant's book. The defendants refused all facts related to copyright infringement [19].

Moreover, Yakubova and Yakubov argue that in terms of the plagiarism, there is no need to publish a work relied on plagiarism, in many cases it can be enough to find it in the part of another work like dissertation or scientific article. The primary characteristic of plagiarism lies in the legal ramifications associated with claiming copyright over someone else's work. While the concept of plagiarism appears straightforward, its boundaries remain ambiguous. In reality, plagiarism can sometimes be confused with other related actions. Consequently, unauthorized use, reproduction, or publication of copyrighted material by others does not necessarily constitute plagiarism [14].

A distinct category of online violations is copyright piracy, particularly internet piracy, which includes copying and distributing musical compositions, sharing copies of films or television programs through computer networks, and unlawfully distributing authors' works.

A key challenge in combating piracy is the support which receives from online communities, including the formation of political movements advocating for unrestricted information sharing on the internet, protests defending sites shut down for hosting unlicensed content, and hacker attacks targeting government websites in various countries.

A common method for sharing content, both legally and illegally, online is through the P2P protocol. The challenge in addressing torrent site activity lies in the fact that these sites do not host the copyrighted material directly; instead, they provide links to individuals who hold the content. These individuals may be located in different countries, making enforcement difficult [20].

In short, it is plausible to say that the existing copyright approach of Kazakhstan appears to be more and less inappropriate to address copyright protection in the digital environment. To be aligned with the modern conditions of digital environment, in our opinion, Kazakhstan needs to take some technological measures and approaches related to copyright protection.

Results

As above said, copyright violation or infringement tends to be a serious threat to creativity and innovation and with digital technologies such a problem has achieved an unprecedented level. To protect the rights and interest of authors and right holders, some scholars offers to use certain technological counter measures. Thus, the following technological measures are recommended to provide better copyright protection.

1. Blockchain technology.

Blockchain is a form of distributed ledger technology that organizes value-exchange transactions into sequential blocks. Each block is linked to the one before it and is permanently recorded across a peer-to-peer network, utilizing cryptographic methods for trust and security. This system preserves a consistent state, agreed upon by all participants, without the need for a central authority or mutual trust.

Blockchain introduces a new approach to data storage security grounded in decentralization. Its key features include:

Transparency: All data on the blockchain is publicly accessible, making it resistant to arbitrary tampering and easily subject to audit.

Redundancy: Each user of the blockchain system possesses a copy of the data, ensuring that it cannot be easily taken offline due to system failures or malicious activities by external parties.

Immutability: Altering records on the blockchain is extremely challenging and requires consensus as defined by the protocol (e.g., agreement from the majority of blockchain users). Therefore, the integrity of the records is upheld by the inherent properties of the underlying code rather than the identities of those operating the system [21].

This ledger logs duplicate works transmitted through a computer system, encoded with specific digital codes that uniquely identify them. With this recorded information, individuals can trace the history and verify the origin of the media content. This preventive capability sets blockchain apart from other technologies and is regarded as the most effective solution to address copyright issues in the digital environment [22].

2. Watermarking technologies.

Watermarking is a digital tool which is used to protect certain copyrighted works. It should be noted that watermarking can be used in multimedia sources such as text, images, audio and video without decreasing the quality of such works. Most experts agree that watermarking is an effective method to protect copyrighted works where copyright owners can monitor their works and prevent the works from illegal copying. A recent study has demonstrated that the ownership of academic works can be enhanced through watermarking tools such as a Digital Object Identifier with Quick Response Code (QR Code) [23].

Watermarking is a preventive technique that embeds the author's signature or a unique mark into the original work, making unauthorized duplication difficult and enabling recognition of the author's ownership through this distinctive sign or mark [12].

In brief, it would be fair to say that digital watermarking technology can solve the problems concerning unauthorized use of copyrighted works.

3. DRM tools.

Encryption involves converting information into a coded format, concealing its true meaning to safeguard data. Its main purpose is to maintain the confidentiality of digital data, whether stored on computer systems or transmitted over networks, such as the internet. DRM uses encryption to limit access to digital content and prevent unauthorized copying and sharing of copyrighted materials like music, movies, and e-books, effectively helping to combat piracy. Through DRM, copyright holders can electronically control the use of their works. Typically, a DRM system begins when the copyright owner provides the digital content to a service

provider, which then incorporates it into an asset management system that regulates its usage. By managing access and enabling content to be streamed upon verification, DRM minimizes unlawful use of digital media [24].

Conclusion

But not least, copyright protection in the digital landscape is a complicated issue. In relation to Kazakhstani legal framework, there is a lack of norms related to the legal regulation of the copyrighted works in the internet, including the main participants of such environment, ISPs.

In this context, we deem it essential to prioritize amending Article 6 of the Law of the Republic of Kazakhstan «On Copyright and Related Rights» to include copyright objects in electronic or digital form.

It is proposed to incorporate definitions related to information intermediaries into the terminology of the Law of the Republic of Kazakhstan «On Informatization» This law would also outline their rights and obligations concerning copyright objects on the internet.

Provisions requiring mandatory pre-trial dispute resolution between authors/rightsholders and providers should be incorporated into Article 49 of the Law of the Republic of Kazakhstan «On Copyright and Related Rights».

In addition to the existing legal framework, authors and right holders in Kazakhstan ought to use contemporary technological measures such as blockchain and watermarking tools to protect their works and prevent illegal duplication.

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Интернет дәуірінде авторлық құқықты қорғау: Қазақстанның бағыты

Андатпа: Авторлық құқық авторлар мен авторлық құқық иелеріне әдеби, көркем, музыкалық және басқа да шығармашылық туындылар құрылған сәттен бастап беріледі. Берн конвенциясы, Зияткерлік меншік жөніндегі дүниежүзілік ұйым (ЗМДҰ) халықаралық шарттары және «Авторлық құқық және сабақтас құқықтар туралы» Қазақстанның Заңы сияқты кейбір

іргелі құқықтық негіздер авторлар мен құқық иелерінің құқықтарын тану және қорғау үшін құрылғанын атап өткен жөн. Интернет, ұялы телефондар, электронды кітаптар, әлеуметтік медиа және басқалары сияқты цифрлық технологиялардың пайда болуы жұртшылыққа авторлық құқықпен қорғалған туындыларды оңай, арзан және жылдам жасауға, көбейтуге және таратуға мүмкіндік берді. Алайда, жоғарыда аталған мүмкіндіктерден басқа, цифрландыру плагиат, авторлық құқықбұзушылық сияқты күрделі мәселелерге әкелді, мұнда қарапайым пайдаланушылар авторлардың рұқсатынсыз материалдарды көшіріп, тарата бастады. Сонымен қатар, аталған мақалада авторлық құқықты қорғаудың қолданыстағы ұлттық режимі бұл мәселелерді шешуде тиімсіз болып көрінетіні атап өтілді.

Мақаланың мақсаты- отандық заңнамалар цифрлық саладағы авторлық құқықты бұзуды реттей ала ма деген мәселені қарастыра отырып, Қазақстандағы авторлық құқықты қорғаудың ағымдағы жағдайын талдау. Бұл мақаланың жаңалығы цифрлық ортада авторлық құқықты қорғауды күшейту үшін ақпараттық делдалдардың жауапкершілігі, блокчейн және су белгілері, Digital Rights Management (DRM) технологиялары сияқты кейбір заңнамалық және технологиялық шараларды енгізу болып табылады. Жоғарыда аталған мәселелерді шешу үшін автор негізінен диалектикалық, жүйелік-құрылымдық, салыстырмалы-құқықтық және формалды-құқықтық сияқты кейбір негізгі әдістерге жүгінеді.

Түйін сөздер: авторлық құқық, авторлық құқықты бұзу, интернет, ақпараттық делдал, блокчейн технологиясы, су таңбасы технологиясы, DRM.

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Защита авторских прав в эпоху Интернета: взгляд Казахстана

Аннотация: Авторское право предоставляется авторам и правообладателям литературных, художественных, музыкальных и других творческих произведений с момента их создания. Следует отметить, что некоторые фундаментальные правовые рамки, такие как Бернская конвенция, международные договоры ВОИС и закон Республики Казахстан «Об авторском праве и смежных правах», были созданы для признания и защиты прав авторов и правообладателей во всем мире. Появление цифровых технологий, таких как Интернет, мобильные телефоны, электронные книги, социальные сети и другие, предоставило общественности возможность создавать, воспроизводить и распространять произведения, защищенные авторским правом, проще, дешевле и быстрее. Однако, помимо вышеперечисленных возможностей, цифровизация также привела к возникновению сложных проблем, таких как плагиат, пиратство в целях защиты авторских прав, когда обычные пользователи начали копировать и распространять материалы без разрешения авторов. Более того, было отмечено, что существующий национальный режим защиты авторских прав, по-видимому, неэффективен для решения этих проблем. Цель статьи – проанализировать текущую ситуацию с защитой авторских прав в Казахстане, рассмотрев вопрос о том, может ли национальная правовая база справиться с нарушением авторских прав

в цифровой сфере. Новизна этой статьи заключается в введении некоторых законодательных и технологических мер, таких как ответственность информационных посредников, блокчейн и водяные знаки, технологии Digital Rights Management (DRM) для усиления защиты авторских прав в цифровой среде. Для решения вышеуказанных вопросов автор в основном использует некоторые основные юридические методы, такие как диалектический, системно-структурный, сравнительно-правовой и формально-юридический.

Ключевые слова: авторское право, нарушение авторских прав, интернет, информационный посредник, технология блокчейн, технология водяных знаков, DRM.

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