

Research Article

COPYRIGHT INFRINGEMENT IN THE DIGITAL AGE: THE CASE FOR REFORM TO KAZAKHSTAN'S COPYRIGHT LAWS

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ABSTRACT

Background: *The rapid digitalisation of copyrighted materials and the creation of new digital products pose significant challenges to copyright law in the era of globalisation. Digitisation has revolutionised access to information by converting it into a digital format, thus making it easier for anyone who surfs the internet to reproduce and share data. However, new technologies have also resulted in illegal activities such as online copyright infringement. That being the case, the development of digital technologies requires new relevant approaches and provisions from the national copyright law of Kazakhstan to handle copyright infringement on the internet. It could be argued that the current legislation cannot handle legal issues related to copyright, especially the responsibility of internet service providers (ISPs) for the violation of the copyright. This article aims to identify shortcomings in the legal regulation of ISPs in the Republic of Kazakhstan and to offer recommendations for improving legislation in this area. The novelty of the paper lies in Kazakhstan's legislation, lacking regulation on the legal status of ISPs and their role in protecting copyright on the internet. By comparing Kazakh legislative developments with practices in the US, UK, and Ukraine, the paper provides insights into potential reforms for better handling digital copyright infringement.*

Methods: *This paper applies several research methods, including systemic, comparative legal, and historical legal analysis. The primary focus is on examining the legislation and case law of the US, UK and Ukraine regarding copyright issues to enhance Kazakhstan's existing legislative framework.*

Results and conclusions: *This article argues that national acts of Kazakhstan on copyright were obsolete before the advancement of digital technologies and therefore, need to be updated to keep pace with modern technologies.*

1 INTRODUCTION

In his 2019 State of the Nation address, the President of Kazakhstan, K. Tokayev, announced the need for the government to revise its legislation to accommodate new technological phenomena, including 5G, smart cities, big data, blockchain, and other tools.¹ The advancement of digital technologies has posed a significant challenge to intellectual property rights (IPR), particularly copyright, by altering its scope and subject matter. In the digital environment, information is not only accessible in the blink of an eye but can also be stored and shared at a low price.² Two key aspects stand out: first, the digitisation of copyrighted works, such as the scanning of photos into image files and the emergence of new products like software; and second, the rise of the internet.³

Kazakhstan's 2015 Law on Informatization defines the internet as "a worldwide system of integrated networks of telecommunications and computing resources for the transmission of electronic information resources."⁴ The World Wide Web has enabled a growing practice where some individuals illegally copy and sell existing works or products for commercial gain. This kind of illegal activity is well known as online copyright infringement or online piracy and has become a hot topic amongst rights holders and scholars. Online infringement has significantly affected copyright, converting it to a tool by which some users steal creative products that initially belonged to copyright owners.⁵ It is worth noting that online copyright infringement is globally acknowledged as a serious crime. It undermines the creative potential of society by depriving copyright owners of legal fees and leads to economic losses for all those who invest in creative industries.⁶

This issue is prevalent in Central Asia, including Kazakhstan, due to the lack of effective legal frameworks to regulate internet copyright matters.

1 Kassym-Jomart Tokayev, 'Constructive Public Dialogue - The Basis of Stability and Prosperity of Kazakhstan: President of Kazakhstan Kassym-Jomart Tokayev's State of the Nation Address' (*President of the Republic of Kazakhstan: Official Website*, 2 September 2019) <https://www.akorda.kz/en/addresses/addresses_of_president/president-of-kazakhstan-kassym-jomart-tokayevs-state-of-the-nation-address-september-2-2019> accessed 25 June 2024.

2 Alankrita Mathur, 'A Reflection upon the Digital Copyright Laws in India' (2020) 25 (1-2) *Journal of Intellectual Property Rights* 5, doi:10.56042/jipr.v25i1-2.65193.

3 Simon Stokes, *Digital Copyright: Law and Practice* (5th edn, Bloomsbury 2019) 298.

4 Law of the Republic of Kazakhstan no 418-V of 24 November 2015 'On Informatization' <<https://adilet.zan.kz/eng/docs/Z150000418>> accessed 25 June 2024.

5 Omotayo F Awomolo-Enujiugha, 'Piracy and Its Burden on Copyright in Nigeria: Challenges and Solutions' (2020) 23(3-4) *Journal of World Intellectual Property* 413, doi:10.1111/jwip.12158.

6 Mathur (n 2).

This highlights the need to review some of the legislation which regulates copyrights and related rights on the internet, according to the “Kazakhstan-2050 Strategy”.⁷ Similarly, the Conception of the legal policy of Kazakhstan until 2030 emphasises the importance of strengthening copyright laws, with a particular emphasis on thoroughly examining the composition of participants in legal relations concerning the protection of intellectual rights online.⁸

This article aims to critically analyse the current development of copyright protection in Kazakhstan in the digital age and recommend adequate solutions to improve them. To do this, it compares the copyright laws of Kazakhstan and foreign jurisdictions such as the US, UK, and Ukraine to distinguish major characteristics and legal issues on ISP liability. The study of foreign legal practice related to copyright protection in the digital age, along with recommendations for improving Kazakhstan legislation, represents a significant contribution to the country's development in addressing this issue. Although “piracy” is slang for copyright infringement, both words are used interchangeably in this article.

2 METHODOLOGY

This paper applies several research methods: systemic, comparative legal, historical legal analysis, and methods of interpreting law and legislation. The systemic method made it possible to review and analyse the copyright in the digital environment, involving its further active study and legal regulation. Comparative legal methods allowed the authors to compare the best practices of the US, UK, and Ukraine to make relevant recommendations to address the issue of the liability of ISPs in Kazakhstan. Relying on historical legal analysis, the authors could make a brief review of the development of national copyright legislation from the 1990s to the current copyright challenges in the digital landscape. Methods of interpreting law and legislation offered a clear understanding of terms and definitions used by legal authorities and international organisations in the legal regulations of ISPs.

The outcomes of these methods include conclusions and recommendations on protecting copyright in the digital environment, particularly concerning the liability

7 Nursultan Nazarbayev, ‘Strategy “Kazakhstan-2050”: New Political Course of the Established State: Address by the President of the Republic of Kazakhstan NA Nazarbayev’ (*President of the Republic of Kazakhstan: Official Website*, 14 December 2012) <https://www.akorda.kz/en/addresses/addresses_of_president/address-by-the-president-of-the-republic-of-kazakhstan-leader-of-the-nation-nnazarbayev-strategy-kazakhstan-2050-new-political-course-of-the-established-state> accessed 25 June 2024.

8 Decree of the President of the Republic of Kazakhstan no 674 of 15 October 2021 ‘On approval of the Concept of Legal Policy of the Republic of Kazakhstan until 2030’ <<https://adilet.zan.kz/kaz/docs/U2100000674>> accessed 25 June 2024.

issues of ISPs. The paper's findings are mostly based on primary and secondary sources. To better understand the current overview of copyright protection in Kazakhstan, primary sources such as legal acts, conventions, regulations and legal cases are used. Secondary sources, including books, journal articles, websites, and relevant web pages, were consulted to gain insights into copyright issues in the digital environment and to recommend relevant solutions.

3 COPYRIGHT INFRINGEMENT

3.1. Copyright Infringement in Cyberspace

Digital technologies have brought major challenges to the entire world, including copyright. While these technologies offer many benefits, they also pose threats to owners of intellectual properties, whose copyrighted works in cyberspace are increasingly vulnerable in cyberspace. Irina Atanasova claimed that the impact of technologies on copyright protection can be seen from the following four elements: the ease of copying, the ease in the dissemination of copyrighted works, the expanded storage of digital tools, and the cheap process of producing creative works.⁹

Kaushiki Ranjan and Siddharth Srivastava suggest that there might be a number of parties involved in digital copyright violation. The parties normally include copyright owners or authors, internet service providers (ISPs), and users who upload material or content to the service of ISPs. Pamela Samuelson indicates other characteristics of digital technologies, such as the compactness of works in digital form, linking abilities, and non-human author features.¹⁰ For instance, one of the outcomes of digital technologies regarding copyright issues was the advent of peer-to-peer (P2P) systems such as Napster, Gnutella, KaZaA, Grokster and others well-known for unauthorised usage of copyrighted works among the public.¹¹ One of the advantages of a P2P system is that it provides software programs that allow file transfers without needing a central server. In a P2P system, each computer functions as a server, and therefore, once a user connects to the system, he or she can search files on other users' computers.

Online copyright infringement appears to be a vast and growing issue in the music, game, computer software and movie industries. This typically occurs through the purchase of counterfeit products at a discounted price compared to copyrighted works and the illegal

9 Irina Atanasova, 'Copyright Infringement in Digital Environment' (2019) 1(1) *Economics & Law* 13.

10 Pamela Samuelson, 'Digital Media and the Changing Face of Intellectual Property Law' (1990) 16 *Rutgers Computer and Technology Law Journal* 323.

11 Atanasova (n 9).

sharing of copyrighted materials via file-sharing technologies. Today, online copyright infringement may take place in the following ways:

- downloads: these actions occur when one downloads e-books, music, video and other content from the internet without permission;
- reposting copyrighted work or other multimedia content on the internet;
- hot-linking or hyperlinking: it is a system which allows a person to redirect a user to another website by clicking a button on previous websites;
- using circumvention technical measures;
- using digital content without appropriate acknowledgement or citation;
- illegal use of computer programs and databases without payments and other actions.¹²

Although Kazakhstan has a legal and institutional framework similar to developed states in terms of IPR, the state has a high rate of copyright infringement, amounting to 73 %, according to the Business Software Alliance.¹³ It could be noted that Kaznet (kz domain) is full of copyright violations such as pirated movies, photos, music, and plagiarism.¹⁴

The rapid growth of the internet has led to a major issue, such as online copyright infringement. Notably, illegal exploitation of IP in the digital landscape is normally associated with cybercrime. Any unauthorised use of computers, the internet, or using a computer as a tool to commit copyright abuse can be assessed as cybercrime. Cybercrime, as a broad term, apart from copyright abuse, also includes other serious crimes such as fraud, child pornography, and security issues.¹⁵ Websites and platforms which offer illegal streaming and downloads of copyrighted works without proper authorisation seem to be widespread today. This offence usually includes streaming and downloading music, movies, TV shows, and distributing e-books without the permission of a right holder or author. Plagiarism is another major issue which involves the illegal use of someone else's idea, work or research as one's own without proper attribution. Plagiarism can often be met in spheres such as academy, media and R&D.¹⁶

12 Albert Olu Adetunji and Nosakhare Okuonghae, 'Challenges of Copyright Protection in the Digital Age: The Nigerian Perspective' [2022] *Library Philosophy and Practice* <<https://digitalcommons.unl.edu/libphilprac/7159>> accessed 25 June 2024.

13 Alexey Malchenko, 'In Kazakhstan, Seven out of 10 Citizens Engage in Piracy' (*MK Kazakhstan*, 19 April 2017) <<https://mk-kz.kz/articles/2017/04/19/v-kazakhstane-sem-iz-10-grazhdan-zanimayutsya-piratstvom.html>> accessed 5 January 2024.

14 Global Voices Online, 'Kazakhstan Combats Internet Piracy' (*Petosevic*, 25 July 2011) <<https://www.petosevic.com/resources/news/2011/07/000716>> accessed 19 January 2024.

15 Jibrán Jamshed and others, 'Critical Analysis of Cybercrimes in Pakistan: Legislative Measures and Reforms' (2022) 7(1) *International Journal of Business and Economic Affairs* 22, doi:10.24088/IJBEA-2022-71002.

16 Samza Fatima and Syed Mudassir Shah, 'Violation of Copyright in Pakistan: Issues and Future Prospects' (2023) 3(1) *Pakistan Journal of Criminal Justice* 54, doi:10.62585/pjc.v3i1.24.

Recently, several significant cases related to copyright in the digital environment have emerged, necessitating a review of national copyright laws, particularly concerning the status of service providers. As judicial practice shows, copyright materials, in the process of reproduction on sites, lose the mention of true authors and can sometimes be altered.

One such case involved Mr Zolotuhin, a professional photographer, who brought a lawsuit against the defendants for the infringement of his exclusive rights to his photos, which were used on a website from 2016 to 2019. The defendants claimed the images were from the public domain; however, after the claimant presented the original format, it was confirmed that the photos were his.

According to Law on Copyright and the Related Rights 1996 (hereafter: the Copyright Law), the exclusive rights of an author include the right to carry out, allow or prohibit the following actions: to reproduce the work (the right to reproduce); to perform other operations, including an open network (the right to distribute); and to publicly display the work (the right to public display).

Additionally, the law grants authors or rights holders the entitlement to remuneration for each use of their work. The amount is determined by the copyright agreement and the agreements concluded by copyright collecting societies. According to the provisions of the Copyright Law, the author's property rights might be assigned in whole or part and may also be transferred for use under an author's contract.

In Mr Zolotuhin's case, during the judicial process, it was revealed that the defendants had not concluded a copyright contract with the claimant. Based on this, the court obliged the defendants to pay 2 272 500 tenges (approximately 4 791,2 USD at current exchange rates), as compensation for the violation of copyright between 2016 and 2019.¹⁷

In another case, Salem Social Media and Alisher Utev, the director of the TV series "5:32", filed a civil action concerning a video posted on the Telegram channel "Men t.me/menmediakz." In that video, Askar Dzhaldinov, author of the book "Off the Record: Secrets of High-Profile Crimes in Kazakhstan," announced reader meetings in Almaty and Astana. The series' creators alleged that Dzhaldinov used footage from six episodes and the official trailer of "5:32" in his video. Aside from this, Dzhaldinov accused Alisher Utev of plagiarism since the series was based on stolen stories from his book.

The claimants sought a court order to cease actions that violated their personal non-property rights, demanded the removal of the video from the social network, and requested compensation amounting to 2800 monthly calculation indexes. Despite Dzhaldinov's defence that the video was created for educational and informative purposes, the court found that it was produced for advertising to promote the book.

17 *Zolotuhin v ATIS LTD* no 7514-19-00-2/10892 (Bostandyk District Court of Almaty, 5 March 2020) <<https://office.sud.kz/courtActs/documentList.xhtml>> accessed 21 May 2024.

Under Article 16 of the Copyright Law, the court found that the defendant, without permission from the claimants, reproduced, posted, and distributed the video containing fragments of an audiovisual work on the internet. The law stipulates that any use of copyrighted works must be authorised by the rights holder. In determining the amount of compensation, the court considered several factors, such as the violation of the claimant's copyright, the video's use for advertising, and the negative reflection on the series' creator. The court, guided by principles of fairness, proportionality, reasonableness, sufficiency, and nature of copyright violation, ordered the defendant to pay compensation amounting to 200 monthly calculation indices, totalling 690 000 tenge (approximately 1 454,77 USD at current exchange rates).¹⁸

In another instance, Saltore Saparbayev took a photo titled "Tian Shan Mountain Sheep" and posted it on his Instagram account. He later discovered that his work had been published on the official website "egemen.kz" without his permission, without crediting him as the author, and without any remuneration for its use. Thus, the claimant sued LLP "Kazakh Papers," demanding compensation for infringing copyright. During the court investigation, it was confirmed that the LLP posted and published the photo on egemen.kz. The court also established that the defendant used the photo without the author's permission, as no copyright contract existed between the parties. Regarding these findings, the court ruled in favour of the claimant, awarding compensation for the copyright infringement.¹⁹

In recent years, legal issues in the sphere of copyright, such as the liability of ISPs or the operators/companies providing the transmission of creative works, have recently grown in Kazakhstan.²⁰ The reason for concern is that these entities provide services that facilitate copyright infringement on the internet. In practice, they may offer various services, from providing cables to operating bulletin boards and websites where users can share information.²¹

In 2013, it was discovered that the text of a Doctor of Law dissertation, originally presented in electronic format and repeatedly discussed at a university in Kazakhstan, had been posted on the internet by one of the providers. Due to the termination of candidate and doctoral dissertations in Kazakhstan, according to new rules, this dissertation was defended in Moscow in 2012. It was discovered that an employee from the Kazakh university had posted the full text of an unprotected 2010 dissertation on a particular internet resource in exchange for free access to other materials available on the site. The author appealed to the

18 *Utev v Dzhalidinov* no 7142-24-00-2/1662 (Almaty District Court of Astana, 29 March 2023) <<https://office.sud.kz/courtActs/document.xhtml>> accessed 21 May 2024.

19 *Saparbayev v Kazakh gazetteri Ltd* no 7142-24-00-2/1662 (Inter-District Court for Civil Cases of Astana).

20 OECD, *The Role of Internet Intermediaries in Advancing Public Policy Objectives* (OECD Publ 2011) doi:10.1787/9789264115644-en.

21 Lionel Bently and Brad Sherman, *Intellectual Property Law* (5th edn, OUP 2018).

internet provider with a demand to stop copyright infringement, resulting in the information intermediary adding the following text to the dissertation placement page: “The possibility of downloading this file is blocked at the request of the copyright holder”.

However, the dissertation itself was not removed. According to the provider, the dissertation was re-uploaded in April 2015, again with the same restriction on downloading. The author had to send another request for its removal, but no response has been received.²²

It is plausible that technological advancement has brought both pros and cons – the main one being online copyright infringement, which has become a serious issue for ex-Soviet states, including Kazakhstan. As a developing nation, Kazakhstan is at a nascent stage of combatting online copyright infringement and lacks extensive legal practice in this area. The above-mentioned cases and judicial practice suggest the current Kazakh legal act on copyright appears outdated and inadequate for handling copyright piracy in the digital environment.

4 LEGAL FRAMEWORK FOR INTERNET INTERMEDIARIES: INTERNATIONAL AND KAZAKHSTANI PERSPECTIVES

4.1. Roles of ISPs

ISPs play a key role in distributing digital content, and thus, they are an essential part of the network of actors. The World Intellectual Property Organization (WIPO) called their role a main challenge for copyright in the digital space. It should be noted that there is no single way to distribute copyrighted materials because the internet has brought about various mechanisms, both lawful and unlawful ways. In addition, the Organization for Economic Co-operation and Development (OECD) describes ISPs as an organisation which gives access to, host, transmit and index various materials, products, and services originated by third parties on the internet or provide online services to third parties. However, this definition appears too broad to cover various types of intermediaries with different goals, including commercial and non-commercial, public and private.²³

Generally, ISPs provide internet access and other services to subscribers who connect through various means, including dual-up connection across the public telecommunication network, gaining access to internet sources once connected. While intermediaries transmit, host and index various content, not all of this content is copyrighted. Apart from copyright,

22 Sara Idrysheva, ‘Public Contract in Civil Law of the Republic of Kazakhstan: Problems of Theory and Practice’ (PhD (Law) thesis, Maqсут Narikbayev University (KAZGUU) 2010).

23 Bethany Klein, Giles Moss and Lee Edwards, *Understanding Copyright: Intellectual Property in the Digital Age* (SAGE 2015).

intermediaries can have a huge impact on human rights, such as access to information, freedom of expression, privacy, and security issues.²⁴

According to Uta Kohl, it is important to distinguish various types of internet intermediaries. Besides ISPs that provide internet access, there are other types of intermediaries, such as search engines that help users locate content online and social platforms or networks that host users and their content. These internet intermediaries have different relations to copyright and can be viewed as legitimate or illegitimate by copyright owners and media users.²⁵

ISPs typically offer four main categories of services such as conduit communication services, information location tools, system caching, and hosting services. However, these services can expose ISPs to liability risks as they provide internet users with the tools to violate exclusive copyright rights such as reproduction, transformation, distribution, and the right to public communication. These services offered by the ISPs can be detrimental and harmful, especially for copyright owners, when intermediaries arm potential infringers with services and facilities such as transmission, routing and storing copyrighted content on their networks.

On the other hand, many ISPs provide websites to their subscribers and run web servers to other users to get access to the site's content.²⁶ Given their pivotal role in disseminating digital content on the internet, ISPs enable global distribution of copyrighted works, which can seriously damage the rights of copyright owners when infringers use ISP-provided facilities. This raises the question of whether ISPs should be held responsible for copyright violations committed by users using their services. To address this question, we will explore and compare various legal frameworks in the following jurisdictions.

4.2. ISP Liability Rules in the US

It is noteworthy that governments can take one of the following actions to hold intermediaries accountable under the law. They can make intermediaries criminally liable for users' actions, impose civil liability for damages caused by users, require intermediaries to monitor subscribers' actions or support an intermediary in taking down the content as part of a notice-and-takedown approach.²⁷

24 *ibid.*

25 Uta Kohl, 'The Rise and Rise of Online Intermediaries in the Governance of the Internet and beyond - Connectivity Intermediaries' (2012) 26(2-3) *International Review of Law, Computers and Technology* 185, doi:10.1080/13600869.2012.698455.

26 Ruwan Fernando, *The Liability of Internet Service Providers for Copyright Infringement in Sri Lanka: A Comparative Analysis* (EconStor Research paper 150, South Centre 2022).

27 Margot Kaminski, 'Positive Proposals for Treatment of Online Intermediaries' (2012) 28(1) *American University International Law Review* 203.

For instance, the US government has adopted a system of notice-and-takedown in terms of intermediary liability. In 1998, the US Congress adopted the Digital Millennium Copyright Act (hereafter: the DMCA), which was controversial among the public. By adopting such an act, the US was the first state to address the application of copyright law to the liability of ISPs for digital copyright violations committed by their subscribers. The DMCA introduced safe-harbour provisions that protect ISPs from liability for infringing content created or posted through their services. To rely on safe-harbours, the DMCA requires ISPs to have a repeat infringer policy - a policy which ceases users who repeatedly commit IP violations on their platforms.

With the DMCA, the US not only regulated a domestic copyright law but also established a model that has been adopted by countries like Australia, Chile and Singapore. One of the main aims of the DMCA was to address copyright problems in the digital domain. Key provisions include protections for ISPs, the criminalisation of circumventing copyright access controls, and granting authors the right to control access to their works. To comply with the international legal framework, the DMCA prohibits the circumvention of copyright protection measures.

It should be noted that before the adoption of DMCA, the issue of ISPs' liability for copyright violation was largely left to the courts, which created inconsistent rulings. There was no common view or approach between the courts, and both users and ISPs were held liable for copyright infringement.²⁸

In terms of copyright issues, the US courts recognised secondary liability for vicarious and contributory infringement. In addition, the Supreme Court recognised intermediary liability for inducement infringement. It could be argued that the US case laws have established the liability issues of copyright infringement in the digital landscape. One landmark case is *Sony Corp vs. Universal Studios*, where ISPs were liable for contributory and vicarious infringements. Another important case is *Religious Technology Center vs. Netcom Online Communication Services, Inc.*, in which the court addressed three main questions concerning ISP liability. First, Netcom was not held liable for the content posted by its users, as the court ruled that the ISP merely provided a tool, while the infringement was committed by the users who uploaded the content. Second, there was no link between Netcom's liability and any financial benefits derived from the infringing action. Third, while Netcom could be held liable for contributory infringement, it could not be considered liable for primary copyright violation.²⁹

28 Tatiana Lopez Romero, 'Internet Service Providers' liability for Online Copyright Infringement: The US Approach' (2006) 55 (112) *Vniversitas* 193.

29 Kaushiki Ranjan and Siddharth Srivastava, 'Copyright Protection in Cyberspace Challenges and Opportunities' (2021) 4 (3) *International Journal of Law Management and Humanities* 837, doi:10.10000/IJLMH.11546.

It is worth mentioning that since the adoption of DMCA, one of the prominent cases regarding online infringement was *Viacom vs. YouTube*. YouTube is one of the largest video platforms in the US. It is also a website where numerous music and video content can be uploaded illegally. In this case, Viacom collected over 100,000 unlawfully uploaded videos, expecting to get 1 billion dollars as compensation for copyright violation. However, the US court did not support the claim, arguing that merely knowing users upload illegal works does not create responsibility for ISPs, and they do not need to monitor what the users are doing. Viacom believed that the court's decision came from a misunderstanding of DMCA. After the case, YouTube introduced a piracy detection system. According to that tool, a suspected user of copyright abuse receives a notification letter where that requests the user to delete materials, which leads to copyright violation. If a user confirms that they are not infringing copyright, they can also send a counter-notification to the ISPs. It would be plausible to say that authors can use such a method to defend their rights, regardless of whether they have registered their work in the US IP Office.³⁰

Apart from the DMCA, the US House of Representatives drafted the SOPA (Stop Online Piracy Act), while the US Senate drafted the Protection of Intellectual Property Act (PIPA), both aimed to combat digital piracy. These bills sought to prohibit American citizens from accessing foreign websites that provide pirated content.

SOPA included two major clauses: the first aimed at protecting digital IP rights, and the second focused on enforcing measures against IP theft. Notably, SOPA allowed US prosecutors to bring lawsuits against the owners of foreign websites or foreign infringing websites. Besides, it gave right holders or authors the ability to send a notification letter to various types of service providers to cease copyright infringement.³¹

Interestingly, the bills propose that anyone found in copyright infringement ten or more times within six months should face up to five years in jail. Pursuant to these bills, ISPs, payment processors and advertisers in the US could be prohibited from doing business with pirated websites. Unlike PIPA, SOPA requires search engines such as Google, Yahoo, and others to remove infringing sites from their results. Additionally, both bills called for ISPs to use a tool, Domain Name System (DNS), to block users from accessing pirated websites.

Despite these measures, these bills were not supported by a majority of the public. Both offered immunity to ISPs if they had "reasonable evidence" that a third party's websites contained illegal content, a provision that raised concerns about potential conflicts of interest. Critics argued that this could lead ISPs to block access to competitor's websites

30 Jiaqi Liu, Xinui Wang and Yihao Wang, 'Research on Internet Copyright Protection Mechanism: Based on the Perspective of the Comparison of Chinese and American Legislation' (Proceedings of the 2022 7th International Conference on Social Sciences and Economic Development (ICSSSED 2022)) 1592.

31 *ibid.*

or trigger firms to take a safety-first approach, potentially resulting in users being banned from using legal materials.³²

To sum up, it is plausible to say that the DMCA continues to play a vital role in the protection of copyright in the digital environment. The DMCA has benefited a wide range of participants in the digital society, from copyright holders to users to internet service providers, by providing a legal mechanism that addresses the challenges of online distribution and consumption of copyrighted works. Given the fact that digital technologies develop rapidly and bring about challenges, the DMCA needs constant adjustments to keep a balance between users and copyright owners.

4.3. ISP Liability Rules the UK

Under Section 97A of the Copyright, Designs and Patents Act (1988) (hereafter: the CDPA), UK rights holders can seek injunctions from local courts to prevent ISPs from allowing their users to access certain websites known to infringe copyrighted works. This provision empowers the High Court to issue injunctions when ISPs have actual knowledge that their services are being used for copyright infringement. To determine whether ISPs have actual knowledge, courts usually consider all relevant matters, particularly whether the ISP obtained a notice according to the Electronic Commerce (EC Directive) Regulations 2002. That notice must include the full name and address of the sender and full information of infringement.³³

Before the introduction of Section 97A, the UK implemented the E-Commerce Directive and the Copyright in the Information Society (Infosoc Directive) through certain regulations. These regulations aligned UK rules with European instruments, particularly addressing liability exemptions under Articles 12, 13, and 14. Thus, those regulations incorporated Sections 97A and 191JA into the CDPA.³⁴

The regulations provide a defence for ISPs, which allows them to be excluded from liability when they are:

- “a) acting a mere conduit – i) does not initiate the transmission; ii) does not choose the receiver of the transmission; iii) does not select or alter the data in the transmission.*
- b) caching – i) does not change information; ii) complies with conditions on access to the information; iii) complies with any rules regarding the updating of the information, specified in a manner widely recognised and used by industry; iv) does not interfere*

32 ‘Sopa and Pipa Anti-Piracy Bills Controversy Explained’ (*BBC News*, 8 March 2012) <<https://www.bbc.com/news/technology-16596577>> accessed 25 June 2024.

33 Law of the Parliament of the United Kingdom of 15 November 1988 ‘Copyright, Designs and Patents Act 1988’ <<https://www.legislation.gov.uk/ukpga/1988/48/contents>> accessed 25 June 2024.

34 Sophie Stalla-Bourdillon, ‘Liability Exemptions Wanted: Internet Intermediaries’ Liability under UK Law’ (2012) 7(4) *Journal of International Commercial Law and Technology* 289.

with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; v) acts expeditiously to remove or to disable access to the information he has stored upon receiving actual knowledge that the information at the initial source of the transmission has been removed from the network.

c) **hosting** – *does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful.*³⁵

In addition to those regulations, the UK Government introduced the Digital Economy Act (2010) (hereafter: DEA) to address online copyright infringement more effectively. Before the DEA, online copyright infringement was poorly tackled by existing legislation. For example, CDPA did not have provisions to prevent file-sharing actions where infringers were countless and unidentified.³⁶ The DEA intended to tackle several legal issues, from regulating digital media services to solving illegal P2P sharing systems.³⁷

The CDPA aimed to combat the commercial use of copyright, while the DEA intended to focus on the problem of digital copyright violation, including illegal P2P file sharing.³⁸ One of the main features of the DEA is that it requires major ISPs to contact their users when their IP addresses are reported by rights holders for infringing IP rights. To be clear, the entire procedure is introduced by the following: first, right holders ask ISPs to reveal the identity of the subscribers whose IP addresses used to infringe copyright materials; and then, after three warnings, they help copyright owners to get civil liability against these infringers.³⁹ Sections 3 to 18 of the DEA introduced appropriate digital copyright provisions. The significance of the act lies in its statutory obligations, which are applied directly to ISPs rather than supporting service providers and rights holders in achieving an industry-led solution.⁴⁰

Despite its aims, the DEA faced criticism from the public. Some argued that the act was rushed through with insufficient investigation and that it imposed disproportionately harsh obligations on the ISPs.⁴¹ Since the act imposed harsh obligations on ISPs, it is unsurprising that major British ISPs such as TalkTalk and BT were its main opponents. As a result, they

35 Stokes (n 3).

36 Nick Cusack, 'Is the Digital Economy Act 2010 the Most Effective and Proportionate Way to Reduce Online Piracy?' (2011) 33(9) European Intellectual Property Review 559.

37 Robin Mansell and W Edward Steinmueller, 'Copyright Infringement Online: The Case of the Digital Economy Act Judicial Review in the United Kingdom' (2013) 15(8) New Media & Society 1312.

38 Anna Karwowska, 'Copyright and the Digital Economy Act: A Comparative Perspective' (2015) 2(1) European Journal of Comparative Law and Governance 19, doi:10.1163/22134514-00201001.

39 Mansell and Steinmueller (n 37).

40 Cusack (n 36).

41 Karwowska (n 38).

initiated a judicial review, but the High Court ruled in favour of the act, dismissing arguments that certain provisions were unreasonable.⁴²

It is worth noting that the adoption of the DEA meant that ISP subscribers would be liable for copyright violations in the digital domain. Furthermore, the UK took the view that implementing such an act would alter the minds of users towards copyright infringement, portraying it as unacceptable. It is believed that a mass notification or warning, according to the DEA, will teach the public about copyright and change their behaviour.⁴³ To date, the UK relies on two different approaches when it comes to cease infringement actions. The first approach is linked to the Voluntary Copyright Alert Program (VCAP), a project between the British Phonographic Industry, the Motion Picture Association and major ISPs. This approach is aimed at targeting infringers and sending them warning emails for educational purposes. The second approach is used to block websites with unlawful content to cease users from accessing illegal copyrighted materials. This process is usually conducted by a special law enforcement body such as the Police Intellectual Property Crime Unit.⁴⁴

To sum up, it is plausible that the UK appears to keep pace with the latest technological advancements by adopting reasonable legislation to tackle online copyright infringement. Its legal, technological, and administrative achievements could be a positive example for developing states like Kazakhstan.

4.4. ISP Liability Rules in Ukraine

As an ex-Soviet republic, Ukraine was named by global copyright associations as one of the world's largest centres for online copyright infringement. Kyiv's Petrovka market platform has notoriously been famous for pirated copyrighted works from music to software.⁴⁵ It is worth noting that Ukraine has faced significant international pressure to adopt Western copyright standards since gaining independence in 1991. Ukraine joined the Geneva Phonograms Convention and the WIPO Copyright Treaty in 2000 and 2002, respectively. Despite these legal changes, the country remains on the list of the most pirated states and has faced harsh criticism from respected organisations such as the IFPI (International Federation of Phonograms and Videogram Producers) and the International Intellectual

42 Alexandra Giannopoulou, 'Copyright Enforcement Measures: The Role of the ISPs and the Respect of the Principle of Proportionality' (2012) 3(1) *European Journal of Law and Technology* <<https://ejlt.org/index.php/ejlt/article/view/122/204>> accessed 25 June 2024.

43 Adetunji and Okuonghae (n 12).

44 Intellectual Property Office, *International Comparison of Approaches to Online Copyright Infringement: Final Report* (IPO 2015).

45 Maria Haigh, The "Goodbye Petrovka" Plan: The Moral Economy of File Sharing in Post-Soviet Society (Working Paper Series of the Research Network 1989 no 7, SSOAR 2008) <<https://www.ssoar.info/ssoar/handle/document/1640>> accessed 25 June 2024.

Property Alliance.⁴⁶ Ukraine has taken steps to enhance its legal framework for copyright protection in the digital age. The Constitution of Ukraine has relevant articles concerning protecting intellectual property rights. For instance, Article 41 determines the rights of possession and use of the results of intellectual and creative activities, while Article 54 guarantees public freedom of literary, artistic, scientific and technical creativity as well as moral and material interests emerging from intellectual, creative activities. Furthermore, the Constitution prohibits the dissemination and exploitation of the results of intellectual activity without the permission of the copyright owner.⁴⁷

In Ukraine, other codified regulations govern intellectual property issues, including copyright, such as the Civil Code of Ukraine (Law No. 435- IV, 2003), which contains some main provisions as the definition, subject and object of IP rights, personal non-property, etc; the Commercial Code of Ukraine which regulates IP rights in economic and business activities; the Code of Ukraine on Administrative Offences which contain norms concerning administrative sanctions in the sphere of copyright relations; the Criminal Code of Ukraine which provides for liability for copyright violation such as illegal reproduction and distribution of copyrighted works. The subject of IP rights is also regulated by the Law of Ukraine, "On Copyright and Related Rights," which provides provisions for the protection of the author's personal non-property and property rights.⁴⁸

One of the main legal issues in the field of copyright was the liability of ISPs. To solve these issues and protect IP rights in the digital landscape, an Association Agreement between Ukraine and the European Union, the European Atomic Energy Community, has been ratified. Therefore, parties have a common view that ISPs can be used by third parties for illegal activities such as digital piracy.⁴⁹

In 2017, Ukraine made amendments to its copyright legislation, introducing significant changes, including the imposition of liability on ISPs – such as website and webpage owners – for third-party infringements. Under the new law, IP rights holders can send a breach of notification ("take-down notice") to ISPs requesting to remove infringed content. If intermediaries fail to address such requests, they can be liable for IP infringement. However, the law is accessible for a limited number of copyrighted objects such as audio-visual works, music, computer programs, video games and broadcasts. Second, intermediaries are required to provide full information about themselves on their websites

46 *ibid.*

47 Olesia Kharchenko and others, 'Protection of Intellectual Property Rights on the Internet: New Challenges' (2021) 10(41) *Amazonia Investiga* 224, doi:10.34069/AI/2021.41.05.22.

48 *ibid.*

49 *ibid.*

or publicly available platforms. Third, ISPs may face civil, administrative and even criminal liability if they fail to act according to the law.⁵⁰

In conclusion, the mechanism of copyright protection in Ukraine is still under development. Implementing the best practices from developed states in the sphere of IP rights on the internet has benefited Ukraine by enhancing its legal framework, particularly concerning the liability of ISPs regarding copyright infringement. Although the above-mentioned legal frameworks might not have fully demonstrated their effectiveness and efficiency before digital piracy, there is no doubt that Ukraine has made significant strides in improving its copyright protection mechanisms. The Ukrainian case could serve as a valuable model for Kazakhstan.

4.5. Kazakhstan

It is worth mentioning that the Constitution of Kazakhstan (1995) provides some fundamental rights, such as the freedom of creativity, freedom of expression, and protection of intellectual property. International conventions ratified by Kazakhstan, the Civil Code of Kazakhstan, and copyright legal acts rely on the principles of the Constitution.⁵¹

For example, Article 20 of the Constitution of Kazakhstan guarantees creative activity and prohibits censorship. Moreover, it also ensures that everyone has the right to access and disseminate information through any lawful means. It should be noted that currently, in Kazakhstan, copyright is protected by law, and anyone who infringes it could face sanctions.⁵²

Kazakhstan has been a member of the WIPO since 1993 and currently is a party to the following international treaties that regulate these legal relations: Berne Convention for the Protection of Literary and Artistic Works (1886), Universal Copyright Protection (1952), Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisation, WCT (1996), and WPPT (1996).⁵³ Additionally, Kazakhstan's national legal acts include the Civil Code (1999) and Copyright Law (1996).⁵⁴

50 'Enforcement of IP Rights on the Internet in CEE, Ukraine and Turkey' (*Kinstellar*, July 2017) <<https://www.kinstellar.com/news-and-insights/detail/552/enforcement-of-ip-rights-on-the-internet-in-cee-ukraine-and-turkey>> accessed 26 June 2024.

51 Constitution of the Republic of Kazakhstan of 30 August 1995 <https://adilet.zan.kz/eng/docs/K950001000_> accessed 25 June 2024.

52 *ibid.*

53 Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan no 11 of 25 December 2007 'On the Application by the Courts of Certain Norms of Legislation on the Protection of Copyright and Related Rights' <https://adilet.zan.kz/rus/docs/P07000011S_> accessed 25 June 2024.

54 Law of the Republic of Kazakhstan no 6-I of 10 June 1996 'On Copyright and the Related Rights' <https://adilet.zan.kz/eng/docs/Z960000006_> accessed 25 June 2024.

According to Article 971 of the Civil Code, “copyright law applies to scientific, artistic and literary works, which are the results of creative activity, regardless of their aim, content, and dignity, as well as the mode of their expression”. It should be mentioned that the Civil Code provides general provisions of intellectual property rights, which in turn regulates not only copyright and related rights but also patents, trademarks, and a right to the topology of integrated circuits.⁵⁵ At this moment, in Kazakh legislation, Chapter 5 of the Civil Code of Kazakhstan is devoted to copyright law. However, among the current chapter's articles, no specific provision regulates copyright on the internet.

As aforementioned, the primary act regulating copyright and related rights on creations is the Copyright Law. Many view the adoption of this law as marking the beginning of a new era for copyright in Kazakhstan, a period that continues to this day.⁵⁶ Since its enactment, the law has undergone 20 amendments, primarily to address emerging challenges,⁵⁷ particularly those posed by the rapid rise of “digital piracy”.⁵⁸ Despite these amendments, the Copyright Law still lacks comprehensive definitions or terms tailored to regulating copyright on the internet. Hence, all subject matters posted on the internet are protected as traditional subject matters of copyright.⁵⁹

Regarding the mechanism of copyright protection, Kazakh law provides civil and criminal liabilities for online copyright infringement. For example, the Kazakhstan Civil Code and the Copyright Law have clear norms on the responsibility for copyright violation and liability for compensation. Under the Civil Code, remedies for copyright infringement include measures such as the suppression of actions, recovery of losses, seizure of material objects, and mandatory publication of the violation.⁶⁰

The Copyright Law, specifically Article 49, provides the ways in which copyright and related rights are protected through a court. These remedies include 1) recognising the rights; 2) restoring the situation that occurred prior to the infringement of the rights; 3) prohibiting the actions that violate or threaten to violate the rights; 4) compensating for the damages, including lost profits; 5) recovering the income, obtained by the infringer after the infringement of copyright and (or) the related rights; and 6) awarding

55 Civil Code of the Republic of Kazakhstan (Special part) no 409 of 1 July 1999 <https://adilet.zan.kz/eng/docs/K990000409_> accessed 25 June 2024.

56 Madi Elyubayev and others, ‘Protection of the Subjective Copyrights (on Example of Legislation of the Republic of Kazakhstan, Russian Federation and Germany)’ (2018) 21 Journal of Legal, Ethical and Regulatory Issues <<https://www.abacademies.org/abstract/protection-of-the-subjective-copyrights-on-example-of-legislation-of-the-republic-of-kazakhstan-russian-federation-and-g-7479.html>> accessed 21 January 2024.

57 Law of the Republic of Kazakhstan no 6-I (n 54).

58 Saule Demezhanova, ‘Jurisdiction on Protection of Intellectual Property in the Republic of Kazakhstan’ (2018) 4 Issues of Law 93.

59 Law of the Republic of Kazakhstan no 6-I (n 54).

60 Civil Code of the Republic of Kazakhstan no 268-XIII of 27 December 1994 <https://adilet.zan.kz/eng/docs/K940001000_> accessed 25 June 2024.

compensation ranging from one hundred monthly calculation indices to fifteen thousand monthly calculation indices determined by the court, or twice the value of the copies of the work or twice the value of the right to use the work, determined on the basis of the price.⁶¹ Therefore, it is plausible that civil remedies can be applied in both traditional and digital environments.

As noted, copyright violation is a widespread issue in cyberspace, often causing substantial damage to authors and copyright owners where civil remedies fall short. Apart from civil remedies, the protection of copyright and related rights can also be seen in the Criminal Code of Kazakhstan (2014), which has severe sanctions for those who abuse authors' rights. For example, under Article 198, criminal liability occurs when a person uses the products of copyright and related rights without the consent of right holders, as well as storing and manufacturing counterfeit products of copyright and (or) related rights for commercial profit. Penalties for such offences include fines, a correlation of labour, community service, and imprisonment.⁶²

Despite these detailed provisions, there remains a legislative gap concerning online copyright protection. The current framework does not specifically address how to combat copyright infringement directly on the internet. Comparative analysis reveals that while other countries have developed relevant regulations for digital copyright protection, Kazakhstan's Copyright Law (1996) appears inadequate in this regard.

For instance, the Copyright Law defines "internet resource" as an electronic information resource displayed in the text, graphic, audiovisual, or other form, with a unique network address and (or) domain name and functioning on the internet (Sections 1.14, Article 2). However, such a term is used only when regulating the activities of entities that manage property rights on a collective basis. There are no legal norms or provisions in the Copyright Law that address the legal issues of ISPs. Kazakhstan lacks a special law to provide relevant protection for ISP's functions, which could otherwise minimise their vulnerability. Furthermore, among the objects of copyright listed in Article 6 of Copyright Law, there is no indication of objects in electronic or digital formats. The only exception is audio or video recordings in digital form, and there are no norms for other objects.⁶³

It is worth mentioning that to enhance copyright protection against piracy, in 2011, the Kazakh state authorities proposed introducing a "three strikes" approach to copyright infringement – where the first strike involves a notification, the second a warning, and the third leads to a criminal case in copyright legislation. However, this proposal was opposed by some internet users and bloggers, who argued that such harsh measures would harm

61 *ibid.*

62 Criminal Code of the Republic of Kazakhstan no 226-V of 3 July 2014 <<https://adilet.zan.kz/eng/docs/K1400000226>> accessed 25 June 2024.

63 Law of the Republic of Kazakhstan no 6-I (n 54).

Kaznet – which exists because of pirated content – by driving users away due to restrictive policies. By arguing that the state's method to stop copyright infringement may force users to leave Kaznet and, as a result, make it less competitive, the internet community asked the local government to temporarily halt changes to copyright legislation. While many users supported this suggestion, others criticised the continued tolerance of copyright infringement as a means to preserve Kaznet.⁶⁴ Since then, no further amendments have been made to the copyright legislation.

Based on a detailed analysis of the above legal acts, the following norms could be introduced into domestic legislation to enhance the scope of copyright in the digital environment.

1. Section 2 of Copyright Law should be supplemented with the following terms:

- a) Digital information – audiovisual works, musical works (with or without text), computer programs, phonograms, and other objects suitable for reading and reproduction by computers, existing and (or) may be stored in one or more files (parts of files), in the form of records in databases on computers on the internet, on storage devices such as servers;
- b) Internet service provider – an entity, a body, or individual that provides services or resources to website owners for hosting websites or parts thereof on the internet, facilitating access to them over the internet. A website owner who publishes his/her website or part of it using their own resources to make it uniquely accessible via the internet is also considered an internet service provider.

2. Given the UK's legal experience, particularly with EC Directive Regulations (2002), it is appropriate to consider adding an additional article addressing internet intermediaries to Chapter 5 of the Civil Code.

Article 970.1 Features of the Responsibility of Internet Service Provider

- a) Internet service providers are responsible for the infringement of intellectual rights on the internet according to the general grounds provided in this Code, considering the specific conditions established by the article below.
- b) An internet service provider is not responsible for the infringement of intellectual rights that occurred as a result of this transfer, provided that the following conditions are met:
 - i) they are not the initiator of this transmission and do not determine the receiver of the information;
 - ii) they do not change the information when providing communication services, with the exception of changes made to ensure the technological process of transferring the material;

64 Global Voices Online (n 14).

- iii) they did not know, and should not have known, that the use of intellectual activity by the body or individual who arranged the transmission of the material containing the result of intellectual activity was unlawful;
- iv) upon obtaining such knowledge or of the copyright holder about the infringement of intellectual rights, act quickly to remove or disable access to the information.

3. Given the insights from the UK's legal experience, particularly Section 124A of the DEA, it would be prudent to incorporate similar provisions into Kazakhstan's Copyright Law. This would entail obligating ISPs to notify subscribers of copyright infringement reports received from rights holders. The proposed provision should include specific criteria for these reports, such as: a) the name and location of the right holder; b) the name and registered address of the representative, if applicable a qualified copyright owner has the authority and proof of authority to act; c) information of copyrighted work including the title and description of the work; d) a statement that copyright infringement has been taken place on the right holder's work; e) a description of the infringement, in particular, the filenames and content of the file; f) the date of copyright infringement which has been committed; g) the IP address of the apparent infringement; 8) the website where copyright infringement happened; h) the date and time of copyright infringement report. The provision may also include the conditions specifying when the subscriber must cease infringement actions within a certain time from receipt of the notification, as well as terms for subscribers who disagree with the notification. It could outline actions that ISPs can take, such as blocking access to the website when the website owner has not taken steps to stop infringement, among other terms.

Based on the above findings, it is plausible to say that the Kazakh legislation on copyright and related rights cannot fully regulate copyright issues in the digital environment and appears to be outdated. It should be mentioned that the abovementioned provisions and proposed articles, particularly limitations to ISPs' liability, are aimed at strengthening the legal protection of copyright in the digital environment. In general, they align with the contemporary conditions of digital society. Therefore, introducing these provisions into the legal framework of domestic legislation would be quite reasonable.

5 CONCLUSION

Today, copyright infringement on the internet threatens copyright and appears to harm the exclusive rights of copyright owners. The function of copyright in cyberspace is completely different from traditional copyright due to the digitisation of copyright products and the role played by intermediaries. In this digital environment, where online piracy is a global issue, it is essential to modify the legal system regarding the liability issues of ISPs.

The comparative analysis of international legislation and legal cases regarding online copyright infringement, including ISP's liability issues, reveals that Kazakh copyright

legislation and related rights are inadequate in fully addressing the problems which have arisen out of technological advancement. It is important to highlight that the current copyright system in Kazakhstan, by and large, still relies on an obsolete regulatory framework to respond to contemporary challenges posed by technologies despite a few amendments in legal acts over the years.

So, having analysed current Kazakh legislation in the field of copyright protection, considering the development of the digital environment, it has been possible to come to the following conclusions:

- 1) The initial step should be to update Articles 970 and 971 of the Civil Code of Kazakhstan by supplementing the relevant abovementioned provisions to enhance the protection of copyright in the digital environment; in addition, today, ISPs play one of the essential roles in the field of IP, apart from users and right holders, it is suggested that the concept of ISP and its liability exceptions should be introduced;
- 2) Moreover, relying on the DEA, there is a need to introduce an additional article in the Copyright Law concerning the obligations of internet intermediaries to notify their subscribers about copyright violation reports;

In conclusion, it should be noted that copyright protection in the digital environment is under development in Kazakhstan. Implementing the best practices from global jurisdictions, tailored to legal conditions, will result in a relevant regulatory framework. This framework will provide effective mechanisms for copyright protection in the digital landscape and regulate relationships involving copyright owners, users, and ISPs.

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Summary: 1. Introduction. – 2. Methodology. – 3. Copyright infringement. – 3.1. *Copyright infringement in cyberspace.* – 4. Legal framework for copyright protection: international and Kazakhstani perspectives. – 4.1. *International legal response for online copyright infringement.* – 4.2. *ISP liability rules in the US.* – 4.3. *ISP liability rules in the UK.* – 4.4. *ISP liability rules in Ukraine.* – 4.5. *Kazakhstan.* – 5. Conclusion.

Keywords: *digital technology, copyright, online copyright infringement, Internet service providers, right holders, users.*

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ПОРУШЕННЯ АВТОРСЬКИХ ПРАВ У ЦИФРОВУ ЕПОХУ: АРГУМЕНТИ НА КОРИСТЬ РЕФОРМИ ЗАКОНІВ ПРО АВТОРСЬКЕ ПРАВО В КАЗАХСТАНІ

Ансаган Аронов* та Сара Ідришева

АНОТАЦІЯ

Вступ. Швидка цифровізація об'єктів авторського права та виникнення нових цифрових продуктів створюють значні виклики для законодавства про авторські права в умовах глобалізації. Цифровізація спричинила революцію в доступі до інформації, перетворивши її в електронний формат, що значно полегшує відтворення та поширення даних будь-яким користувачем інтернету. Однак нові технології також призвели до незаконної діяльності, зокрема до порушення авторських прав в інтернеті. У зв'язку з цим розвиток цифрових технологій потребує нових відповідних підходів і положень у національному законодавстві Казахстану щодо захисту авторських прав в інтернеті. Можна стверджувати, що чинне законодавство не здатне ефективно вирішувати правові питання, пов'язані з авторськими правами, особливо, що стосується відповідальності постачальників інтернет-послуг (ISP) за порушення авторського права. Метою цієї статті є виявлення недоліків у правовому регулюванні діяльності постачальників інтернет-послуг у Республіці Казахстан та надання рекомендацій щодо вдосконалення законодавства у цій сфері. Новизна дослідження полягає у тому, що в законодавстві Казахстану відсутні чіткі положення щодо правового статусу постачальників інтернет-послуг та їхньої ролі у захисті авторських прав в інтернеті. Порівнявши казахстанські законодавчі розробки з практиками США, Великої Британії та України, ми запропонували у статті перспективи реформування для того, щоб більш ефективно вирішити питання порушення авторського права у форматі цифрових відтворень об'єктів авторського права.

Методи. У цій статті застосовано кілька методів дослідження, зокрема системний, порівняльно-правовий та історично-правовий аналіз. Основна увага зосереджена на вивченні законодавства та прецедентного права США, Великої Британії та України щодо питань авторського права з метою вдосконалення наявної законодавчої бази Казахстану.

Результати та висновки. У статті стверджується, що національні акти Казахстану щодо авторського права були застарілими ще до появи цифрових технологій і тому потребують оновлення для відповідності сучасним технологічним реаліям.

Ключові слова: цифрові технології, авторське право, порушення авторських прав в інтернеті, постачальники інтернет-послуг, правовласники, користувачі.