

The Legislation of the Republic of Kazakhstan on Copyright and the Related Rights

Baimoldina Svetlana Malikovna
Department of Criminal and Legal Disciplines, Faculty of Law,
L.N. Gumilyov Eurasian National University, Astana, Republic of Kazakhstan

Abstract: This study describes issues related to the relevance of the protection of copyright and related rights in the economic crisis, widespread in Europe, highlights the legal framework for the protection copyright and related rights in the Republic of Kazakhstan, analyzes statistical data on infringement of copyright and related rights in Kazakhstan and the CIS countries, Foreign experience of protection of copyright and related rights in the US in Europe. The study presents the opinions of famous scientists on the protection of copyright and related rights. The researcher proposes measures to improve the legislation for the protection of copyright and related rights in Kazakhstan and CIS countries.

Key words: Copyright, related rights, protection, improve the legislation, intellectual property

INTRODUCTION

The globalization of the economic crisis, rapidly spreading in many countries of Europe and CIS eloquently suggests that socio-economic policy in these countries requires new approaches and solutions to emerging economic problems and accordingly, it is necessary to analyze legal rules, enforcement practices and emerging issues in the socio-economic sphere of these countries.

In his new message of the President of the Republic of Kazakhstan, Nazarbayev (2014) noted that “today the world is facing new challenges and threats. The world economy still has not recovered from consequences of the global financial and economic crisis. Recovery is going on in very slow and uncertain pace and in some countries it continues to decline. The geopolitical crisis and the sanctions policy of the leading powers creates an additional obstacle to the recovery of the world economy”.

One of the ways to solve the problems, certainly to our mind, is the use of innovative ways of overcoming the economic crisis, the use of intellectual property, especially of copyright and related rights and their legal protection in all spheres of public life and in the economy.

The main purpose of this study is the analysis of the basic legal rules governing the protection of copyright and related rights in the Republic of Kazakhstan and the identification of conflicts and development of proposals on their violations improvement.

Literature review: Research of leading domestic and Foreign scientists and specialists are dedicated to the legal relations in the sphere of copyright and related rights and in general, to the intellectual property.

Russian scientists, Ya.A. Kantorovich, A.A. Pylenko and G.F. Shershenevich were involved in copyright protection in the pre-revolutionary period.

M.N. Asinovsky, A.N. Belilovsky, G.N. Druchok, N.M. Zenkin, U.K. Ihsanov, E.U. Ihsanov, A.D. Garibyan, V.M. Kamyshev, E.F. Melnik, K.S. Namengenov, V.D. Nosov, A.I. Omelchenko, V. Rassokhin, I.G. Salman, Ye.Ya. Skripko, Sh. G. Sharahmetov, V.P. Chertkov, G.I. Tytskaya and A.K. Yurchenko, etc., were involved in the intellectual property rights protection in the Soviet period.

Works of leading domestic and Foreign scholars and professionals were devoted to legal relations in the sphere of intellectual property. Among Foreign researchers whose works are devoted to their legal regulation, should be called A.A. Alekseyev, B.M. Asfendiyarov, I.A. Bliznets, M.M. Boguslavsky, A.I. Vaksberg, A.B. Vengerov, G.V. Vitaliev, E.P. Gavrilov, A.M. Garibyan, M.V. Gordon, I.A. Gringolts, V.A. Dozortsev, T.I. Illarionov, V.Ya. Jonas, O.S. Ioffe, B.V. Kaitmazova, V.O. Kalyagin, V.G. Kamyshev, M.Ya. Kirillova, V.I. Koretsky, O.A. Krasavchikov, L.O. Krasavchikova, Yu.G. Matveyev, I.E. Mamiof, M.I. Nikitina, V.A. Ryasentseva, I.V. Savelyev, A.P. Sergeev and V.I. Serebrovsky, etc.

In the Republic of Kazakhstan, R.J. Abuova, B.K. Aligozhin, A.A. Amangeldi, A.I. Askarov, K.E. Beysembina, E.U. Ihsanov, U.K. Ihsanov, T.E. Kaudyrov, K.N. Namengenov, N.N. Sakhipova and A.E. Kapyshev were involved in separate issues of intellectual property civil protection.

A significant contribution to the development of science on copyright and related rights is made by Bliznets and Leontev (2015). Among the last works in the sphere of copyright and related rights protection on the

territory of CIS countries the following studies are known: Bliznets and Leontev (2015), "Copyright and related rights: a textbook". This book describes the copyright and related rights legal protection system, the system of contracts used in the copyright sphere, features of the transition and of copyright protection in certain cases, the copyright and related rights collective management system, the copyright and related rights issues of protection, civil, administrative and criminal liability for their violation.

However, issues related to the actual problems of the authors and other copyright holders rights implementation, to a criminal prosecution for these rights violations, procedural issues arising in the course of justice in relation to these cases remain studied not thoroughly and require more in-depth and comprehensive study.

MATERIALS AND METHODS

Research model: The relevance of this issue is immeasurably high especially at the present time, when the Republic of Kazakhstan is actively preparing for the international economic forum Expo-2017, where the use of new innovative technologies in various fields of production, economy, new objects of copyright and intellectual property in general is supposed to be. In this regard, new challenges, requiring proper solution, constantly arise.

Problems occur at the initial level of intellectual property rights implementation, in determining the content of this concept. For example, a number of scientists have noted that the concept of "intellectual property" is not defined by current legislation.

Moreover, due to the fact that the term "intellectual property" is traditionally viewed as conditional, collective, applicable only for the purposes of a shorthand for a particular set of rights arising in respect of a number of intellectual activity objects, in the last decades, there was a steady trend of its exclusion from the texts of legislative and other normative legal acts in which preference is given to using terms such as "the rights to results of intellectual activity and means of identification", "exclusive rights", etc. (Anonymous, 2011).

The geographical position of Kazakhstan, weakened crime control, market relations development, integration processes contribute to the growth of crime, to the smuggling of counterfeit goods, items containing elements of copyright and related rights and in general, intellectual property rights.

"In the CIS member states level of counterfeit goods ranging from 73-94% (Ukraine 90%, Belarus 94, Kyrgyzstan 86, Georgia 73%, the latter two countries are members of the WTO) and in countries such as U.S., Britain, France, the Czech Republic it is <10%, Finland and Italy 10-25%, Poland and Brazil 25-50%" (Anonymous, 1995). Dvoryankin (2001) Measures to fight illegal replication of Russian objects of related rights.

RESULTS

Data analysis: Timely and effective copyright and related rights protection is only possible with full legal support. Following independence of the Republic of Kazakhstan is characterized by a significant breakthrough in all sectors of public relations and, above all, in the legislative, regulating and functionally ensuring realization of citizens' rights in the sphere of copyright and related rights: creation, registration, implementation, protection.

The constitution of the Republic of Kazakhstan, adopted by national referendum on 30 August 1995, Article 20, Paragraph 1 ensures "freedom of speech and creativity", while "censorship is prohibited". Also Paragraph 2 of this article proclaims "the right to freely receive and disseminate information by any means not prohibited by law" (Anonymous, 1995). These standards guarantee freedom of creative activity to citizens which is an intellectual activity of a person.

In addition, a number of legislative acts and international documents, providing for the rights regulation in the copyright and related rights sphere was adopted.

In the field of copyright, the Republic of Kazakhstan joined the World Copyright Convention, signed at Geneva on September 6, 1952; WIPO copyright treaty and the agreed statements concerning the WIPO Copyright treaty adopted by the diplomatic conference on December 20, 1996. On the accession of the Republic of Kazakhstan to the Berne Convention for the Protection of Literary and Artistic Works (September 9, 1886) law of the Republic of Kazakhstan dated 10 November 1998; Berne Convention for the Protection of Literary and Artistic Works (September 9, 1886); on the accession of the Republic of Kazakhstan to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, the Law of the Republic of Kazakhstan dated June 7, 2000; Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;

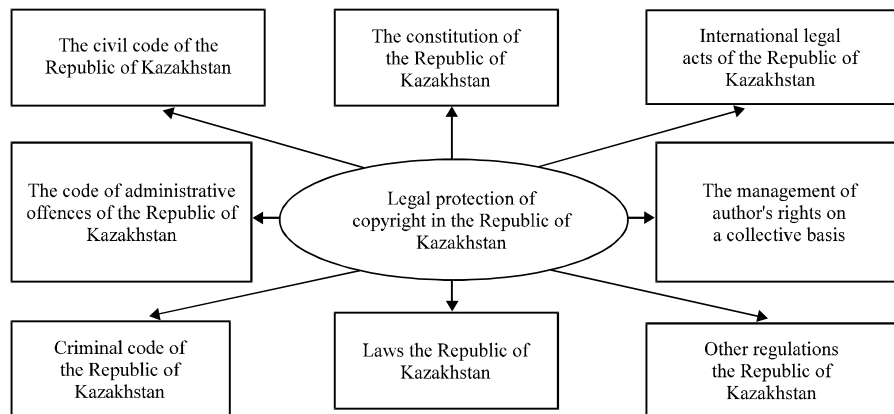


Fig. 1: Legal protection of copyright in the Republic of Kazakhstan

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Government Resolution of the Republic of Kazakhstan dated May 26, 2014 No. 539 On Suggestion Introduction for Consideration to the President of the Republic of Kazakhstan Regarding the Treaty on the Eurasian Economic Union Signing”, the Agreement of CIS countries on cooperation in the field of copyright and related rights protection 1993 and a number of other (Fig. 1).

Among the first laws, in the sphere of copyright and related rights protection were adopted: June 10, 1996 Law of the Republic of Kazakhstan On Copyright and Related Rights (No. 6-1), regulating social relations, in connection with the creation and use of works of science, literature and art (copyright), productions, performances, phonograms, programs of broadcasting organizations and cablecasting organizations (related rights); July 23, 1999 the Law of the Republic of Kazakhstan On Mass Media (No. 451-1) was adopted, regulating social relations in the field of mass media, it establishes state guarantees of their freedom in accordance with the constitution of the Republic of Kazakhstan.

In accordance with the civil code of the Republic of Kazakhstan, the rights to intellectual property rules are provided for by the following articles: Article 14 of the Civil Code of the Republic of Kazakhstan “The main content of the legal capacity of the citizen, the citizen may have on the right of ownership property intellectual property rights on inventions, works of science, literature and art, other intellectual property”; paragraph 2, Article 115 CC RK “Civil Rights” to material benefits and property rights (property) include: things, money, including Foreign currency, securities, works, services, objectified results of creative intellectual activity, trade names, trademarks and other means of products individualization, property rights and other property;

Article 125 of the CC RK “Intellectual Property” establishes the exclusive rights of the citizen or the legal entity on the results of creative intellectual activity and equalized to them means of individualization of a legal entity, products, natural or legal persons, their works or services (brand name, trademark, service mark, etc.) as well as the rules for their use, with the consent of the right holder; Article 126 provides for rights to proprietary and trade secret”; In addition, there is a specialized section entitled “Intellectual Property Rights”, which covers almost all of the objects of intellectual property: the results of creative intellectual activity and means of participants individualization of civil turnover, goods, works or services. Article 971 through 984 of the CC RK cover the protection of copyright and related rights (Anonymous, 1994).

In addition, the copyright and related rights protection by the court in accordance with Article 49 of the Law of the Republic of Kazakhstan On Copyright and Related Rights is carried out in the following way:

- Recognition of the rights
- Restoration of the situation that was before the violation of the rights
- Suppression of actions that infringe or threaten to infringe the rights
- Compensation of damages, including the lost profits
- Recovery of the income, received by the infringer after violation of copyright and (or) the related rights
- Payment of compensation in the amount from twenty minimum earnings to fifty thousand minimum earnings, established by the legislation of the Republic of Kazakhstan. The amount of compensation is defined by the court in lieu of payment of damages or recovery of profits
- Taking of any other measures, provided for by the legislation on protection of their rights

The measures, specified in Subparagraphs 4, 5 and 6 of this paragraph shall apply at the discretion of the copyright holder.

Before considering the case, the judge may independently render a decision to prohibit the respondent to manufacture, reproduce, sell, use the copies of the objects of copyright and (or) the related rights, in relation to which it is assumed that they are counterfeit. The judge is also entitled to render a decision on seizure and confiscation of all copies of the objects of copyright and (or) the related rights in relation to which it is assumed that they are counterfeit and the materials and equipment used for their production and reproduction.

The court may render a decision on confiscation of the counterfeit copies of the objects of copyright and (or) the related rights as well as the materials and equipment, used for their production. Counterfeit copies of the objects of copyright and (or) the related rights can be submitted to the holder of copyright or the related rights upon his request or shall be destroyed under the court decision.

Materials and equipment used for their production are to be destructed under the court decision or transferred to the state revenue (Anonymous, 1996).

Also, it should be noted that an important part of the copyright and related rights enforcement is the management of author's rights on a collective basis, when legal entities enter into copyright agreements with copyright holders and pay compensation.

Administrative responsibility for copyright infringement occurs according to the Article 129 of Illegal use of objects of copyright or related rights of the Administrative Offences Code of the Republic of Kazakhstan, according to which the guilty persons are liable to a fine.

Republic of Kazakhstan Law On Science also contains the overall approach in the determination of the intellectual property (Anonymous, 2001).

Starting from January 1, 2015 in connection with the enactment of new criminal legislation in the Republic of Kazakhstan, criminal liability for copyright and related rights violations occurs in accordance with Article 198, referred to as the Copyright and (or) Related Rights Violation. In accordance with Paragraph 1 of this article "illegal use of intellectual property as well as the acquisition, storage, transportation or manufacturing of intellectual property counterfeit copies for the purpose of sale or assignment of authorship or compulsion to co-authorship shall be punished by a fine of up to one hundred monthly calculation indices, or by correctional labor in the same amount, or by community service for a period of up to 120 h.

Paragraph 2 of this article states that "the same acts, when committed in a significant size or causes significant damage or significant harm to rights or legitimate interests of the author or other copyright holder, or committed repeatedly, shall be punished by a fine of up to three hundred monthly calculation indices or by correctional labor in the same amount, or by community service for a period of up to 240 h or by arrest for a period of 75 days.

Also the Criminal legislation of the Republic of Kazakhstan provides for more stringent measures for these types of offences committed with regard to aggravating circumstances. In particular, Paragraph 3 of Article 198 of the Republic of Kazakhstan Criminal Code states that "the actions envisaged in part two of this article committed:

- By a group of persons in collusion
- On a large scale or causing major damage
- By a person using his official position, shall be punished by a fine of up to five thousand monthly calculation indices, or by correctional labor in the same amount, or by limitation of freedom for a term not exceeding 5 years, or imprisonment for the same term, with deprivation of the right to occupy certain positions or to be engaged in certain activities for a term up to 3 years or without that

Paragraph 4 of this article points out that "the actions envisaged by the second or third parts of Article 198 of the Republic of Kazakhstan Criminal Code, committed by a criminal group shall be punished by imprisonment for the term from 3-6 years.

Criminal liability for copyright and related rights violations in the previous criminal law occurred in accordance with Article 184 of the RK Criminal Code.

According to statistics of the General Prosecutor of the Republic of Kazakhstan on criminal cases on copyright and related rights violations in 2014 the following information is given: the number of crimes, the criminal case of which were in production during the reporting period 389; the number of crimes registered during the reporting period 322; number of crimes, cases of which were completed within the reporting period 208; number of crimes, criminal cases of which were sent to the court during the reporting period 170; the number of crimes, criminal cases of which were terminated on grounds of non-rehabilitation 38; number of crimes, criminal cases of which were terminated with the deregistration 160; including the lack of crime components and crime event (Paragraph 1, 2 Part 1, Article 37 the RK

Table 1: Statistics of the General Prosecutor of the Republic of Kazakhstan on criminal cases on copyright and related rights violations in 2014

Years	The name of indicators	1	2	3	4	5	6	7	8	9
6 months	Copyright and (or) related rights violation									
2015	(Article 198 of the Republic of Kazakhstan Criminal Code)	283	279	41	19	15	2	2	1	22
2014	Copyright and Related Rights Violation									
	(Article 184 of the Republic of Kazakhstan Criminal Code)	389	322	208	170	38	160	160	4	3
2013	Copyright and Related Rights Violation									
	(Article 184 of the Republic of Kazakhstan Criminal Code)	897	858	552	434	118	36	36	1	1
2012	Copyright and Related Rights Violation									
	(Article 184 of the Republic of Kazakhstan Criminal Code)	502	512	350	285	65	5	5	2	2
2011	Copyright and Related Rights Violation									
	(Article 184 of the Republic of Kazakhstan Criminal Code)	732	712	647	606	41	3	3	6	4
2010	Copyright and Related Rights Violation									
	(Article 184 of the Republic of Kazakhstan Criminal Code)	726	680	654	579	75	2	2	4	4

1: The number of crimes, the criminal case of which were in production during the reporting period; 2: The number of crimes registered during the reporting period; 3) The number of crimes, cases of which were completed within the reporting period; 4) The number of crimes, criminal cases of which were sent to the court during the reporting period; 5) The number of crimes, criminal cases of which were terminated on grounds of non-rehabilitation; 6) The number of crimes, criminal cases of which were terminated with the deregistration; 7) including the lack of crime components and crime event (Paragraphs 1, 2 Part 1, Article 37, the RK Criminal Procedure Code); 8) On which the decision on commencement were cancelled by the prosecutor and 9) On cases initiated within the reporting period

Criminal Procedure Code) 160; on which the decision on commencement were cancelled by the Prosecutor 4; on cases initiated within the reporting period 3 (Table 1).

DISCUSSION

Despite full legal protection of copyright and related rights, some provisions contain conflicts that can negatively affect their enforcement and require substantial revision. For example, Article 3, Appendix No. 26 to the Treaty on the Eurasian Economic Union, the Protocol on the protection of intellectual property rights specifies the following: “3 Copyright applies to works of science, literature and art. The author of the work has, in particular, the following rights:

- The exclusive right for work
- The right of authorship
- The right on name
- Right for untouchability of the work
- The right for making the work available to the public
- Other rights defined by the legislation of the member-states (Kalyagin, 2000)

In this paragraph, we identified discrepancies with the Article 7 of the Law On Copyright and Related Rights” which specify that copyright objects are:

- The literary works
- Dramatic and musical-dramatic works
- Scenarios
- Pantomimes and choreographic works
- Musical works with or without lyrics
- Audiovisual works
- Paintings, sculptures, drawings and other works of fine art
- The works of applied art

- The works of architecture, urban planning and landscape designing
- Photographic works and the works produced by the means, analogous to photography
- Maps, plans, sketches, illustrations and three-dimensional works, relating to geography, topography and other sciences
- Computer software programs
- Other products

Protection of computer software programs is applicable to all kinds of software (including operating systems) that can be expressed in any language and in any form, including source code and object code. The subject matters of copyright also include:

- The derivative works (translations, adaptations, summaries, abstracts, summaries, reviews, stages, musical arrangements and other transformations of works of science, literature and art)
- Collections (encyclopedias, anthologies, databases) and other composite works, the selection and (or) the location of which is the result of creative work (Anonymous, 1996)

Derivative and composite works are protected by copyright, regardless of whether the works are the copyright objects on which they are based or which they include.

From the abovementioned information, it is clear that in Appendix No. 26 to the Treaty on the Eurasian Economic Union, the protocol on the protection of rights for intellectual property objects, the list of copyright and related rights regulated by the law is not complete. This difference in the wording of the rules greatly complicates the protection of copyright and related rights not only of Kazakhstan authors but of Foreign authors working in Kazakhstan.

In this regard, we consider it necessary to improve the edition of Appendix No. 26 to the Treaty on the Eurasian Economic Union, the protocol on the protection of rights for objects of intellectual property, by adding the list of copyright and related rights objects in the light of the law and international legal norms.

The protection of copyright in Foreign countries is of particular interest. The various ways of pre-trial protection of the right holder have spread in some Foreign countries. The most interesting way to protect the copyright holder has been developed in the Anglo-Saxon system. Such tool as “Anton Piller order” became widely known. Its essence lies in the fact that at the request of the right holder, the court may issue an order authorizing that person to inspect the facility where it believes committed acts that violate his exclusive rights.

Another well-known tool is “Mareva injunction”, which is aimed at restricting the defendant in property disposal, including the intellectual which may be required to satisfy the claim.

The third important tool is “Norwich Pharmacalaction”, important in conducting business activities abroad. First, this way of protection was applied in 1972 in Norwich Pharmacal case, when the claimant asked the customs authorities to disclose confidential information about individuals, importing into the country medicines containing an ingredient patented by him (Belov *et al.*, 2002).

Choosing way of intellectual property rights protecting, it is better to look at many years of experience and best practices for dealing with violations of intellectual property rights of those countries that can be attributed to countries with high economic development and the most developed industry intellectual property.

As world experience of intellectual property industry shows, a significant role in the economic development of civilized nations belongs to the legal protection of intellectual property. One of the leading countries in the world for all positions in the scope of application and protection of intellectual property, including in the media and the internet is the United States.

Creation of legislation in the field of intellectual property protection in the United States was observed after the War of Independence (1775-1783), when the US Congress passed a resolution recommending ensuring copyright protection in a number of states. Later, in 1787 in the US Constitution was recorded a provision stating that the US Constitution gives Congress the power “to promote the progress of science and useful arts by guaranteeing to authors and inventors the exclusive right to their works of art and invention for a certain period of time”.

United States is the first state to take steps to protect their intellectual property at the international level. Special

Section 1303, Section 301 of the General Law on Trade and Competition, adopted by Congress in 1988, provides for the identification of countries that violate the rights of Americans to intellectual property. At the turn of the 21st century, American intellectual property industry, in particular copyright, is one of the largest and fastest growing sectors of the US economy. In 1991, all kinds of copyright industry: software industry, cinema, television and video industry, the industry of music and sound recordings, publishing industry and others have provided 325 billion dollars on value added or about 5.5% of GDP. In this aspect, the copyright industry is investing in the US economy more than any single manufacturing sector, including the production of aircrafts and their spare parts, primary metals, metal products, electronic equipment, industrial equipment, food and related products, chemicals and allied products.

Copyright industry creates jobs faster than many of the leading sectors of the economy. Now, the US copyright industry employs more workers than such industries as aeronautics, automotive, steel, pharmaceutical, textile, etc.

Currently in the United States, there is a law “On Copyright”, which is a federal law. Court prosecutes criminally violation of this law, when committed intentionally, in order to obtain commercial advantage or private financial benefit.

American Cinematic Association (ACA) is engaged in fight against “piracy” in the United States in the production and distribution of films and videotapes. American Recording Industry Association (ARIA) protects the products of its member companies through fighting against pirated recordings at the level of production, distribution and retailing.

National Association of Music Publishers (NAMP) represents the interests of >500 US companies, who are the owners, managers or administrators of copyright in musical works. The Association participates in numerous lawsuits, protecting the rights of music publishers and protecting the legal principles in the field of copyright.

Business Software Alliance (BSA) which represents the interests of major US companies that manufacture about 75% of software packages in the world tirelessly fights against “piracy” which annually brings industry losses of \$2.2 billion. BSA activities in fighting against “piracy” include lawsuits, sudden raids and audit companies.

Huge money is involved in the field of copyright industry. With the development of information and other high technologies, this trend will increase. That is why the US is taking strict measures for the elimination of “piracy” as within their own country and abroad. The US government is ready to break even on the trade and

industrial relations with those countries that do not comply with the legal protection of intellectual property (Gerald, 2002).

Strengthening the protection of intellectual property rights in countries with high-tech industries, stricter patent regime had a positive impact not only on the economy of these countries, but also in other spheres of public life. In 1996, Brazil adopted a very good patent law. Since then the country has attracted new investments in the amount of from 1.7-2.2 bln. Dollars in high-tech industries, especially concentrated in the pharmaceutical sector. In Japan, where patent protection of pharmaceuticals was not until 1978, also felt the sharp rise of US investment in pharmaceutical R&D from 135,8 million Dollars in 1985 to 505.5 million Dollars in 1994. Similarly, countries that strengthened patent protection for pharmaceuticals, achieved impressive growth in the national pharmaceutical industry. Italy has introduced a strong patent protection of pharmaceuticals in 1978. The same year only 123 bln. lire were invested in local pharmaceutical R&D. And just in 10 years, these investments have increased to 592.3 billion lire and continue to grow. Mexico has strengthened the system of patent protection in 1991. As a result, investments in R&D and in enterprises for production of medicines has increased a total of 41 million Dollars in 1990 to 103 million Dollars just 3 year later (Baimoldina, 2014).

One of challenges is intellectual property rights protection in computer systems, the World Wide Web. Increasing concern in recent years is the protection of intellectual property rights in the use of pharmaceuticals, as in this case, in the use of counterfeit drugs, which are usually made of poor quality, as a result does great harm to public health and sometimes leads to death.

Distinctive approach to copyright protection is in German Law. Copyright protection peculiarity in Germany is that the relevant rules are contained in a special Federal Law entitled the Law on Copyright and Related Rights, which was adopted on September 9, 1965 (Serebrovsky, 1956).

Sanctions for copyright and related rights violation in the act are annumerated in Section 4 Paragraph 2 of the law, entitled Criminal Law Provisions. This section includes the following norms: unauthorized use of copyrighted works (106), inappropriate use of the copyright mark (107), unlawful interference with adjacent copyright law (108), unlawful use of works of the author in the form of business (108 a). About 109 regulates the issues related to the filing of a complaint for criminal prosecution, 110 is associated with confiscation of subjects of the offence and 111 establishes the possibility of the sentence publication (Shershenevich, 1995).

As specifies Serebrovsky (1956) "copyright governs only those relations which are connected with creation and use of works of science, literature and art" (Ojegov, 1986).

"Object of copyright, Shershenevich (1995) wrote the literary work as the product of spiritual creativity given a written or verbal shape and intended to the address in society is. Reports on court sessions, scientific societies, zemstvoes, etc. not expressing spiritual creativity of their originators, can't be considered as such objects" (Militsin, 2005).

In the dictionary of Russian of Ojegov (1986), there are two semantic values of work: 1. Creation, product of work, creativity, nature work, work of art, literary work. The second value of this word means result, a result of multiplication (Yurchenko, 1963).

Generalizing work as a material benefit in a counterbalance of the philosophical category combining the material and ideal phenomenon, Militsin (2005) gives the following definition of work: work in author's and legal sense object of a material world, a product of creative activity of the person, existing or existing in the objective form, protected by copyright as individual connection of a matter and a form and as that or in the form of the copies capable to be object of the real rights (Baimoldina, 2015).

Necessary criterion of object of copyright is creative character and an objective form of its expression. There are different formulations of concept of creativity. According to Yurchenko (1963) creativity is not "intuition", not sudden "inspiration", not unconscious inspiration when the invention or an improvement suggestion appears suddenly, without labor efforts of the person. Creativity is a work, besides work difficult and laborious, caused by social requirements of society. Technical creativity as is natural as development of technology" is natural (Pankeev, 2005).

Creativity is peculiar only to the people possessing creative thinking. This circumstance needs to be considered in the course of identification of perpetrators, involvement of suspected persons to the criminal liability, intellectual property rights carrying out violation and also the characteristic of the identity of the studied criminal. Necessary indicator of creative activity is the novelty of work which is expressing as in an external form (objective signs of work) and in the internal contents (subjective signs of work). There are the works which value can be shown in the most part in an external form. Works of the fine arts belong to such works.

For work creation the researcher sometimes needs certain time. The researcher, in search of the new image, a new form of work, the solution of any task, abstracts, dreams, analyzes information arriving from world around and comes to the new decision, before, born in

consciousness of the person and then, are embodied in a material subject. But the law protects only what have a material embodiment in various forms, allowing to perceive work by sense organs. The ended work may contain some parts which can be separate independent independent works or to be visually and are ideologically interconnected with each other are addition of the following or the previous component (Ggrin, 2015).

“Copyright and related rights, Pankeev (2005) fairly notes can exist and be protected fully only when they will be effectively protected. Numerous researches, acts, etc. are devoted to ways and methods of such protection. It is a question not only of a piracy, unauthorized the print out and reprints, plagiarism, illegal sale, etc. but also of fair terms of the contract, high-quality execution of the taken obligations” (Ivanov, 2014).

Ggrin (2015) in his Monograph Copyright for Multimedia Product based on the analysis of Foreign practice and doctrine formulates the concept of the legal regime of these objects under the Russian Law. In the research, the multimedia product is considered as a work of modern art, its characteristics are identified and a definition of the concept is proposed, the varieties of this object are analyzed and a distinction between the other intellectual activity protected results is made.

Ivanov (2014) in his training manual Copyright and Related Rights in Music in detail and comprehensively discusses the problems of intellectual activity results legal protection in the field of music. The work highlights the issues of copyright for musical works, issues on related rights for musical works and phonograms performance, based on the latest Russian legislation in this sphere, taking into account legal practice of recent years.

However, legal protection of many copyright and related rights objects in Kazakhstan and abroad requires a detailed examination.

CONCLUSION

In the result of studies we come to the following conclusions concerning the theoretical and practical issues of copyright and related rights protection.

Copyright is a complex of legal rules covering public relations in the process of establishment, registration, use and protection of rights for copyright and related rights objects. A natural person who commits plagiarism, offences related to the copyright and related rights violations, has characteristic features distinguishing him from other types of criminals. Such a criminal can be called a plagiarist. A plagiarist is a criminal who commits

appropriation of authorship, i.e., somebody's name appropriation, in relation to such intellectual property as the works of copyright, industrial designs, utility models, inventions and other types of intellectual property.

To achieve full protection of copyright and related rights it is necessary to apply a set of measures including prevention, suppression and punishment for such crimes, in particular:

- Legal arrangements: making the Kazakhstan civil, administrative, criminal-legal norms and national standards in the sphere of intellectual property rights turnover consistent with international norms, including registration, use, sale, transfer of rights under contracts, inheritance and other applicable types
- Human resources: training of law enforcement officers in combating violations of intellectual property rights; educational work with authors, performers, rights holders, users of intellectual property rights
- An integrated approach to the protection of copyright and related rights is necessary, through close collaboration of public, private and social organizations, using the experience of advanced countries like USA, UK, France, Germany and other countries with developed market of intellectual property

REFERENCES

- Anonymous, 1994. The Civil Code of the Republic of Kazakhstan (enacted by the resolution of the Supreme Council of the Republic of Kazakhstan of December 27, 1994).
- Anonymous, 1995. The Constitution of the Republic of Kazakhstan, adopted at the national referendum on August 30, 1995.
- Anonymous, 1996. The law of the Republic of Kazakhstan On Copyright and Related Rights dated June 10, 1996.
- Anonymous, 2001. The law of the Republic of Kazakhstan On Science of July 9, 2001.
- Anonymous, 2011. Intellectual Property Law: textbook I.A. Bliznets, E.P. Gavrilov, A.V. Dobrynin and others; under the editorship of I.A. Bliznets. Moscow: Prospekt, pp: 960.
- Bliznets, I.A. and K.B. Leontev, 2015. Copyright and Related Rights: textbook/under the editorship of I.A. Bliznets. Moscow: Prospekt, pp: 416.
- Belov, V.V., G.V. Vitaliyev and G.M. Denisov, 2002. Intellectual property. Legislation and Practice: Guide book. M.: Lawyer, pp: 288.

- Baimoldina, S.M., 2014. Mechanism of the Legal Regulation of Intellectual Property Rights in MassMedia and Internet. International Trends and Issues in Communication and Media Conference in February 5-7, 2014 Dubai, UAE, BGBlIS.1273. pp: 97-100.
- Baimoldina, S.M., 2015. Concept of legal protection of intellectual property rights. Procedia Social and Behavioral Sciences 176. International Educational technology conference Proceeding Book. Chicago, USA, pp: 998-1004.
- Dvoryankin, O.A., 2001. Measures to fight illegal replication of Russian objects of related rights. J. Intellectual Property copyright and related rights, No. 7, pp: 61.
- Ggrin, Ye.S., 2015. Copyright for Multimedia Product: Monograph. Moscow: Prospekt, pp: 128.
- Gerald, J., 2002. Mossinghof Progress in the pharmaceutical industry. Intellectual property rights in the United States. Documents, expert commentaries, reference materials. Compiler E. Dzhonson. M.: "Publisher LIBEREYA", pp: 143.
- Ivanov, N.V.N., 2014. Copyright and Related Rights in Music, training manual/under the editorship of A.P. Sergeyeva. Moscow: Prospekt, pp: 176.
- Kalyagin, V.O., 2000. Intellectual property (exclusive rights). Textbook for high schools M.: Publishing NORMA, pp: 480.
- Militsin, A., 2005. Protection of copyright and related rights. Civil law, No. 1, pp: 28-39.
- Nazarbayev, N.A., 2014. The President of the Republic of Kazakhstan New Message dated November 11, 2014, Nurly Zhol way to Future.
- Ojegov, S.I., 1986. Russian dictionary: Apprx. 57000 words. Academy of Sciences of the USSR of N. Yu. Shvedova. M.: Russian Language, pp: 797.
- Pankeev, I.A., 2005. Copyright. Course of lectures. M.: VK publishing house, pp: 270.
- Serebrovsky, V.I., 1956. Questions of the Soviet copyright. M.: Publishing house of Academy of Sciences of the USSR, pp: 31.
- Shershenevich, G.F., 1995. The textbook of the Russian civil law (according to the edition of 1907) M., pp: 256.
- Yurchenko, A.K., 1963. Problems of the Soviet inventive right. Publishing house Leningrad un-that, pp: 180.