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**Critical analysis to Intellectual  
property protection in  
Kazakhstan Multimedia**

This essay will examine Kazakhstan Intellectual Property laws in multimedia and makes a brief of the literature about protecting property of creative industry in Kazakhstan according to the country's laws. Main purpose of the paper is to analyze current situation due to new amendments on law in the Republic of Kazakhstan and looks at several court cases.

**Key words:** intellectual property, Kazakhstan, rights, piracy, Internet.

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**Қазақстан медиа аумағындағы  
зияткерлік меншікті қорғауға  
сараптама**

Эсседе Қазақстандағы авторлық құқықтың дамуы мен шығармашылық индустриядағы зияткерлік меншікті қорғау тақырыбы қарастырылады. Жұмыстың басты мақсаты Қазақстан заңнамаларындағы өзгертулер енгізілгеннен кейін қазіргі медиа аумақта пайда болған жағдайларды саралау.

**Түйін сөздер:** зияткерлік меншік, Қазақстан, Заң, Интернет.

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Қайымова Н.  
**Критический анализ  
интеллектуальной  
собственности  
в мультимедий Казахстана**

В данном эссе рассматривается развитие авторского права и защиты интеллектуальной собственности в творческой индустрии Казахстана. Главной целью эссе является анализ нынешнего состояния в медиа сфере, в связи с новыми изменениями в законодательствах Республики Казахстан.

**Ключевые слова:** интеллектуальная собственность, право, Казахстан, пиратство, Интернет.

**CRITICAL ANALYSIS  
TO INTELLECTUAL  
PROPERTY PROTECTION  
IN KAZAKHSTAN  
MULTIMEDIA**

Since UK government has created a Statute of Anne in 1709, rights of people to protect their Intellectual property (IP) have spread worldwide [1]. The basic idea of IP is to prevent copying or ‘pirating’ the author’s own creation, and ensure that his original piece of work is not used without permission of creators. It also includes a protection of significant issue as economic benefits of using author’s materials.

IP Laws constitute principle that copyright is territorial in nature, which means that ‘protection under a given copyright law is available only in the country where that law applies’ [2]. There are considerable numbers of international agreements, such as the Berne Convention, which protect creator’s rights worldwide. New technologies and new opportunities in digital age create more issues about the law of copyright. Inevitable pace of technological change supported media law to be reconstructed. Since the Internet has become an international platform of finding and exchanging information, the law of copyright as in many areas of law has shifted benchmarks.

Kazakhstan, as one of the developing countries in Central Asia, constructs its media and business around the Internet. Kazakhstan enacted Copyright and Neighbouring Rights law in 1996. However, the country faces several important issues concerning to protecting IP, especially in the Web. This essay will focus on Kazakhstan IP laws in multimedia and looks firstly the literature about protecting property of creative industry in Kazakhstan according to the country’s laws. Then paper further analyses current situation due to new amendments on law in Kazakhstan and looks at several court cases.

**Protecting Intellectual Property in Kazakhstan**

The history of copyright has started in middle 18<sup>th</sup> century. First communities which protect IP, and restrict length of copyright afterwards everyone could publish a creation appeared in England and France. But outside of owner’s country copyright laws creations had a little protection. Therefore, countries need to have agreements between them to produce and share creations legally. Fundamental levels of protection and recognition of industrial property was established by the Paris convention for the Protection of Industrial Property 1883, which excluded prevalently aesthetic works covered by the Berne Convention. The Berne Convention for the Protection of Literary and Artistic Works was based on rules of the Paris Conven-

tion was signed in 1886 and it is the first worldwide agreement to integrate protection of copyright [2]. The Berne convention as the milestone of modern laws of IP has been revised many times, which creates a copyright in works as soon as they were created.

IP in Kazakhstan is regulated by many laws and international agreements; however the main law is the 'Law on Copyright and Neighbouring Rights' and Civil Code of the Republic of Kazakhstan.

As citizens of Kazakhstan were nomads from the ancient time, they did not land in one place. Consequently, people were passing literal and dramatic creations with oral methods. However, usually authors of steppe literature were well-known, nobody plagiarised them and their creative works were kept in safe. Therefore, it is seen that fundamentals of copyright was based on moral and ethical notions.

It is known that poems and lyrics of legendary Kazakh poet Abay Kunanbayev in first years of his literal work-life were published by another name. After that the poet argued with plagiarist and then all his creations were published by his name [3].

It was the first time when legal documentations for legislations about IP in Kazakhstan were noticed in scholar and social works in the end of 19th and in the beginning of 20th centuries. The Law on Copyright and Neighbouring Rights essentials started with a Decree of Governmental Publications enacted in 1917. Because of this decree some literal creations were transferred from personal ownership to collective. For the 26 of November 1918 science, literature, music and creative works which were registered under collective ownership had risen, therefore next year the law about collective ownership was refused. The Law on IP basics came into force in 1925 and it was the main law for all Soviet Union countries and each of them separately. In 1961 Laws on IP were removed by the chapter about protecting IP in USSR Civil Laws. In 1973 All-Union Agency of Copyright opened a branch in Kazakh SSR and all international contracts with publisher had to be covered through this agency.

A new phase of legislation of copyright in Kazakhstan started after independency in 1991. A year later there was established a governmental Office for Copyright and Neighbouring Rights, which fundamentals were connected with All-Union Agency of Copyright. Over the period of its functioning the office had some changes in organization [4].

As in all countries in the world 'copyright shall extend to scientific, literary and artistic works that are the outcome of creative effort whatever

their purpose, content, merit or manner or form of expression' under the Law on Copyright and Neighbouring Rights [5]. According to the Law on Copyright and Neighbouring rights [5] 'a scientific, literary or artistic work shall enjoy copyright by the mere fact of its creation. The origin and exercise of copyright shall not require either a registration of the work or the accomplishment of any other act or formality'. However, it usually needs to register creations for protecting authorship.

Copyright protection lasts for being in life of the author and 70 years after the death of author. There is no limitation for moral rights which involve right to be named and right to protection of author's reputation. The Law states that nobody cannot copy or use it without permission of owner of copyright.

The Law has been changed three times in 2004, 2009 and 2012. Kazakhstan has developed a system of IP rights protection, which is one of the most significant areas for initial entering the market of the region, especially media-market, including the Patent Law, Law on Trademarks; Criminal Code and Administrative Code provide administrative and criminal liability for infringement of the IP rights.

Kazakhstan founded the State Enterprise «National Institute of Intellectual Property» of the Ministry of Justice Committee the Intellectual Property Rights (the «NIIP» or «Kazpatent») in 2003. Responsibility of the NIIP is for registration of IP objects and 'implementation of the state policy in relation to protection of copyrights, inventions, utility models, industrial designs and other creative items; issuing copyright, patent and trademarks certificates, and recognition of marks as well-known' [4].

The meaning of IP and protecting of it has a long history all around the world. Kazakhstan has several international agreements concerning IP protecting. Kazakhstan signed the Paris Convention for the Protection of Industrial [6] in 1991, the Berne Convention for the Protection of Literary and Artistic Works [7] in 1999, the *Madrid Agreement Concerning the International Registration of Marks* [8] in 2010, the *Nice Classification in April 2002* [9]. Kazakhstan joined *World Intellectual Property organisation in 2004* [10]. The country protects its creators rights by signing other conventions: Eurasian Patent Convention, Patent Cooperation Treaty, Strasbourg Agreement classification, Singapore Treaty on the Law of Trademarks [11] and it also has a partnership with CIS countries. Kazakhstan signed for Universal Copyright Convention in 1992. It was created to supply universal mode for protecting IP, which 'persuaded that such a universal copyright system

will facilitate a wider dissemination of works of the human mind and increase international understanding' [12].

Amendments of the IP Law and its current impact on the Internet space in Kazakhstan

When Amendments and Addenda to Some Legislative Acts of the Republic of Kazakhstan on Issues of IP have come into force in 2012 [13], it becomes the most popular Law in Kazakhstan which was criticised and argued by the web-users. In one of the sites over 200000 people voted against new amendments, which is strict for infringement. Torrent-tracker users and sites with free films complained that these could lead negative impact on developing of KazNet which is the local Kazakhstan Internet field. Hackers tried to attack governmental sites against these amendments, in Astana, capital of Kazakhstan, and Almaty, state capital, people were collecting signs against the Law in favour of piracy. However, experts said that it could influence for the distribution of the traffic, inside KazNet and outside.

The Internet has become significant source of information, however it was ignored in honour of IP in KazNet, also it was not regulated by the government. New sphere of anti-piracy movements needs changes in Civil Code and Criminal Code. The current infringement of copyright under the Law shall make the infringer liable to civil, administrative and criminal sanctions in accordance with the legislation. Illegal usage of objects of IP throw organising of the web-sources for the forward allowance to exchange and save in electronic devices. All local sites which have pirate content, especially torrent-trackers where users could download music, films and video games may be closed in regards the law. According to Chapter V in the Copyright Law the court may prohibit the defendants from manufacturing, reproducing, selling or using copies of works or phonograms presumed to be infringed. The court may also order seizure, descriptive or real, of all copies of works or phonograms presumed to be infringed and of the materials and equipment used in their manufacture. The court can nominate a payment of an indemnity of between 20 and 50 times the minimum salary set and it shall determine the amount of the indemnity to be paid in place of damages or surrender of revenue. However, if actions of the pirate-sites create more damage, the Criminal Code Articles 2, 3 and 184 comes to force – indemnity between 600 and 800 times the minimum salary, public works for 200-240 hours or to jail for one year. Under the amendments in 2012 a person who has guilty of infringement can be prosecuted by criminal laws. In

case of repeated infringement of the law the court settles to prison a person for 2 and 5 years [5]. Logically that numerous site owners chose to close their sites themselves, to prevent going to the jail. But one of the main aims of changes in the Law for IP, especially related to internet-resources was to protect information agencies, journalists and media workers such as photographers from using their materials without their permission. For example, these torrent-sites transfer online broadcasting of TV-channels without their permission. Regional channels spend a huge amount of money to differentiate content of films and music for the audience; however pirate-sites use neutral domains such as .tv, .net, .org, which is hard to find holders of them [14]. Situation which occurs frequently is the publication of photographs in the worldwide network without permission of photographer, for example, photographs on well-known Kazakhstan's website of photo-reportages Vox Populi are usually copied by bloggers or web-sites. The project manager of Vox Populi Alisher Yelikbayev posted on his Twitter that Mongolian site Xopom.com has copied the whole article with photographs called 'Akshatau: 35 Kilometres Away From Water' without their permission. That site translated article into Mongolian, and kept copyright watermark of original site, however, the watermark of Xopom was put as well. Another example is the stolen article 'The salt of the earth' from Vox Populi by the site Pikabu.ru which shares images and videos. That site cut the watermarks and put it into network as author's own creation. Alisher Yelikbayev sarcastically stated 'Vox Populi now is available in Mongolian! In fact it is not, they are simple thefts!' and 'It happens often. In Kazakhstan we solve it agreeably, but we do not know what to do with sites outside of the country' [15, 16, 17, 18, 19]. Another similar situation occurs with a photograph of A. Lunin who works in Forbes Kazakhstan. He took a picture of Erbolat Toguzakov, a winner of festival 'Golden person-2012' in nomination of the best actor, and published in the site on 19<sup>th</sup> of November 2012. Next day, official site of Film Company Kazakhfilm published article with the photo without permission of the Forbes. A day after on 21<sup>th</sup> of November news sites as tengrinews, zakon.kz, thenews.kz, gazeta.kz copied the photo as their sources, the offices of these sites said that they took permission from the Kazakhfilm, since the Kazakhfilm is also reputable company. According to V. Boreiko [20] chief-editor of the site Forbes.kz the editorial office was thinking about protecting their IP, however, there is no information that

the Forbes.kz sued with those sites for copyright infringement.

The first court case where rights of photographer were protected happened in October 2012. Photographer A. Gordeev sued with well-known magazine. The jury found that Men's health Kazakhstan wilfully violated the Law on Copyright when they used photos, which Gordeev took in cycling race of 'Astana' team, especially Kashechkin, a sportsman, in Calpe in January 2012. The photographer works with 'Astana' national bicycle team and takes pictures for publication on their site. 'When I had recognised my creation in a magazine I contacted with them to ask compensation. They told me that it can be persecuted by the Criminal Law in terms of extortion' said the photographer. As he was only accredited photographer from Kazakhstan he was trying to do a lot of photographs. He was seating in the baggage compartment in a car that was driven to take professional photographs of the race, which could be dangerous for the author's health [21]. 'The Men's Health printed 18 000 copies of this picture, consequently we are complaining of infringement by two methods: recording and distribution' said Baurzhan Aydarbekov, a lawyer for A. Gordeev. They asked for the award to be set at 5 million tenge, which is around 35 000 dollars [21].

According to the lawyer of Gordeev an editorial team of the Men's Health said that it was a mistake: when they were preparing an edition chief-editor was replaced by another person, and an art-director was in a hospital, then photo-editor took the photo from the Internet for the draft version. They thought that US 35 000\$ is too much for the photo which cost US 50\$, consequently, they wanted to pay a compensation three times more than the cost [21].

Y. Popik, a lawyer for Men's Health, blamed the infringement on an innocent mistake and said that they asked Kashechkin for photos. 'We work with a lot of photo bases and the sportsman gave us 16 photographs'. By the Law all photographs were owned by Gordeev, therefore Kashechkin could not to allow using it. On 17th of October 2012 the judge ordered Men's Health to pay a compensation of 300 000 tenge, which is approximately 2000 US dollars. This amount of money was not satisfied by the two sides; therefore both of them were going to file a notice of appeal [21]

The first case of piracy was in 2011 when A. Krigin, an administrator of the torrent-tracker site torrentzone.kz, was established as a guilty of infringement of copyright. He put a film 'Sucker Punch' of «Warner Bros. Legendari Pictures», which used by local distributors of the company, 'Kazakhstan Association of protecting copyright and neighbouring rights' into site. Because the case was before new amendments of the Law 2012 Krigin was responsible to pay 5 times of the minimum salary, which was around 7000 tenge for governmental budget, and a hard-disk and a modem of the infringer were also confiscated [22].

The purpose of this paper is to review the Law of protection IP in Kazakhstan and its current situation, by describing court cases. Kazakhstan has different international agreements for copyright as well as main Copyright and Neighbouring Rights Law. In the last few years the law has changes therefore new amendments in honour of preventing pirating has focused on heavy punishments. However, media workers still has faced problems with piracy, such as stolen photographs in the Web. Protecting intellectual property is not explored deeply; hence it needs to be researched more in future.

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