

1 FIGHTING PIRACY IN AZERBAIJAN: A SURVEY AND PERSPECTIVE ON THE CURRENT SITUATION

*Elnur Mammadli

ABSTRACT

This article describes the current attempts to combat and regulate piracy of intellectual property in Azerbaijan. Further, it analyses a newly adopted law and its amendments on enforcement of intellectual property rights and the fight against piracy.

Keywords: *intellectual property, copyright, related rights, piracy, intellectual property enforcement, control marks, twinning project*

I. INTRODUCTION

Article 30 of the Constitution of the Republic of Azerbaijan vouchsafes intellectual property rights, including, in relevant part, copyright protection. The Constitution further states in Article 51 that everyone is free to carry out creative activity ranging from literary and artistic to scientific and technical activities. During the last 20 years, the Azerbaijani copyright system has developed and harmonized with international standards. However, the fight against piracy remains one of the most important issues of enforcing these intellectual property rights in Azerbaijan.

II. LEGISLATION

Three sources of law govern intellectual property rights and disputes within Azerbaijan, namely, domestic policy, international conventions and regional agreements.

A. DOMESTIC POLICY

Enabled by the Statute of the Copyright Agency via Presidential decree on 30 August 2005, the

* Mr Elnur Mammadli (Azerbaijan) graduated from the Department of International Law and International Relations of the Baku State University (BSU), Azerbaijan, in 1998. He received his Master's degree in International Relations from the same university. He works as Leading Counsellor at the Copyright Agency of the Republic of Azerbaijan, as well as lecturer at the Azerbaijan University of Languages. He was involved in the European Union-funded Twining Project 'Capacity Development for Enhancing Enforcement of Copyright and Related Rights in the Republic of Azerbaijan' as Resident Twining Adviser.

In 2012 Mr Mammadli received an LL.M. in Intellectual Property, jointly offered by the University of Turin, the World Intellectual Property Organization (WIPO), and the International Labour Organization (ILO). He is a Ph.D Candidate at the University of Patras, Greece and his tentative doctoral research relates to copyright infringement prevention in the digital environment, looking to the European experience and implementation attempts in Azerbaijan, as well as focusing on new algorithms and software development aimed at copyright protection, management, and monitoring.

Copyright Agency of the Republic of Azerbaijan (the Agency) wields central executive power, enforcing state policy regarding the protection of copyright and related rights. The Agency administers five laws on copyright protection: the Law on Copyright and Related Rights (1996), the Law on Legal Protection of Topographies of Integrated Circuits (2002), the Law on Legal Protection of Expressions of Azerbaijan Folklore (2003), the Law on Legal Protection of Databases (2004), and the Law on Enforcement of Intellectual Property Rights and Fight against Piracy (2012).

B. INTERNATIONAL CONVENTIONS

The Republic of Azerbaijan has been a member of the World Intellectual Property Organization (WIPO) since 1995. Azerbaijan is also a contracting party to the Berne Convention for the Protection of Literary and Artistic Works (1999), the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (2001), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (2005), the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) (2006), and the Universal Copyright Convention. Lastly, a Cooperation Programmed between Azerbaijan and WIPO has existed since 2006.

C. REGIONAL AGREEMENTS

Azerbaijan has entered into three agreements between members of the Commonwealth of Independent Countries (CIS): the Agreement on Cooperation in the Field of Protection of Copyright and Related Rights (1993), the Agreement on Cooperation to Prevent Infringements in the Field of Intellectual Property (1998), and the Agreement on Cooperation on the Fight against Crimes in the Sphere of Computer Information (2001). Azerbaijan also has cooperation-related bilateral agreements on the protection of copyright and related rights with Uzbekistan (1997), Kazakhstan (1999), Ukraine (2002), Turkey (2005), and Tajikistan (2012) respectively.

III. LEGAL FRAMEWORK FOR THE FIGHT AGAINST PIRACY

Under Article 47 of the Law on Copyright and Related Rights, infringing copyright and related rights raises civil, administrative and criminal liabilities. Relevant to infringement analysis, Article 4 states that a 'pirated product' shall mean any copies of work and phonogram made (produced) and distributed without the consent of the right holder.

Article 50 of the Code of Administrative Offences addresses copyright infringement and the

infringement of related rights where the damage is 'insignificant'.¹ In such cases, infringers face a fine of AZN 15 to 40² and confiscation of both pirated copies and any materials or equipment used for making pirated products. Also, infringing copyright of the topographies of integrated circuits, in a cause of insignificant damage, involves a fine from AZN 20 to 40 (Article 50-1).

In causes of significant damage, Azerbaijan approaches infringement of folklore expressions and databases differently depending on who infringes: AZN 15 to 25 fine for physical entities, AZN 30 to 50 for officials, and AZN 100 to 150 for legal entities. Just like the provisions mentioned above, infringers of folklore expressions and databases face confiscation of pirated copies, as well as materials and equipment used to produce the pirated copies (Articles 50-2 and 50-3). Also, broadcasting without the consent of television or radio broadcasting organizations, or copying, selling, as well as publicly performing broadcasts without consent involve fines from AZN 70 to 90 for officials and from AZN 250 to 300 for legal entities (Articles 187.2).³

In the case of significant damage, copyright infringement could result in criminal liability. According to Article 165 of the Criminal Code, copyright infringement and infringement of related rights, in a cause of significant damage⁴, involve a fine from AZN 100 to 500 or community service of 160 to 200 hours; and if the infringer commits the same acts repeatedly, or commits such infringement with a pre-arranged group of persons or organized group, fines increase to AZN 500 to 1000 with possible imprisonment for a term up to three years.

At the same time, Article 45.2 of the Law on Copyright and Related Rights provides that the court, while hearing cases on copyright and related rights issues outside of general civil-legal enforcement, shall have the right to issue the following penalties:

(a) collection of infringer's income resulting from infringement of copyright and related rights in lieu of damage reimbursement;

(b) the payment of compensation in an amount from AZN 110 to 55000, in lieu of damage reimbursement or income collection;

(c) confiscation of materials and equipment used for the reproduction (production) of pirated copies in accordance with court resolution, taking into account the severity of infringement and legal interests of other persons; and

(d) confiscation or destruction of pirated copies, without compensation to the infringing party.

On 1 April 2008 and 30 September 2010, substantial amendments were made to the Law on Copyright and Related Rights, bringing the national legislation closer aligned with the WCT and the WPPT and EU directives. Lastly, the New Customs Code went into effect on 1 January 2012. Chapter 49 (Articles 278-288) of the new Customs Code is related to border measures over objects of intellectual property.

IV. MEASURES AGAINST PIRACY

In the last few years, Azerbaijan has taken a number of measures to prevent piracy. In 2006 the Office of the United States Trade Representative (USTR) removed Azerbaijan from the USTR Special 301 Report's Watch List due to progress with regard to intellectual property right enforcement.⁵ In 2009 Azerbaijan joined the Convention on Cybercrime. Lastly, in accordance with an agreement signed with Microsoft Corporation in May 2011, all public bodies in Azerbaijan have started to use legally licensed software.

The 2012 BSA Piracy Study showed that 87 per cent of software in Azerbaijan was pirated, down from 94 per cent in 2006.⁶ There were additional improvements in decreasing piracy in the publishing sector from 61 to 33 per cent and in the CD/DVD market from 90 to 68 per cent over the past five years in Azerbaijan. The share of Azerbaijan's GDP occupied by copyright-based industries has increased from 3.1 per cent in 2008 to 4.5 per cent in 2012.⁷

During the past few years, the State Service for Antimonopoly Policy and Consumer Rights Protection under the Ministry of Economy and Industry has implemented a monitoring system of the audiovisual market. Representatives of the Service have levied financial sanctions against distributors and sellers of pirated CD/DVDs; as a

¹ 'Insignificant damage' means the amount of damage equal up to AZN 1,000.

² 1 AZN (Azerbaijani Manat) = USD 1,275. Central Bank of the Republic of Azerbaijan <<http://www.nba.az/>> accessed 12 February 2014.

³ Code on Administrative Offences of the Republic of Azerbaijan <http://vn.taxes.gov.az/2009/uploads/qanun/2011/mecelleler/inzibati_xetalar_mecellesi_eng.pdf>

⁴ 'Significant damage' means an amount of damage more than AZN 1,000.

⁵ Office of the United States Trade Representative, Special 301 Report, [2006] 3 <http://www.ustr.gov/archive/assets/Document_Library/Reports_Publications/2006/2006_Special_301_Review/asset_upload_file473_9336.pdf>

⁶ BSA Global Software Piracy Study, Ninth Edition, 8 May 2012 <http://globalstudy.bsa.org/2011/downloads/study_pdf/2011_BSA_Piracy_Study-Standard.pdf>

⁷ K Imanov, IT-IP: View to the Future of Intellectual Property, Intellectual Property in Speeches and Presentations II (Baku 2013).

result, about 10,000 discs were confiscated and destroyed.

In order to increase public awareness, the Copyright Agency has held a number of conferences, seminars and round-tables on intellectual property issues. Other high-profile events coinciding with the Agency's efforts included a concert of famous Azerbaijani singers under the slogan 'Fight against pirates' in January 2010, as well as a 2012 concert by Rihanna in Baku devoted to the fight against piracy in the musical industry.

In 2011–2013 the EU-financed twinning project 'Capacity Development for Enhancing Enforcement of Copyright and Related Rights in the Republic of Azerbaijan' was implemented. The main objectives of the project were (1) harmonizing Azerbaijan copyright legislation with the EU *acquis*; (2) assisting and enhancing the institutional and technological capacity of the Copyright Agency; (3) strengthening the copyright-protection regime; (4) fighting piracy; (5) developing a system of digital rights management (DRM); and (6) increasing public awareness.⁸ A consortium organization with representatives from Greece, Germany and Spain implemented the project. During the project, the consortium organizers trained judges, customs officials, police and security personnel, staff from the Copyright Agency and representatives from collective management societies.

V. THE LAW ON ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THE FIGHT AGAINST PIRACY

In 2012 Azerbaijan adopted the Law on Enforcement of Intellectual Property Rights and the Fight against Piracy (Fight against Piracy Law). The Fight against Piracy Law regulates the interplay between the enforcement of intellectual property rights, the protection of right holders' interests, and prevention of infringement, including illegal production and distribution of the copies of intellectual property objects. According to Article 5.1 of the Fight against Piracy Law, upon the request of the right holder or his or her representative, the court can order the defendant to inform the right holder or her representative about third parties that were directly or indirectly involved in the production and distribution of pirated copies and infringing goods or services and their channels of distribution. Under Article 5.2, the court can order infringers to produce both the names and addresses of persons engaged in the production, distribution and sale of pirated and

counterfeited goods, and the quantity and prices of those counterfeited goods. And Article 7 gives courts the right to issue judgments to remove infringing goods from commercial networks, as well as withdraw, confiscate or destroy the materials and equipment utilized to produce the infringing goods.

Chapter III of the Fight against Piracy Law provides administrative measures against the production and distribution of pirated products. One such measure is the use of unique digital codes and international standard identification numbers such as ISBN, ISSN, ISAN and ISRC. Such codes enable the identification of information by the source of production of those copyrighted and otherwise protected objects.⁹

One of the principal requirements of this law is stamping copyright or otherwise protected copies of audiovisual works, phonograms, videograms, computer programs, databases, or books with control marks (Article 13.1). Distributing copyrighted objects or objects protected by copyright and related rights without these control marks is prohibited.

According to the Fight against Piracy Law, the Copyright Agency controls the use of property rights of authors, performers and phonogram producers in digital networks and arranges collective management of these rights, in accordance with the interests and aims of right holders, taking appropriate measures in cases of infringement, circumvention of technological protection measures, and removal or alteration of any electronic rights-management information without authority from the right holder.

In connection with the implementation of the Fight against Piracy Law, amendments have been made to the Code of Administrative Offences and the Criminal Code. According to new Article 229-1 of the Code of Administrative Offences, the sale or any distribution without a control mark—as well storage for sale and distribution without a control mark—of goods, products and information materials that should be stamped with control marks, shall involve a fine, per item, of AZN 50 for physical entities, AZN 100 for officials and AZN 150 for legal entities with confiscation of goods, products, and information materials without control marks. Another new article, Article 205-1, provides for fines of AZN 1000 for physical entities, AZN 2000 for officials, and AZN 3000 for legal entities who intentional destroy, falsify, illegally produce, use, or sell control marks; this provision additionally calls for confiscation of manufactured (produced), used, and sold control marks, as well as materials and equipment used to manufacture and distribute the marks.

⁸ E Mammadli, 'Challenges of the Fight against Piracy in Azerbaijan within the Approximation to the EU *Acquis*' (2011) pp. 38–52 <www.unito.it/unitoWAR/ShowBinary/FSRepo/D058/Papers/Turin_Book_2011.pdf>

⁹ K Imanov, 'Intellectual Property Rights Management in Digital Networks' (Baku 2009) pp. 134–138.

According to newly amended Article 205-2 of the Criminal Code, the intentional destruction, falsification, illegal production, use, and sale of control marks, in cases of significant damage, shall involve a fine of AZN 3000 or community service from 320 to 480 hours; and if the same prohibited acts are (1) committed repeatedly, or (2) by preliminarily arranged groups of persons or organized groups, or (3) in cases of harm exceeding significant damage, the courts shall fine guilty parties AZN 7000 or imprison them for a term of two to four years.

The Copyright Agency has proposed to increase the amount of fines and penalties for copyright infringement, and to decrease the amount of 'insignificant damage' from AZN 100 to 1000 in the Code of Administrative Offences (Articles 50, 50-1, 50-2 and 50-3) and the Criminal Code (Article 165).

VI. PERSPECTIVES

The principal actor in the implementation of the new Fight against Piracy Law will be the Centre for Enforcement of Intellectual Property Rights (Enforcement Centre) under the auspices of the Agency. The main functions of the Enforcement Centre are fostering the growth of an intellectual property culture, conducting research in the field of intellectual property and organizing training courses for law enforcement bodies. The Enforcement Centre will be a base for intellectual property enforcement measures, including preventing the illegal use of copyright-protected works (such as computer programs, phonograms, and audiovisual works), registering and delivering unique digital codes (such as international standard identification numbers and control marks), and establishing Digital Rights Management (DRM) for electronic commerce of copyright works. In September 2012, the Enforcement Centre was accepted into the WIPO Global Network on Intellectual Property Academies.¹⁰ This opened new perspectives for the effective implementation of the Enforcement Centre's activities, cooperation and exchange of experience with intellectual property academies and training centres of other countries. As a result of these cooperative measures and as well as the implemented measures described above, the economic significance of intellectual property in Azerbaijan has increased and the level of piracy has decreased, on average, 9–28 per cent.¹¹ Long-term goals of the Enforcement Centre include a multinational training centre.

Other forward-looking Azerbaijani initiatives regarding intellectual property issues include the Development Concept—'Azerbaijan 2020: Look into the Future' approved by Presidential Decree on 29 December 2012. Also, draft documents prepared by the Agency and issued by the National Strategy and the State Programme on Intellectual Property address issues and propose corrective measures for combatting infringement of intellectual property rights, including piracy and counterfeiting.

VII. CONCLUSIONS

Piracy and infringement of intellectual property are a constantly growing global problem. Involvement and close cooperation of all stakeholders in Azerbaijan are required in order to resolve this problem. Improvement of legislation, strengthening of enforcement activities, use of new technological measures, and public awareness will help in decreasing copyright piracy.

The Agency has proposed the establishment of an intergovernmental Anti-Piracy Commission under the Cabinet of Ministers for the purpose of coordinating the activities of the various governmental bodies concerned with intellectual property enforcement. Creation of such close cooperation between state institutions will provide a coordinated system of information sharing, market analyses, and data-statistics compilation, additionally allowing for the publishing of information relating to legal court actions and seizures of pirated product. The establishment of specialized intellectual property units within courts, police, prosecutors, and other law-enforcement bodies, as well as specially training officials from relevant governmental institutions, will assist in improving the more professional and prompt prevention of piracy cases.

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¹¹ M Najafbayli and E Teymurov, 'Protection and Enforcement of Intellectual Property Rights in Azerbaijan' <<http://www.ubis-geneva.ch/protection-enforcement-intellectual-property-rights-azerbaijan/>>

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