

Impact Factor:

| | | |
|--------------------------|------------------------|----------------------|
| ISRA (India) = 1.344 | SIS (USA) = 0.912 | ICV (Poland) = 6.630 |
| ISI (Dubai, UAE) = 0.829 | PIHHI (Russia) = 0.234 | PIF (India) = 1.940 |
| GIF (Australia) = 0.564 | ESJI (KZ) = 1.042 | IBI (India) = 4.260 |
| JIF = 1.500 | SJIF (Morocco) = 2.031 | |

SOI: [1.1/TAS](#) DOI: [10.15863/TAS](#)

International Scientific Journal Theoretical & Applied Science

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2017 Issue: 03 Volume: 47

Published: 6.03.2017 <http://T-Science.org>

Kambariddin Mekhmonov
Researcher,
Department of Civil right,
Tashkent State Law University
gambariddin@mail.ru

SECTION 32. Jurisprudence.

THE LEGISLATIVE FRAMEWORK AND THE PRINCIPLES OF CIVIL-LAW REGULATION OF RELATIONS CONNECTED WITH THE COMPUTER PROGRAMS AND DATABASES IN THE REPUBLIC OF UZBEKISTAN

Abstract: The article deals with the legislative framework and the principles of civil-law regulation of relations connected with computer programs and databases in the Republic of Uzbekistan. The author analyzes the relevant legal regulation of relations related to computer programs and databases, sources of legal regulation, the role and importance of secondary legislation, the principles of civil-legal regulation of relations related to computer programs and databases, as well as legal support for further development in the Republic of Uzbekistan production software. In conclusion, the author gives suggestions for improving the legislative framework.

Key words: computer software, software for computers, software, software, legislative framework, the source of law, the law, by-law, the principle of law, legal security.

Language: English

Citation: Mekhmonov K (2017) THE LEGISLATIVE FRAMEWORK AND THE PRINCIPLES OF CIVIL-LAW REGULATION OF RELATIONS CONNECTED WITH THE COMPUTER PROGRAMS AND DATABASES IN THE REPUBLIC OF UZBEKISTAN. ISJ Theoretical & Applied Science, 03 (47): 23-28.

Soi: <http://s-o-i.org/1.1/TAS-03-47-5> **Doi:**  <https://dx.doi.org/10.15863/TAS.2017.03.47.5>

Introduction

At the present stage of civilization development of the intellectual property rights play a fundamental role. Creation and implementation of intellectual property rights, their use in a variety of socio-economic, legal order has a positive effect on the effective solution of certain problems. Therefore, an important task is to study and analyze the mechanism of legal regulation of relations connected with intellectual property.

Recently, more clearly seen in the developed countries of the world economy, new segments for the production of software products. Without them, unthinkable a normal functioning of modern information and communication technologies, the development of the economy and the cultural and social life. Software industry can be characterized as an economic sector which provides design, implementation, use and legal protection of software products.

Technology development requires us to use information and communication technologies in various spheres of our life. This makes it possible not only to make life easier for people, but also makes it

possible to effectively cope with life, scientific and other problems.

As noted by the first President of the Republic of Uzbekistan Islam Karimov "We must be aware that without a radical, I would say explosive move towards wide implementation in all sectors of the economy, in our daily lives of modern information and communication systems, it is difficult to see the future. We need as soon as possible not only to eliminate the backlog occurring in many kinds of information services, but also to enter into the category of advanced countries with a high level of information and communication technologies." [1].

Sources of legal regulation

In the Republic of Uzbekistan established the legal framework to protect intellectual property. An important root of this essential, the basis of regulation of relations connected with intellectual property is Article 42 of the Constitution of the Republic of Uzbekistan. This article states that "everyone shall be guaranteed the freedom of scientific and technical creativity, the right to enjoy cultural benefits. The State shall promote the cultural, scientific and technical development of



Impact Factor:

| | | | | | |
|-------------------------|----------------|-----------------------|----------------|---------------------|----------------|
| ISRA (India) | = 1.344 | SIS (USA) | = 0.912 | ICV (Poland) | = 6.630 |
| ISI (Dubai, UAE) | = 0.829 | PIHHI (Russia) | = 0.234 | PIF (India) | = 1.940 |
| GIF (Australia) | = 0.564 | ESJI (KZ) | = 1.042 | IBI (India) | = 4.260 |
| JIF | = 1.500 | SJIF (Morocco) | = 2.031 | | |

society. " Recorded generally "freedom of scientific and technical creativity" guarantees to every person engaged in scientific and creative activities in different sectors of social life. Everyone has the right to engage in creative activities, such as the creation of computer programs and databases. Also, people in various conditions and states have the right to engage in creative activities. For example, the author, the creator of the software does not require a higher education, state registration activities.

According to article 1031 (section 4) of the Civil Code of the Republic of Uzbekistan, the program for electronic computers and databases are the intellectual property. The Civil Code contains fundamental rules on intellectual property. Specific rules concerning intellectual property found its reflection in special laws dealing with that or other intellectual property.

According to article 1031 (section 4) of the Civil Code of the Republic of Uzbekistan, the program for electronic computers and databases are the intellectual property. The Civil Code contains fundamental rules on intellectual property. Specific rules concerning intellectual property found its reflection in special laws dealing with that or other intellectual property.

The improvement of section IV (intellectual property) of the Civil Code have been studied by many scientists jurists. In particular, according to O.Okylouva many negative opinions were expressed in the scientific literature regarding the Section IV of the Civil Code. After the adoption of the new edition of the Law "On Copyright and Related Rights" has not solved the problem on 20 July 2006. Also, the Law on Amendments and Additions to the Civil Code of 11 October 2006 did not prevent existing problems and further aggravated the situation. All this seriously disrupted the structure of the Civil Code, a vacuum and there were repeated legal norms. These circumstances have made urgent questions to revise and improve the section IV of the Civil Code [2].

According N.F.Imomova simultaneous presence and repetition in the two laws the same rules creates difficulties for enforcement and interpretation and endless dispute between the subjects. When this phenomenon continues, the problem may not be solved and it will still go on. For example, if in section IV of the Civil Code to include rules concerning the topographies of integrated circuits, nanotechnology, genetic engineering and innovation, and individual duplicate laws will exist simultaneously, and in the future will continue inconsistency of legal rules [3].

In foreign countries concerning the legal regulation of computer programs and databases on the basis of the application of the legal form of protection of copyright laws apply. In particular, the practice of the European countries [4], USA [5],

Japan [6], Canada [7], Spain, Ukraine [8], Belarus [9], Moldova [10], Kazakhstan [11] relations related to computer programs and databases, is governed by the copyright laws.

According I.Nasrieva prior to the Civil Code of the Republic of Uzbekistan the right to disclosure of the product is formed as the right to publish. While in the Civil Code, the term was used to completely cover the content and essence of the right to publication of the work. The right of publication is used mainly for works with the written form, and did not apply to a product which could be perceived by hearing and vision. In our opinion there should be pay attention to the systematization of the rules concerning the property and personal non-property rights. It should in particular provide for separate laws and rules for the application of these rights.

According B.Tosheva, legislation in the field of copyright based on the theory of law and understanding, you can organize the subsequent:

1. The legislative framework governing copyright (Civil Code);
2. The Act covers all the rules of copyright law (Law on copyright and related rights);
3. The law provides for certain types of copyright (Law "On Legal Protection of Software and Databases", the Law "On the activities of journalists" and other laws);
4. International legal instruments on copyright (conventions, treaties, etc..) [12].

n this case, B.Toshev pays attention to the general rules of copyright. In our opinion, it is important that, at this time you must have a legislative system containing common patterns and characteristics of the various intellectual property to which the copyright and legal form of protection. In particular, the law governing the contract of author's order, which applied copyright and legal form of protection should contain rules on the creation of computer programs and databases.

Hierarchy of legal sources

In the hierarchy of legal sources regulating the relations related to computer programs and databases is essential special laws. In particular, the laws of the Republic of Uzbekistan "On Copyright and Related Rights" dated 20 July 2006 and "On Legal Protection of Software and Databases" on May 6, 1994. According to Article 6 of the Law "On Copyright and Related Rights" are subject to copyright for electronic computers of all kinds of software, including application programs and operating systems that can be expressed in any language and in any form, including source code and object code. Copyright in a work of science, literature and art arises by virtue of the fact of its creation. The origin and exercise of copyright does not require registration of the work or compliance with any other formalities. The person indicated as the author on the



Impact Factor:

| | | | | | |
|-------------------------|----------------|-----------------------|----------------|---------------------|----------------|
| ISRA (India) | = 1.344 | SIS (USA) | = 0.912 | ICV (Poland) | = 6.630 |
| ISI (Dubai, UAE) | = 0.829 | PIHHI (Russia) | = 0.234 | PIF (India) | = 1.940 |
| GIF (Australia) | = 0.564 | ESJI (KZ) | = 1.042 | IBI (India) | = 4.260 |
| JIF | = 1.500 | SJIF (Morocco) | = 2.031 | | |

original or copy of the work shall be considered its author, unless proven otherwise (Article 10 of the Law).

It should be noted that the Law "On Copyright and Related Rights" dated 20 July 2006 Adoption of the new edition due to the ratification and the resolution of the Oliy Majlis of the Republic of Uzbekistan of 27 August 2004 "On accession to the Berne Convention ". The Act established rules concerning the works that are subject to copyright, the objective form of copyright, contractual relations, the free use of a work-free playback and adaptation programs for electronic computers and databases, and is a kind of universal law.

Law of the Republic of Uzbekistan "On Legal Protection of Software and Databases" on May 6, 1994 is a special law regulating relations related to computer programs and databases. These law being a special law, apply to the first generation of laws adopted for the protection of intellectual property. In it were some changes and additions to the adoption of the new edition of the Law "On Copyright and Related Rights" dated 20 July 2006. In this special law, there are also basic concepts about computer programs and databases. In particular, given the concept of determining the source code and object code. Source text - the text, written in any programming language, is not subject to processing in any compiler. And object code is - the program, resulting in conversion of source code into machine code that is here understood as a ready-made and used a computer program.

The data definition includes special concepts regarding object code and source code. Written code expert with special knowledge in the field of programming is - source code, and the code understandable computer or other electronic device with the help of software and hardware is the object code. The user or licensee installs the program in the form of an executable file that is object code that contains a set of instructions understood by the computer of the licensee (user) [13].

Usually, the source code be kept secret by the producers, companies and authors. For example, Microsoft word program introduced into commercial circulation with the object code.

The role and importance of secondary legislation to regulate the relations connected with computer software and databases

The next step in the hierarchy of legal sources are subordinate legal acts regulating the relations related to computer programs and databases. In the Republic of Uzbekistan to pay close attention to the comprehensive support of software vendors. In particular, to further developments in software production country for information and communication technologies in accordance with international standards, to strengthen the motivation of domestic developers to expand production of high-

quality, competitive software products, as well as assist in the promotion of the internal and external markets was adopted Resolution President of the Republic of Uzbekistan from September 20, 2013 № PP-2042 "on measures to further strengthen the incentives of domestic software developers."

In accordance with the Decree provides that, in the National Register of software developers created on the basis of a national catalog of developers and software hosted on the Internet portal software.uz. The entities whose revenues from the development, introduction and implementation of proprietary software are not less than 50 per cent of the total volume of sold goods (works, services) on the National Register of voluntary and free of charge are included.

It should be noted that software developers listed in the National Register, up to January 1, 2020 are exempt from all kinds of taxes and mandatory contributions to the Republican Road Fund and off-budget fund of reconstruction, refurbishment and equipping of schools, professional colleges, academic lyceums and medical institutions under the Ministry of Finance of the Republic of Uzbekistan. Also exempt from customs payments (except customs clearance fees) for imported equipment for their own use, part of the components, parts, components, technical documentation, software that is not manufactured in the Republic of Uzbekistan, on a list approved by the Cabinet of Ministers of Uzbekistan.

Is it right to use the term "electronic computer programs"?

The term "programs for computers" were used in the original titles, in particular the law of the Republic of Uzbekistan "On legal protection of programs for electronic computers and databases", which was adopted in the early stages of the development of information and communication technologies. In our opinion, these laws are much out of date, as it was taken as far back as the early stages of development and implementation of software. The law is almost no amendments except amendments and additions have been introduced mainly technical in nature. When adopting the law of the Republic of Uzbekistan "On legal protection of programs for electronic computers and databases" market reforms only began to implement, there were computers, mobile devices, and computer software. And these technologies have not been applied on such a scale as today. Scope of the innovation and technology of data was also poor. Similar laws have been adopted and although at the time of the Commonwealth of Independent States, and later lost their force [14].

Law of the Republic of Uzbekistan "On legal protection of programs for electronic computers and databases" contains 16 articles and reiterates many provisions of the law adopted in the new edition of "On Copyright and Related Rights". In particular, the



Impact Factor:

| | | |
|---------------------------------|-------------------------------|-----------------------------|
| ISRA (India) = 1.344 | SIS (USA) = 0.912 | ICV (Poland) = 6.630 |
| ISI (Dubai, UAE) = 0.829 | PIHII (Russia) = 0.234 | PIF (India) = 1.940 |
| GIF (Australia) = 0.564 | ESJI (KZ) = 1.042 | IBI (India) = 4.260 |
| JIF = 1.500 | SJIF (Morocco) = 2.031 | |

conditions for the recognition of copyright in the program for electronic computers and databases (Article 4), the terms of copyright (Article 5), authorship, personal and property rights (Article 6), the transfer of property rights (Article 7), property the rights to the program for electronic computers or database created in the performance of official duties (article 8), the right to register and registration programs for electronic computers and databases (article 9), program registration for electronic computers and databases in other countries (article 10), the use of the program for electronic computers and databases under a contract with the owner (article 11), and others.

The Law of the Republic of Uzbekistan "On legal protection of programs for electronic computers and databases" also has fundamental rules that make it possible to identify the computer program as an intellectual property right. In particular the rules governing the concept of a computer program, database, free use of computer programs and decompilation, protection of computer programs, and others.

Today widely used software in mobile devices (usually on android platforms). According K.Nizamatinova between the telephone operator and the subscriber is a contract which provides for the provision of telecommunications services and payment of services rendered by the subscriber. If a user has a need to provide other services (eg, transmission of a variety of photos, games, music, etc.) The operator shall specify in the contract conditions that these commitments will be provided by third parties [15].

It should be noted that to date the bulk of the services provided by mobile operators is the transmission of data. Through mobile devices are introduced into circulation various types of intellectual property -. Movies, music, songs, audio-visual, artistic works, works of science, art, etc. With these objects can only be used, with appropriate software. That is, this phone - must have smartphone capabilities. Since the smartphone has a fully functional operating system (for example, Symbian OS, Windows Mobile, Palm OS, GNU / Linux, Android, Apple iOS, MeeGo, etc.) and these operating systems are installed on the smartphone memory. Operating system installed on the smartphone is more complicated and closed.

Based on the foregoing, we note that of Computer programs, computer programs, software, software product are identical to the concept, synonymous. Considered obsolete term "electronic computer programs." It is used in the legislation, the term corresponding to the international standards such as "computer software", "software", "software". With the introduction of computer programs into circulation must comply with the rights and legitimate interests of authors and copyright holders. Also, not least important is consumer protection in this area.

The principles of civil-law regulation of relations related to computer programs and databases

The principle of the right being the main source, the beginning of legal novels are an important component in the regulation of social relations. The main value of the data has started (the principles of) is that together they form a civil law as a holistic education system of a democratic type, capable of the most effective way to regulate the property and non-property relations [16].

According D.Habibullaeva "the principle of the right to judicial protection is - the data to all interested parties a guarantee in any stage of civil proceedings access to the Courts for protection of their rights and legitimate interests."интересов» [17]. It is important to distinguish between the principles of civil law and the principles of civil procedure law as enshrined in codified acts (Civil Code and the Civil Procedure Code of the Republic of Uzbekistan).

N.Imomov exploring the principles of legal protection of selection achievements proposes to create a single organizational infrastructure for the creation of intellectual property, compulsory identification of breeding achievements, etc. [18]. O.Okuyulov exploring the objects of intellectual activity relation to the development of innovation considers that there are several types of intellectual property principles. In particular, the freedom of creativity, the ability to use the works of science, literature and art, enshrined in the laws of personal and property rights, the formation of national legislation in accordance with international standards, etc. [19]. In fact, every intellectual property needs in the implementation in practice of the principles of legal regulation.

According S.Borodina "copyright system consists of the principles of the principles of protection of intellectual property, not alienability moral rights of authors, access to cultural values and artistic freedom" [20]. In this case, it is considering S.Borodin narrowly copyright principles system. So, in theory and in practice, there are many other principles of copyright, which express the essence of the legal institution and having generally binding in nature.

In our view, the following principles of civil-law regulation of relations connected with computer software and databases:

- Freedom of creativity of creating computer programs and databases;
- A combination of the personal interests of the creator of a computer program and database with the interests of the state and society;
- Are inalienable moral rights of the creator of computer programs and databases;
- The freedom to enter into a different type of contract of the relevant legislation;

Impact Factor:

| | | | | | |
|-------------------------|----------------|-----------------------|----------------|---------------------|----------------|
| ISRA (India) | = 1.344 | SIS (USA) | = 0.912 | ICV (Poland) | = 6.630 |
| ISI (Dubai, UAE) | = 0.829 | PIHHI (Russia) | = 0.234 | PIF (India) | = 1.940 |
| GIF (Australia) | = 0.564 | ESJI (KZ) | = 1.042 | IBI (India) | = 4.260 |
| JIF | = 1.500 | SJIF (Morocco) | = 2.031 | | |

- Free (gratuitous) the reproduction and adaptation of computer programs and databases in accordance with the law;
- The transition of computer programs and databases as a work in the public domain;
- Consolidation and protection of property and personal non-property rights holders in accordance with international and national law;
- The existence and mass use in civil turnover of exclusive rights in respect of computer programs and databases;
- Collective (co-author) to create complex, bulky, requiring significant financial investment of computer programs and databases;
- Repetition of some parts of the code (source code) of a computer program;
- Development and improvement of national legislation in accordance with international standards;
- The impact of science and technology, software products in the development and improvement of the legal framework;
- Copyright and legal form of protection;
- The author's interest in the creation and use of computer programs and databases.

Questions of legal support further development in the Republic of Uzbekistan made software

Further development in the Republic of Uzbekistan made software, information and communication technologies in accordance with international standards, to strengthen the motivation of domestic developers to expand production of high-quality, competitive software products, as well as assist in the promotion of the domestic and foreign markets is a priority development of our country. In this respect, an important role is played by the legal provision.

Public authorities should have its place in the implementation and protection of rights and legitimate interests of copyright holders of computer programs and databases. It is necessary to create legal mechanisms to combat software piracy.

It should focus on relevant international standards for the creation and implementation of software products. Ensuring that the competitive environment in the development and implementation of software products in different sectors of the economy. It is necessary to develop and introduce new contractual structures for the creation and introduction into circulation of computer programs and databases.

In the field of legal support of this sector should note the lack of a single system-legal instrument. Existing regulations are scattered, they are characterized by fragmentation, locality, and they are mainly of the nature of regulations that do not provide their supreme legal force.

The new law will ensure the formation of a unified state policy in the sphere of development and strengthening of the production of software products of our country. It will create a favorable climate for expansion and strengthening of the role of programmers and developers in dealing with various socio-economic and political problems, coming to our country. Facilitate the full effective use of the achievements of the production of software products in all areas of public life contributes to the development of interactive public services. Will open new avenues in the development of entrepreneurial activity, create a comfortable environment in the implementation of business activity.

Conclusion

The legal system of the Republic of Uzbekistan belongs to the Romano-Germanic legal system. Legal basis of civil-legal regulation of relations related to computer programs and databases should be seen in public law and private law character.

Development does not cost on a place, and it is advisable to find solutions to existing problems. Therefore, it should be in the Civil Code to define common rules on intellectual property rights and further development of its standards. With the development of the foundations of legal regulation of relations related to computer programs and databases it is closely related to the modernization of the social life of the Republic of Uzbekistan and the impact of foreign experience. On this special laws governing these relations.

In our opinion, it is necessary to take special and flexible law covering the basic rules and the novel of the Civil Code, laws of the Republic of Uzbekistan "On Copyright and Related Rights" dated 20 July 2006 and "On Legal Protection of Software and Databases" 6 May 1994, and other regulations.

Novels and legal structure applicable to computer programs and databases should be determined in a special law. The special law it is advisable to consolidate the rules regarding further development of the market of software, support software developers in accordance with international standards, to support and stimulate the programmers, programmer defining the legal status, provide benefits and preferences, improving the training system in the industry.

The new law has a higher legal force, would effectively regulate civil relations relating to computer programs and databases, relevant international standards, covering the interests of the state and society.

Impact Factor:

| | | |
|--------------------------|------------------------|----------------------|
| ISRA (India) = 1.344 | SIS (USA) = 0.912 | ICV (Poland) = 6.630 |
| ISI (Dubai, UAE) = 0.829 | PIHHI (Russia) = 0.234 | PIF (India) = 1.940 |
| GIF (Australia) = 0.564 | ESJI (KZ) = 1.042 | IBI (India) = 4.260 |
| JIF = 1.500 | SJIF (Morocco) = 2.031 | |

References:

1. Karimov IA (2013) Report of the President of Uzbekistan Islam Karimov at the meeting of the Cabinet of Ministers dedicated to the socio-economic development in 2012 and the most important priorities of economic program for 2013. // People's Word, January 18, 2013.
2. Okyulov O (2007) Title IV of the Civil Code: challenges and achievements. // Proceedings of the scientific-theoretical conference on the improvement of the Civil Code. -Tashkent: TSIL, 2007. - 35 p.
3. Imomov NF (2011) New intellectual property rights. -Tashkent: TSIL, 2011. 37-38 p.
4. (1991) Official Journal of European Communities. № L122/ 17 of May 27, 1991.; Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs. <http://eur-lex.europa.eu>
5. (2002) The United States Code // URL: <http://uscode.house.gov>; Cheryachukin B. Legal protection of computer programs abroad // Intellectual Property. Copyright and related rights. - 2002. - № 2. - p.71.
6. (2017) Japanese Copyright Act // Available: <http://www.japaneselawtranslation.go.jp/law> (Accessed: 2.03.2017).
7. (1998) Canada. Copyright Act, R.S.C. 1985, Chapter C-42 // Industrial Property and Copyright. - 1998. - Vol. 05. - № 1.- Art. 03.
8. (2017) THE LAW OF UKRAINE Copyright and related rights Available: <http://zakon.rada.gov.ua/laws/show/3792-12> (Accessed: 2.03.2017).
9. (2017) National center of legal information of the Republic of Belarus. Available: <http://www.pravo.by/main.aspx?guid=3871&p2=2/1813> (Accessed: 2.03.2017).
10. (2017) The LAW on copyright and related rights. Available: <http://itlex.ru/sites/default/files/da-139-ru1.pdf> (Accessed: 2.03.2017).
11. (2017) The law of the Republic of Kazakhstan from June 10, 1996 # 6-I On copyright and related rights. Available: http://online.zakon.kz/Document/?doc_id=1005798 (Accessed: 2.03.2017).
12. Nasriyev I (2006) Contents of moral rights, implementation and civil issues of further development. Doctoral Dissertation. T. : 2006. - 51 p.
13. Meeker, Heather J (2008) The open source alternative: understanding risks and leveraging opportunities. Published by John Wiley&Sons, Inc, Hoboken, New Jersey. 2008, P. 7.
14. RF Law (2006) "On Legal Protection of Software and Databases" on September 23, 1992 N 3523-1. The document is no longer valid since 1 January 2008 in connection with the adoption of the Federal Law of 18.12.2006 N 231-FZ.
15. Nizamatinov KK (2010) Problems of civil-law regulation of the provision of radio services svyazi.-T. : TSIL, thesis for the degree of Candidate of Legal Sciences. 2010. pp 29-30.
16. (2010) Commentary on the first part of the Civil Code of the Republic of Uzbekistan. -Tashkent. Vektor press, OSCE, 2010. -10 p.
17. Khabibullayev DY (2007) Principles of civil procedural law and problems of their realization in court practice. Thesis on the scientific degree competition of the candidate of law. – Tashkent. 2007. P.7.
18. Imomov N (2012) Legal Status of new sort and Brees as object of Intellectual Property. Dissertation work. –Tashkent, 2012. P.29.
19. Okyulov O (2016) Ensuring the development of innovation to increase the effectiveness of the impact of intellectual property rights institutions. Ownership. : Turon intelligent, 2016. -45 p.
20. Borodin S (2013) The principle of the system avtorskogo rights reserved. Bulletin of the University of Omskogo. Series of mistakes. 2013. № 1 (34), p.122.

