

GLOBAL INFORMATION SOCIETY WATCH 2009

*Focus on access to online information and knowledge
– advancing human rights and democracy*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

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*Dedicated to A.K. Mahan - an activist who valued
intellectual rigour and concrete outcomes.*

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Introduction

For some time after the country's independence (upon the dissolution of the Soviet Union in 1991), Uzbekistan did not pay close attention to the issues of intellectual property (IP) protection. The country had developed a number of relevant laws and participated in global dialogue in the field, but its legislative focus was elsewhere, and its powers to enforce the laws had not been evident. This is understandable given that it was necessary to establish all the core institutions of the newly built state first.

About ten years after independence, however, the time came to reassess the situation and really face the issues that by then were calling for immediate attention and urgent action. IP protection became a hot issue in all respects, including in the area of information and communications technologies (ICTs). Ignoring it would be devastating for the needs of Uzbekistan's developing economy and evolving society.

Today, inspired by the examples of developed states, the country protects IP in its national legislation, through participation in international conventions, as well as through multilateral agreements.

Article 42 of the Uzbek Constitution guarantees, *inter alia*, "the freedom of scientific and technical research" and "the right to enjoy cultural achievements." It also says that "the state protects the cultural, scientific and technical development of the society."¹

Online information policy in Uzbekistan

Recently Uzbek officials have stopped denying the fact that online information is controlled and filtered for domestic users. While much information relating to education, entertainment, science, travel and other areas of general interest is accessible, the websites of Islamic extremists (e.g. Hizb-ut-Tahrir, Muslim Brothers, etc.), a number of Western voices (such as the BBC and Radio Free Europe/Radio Liberty) that constantly criticise human rights violations and other political choices made by Uzbek leader Islom Karimov and the government, as well as sites covering the political situation in the region, have been blocked.

On top of this Uzbek officials pay serious attention to the moral aspects of the information accessible to the public. Although a secular state, 90% of the population is Muslim and religious influence is growing from year to year. For instance, it is impossible to watch pornography or any other sexually provocative content on Uzbek TV. The same goes for anything to do with gay and lesbian lifestyles. Based on this, it is easy to understand that all similar online material is blocked upon detection.

Domestic legislation also threatens the originators and even the providers of restricted content with criminal prosecution for publishing the content online. A special department dealing with intelligence is known to monitor the content produced domestically. The fear of such prosecution results in heavy self-censorship, not only by those who prepare the information for publishing (including independent journalists and even bloggers) but also by internet service providers (ISPs), who are compelled to control (as much as they can) the information circulated by their clients. In the case of repeated breaches of the country's restrictive media and information laws, a special regulatory body – the Uzbek Agency for Press and Information (UZPIA) – is authorised to suspend and even discontinue the operating licence of an ISP.

Legislative environment

The legal framework for online information and communication is formed by:

- The Civil Code of Uzbekistan: This piece of legislation is widely applicable in all areas of civil society and as such has direct influence on the issues at stake. It lays down the main principles of contractual relationships, and civil liability for all types of breaches, describing the area of IP and the rights of copyright holders (including in the online domain).
- Criminal Code of Uzbekistan: This addresses types of crimes in the area of information technologies in a new chapter (Chapter XX) adopted in late 2007. It also deals with IP.

Particular statutory acts having immediate relevance to the online sphere are as follows:

- The Law on Telecommunications (adopted in 1999 and amended in 2007)
- The Law on Informatisation (2004)
- The Law on Legal Protection of Software and Databases (1994, amended in 2002)
- The Law on Media Freedom (2003)
- The Law on E-Commerce (2004)
- The Law on Electronic Signatures (2004)
- The Law on Electronic Documentation (2004)²
- The Law on Electronic Payments (2005)
- Enactment of the Cabinet of Ministers #155 on Domain Names Registration (2008)

1 www.lex.uz/ru/doc/zak.html

2 Dealing with the circulation of e-documents amongst government institutions and other public bodies.

- Enactment of the Cabinet of Ministers #242 on Registration and Licensing of Activities in the Field of the Cryptographic Protection of Information (2007).

Further statutes, although not directly dealing with the online domain, are applicable in certain circumstances:

- The Law on Copyright and Allied Rights (new edition of 2006)
- The Law on Bank Secrets (2005)
- The Law on State Secrets (1993).

Finally, the online arena is also governed by a large number of subordinate laws produced by the Cabinet of Ministers, the National Agency for Press and Information (formerly the Ministry of Communication), the Central Bank, and the Ministry for Foreign Economic Relations, amongst others.

Intellectual property rights in Uzbekistan

The IP policy sphere in Uzbekistan in general is quite positive. The country is already a signatory to a series of international conventions and treaties by the World Intellectual Property Organization (WIPO) on IP protection. Key amongst them are:

- The Berne Convention for the Protection of Literary and Artistic Works³
- The Paris Convention for the Protection of Industrial Property⁴
- The Rome Convention for Protection of Performers, Producers of Phonograms and Broadcasting Organisations⁵
- The Geneva Trademark Law Treaty.⁶

On the face of it, Uzbek legislation dealing with IP generally conforms to these international treaties and agreements. In general, as partly suggested above, the area of IP is governed by civil, criminal and customs codes. These include laws on authors' rights and allied rights; inventions, models and industrial samples; trademarks, service marks and places of origination; the legal protection of topologies of integral micro-schemes; the legal protection of computer software and databases; and the names of companies.⁷

The Law on Authorship (Copyright) and Allied Rights,⁸ adopted in 1996 and amended in 2006,⁹ plays a special role in the protection of creative works. This was the first piece of legislation that addressed not only the rights of authors, but also the rights of the authors of allied products. Their rights and monetary interests were not protected at all before. Currently the law governs the creation and use of scientific, artistic and literary products as well as performances, audio recordings and broadcasts (the so-called "allied rights").

Based on the international conventions mentioned above, a key piece of legislation in the economic and civil sphere – the Civil Code of Uzbekistan – underwent material changes in its parts dealing with authorship as a non-property right and copyright as a property right.¹⁰ There is also substantial work being done in the domain of industrial property laws.

The Criminal Code of Uzbekistan stipulates that the violation of copyright, compelled co-authorship,¹¹ as well as the dissemination of copyrighted information before its official publication and registration results in criminal punishment by way of a fine (25 to 75 times the minimum wage), the deprivation of certain rights up to a five-year period, correctional tasks (up to five years) or imprisonment (up to six months).

Uzbekistan has started to take its first steps in the field of online IP protection. Since 2006, law enforcement bodies have started paying attention to the problem of online piracy, but little success has been achieved so far.

Another growing and already dangerous problem in the online field is hacking. Once the internet became popular, especially with young people, it became more difficult to ensure the safety of copyright holders and industrial property online. There are reported cases of hackers attacking private as well as public and governmental sites (including those on the highest levels of secrecy).

In reaction to this emerging problem the government provided a two-fold solution. First, it established statutory barriers against online IP violations. The Criminal Code of Uzbekistan (since 25 December 2007) introduced an entire chapter dedicated to crimes in the field of information technology (IT), along with another four articles addressing online IP violations. These are:

- *Article 278-2. Illegal access to online information:* Includes unauthorised copying and interception of online information. Sanctions provided begin with 100 times the minimum wage and extend to three years imprisonment.
- *Article 278-3. Production and distribution of software allowing illegal access to computerised systems:* With sanctions from 200 times the minimum wage up to three years imprisonment.
- *Article 278-4. Modification of computer information:* Describes the illegal alteration of, harm to, or destruction of computer information, including inserting false information into existing data. Sanctions provided are from 200 times the minimum wage up to a maximum of three years imprisonment.
- *Article 278-6. Creation, use or distribution of harmful programmes:* Deals with all kinds of computer viruses, including those that allow the copying and interception

3 www.wipo.int/treaties/en/ip/berne

4 www.wipo.int/treaties/en/ip/paris

5 www.wipo.int/treaties/en/ip/rome

6 www.wipo.int/treaties/en/ip/tt

7 www.lex.uz/ru/doc/zak.html

8 www.lex.uz/ru/doc/zak.html

9 After joining the Berne Convention in 2006, the law was considerably redrafted to bring its provisions in line with international principles.

10 Authorship rights are the rights of the author which are not alienable from his/her immediate personality (such as the author's right to use his/her name), as opposed to copyright, which can be alienated against some pecuniary interest. For instance, if I write a novel I can pass the right to publish, distribute and receive payment for it to anyone I like, but that person will be under the obligation to identify me as the author of this particular novel.

11 For example, if someone lends an author money to complete a work, and then tries to compel the author to place his/her name as co-author on the work to enjoy all the rights pertaining to the author.

of information saved in computer memory. The maximum sanction is three years imprisonment.

There are ongoing discussions regarding the strictness of the punishment. For instance, some feel that three years imprisonment for someone whose crime was just a case of pressing the buttons on a keyboard is too much. However, this ignores the great harm that can be brought on by such “innocent” activity. If anything, criminal punishment will become more severe in the future.

ICT development is increasingly rapid and although amendments to the Criminal Code were recently made, there is already a growing need for this area of the law to evolve. Special working groups have been established and work under the Parliament and the Cabinet of Ministers to address these needs. In their work they mainly use United States and European Union legal models.

While there are some 25 law firms primarily concentrating on the issues of IP protection in the capital (Tashkent), two years ago the first law firm – *Uzbekistan mualliflar va ijrochilar gildiyasi* (UMIG) – declared its readiness and willingness to focus on cases of online IP violation. According to the latest data there are two more law firms that now actively work in the field.

Reports are made on the growing number of cases against online violators of IP rights, including those located abroad. UMIG has entered into bilateral agreements with law firms in the region (Kazakhstan, Kyrgyzstan) as well as in Russia and Ukraine, allowing it to defend the interests of its clients at a regional level.

The very existence of professional lawyers with growing experience in the defence of online IP rights not only secures the interests of the rights holders, but provides incentives for the faster development of the sector as a whole.

New trends

Uzbek legislation has only relatively recently started to address emerging issues in the online area. For instance, the issue of “cyber squatting” first appeared in official documents as late as 16 December 2005 in the “Provision on order of domain name use in the national segment of the internet for the .uz domain.” Paragraph 3.1.16 of the above Provision defines cyber squatting as a “specific kind of business dealing with domain names registration for the purpose of their further sale.”

Attempts by law enforcement bodies to fight against IP violations generally have produced no visible effect. When it comes to cyber squatting, no one has yet been punished in line with the legislation. The reason is practical: there are still plenty of free names in our national domain – no comparison to .de or .ru. At the same time, there are few newly registered sites (3,380 as of April 2009).

Representatives of well-known international companies have registered their brands in the Uzbek domain (such as sony.uz or hitachi.uz) and apparently have had no complications in doing so. Yet the absence of cyber squatting at this particular stage of ICT development in the country does not mean that it will not become a serious problem in the future (given the experiences in developed markets).

Taking into account that among the Commonwealth of Independent States (CIS) countries, Uzbekistan is the undisputed leader in applying internet controls, and the fact that the government employs sophisticated multilayered mechanisms to exercise this control over the internet, one may expect that in the field of detecting online IP violations the country has a good chance at success.

Another issue that Uzbek legislation is seeking to address is peer-to-peer file sharing of copyrighted works. While the person at the beginning of this distribution chain is clearly subject to copyright liability, under what circumstances should other parties to the internet communication be responsible for copyright infringement at all? So far there is no clear answer to this, but the issue is being debated.

Finally, following international examples, copyright holders of Uzbekistan started raising the issue of “fair use” violations. Traditionally, the doctrine of fair use permitted individuals to record television programming onto videotape, share a newspaper article with colleagues, or copy a scholarly article from the net for research. It was an attempt to balance public interest with the rights of copyright holders. When it comes to the internet, this remains a burning issue.

Action steps

Given the above, the followings measures must be taken:

- The country should accede to all relevant international treaties on IP protection.
- Bilateral agreements in the field should be made with neighbouring countries.
- Civil society and other stakeholders should participate in the activities of international and regional organisations on the protection of online IP rights.
- There should be harmonisation of national legislation between different states.
- Administrative and criminal measures against intellectual piracy and other online wrongs should be further developed.
- There should be support for private entities/organisations (including non-profit organisations) that deal with the monitoring of online IP violations.

In this context it should be said that Uzbekistan cooperates with a number of international organisations dealing with copyright protection, including the United Nations Educational, Scientific and Cultural Organization (UNESCO), WIPO and the World Trade Organization (WTO). Recently joining the Berne Convention for the Protection of Literary and Artistic Works strengthens authors’ rights and the position of allied rights holders.

Uzbekistan is taking steps towards the better protection of IP rights in general, as well as in the online domain. However, so far, the results are not too impressive. This is understandable given that the online sphere is not highly developed. What is inspiring, however, is that the country and its legislation are already moving in the right direction. ■

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels
- **Encouraging** critical debate
- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy.* It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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2009 Report

www.GISWatch.org

