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**INTERNET AND COPYRIGHTS:  
CLASH OF INTERESTS AND  
COMPROMISE SEARCH**

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## **Internet and Copyrights: clash of the interest and compromise search**

Intellectual property is considered as one of the main priority fields in the Concept “Azerbaijan - 2020: View to the Future”, approved by the decree of the President of the Republic of Azerbaijan Ilham Aliyev. The main issues forthcoming the copyrights and related rights system have been indicated in 6 chapters of this document, including economy, information technologies, education, science, legislation and cultural heritage. Especially, one of the necessary issues of the 6th chapter "Development of IKT and providing transition to the information society" is indicated as "Taking into account the mutual influence of IKT and intellectual property and the migration of some objects to the global digital network, the system of management of digital rights will be created on the basis of services on one-stop-shops format and online licensing".

In order to learn the implementation process of this Concept, with regard to the mutual relations between copyrights and Internet, we decided to have an interview with professor Kamran Imanov, the head of Copyright Agency of the Republic of Azerbaijan, well-known and respected expert, chairman of the WIPO Copyright Treaty Assembly.

**- Mr. Imanov, according to your opinion, which problems about the enforcement of copyright are there on the Internet?**

- The adoption of WIPO Copyright Treaty and Performances and Phonograms Treaty called simply Internet-Treaties by experts during the diplomatic conference in 1996 with the participation of the representative of Azerbaijan at the governing body enabled the authors/creators to “breathe

freely”: finally, they would have their own rights through Internet. Because, until that time, only unwritten rules of internet etiquette or web etiquette were in force. But, it was obvious that advancing the rapid development of the information technologies more than development of the rights would lead to the creation of the new problems.

Obviously, if we give attention to the issues regarding the use of copyright objects on Internet and their migration towards the virtual network, it can be concluded that the conflicts between the rights holders and users, as well as, the owners and Internet service providers are growing. The essence behind the first issue arises from the fact that rights holders can't make the profit from the creation and the dissemination of the intellectual products. This is connected with the low-cost character of the duplication of the information or digital content by the users in the global network and the existence of the possibility of the exchange of a great amount of information through long distances. In that case, there are great opportunities for the multiplication and instant dissemination of the copies with perfect accuracy and zero cost.

The second conflict consists of that the right holders in most cases, cannot submit claims against factual infringers because of their anonymity and widespread character of the illegal content transfer and, therefore, they blame web providers.

**- So, it means that the development of Internet has caused the clashes regarding copyrights.**

- If we say more exactly, the reason is technological dominance obtained by Internet users due to new mutual relations in the framework of Web-2.0, also character of digital content, unlike traditional copyright works (products). Because of this, the balance between the availability of the works for users on the Internet and the encouragement of the creators and

disseminators of copyright objects has been changed in favor of the former ones.

Let me explain this. Internet service providers and platforms operating under the Web-2.0 framework, such as Wikipedia, Facebook, Myspace, Youtube, Flickr blogs (Twitter), peering networks, P2P file distribution networks (BitTorrent), broaden opportunities for information transfer and make the infringement of copyrights much easier. And Web-3.0, provided with cloud computing and advanced personalization system will create more integration and trans-border data flow, thus tightening the current situation.

Now, let's take a look what happens with the products converted into digital content. Firstly, due to the nature of the content, the importance of the information, in other words, copyright objects rises and at the same time the notion of the form, protected with copyright weakens. Secondly, new digital forms of creativity - fragmentation (division into segments), remix, mashup, sampling etc. occur and this leads to the loss of the form of the works created under the specific content. Furthermore, the restrictive function of the exclusive rights does not work effectively, laws of value act differently, the notions of "sample" and "copy" change their meanings and the term "access" becomes more crucial.

In my opinion, the things mentioned by me are sufficient to assess the critical situation of the copyright and understand the ineffectiveness of the measures and models, aiming to only toughen the traditional copyright. It is not a coincidence that, international and national initiatives fighting against piracy, such as ACTA, PIPA, and SOPA, which have been based on these principles, have not entered into force yet. The legal power of the HADOPI, the French legislation act of which has set out closing down of the websites after three warnings due to infringements, has been terminated. But it does not change the fact: according to the assessment of WIPO, only in the music

field the amount of illegal distribution between users has been over 40 billion files in the end of the first decade of the XXI century, thus, the percentage of the piracy has been 95 percent.

In order not to load readers with the figures on the overall capacity of the piracy I can only say that in spite of the rise in the sale of digital content, it is not enough to reimburse the damages, arising from the reduction in the purchase of works in physical objects. Therefore, the capacity of the market is decreasing. How can it be prevented? Some experts support the adoption of the measures, which impose harsh sanctions for the user infringements. Another group, who is backed by lawyers, demand to impose full liability on service providers and compensation for the breach of the users' rights.

**- Are there any other approaches except the ones, which aim to make hard the punishments and impose a liability for intermediary service providers?**

- Of course there are and the main consideration is given to the new business models, which create additional value in digital environment, ensure the remuneration for right holders and motivate e-commerce. These models are prepared under the framework of the balance restoration concept in the “Openness on the Internet – enforcement of copyrights” system. And the balance, as I mentioned, is on the side of the scales, where unrestricted access and Internet users stand.

Without lessening the importance of the aforementioned approaches, I can mention that one principal requirement should be met for the success of such approaches. It is the adjustment of legal instruments of e-commerce with the expectations of Internet users. In other words, legal trade, or licensing should be realized as easily as it is for the illegal one. Unless there will be discrepancy between the legal forms of the content use and the expectations of Internet users, piracy will become more distinct because it is much easier to implement

these expectations through illegal ways. It should not be forgotten that it is impossible to change the technological dominance of one of the parties and amendments created by them back, so, the only reasonable way is not to act against the current processes, but to confess their inevitability and create mutual intellectual relations with them. There is no choice – whether copyrights system should be adjusted to the “natural selection”, or it will perish.

### **- What is the essence of new approaches?**

- It can be briefly stated that they recognize the exclusive right, which is considered a copyright protection mechanism. As it is known, exclusive rights have become the analog to the “property” in the Intellectual Property (IP) area. They were based on the restrictive function, precisely, “prohibition of the use” of the copyright object, which is the close to the “ownership” entitlement notion in the exchange of material objects. The models, aiming to make copyright laws hard, especially rely on such restrictive function. But the content behaves differently on the Internet. And this demands the reconsideration of the approach. I remember Saltikov-Shedrin, thinking of the ways of making his initiatives more attractive “without any changes”, wrote that “you can think during the daytime and at night and one more day and night”. While making a comparison with mathematics, it can be said that a famous scientific fact concerning Godel’s result incompleteness theorem may work in this case: it is impossible to absolutely prove the theorem: In order to complete your proof (in our case any initiative) you need to step outside the system.

So, new approaches offer the replacement of the restrictive function with the positive one, regarding unrestricted use, in other words, content is used without restrictions on the Internet and limitations imposed on free access are removed.

The licenses, such as Creative Commons (CC), being applied in 54 countries and already proving their effectiveness, can be shown as an example to these models. Another type of approaches is connected with the unrestricted access, confining itself to the mandatory licensing (with regard to rights owners) and payment of the remuneration. These models vary according to the rules, concerning remuneration and its source, or compensation paid for use of rights.

Such approach fits the purpose of the copyright and it should not affect the technological opportunities, established for the creative ideas and business models, and it should not be applied for the preservation of the business models based on the outdated technologies.

Again I want to emphasize that the purpose of the copyright is to cooperate with all the technologies, pertaining to the creation and dissemination of the works, and benefit from the cultural exchange, emerging thanks to those technologies. As WIPO General Director F.Gurry mentioned, “the purpose of the copyright – is not to stimulate the commercial interests of the business, but assist cultural dynamism”.

**- What should be done in order to implement the objectives?**

- This is the most important issue we try to deal with both scientifically and practically. We consider that preparation of the offers, pertaining to counter-measures on copyright policy demands the combination of the rights, existing in online and offline regimes and infrastructure, as well as taking into account of the changes in the leading business-model field. Unfortunately, some publishers and newspapers, including yours, make mistakes, coming from their thirst for complexity and harmony, but not because of the populism.



As you know, through the decades (not centuries) law was regarded as the main tool for shaping the policy in the copyright field. However, it became a very harsh and even restricted instrument in the digital environment, as the physical impact of the territorial principle of the copyright lost its power due to the scope of movement and international multi-jurisdictional feature of the virtual network. Economic and technological institutions have already left this “territory cage”. The current level of Internet culture and the platforms offered by it, impact the conduct and behaviors more than the law does.

In a word, in order to preserve its position as the final remedy, the law should pave a way for such platforms and Internet culture, shaped by them.

**- Why did you emphasize the point that legal novelty should be applied in both real (offline) and virtual (online) worlds?**

- The situation, arising in the network due to illegal content has a mutual relationship with the same problem, regarding digital content on CD and DVDs, because of some reasons. As I mentioned before, compared to the increase in the sale of the content at the network, the purchase of the content kept in disc storage mediums is reducing. Perhaps, you have also mentioned that most of the pirate disks are not the copies of the samples of original phonograms and audiovisual works released before, but rather the ones illegally downloaded from the Internet. So, with the decreasing sale numbers in offline trading, product piracy realized through the Internet becomes more common. Thereby, corresponding measures, aiming to strengthen the right to get access in the legislation, should be applied for both offline and online tools. Or let's give another example. Some users refuse to pay collective management organizations the remuneration for the use authors' works.

Besides this, it can be stated that collective management system is also created for the digital content on the Internet. That's why we prepared a draft law on "Collective management of the rights". Or I can give one more example. According to foreign experts, digital technical system, created for the personalization of the control stamps, the stamps of which are placed on the IP products, is regarded the success of the Agency. The uniqueness of this project, being expected to be applied in recent future, is that it has been provided with the digital system, which is mutually connected with "Track & Trace" program for smartphones and makes the remote identification of the legal stamps possible. The absence of such a stamp can result with a great number of fines. The establishment of the system is based on the "Law of the Republic of Azerbaijan on Enforcement of the Intellectual Property Rights and Fight against Piracy" and respective legislation acts, thus it has a legal ground backed by the modern opportunities of Internet.

**- And now what can you add about the infrastructure management of digital rights?**

- Infrastructure is as important as the law itself. How is the level of the current infrastructure? As a general rule, it is the system of collective management organizations, coordinated by a national body, which carries out the policy on copyright. For example, two collective management organizations – "Azerbaijan Authors Society" and "Film Directors guild of Azerbaijan"- operate their activities for collecting and distributing the remuneration among the authors for the use of music and audiovisual works. And state policy, concerning copyrights and related rights is carried out by the Copyright Agency of the Republic of Azerbaijan.

So, existing collective management infrastructure does not meet the requirements of the digital era, it is outdated and

needs to develop, because every society has its own specific expression environment, but for the management of the content on the Internet it does not matter whether that content has been created from music, audiovisual or another type of works or not. Besides this, the Internet is multi-jurisdictional and does not recognize any borders. The project prepared and realized by our Agency, as you mentioned, includes one-stop-shop licensing and monitoring for any content protected by the copyright. We will build a mutual relationship with our societies, but with different rules. We will regulate the national base of the content, although the database of the content uses the repertoire, folklore and other objects of these societies. Altogether, the content preserved through the Internet will consist of literary, music, audiovisual works, compilations of data, photographs (as works of art), folklore samples and phonograms. The content is provided with identifiers and security marks for searching and watermarks for verifying its legality. When talking about technical matter and programs, as you already know, we are ready for the pilot realization of the part of the project, by providing storage, digital library aggregation services, devices for the digitization of different kinds of works, a complex of programs etc.

**- What activities are currently being carried out?**

- First of all, we need to “feed” our national Registry with the author content. Some problems arise with regard to this issue. For example, in Azerbaijan there are not collective management organizations, which administer copying of the texts. And this means that there is no ready text repertoire for copyright objects. The same problem exists for the works of applied arts, such as photographs. Therefore, there is a need, first of all, to find out the necessity of them on the Internet, and then realize the digitization. The essence of “one-stop-shops” is that all the rights, concerning different kinds of works and

embodied in digital content, are managed from a single center. There are other issues waiting for their solutions. Online licensing is connected with the global one, in this case, rights owners give respective rights, regarding the use of author content, and the principle of voluntarism enable each rights owner “to take out” any or all the collective management objects. And it is not surprising, as the right owner can manage the rights, concerning his own content, by himself through the use of licenses, like Creative Commons (CC). The model applied by the Ministry of Education can be shown as an example to the use of them. Thus, rights, arising from the best educational materials, are purchased by the entity in compliance with the recommendation of the Agency and demonstrated on the Internet for free use through the licenses, such as CC.

**- What rights should be a law abiding user entitled with and how are they acquired?**

- You need to pass two stages in order to get access to any source, I mean, get to know it, obtain an opportunity for “downloading”, in other words, use content kept here. These rights correspond with the ones, which belong to the rightsholder. Users need to have a legal entitlement, which belongs to the rightsholder and is needed for “general access” in order to connect to the network channels. But if a user “copies” the content, in other words, downloads it to his computer, tablet, or smartphone, then he reproduces it and he should be entitled to be a copyright holder for “reproducing”. The peering networks, enabling an unlimited number of Internet users to exchange information, are very popular. Considering that more than half of the Internet traffic consists of the file exchange, transfer of the information to the interested user requires having a right to “disseminate”. Thus,

rights have to be granted whether from copyright owners or collective management organizations and formed as a license.

**- Please, explain the characteristic of “Openness of the Internet - enforcement of the copyright” conflict.**

- As you understood, Internet-community, or virtual community, first of all, is the network of users and it includes both authors and their business intermediaries - rightsholders. The purposes of the Internet-community are not the same, but different and the spectrum of them starts from stricter copyright legislation and expands to the absolute unrestricted use of the Internet content.

Accordingly, copyright legislation, as a combination of the concessions for balancing the needs of the society and interests of the authors (rightsholders), sets out the measures, which restrict the monopoly of the authors, or the rightsholders, including the restrictions and exceptions, such as unrestricted access to works under the compensation paid to the authors (rightsholders) or without such payment.

Considering the disruption of the balance between the relationships of the sides on the Internet with regard to the technological dominance taken by the users, the action plan, being realized in three directions and aims to restore the status-quo, can be outlined. More precisely: toughening copyright norms on the Internet, or applying limiting restrictions and exceptions, such as unrestricted access to the content under the compensation, or simply use without such payment.

In “Openness of the Internet - enforcement of the copyright” system Internet users act as the supporters of the idea of the openness and give more preference to the unrestricted access to works. And the majority of the defenders of the idea to get unrestricted access to works under the condition of the remuneration payment are authors. Rights owners, acting as business partners of the authors, also support

toughening the requirements regarding the enforcement of the rights and research proves those aforementioned approaches.

During the preparation of our national draft project (concerning the management of the rights on the Internet), by addressing modern mathematical models, such as a game theory, we theoretically analyzed the relationships between three players: authors, rights owners and users, and came into conclusion that more sustainable compromise is achieved through the unrestricted access to the content under the payment of the compensation. However, it does not exclude the use of other two models. The legislation provisions, setting out the rules on blocking (closing down) the websites of copyright infringers or application of open licenses, such as CC, can be shown as a clear example to this.

So, the dominance of the strategy prepared by us, concerning the unrestricted access under the payment of the compensation constitutes the theoretical platform of the collective management system of the digital rights.

**- What kind of sources does the additional value for awarding of rights holders, as you said, "comes from"?**

- Perhaps, this is a key word and is connected with choosing more excellent business-model and not being the reason of argument. Users get efficient legal authorities on the basis of licenses given by the organization at simple systems on collective management of rights on internet and undertake to pay the remuneration for every type of use. The amount of remuneration (of award) depends on will of the parties, but it can be determined on the basis of affirmed tariff degrees. The user registers uses and pay compensation for use as it is clear, this scheme is unproductive, because it is impossible to provide necessary control for use. Scale of rights infringement arises from this.

There are other approaches directed to discovering more standard sources and softening (smoothing) possible infringements. For example, like to entrust the payment for the users' use of author content network to the providers, to impose taxes upon copyright for internet for the users, because additional load of payment falls just on them.

It is taken into account that global license just for use will be presented to the users by the providers. For example, Azerbaijan, you can see that 70 percent (more than 6,5 million) of its population is internet user and if calculates 1 manat for a year for every user this will be more than 6,5 mln manats and this will be spent for awarding of right holders. If takes into account that almost 45 percent falls to each: musical and audiovisual works' and about 10 percent to literary works' share at transferred content and then presumable view of these ways is clear among different right holders.

Russian model requested by N.Mikhalkov consists of this. The idea of the model considered tax form is not new. Dr. Fisher requested alternative system of compensation for free use of works in his popular book "Promises to keep: Technology, Law and the Future of entertainment" (Stanford, 2004) in 2004. Fisher's model took into account the work registration and obtaining the unique identification at special state organization on digital rights, following the use from content and formalizing its rating, collecting the compensation means as a tax and in service form on access to digital resources from setting producers by state organization, distribution the means among the right holders according to the rating. This idea has been developed in Dr.A.Dolgin's "Economy of symbolic exchange" work (M., "Infra", 2006), in articles of B.Budnik's "Copyright" magazine.

**- How it is taken account using the system prepared in Azerbaijan?**

- System prepared by us bases on relevant norm of Law on "Protection of intellectual property rights and struggle against piracy" and elimination paradigm of limitations on free use of works on Internet by absolute paying the compensation to the right holders. The system gives opportunity to use 2 ways. The first is hyper monitoring by providing the payment of compensation for free use of content to the right holders, by following the use facts and robotized indexing mechanism.