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ЕУРАЗИЯЛЫҚ ЖУРНАЛ ЗИЯТКЕРЛІК МЕНШІК ҚҰҚЫҒЫ

Batyrkhan Shukenov: the VOICE of a GENERATION

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EURASIAN JOURNAL OF INTELLECTUAL PROPERTY LAW / ЕУРАЗИЯЛЫҚ ЖУРНАЛ ЗИЯТКЕРЛІК МЕНШІК ҚҰҚЫҒЫ, Volume II (2026), Issue 1

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EURASIAN JOURNAL OF INTELLECTUAL PROPERTY LAW / ЕУРАЗИЯЛЫҚ ЖУРНАЛ ЗИЯТКЕРЛІК МЕНШІККҰҚЫҒЫ is an independent, professional publication and a dynamic academic platform where diverse legal traditions, languages, and cultural contexts converge. The journal provides in-depth coverage of the latest legal developments across the Eurasian continent and on the international stage.

We champion comparative legal research and actively support the processes of integration and harmonization in intellectual property law. Special emphasis is placed on interdisciplinary legal studies that engage with intellectual property issues.

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Рецензияланатын ғылыми-практикалық журнал

EURASIAN JOURNAL OF INTELLECTUAL PROPERTY LAW / ЕУРАЗИЯЛЫҚ ЖУРНАЛ ЗИЯТКЕРЛІК МЕНШІК ҚҰҚЫҒЫ – құқықтық мектептер, тілдер мен мәдени контекстер тоғысатын, Еуразия құрлығындағы және халықаралық деңгейдегі соңғы құқықтық оқиғаларды талдайтын тәуелсіз кәсіби журнал және өзекті ғылыми алаң.

Журнал салыстырмалы-құқықтық зерттеулерді қолдайды және зияткерлік меншік құқығы саласындағы интеграция мен унификация процестерін дамытуға үлес қосады. Зияткерлік меншік саласындағы пәнаралық құқықтық зерттеулерге ерекше көңіл бөлінеді.

Журнал демеушілерге тәуелді емес және ешбір университетпен байланыспаған. Мемлекеттік органдардың қандай да бір қолдауынсыз жеке бастамамен құрылған тәуелсіз жалпыеуразиялық ғылыми-практикалық алаң болып табылады.

Рецензируемый научно-практический журнал

EURASIAN JOURNAL OF INTELLECTUAL PROPERTY LAW / ЕУРАЗИЯЛЫҚ ЖУРНАЛ ЗИЯТКЕРЛІК МЕНШІК ҚҰҚЫҒЫ – независимый профессиональный журнал и актуальная научная площадка, где пересекаются правовые школы, языки и культурные контексты, освещающая последние правовые события в странах Евразийского континента и на международном уровне.

Журнал поощряет сравнительно-правовые исследования и поддерживает процессы интеграции и унификации в сфере права интеллектуальной собственности. Особое внимание уделяется междисциплинарным правовым исследованиям, затрагивающим аспекты интеллектуальной собственности.

Журнал не спонсируется и не связан ни с одним университетом. Является независимой общеевразийской научно-практической площадкой, созданной в частном порядке без какой-либо поддержки со стороны государственных органов.

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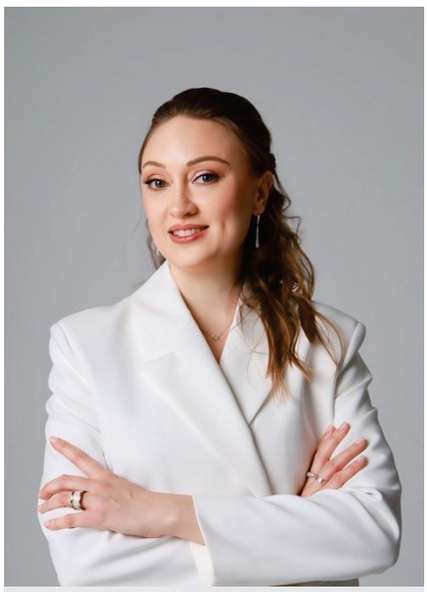
EDITOR'S NOTE



Bratus D.

Editor-in-Chief, Ph.D. in Law

Братусь Д.В.

Шеф-редактор, к.ю.н.

The third issue of the journal is devoted to generative technologies and the legal challenges faced by the creative sub-sector. The focus is not on abstract discussions of Artificial Intelligence, but on specific issues of the legal qualification of generative outputs, licensing in the training of AI models, the allocation of liability, and the need to transform legal approaches.

The issue opens with an interview with Nargiz Shukenova, Director of the Batyrkhan Shukenov Public Foundation, which addresses the applied aspects of using the legacy of deceased authors in the digital era, as well as the role of public organizations in preserving heritage and supporting authors and right holders.

The discussion section is formed by contributions from colleagues on the question of the necessity of licensing exclusive rights for developer companies in the training of AI models.

The research section presents works addressing both specific and general aspects of digitalization. Of particular importance is the theme of the digital transformation of legal regulation of social relations. Proposals are made to eliminate legal uncertainty and conflicts in the field of AI use; principles of responsible consumption of generated content are discussed; arbitral and judicial practice in this area includes an analysis of algorithmic transparency and the admissibility of using AI in dispute resolution. Issues of liability of marketplaces and other information intermediaries for infringements of intellectual property rights are also examined. The broader context is essential: generative technologies do not exist in isolation but develop within an already established infrastructure of digital intermediaries.

A special place in the issue is occupied by a contribution in the "Gaps in legislation" section, presented in the format of a conversation with the founders of GPT_THEATRE. It explores, from multiple perspectives, the fundamental question of the status of generative intelligence: author, co-author, tool, or merely a technological trend. The discussion moves beyond formal legal constructs, addressing the boundaries of creativity and the criteria of originality in the era of machine generation. A distinctive feature of this contribution is its insider perspective: creators producing intellectual works authentically and candidly describe how contemporary performances are created.

The expert commentary section is devoted to the analysis of the technical aspects of generating outputs, enabling a more precise understanding of how objects claiming legal protection are created.

The practice-oriented part of the issue reinforces the expert commentary and includes a review of landmark court cases in the field of high technologies, as well as an analysis of legislative developments (in a comparative legal perspective) in the field of AI. These materials demonstrate that the legal system is already responding to the challenges of generative technologies; however, stable approaches have not yet been сформированы in judicial practice.

The reviews section features a work devoted to Pamela Samuelson's article on the doctrine of fair use in the context of technological shifts. The relevance of this topic is evident: mechanisms of flexible limitations of exclusive rights are currently at the center of debates on the permissibility of training and using generative models.

Young scholars reflect on the legal nature of social media accounts and issues of succession of access to them, which are directly related to users' digital identity. They also examine the paradoxes of authorship in the field of musical creativity in the context of the global development of Artificial Intelligence.

The issue is complemented by materials on the professional and creative trajectories of right holders, as well as reviews of WIPO's digital initiatives.

Although the topic of AI is becoming commonplace in research, it is important not to lose sight of the central issue – the place of the human author in the new system, the provision of the maximum possible protection of their rights, and the prevention of the dominance of quasi-creative outputs in the creative sub-sector.

We sincerely thank all the authors who contributed to this issue. Together, we are doing important work.

Best regards,
Editor-in-Chief, Ph.D. in Law
Bratus D.

РЕДАКТОР СӨЗІ

Журналдың үшінші номері генеративті технологияларға және шығармашылық салада туындайтын құқықтық сын-қатерлерге арналған. Назарда — Жасанды интеллект туралы абстрактілі пікірталастар емес, генеративті нәтижелердің құқықтық біліктілігі, ЖИ модельдерін оқыту кезіндегі лицензиялау мәселелері, жауапкершілікті бөлу және құқықтық тәсілдерді трансформациялау қажеттілігі сияқты нақты сұрақтар.

Номерді Батырхан Шөкенов атындағы Қоғамдық қордың директоры Наргиз Шөкеновамен сұхбат ашады. Онда цифрлық дәуірде қайтыс болған авторлардың мұрасын қолданудың қолданбалы аспектілері, сондай-ақ мұраны сақтау мен авторлар және құқық иелерін қолдаудағы қоғамдық ұйымдардың рөлі талқыланады.

Пікірталас блогы ЖИ модельдерін оқыту кезінде әзірлеуші компаниялар үшін айрықша құқықтарды лицензиялау қажеттілігі жөніндегі әріптестердің көзқарастары негізінде қалыптастырылған.

Ғылыми зерттеулер бөлімінде цифрландырудың жекелеген әрі жалпы аспектілерін қамтитын жұмыстар ұсынылған. Қоғамдық қатынастарды құқықтық реттеудің цифрлық трансформациясы маңызды тақырып ретінде қарастырылады. ЖИ қолдану саласындағы құқықтық белгісіздік пен қайшылықтарды жою жөнінде ұсыныстар беріліп, генерацияланған контентті жауапты тұтыну қағидаттары талқыланады. Арбитраждық және сот тәжірибесінде алгоритмдердің ашықтығы мен дауларды шешуде ЖИ қолданудың рұқсат етілуі сараланады. Маркетплейстер мен өзге де ақпараттық делдалдардың зияткерлік меншік құқықтарын бұзғаны үшін жауапкершілігі қарастырылған. Маңыздысы — генеративті технологиялар оқшау дамымайды, олар қалыптасқан цифрлық делдалдар инфрақұрылымы аясында өрбиді.

Номерде «Заңнамадағы мәселелер» айдары ерекше орын алады. Онда GPT_THEATRE негізін қалаушыларымен сұхбат форматында генеративті интеллекттің мәртебесі туралы негізгі мәселе — автор ма, тең автор ма, құрал ма әлде жай ғана технологиялық тренд пе — жан-жақты қарастырылады. Талқылау оқырманды формалды-құқықтық шеңберден шығарып, машиналық генерация дәуіріндегі шығармашылық шекаралары мен түпнұсқалық критерийлері мәселесіне жетелейді. Материалдың ерекшелігі — ішкі көзқарас: зияткерлік өнім жасаушы шығармашылық өкілдері заманауи спектакльдердің қалай дүниеге келетінін ашық баяндайды.

Сараптамалық пікірлер бөлімі генеративті нәтижелердің техникалық жасалуын талдауға арналған, бұл құқықтық қорғауға үміткер объектілердің қалай пайда болатынын дәлірек түсінуге мүмкіндік береді.

Практикаға бағытталған бөлім сарапшылар пікірін толықтырып, жоғары технологиялар саласындағы резонансты сот істеріне шолу мен ЖИ саласындағы заңнамалық жаңалықтарды (салыстырмалы-құқықтық талдау) қамтиды. Бұл материалдар құқықтық жүйенің генеративті технологиялардың сын-қатерлеріне жауап беріп жатқанын көрсетеді, алайда сот тәжірибесінде әлі де тұрақты тәсілдер қалыптаспаған.

Рецензиялар бөлімінде Памела Самуэльсонның технологиялық өзгерістер жағдайындағы еркін пайдалану доктринасына арналған мақаласына шолу ұсынылған. Бұл тақырыптың өзектілігі айқын: дәл осы икемді шектеу механизмдері бүгінде генеративті модельдерді оқыту мен қолданудың заңдылығы туралы пікірталастардың өзегіне айналып отыр.

Жас ғалымдар әлеуметтік желідегі аккаунттың құқықтық табиғаты мен оған қолжетімділікті мұраға қалдыру мәселелерін қарастырды, бұл пайдаланушылардың цифрлық сәйкестігімен тікелей байланысты. Сонымен қатар, Жасанды интеллекттің жаһандық дамуы жағдайында музыкалық шығармашылықтағы авторлық парадокстар талданды.

Номерді құқық иелерінің кәсіби және шығармашылық жолы туралы материалдар, сондай-ақ ДЗМҰ-ның цифрлық бастамаларына шолулар толықтырады.

ЖИ тақырыбы зерттеулерде кең таралғанына қарамастан, бастысы — жаңа жүйеде адам-автордың орнын ұмытпау, оның құқықтарын барынша қорғау және шығармашылық салада квазишығармашылық нәтижелердің үстемдік етуінің алдын алу.

Номерді дайындалуына қатысқан барлық авторларға шын жүректен алғыс білдіреміз. Бірге үлкен іс атқарып жатырмыз!

Құрметпен,
Бас редактор, қ.ғ.к.
Братусь Д.В.

СЛОВО РЕДАКТОРА

Третий номер журнала посвящён генеративным технологиям и тем правовым вызовам, с которыми сталкивается творческая подотрасль. В центре внимания не абстрактные дискуссии об Искусственном Интеллекте, а конкретные вопросы правовой квалификации генеративных результатов, вопросы лицензирования при обучении ИИ-моделей, распределения ответственности и необходимости трансформации правовых подходов.

Открывает номер интервью с директором Общественного фонда имени Батырхана Шукенова Наргиз Шукеновой, в котором обсуждаются прикладные аспекты использования наследия умерших авторов в цифровую эпоху, а также роль общественных организаций в сохранении наследия и поддержке авторов и правообладателей.

Дискуссионный блок формируется за счёт мнений коллег по вопросам необходимости лицензирования исключительных прав для компаний-разработчиков при обучении ИИ-моделей.

В разделе научных исследований представлены работы, затрагивающие как частные, так и общие аспекты цифровизации. Важной представляется тематика цифровой трансформации правового регулирования общественных отношений. Предлагаются идеи по устранению правовой неопределенности и коллизий в области использования ИИ, обсуждаются принципы ответственного потребления сгенерированного контента, арбитражная и судебная практика в этой сфере общественных отношений включает анализ прозрачности алгоритмов и допустимости использования ИИ при разрешении споров. Рассмотрены вопросы ответственности маркетплейсов и иных информационных посредников за нарушения прав интеллектуальной собственности. Важен контекст: генеративные технологии не существуют изолированно, а развиваются внутри уже сложившейся инфраструктуры цифровых посредников.

Особое место в номере занимает материал в рубрике «Пробелы законодательства», представленный в формате беседы с основателями GPT_THEATRE. В нём с разных сторон раскрывается принципиальный вопрос о статусе генеративного интеллекта: автор, соавтор, инструмент или лишь технологический тренд. Обсуждение выводит читателя за пределы формально-юридических конструкций, затрагивая проблему границ творчества и критериев оригинальности в эпоху машинной генерации. Особенность материала – взгляд изнутри. Творцы, создающие интеллектуальный продукт, аутентично и откровенно рассказали о том, как создаются современные спектакли.

Раздел экспертных комментариев посвящен анализу технической стороны создания генеративных результатов, что позволяет более точно понять, каким образом возникают объекты, претендующие на правовую охрану.

Практико-ориентированная часть номера усиливает экспертные комментарии и включает в себя обзор резонансных судебных дел в сфере высоких технологий, а также анализ законодательных новелл (сравнительно-правовой срез) в области ИИ. Эти материалы демонстрируют, что правовая система уже реагирует на вызовы генеративных технологий, однако в судебной практике пока не выработаны устоявшиеся подходы.

В разделе рецензий представлена работа, посвящённая статье Памелы Самуэльсон о доктрине свободного использования в условиях технологических сдвигов. Обращение к этой теме неслучайно: именно механизмы гибкого ограничения исключительных прав сегодня оказываются в центре дискуссий о допустимости обучения и использования генеративных моделей.

Молодые ученые порассуждали о правовой природе аккаунта в социальных сетях и вопросах наследования доступа к нему, что напрямую связано с цифровой идентичностью пользователей. А также рассмотрели парадоксы авторства в сфере музыкального творчества в условиях глобального развития Искусственного Интеллекта.

Номер дополняют материалы о профессиональном и творческом пути правообладателей, а также обзоры цифровых инициатив ВОИС.

Несмотря на то, что тема ИИ становится общим местом в исследованиях, важно не упустить главное – место автора-человека в новой системе, предоставить ему максимально возможный объем защиты его прав, предупредить доминирование в творческой подотрасли квази-творческих результатов.

Сердечно благодарим всех авторов, принимавших участие в создании номера. Вместе мы делаем большое дело!

С уважением,
Шеф-редактор, к.ю.н.
Братусь Д.В.

УДК / UDC 347.78.031.2; 7.067

FEATURED INTERVIEW

BATYRKHAN SHUKENOV: THE VOICE OF A GENERATION

On May 18, 1962, in Kyzylorda, a boy was born into a family of economists – a boy destined to become the voice of an entire generation...

Batyrkhan Shukenov grew up in a home that valued not only precision and order, but also the warmth of human connection, hospitality, music, and kindness. From an early age, he was immersed in sound – the school ensemble, his first notes on the saxophone, his initial successes, and the recognition of his talent by seasoned, master musicians. Even then, an inner rhythm was beginning to stir within him – a unique fusion of jazz-inspired freedom and the deep resonance of the Kazakh soul that would later captivate millions.

Batyr's evolution was the journey of a true musical nomad. His path wound through the Leningrad Institute of Culture and the Kurmangazy Almaty Conservatory, where he mastered the saxophone. Following early experiences with jazz ensembles, 1987 marked the birth of the legendary band A'Studio. With hits like Belaya Reka (White River) and Julia, collaborations with Alla Pugacheva, and triumphant performances across the USSR and the CIS, his work became more than just the success of a single band; it became the very soundtrack of an era. In 2000, Batyrkhan Shukenov embarked on a solo career. He released albums infused with ethnic motifs and personal revelations, served as a UNICEF Goodwill Ambassador, and was honored as an Honored Artist of Kazakhstan. Batyrkhan Shukenov always remained someone who shared warmth with everyone around him.

On April 28, 2015, in Moscow, his heart stopped... He was only 52 years old. Batyr left us too soon, but he bequeathed a musical legacy that defined an entire era – melodies and songs that continue to resonate in the hearts of millions. Since 2015, this legacy has been carefully preserved and nurtured by the Batyrkhan Shukenov Public Foundation, led by his niece, Nargiz Shukenova. The foundation has transformed memory into a living cultural platform. Through initiatives like the annual BATYR LAB music residency for young composers and musicians, the Qazaq Roses podcast series on women in Kazakhstani art, the book 91-23: On Popular Music of Independent Kazakhstan, concerts, exhibitions, and educational programs, the foundation pays tribute to Batyr. It embodies his spirit of openness to the new, respect for tradition, and belief that culture must breathe and inspire generations.

Today, in an era of rapid technological change, the foundation seeks a balance between preserving authenticity and embracing experimentation. It is this very balance that Lyubov Balmagambetova, General Director of Amanat Non-Profit Organization for the Protection of Copyright and Related Rights and Nargiz Shukenova, Director of the Batyrkhan Shukenov Public Foundation, discussed in their conversation.

L.B.: Hello! Thank you for taking the time for this interview! This issue of our magazine is dedicated to Artificial Intelligence and generative technologies, which brings me to my first question: In the context of rapidly evolving technologies, how do you see the Foundation's role in preserving and developing Batyrkhan Shukenov's musical legacy?

N.Sh.: Good afternoon! Thank you for your interest in our work. The Batyrkhan Shukenov Foundation is, first and foremost, a tribute – a way to express gratitude and honor the memory of my uncle. Batyrkhan Shukenov was a person who was always open to the new, yet deeply respectful of his roots and the sincerity inherent in music.

In this era of generative technologies and rapid change, our mission is fundamental. On one hand, it is about preserving and systematizing Batyr's legacy: his archives, recordings, documents, and memories. We engage with these materials through publishing projects, archival publications, and cultural initiatives.

On the other hand, it is vital for us to foster a living cultural environment. Through the Foundation's projects, we support young musicians and strive to cultivate a space where a new generation of artists can develop and find their audience.

L.B.: While preparing for this interview, we studied the Foundation's website and its projects. Your initiatives are authentic and remarkable! Listening to Batyrkhan Shukenov's music on vinyl players, the release of commemorative stamps and books – everything is very stylish, yet quite conservative. Is this a deliberate avoidance of new technologies? Furthermore, do you believe it is ethical to reinterpret the work of departed artists using AI – for instance, by generating new arrangements, remixes, or even entirely new compositions based on their legacy?

N.Sh.: We do not avoid technology; rather, we strive to move with great caution. When dealing with the legacy of an artist who is no longer with us, it is crucial to remain respectful of their unique artistic tone and the body of work they left behind.

Batyr's music already exists as a complete, cohesive artistic statement. Our mission is to preserve its authenticity and ensure it remains accessible to new generations of listeners.

L.B.: How important are experimental projects to you, and how do they align with preserving the memory of Batyrkhan Shukenov? For instance, the creation of deepfakes and the use of revived imagery in concert performances – a practice that already exists globally. Is this something you find acceptable?

N.Sh.: Experimental projects are important to us, as they are intrinsically linked to cultural development. However, when it comes to digital reconstructions or similar technologies, we exercise great caution.

If such technologies are used within an educational or museum context, and it is clearly indicated that the content is a reconstruction, then perhaps it can form a valid part of a cultural dialogue. Yet, creating the illusion of a live performance by an artist who is no longer with us, especially in a commercial format, strikes us as controversial. Batyr was an incredibly vibrant artist with an astonishing energy, and for us, it is paramount to preserve his memory through authentic recordings, archives, and his music.

L.B.: Does the Republic of Kazakhstan require specific legal regulations for the creation and use of deepfakes?

N.Sh.: I am not a technology expert, so I will refrain from evaluating legislative initiatives. From the perspective of a cultural institution, what matters most to us is the ethical dimension: maintaining a respectful attitude toward the artist's personality and their legacy.

L.B.: The Foundation already publishes sheet music, books, and musical archives of Batyrkhan Shukenov. What is your stance on making these materials available for training algorithmic AI models?

N.Sh.: We advocate for the accessibility of culture. Our publications are created so that people can listen to the music, study it, and find inspiration in it.

If artificial intelligence technologies are used for research into musical styles or for educational purposes, that could be a valid tool. However, when it comes to attempts to generate 'new works' in the name of a specific artist, especially one who is no longer with us, that becomes a very sensitive area for us. It is paramount that Batyr's legacy remains authentic and is not reduced to a digital simulation. Therefore, any such experiments, in our view, require a very careful and transparent approach. As such mechanisms are still being established, we prefer to approach these issues with caution.

L.B.: As part of BATYR LAB, you engage with a broad array of musical genres, ranging from hip-hop to ambient. Do you believe that AI could foster creative expansion within these fields?

N.Sh.: I believe that new technologies can serve as an intriguing tool for musicians. We see how contemporary young artists freely blend various traditions and genres, experimenting with both form and sound. In that respect, AI can also function as one of these tools, for instance, in brainstorming ideas or conducting creative experiments.

However, I believe it is fundamentally important that technology does not replace real people. After all, music is born of human experience, emotions, and intonation. Therefore, I view AI more as a potential assistant in the creative process rather than as an author in its own right.

Technology can certainly broaden creative horizons, but the soul and originality of music still remain human. Batyr himself loved to experiment and seek out new sounds, and I believe he would have resonated with an approach where technology aids creativity without ever supplanting it.

L.B.: How do you feel about the idea of utilizing AI tools within the Foundation's educational initiatives? Could AI assist young musicians in composition or production?

N.Sh.: We have discussed the application of AI tools within the context of our music production workshops, primarily to provide an overview of available tools rather than to endorse them. That said, it has always been a priority for us to foster work with real artists and encourage deep immersion in music – focusing on the recording process, the interaction between musicians, and the live sound.

We are not currently viewing the use of AI in our educational initiatives as a standalone program. It is possible that, over time, such tools may appear in our educational environment, perhaps as a supplementary aid for analysis or experimentation. However, it remains fundamentally important that music education stays a living process, built around the interaction between people and genuine musical experience.

L.B.: Does the Foundation hold all the exclusive rights to Batyrkhan Shukenov's legacy?

N.Sh.: The Foundation works with Batyrkhan Shukenov's legacy in close cooperation with his family and rights holders. We manage the archives, publishing projects, and cultural initiatives associated with his creative work.

L.B.: Which mechanisms of legal control over authorial authenticity do you consider a priority for major AI platforms? For example, some generative platforms offer the capability to generate music in the style of a specific artist. As a result, we end up with an AI musician singing like Batyrkhan Shukenov. Should this be countered, and if so, how?

N.Sh.: This is a new and quite complex field where both legal and ethical approaches are only just beginning to take shape. I am not prepared to give definitive assessments on this matter at this stage.

L.B.: The next question follows from the previous one. Let's assume Batyrkhan Shukenov left behind unfinished works – lyrics and songs. Would it be acceptable to upload them to an AI with the prompt: "Complete this musical work in the author's style." Is it permissible to finish a piece of work without the author's consent?

N.Sh.: It seems to me that any decisions regarding unfinished works must be made with extreme caution and, above all, be rooted in respect for the author.

L.B.: A final question. In the age of AI, the music of deceased authors faces three possible scenarios... Which one do you consider the most acceptable?

N.Sh.: The second scenario – controlled transformation – is closer to my view.

Music only truly lives when people continue to listen to it, perform it, and reinterpret it. Total preservation might keep the form intact, but it risks turning the work into a museum piece. At the same time, complete freedom for algorithmic reinterpretation, without the involvement of rights holders and heirs, seems ethically problematic. It could lead to the dilution of authorship and the original context in which the music was created.

I believe the most responsible path is one where the ultimate decision remains with the rights holders and the institutions tasked with managing that legacy. They are best positioned to define the boundaries: where AI experimentation is permissible, and where it is vital to preserve a work in its original form. We are already living in an era where technology is becoming a new instrument for creativity. AI can assist in analyzing styles, restoring archival recordings, suggesting arrangements, or discovering new forms of sound. However, it is essential that the ethics of working with a legacy and respect for the author remain at the center of this process. For me, the key principle is quite simple: technology can expand the dialogue with the past, but it must never supplant the author's voice.

We thank Nargiz Shukenova, Director of the Batyrkhan Shukenov Public Foundation, for this sincere and heartfelt conversation.

This publication was prepared using materials available on the website: https://ru.batyr.foundation/

НӨМІР ТҰЛҒАСЫ. СҰХБАТ

БАТЫРХАН ШӨКЕНОВ – ҰРПАҚ ҮНІ

1962 жылы 18 мамырда Қызылорда қаласында, экономистер отбасында, тұтас бір ұрпақтың үні болатын ұл дүниеге келді...

Батырхан Камалұлы Шөкенов сандар мен тәртіп қана емес, адамгершілік жылуы, қонақжайлық, музыка мен мейірім бағаланатын ортада өсті. Бала кезінен ол дыбыстар әлемінде болды — мектеп ансамблі, саксофонда алғаш ойнаған әуендер, алғашқы жетістіктері және оның талантын тәжірибелі музыканттардың мойындауы.

Сол кездің өзінде оның бойында, кейін миллиондарды баурап алған ішкі ырғақ — джаз еркіндігі мен қазақы терең рухтың үйлесімі ояна бастаған еді.

Батырдың қалыптасу жолы – музыкадағы нағыз көшпенді жолы.

Ленинград мәдениет институты, Құрманғазы атындағы Алматы консерваториясының саксофон класы, алғашқы джаз ансамбльдері және 1987 жылы аты аңызға айналған «A'Studio» тобының құрылуы. «Белая река», «Джулия» хиттері, Алла Пугачёвамен шығармашылық байланыс, КСРО мен ТМД сахналарындағы табыс – мұның бәрі тек бір топтың дамуы емес, тұтас дәуірдің тынысы еді. 2000 жылы Батырхан Шөкенов жеке шығармашылық жолына шығып, этникалық сарындар мен жеке толғаныстарға толы альбомдар шығарды, ЮНИСЕФ-тің ізгі ниет елшісі, Қазақстанның еңбек сіңірген өнер қайраткері атанды. Ол әрдайым жанындағы адамдарға жылу сыйлайтын жан болып қала берді.

2015 жылғы 28 сәуірде Мәскеуде Батырхан Шөкеновтің жүрегі тоқтады... Ол небәрі 52 жаста еді. Батыр дүниеден ерте кетті, бірақ оның артына тұтас бір дәуірдің музыкалық мұрасы – миллиондаған адамдардың жүрегінде жаңғырған әуендері мен әндері қалды. 2015 жылдан бері бұл мұраны жиені Наргиз Шөкенова басқаратын Батырхан Шөкенов атындағы қоғамдық қоры мұқият сақтап, дамытып келеді. Қор естелікті тірі мәдени алаңға айналдырды. Жас композиторлар мен музыканттарға арналған BATYR LAB музыкалық резиденциясы, Қазақстан өнеріндегі әйелдер туралы Qazaq Roses подкасттары, «Тәуелсіз Қазақстанның танымал музыкасы туралы 91–23» кітабы, концерттер, көрмелер мен білім беру бағдарламалары. Мұның бәрі – Батырға арналған құрмет. Жаңалыққа ашықтық, тамырға құрмет және мәдениет әрдайым тыныстап, жаңа буындарды шабыттандыруы тиіс деген сенім.

Бүгінде, технологиялар қарқынды дамыған дәуірде, қор түпнұсқалықты сақтау мен эксперимент арасында тепе-теңдік іздеуде. Осы тақырыпта «Аманат» авторлық және сабақтас құқықтарды қорғау жөніндегі коммерциялық емес ұйымының бас директоры Балмагамбетова Любовь Юрьевна мен Батырхан Шөкенов атындағы қоғамдық қордың директоры Наргиз Шөкенова әңгімелесті.

Л.Ю.: Сәлем! Осы сұхбатты жасауға уақыт бөлгеніңіз үшін рахмет! Журналымыздың бұл саны жасанды интеллект және генеративті технологияларға арналған. Сондықтан менің бірінші сұрағым: Технологиялардың тез өзгеріп жатқан жағдайында Батырхан Шөкеновтің музыкалық мұрасын сақтау мен дамытудағы Қордың рөлін қалай көресіз?

Н.Ш.: Қайырлы күн! Біздің жұмысымызға қызығушылық танытқаныңыз үшін рақмет. Батырхан Шөк-

енов қоры – ең алдымен, менің ағама деген құрмет пен естеліктің бір көрінісі. Ол әрдайым жаңашылдыққа ашық болғанымен, музыкадағы түп-тамыр мен шынайылықты ерекше бағалайтын.

Генеративті технологиялар мен жылдам өзгерістер дәуірінде біздің міндетіміз іргелі. Бұл бір жағынан Батыр мұрасын: мұрағаттарды, жазбаларды, құжаттарды, естеліктерді сақтау және жүйелеу. Біз бұл материалдармен бампа жобалара, мұрағаттық басылымдарды және мәдени бастамаларды жариялау арқылы жұмыс істейміз.

Екінші жағынан, біз үшін белсенді мәдени орта құру маңызды. Қор жобалары арқылы жас музыканттарды қолдап, жаңа буынның дамуына және өз аудиториясын табуына жағдай жасаймыз.

Л.Ю.: Сұхбатқа дайындалу барысында біз Қордың сайты мен жобаларын зерттедік. Бастамалар шынайы және керемет! Б. Шөкеновтің музыкасын винил ойнатқышта тыңдау, естелік маркалар, кітаптар шығару, т.б. Мұның бәрі өте стильді, бірақ консервативті. Сіз жаңа технологиялардан әдейі аулақ жүрсіз бе? Жасанды интеллект арқылы «кеткен» әртістердің жұмысын қайта түсіндіру (мысалы, олардың жұмысына негізделген жаңа аранжировкаларды, ремикстерді немесе тіпті композицияларды жасау) заңды ма?

Н.Ш.: Біз технологиядан қашпаймыз. Керісінше, біз өте сақтықпен әрекет етуге тырысамыз. Марқұм автордың мұрасы туралы айтқанда, оның көркемдік үнін сақтау маңызды.

Батырдың музыкасы – тұтас көркем туынды. Біздің міндет – оның түпнұсқалығын сақтау және жаңа тыңдармандарға жеткізу.

Л.Ю.: Сіз үшін эксперименттік жобалар қаншалықты маңызды және олар Батырхан Шөкеновтің мұрасын сақтауымен қалай үйлеседі? Мысалы, дипфейк технологиялары арқылы «тірі бейне» жасау қаншалықты орынды?

Н.Ш.: Эксперименттік жобалар біз үшін маңызды, өйткені бұл мәдениеттің дамуымен байланысты. Бірақ цифрлық қайта құрулар немесе ұқсас технологиялар туралы сөз болғанда, біз сақтық танытамыз.

Егер мұндай технологиялар білім беру немесе музейлік контексте қолданылып, оның реконструкция екені нақты көрсетілсе, бұл мәдени диалогтың бір бөлігі болуы мүмкін. Бірақ өмірде жоқ әртістің «тірі концерт» иллюзиясын жасау, әсіресе коммерциялық форматта, даулы мәселе болып көрінеді. Батыр өте тірі энергиясы бар артист еді, сондықтан біз үшін оның естелігін шынайы жазбалар, архивтер мен музыка арқылы сақтау маңызды.

Л.Ю.: Қазақстан Республикасында дипфейктерді жасау мен пайдалануды арнайы құқықтық реттеу қажет пе?

Н.Ш.: Мен технологиялар саласының маманы емеспін, сондықтан заңнамалық бастамаларға баға беруге талпынбаймын. Мәдени ұйым ретінде біз үшін ең маңыздысы – этикалық аспект: әртістің тұлғасына және оның мұрасына құрметпен қарау.

Л.Ю.: Қор қазірдің өзінде Б. Шөкеновтің ноталарын, кітаптарын және музыкалық архивтерін жариялап келеді. Осы материалдардың заманауи ЖИ модельдерін алгоритмдік оқыту үшін қолжетімділігі мәселесіне қатысты сіздің ұстанымыңыз қандай?

Н.Ш.: Біз мәдениеттің қолжетімді болғанын қолдаймыз. Біздің басылымдар адамдар музыканы тың-

дап, оны зерттеп, одан шабыт алуы үшін жасалады.

Егер жасанды интеллект технологиялары музыкалық стильдерді зерттеу немесе білім беру мақсатында қолданылса, бұл рұқсат етілетін құрал болуы мүмкін. Бірақ нақты бір әртістің, әсіресе өмірден өткен адамның атынан «жаңа шығармалар» жасау әрекеттері туралы айтылғанда, бұл біз үшін өте нәзік мәселе. Біз үшін Батырдың мұрасы өзінің түпнұсқалығын сақтап, цифрлық симуляцияға айналмауы маңызды. Сондықтан мұндай тәжірибелер, біздің ойымызша, өте мұқият әрі ашық тәсілді талап етеді. Қазіргі кезде мұндай жүйелер енді ғана қалыптасып жатқандықтан, біз бұл мәселелерге сақтықпен қараймыз.

Л.Ю.: «BATYR LAB» аясында сіздер хип-хоптан бастап эмбиентке дейін әртүрлі музыкалық жанрлармен жұмыс істейсіздер. ЖИ осы жанрларда шығармашылық кеңеюге ықпал ете алады деп ойлайсыз ба?

Н.Ш.: Меніңше, жаңа технологиялар музыканттар үшін қызықты құрал бола алады. Бүгінде жас әртістердің түрлі дәстүрлер мен жанрларды еркін үйлестіріп, форма мен дыбыспен тәжірибе жасап жатқанын көріп отырмыз. Осы тұрғыдан алғанда, ЖИ де құралдардың бірі ретінде қолданылуы мүмкін. Мысалы, идея іздеуде немесе шығармашылық эксперименттерде.

Бірақ мен үшін технологиялардың тірі адамдарды алмастырмауы өте маңызды. Музыка бәрібір адам тәжірибесінен, эмоциясынан және интонациясынан туады. Сондықтан мен ЖИ-ді үдерістегі көмекші ретінде көремін, бірақ автор ретінде емес.

Технологиялар шығармашылық өрісін кеңейте алады, бірақ музыканың жаны мен түпнұсқалығы бәрібір адамға тән болып қалады. Батырдың өзі де тәжірибе жасап, жаңа дыбыстарды іздеуді жақсы көретін, сондықтан технология шығармашылыққа көмектесіп, бірақ оны алмастырмайтын тәсіл оған да жақын болар еді деп ойлаймын.

Л.Ю.: Қордың білім беру бастамалары аясында ЖИ құралдарын қолдану идеясына қалай қарайсыз? ЖИ жас музыканттарға композиция немесе продюсерлік ісінде көмектесе ала ма?

Н.Ш.: Біз музыкалық продюсерлік бойынша воркшоп аясында ЖИ құралдарын қолдануды талқылағанбыз - көбірек шолу ретінде, нақты баға бермей. Сонымен қатар біз үшін әрдайым тірі әртістермен жұмыс істеуді және музыкаға терең бойлауды ынталандыру маңызды болды: жазба үдерісі, музыканттардың өзара әрекеті, тірі дыбыс.

Қазіргі таңда қордың білім беру бастамаларында ЖИ-ді жеке бағыт ретінде қарастырып отырған жоқпыз. Болашақта мұндай құралдар біздің білім беру ортасында пайда болуы мүмкін. Мысалы, талдау немесе эксперимент үшін қосымша құрал ретінде. Ең бастысы – музыканы үйрену тірі үдеріс болып қалуы және адамдардың өзара қарым- қатынасуы мен шынайы музыкалық тәжірибеге негізделуі тиіс.

Л.Ю.: Қор Б. Шөкенов мұрасына барлық айрықша құқықтарға ие ме?

Н.Ш.: Қор Батырхан Шөкеновтің мұрасымен оның отбасы және құқық иелерімен бірлесіп жұмыс істейді. Біз архивтермен, баспа жобаларымен және оның шығармашылығына қатысты мәдени бастамалармен айналысамыз.

Л.Ю.: Авторлық түпнұсқалықты құқықтық тұрғыдан бақылау үшін ірі ЖИ-платформалар қан-

дай тетіктерді басымдыққа алуы тиіс деп ойлайсыз? Мысалы, кейбір генеративті платформалар белгілі бір орындаушының стилінде музыка жасауға мүмкіндік береді. Нәтижесінде біз Батырхан Шөкенов сияқты «ән айтатын» ЖИ-музыкантты аламыз. Бұған қарсы тұру керек пе, және қалай?

Н.Ш.: Бұл – жаңа әрі күрделі сала, мұнда құқықтық та, этикалық та тәсілдер енді ғана қалыптасып жатыр. Сондықтан бұл жерде біржақты баға беруге дайын емеспін.

Л.Ю.: Келесі сұрақ — алдыңғысының жалғасы. Батырхан Шөкеновтің аяқталмаған шығармалары (мәтіндер мен әндер) қалды делік. Оларды ЖИ-ге жүктеп, «шығарманы авторлық стильде аяқта» деген тапсырма беру мүмкін бе? Автордың еркінсіз шығарманы аяқтау қаншалықты орынды?

Н.Ш.: Менің ойымша, аяқталмаған шығармаларға қатысты кез келген шешімдер өте мұқият қабылдануы тиіс және ең алдымен авторға деген құрметтен туындауы керек.

Л.Ю.: Қорытынды сұрақ. ЖИ дәуірінде өмірден өткен авторлардың музыкасын үш түрлі сценарий күтіп тұр... Соның қайсысын ең қолайлы деп санайсыз?

Н.Ш.: Маған екінші сценарий – бақыланатын трансформация – жақын.

Музыка тек тыңдалғанда, орындалғанда және қайта пайымдалғанда ғана өмір сүреді. Толық консервация форманы сақтауы мүмкін, бірақ шығарманы музейлік нысанға айналдыру қаупі бар. Ал құқық иелері мен мұрагерлердің қатысуынсыз толық алгоритмдік қайта пайымдау да этикалық тұрғыдан күрделі, себебі ол авторлықты және шығарманың жасалған контекстін бұлдыратуы мүмкін.

Ең жауапты жол – шешім құқық иелері мен мұрамен жұмыс істейтін институттардың қолында болатын тәсіл. Олар ЖИ-мен эксперименттер қай жерде орынды, ал қай жерде шығарманы бастапқы күйінде сақтау қажет екенін анықтай алады. Біз қазірдің өзінде технологиялар шығармашылықтың жаңа құралдарына айналған дәуірде өмір сүріп жатырмыз. ЖИ стильдерді талдауға, архивтік жазбаларды қалпына келтіруге, аранжировкалар ұсынуға немесе жаңа дыбыстық формаларды ашуға көмектесе алады. Бірақ бұл үдерістің ортасында мұрамен жұмыс істеу этикасы мен авторға деген құрмет қалуы тиіс. Мен үшін басты қағида өте қарапайым: технологиялар өткенмен диалогты кеңейте алады, бірақ автордың даусын алмастырмауы керек.

Батырхан Шөкенов атындағы қоғамдық қордың директоры Наргиз Шөкеноваға осы шынайы әрі жылы әңгіме үшін алғыс білдіреміз.

Жарияланымды дайындау барысында https://ru.batyr.foundation/ сайтында орналастырылған материалдар пайдаланылды.

ПЕРСОНА НОМЕРА. ИНТЕРВЬЮ

БАТЫРХАН ШУКЕНОВ – ГОЛОС ПОКОЛЕНИЯ

18 мая 1962 года в Кызылорде, в семье экономистов, родился мальчик, которому суждено было стать голосом целого поколения...

Батырхан Камалович Шукенов вырос в доме, где ценили не только цифры и порядок, но и тепло человеческих отношений, гостеприимство, музыку и доброту. С детства он был окружён звуками – школьный ансамбль, первые ноты на саксофоне, первые успехи и признание таланта от более мастеровитых и состоявшихся музыкантов. Уже тогда в нём просыпался тот самый внутренний ритм – смесь джазовой свободы и глубокой казахской души, который позже покорил миллионы.

Становление Батыра – это путь настоящего кочевника музыки. Ленинградский институт культуры, Алматинская консерватория имени Курмангазы по классу саксофона, первые джазовые ансамбли, а в 1987 году рождение легендарной группы A'Studio. Хиты «Белая река», «Джулия», сотрудничество с Аллой Пугачёвой, триумф на сценах СССР и всего СНГ. Всё это было не просто развитием одной группы, а настоящим дыханием эпохи. В 2000 году Батырхан Шукенов ушёл в сольное плавание, создав альбомы, полные этнических мотивов и личных откровений, стал послом доброй воли ЮНИСЕФ, Заслуженным деятелем искусств Казахстана. Батырхан Шукенов всегда оставался тем, кто делился теплом с каждым, кто рядом.

28 апреля 2015 года в Москве сердце Батырхана Шукенова остановилось... Ему было всего 52 года. Батыра не стало слишком рано, но он оставил после себя музыкальное наследие целой эпохи – мелодии и песни, которые продолжают звучать в сердцах миллионов. С 2015 года это наследие бережно хранит и развивает Общественный фонд имени Батырхана Шукенова, возглавляемый его родной племянницей Наргиз Шукеновой. Фонд превратил память в живую культурную платформу. Ежегодная музыкальная резиденция BATYR LAB для молодых композиторов и музыкантов, подкасты Qazaq Roses о женщинах в казахстанском искусстве, книга «91-23 о популярной музыке независимого Казахстана», концерты, выставки и образовательные программы. Всё это – трибьют Батыру. Открытость новому, уважение к корням и вера в то, что культура должна дышать и вдохновлять поколения.

Сегодня, в эпоху стремительных технологий, фонд ищет баланс между сохранением аутентичности и экспериментами. Именно об этом побеседовали генеральный директор Частного учреждения «Некоммерческая организация по защите авторских и смежных прав «Аманат» Балмагамбетова Любовь Юрьевна и Наргиз Шукенова, директор Общественного фонда имени Батырхана Шукенова.

Л.Ю.: Здравствуйте! Спасибо, что нашли время для интервью! Номер нашего Журнала посвящен искусственному интеллекту и генеративным технологиям. В связи с чем мой первый вопрос: в контексте быстро меняющихся технологий, как Вы видите роль Фонда в сохранении и развитии музыкального наследия Батырхана Шукенова?

Н.Ш.: Добрый день! Благодарю Вас за интерес к нашей работе. Фонд имени Батырхана Шукенова – это, прежде всего, форма благодарности и памяти о моём дяде. Батырхан Шукенов – человек, который всегда был открыт к новому, но при этом очень уважал корни и искренность в музыке.

В эпоху генеративных технологий и стремительных изменений наша задача фундаментальна. С одной стороны, это сохранение и систематизация наследия Батыра: архивов, записей, документов, воспоминаний. Мы работаем с этими материалами через издательские проекты, архивные публикации и культурные инициативы.

С другой стороны, для нас важно создавать живую культурную среду. Через проекты Фонда мы поддерживаем молодых музыкантов и стараемся формировать пространство, где новое поколение артистов может развиваться и находить свою аудиторию.

Л.Ю.: Готовясь к интервью, мы изучили сайт Фонда и проекты. Инициативы аутентичные и потрясающие! Прослушивание музыки Б. Шукенова на виниловых проигрывателях, издание памятных марок, книг и т.д. Все очень стильно, но достаточно консервативно. Вы намеренно избегаете новых технологий? Правомерно ли переосмысливать творчество «ушедших» авторов с помощью ИИ (например, генерировать новые аранжировки, ремиксы или даже композиции на основе его работ)?

Н.Ш.: Мы не избегаем технологий. Скорее, стараемся двигаться очень осторожно. Когда речь идёт о наследии ушедшего автора, важно сохранять уважение к его художественной интонации и к тому, что он оставил после себя.

Музыка Батыра уже существует как целостное художественное высказывание. Наша задача – сохранить её подлинность и сделать доступной для новых поколений слушателей.

Л.Ю.: Насколько важны для вас экспериментальные проекты, и как они соотносятся с сохранением памяти о Батырхане Шукенове? Например, создание дипфейка и использование «ожившего изображения» в концертной деятельности. Такая практика уже существует в мире. Допустимо ли это?

Н.Ш.: Экспериментальные проекты для нас важны, и связано это с развитием культуры. Но когда речь идёт о цифровых реконструкциях или подобных технологиях, мы проявляем осторожность.

Если такие технологии используются в образовательном или музейном контексте и ясно обозначено, что это реконструкция, возможно, это может быть частью культурного диалога. Но создавать иллюзию «живого выступления» артиста, которого уже нет, особенно в коммерческом формате, представляется спорным. Батыр был очень живым артистом с потрясающей энергетикой, и для нас важно сохранять память о нём через реальные записи, архивы и музыку.

Л.Ю.: Необходимо ли Республике Казахстан специальное правовое регулирование в сфере создания и использования дипфейков?

Н.Ш.: Не являюсь экспертом в области технологий, поэтому не берусь оценивать законодательные инициативы. Со стороны культурной институции для нас важнее этический аспект: уважительное отношение к личности артиста и к его наследию.

Л.Ю.: Фонд уже издает ноты, книги и музыкальные архивы Б. Шукенова. Какова Ваша позиция по вопросу доступности этих материалов для алгоритмического обучения современных моделей ИИ?

Н.Ш.: Мы выступаем за доступность культуры. Наши издания создаются для того, чтобы люди слушали музыку, изучали её и вдохновлялись ею.

Если технологии искусственного интеллекта используются для исследования музыкальных стилей или образовательных целей, это может быть допустимым инструментом. Но когда речь идёт о попытках генерировать «новые произведения» от имени конкретного артиста, особенно ушедшего, для нас это уже чувствительная зона. Нам важно, чтобы наследие Батыра сохраняло свою подлинность и не превращалось в цифровую симуляцию. Поэтому любые подобные эксперименты, на наш взгляд, требуют очень аккуратного и прозрачного подхода. Пока такие механизмы только формируются, мы стараемся относиться к этим вопросам осторожно.

Л.Ю.: В рамках «BATYR LAB» Вы работаете с широким спектром музыкальных жанров – от хип-хопа до эмбиента. Считаете ли Вы, что ИИ может способствовать креативной экспансии в этих жанрах?

Н.Ш.: Полагаю, новые технологии могут быть интересным инструментом для музыкантов. Мы видим, как молодые артисты сегодня свободно соединяют разные традиции и жанры, экспериментируют с формами и звучанием. В этом смысле ИИ тоже может использоваться как один из инструментов. Например, для поиска идей или каких-то творческих экспериментов.

Но для меня принципиально важно, чтобы технологии не заменяли живых людей. Музыка всё-таки рождается из человеческого опыта, эмоций и интонации. Поэтому я скорее вижу ИИ как возможного помощника в процессе, но не как автора.

Технологии могут расширять горизонты творчества, но душа и оригинальность музыки всё равно остаются человеческими. Батыр сам любил экспериментировать и искать новые звучания, и, мне кажется, ему был бы близок подход, когда технология помогает творчеству, но не подменяет его.

Л.Ю.: Как Вы относитесь к идее использования инструментов ИИ внутри образовательных инициатив Фонда? Может ли ИИ помочь молодым музыкантам в композиции или продюсировании?

Н.Ш.: Мы обсуждали применение инструментов ИИ в рамках воркшопа по музыкальному продюсированию, скорее, чтобы дать обзор инструментам, но не давая при этом оценки. При этом для нас всегда было важно стимулировать работу именно с живыми артистами и глубокое погружение в музыку: в процесс записи, взаимодействие между музыкантами, живое звучание.

Использование ИИ в образовательных инициативах Фонда мы пока не рассматриваем как отдельное направление. Возможно, со временем такие инструменты могут появляться в нашей образовательной среде. Например, как вспомогательный инструмент для анализа или эксперимента. Принципиально важно, чтобы обучение музыке оставалось живым процессом и строилось вокруг взаимодействия людей и реального музыкального опыта.

Л.Ю.: Фонд обладает всеми исключительными правами на наследие Б. Шукенова?

Н.Ш.: Фонд работает с наследием Батырхана Шукенова в сотрудничестве с семьёй и правообладателями. Мы занимаемся архивами, издательскими проектами и культурными инициативами, связанными с его творчеством.

Л.Ю.: Какие механизмы правового контроля авторской аутентичности Вы считаете приоритетными для работы крупных ИИ-платформ? Например, некоторые генеративные платформы предоставляют возможность генерировать музыку в стиле того или иного исполнителя. В результате мы получаем ИИ-музыканта, который поет как Батырхан Шукенов. Нужно ли этому противодействовать и каким образом?

Н.Ш.: Это новая довольно сложная область, где только формируются и правовые, и этические подходы. Я не готова давать здесь однозначные оценки.

Л.Ю. Следующий вопрос – продолжение предыдущего. Предположим, что у Батырхана Шукенова остались неоконченные произведения (тексты и песни). Можно ли загрузить их в ИИ с заданием: «Закончи музыкальное произведение в авторском стиле». Допустимо ли завершать произведение без воли автора?

Н.Ш.: Мне кажется, любые решения, связанные с незавершёнными произведениями, должны приниматься очень осторожно и в первую очередь исходить из уважения к автору.

Л.Ю. Заключительный вопрос. Музыку умерших авторов в эпоху ИИ ждет три возможных сценария... Какой из них Вы считаете наиболее приемлемым?

Н.Ш.: Мне ближе второй сценарий – подконтрольная трансформация.

Музыка живёт только тогда, когда её продолжают слушать, исполнять и переосмыслять. Полная консервация может сохранить форму, но рискует превратить произведение в музейный объект. При этом и полная свобода алгоритмического переосмысления без участия правообладателей и наследников кажется этически сложной. Может привести к размытию авторства и контекста, в котором эта музыка создавалась.

Наиболее ответственным я вижу путь, при котором решение остаётся за правообладателями и институциями, работающими с наследием. Они могут определять границы: где допустимы эксперименты с ИИ, а где важно сохранить произведение в его исходном виде. Мы уже живём в эпоху, когда технологии становятся новыми инструментами творчества. ИИ может помогать анализировать стили, восстанавливать архивные записи, предлагать аранжировки или открывать новые формы звучания. Но важно, чтобы в центре этого процесса оставалась этика работы с наследием и уважение к автору. Для меня ключевой принцип очень прост. Технологии могут расширять диалог с прошлым, но не должны подменять собой голос автора.

Благодарим Наргиз Шукенову, директора общественного фонда имени Батырхана Шукенова, за этот искренний и тёплый разговор.

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DISCUSSION / ТАЛҚЫЛАУ / ДИСКУССИЯ

Should a licensing regime be introduced for companies that train Artificial Intelligence systems on authors' creative works?

Нужно ли внедрять систему лицензирования для компаний, обучающих ИИ на творческих результатах авторов?

Ryan McGrath

Society & Repertoire Manager Lime Blue Music

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Райн Макграт

Менеджер по работе с обществами и репертуаром «Lime Blue Music»,

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AI-generated music has the potential to disrupt Neighbouring Rights collections on a large scale, given the rapidly increasing rate at which this content is spreading, as well as the fact that the average listener is no longer able to distinguish it from human-made music. We may find that licensees of all kinds will start to gravitate towards AI-generated music, should their customers or audiences find it acceptable. This would reduce the amount of money being distributed to Performers and Rights Holders in a revenue stream that is critical to their ongoing efforts. Creatives must be fairly remunerated for their work, and within Neighbouring Rights there is a strong case to be made for the implementation of value-transfer mechanisms stemming from AI usage, to reflect the fact that these models are trained on real music.

Музыка, генерируемая Искусственным Интеллектом, обладает потенциалом масштабного воздействия на систему сбора вознаграждений в сфере смежных прав, учитывая стремительно возрастающие темпы распространения такого контента, а также тот факт, что среднестатистический слушатель более не способен отличать её от музыки, созданной человеком.

Можно ожидать, что лицензиаты различных категорий начнут отдавать предпочтение музыке, созданной с использованием Искусственного Интеллекта, при условии её приемлемости для их клиентов или аудитории. Это приведёт к сокращению объёма средств, распределяемых исполнителям и правообладателям и имеющих критическое значение для их деятельности.

Творческие работники должны получать справедливое вознаграждение за свой труд. В области смежных прав имеются веские основания для внедрения механизмов перевода ценностей, обусловленных использованием Искусственного Интеллекта, с учётом того, что соответствующие модели обучаются на основе реальных музыкальных произведений.

Lyubov Balmagambetova

General Director of Amanat Non-Profit Organization for the Protection of Copyright and Related Rights

Любовь Юрьевна Балмагамбетова

Генеральный директор Частного учреждения «Некоммерческая организация по защите авторских и смежных прав «Аманат»

Analyzing international judicial practice in the field of copyright protection in the context of training artificial intelligence systems leads to an очевидный conclusion: a licensing regime for companies engaged in the development and deployment of AI is necessary.

First, it is evident that companies rely on the results of human creative labor when training AI systems. AI developments generate substantial revenues. For instance, according to Forbes, OpenAI's revenue reached $4.3 billion in 2025. Absent machine learning based on third-party creative outputs, such revenues would not have been achieved. A number of lawsuits against OpenAI demonstrate that AI models make use of works created by real authors.

Lawyers representing The New York Times have submitted to the court numerous examples in which ChatGPT, in response to ordinary prompts, reproduced entire paragraphs from paid articles that are typically accessible only through subscription. It is untenable to encourage the unjust enrichment of major AI companies at the expense of other stakeholders—yet this is precisely what is occurring at present.

Second, licensing establishes an economic foundation for remunerating authors whose works effectively serve as "fuel" for AI systems. Use entails payment.

Third, licensing enhances transparency and trust in AI companies. At its core lies the principle of good-faith use: where processes are open and transparent, and authors receive due remuneration. This approach is consistent with the traditions of collective management of copyright and related rights.

It is striking that no consensus has yet emerged on this issue. It appears очевидный that lobbying by large corporations is actively promoting the adoption of legal norms that place the burden on authors to prohibit the use of their works for AI training. Since when, under the guise of technological progress, has the author been placed in a position akin to that of the exploited?

One cannot disregard the foundational principles underlying the Berne Convention. With such an approach, there is a tangible risk of eroding creative authenticity.

The United Kingdom provides a notable example: proposals were made to expand the exception for text and data mining (TDM), including commercial uses without licensing. However, following criticism from the creative industries, the reform was suspended.

At the EU level, Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive), in Article 4 ("Exception or limitation for text and data mining"), permits the commercial use of creative

works for AI training, subject to the condition that the rightholder has not expressly prohibited such use.

Similarly, the Law of the Republic of Kazakhstan of 17 November 2025 No. 230-VIII "On Artificial Intelligence" (Article 23(5)) provides that the use of works for training AI models is permissible in the absence of a prohibition expressed by the author or rightholder in machine-readable form.

Japan has gone even further by allowing the use of works for AI training without the author's consent, provided that such use is not aimed at extracting expressive elements of the work (Article 30-4 of the Japanese Copyright Act 2025).

Against this background, the introduction of a licensing model for AI developers appears to be the most balanced solution. Establishing mechanisms for reporting and identifying the works used in AI training is not technically complex. Such an approach would support authors while preventing multiple forms of abuse on the part of businesses.

Анализируя международную судебную практику в сфере защиты авторских прав при обучении систем Искусственного Интеллекта, напрашивается очевидный вывод – необходима система лицензирования для компаний, занимающихся разработкой и внедрением ИИ.

Во-первых, очевиден факт, что при обучении ИИ компании используют результаты человеческого труда. ИИ-разработки приносят огромные деньги! Например, по оценкам Forbes, выручка OpenAI в 2025 г. достигла $ 4,3 млрд. Если бы не машинное обучение на чужих результатах творческой деятельности, то таких доходов не было бы. Ряд исков к OpenAI доказывает, что ИИ-модели используют результаты творческой деятельности реальных авторов.

Юристы газеты The New York Times представили суду множество примеров, где ChatGPT по ординарному запросу выдавал целые абзацы платных статей, которые обычно скрыты за платной подпиской. Мы не можем поощрять незаконное обогащение ИИ-гигантов за счёт эксплуатации других субъектов. Но сейчас так и происходит!

Во-вторых, лицензирование создаёт экономическую основу для вознаграждения авторов, чьи произведения фактически становятся «топливом» для ИИ. Используешь – плати!

В-третьих, это повышает прозрачность и доверие к ИИ-компаниям. В основе этого установления – принцип добросовестного использования. Когда все открыто, прозрачно, автор получил свое вознаграждение. Этот подход соответствует традициям коллективного управления авторскими и смежными правами.

Удивляет, что по этому поводу нет единства. Очевидно, что лобби крупных компаний активно продавливает принятие законов, которые содержат нормы о необходимости запрета автором использования его произведения для обучения ИИ.

С каких пор под соусом технического прогресса автор оказывается сродни эксплуатируемому?!

Мы забыли, за что боролись те, кто создавал и писал Бернскую конвенцию! С таким подходом мы рискуем потерять творческую аутентичность!

Ярким примером победы технологических компаний стала Великобритания. В Великобритании обсуждалось расширение исключения для TDM (text and data mining), включая коммерческое использование без лицензии. Однако после критики со стороны креативных индустрий реформа была приостановлена.

В Директиве ЕС Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (DSM Directive) в ст. 4 «Exception or limitation for text and data mining» допускается коммерческое использование результатов творческой деятельности при обучении ИИ с оговоркой о том, что нет запрета правообладателя.

В Законе Республики Казахстан от 17 ноября 2025 г. № 230-VIII «Об искусственном интеллекте» закреплено правило (п. 5 ст. 23), согласно которому использование произведений для обучения ИИ-моделей допускается при отсутствии запрета со стороны автора или правообладателя, выраженного в машиночитаемой форме.

Япония пошла еще дальше, разрешив использование произведений для обучения ИИ без согласия автора, если это не направлено на извлечение выразительных элементов произведения (ст. 30-4 Japanese Copyright Act 2025).

Наиболее сбалансированным выглядит внедрение лицензионной модели для компаний, занимающихся разработками ИИ. Несложно наладить систему предоставления отчетов и выявления тех произведений, на которых обучаются ИИ-системы. Такой подход позволит поддержать авторов и предотвратит множество злоупотреблений со стороны бизнеса.

Grigory Turintsev
Deputy General Director of Russian Authors' Society

Григорий Туринцев
Заместитель генерального директора Общероссийской общественной организации «Российское авторское общество»

In order to discuss the licensing of works for the purpose of artificial intelligence training, it is necessary to understand that there are at least four facts need to be accepted.

1. Artificial intelligence has already been trained on works eligible for copyright protection. Current AI models have been trained on the results of authors' creative efforts without their consent.

2. Authors could indeed prohibit content mining. Unfortunately, we cannot "roll back" these processes. Once current models are trained, extracting the training data from their underlying database appears impossible.

3. Developers of modern AI models trained on existing creative works argue that such data is encrypted, that they only extract statistical patterns, and that they do not use any fragments of works in any way. Meanwhile, the ability to reproduce certain parts of protected works – essentially, direct quotation – is more than 70% higher with a well-crafted prompt. This is confirmed by statistical data from international agencies. For example, according to a Copyleaks research, 60% of GPT-3.5 responses constitute plagiarism.

4. According to a study by the Higher School of Economics, carried out and released last year the damage across 17 categories of creative professions in the Russian market for the period from 2025 to 2030 will exceed 1 trillion rubles - a massive figure. Such losses result from the displacement of genuine creative outputs by generative content on digital platforms. The problem is further exacerbated by a decline in demand for

services provided under commissioned author contracts. Artists, illustrators, and other creative professionals are gradually being displaced by AI.

In total, we have four facts that need to be taken into account. With this in mind, the stance of the Russian Authors' Society is unambiguous.

Given these circumstances, the only viable approach is to permit the use of protected works for training artificial intelligence and generating content for personal use. The use of generated outputs for personal purposes should be allowed, subject to a compensatory payment mechanism, similar to that already applied to private copying levies. It is important that these compensatory payments will only apply where generated results are used for personal purposes.

As for commercial use – in this regard, we firmly believe that it must be considered separately, on a case-by-case basis, with disputes resolved through legal and judicial mechanisms. This is because there is a mechanism whereby a user employs Artificial Intelligence by feeding it certain prompts. The user knows what they want to achieve as a result of the generation. Artificial Intelligence is merely a technical means for realizing a particular creative concept. However, at the same time, given the presumption of creative conception established in the Russian Federation, we rely on Resolution No. 10 of the Plenum of the Supreme Court of the Russian Federation dated 23 April 2019, according to which, unless proven otherwise, any work is presumed to contain a creative idea. And that creative idea must not infringe upon the rights of authors and rights holders whose copyrights are protected.

Should a dispute arise between the author of a work (original content) and generative (derivative) content, such dispute should be adjudicated by a court, with all relevant circumstances duly established. Only under such conditions can the court identify the creative element or the presence of simple – though digital - plagiarism.

Для того чтобы рассуждать о деятельности по лицензированию произведений для обучения Искусственного Интеллекта, необходимо понимать, что есть как минимум четыре факта, которые необходимо принять.

1. Искусственный Интеллект уже обучен на тех произведениях, которые являются охраноспособными. Нынешние модели ИИ обучены на результатах творческого труда авторов без их согласия.

2. Авторы действительно могли бы запретить майнинг контента. К сожалению, «отмотать назад» эти процессы мы не можем. Если современные модели уже обучены, те данные, на которых они обучались, изъять из их базы представляется невозможным.

3. Разработчики современных ИИ-моделей, обучаемых на основе существующих результатов творческой деятельности, говорят о том, что они шифруют эти данные, что они получают только статистические закономерности, что на самом деле они никоим образом не используют какие-то фрагменты произведений… Между тем, способность воспроизводить те или иные части охраноспособных результатов, то есть чистая цитируемость произведений, при корректно сформулированном «промпте» или запросе от 70 % выше. Это доказывается статистическими данными всемирных агентств. Например, согласно исследованиям Copyleaks, 60 % ответов GPT-3,5 являются плагиатом.

4. В соответствии с исследованием Высшей школы экономики, проведенным и обнародованным в прошлом году, за период с 2025 года по 2030 год ущерб по 17 категориям творческих профессий на российском рынке составит более 1 триллиона рублей. Колоссальная цифра. Данный ущерб складывается из-

за тенденций замещения генеративными произведениями на цифровых платформах подлинных результатов творческой деятельности. Особенно усугубляет проблему спад на услуги по договорам авторского заказа. Художники, иллюстраторы и прочие креативные специальности постепенно вытесняются ИИ.

Итого, у нас есть четыре факта, которые необходимо учитывать. С учетом этого позиция Российского авторского общества однозначна.

При таких исходных данных мы можем только разрешить применять охраняемые произведения для обучения Искусственного Интеллекта и генерации контента для личного использования. Разрешить использование сгенерированных результатов в личных целях, установив компенсационный порядок выплат, как это уже работает с чистыми носителями. Важно, что эти компенсационные выплаты будут применяться только при использовании сгенерированных результатов в личных целях.

Что касается коммерческого использования – в данном случае мы искренне считаем, что коммерческое использование необходимо рассматривать отдельно и каждый частный случай, переводя споры в правовую и судебную плоскости. Почему? Потому что есть механика, когда пользователь применяет Искусственный Интеллект, задавая ему те или иные «промпты». Когда пользователь понимает, что он хочет получить в результате генерации. Искусственный Интеллект является исключительно техническим средством для достижения того или иного творческого замысла. Но при этом, если мы говорим о презумпции творческого замысла, который установлен в Российской Федерации, мы презюмируем, что у нас есть постановление Пленума Верховного Суда Российской Федерации № 10 от 23 апреля 2019 года, в соответствии с которым пока не доказано иное, в любом произведении есть творческий замысел. И этот творческий замысел, собственно, не должен наносить вреда тем авторам и правообладателям, авторские права которых охраняются.

В случае возникновения споров между автором произведения (исходного контента) и генеративного (производного) контента, такой спор должен рассматриваться судом и должны быть установлены все существенные обстоятельства. Только в таком случае суд сможет установить творческую составляющую или факт простого, хоть и цифрового, но плагиата.

ORIGINAL RESEARCH ARTICLES / ТҮПНҰСҚА ЗЕРТТЕУ МАҚАЛАЛАРЫ / ОРИГИНАЛЬНЫЕ ИССЛЕДОВАТЕЛЬСКИЕ СТАТЬИ

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BRINGING RESPONSIBLE ARTIFICIAL INTELLIGENCE INTO INTERNATIONAL ARBITRATION PRACTICE: REGIONAL ADAPTATION, ETHICAL SAFEGUARDS, AND PROCEDURAL INTEGRITY

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Scientific Novelty and Contribution

An additional element of scientific novelty lies in the practice-based methodology adopted by the author. Unlike purely conceptual studies, this research is informed by the author's independent practical experimentation with AI tools and direct participation in the development of a regionally adapted arbitration support system in cooperation with AICA. This combination of theoretical analysis and applied LegalTech development enhances the credibility of the findings and demonstrates how responsible AI principles can be operationalized in professional arbitration practice.

The scientific novelty lies in combining responsible AI principles with arbitration-specific safeguards and applying this framework to Central Asia, an underexplored region in LegalTech research.

The article demonstrates how localized AI tools can support arbitration practice while preserving confidentiality, procedural fairness, and human oversight. By bridging international ethical standards and regional practice, the study contributes to the development of a more inclusive and context-sensitive model of AI governance in international arbitration.

Abstract. The rapid development of artificial intelligence (AI) has significantly transformed legal practice, including international arbitration. AI-based technologies are increasingly used to enhance procedural efficiency, document management, and legal analytics. However, their integration raises complex legal, ethical, and procedural concerns, particularly regarding transparency, confidentiality, accountability, and the preservation of human decision-making.

This article examines the concept of responsible artificial intelligence in international arbitration with a particular focus on regional adaptation.

While most existing LegalTech solutions are designed for universal application, arbitration practice remains deeply embedded in regional legal traditions, procedural cultures, and linguistic environments.

The article argues that responsible AI deployment in arbitration must account for these regional specificities to maintain procedural integrity and legitimacy.

Using a qualitative legal-analytical methodology and a case study approach, the article analyzes international ethical standards governing AI and explores their application within arbitration proceedings.

Special attention is given to Central Asia as an emerging arbitration region characterized by hybrid legal systems and multilingual practice.

The study presents a case study of a regionally adapted AI assistant developed to support arbitration practitioners while preserving human oversight and confidentiality.

The findings demonstrate that responsible AI integration in arbitration is achievable only through ethical safeguards, region-sensitive design, and strict adherence to the principle that AI must assist—but never replace—human judgment.

The article contributes to the international discourse on LegalTech by offering a model for responsible and sustainable AI use in international arbitration.

Keywords: artificial intelligence; international arbitration; LegalTech; responsible AI; procedural integrity; regional adaptation.

Introduction

Digital transformation has become a defining feature of contemporary legal systems, reshaping both substantive law and procedural mechanisms. Among emerging technologies, artificial intelligence occupies a central position due to its capacity to process large volumes of information, identify patterns, and support complex decision-making processes.

International arbitration, traditionally valued for its flexibility, confidentiality, and party autonomy, has increasingly incorporated AI-based tools to address growing procedural complexity and efficiency demands.

Arbitration proceedings frequently involve extensive documentary evidence, multilingual submissions, and strict procedural timelines. These characteristics make arbitration particularly receptive to technological assistance. AI-based tools are now widely used for document review, legal research, procedural scheduling, and evidence organization. While these applications offer significant benefits, they also raise concerns about transparency, explainability, and the allocation of responsibility between human actors and automated systems.

Unlike conventional legal technologies, AI systems may operate through opaque algorithms and probabilistic models. This challenges core arbitration principles, including equality of arms, procedural fairness, and the central role of human judgment. The risk is not merely technical but institutional: excessive reliance on AI may undermine trust in arbitral proceedings and their outcomes.

These concerns are particularly acute in emerging arbitration regions.

Central Asia illustrates this challenge vividly. The region is undergoing rapid digital transformation while simultaneously developing its arbitration infrastructure. Legal systems in Central Asia reflect hybrid traditions, linguistic diversity, and evolving institutional frameworks.

Consequently, AI solutions designed for established arbitration hubs may not adequately address regional needs.

This article argues that responsible artificial intelligence provides a conceptual framework for integrating AI into arbitration without compromising its foundational values. Responsible AI emphasizes ethical safeguards, transparency, accountability, and human oversight.

Moreover, the article contends that responsible AI must be regionally adapted rather than universally applied.

The study aims to analyze the legal and ethical implications of AI use in international arbitration, assess the limitations of standardized AI platforms, and demonstrate how regionally adapted AI tools can support arbitration practice while preserving procedural integrity.

Literature Review

Academic discourse on artificial intelligence in legal practice has expanded significantly in recent years, focusing on automation, efficiency, and access to justice (1).

Early LegalTech research emphasized rule-based expert systems, whereas contemporary scholarship addresses machine learning, natural language processing, and predictive analytics (2).

In arbitration, AI is primarily discussed as a tool for procedural support rather than adjudication (3). Scholars highlight its potential to reduce costs and improve efficiency in document-intensive proceedings (4). However, arbitration's reliance on confidentiality, party autonomy, and discretionary judgment distinguishes it from court litigation (5).

Ethical concerns dominate recent scholarship. Researchers warn that algorithmic opacity and bias may undermine procedural fairness (6). International organizations have responded by developing ethical frameworks emphasizing transparency, accountability, and human oversight (7).

Predictive justice tools have generated significant debate. While widely used in litigation analytics, their application in arbitration is considered problematic due to confidentiality constraints and the individualized nature of arbitral decision-making (8). Most scholars agree that predictive AI should not influence arbitral outcomes (9).

Regional perspectives remain underrepresented. Existing literature largely focuses on Western jurisdictions and major arbitration centers (10). Studies addressing AI governance in emerging regions emphasize the importance of context-sensitive approaches (11).

Central Asia, characterized by multilingual proceedings and evolving arbitration institutions, exemplifies the need for localized AI solutions.

Materials and Methods

This research adopts a qualitative legal-analytical methodology combining doctrinal analysis, comparative assessment, and case study examination. Primary sources include international ethical frameworks, arbitration rules, policy documents, and academic literature on AI governance and LegalTech.

Comparative analysis is used to identify common principles and divergent regulatory approaches across jurisdictions. This method highlights the limitations of universal AI solutions and underscores the need for regional adaptation.

The case study method is applied to analyze a regionally adapted AI assistant developed for arbitration practitioners in Central Asia. Data sources include system design documentation and functional specifications. The analysis focuses on ethical safeguards, scope of functionality, and mechanisms preserving human oversight and confidentiality.

In addition to doctrinal and comparative legal analysis, the research is grounded in the author's independent practical work in the field of international arbitration and LegalTech. The author has systematically tested the applicability of artificial intelligence tools within real arbitration-related workflows in order to assess their functional value, limitations, and compliance with procedural and ethical standards.

This practice-oriented approach allowed the author to evaluate how theoretical principles of responsible artificial intelligence operate in real professional environments, particularly in multilingual and procedurally diverse arbitration contexts. The empirical insights obtained through this applied work informed both the analytical framework and the case study presented in this article.

Results

The findings demonstrate that responsible AI integration in arbitration is feasible when guided by ethical and procedural constraints. The case study reveals three critical elements: regional adaptation, ethical safeguards, and preservation of human control.

The case study presented in this article is based on the author's direct practical involvement in the development and testing of a specialized AI-assisted tool for arbitration practitioners. In cooperation with the Central Asian Association for Artificial Intelligence (AICA), the author participated in the development and implementation of ArbiBot AI, a regionally adapted digital assistant intended to support international arbitration practice in Central Asia.

The development of ArbiBot AI is preceded by independent empirical assessment of existing LegalTech solutions, which revealed significant limitations of universal AI platforms when applied to arbitration proceedings characterized by multilingual documentation, hybrid legal traditions, and varying institutional rules. These findings directly influenced the functional architecture and ethical constraints embedded in the system.

The AI assistant analyzed supports multilingual arbitration practice, procedural rule navigation, and structured organization of case materials. It deliberately excludes predictive analytics and outcome forecasting. This design

choice ensures that substantive decision-making remains entirely human-driven.

Confidentiality safeguards are embedded in system architecture. The tool avoids long-term data storage and does not rely on open-access databases. These measures align with international data protection standards and arbitration confidentiality obligations.

Practitioners perceive the tool as enhancing procedural efficiency without diminishing professional judgment. By automating routine tasks, the system enables arbitrators and counsel to focus on substantive legal analysis.

Discussion

The results confirm that the principal risk of AI integration in arbitration lies not in technological failure but in inappropriate delegation of authority. Responsible AI requires clear boundaries between assistance and adjudication.

A distinctive feature of the present research is its integration of theoretical analysis with continuous professional practice. The author's dual engagement as an international arbitration practitioner and LegalTech developer enabled ongoing testing of theoretical assumptions against practical realities. This iterative interaction between theory and practice strengthened the reliability of the study's conclusions and ensured their relevance for real-world arbitration proceedings.

The experience gained through the practical application of AI tools confirms that responsible artificial intelligence cannot be developed solely through abstract ethical frameworks. Instead, it must be informed by direct operational experience, procedural constraints, and the lived realities of arbitration practice.

Regional adaptation emerges as a legal necessity rather than a technical preference. Arbitration legitimacy depends on procedural trust, which may be undermined if AI tools disregard local legal culture and language. In emerging arbitration regions, such risks are amplified.

The case study illustrates how ethical principles can be operationalized through concrete design decisions. Transparency and accountability are achieved by limiting functionality and preserving human oversight. The exclusion of predictive justice tools reflects alignment with scholarly consensus on arbitration integrity.

Conclusions

Artificial intelligence offers substantial benefits for international arbitration but also presents significant risks. Responsible AI integration requires ethical safeguards, regional adaptation, and strict preservation of human decision-making.

This study demonstrates that AI can support arbitration practice without undermining procedural integrity when deployed responsibly. Regionally adapted AI tools provide a viable model for emerging arbitration jurisdictions seeking to balance innovation with trust and legitimacy.

As arbitration continues to evolve in the digital era, responsible AI offers a pathway toward sustainable technological integration grounded in legal values and procedural fairness.

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LIABILITY OF MARKETPLACES AND OTHER INFORMATION INTERMEDIARIES FOR INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS IN KAZAKHSTAN

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Scientific Novelty and Contribution

The article advances international scholarship by offering a comprehensive, systematized analysis of marketplace liability for trademark infringements in a jurisdiction that remains underexplored in global legal discourse – Kazakhstan. Its scientific novelty lies in bridging doctrinal gaps between national legislation and transnational regulatory models (EU, USA, China), and in proposing a hybrid liability framework tailored to emerging digital economies.

The study contributes to the development of international legal knowledge by introducing a refined classification of marketplaces as a distinct category of information intermediaries, while simultaneously demonstrating the insufficiency of existing Kazakhstani legal constructs. It further advances comparative legal methodology by identifying functional equivalence and divergence in liability standards, particularly between "safe harbour" models and direct liability regimes.

A key original contribution is the substantiation of joint (solidary) liability of marketplaces under specific conditions (knowledge and inaction; active commercial involvement), combined with a differentiated approach depending on the platform's role in transactions. The article also proposes legislative innovations, including the formal recognition of information intermediaries, clearer notice-and-takedown obligations, and integration of civil and administrative enforcement mechanisms.

Overall, the research generates new knowledge by articulating a coherent legal model adaptable to other developing digital markets, thereby enriching the global discourse on platform governance and intellectual property protection

Abstract. This article examines the liability of marketplaces and other information intermediaries for trademark infringements in Kazakhstan within a comparative international context. It identifies significant gaps in national legislation, particularly the absence of a clear legal status and liability framework for digital platforms. Drawing on the regulatory approaches of the European Union, the United States, and China, the study analyzes different models of intermediary liability, including safe harbour regimes and direct liability mechanisms.

The article proposes a hybrid regulatory approach that combines elements of both models and substantiates the need to recognize marketplaces as a distinct category of information intermediaries. It argues for the introduction of joint liability under specific conditions, such as knowledge of infringement and failure to act, as well as in cases of active commercial involvement. The study also outlines legislative recommendations, including the implementation of notice-and-takedown procedures and the integration of civil and administrative enforcement mechanisms.

The findings contribute to the development of a coherent legal framework adaptable to emerging digital markets and enrich the international discourse on platform governance and intellectual property protection.

Keywords: marketplaces; intellectual property; trademark infringement; platform liability; joint liability; secondary liability; safe harbour; e-commerce.

Introduction

As of today, in Kazakhstan, as in many other countries, traditional trade is gradually migrating to the electronic environment. It is unlikely that e-commerce will completely replace conventional physical retail in the near future; however, already in 2024 the volume of the e-commerce market in Kazakhstan amounted to 3.15 trillion tenge, which is 4.1% higher than in 2020 (1). Thus, according to current trends, traditional retail is losing about 1% of its customers per year, and this trend may accelerate sharply at any moment.

Public procurement and procurement in the quasi-public sector, which are also part of trade, have already been fully transferred to electronic formats. Moreover, an electronic store has already been launched, featuring an electronic catalog of goods and services (2).

Among the general population, e-commerce operates either through companies' own online stores or via electronic trading platforms – marketplaces. Wholesale and retail trade through social networks such as Instagram, Facebook, VK, and others is also widespread, as well as through messaging applications like WhatsApp or Telegram.

The most popular marketplace is Kaspi Shop (hereinafter referred to as "KS"). In 2023, its share of revenue increased by 56.08%, and the average monthly number of fulfilled orders exceeded 3.5 million (3).

At the same time, it is not surprising that alongside traditional trade, sellers of counterfeit and parallel-imported goods are also moving to marketplaces – that is, products that infringe intellectual property rights, most often trademark rights. In Kazakhstan's information space, KS is already being referred to as a flea market (4), and consumers complain about counterfeit goods (5). This is not surprising, since it is much easier to deceive consumers in the digital environment: while in an in-person purchase a consumer can at least to some extent distinguish a counterfeit, in the online environment infringing sellers use photographs of original products taken from manufacturers' websites. Of course, there are also those who upload photos of the counterfeit goods themselves, but such sellers are few, and consumers are increasingly forced to buy a "pig in a poke." As a result, consumers file complaints with the Committee for Consumer Protection, the Ministry of Justice, and other government bodies, and the number of such complaints specifically against marketplaces is increasing exponentially from year to year (6).

Rationale

The activity of the marketplaces is regulated by various legislative acts. These include the Civil Code (General

and Special Parts) with regard to the regulation of transactions, the Entrepreneurial Code with regard to antitrust regulation, the Criminal Code and the Code on Administrative Offences with regard to the dissemination of various types of prohibited information, as well as information that harms honor and dignity, and the Tax Code with regard to the payment of taxes. In addition, the activities of marketplaces are regulated by various specialized laws, primarily the Law of the Republic of Kazakhstan "On regulation of trading activities" which defines any type of marketplace as an "electronic trading platform" and regulates its main obligations to the state and consumers.

At the same time, the activities of marketplaces in terms of compliance with intellectual property rights are not fully regulated by the current legislation of the Republic of Kazakhstan, and the issue of holding marketplaces liable remains open, including due to the lack of judicial practice.

Nevertheless, the Ministry of Justice of the Republic of Kazakhstan has already raised concerns about holding marketplaces accountable for the sale of counterfeit goods, although so far only at the level of calls for good faith and responsible conduct (7).

At the same time, the need for legal regulation of marketplace activities in terms of protection against counterfeit goods and parallel imports has become pressing, and the topic is being actively discussed. Marketplaces themselves are involved in proposing amendments to legislation, but only from the perspective of consumer protection. That is, if a consumer complains about a counterfeit product, under the draft law on amendments and additions to certain legislative acts regulating trading activities, the marketplace is obliged to take action. However, if a complaint about the sale of counterfeit goods is filed by the product manufacturer, the holder of intellectual property rights, or their representative, the Law "On regulation of trading activities" does not oblige the marketplace to respond.

This article attempts to structure the various types of information intermediaries and the forms of their participation in the dissemination of product information or in the sale of goods. It examines the approaches of different countries to regulating the activities of marketplaces and other information intermediaries, reviews foreign case law arising from the current legislation of foreign jurisdictions, analyzes the forms of liability of information intermediaries, and proposes possible amendments to the legislation of the Republic of Kazakhstan aimed at effectively combating counterfeit goods and parallel imports.

Despite the fact that various violations of intellectual property rights occur on the Internet, the subject of this article is limited to violations of trademark rights protected in the Republic of Kazakhstan. Violations of copyright, related rights, patent rights, as well as rights to other means of individualization, are not within the scope of this study.

Discussion

Information intermediaries

It is necessary to begin the study of this issue by understanding the subject of the relationships under consideration, namely the marketplace. When asked "what is a marketplace?", an average Kazakhstani consumer will most likely think of a mobile application or a website that contains numerous images of a wide variety of goods, along with descriptions and prices. The consumer will also likely understand that most of the goods are sold not by the owner of the application or website itself (i.e., not by the marketplace), but by third parties, while the marketplace provides a certain space – most likely a limited amount of memory on its own or leased servers – for placing the product images and related information.

Today, among marketplaces in Kazakhstan, in addition to companies that are engaged solely in managing their applications, such as Wildberries or Ozon, there are also bank-operated applications for selling goods, for example Kaspi Shop, HalykMarket.kz, or Jmart.kz. Marketplaces also include applications of retail companies that have

physical stores and warehouses, such as Sulpak.kz or Technodom.kz. In addition, marketplaces may include applications such as Aviata.kz (now called Freedom Travel, a service for searching air and railway tickets) or Tickets.kz (a service for selling tickets to various events). This category also includes GlovoApp (a service for the delivery of ready-made food and beverages, as well as certain goods) and Arbuz.kz (a service for the delivery of groceries and other goods).

A separate category includes classified advertisement aggregators, such as Kolesa.kz (an aggregator of advertisements for the sale of cars and spare parts) and Olx.kz (an aggregator of advertisements for the sale of a wide range of goods). Finally, even applications such as abr+ (a service for selling restaurant services) (3) or 1fit.app (a service for selling fitness club memberships) are classified as marketplaces. Recently, there has also been a growing trend toward the development of so-called super-marketplaces that combine several other marketplaces within a single ecosystem, such as the Aitu application.

In other words, the areas of activity of marketplaces can be extremely diverse, encompassing both various goods and various services. As a result, the digital environment largely mirrors the physical one. It should also be borne in mind that most such marketplaces and their participants have counterparts in the real world. A marketplace for the sale of goods in the physical world may be compared to a bazaar, a supermarket, or a shopping mall; a ticket search service to an airline ticket office or a travel agency; a standalone online store to a shop or other point of sale; a classified advertisements aggregator to a newspaper or magazine; targeted advertising on a specific website or application to television or radio advertising; banner advertising on websites to roadside billboards, and so forth.

As for the legal definition of a marketplace, in the Law "On regulation of trade activities" it is defined as "an Internet resource providing infrastructure to electronic trade participants, including their conclusion of contracts for the provision of works and services using information and communication technologies". It is noteworthy that, pursuant to subparagraph 46) of Article 1 of the Law of the Republic of Kazakhstan "On informatization" an Internet resource is defined as information (in textual, graphic, audiovisual, or other form) posted on a hardware and software complex that has a unique network address and/or a domain name and operates on the Internet. It follows that, if the provisions of the Law "On regulation of trade activities" are considered together with those of the Law "On informatization," a marketplace is, in essence, not even a trading facility but rather information that provides a certain infrastructure for participants in electronic commerce. We consider this definition to be ambiguous and capable of depriving a marketplace of legal personality.

It should be noted that behind every marketplace and every online store there are several additional participants in the relevant legal relationships, including a telecommunications operator, a provider of intermediary and temporary data storage services (a caching provider), a provider of permanent data storage services on a server (a hosting provider), a domain name registrar, a provider of cross-linking or keyword services, a payment system operator, a security system provider, a provider of large-scale data analytics systems, and others. All of these participants in legal relations who, in one way or another, facilitate the transmission of information are commonly referred to as information intermediaries or providers (8). It should also be noted that information intermediaries include messengers, social networks, as well as email services, search engines (9), and websites providing video content (10). Accordingly, legislative changes concerning marketplaces also affect other intermediaries, both in the digital environment and in the physical one, and this is important to bear in mind when developing any amendments or additions to legislation.

In the United States, marketplaces are classified as Internet service providers under the Digital Millennium Copyright Act of 1998 (11), while in the European Union marketplaces, along with social networks and search engines, are classified as information intermediaries, specifically as online platforms, under the Digital Services Act

of 2022 (12).

A similar, albeit terminologically confusing, approach is applied in Russia, where marketplaces may be classified as information intermediaries referred to in Article 1253.1 of the Civil Code of the Russian Federation. However, Russian judicial practice, which will be examined below, demonstrates that it is precisely this lack of clarity in terminology that leads courts to render decisions both against and in favor of marketplaces under similar circumstances.

In China, the approach to marketplaces is somewhat different, classifying them as "e-commerce platform operators" under the Law of the People's Republic of China "On E-Commerce" (13).This approach distinguishes marketplaces from all other participants in the relevant legal relationships and allows their activities to be regulated without conflating them with telecommunications operators, hosting providers, domain registrars, and other intermediary entities. This approach is likely justified, given that China is one of the largest providers of e-commerce in the world (14). Nevertheless, it is generally considered that the United States offers the least stringent regulation, with minimal government intervention, allowing marketplaces to manage intellectual property issues themselves, except in certain cases. The European Union provides a moderate level of regulation, having placed the oversight of marketplaces at a supranational level. The strictest government regulation is found in China and Russia, where complete control over the information environment is established (15).

In Kazakhstan, however, a marketplace is not classified as an information intermediary but is referred to as an "electronic trading platform" (16). It should be noted that the concept of an information intermediary is generally absent in Kazakhstani national legislation.

In 2008, a draft Law "On the regulation of the Kazakhstani segment of the Internet" [17], it was proposed to refer to such entities as "information intermediaries," including "Internet service operators, as well as website owners who, through their information systems, provide users with access to other information systems on the Internet (offering interactive services), or provide services for maintaining a user's information resource on their own infrastructure, or for temporary and permanent storage of information". This is a fairly comprehensive definition, and marketplaces could clearly fall under it. However, the law was never adopted in its proposed form, and its provisions were not incorporated into other regulatory acts of the Republic of Kazakhstan to the extent necessary for regulating the activities of intermediaries. Instead of the Law "On the regulation of the Kazakhstani segment of the internet," another one – the Law "On amendments and additions to certain legislative acts of the Republic of Kazakhstan on information and communication networks" was adopted, which did not include the concept of an information intermediary.

A little later, in November 2008, at the thirty-first plenary session of the Interparliamentary Assembly of the CIS Member States, the Model Law "On electronic commerce" was adopted (18). In this Model Law, an information intermediary was defined as "a person [entity] who, on the initiative and on behalf of another person, sends, receives, or stores an electronic message, or provides other services in relation to such messages". In turn, an 'electronic message' is defined as "information that is prepared, sent, received, and stored using information systems, information and communication networks, and electronic procedures". Thus, the circle is complete, and, as can be seen, the Model Law does not disclose the substance of information intermediaries, and marketplaces can be brought within this concept only with considerable strain.

At the same time, the same Model Law defines the concept of a person [entity] engaged in electronic commerce. Such a subject is defined as "a person [entity] who sells goods, performs works for remuneration, and provides services using electronic messages". However, since many marketplaces do not sell goods directly, it is quite difficult to subsume them under this definition. It is also noteworthy that, pursuant to Article 23 of the Model Law, information and other intermediaries providing services to support and carry out electronic procedures in the

field of electronic commerce bear liability for the performance of their obligations as established by national legislation and by agreements between the parties. At the same time, the national legislation of the Republic of Kazakhstan lacks the concept of an information intermediary and, accordingly, does not provide for liability for its activities.

Much later, specifically in March 2016, Kazakhstan ratified the Agreement with the European Union "on Enhanced Partnership and Cooperation" (19). Section 4 of this Agreement provides for the liability of service providers acting as intermediaries. Articles 113, 114, and 115 divide such intermediaries into those providing "mere conduit" services (essentially telecommunications operators), "caching" services (providers of intermediary and temporary data storage), and "storage" services (hosting providers). It is not entirely clear to which of these categories marketplaces should be attributed. Moreover, neither the provisions of the CIS Model Law nor those of the Agreement with the European Union have been incorporated into national legislation with respect to defining and regulating the activities of information intermediaries, remaining instead at the level of international agreements of a declaratory nature.

Thus, marketplaces in Kazakhstan are not classified as information intermediaries, and, more broadly, despite the existence of international agreements, the legal status of such intermediaries remains insufficiently regulated, particularly with regard to the protection of intellectual property rights. Such a lack of regulation leads to unstable legal relations, "since the rights of the main participants in the legal relationship, although formally guaranteed by law, may in practice prove unenforceable due to the unregulated status of information intermediaries" (20).

Accordingly, there is also no clear delineation of marketplace liability: in Kazakhstan, marketplaces do not bear direct, joint, or subsidiary (secondary) liability toward rights holders. Kazakhstani scholars merely allude to the possible existence of secondary liability when comparing the civil legislation of the Republic of Kazakhstan with German law, noting that an obligation may arise as a result of harm, under which compensation for damage must be provided not only by the person who caused the harm, but also by another person who is responsible for the actions of the tortfeasor (21). However, as long as such arguments remain at the level of theory, marketplaces in Kazakhstan are free to refuse any rights holder's request to remove infringing content, leaving rights holders to rely solely on the goodwill of marketplace operators rather than on statutory provisions.

By the way, in Russia, in 2023, a document entitled "Good Faith Practices for Interaction between Marketplaces, Rights Holders, and Sellers in the Framework of Combating the Sale of Counterfeit Goods" was adopted (22). Against the backdrop of the ambiguous legislative regulation of this issue in Russia, the 2023 Practices provide for cooperation between marketplaces and rights holders, envisaging various tools and procedures such as test purchases, product examinations, removal of goods from sale, the establishment of "red flags" for suspicious products, disclosure of seller information, and the maintenance of brand owner dashboards. These Practices have certain shortcomings, including the need for rights holders to purchase large quantities of goods, and they rely on voluntary participation by both rights holders and marketplaces, which entails a risk of refusal to join. Nevertheless, their very existence represents a step toward further regulation of the e-commerce sector.

With regard to Kazakhstan, in the limited number of events (roundtables, business breakfasts, conferences, seminars) held in recent years specifically on the protection of intellectual property on marketplaces, the main argument of marketplaces against adopting such voluntary Practices in Kazakhstan is that a marketplace's participation could be interpreted as entering into an anti-competitive agreement under Article 169 of the Entrepreneurial Code of the Republic of Kazakhstan, seen as an agreement that results in a refusal to contract with certain sellers or buyers. It should be noted, however, that paragraph 7 of Article 169 does allow for the conclusion of anti-competitive agreements under restrictive conditions if such agreements concern the exercise of exclusive rights to intellectual property and related means of individualization (license agreements). In the same way, this

paragraph could be supplemented with provisions permitting anti-competitive agreements not only on the exercise of exclusive rights but also on their protection. Nevertheless, such amendments have not yet been made in Kazakhstan.

In 2022, the Eurasian Economic Commission announced that it is developing an Agreement on the Protection of Intellectual Property Rights on the Internet (23). The draft Agreement, in particular, envisages the introduction of a mechanism for blocking illegal content through judicial and extrajudicial procedures, the involvement of information intermediaries in the process of preventing intellectual property rights infringements, as well as the establishment of liability in the national legislation of the Union countries for failing to restrict access to illegal content. However, at the time of writing this article, the Agreement had not been submitted for public discussion.

From all of the above, it follows that Kazakhstan requires clear regulation for the protection of intellectual property rights on marketplaces. It is only necessary to determine the underlying concept – whether to continue treating marketplaces as independent entities, separate from information intermediaries, as is done in China, or as part of the category of information intermediaries, as is the case in the United States, the European Union, Russia, and a number of other countries.

On the one hand, Chinese legislation regulates the activities of e-commerce operators in a fairly straightforward manner, and Articles 41–45 of the PRC Law on E-Commerce introduced unprecedentedly detailed rules governing the actions of an operator upon receiving a complaint from a rights holder (24). However, if Kazakhstan were to introduce regulation solely for marketplaces, all other information intermediaries in the country would remain without proper regulation.

Interestingly, the issue of the lack of regulation of information intermediaries in Kazakhstan did not arise in the context of counterfeit goods on marketplaces, but rather against the backdrop of lawsuits in 2018 concerning Kazakhstani companies that retransmitted foreign television channels and engaged in broadcasting (25). It was precisely such companies that sought to be recognized as information intermediaries and to be exempted from liability for third-party content, as provided for under the EU Agreement on Enhanced Partnership and Cooperation, the Digital Services Act (DSA), the DMCA, and other foreign legal acts, as well as the "Manila Principles" (26).

It is also noteworthy that prior to the relatively active development of the retransmission and e-commerce markets, the issue of information intermediaries was hardly ever raised. In essence, any newspaper or magazine, any shopping center or market, any printing house, a taxi with a rooftop billboard, or even a post covered with advertisements already serves as a source of information about a product or service, through which such information is conveyed to consumers. These are information intermediaries existing in the real, rather than digital, world. Such "physical" intermediaries have existed for over a century, yet their liability for disseminating information about the sale of counterfeit goods has rarely been widely discussed, and there are very few professional literature sources on this topic. A 2014 article, "The Right to Liability," discussed the responsibility of printing houses that produced stickers for counterfeit spare parts; at that time, their liability was considered not as secondary liability of an information intermediary, but as joint liability alongside the seller of the counterfeit goods distributing products with such stickers (27). This is almost a unique case of examining the liability of "physical" intermediaries through the lens of intellectual property protection. In most other cases, such "physical" information intermediaries have been considered under advertising legislation and classified as advertising distributors.

Marketplaces are also, by their nature, advertising distributors, but this does not change the situation – national legislation does not develop in favor of intellectual property protection when it comes to any type of information intermediaries, whether physical or electronic: neither advertising law, nor the law on information intermediaries, nor trade legislation. At the same time, there have been cases where any Internet resource was recognized as mass

media, which is precisely how the latest version of the Law "On Mass Media" was structured [28], under which even the website of the National Bank of Kazakhstan or the Office of the Prosecutor General of Kazakhstan is considered mass media (29).

For these reasons, Kazakhstan is more in need of developing legislation on information intermediaries than otherwise, with a clear distinction between physical and digital intermediaries, a precise definition of which digital intermediaries are not liable for third-party content, as well as a clear description of the actions marketplaces must take upon receiving a copyright holder's complaint and the liability for failing to perform these actions. Kazakhstan has a unique opportunity to apply the experience of the USA and the EU, avoiding the ambiguous approach of Russia, while also leveraging the positive experience of China. In other words, Kazakhstan should introduce regulation for information intermediaries, especially since the groundwork has already been laid by international agreements, and should not attempt to use overly broad definitions that could confuse the courts, but rather apply simple and clear instructions and liability measures to marketplaces (or electronic trading platforms) for failure to comply with such instructions.

What is the liability of a marketplace towards a copyright holder?

As is well known, legal liability, in general, is a type of social responsibility. Legal liability is based on legal norms, guaranteed by the state, enforced through state coercion, entails punishment as a consequence of its occurrence, and is exercised in procedural form (30).

Civil liability, in turn, is divided into individual, shared, joint, and secondary (subsidiary) liability. Individual liability applies to a single entity and falls entirely on their shoulders. However, in these legal relationships, on one side there is the rights holder, and on the other – the seller and the marketplace.

In short, shared (proportional) liability takes the form of equal shares, each of which is compensated to the creditor by each of the debtors. In this case, the creditor has no right to claim compensation from a debtor who has already paid their share.

Under joint (solidary) liability, the creditor has the right to demand fulfillment of the obligation from all debtors collectively or from any one of them individually. This right applies to the entire debt or a portion of it. A creditor who has not received full satisfaction from one of the joint debtors has the right to claim the remaining amount from the other joint debtors [30].

In a subsidiary obligation, a claim may be made against the subsidiary debtor only after it has been presented to the primary debtor and if the primary debtor fails to satisfy the claim in whole or in part. In the case of subsidiary liability, the subsidiary-liable party enters the obligation as an additional debtor, supplementing or replacing the primary debtor (30).

It is necessary to clearly understand what claims a rights holder can make both against a seller on a marketplace and directly against the marketplace itself. According to Article 9 of the Civil Code of the Republic of Kazakhstan (General Part), the rights holder, among other things, has the right to demand from the seller the cessation of actions that violate the right (for example, by removing the product listing), the recovery of damages (if they can be proven), and compensation for moral harm (if the rights holder is a natural person).

To the marketplace, claims can be made for the restoration of the situation existing before the violation of the right (also in the form of removal of a product card), recovery of damages (if the role of the marketplace consists of more than only the function of an aggregator), termination or modification of legal relations (in the form of termination of the contract with the seller and removal of all their product cards with subsequent blocking of the account).

According to the provisions of Article 1032 of the Civil Code of the Republic of Kazakhstan (Special Part), the

rights holder has the right to demand from any person who has infringed the exclusive right to a trademark the cessation of the infringement, compensation for damages, recognition of the goods as counterfeit with subsequent destruction (31), and payment of compensation in lieu of damages.

It is evident that the majority of claims are intangible in nature – cessation of infringing actions, restoration of the previous state, termination of legal relations, and cessation of the violation. Among tangible claims, it is possible to demand the destruction of counterfeit goods (albeit with significant doubts regarding the feasibility of enforcement), as well as the payment of either damages or compensation.

What type of liability should be applied to enforce these claims? Joint liability cannot be applied in this case, as it is unclear how to divide the performance of intangible claims into portions. In this context, either solidary (joint and several) liability or subsidiary liability may be applied.

"According to paragraph 1 of Article 287 of the Civil Code of the Republic of Kazakhstan (General Part)" « Solidary obligation or solidary claim arise, if this is provided by the contract or established by legislative acts». In this situation, there is no contract between the right holder (the potential creditor) and the seller and the marketplace (the potential joint debtors in a multi-party obligation) that would create a joint obligation. As for the legislation, it currently does not provide for the liability of the marketplace (except in cases of direct influence on the price and terms of sale of the goods by the marketplace, which will be discussed later) to the right holder, neither as an information intermediary nor as an electronic trading platform.

What remains is only subsidiary liability under Article 288 of the Civil Code of the Republic of Kazakhstan (General Part), whereby the marketplace "completes" the seller's obligation to the extent not fulfilled by the seller themselves. In other words, holding the marketplace civilly liable under subsidiary liability will only be possible at later stages of civil proceedings or even in separate proceedings. As for administrative liability, it is generally impossible, since "completion" of the sanction under a particular article of the Administrative Code of the Republic of Kazakhstan by another person is not provided for. Regarding criminal liability, in theory, the marketplace and the seller could be considered as a group of persons, even acting in collusion; however, Article 222 of the Criminal Code of the Republic of Kazakhstan, which provides for criminal liability for the unlawful use of someone else's trademark, does not include any qualifying circumstances.

In American literature, subsidiary liability is considered as part of secondary liability for intellectual property infringement (32). In such disputes, the defendant (in this case, the marketplace) is brought into the dispute through a 'secondary' claim and is liable for the actions of third parties (sellers on the marketplace) in the uncovered part of the obligation (33). However, the doctrine of secondary liability is not applicable in our legal system – here the defendant is involved as an independent procedural party (defendant or third party), or in a group (as a co-defendant).

From the brief analysis presented, it is evident that subsidiary liability is not entirely convenient when applied to the marketplace's obligations toward the rights holder. The application of joint liability would be more appropriate, but currently there are no conditions for its implementation – there is neither a contract between the rights holder, the marketplace, and the seller, nor legislative regulation. However, since the first part of the article discussed regulating legislation by introducing the concept of an information intermediary and allocating the marketplace as a separate category, such regulation could simultaneously provide for the marketplace's liability in the form of joint liability, arising under certain conditions. Incidentally, researchers from foreign countries reach similar conclusions regarding the need to apply joint, rather than subsidiary, liability to marketplaces (34).

As for the forms of liability, according to E.B. Osipov, the measures of liability can be divided into three groups: confiscatory, punitive, and compensatory (35). However, while Osipov classifies these measures of liability solely in terms of civil-law protection in general, with respect to the infringement of intellectual property rights, in particular

trademark rights, this classification could be extended to include administrative-law measures. Incidentally, it is noteworthy that in the normative acts of foreign countries and integration associations, the liability of information intermediaries is considered only through the lens of civil-law impact; that is, the liability of the marketplace arises only in the event of a direct appeal to the court in civil proceedings. However, regulation in Kazakhstan could quite reasonably go further, and since confiscatory and punitive measures of liability exist, within the framework of administrative offense cases, marketplaces could well bear punitive liability before the state. The criminal-law method of protection will not be considered, as bringing the director of a marketplace to criminal liability seems excessive, although with such a rapid growth of e-commerce, in the future, the possibility of introducing criminal liability for the director of a marketplace cannot be excluded.

Returning to the study of foreign regulatory acts, as well as the international agreements of the Republic of Kazakhstan, it should be noted that they do not always contain direct provisions regarding the possibility of holding an information intermediary liable; rather, they contain provisions that allow an intermediary not to be held liable if certain conditions are met.

For example, according to Articles 113–115 of the Agreement with the European Union on 'Enhanced Partnership and Cooperation,' it is provided that various intermediaries are not liable if certain conditions are met. Thus, mere conduit intermediaries (network operators) are not liable if they do not initiate the transmission of information, do not select the recipient, and do not select or modify the information [36]. A caching intermediary is not liable if it does not modify the information, complies with conditions of access to it, observes rules regarding the updating of information, does not interfere with the lawful use of widely recognized technologies in the sector for obtaining data on the use of information, and acts expeditiously to remove stored information or disable access to it upon obtaining actual knowledge that the information at the originating point of transmission has been removed from the network, or access to it has been disabled, or a court or administrative authority has issued an order to remove it or disable access (36, Article 114). Finally, a hosting intermediary (which, by its technical nature, includes a marketplace) is not liable if it does not have actual knowledge of illegal activity or information, and upon obtaining such knowledge acts promptly to remove the information or disable access to it (36, Article 115).

It should be noted that the conditions for exempting intermediaries from liability provided by the Agreement correspond to the conditions set out in the EU E-Commerce Directive (37), as well as the DSA. Similar conditions for exemption from liability are also provided in § 512 of the DMCA.

According to Article 1253.1 of the Civil Code of the Russian Federation, such an intermediary as a telecommunications operator is not liable if it is not the initiator of the transmission and does not determine the recipient of the specified material, does not modify the specified material while providing communication services, except for modifications carried out to ensure the technological process of material transmission, and also did not know and could not have known that the use of the corresponding intellectual property rights or means of individualization by the person who initiated the transmission of material containing such intellectual property rights or means of individualization is unlawful.

Regarding an intermediary that provides the opportunity to place material in the information and telecommunications network, it is not liable if it did not know and could not have known that the use of the corresponding intellectual property rights or means of individualization contained in such material is unlawful, and also, upon receiving in written form a statement from the rightsholder about the violation of intellectual property rights with an indication of the website page and/or network address on the Internet where such material is posted, promptly took the necessary and sufficient measures to stop the violation of intellectual property rights.

Thus, the legislation of the EU, the USA, and the Russian Federation is built on a fairly similar scheme – a marketplace is not liable if it was unaware of the trademark violation and, after receiving a notice from the

rightsholder, took measures to remove the infringing content. This legal construction implies that to hold a marketplace liable, these regulatory acts must be read in reverse order – a marketplace is liable if it fails to take measures to remove illegal content after the rightsholder has notified it.

Unfortunately, from this construction, it is not entirely clear what type and form of liability the marketplace bears – individual or joint liability (in this case, only joint or subsidiary liability is possible), punitive or compensatory. As will be shown in the next part of the article, such uncertainty leads to differences in court decisions under similar circumstances.

It can also be seen from the aforementioned regulatory acts of the EU, the USA, and the Russian Federation that most intermediaries – telecommunications operators, caching providers, domain registrars – are exempt from direct liability in certain cases and for actions they could not have known or should not have known about (38). Some researchers compare such intermediaries to carriers or postmen, who merely transmit information but do not know its content (39). However, regarding a marketplace, the conditions for exemption from liability are somewhat simpler and more straightforward. A marketplace is an intermediary that provides permanent storage of information about goods, essentially acting as a hosting provider, and it can only be exempt from liability if it fails to timely remove information about a product (or service) that violates trademark rights.

Finally, from the aforementioned structure, it is clearly seen that a marketplace can be held liable only if it has received the corresponding notice from the rights holder and has taken no action. In other words, the basis for liability is knowledge of the infringement and inaction. That is, marketplaces, as one type of information intermediary, bear liability on the basis of fault (40). At the same time, this approach is considered reasonable, since if a marketplace were required to exercise greater diligence, such as checking every product posted by sellers for trademark infringements, such a requirement would overload the information intermediary system (41).

Particular attention should be paid to the E-Commerce Law of the People's Republic of China. As mentioned above, this Law distinguishes marketplaces, or more precisely, the 'operator of an e-commerce platform', and provides separate regulation for it – not as part of other information intermediaries, but as an independent subject of regulation. The provisions on liability are set out in Articles 41–45 of the Law, and unlike the "reverse" model (exemption from liability if...), they provide a model of direct application of the legal norm.

Thus, the E-Commerce Law of the People's Republic of China provides that "The intellectual property rights holder has the right to notify the operator of the e-commerce platform of the need to take appropriate measures, such as removal, blocking, disabling a link, or stopping a transaction or the provision of a service, if the rights holder believes that there is a violation of their intellectual property rights" (13, Art. 42).

It is further stated that "The operator of the e-commerce platform is obliged to promptly take the necessary measures and forward the said notice to the sellers listed on the platform upon its receipt. Failure to promptly take the necessary measures entails joint and several as well as individual liability of the operator of the e-commerce platform for any increase in damages together with the sellers listed on the platform" (13, Art.42).

Thus, in order to avoid speculation and double interpretation, the Chinese Law "On E-Commerce" provides in a fairly straightforward manner for joint and several or individual liability of the marketplace towards the rights holder.

Before moving on to the conclusion of this part of the article, it is necessary to consider one more aspect of the marketplace's liability, namely the form of the marketplace's participation in the considered legal relations. A.S. Vorozhevich distinguishes two forms of marketplace participation:

1. The marketplace receives remuneration from the sale of goods;

2. The marketplace receives remuneration for providing services related to the sale of goods – providing functionality for promoting the goods on the marketplace (the "Send to Top" or "VIP Listing" function), organizing

storage of goods, organizing delivery of goods, preparing accompanying documentation, and so on. (40).

In the first case, the marketplace receives profit from sales, so it can no longer be called merely an intermediary. Moreover, to accelerate the sale of goods, the marketplace may change the description, price, or methods of advertising (for example, in the form of banner advertising on other websites or on social networks). That is, in the first case, the marketplace bears joint liability with the main seller without any conditions for exemption from liability. In the second case, when the marketplace earns only from providing additional services and does not participate in the sale, it remains an intermediary and bears joint liability only in the absence of conditions for exemption from liability (34).

In Kazakhstan, KM can be considered as a marketplace that receives commissions from the sale of goods since, in addition to providing intermediary services, it charges commissions ranging from 7% to 15% (41). Moreover, this marketplace has the right to unilaterally edit product information at its discretion (42, Clause 5.3.1) and independently organize advertising campaigns, including placing any promotional materials about the goods on third-party Internet resources, including social networks (42, Clause 5.3.8).

A typical representative of the second group of marketplaces, which receives remuneration for provided services, is the marketplace Krisha.kz, which charges only for the provision of paid services (43).

In concluding this part of the article, it is necessary to answer a number of questions:

1. which type of liability should be applied to a marketplace in Kazakhstan – joint (solidary) or subsidiary?
2. which procedural form of liability should be applied to a marketplace – civil law or also administrative law?
3. what sanctions should be applied in civil proceedings against a marketplace?
4. which legal construction should be chosen to hold a marketplace liable – a direct one, as in China, or a reverse one, as in the EU, USA, and Russia?
5. should it be indicated in the legislation that the applied sanction depends on the form of the marketplace's participation in the sale of goods?

The answer to the first question is joint (solidary) liability, but it needs to be specified in the legislation. As was briefly discussed in the first part, subsidiary liability is inconvenient in relationships between marketplaces and sellers.

To answer the third question, it is necessary to refer to the Civil Code, in which Articles 9, 970, and 1032 already provide for civil liability for violations of trademark rights, and the sanctions of these articles can already be applied taking into account only joint (solidary) liability.

The answers to the second and fourth questions can be found in the draft Law of the Republic of Kazakhstan "On Regulation of the Kazakh Segment of the Internet." In particular, paragraphs 2–4 of Article 13 state the following:

«2. The owners of websites, as well as operators of Internet services performing the function of an information intermediary through their information systems, shall not bear responsibility for the content of information and materials distributed by users, provided that they:

- do not initiate their transmission;

- do not select their recipient;

- do not filter or modify them.

3. If an information intermediary provides a service for the permanent storage of user-posted information and materials that do not comply, not comply with the requirements of the law and violate the rights of third parties, it shall be liable for their distribution if it fails to take the necessary measures to remove them or block access to them

within one business day after receiving an official notice

A service provider acting as an intermediary cannot be required to search for facts or circumstances indicating the illegal nature of information provided by a user, except in cases explicitly stipulated by the legislation of the Republic of Kazakhstan.

The intermediary must remove or block access to user-posted information and materials that do not comply with legal requirements upon receiving an official notice in cases where:

– the notice is received from authorized state bodies;

– the information or material has already been removed or access to it has been blocked on the site where it was originally posted, or a court decision has been issued to remove or block access to it on that site;

– the notice contains the original or electronic signature of the person authorized to act on behalf of the rights holder, information about the alleged infringement; a description of the intellectual property objects that are allegedly infringed, indicating the source from which they were taken; information necessary for the information intermediary to locate the material that infringes the rights; necessary contact information of the person reporting the infringement, including: address, phone number, and, if possible, email address; a statement of how exactly the posted information and materials infringe the rights.

The information intermediary must notify the user within one business day about the removal or restriction of access to the information and materials posted by them, as well as the grounds for this, except in cases where the agreement with the user (contract, website rules, etc.) grants the intermediary the right to remove information and materials without explanation.

In other cases, disputes regarding the posting of materials and information are resolved by the court, while the information intermediary must ensure the storage of the disputed information and materials until the court decision comes into legal force, or, by agreement with other interested parties, for a longer period.

4. The provisions on limitation of liability apply to information intermediaries only in cases where they have designated, or specified in the site rules, an authorized representative for receiving notices of violations, indicating their name, address, phone number, and email address."

According to the highlighted paragraphs, Kazakhstani legislation has already envisaged the use of a hybrid framework for holding marketplaces liable – both reverse and direct approaches. The reverse approach could be extended to the conditions of the EU "Enhanced Partnership and Cooperation Agreement" so as not to violate its requirements. The direct approach could be slightly clarified by specifying that liability is joint and several, as in China, or individual, depending on the marketplace's form of participation in the infringement of intellectual property rights.

Furthermore, considering that paragraph 3 proposed blocking content upon notification by an authorized body, it can be said that this proposal lays the groundwork for the future application of an administrative-legal form of liability from a procedural perspective.

In essence, the draft Law of the Republic of Kazakhstan "On Regulating the Kazakhstani Segment of the Internet" already serves as a kind of preliminary framework for regulating the activities of marketplaces, and its implementation could benefit the current doctrinal regulation of marketplace activities in cases of intellectual property rights violations.

Finally, answering the fifth question, it could be specified that a marketplace, regardless of official notification, bears joint and several liability with the seller if it receives profit from the sale of goods or influences the sale by making changes to the product description or running promotions related to the product.

Judicial Practice of Holding Marketplaces Liable (Brief Case Study)

When considering the legal regulation of holding marketplaces liable in various countries, it is impossible to ignore the judicial practice that has developed around this legislation, which demonstrates how effectively the law is structured and how it is interpreted by the courts

In the United States, in the case of Tiffany & Co. v. eBay, the plaintiff argued that the marketplace should bear individual liability for trademark infringement, since when a third party lists an item, the marketplace can and must monitor the seller (44). The court disagreed with this claim and ruled to dismiss the case, reasoning that the burden of monitoring infringements rests with the rights holder.

Moreover, the court noted that the marketplace had taken measures to combat counterfeiting and implemented mechanisms to block listings, and it did not refuse to block them. This was a basis for considering that the marketplace, as an intermediary (provider) performing the function of storing information (hosting provider), had taken steps to block illegal content. However, the plaintiff demanded that the marketplace be held liable not as a co-defendant together with the sellers, but as the primary infringer of rights, which the court rejected. Ultimately, the marketplace was exonerated from liability, despite being aware that the sellers were offering counterfeit goods.

In the EU, in the case of L'Oréal versus the same marketplace eBay, the court also sided with the marketplace (45). The plaintiff demanded that, in addition to the eBay group of companies (3 defendants), seven more defendants – sellers on the marketplace – be held liable. The European Court found the sellers guilty of trademark infringement. Four of them were found guilty of distributing parallel imports (goods not placed on the market within the EU), and three were found guilty of distributing counterfeit goods. The marketplace itself was exonerated from liability; however, the court emphasized its obligation to remove suspicious listings upon the right holder's request. The European Court also noted that, at the level of national courts, the intermediary activity of the marketplace could be subject to secondary liability (the marketplace pays compensation not paid by other defendants and removes listings not removed by other defendants), leaving this determination to the national courts. Additionally, the European Court stressed that if the marketplace knew or was notified of infringements and failed to remove the listings, it cannot be exonerated from liability in subsequent proceedings before national courts.

"In France, in the dispute between Louis Vuitton and the marketplace eBay, the national court took the position of the right holder – eBay was recognized as a direct infringer of trademark rights (46). The court justified this by stating that the marketplace had been notified of the infringements but failed to take proper measures, and its software for blocking listings subject to complaints was deemed ineffective. As a result, the marketplace was recognized as an active intermediary deriving profit from sales, and the court ordered it to pay damages, a fine, compensation for moral harm (which is allowed in France), and the plaintiff's legal costs.

Also in France, in the dispute in the lawsuit filed by Hermes against a seller and two companies managing the eBay marketplace, the national court held the marketplace jointly liable with the seller, because it was aware of the situation and failed to take proper measures to remove the listing and stop the sale of counterfeit goods (47).

From the practice of courts in the USA, the EU, and France, it is evident that courts either recognize marketplaces as individually liable or jointly liable for the use of trademarks. At the same time, even in cases where the marketplace is not held liable, it is still obliged to remove listings or take additional measures to block listings. However, the experience of the USA shows that a marketplace can be fully exempt from liability if it implements software (a tool) to remove or block listings, even if such software later proves to be ineffective, as subsequently established in a court in France. The US example demonstrates an overly broad interpretation of the phrase 'take measures to stop infringement of rights.

In the Russian Federation, judicial practice is more contradictory (15). In the case regarding the trademark 'Lafinelle', the court ruled that the seller LLC 'Velar' and the marketplace LLC 'Wildberries' are jointly liable for putting goods with the similar designation 'Lafinele' into circulation, and obliged them to cease the infringement

and jointly pay compensation to the rightsholder (48).The marketplace was held liable because it was the direct recipient of the money, just like the Kazakhstani KM.

At the same time, in another case, where the actions of LLC 'Wildberries' under similar circumstances were initially recognized as an infringement of the trademark '6th Sense', on appeal it was completely released from liability and payment of compensation due to being recognized as an information intermediary, exempt from liability (49).

Also, in the case concerning LLC "Internet Resheniya" (the marketplace Ozon.ru), the court exempted the marketplace from liability, and the seller was not recognized as a co-defendant, since "the site ozon.ru is an information-reference system in which reference information about goods, services, offers of specific sellers (stores), and user information about goods/stores (reviews) is posted. At the same time, the Defendant itself does not carry out actions aimed at interacting with the intellectual property objects/trademarks of the plaintiff, nor does it use them.

The Defendant provides sellers with the technical ability to post information about products on the platform, but does not itself participate in the sale of the products" (50). This decision is itself controversial, as the court smoothly shifted from the trademark to copyright, treating the case as if the object of violation were a copyright work, and also considered the marketplace as an information intermediary providing the ability to post material or information, as well as providing access to the material on the network—that is, like a telecommunications operator or a domain name registrar.

Thus, Russian judicial practice is quite contradictory. This is due to the fact that the definition of information intermediaries in Article 1253.1 of the Civil Code of the Russian Federation is too vague, allowing courts to interpret the concept ambiguously, which leads to questionable decisions.

Kazakhstani judicial practice, where a marketplace would be held liable not as a third party but as a defendant, is quite limited. At the time of preparing this article, only two such decisions have been identified.

The first case concerns the claim of A.N. Turdaliev against LLP "Kaspi Store" (KS) regarding the obligation of the defendant to remove all listings of products bearing the trademark "MANTING" (51). The court dismissed this claim, reasoning that KS "provides a platform for the sale and purchase of goods, but does not independently sell any products".

In another case filed by the company "Astrata AG", where the defendants are KS and individual entrepreneur "Zhumakhan A.D.", a claim was made to oblige KS to remove listings with the "POLARIS" trademark, prohibit the use of this trademark, and pay compensation in the amount of 3,690,000 tenge (52). Similar claims were made against the second defendant. In this case, the court established that the seller 'joined' a previously created product listing for an iron and removed themselves from the listing after receiving the complaint. The court was unable to determine, and KM did not assist in determining, the identity of the person who originally created the product listing. As in the previous case involving KM as a defendant for trademark infringement, KM referred to the Agreement concluded with sellers (Partners), according to which the seller bears responsibility for violating the rights of third parties.

In this case, the court initially stated that the defendant, as an individual entrepreneur, had purchased the disputed product from a person who was lawfully authorized to use the trademark. However, in subsequent paragraphs, the court contradicted this by noting that the Plaintiff does not manufacture irons of such a design. Accordingly, an iron with a design that the Plaintiff does not produce could not have been acquired from an authorized person, and if it was acquired from such a person, it is counterfeit, as it was not manufactured by the Plaintiff or with their consent.

As a result, the claim was partially satisfied – compensation was recovered from the individual entrepreneur. At the same time, the actions of the individual entrepreneur were not recognized as infringing the trademark rights, as had been asserted in the claim.

In this case, the marketplace was exempted from liability for the following reason: «Thus, LLP merely provides a platform for the sale and purchase of goods, but in no way carries out the independent sale of any goods».

Unfortunately, Kazakhstan's judicial practice in this category of cases cannot be said to be extensive at the moment. Nevertheless, from the two cases reviewed, it is clear that the courts hardly perceive marketplaces as proper defendants. In the absence of legislative regulation, the courts are forced to rely on the marketplace's agreement with the sellers – that is, on an internal document of one of the defendants.

Conclusion

In conclusion of this study, it is necessary to summarize all the findings derived from the examination of foreign and national experience, as well as judicial practice, and to make recommendations.

First, a marketplace is a type of information intermediary. While other information intermediaries are generally exempt from liability, a marketplace may bear joint liability for trademark infringement if it fails to take measures to remove listings for goods that violate trademark rights – whether counterfeit or parallel-imported.

Second, if a marketplace directly receives payment for the sale of goods, retains a commission, and transfers the remaining amount to the seller, the marketplace bears independent liability.

Third, the more straightforward the legislation concerning marketplaces, the less ambiguous it is, and the fewer interpretive gaps exist in its legal constructs, the easier it is for courts to determine the degree of fault and to impose sanctions and compensation on marketplaces. This, in turn, provides an incentive for marketplaces, either individually or collectively, to develop instructions, principles, practices, and tools (software or specialized departments) for combating intellectual property rights violations, and to continuously improve them over time. For example, major international marketplaces have already implemented and regularly refine their policies and tools for intellectual property protection. In China, Alibaba Group and Taobao use the IP Protection Platform; Amazon has implemented Project Zero with zero tolerance for counterfeit goods, as well as the Brand Registry Tool; eBay employs the VeRO programme, which allows rights holders to submit infringement notices; and Meta (the social networks Facebook and Instagram) offers users the IP Help Centre, where complaints can be submitted (53). Since the implementation of all these policies and tools, the number of claims against marketplaces has decreased – provided, of course, that such policies and tools are not "illusory," created merely to evade liability but essentially ineffective.

Fourth, Kazakhstani national legislation currently lacks regulation of information intermediaries and does not provide for liability for their actions with respect to rights holders. This issue requires prompt but thorough consideration. As a basis, one could refer to the draft Law "On the Regulation of the Kazakhstani Segment of the Internet," issued back in 2008 – it contains a hybrid framework that allows for the application of provisions regarding the exemption of information intermediaries from liability, while simultaneously distinguishing regulations applicable to marketplaces or online stores, which were presumably more widespread in Kazakhstan in 2008.

It is also necessary to take into account the existence of other "physical" intermediaries – newspapers, markets, department stores, and so on. Alongside digital information intermediaries, regulatory frameworks could also be introduced for these intermediaries, which remain extremely popular in Kazakhstan.

Fifth, it is necessary to amend paragraph 7 of Article 169 of the Tax Code of the Republic of Kazakhstan to allow for the conclusion of anti-competitive agreements not only regarding the exercise of exclusive rights but also

concerning their protection. This is necessary so that marketplaces can implement policies that limit the circle of sellers or restrict access to the goods market without risk to themselves and without fear of being accused of concerted anti-competitive actions.

Sixth, legislation must explicitly establish joint liability for a marketplace if it acts as an information intermediary–host, otherwise it will not be possible to hold it liable under current regulation as provided in civil law. If, however, the marketplace derives profit directly from sales in the form of a commission or otherwise, the provisions governing information intermediaries do not apply, and the marketplace bears joint liability with the seller of the goods, regardless of notification from the rights holder (and irrespective of fault).

Finally, there needs to be a discussion regarding the provision of seller information upon request from the rights holder or their representative. At present, most marketplaces provide only the seller's contact number, which is insufficient even to file a claim directly against the seller, bypassing the marketplace.

Regulation of marketplaces in the area of intellectual property rights compliance is necessary because, without it, the situation may deteriorate not only for rights holders but also for consumers. It is understandable that marketplaces are already subject to regulation on a wide range of issues – taxes, antitrust compliance, adherence to ethical and moral standards, and more. However, practice shows that regulating intellectual property matters is a feasible task and does not require massive time or financial investments.

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THE DRIVERS AND PREREQUISITES OF THE DIGITAL TRANSFORMATION OF LAW, OR LAW 3.0.

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Statement of Scientific Novelty and International Contribution

This study advances an original conceptual framework for understanding the digital transformation of law by shifting the analytical focus from its commonly examined manifestations (such as digital assets, smart contracts, and artificial intelligence) to its underlying causes. Unlike the prevailing doctrinal approach, which predominantly treats digitalization as an externally driven phenomenon обусловленный technological and economic change, the present research substantiates the thesis that a substantial part of the drivers of legal transformation is endogenous to the legal system itself. In particular, it demonstrates that the accumulation of structural deficiencies and internal inconsistencies within private law has created objective preconditions for the integration of digital (technological) mechanisms as auxiliary regulatory tools.

The scientific novelty of the research lies in several key contributions. First, the author develops a systemic explanation of digital transformation through the prism of the evolution of means of production and their corresponding legal forms. By linking the transformation of legal regulation to the transition from an industrial to a post-industrial (information-based) economy, the study identifies a fundamental shift in the object of civil circulation from tangible goods to information and other intangible assets as the primary driver of legal change. Second, the paper introduces a refined analytical distinction between quantitative and qualitative deficiencies of existing legal regulation. Quantitative deficiencies refer to the absence of coherent legal regimes for new types of intangible assets, whereas qualitative deficiencies reflect the inadequacy of traditional legal constructs—originally designed for material objects to govern relations centered on information exchange.

Third, the research proposes an original evolutionary model of private law, demonstrating how the internal structure of subjective rights (possession, use, and disposition) correlates with dominant economic paradigms. It argues that while possession was central in agrarian societies and use in industrial economies, the post-industrial environment elevates the legal significance of disposition, thereby necessitating a reconfiguration of legal institutions. This thesis contributes to a deeper theoretical understanding of the ongoing transformation of property and obligation law.

From an international perspective, the article contributes to the global scholarly discourse by offering a universal explanatory model applicable across jurisdictions, regardless of differences in national legal systems. By synthesizing insights from Russian and foreign legal doctrine, as well as economic theory, the study bridges doctrinal traditions and provides a comparative analytical lens for evaluating digital transformation processes worldwide. Its findings are particularly relevant for jurisdictions currently grappling with the regulation of digital assets, platform economies, and AI-driven transactions, as they highlight the structural limitations of existing legal frameworks and justify the need for systemic, rather than piecemeal, regulatory reform.

Overall, the research not only deepens the theoretical foundations of digital law but also offers a paradigm for rethinking the future development of private law in the context of global technological change.

Abstract. This article is devoted to a comprehensive description of the causes of the digital transformation of the legal regulation of public relations. It is proved that the changes taking place in law are conditioned by a complex of economic, social and, most importantly, legal prerequisites. The use of digital entities is conditioned by the need to resolve and eliminate legal deficiencies and problems that cannot be resolved using purely legal means.

The digital transformation of law leads to a situation in which objectively existing shortcomings in law are eliminated through the use of technical means that act as extremely effective auxiliary mechanisms that do not reduce the impact and importance of law for society.

Keywords: private law; blockchain; digital assets; smart contracts; reasons; digital law.

The defining characteristic of digitalization as a method of influencing social relations lies in its capacity to exert an equally profound impact across the entire spectrum of social, economic, and political phenomena, altering not only their form but their very substance.

While the potential digital transformation of specific legal relations and the utilization of certain digital tools have been widely discussed, the underlying causes of these transformations are often overlooked by the legal community. They have yet to receive comprehensive coverage in either domestic or international legal doctrine. Consequently, current scholarship in civil law specifically, and law in general, lacks a consistent and thorough justification of the causes and factors that have triggered such significant shifts in legal reality.

Even a cursory analysis of the changes occurring within the legal sphere suggests that the digital transformation of law will not be limited to the mere introduction of digital assets and smart contracts. Its potential is so vast that it is now appropriate to speak of an impending transformation of the very essence of the legal system, fundamentally altering the core principles of law in general and private law in particular.

The timeliness of this research is underscored by the fact that without a thorough and comprehensive audit of the circumstances that have led us to the digital transformation of legal reality, it is impossible to fully grasp the true nature of future law and its societal role, to comprehend the character, genesis, and prospects of anticipated changes, or to formulate adequate measures for harmonizing the legal system and preserving the status quo in legal regulation.

Although the trend of digitalization affects all branches of law, it is reasonable to assert that it has exerted the most significant influence on the domain of private law. This is because the property relations encompassed within this sphere have proven not only most amenable to large-scale digital transformations but also most in need of leveraging the advantages offered by digital tools.

By focusing primarily on isolated changes within private law – be it the expansion of the catalogue of civil rights objects, the emergence of new subjects in private legal relations, or the potential recognition of smart contracts as transactions – legal doctrine has concentrated on what can only be characterized as consequences (45), while the underlying causes of the legal system's transformation have remained beyond the scope of scholarly inquiry.

At first glance, the causes of the legal system's digital transformation appear to lie beyond the sphere of law, acting as a consequence of developments occurring within the social, political, or economic domains (9). However, the nature, scale, and, most importantly, the velocity at which these changes are being integrated into the legal sphere suggest that a significant number of the causes of this digital transformation can be identified within the very fabric of law itself, while external factors have served primarily as a kind of "catalyst".

A further argument in support of the thesis that part of the impetus for the digital transformation of law originates from within the legal system itself is the significant increase in both the quantity and complexity of pre-existing legal problems. To some extent, contemporary law has itself become a source of virtually intractable legal issues and conflicts, the negative consequences of which have been experienced by many bona fide participants in civil commerce.

For instance, in an effort to eliminate the possibility of utilizing cashless payment systems to finance prohibited activities, international regulators have raised the standards for counterparty due diligence to such an extent that many of the most financially vulnerable segments of society have, in effect, been entirely excluded from access to banking and financial services – a development that, in turn, does little to alleviate the problem of poverty (54).

The potential of digital assets allows for the formation of an alternative economic system, the foundation of which is composed of objects that do not conform to traditional legal regimes – such as those governing tangible goods, obligations, or intellectual property.

Having encountered the widespread adoption of digital entities – including digital assets, artificial intelligence, and smart contracts – the significance of and reliance upon which have become critical for modern society, the legal order has not only failed to establish a coherent regulatory framework for these phenomena but has also made little progress in understanding their legal nature, essence, and potential.

The categorical framework used in programming is exceptionally well-suited to describe the current situation: the legal order is attempting to regulate social relations that have already evolved to Version 3.0 by utilizing a legal system still operating on Version 2.0.

Social and Economic Prerequisites

In attempting to find a justification for the changes occurring within the legal system, some scholars quite reasonably point to the Fourth Industrial Revolution as the primary driver. This era is characterized by the pervasive integration of new technologies into both the physical and technological spheres, which has spurred shifts in the economy and, consequently, necessitated transformations within the legal system (9).

While this assertion is accurate and well-founded, it does not allow for a holistic understanding of the ongoing processes. It focuses attention on an important, yet ultimately derivative, phenomenon that occurred in the economic sphere, much like what transpired in the legal sphere. In other words, the Fourth Industrial Revolution appears to be just as much a consequence for the economic sector as digital transformation is for the law; it is by no means the cause underlying the modern economic system.

Within both domestic and foreign legal doctrine, a concept that seeks to bridge the economic and legal spheres is quite prevalent. The works of R. Posner (38), S.S. Alexeyev (1), A.G. Karapetov (22), and other scholars allow us not only to identify the correlations between the formation of economic and legal systems but also to understand the mechanics of their mutual influence, the underlying causes and factors of change, and, most importantly, to evaluate and forecast anticipated transformations.

In describing the category of legal relations, S.S. Alexeyev placed particular emphasis on the nexus between law and the material conditions of life, the decisive significance of economic factors, and the description of the economic basis of a legal relation – which imbues a social relation with tangible material content and serves as the genesis of the legal relation itself (1). When examining the architecture of legal relations, one must inevitably focus on the category of the object, as it serves as the source of mutual interest for the participants and gives rise to the causa of the relationship (24).

Characterizing the construction of the object of law, S.S. Alexeyev noted that it always consists of tangible or intangible benefits capable of satisfying the needs of a subject – that is, the interest of the entitled party (1). It appears that the true cause of the digital transformation of law lies precisely in the fundamental shift in the objects of civil commerce and the interests that arise in relation to them.

From the perspective of economic science, the tangible and intangible assets that serve as the object of interest constitute the society's means of production; they are the primary factor influencing the construction of the economic and production system as a whole. Thus, the means of production act as the starting point for the formation of a society's economic system, while the establishment of ownership relations over these primary means of production constitutes the vital task – and indeed the genesis – of the legal system (43).

Depending on the prevailing principle of production – which is, in turn, predicated on the utilization of specific means of production – societies may be categorized as pre-industrial, industrial, or post-industrial (13). Particular attention will be devoted to comparing industrial and post-industrial societies, as these serve as the primary focus of the present study.

In an industrial society, the economic foundation is formed by machine-based production and the resulting

output, which, in the vast majority of cases, consists of tangible goods. Consequently, the core of capital is comprised of material objects, for which the right of ownership is considered both natural and inalienable (50). The production of goods emerges as the most lucrative form of economic activity and the most significant driver of value-added creation. Consequently, it becomes the dominant force in the economic sphere, necessitating the formation of corresponding legal institutions.

Thus, for the industrial world, property rights represent the paramount legal phenomenon, as the means of production are comprised of tangible objects, and civil commerce is primarily based on purchase-and-sale transactions that facilitate the transfer of proprietary interests.

In contrast, a post-industrial society is predicated not on the production of goods and services, but on the production of information – which facilitates social development across all major spheres of life – and the provision of services (28). In post-industrial societies, the core of capital shifts from real estate and manufacturing equipment to human capital, which serves as the foundation for information creation (5).

Consequently, a shift occurs in the principle of production, wherein the foundation of the means of production consists not of tangible material objects, but of information, as well as the tools required for its creation, processing, storage, and transmission. The service sector makes the most significant contribution to the value of both tangible and intangible assets and now constitutes the bedrock of civil commerce (21). In conditions of diversity and excess of supply over demand, the distribution of goods – or trade – acts as the "locomotive" of the economy, the primary objective of which is not to create, but to realize the good. Thus, trade-related services emerge as the most vital (27) and, by extension, the most lucrative form of economic activity, generating the highest returns and forming the core of the post-industrial economy.

Whereas in an industrial society, the primary income was captured by those who produced the goods, in a post-industrial society, this income accrues to those capable of navigating fierce competition and market saturation to bring those goods to market.

The entry of our society into the 21st century has been marked not merely by the emergence of new means of production and modes of economic management, but by a fundamental and profound shift in the economic fabric of society – signaling the transition from an industrial to a post-industrial economic model.

In describing the shifts occurring within the economic sphere of contemporary society, scholars classify this transition as a distinct era of change or a transitional period required for the gradual adaptation of the society's productive forces. Termed "neo-economics" (36), this stage is characterized by several key features.

1. Modern productive forces are characterized by the dominance of information resources and intangible assets.

2. There has been a significant decline in the relative value of material goods compared to intellectual assets.

3. Market participants' response time to any market changes has been drastically reduced.

4. Human intellect and knowledge have become the core of the economic system.

5. Venture capital has emerged as the primary method of financing economic activity.

As L. D. Lvov aptly observed, in today's knowledge-based economy, it is no longer metal and concrete, nor billion-dollar industrial giants, but rather human intellect and the ability to generate new knowledge that constitute the primary productive force of society (31).

According to A. Toffler, the ascendancy of human intellect within the system of productive forces, coupled with substantial investment in innovative sectors, are unmistakable indicators of the transition from an industrial to a post-industrial society (46). This state, referred to as "neo-economics", is not characterized as the full realization of a post-industrial society, but rather as the cessation of the industrial era.

In other words, we can reasonably argue that at the turn of the 21st century, the economic sphere underwent a fundamental transformation in its principles, modes, and, most importantly, means of production. This shift inevitably impacted the legal sphere, signaling what might be described as the "twilight" of the classical law of property. The rationale for this is that within the state of neo-economics – as in a post-industrial society – the foundation of civil commerce is no longer comprised of tangible goods, but of unique intangible assets that form the basis of a society's material wealth (29).

The digital transformation of the legal system has become a necessity precisely because the current regulatory environment fails to establish a stable and robust framework for the civil turnover of intangible assets, which are essential for the transmission of information among members of society. Currently, 70 percent of all participants in modern civil commerce are engaged in the creation and transmission of information (29); yet, existing civil legislation remains inadequate, failing to provide the legal mechanisms necessary to protect and satisfy their legitimate interests. Describing this market landscape, I. B. Polyubina concluded that "the production of information has become an independent sector of the economy," in which the capitalist owner has been superseded by the manager-owner (40).

The digital transformation of law is driven by the fact that the transition of civil commerce toward fundamentally new means of production – namely, the intangible assets that facilitate the transmission of information – has exposed significant deficiencies in legislative regulation, which possess both quantitative and qualitative dimensions.

While the quantitative shortcomings manifest in the fact that intangible assets transmitting information lack a dedicated legal regime and a coherent legal infrastructure (including the scope of rights, the system for the acquisition and termination of rights, the methods of transfer, and the mechanisms for legal protection), the qualitative deficiencies highlight the fundamental inapplicability of previously established mechanisms for codifying ownership relations. This is primarily due to a substantial shift in the focus of market participants, who have moved away from the traditional bundle of user rights toward an emphasis on the rights of disposition.

Quantitative Challenges

Among the vast array of private law institutions, only results of intellectual activity (RIA) appear even partially suitable for facilitating the transfer of intangible assets acting as information carriers; all other legal institutions have proven fundamentally inadequate for this purpose. A highly illustrative example of this issue is the global legal order's persistent inability to properly regulate relations concerning virtual property within online video games – a distinct category of intangible assets.

Having encountered the emergence of fully functioning markets for in-game assets, along with the inherent challenges, contradictions, and disputes that inevitably arise between participants, legal systems have yet to establish a comprehensive legal regime for these phenomena. They have failed to clearly define the content of the subjective rights held by users or to offer effective mechanisms to facilitate the commercial turnover of such assets. In an effort to provide at least some degree of regulation, legal systems have experimented with a variety of approaches, ranging from the direct transposition of established rules governing tangible property (42) and RIA (42) to the application of contractual, obligation-based legal constructs (42).

The application of property law instruments to regulate relations involving intangible assets has long been the subject of intense debate within private law doctrine (33). The concept of incorporeal things as objects of property rights, employed in German legal systems, has not gained significant traction – either in other jurisdictions or even within the legal frameworks of those states that recognize such a category.

In the German legal order, the emergence of the incorporeal thing construct was driven by a combination of

theoretical and practical considerations. However, its actual application remains confined to a limited set of scenarios, primarily arising from the use of the right to a right construct 8, 15, 48, 51). The core issue with this approach lies in the application of property law mechanisms to intangible objects, despite the fact that the entire legal toolkit was developed with the characteristics of possession and transfer of tangible, material objects in mind. Meanwhile, the doctrine of German property law has historically been grounded in the prevailing concept of factual control over a thing (37).

While the use of sales contract constructs for the transfer of incorporeal things has not caused significant difficulties, issues related to securing possession, determining the risk of destruction or loss, and the recovery of intangible assets continue to pose challenges in legal practice.

Similarly, the RIA regime, despite its superficial proximity to intangible assets that facilitate information transmission, proves equally inadequate and fails to satisfy the fundamental requirements of the modern market.

The two categories are related only in form – as both are intangible phenomena that require objective fixation to be perceived by a subject (26) – yet their underlying essence differs fundamentally. The emergence of an RIA as an object of civil rights is, in the vast majority of cases, inextricably linked to the author's creative activity and the contribution made to that result (whether it be an object of copyright, related rights, or patent rights) (26).

The expression of the author's unique personality in RIA is an essential and constitutive feature, without which the RIA cannot qualify for legal protection (25). The significance of the author's personality and the protection of their contribution are so profound that this circumstance permeates the entire regulatory system governing RIAs, much in the same way the concept of factual control predetermines the framework of property law. This is most notably reflected in the temporal limitations placed on the legal recognition and protection of RIAs, as well as in the conditions governing their inception and termination.

This framework is entirely unsuitable for regulating relations involving intangible assets that facilitate the transmission of information. In the vast majority of cases, the information we create and exchange lacks the attributes of individual creative activity that would otherwise provide a meaningful contribution to the advancement of science, art, or technology in society.

To some extent, utilizing the know-how regime is also a viable option, as its structure is well-suited for the transfer of any information, including that which does not constitute the result of creative intellectual activity. However, the know-how regime inherently precludes the possibility of fully integrating such information into civil commerce to the extent required by contemporary market conditions (49). As know-how is disseminated within the commercial sphere, its content inevitably becomes known to an increasing number of individuals, which leads, with certainty, to the loss of its legal status as a trade secret.

Qualitative Challenges

At present, the core body of legal norms governing a subject's dominion over assets has been shaped by the necessity to prioritize relations of use and, to a subsidiary extent, possession. These relations were historically aligned with the nature of the means of production and the prevailing economic principles – essentially codifying the appropriation of assets in a manner consistent with the interests of the majority of participants in an industrial society.

The key insight lies in recognizing that, upon examining the evolution of legal instruments designed to secure subjects' dominion over assets, one observes that while formal characteristics have remained largely unchanged, the substantive content of property rights has undergone continuous transformation.

It appears that the evolution of private law, which governs the appropriation of assets, has maintained a close correlation with the means and modes of production throughout history. This evolution has consistently reinforced

the economic model embraced by the majority of participants in civil commerce. This, in turn, facilitated the prioritized regulation and codification of specific modes of conduct for the asset holder, granting them a certain legal privilege that, at specific historical junctures, defined the overarching character of the legal institution as a whole.

It is noteworthy that the legislative prioritization of particular legal powers correlates directly with fundamental societal archetypes – agrarian, industrial, and post-industrial – and their respective dominant means of production. It stands to reason that, despite the formal equality of the various entitlements constituting a subject's dominion over an asset, the power of possession held the greatest significance and priority within agrarian or pre-industrial societies. Consequently, possession received the most comprehensive legal articulation; however, in industrial societies, this primacy shifted as possession ceded its dominant position to the relations of use.

In agrarian societies – encompassing both the Roman Empire and the states of medieval Europe – relations of possession formed the bedrock of both the economic and legal spheres of life. In these systems, tangible assets (both movable and immovable) constituted the vast majority of the means of production, thereby dictating the methods and principles of production, where the core productive forces were rooted in the possession of assets essential for agricultural activity.

In Roman law, the category of res mancipi was comprised exclusively of assets vital to agriculture (livestock, slaves, and land) (34). Similarly, in Germanic law, the concept of factual control did not merely influence the structure of property relations; it preordained the framework of the entire legislative system governing the regulation of tangible assets.

It was within Roman law that the doctrine of possession – whether analyzed as an entitlement within the content of property rights or as the appropriation of another's property – received an exceptionally profound development. Roman property relations were essentially permeated by the necessity of factual control over the asset. As a general rule, the transfer of an asset was not considered complete until the traditio (the physical or symbolic delivery of the asset to the purchaser) had occurred (47). In the event of a dispute over an asset, the object itself had to be presented during legal proceedings (47), and the process of mancipatio was invariably accompanied by the actual possession or demonstration of the asset (34).

The priority of possession was exemplified by the principle "nemo plus iuris ad alium transferre potest quam ipse habet", as no physical separation of an asset – if conducted against the will of the possessor – could sever the legal bond between the asset and that individual. Consequently, ensuring a subject's factual dominion over assets was viewed by Roman law as a vital societal imperative.

Viewed through the lens of maintaining constant factual authority over an object, the principle of superficies solo cedit acquires a different significance. It enabled the landowner to exert authority over any asset located within the bounds of their legal and factual control, even in instances where they had previously authorized the placement of that asset on their land (39).

The emergence of the institution of possessio (possession) and the provision of robust legal protection to factual relations of control – even those lacking a formal legal title – clearly underscore the profound significance of factual possession in Roman society. This is further evidenced by such modes of acquiring property as occupatio (occupation), which Roman jurists regarded as an original means of acquisition rooted in natural law (34), precisely because it elevated factual possession to a state capable of generating such significant legal consequences. It was within Roman law that the concept of property rights as a mechanism ensuring the absolute, and even despotic, dominion of a subject over an object – unfettered by the interference or restrictions of third parties – gained widespread prominence (12).

Despite the pervasive legal recognition of possession, the most compelling analysis in primary legal texts

concerns the dynamics of civil commerce within agrarian societies. A defining characteristic shared by virtually all agrarian societies was the absence of a developed market for their primary means of production: land. In both ancient Rome and medieval Europe, land plots remained largely excluded from civil turnover (11). This state of affairs was not driven by explicit legal prohibitions, but rather by the profound reluctance of market participants to alienate such vital and valuable property.

In the context of an agrarian society, agriculture served as the primary economic activity. Consequently, land plots formed the bedrock of the means of production, necessitating an economic model that prioritized the sustained, long-term factual control of landed property.

A fundamental characteristic of agricultural activity is that it is time-consuming and governed by harvest cycles. Consequently, land in agrarian societies stands as the most valuable and critical means of production and, by extension, the primary object of civil rights.

Furthermore, it is essential to note that land use in medieval Europe was characterized by the emergence of distinct land monopolies – such as Crown lands or church estates – which were largely excluded from commercial turnover and remained concentrated in the hands of the same owners for generations.

Meanwhile, land-use relations involving third parties were structured through the concept of split ownership. Under this arrangement, third parties were not granted possessory rights over the real estate, but were merely entitled to conduct specific activities on the land, thereby enabling its use without the transfer of possession.

The preoccupation of both Roman law and medieval European law with the concept of factual control over assets was rooted in the rational interests of market participants, whose primary goal was to extract utility from the assets.

The physical nature of the vast majority of goods forming the civil turnover in agrarian societies was such that, due to their technical simplicity, extracting utility required constant, direct physical possession. Consequently, the physical loss of an asset terminated a subject's economic, and in some instances, even legal authority over that asset.

As society transitioned from an agrarian to an industrial model, the shifts in production relations triggered changes in the relations of appropriation: possession ceded its priority to the relations of use.

By pivoting from agriculture to industrial production, economic actors did more than merely change their field of activity; they fundamentally altered their system of values and needs, where the primary objective shifted from the longevity of possession to the most rapid and cost-efficient extraction of an asset's utility (depreciation).

With the transition from manual labor to machine-based production – the advent of the assembly line – the volume of manufactured goods increased exponentially. In a market defined by unsatisfied mass consumer demand, the competitive advantage lay with the producer capable of maximizing output per unit of time.

Under these conditions, the classical right of ownership for an industrial manufacturer evolved from an asset into a burden, entailing the immobilization of significant capital, the assumption of substantial risks associated with the maintenance and destruction of property, rapid technological obsolescence of equipment, and the inherent difficulties of its subsequent liquidation. The emergence of the financial lease (leasing) contract as a legal construct serves as definitive evidence of profound shifts in the economic – and, subsequently, legal – spheres; indeed, the formation of such relationships within the context of an agrarian society would have been simply impossible.

By way of illustration, the U.S. market for leased industrial equipment accounted for more than 30% of total acquisitions in 2017. Given that experts have observed explosive growth in the leasing market over the past five years, it is reasonable to conclude that the volume of leased equipment saw a significant increase by 2022 (30).

However, the user economy has extended its influence beyond professional market players to the general consumer, giving rise to a fundamentally new economic phenomenon: the sharing economy. In this paradigm, assets are no longer acquired for ownership but are instead accessed via long-term or short-term rental agreements (3). Residents of major metropolises worldwide are increasingly eschewing private vehicle ownership in favor of car-sharing services. Tech-savvy consumers frequently forgo purchasing smartphones, opting instead to wait for the next iteration, often announced a year in advance. Similarly, young professionals are reluctant to purchase real estate, which would constrain their mobility, preferring instead the flexibility of renting. Consequently, the emergence of the user economy necessitated a reorientation of jurisprudence – from a framework rooted in possession to one centered on use – a shift that has already taken place.

As previously noted, the emergence of the financial lease (leasing) contract serves as a clear testament to the law's responsiveness to evolving economic requirements. Indeed, the transition to an industrial society fostered the formation of an extensive and diverse system of contracts, capable of satisfying the multifaceted needs of market participants without the requisite acquisition of formal property rights.

Today, a significant portion of any codified civil act in many jurisdictions is dedicated to contractual obligations – a development that was not always the case. In an agrarian society, there existed neither the legal nor the economic prerequisites for such a sophisticated system of contracts; consequently, legislators limited themselves to codifying only the most essential, straightforward, and frequently encountered constructs (such as purchase-and-sale, lease, loan agreements, etc.).

The formation of this comprehensive contractual system serves as evidence of the increasing complexity of civil commerce, driven by the economic necessity of enabling parties to utilize assets owned by others. For instance, the modern market has normalized a situation where tenants of spaces within major shopping malls do not become the owners (6) of those premises. Instead, obtaining the right to use the real estate – or a portion thereof – is sufficient for them, as this usage is precisely what allows them to fulfill their fundamental interests.

It was during the era of industrial society that the institution of limited property rights attained its full potential. As I.A. Pokrovsky observed, a reliance solely on the right of ownership is characteristic of only the most primitive forms of commerce, in which individual economic entities are inevitably isolated from one another (39). The introduction of an extensive framework of limited property rights – encompassing superficies, emphyteusis, usufruct, neighbor rights, and servitudes – has defined the modern land-use system. Under this system, the law provides a secure mechanism for the use of another's real estate

E.A. Sukhanov aptly characterizes the system of limited property rights as a legally robust and economically necessary right to use another's property (44). Crucially, the entire institution of limited property rights has been shaped by contemporary economic conditions, under which the use of another's property is not only recognized as a necessity but is also legally sanctioned.

Significant transformations have also reshaped the substance of property rights, marking a shift from a concept of despotic dominion to a framework where the scope and exercise of these rights are inherently limited by the rights and legitimate interests of third parties – most notably those pertaining to the use of neighboring property. In many European jurisdictions, the scope of neighbor rights is so extensive that certain provisions impose upon the title holder a duty to tolerate various forms of interference, provided such interference is strictly necessary for the reasonable use of a neighboring land plot (16).

A striking example of the correlation between the objective characteristics of the means of production and the special legal significance accorded to specific entitlements within subjective rights is the institution of intellectual property.

First, it is essential to observe that the emergence and existence of this institution are direct consequences of

society's transition from an agrarian to an industrial model. In a society where land and agricultural equipment constitute the most vital and economically sought-after means of production, and where civil turnover is primarily focused on foodstuffs, there is no impetus to accord comprehensive legal protection to the results of human intellectual activity.

Although human beings have generated intellectual products in the spheres of science, art, and technology throughout history, legal recognition of these objects emerged only when knowledge itself evolved into a self-contained and vital means of production for both tangible and intangible assets.

Furthermore, the emergence of RIAs did not merely necessitate the introduction of new legal objects into the legislative framework; it compelled legislators to re-evaluate the regulatory approach toward the appropriation of assets, shifting the focus from relations of possession to those of use.

The very essence of the modern intellectual property regime is predicated on the impossibility of prohibiting third parties from possessing RIAs, a consequence of the intangible nature of these assets (25). Initially, when formulating methods for the legal protection of RIAs, legislators attempted to utilize traditional property-law mechanisms, primarily the institution of ownership (25). This attempt ultimately proved unsuccessful, as it failed to account for the objective characteristics of the object – namely, its intangibility. Consequently, the direct transposition of mechanisms designed for the possession and transfer of physical, tangible objects proved entirely unsuitable for the protection of assets that can be possessed through knowledge.

It appears that the primary flaw in this approach lay not so much in the intangibility of RIAs as in the construction of the entire property law system under the influence of the possessory concept. Within this framework, all relations of appropriation were predicated on the necessity of factual possession – a prerequisite deemed the sole source of an asset's utility, without which neither use nor disposition could be exercised. Possession thus served as the vanguard of property rights (20).

However, the intangible nature of RIAs fundamentally obviated the need for any formal recognition of possession or physical control over the asset. Consequently, having learned from its initial failure, the legislator developed a highly effective regulatory system centered on the relations of use. Thus, market participants are prohibited not from possessing an RIA, but from utilizing it without the explicit authorization of the rights holder. Despite this initial failure, legal systems demonstrated the capacity to develop a regulatory framework that not only accounted for the objective characteristics of the phenomenon but also fully addressed the interests of market participants – interests driven by the capacity to extract utility from an asset rather than the mere possession of it.

Ultimately, use emerged as the most critical entitlement in industrial society, as its exercise was the primary driver of profit and the foundational pillar of economic relations. However, while these principles are essential to an industrial society, they become less paramount in a post-industrial setting, where the market itself evolves into the primary means of production, thereby elevating the significance of the power of disposition. The most illustrative example of this shift is the stock market, where participants neither create assets nor utilize them; rather, they facilitate their circulation and, in doing so, generate profits that often far exceed the income earned by the original creators of the assets traded on the exchange.

Another pertinent example is the success of Apple Inc., which has attained the highest market capitalization in the world. The foundation of this success lies neither in intellectual property, nor in a sophisticated logistics system, nor in customer service alone, but in the concept of forming its own sales market. APPLE did not merely develop products; it carved out a proprietary segment from the broader market, thereby securing guaranteed demand for its offerings (52). Thus, APPLE's high financial performance is driven by the fact that investors possess the certainty that its products will not merely be in demand, but are virtually guaranteed to be sold.

Describing the current state and developmental trends of the market for goods and services, Sh. Zuboff notes

that APPLE's strategy has become more than a mere model for imitation by other economic actors; it has become a mandatory paradigm that has fundamentally altered the structure of the modern economy and the behavior of market participants across virtually all industries (52).

In the transition to a post-industrial society, the means of production shift from equipment to knowledge. Similarly, the mode of production evolves into one founded on the continuous exchange of knowledge among market participants, rather than the manufacturing of individual products. Consequently, as information and knowledge become the most critical and valuable objects of civil commerce, they dictate the fundamental requirements of the market and shape its overall character.

The intangible nature of information and knowledge allows for their dissemination with a speed, ease, and cost-efficiency unprecedented for other objects of civil commerce. Today, acquiring software often requires nothing more than visiting a rights holder's website, making the asset instantly available for comprehensive use. Such velocity is simply inconceivable for other types of civil rights, the realization of which can sometimes span months.

Indeed, in a post-industrial economy, the significance of time increases manifold, becoming a paramount factor of production; the outcome of competitive struggle is now determined by the volume of information processed and transmitted per unit of time (40).

In the era of neo-economics and post-industrialism, civil commerce becomes a vital pillar of the economy, leading to significantly heightened requirements for its execution. According to experts, the post-industrial economy is becoming exceptionally fluid, mobile, and – in a certain sense – even capricious, even as it maintains a high degree of managerial control, while civil commerce is increasingly characterized by the hallmarks of weightlessness, volatility, and flexibility (36).

By transposing the requirements imposed upon civil commerce in a post-industrial society from the economic sphere into the legal system, we can reasonably assert that the civil turnover of the future must be constructed upon the pillars of speed, simplicity, and cost-efficiency. These factors, in turn, serve as the foundational tenets – or even core principles – underlying the legal framework for the transfer of assets as a whole.

In other words, civil law mechanisms must facilitate a qualitative transformation of civil commerce, ensuring a manifold increase in the speed of transaction formation and execution, a significant simplification of the procedures and conditions for entering into agreements, and a reduction in transaction costs.

Velocity

The rapid advancement of digital technologies has dramatically expanded the array of intangible assets. This evolution has catalyzed the formation of a new marketplace where the execution of a transaction by the seller is, for all intents and purposes, instantaneous with its formation. When acquiring a software product, for example, the consumer receives the asset the moment the seller approves the transaction. For the purchaser, the execution and performance of the contract converge – notwithstanding the negligible latency required for signal transmission. The position of the seller, however, is completely different.

The issue of protracted timelines in settlement processes, while seemingly purely technical, is rooted in the very structure of the cashless settlement system. This system does not rely on the direct transfer of assets, but rather on the coordinated actions of a multitude of third parties.

First, settlement relations – or the mechanisms governing the transfer of payment power – are governed by public law in virtually every jurisdiction (17). Their core essence is defined by a complex web of public law norms (budgetary, financial, tax, and banking regulations). Consequently, private individuals are precluded from utilizing alternative settlement methods, forced instead to rely on bank accounts and cashless transfers. The permissible conduct of participants in these settlement relations is exhaustively defined by law; any deviation into

unauthorized actions often triggers punitive measures, mandatory audits, or increased scrutiny from regulatory bodies.

Second, banks have evolved from mere intermediaries performing technical settlement functions into de facto regulatory agents. They are now tasked with enforcing legislative mandates aimed at anti-money laundering and counter-terrorism financing (23). This acts as a significant impediment to reducing transaction times.

By relying on non-cash settlement systems and acquiring services, the moments of digital product delivery and receipt of payment became decoupled. This created a significant temporal gap for the seller. In international settlements, this time lag could span several weeks – or even months, should the acquiring bank raise compliance concerns. Consequently, sellers were exposed to secondary financial losses (currency fluctuations), and risks (bank failures or the revocation of banking licenses).

However, the problem extended beyond mere delays. Bad-faith purchasers began to exploit these systems by initiating fraudulent "chargeback" claims. Guided by internal protocols, banks would frequently suspend settlement operations and unilaterally refund the purchaser, often disregarding the evidence provided by good-faith sellers (4).

The emergence of cryptocurrencies served as a response to these deficiencies. Through digital assets, settlement operations occurred almost instantaneously – aligning with the delivery speed of intangible goods. Most critically, once executed, these transactions could not be reversed or canceled. By synchronizing the timing of contract execution and performance for both parties, digital assets successfully addressed the exigencies of modern civil commerce, thereby earning widespread recognition and support from market participants.

Ultimately, any temporal disconnect between the conclusion of an agreement and its execution inherently generates a multitude of risks and complexities for the buyer, the seller, or both. A classic example is the bankruptcy of a seller who has executed a sale but has yet to deliver the property. In such a scenario, rather than receiving the goods, the purchaser may find themselves relegated to the rank of claimants within the registry of creditors' demands.

A substantial array of issues arises within the realm of real estate transactions. During the interim period required for the statutory registration of title transfer, the buyer remains the most vulnerable participant in the transaction – a status that persists until the registry is formally updated. This vulnerability is exacerbated during periods of market instability, characterized by national currency volatility or shifts in market supply. Under these conditions, bad-faith actors are often incentivized to exert every effort to terminate existing contracts, as the potential liabilities for breach are easily offset by the gains from reselling the property under new market conditions.

The most pronounced challenges associated with significant temporal gaps in the disposal of assets are observed in the turnover of RIAs. For instance, current regulations stipulate that the registration of a transfer of exclusive patent rights can take up to two months. While such a timeframe might have sufficed for market participants at the close of the 20th century, it is now entirely incongruous with economic demands.

In today's environment, the practical lifecycle of a patented technical solution has diminished significantly; many intellectual products lose their relevance and industrial utility long before their statutory period of legal protection expires (56). According to an analytical report by Baker McKenzie, the accelerating pace of technological development and the intensity of manufacturer competition have significantly shortened the lifespan of utilized technologies. Consequently, many technical solutions lose their commercial relevance within a period of just one to two calendar years (56).

Given that the registration of an invention as an object of civil rights currently takes approximately two years, with the subsequent transfer to a third party requiring an additional two months, the registration system and its legally

prescribed timelines have effectively lost their practical utility for market participants.

In all the cases cited above, the analysis focused exclusively on the time required for the formal transfer of rights. However, the temporal costs associated with asset acquisition are not confined to this stage alone. The transfer process is typically preceded by a preparatory phase, which encompasses not only the drafting of documentation but also the conduct of legal due diligence. This is particularly critical for transactions involving assets for which title is not subject to formal registration or other public recordation.

Complexity

The diversity of civil commerce objects and the resulting proliferation of legal regimes leave the average participant in a state of complete legal helplessness. As the regulation of various categories of assets becomes increasingly intricate, even a general legal literacy is often insufficient to ensure the proper formalization and execution of a contract.

From the perspective of civil commerce and its participants, the legal landscape has become saturated with an excessive number of specialized regimes. Each category of assets is defined by unique legal characteristics of possession and use, distinct procedures and conditions for transfer, specific remedies for protection and recovery, and idiosyncratic requirements for record-keeping and oversight.

For instance, even the relatively homogeneous category of real estate presents a multifaceted "palette" of legal regimes. Residential and non-residential premises, land plots, buildings, structures, engineering facilities, aircraft, seagoing vessels, and commercial enterprises are no longer mere designations for physical objects; they have evolved into distinct legal categories, each possessing its own myriad of legal nuances and distinctions. These legal distinctions inevitably dictate the behavioral models of actors, creating unique combinations of permitted, prohibited, and mandatory conduct. Consequently, the resulting transactions possess fundamentally different legal substances, unique sets of essential terms, and distinct procedures for their formation and execution. Furthermore, the requirements imposed upon the parties involved serve only to impede the simplification of civil commerce.

As a result, modern jurisprudence has taken on a highly specialized character. A legal professional proficient in formalizing real estate transactions may find themselves out of their depth when dealing with motor vehicle transfers or uncertificated securities. Such a practitioner often lacks insight into critical nuances that are absent from the statutes but established through judicial practice, remains unaware of secondary legislation governing interactions with registrars, and cannot fully account for the customs and unwritten rules that have formed within specific markets. At first glance, this issue might seem overstated or contrived; however, its reality becomes starkly evident when we assess the practical environment in which we operate today.

"Ignorance of the law is no excuse" is a legal maxim that was perfectly just in a Roman society governed by the Laws of the Twelve Tables. Yet, one must wonder if it remains equally just in the 21st century, where legislation has become so vast and convoluted.

The challenge of legal comprehension is compounded by the fact that, even within the first two decades of this century, the volume and variety of transactions entered into by the average participant have increased manifold (57). Shifted economic conditions have compelled a deep integration of market participants into civil commerce; unless one wishes to live as a Robinson Crusoe, one must accept this increased level of market involvement as a prerequisite of modern life.

However, the increasing complexity of civil commerce is not limited to the rising volume of transactions; it is fundamentally driven by their growing diversity. While the late 20th century was dominated by standard sales and service contracts, these have increasingly ceded ground to agreements governing the use of computer software,

the processing of personal data, and complex end-user license agreements. The proliferation of contracts essential for maintaining a standard of living in the modern world has become so vast that it is now reasonable to argue, as A. Aaron and J. Schultz do, that every individual requires a personal attorney to navigate them (2).

A quintessential example of this phenomenon is the end-user license agreement. The volume of these documents is such that merely reading them – let alone comprehending the intricate legal terminology employed therein – would consume a significant portion of an individual's life. For instance, the cumulative volume of the user agreements for APPLE's core products alone exceeds 2,000 pages, all drafted in accordance with the specific statutory requirements of California law (2).

This problem is further compounded by the fact that end-user license agreements are not merely the whims of modern market participants, but a practical necessity. Without accepting these terms, access to the fundamental benefits of modern civilization is effectively terminated – as evidenced by the author's own inability to avoid consenting to the user agreement for the word processing software of a well-known corporation.

Beyond this necessity lies the daunting challenge of diversity. Unlike standard sales and purchase contracts, which remain relatively typified despite their variety, the legal substance of user agreements across different services and jurisdictions is so diverse, expansive, and – most crucially – volatile, that acquiring comprehensive knowledge of them is objectively impossible. Consequently, the expectation that an average market participant must be fully cognizant of every contractual term and applicable law becomes morally unjustified and practically unenforceable.

The complexity of modern law, manifested through the proliferation of divergent legal regimes, affects not only lay market participants but also professional legal counsel, particularly when asset transactions acquire an international dimension.

A telling example is the trade in computer software, where ensuring the correct formalization of an exclusive rights transfer is far from a trivial task, even for an experienced practitioner. This complexity arises because a computer program and its constituent functional modules may be subject to disparate, overlapping legal regimes: as copyright-protected works that do not require registration; as copyrighted objects that do require state registration for the transfer of exclusive rights; or even as patentable inventions and trade secrets (know-how).

The complexity of this task multiplies exponentially when we consider that a computer program might be the subject of an alienation agreement complicated by an international element and a complex party structure on either the seller's or the buyer's side. Consequently, the selection of the appropriate legal regime for the alienated object of civil rights within a single jurisdiction is further complicated by the international aspect. This often manifests as a divergence in the legal regimes governing civil law objects or in their substantive legal content.

For example, the same object of civil rights can be subject to different legal regimes while simultaneously situated in various countries globally – whether it is a messenger application or an oil pipeline traversing the territories of multiple states. The legal regime for complex cross-border assets, such as bridges, gas pipelines, dams, and oil pipelines, which are located across several national territories, has yet to be definitively established in domestic, foreign, or international law (18).

Thus, participants in modern civil commerce undertake obligations, the fulfillment of which becomes impracticable for objective and entirely legitimate reasons. Meanwhile, the diversity of legal regimes governing various objects of civil commerce, and the individualized rules developed for each, completely divests law of the state where it is intuitively understandable for the majority of civil commerce participants, not solely for legal professionals.

Prohibitive Costs

When describing the negative economic consequences of an inefficient, protracted, and overly complex legal system, it is instructive to turn to the insights of R.R. Torrens, who precisely detailed the losses incurred by participants in real estate commerce in the absence of a title registration system (7).

Among the most significant of these are the costs associated with market price fluctuations during the transaction preparation phase and the expense of legal counsel. Given a convoluted and often obscure regulatory framework, participants in any transaction of even modest economic or social significance are compelled to seek professional assistance. This necessity results in a substantial increase in both financial and time expenditures (7). On the other hand, retaining a lawyer does not always resolve the challenges facing a business entity; while many practitioners are adept at identifying legal prohibitions, not all are prepared to assist in navigating toward a legitimate solution. Consequently, even after incurring significant legal fees, the desired commercial outcome may remain elusive.

One must also consider those economic losses that the law does not formally classify as damages, as their occurrence does not technically coincide with a legally cognizable injury. In this context, we refer to the losses sustained by good-faith participants who, while engaging in economic operations, fail to formalize them in the proper legal manner. Such instances are particularly prevalent in Russian judicial practice, as a significant number of market participants continue to rely solely on a counterparty's word of honor or informal assurances. While the law may not formally recognize these participants as injured parties, they are victims in fact, as the economic losses they sustain impede the broader development of civil commerce.

Robustness

Beyond satisfying the three aforementioned requirements – which are essentially economic in nature – there exists a further demand rooted exclusively in the substance of the legal sphere. This is the requirement for genuine legal robustness and true juridical security within civil commerce: the maintenance of a permanent, tangible state of protection for participants against the entire spectrum of legal contingencies.

The pursuit of high velocity in post-industrial civil commerce must never come at the expense of its legal integrity or security. On the contrary, under such conditions, a significant increase in the speed of commerce must be accompanied by a commensurate strengthening of its legal robustness. Consequently, the emerging commerce of information and knowledge must possess the dual attributes of economic flexibility and legal robustness on a fundamentally new qualitative level.

The demand for high levels of security and protection within civil commerce stems from the sophisticated degree of organization inherent in such transactions. The demand for high levels of security and protection within civil commerce stems from the sophisticated degree of organization inherent in such transactions. As velocity increases, civil commerce inevitably develops a high degree of mutual interdependence and structural organization among its actors. In such an environment, a failure in a single element of the system can trigger a "cascade effect" or a chain reaction. Consequently, a single problematic legal relationship can negatively impact not only its immediate parties but also a vast number of third parties bound to them by indissoluble economic ties. Much like a minor traffic incident on a high-speed expressway can paralyze an entire transport network rather than just a single lane,

the 2008 economic crisis was precipitated, in part, by the intentional manipulation of asset valuations by a leading player in the mortgage market. This was made possible because legal systems lacked effective and robust mechanisms to ensure the juridical security of credit-based financial products. According to the Declaration of the G20 Summit on Financial Markets and the World Economy (November 15, 2008), the opacity of financial instruments and the consequent excessive leverage used for speculation were primary drivers of systemic fragility.

This instability was further compounded by inadequate state oversight, which relied too heavily on the veracity of data voluntarily reported by economic entities to regulatory bodies (55).

As a consequence, the failure of regulatory authorities to timely identify the legal infirmities within the operations of a single organization did not merely lead to the bankruptcy of a specific market participant; it precipitated a massive economic crisis that engulfed virtually every sector of global commercial activity.

As of 2022, the legal landscape has yet to achieve a state of consistent compliance with prevailing legislation – neither in the Russian Federation nor in any other jurisdiction worldwide. This persistence of non-compliance is driven by the fact that, despite stringent prohibitions and the threat of sanctions, a significant number of market participants remain willing to disregard statutory requirements and infringe upon the rights and legitimate interests of good-faith actors.

This situation is particularly acute within the Russian legal order, where litigation regarding the invalidation of transactions has long been an ubiquitous, almost mandatory, feature of the legal landscape. While the situation improved somewhat following the civil law reforms of 2013, the underlying issue has not been fully eradicated, particularly within the sphere of insolvency. The challenging of transactions concluded in the period preceding insolvency – and the subsequent declaration of their invalidity – continues to occupy a significant proportion of the arbitration courts' caseload.

Consequently, the conduct of due diligence for any transaction of consequence to a purchaser has become an entirely standard and routine practice, wherein the buyer's legal counsel meticulously audits the seller's title and the chain of ownership, sometimes tracing back to the moment the asset was originally created. This state of affairs has been criticized in legal scholarship since the Middle Ages, often referred to as the "devil's circle", as it makes it effectively impossible to provide a buyer with genuine legal security.

Even today, this practice remains quite common in the United States, where real estate attorneys conduct exhaustive due diligence on the "chain of title," often tracing the history of the asset's turnover back to the very inception of the property right.

A legal system in which market participants cannot easily determine whether they can safely acquire an asset without the constant threat of title invalidation or the recovery of the property from their possession cannot be characterized as healthy. The core objective of R.R. Torrens was to ensure that buyers had direct access to comprehensive, reliable, and – most importantly – intelligible information regarding all legal factors that might impede a transaction or transfer, or to provide certainty of their absence (7).

Not only has this idea failed to materialize, but it has also, to a certain extent, fallen into obscurity. According to the Supreme Court of the Russian Federation, the mere fact of state registration does not guarantee the absence of legal defects that could render a transaction void. Furthermore, buyers cannot establish their bona fide (good faith) status simply by relying on the fact that they purchased the property from an individual whose rights were recorded in the state register (10). An even more acute problem lies in establishing a robust turnover for intellectual property. The register for patent holders lacks the quality of public faith, meaning market participants cannot rely on its entries as definitive proof of their legal standing (35).

The issue of title integrity in the turnover of civil rights has arguably reached its zenith in the 21st century. While legal systems provide a myriad of ways to cloud a title – ranging from undisclosed security interests to the unauthorized transfer of leased assets – contemporary legal orders offer virtually no curative mechanisms for restoring title to a "clean" state. Consequently, a seller's position deteriorates not necessarily because an encumbrance is substantial or severe, but simply because it exists. The average purchaser, deterred by the mere suspicion of a potential lien, will often abandon a transaction, as they lack the specialized resources required to

conduct a definitive title search and verify the status of the alleged burden.

A poignant example of this problem emerged recently in the Russian Federation. Good-faith vehicle owners who happened to lose their original vehicle titles and were issued duplicates faced significant hurdles when attempting to sell their property. For a long period, Russian judicial practice maintained that the use of a duplicate registration document might indicate that the vehicle might be encumbered by a pledge (53). As a result, bona fide market participants suffered substantial economic losses, as the market reacted to this perceived legal risk with a sharp devaluation of their assets.

However, disputes surrounding the invalidation of transactions are not the sole challenge facing modern civil commerce. An excessive volume of such litigation is arguably symptomatic of emerging legal systems, whereas developed jurisdictions primarily contend with issues of non-performance or improper performance of contractual obligations.

Although the negative impact of non-performance is generally confined to the immediate parties to the contract – unlike invalid transactions, which may adversely affect third parties – breach of contract significantly undermines the robustness of civil commerce. This is particularly true when non-performance stems from purely subjective motives associated with bad-faith conduct.

The core challenge in securing legal robustness today lies in the fact that neither the legal system as a whole nor its individual participants are capable of guaranteeing it. Even when a market participant conducts the most rigorous legal due diligence, there is a high probability of uncovering minor encumbrances, residual risks, or blind spots in the asset's history. Such findings will inevitably be documented by the attorney as a potential risk. Consequently, acquiring an asset despite an identified risk strips the purchaser of their status as a bona fide buyer, as they are now deemed to have had actual or constructive knowledge of even the most contrived or speculative obstacle.

The primary objective of this article was to identify the drivers of the digital transformation of law while simultaneously describing its potential implications for the legal sphere. In summary, this transformation has been precipitated by a fundamental shift in the economic landscape – specifically in the means, methods, and principles of production – coupled with the failure of the existing legal framework to adequately adapt to these changes. Modern legal systems continue to regulate relations rooted in dominion over material means of production effectively, yet they remain tethered to an industrial paradigm. In a sense, we are witnessing an internal crisis of classical jurisprudence, resulting from the diminishing efficacy of law as an instrument for maintaining social order.

The high efficacy of law as a retrospective tool – a mechanism designed to resolve conflicts that have already occurred – has outlived its utility and no longer satisfies the systemic requirements of a society characterized by unprecedented levels of organization and interdependence. Consequently, in the 21st century, law in general – and civil law in particular – has evolved from an effective instrument for problem-solving into, in some respects, its own antithesis.

In fairness, it must be noted that the inherent lag between legal systems and shifting socio-economic realities is a normal and perhaps necessary phenomenon, allowing law the time to adapt, develop new toolsets, and assume an appropriate form. The core problem lies in the dimension of time: while both physical and human nature abhor a vacuum, the processes of legal evolution and reform can, at times, span centuries. In the face of unprecedented rates of change and the perceived inadequacy of traditional legal frameworks, society may well elect to adopt alternative regulatory mechanisms – particularly if they prove to be genuinely effective tools for resolving human conflict and disputes. Some scholars have already identified program code as a candidate for this role: a mechanism designed to ensure the unwavering adherence to social norms, a claim increasingly supported by the explosive growth and rising economic significance of digital entities.

It is worth noting that the digital transformation presents a formidable challenge to law as a whole, and to private law in particular, which must serve as the locomotive driving this transformation. We must ensure the satisfaction of the interests of modern civil commerce participants or, as R. Jhering noted, adapt the law to the conditions of societal existence (19). The foremost requirement of this adaptation is the transformation of private law into a system of disposition characterized by speed, simplicity, cost-efficiency, and true legal robustness.

In other words, we must transition from a jurisprudence of use to a jurisprudence of disposition, as civil commerce is rapidly becoming the foundational bedrock of the modern economy.

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GAPS IN LEGISLATION / ЗАҢНАМАДАҒЫ ОЛҚЫЛЫҚТАР / ПРОБЕЛЫ ЗАКОНОДАТЕЛЬСТВА

УДК / UDC 347.786; 7.067

GENERATIVE INTELLIGENCE: AUTHOR, CO-AUTHOR, TOOL, OR SIMPLY A TREND?

We spoke with **Adil Solo** and **Violetta Berezovskaya**, the founders of GPT_THEATRE, to discuss artificial intelligence (AI), AI performances, copyright for generative content in Kazakhstan, creative plans, and the protectability of works created by the Theatre's team.

Background:

GPT_THEATRE is among the first theatrical projects in Kazakhstan to experiment with generative AI tools. Their latest musical, developed using AI, raises not only artistic but also legal questions. Who holds authorship over AI-generated works? How can such works be protected? Are these outputs eligible for protection? What is the primary objective of integrating generative tools into the theatre? And so on.

Following the enactment of Law of the Republic of Kazakhstan No. 230-VIII "On Artificial Intelligence" dated November 17, 2025, it is particularly compelling to examine how the theatre's leadership considered legal risks during the project's planning phase, and to discuss the legal support for this project.

Interviewer: Diana Bratus, Ph.D., Leading Editor of the Eurasian Journal of Intellectual Property Law, co-founder and head of the Online School of Intellectual Property Law.

D.B.: Adil, Violetta, hello! Thank you for taking the time to speak with us.

How did the concept of a generative musical first originate?

In 2021, Czech director Daniel Hrbek staged AI: When a Robot Writes a Play at the Švanda Theatre in Prague. It was touted as the world's first production where 90% of the script was generated by GPT-2. The team's objective was purely investigative: to test whether AI could produce dramatic texts.

What are the goals of your team?

Adil: Creating my own musical has been a lifelong dream of mine. It's my favorite genre in both theatre and film. It all stems from childhood – I was inspired by The Lion King, The Jungle Book, and various Disney musicals, and later by West Side Story. The idea for a musical had been brewing in my mind for a long time. Two years ago, we developed a draft for another original musical, which was an exhilarating experiment. It was during that process that we formed our theatrical collective.

Regarding our goals: while the example you mentioned was research-oriented, our team's focus is purely creative and experimental. Furthermore, the integration of generative AI was initially driven by economic necessity. It is wonderful when a theatre has the budget to realize every vision – for instance, by hiring an orchestra. However, when those resources are unavailable, you have to innovate.

We faced a significant financial hurdle regarding music arrangements. With tools like SUNO, we found we could

create arrangements affordably and in a matter of minutes. We thought, "Why not experiment with AI and share this journey with our audience?" It proved to be a creative and cost-effective solution. Thus, the musical was born at the intersection of human artistry and emerging technology.

D.B.: It is crucial to underscore your point here, as from 2026, notification regarding the use of generative technologies will be mandatory. Article 21 of the Law of the Republic of Kazakhstan on AI imposes an obligation on content creators to inform users when goods, works, or services are produced or provided using AI systems.

Violetta: I would like to elaborate on the actual creation process of our musical. Once Adil's concept took shape, we began exploring how this story could be adapted into a stage production. We had previously studied a recording of the musical Frozen. We assembled a team and wrote the script. The copyright for the script belongs to Adil and me. Then began the extensive process of songwriting. Whenever we arrived at a result we were happy with, we would record an audio demo: Adil on guitar, and myself on the synthesizer. We recorded the vocals in various ways. We preserve all of these recordings as definitive evidence of our authorship and creative contribution. We would then feed these demos into SUNO, crafting detailed prompts to explain the specific arrangement we envisioned, and iteratively generated results until we achieved the perfect sound.

We chose to use SUNO because it is an incredibly convenient tool that allows us to generate two complete arrangements in any required style - be it pop-punk, a ballad, K-pop, or others - in just a matter of minutes. And within seconds thereafter, we can produce several more variations.

At first, we experimented with short prompts, simply requesting a song in a specific genre sung by a female vocalist. However, we weren't particularly satisfied with the results. Later, we began crafting more detailed prompts. We approached the prompt-writing process with a creative mindset, testing different angles until it started to work. It took countless attempts!

Adil has already mentioned the economic factors. Our musical includes tracks that call for a symphony orchestra, and we simply didn't have the financial means to hire one.

Naturally, in the future, we would love to have the entire score rewritten for real musicians, and perhaps one day perform with a live orchestra.

And, of course, utilizing generative technology to create a theatrical production is highly contemporary. Who else would think of creating a musical where the arrangements are generated entirely in SUNO?

D.B.: What you are describing – regarding AI as a modern tool and beyond – leads me to ask: conceptually, what role do generative technologies play in your theatre?

Violetta: It varies; we are experimenting (smiles). For our musical Christoferina, we wrote the script, lyrics, and characters ourselves; we only turned to AI for the musical arrangements.

In our GPT Readings project – our very first endeavor we presented audiences with a mix of texts by Kazakh authors and texts generated by AI. The challenge for the audience was to guess which pieces were human-authored and which were AI-generated.

We also had an experience within a commercial project for Sozday Magazine, where we used AI to write a play an adaptation of a scene from Hamlet, set in a modern office. In that instance, we received an AI-driven reimagining of a classic work, based on the specific parameters we provided.

Furthermore, we held a GPT Concert in collaboration with the music group 50/50. The band performed cover versions of obscure rock songs alongside songs generated by AI.

Similar to the GPT Readings, the audience was invited to guess which songs were created by a human and which were AI-generated.

D.B.: In your interviews, you consistently emphasize that AI is merely a tool, and you firmly reject the notion of AI as a co-author, let alone an autonomous creator. From a legal standpoint, this is a rational position – technology is not a legal subject and cannot possess authorship. However, I am curious: why do talented creative professionals like yourselves choose to employ generative technologies in creating plays, musicals, and musical arrangements?

Adil: Whether we are talented or not is for the audience to decide. we prefer to see ourselves as craftspeople.

True authorship, in my view, is when a song is conceived entirely by a human – ideally, structurally, and content-wise. Everything else the complete generation of songs via AI is certainly not an original work or a creative result. Paradoxically, the majority of people those outside the professional creative sphere cannot distinguish between an authentic text and a generated one. As Alexander Pushkin wrote: "Ah, it's not hard to deceive me! I am glad to be deceived!"

AI is a wonderful tool. When you've composed a song on the guitar or synthesizer, you already have a vision of how it should sound; yet, it requires a saxophone, a trombone, or specific sound effects. If these effects are available via AI, but you lack the funds to record real instruments, then AI is an absolute godsend – especially for young artists.

When the synthesizer first appeared, many musicians were against it. It was widely believed that only the piano or other traditional instruments could produce a live sound. Today, of course, the synthesizer surprises no one. Creative people adopt new technologies to unlock fresh facets of their craft.

The legendary Liza Minnelli participated in an experiment with ElevenLabs. Her song, Kids, Wait Till You Hear This, was included on the Eleven Album, with arrangements crafted using generative AI. Some fans condemned Liza Minnelli for this experiment. Yet, consider this: Minnelli had not released new music since 2013. You would think people would celebrate a fresh sound.

I read an interview with Minnelli, where the legend stated: "I was intrigued by the idea of using new tools for self-expression. This project respects the artist's voice, their choices, and their ownership of their creative work." In my view, it is evident that creators use new technologies for a variety of purposes: for experimentation, to achieve a novel sound, or as in Minnelli's case to revitalize their artistic output. I believe that is exactly what it is for. And she has every right to do so.

D.B.: At the 2025 Edinburgh Fringe Festival, a play titled Dead Air was staged, in which playwright Alfrun Rose offered a "female-led reimagining of Hamlet". In this version, the protagonist's father is not a ghost, but an AI. From your perspective, are such reinterpretations permissible? Detractors often complain that "the classics are being ruined", that "we are losing our cultural DNA", and ask "what are we teaching our children?" Should there be any restrictions or oversight in this domain, or should artists have complete creative freedom? After all, theatre is one of our most vital cultural pillars.

Adil: In my view, Vladimir Vysotsky performing in jeans was more provocative for his time than an AI character in Hamlet is today. Progress is synonymous with evolution. Rejecting technology, in my opinion, leads only to stagnation. To ban a contemporary reading of a classic is tantamount to reinstating censorship. Theatre must provoke thought and evoke emotion. I believe this play is a successful example of a philosophical reflection on the changes currently occurring within our society.

Violetta: Such reinterpretations are entirely permissible. The original work does not vanish – people can always return to the authentic text. If you dislike an AI-driven adaptation, you are free not to watch or read it.

There is no need to complain, get upset, or worry about the children. On the contrary, these new technologies motivate people to create, innovate, and view existing concepts through a different lens. Everyone should have the freedom to create whatever they want, in whatever way they choose.

As for limitations, they are absolutely necessary at the legislative level to prevent fraud and avoid misleading audiences regarding true authorship. If a person has made no creative effort and simply entered a banal prompt such as "I want a poem about dirty sneakers" and then passed off the resulting AI generation as their own, that is entirely unacceptable. They cannot be considered an author, or at the very least, they must prove their creative contribution.

Furthermore, taking someone else's text without permission and reworking it using generative AI is unethical. We need legislative restrictions to address these types of practices.

D.B.: On November 17, 2025, the Law on Artificial Intelligence was enacted in the Republic of Kazakhstan. Clause 1 of Article 23 states: "Works created using artificial intelligence systems are protected by copyright only if there is a creative contribution from a human in their creation." In your view, can a person who merely writes a prompt be considered an authentic author? I would also note that, according to Clause 2 of Article 23 of the same law, prompts are recognized as protectable, independent results, provided they meet the criterion of originality.

Adil: I do not believe that writing a prompt is equivalent to a human creative contribution. If you put a monkey at a keyboard, it could easily type out a random prompt even if it were just a string of nonsense, an AI would still generate an output. We could even conduct an experiment and append a screenshot of such a query to this interview. Ultimately, we would still get some result. The difference is that while an animal lacks reason, a human can evaluate whether that result meets their needs and refine it further.

Violetta: True authorship can only be claimed when a human conceives everything independently, from the initial concept to its final execution, while maintaining full control over the entire process. They must strive to achieve the specific outcome they originally envisioned. When someone simply sends a prompt to a GPT chat like: "Write a song about a girl with pink hair" and then takes the ready-made result and claims to be its author, they are not a creator in my eyes. They are a fraud, misleading everyone about their actual talent and creative abilities.

D.B.: In your opinion, who holds the rights to music or arrangements created via SUNO or other neural networks, provided that the source material is original?

Violetta: As authors, we write the original lyrics and music, meticulously design the concepts, and craft the prompts used for generation, while utilizing SUNO specifically for the arrangements. We have purchased a SUNO Premier subscription, which means the company transfers all rights to us.

This allows us to use and monetize the exclusive rights to the creative results we produce as we see fit. SUNO does not claim any of our rights or royalties.

Of course, there are nuances: SUNO cannot guarantee that the arrangements we generate will be recognized as protectable under the laws of the Republic of Kazakhstan.

D.B.: I cannot help but comment on your response. Our readers include your peers, and our objective here is to clarify the intellectual property rights that arise from AI-generated results.

The SUNO Terms of Service contain a clause which, in my view, could effectively "nullify" all your intellectual property claims.

First and foremost, SUNO offers no guarantees, even to its paid subscribers. The agreement states: "However, due to the nature of machine learning, Suno makes no representation or warranty to you that any copyright will vest in any Output." Furthermore, the rules specify that because of the inherent nature of machine learning, the generated results may lack uniqueness. The service may produce identical or similar results for others. To quote the terms directly: "Due to the nature of machine learning, Output may not be unique across users and the Service may generate the same or similar output for a third party. Other users may provide similar submissions and receive the same output. Output that is requested by and generated for other users is not your Content."

This means you could upload an original composition and receive an output that incorporates third-party creative material. You cannot be certain that the generated result is original, and the developers at SUNO explicitly warn you about this risk. This applies to all subscription tiers – both paid and free. If you cannot guarantee the originality of the final result, you cannot warrant it in any contract, and you must explicitly disclose these risks to your counterparties.

Creators must understand that SUNO is trained on the works of real authors, and there is a genuine possibility of generating an output that infringes upon someone else's rights or bears a resemblance to existing works. These are significant risks, and the liability will fall squarely on the creator, not SUNO, because it is the creator who ultimately chooses to use the generated output.

D.B.: In your opinion, who should bear the responsibility for the content of an AI-generated work: the prompt author, the stage director, or the producer?

Violetta: The prompt author. The director stages the production and is responsible for its overall visual and artistic execution. The producer is responsible for securing funding for the project.

However, the author of the prompt is responsible for what the director will stage and what lines the actors will deliver. That is their area of responsibility.

D.B.: The ultimate responsibility for a production always lies with the right holder typically the theatre itself. As a general rule, exclusive rights are automatically transferred to the theatre by virtue of employment agreements. In some instances, however, a producer may serve as the primary right holder. In the context of commercial theatres, separate assignment agreements for the transfer of exclusive rights are often executed. In such cases, both the playwright and the stage director are liable to the theatre under the terms of their respective contracts. While these individuals are accountable to the theatre, the theatre remains solely responsible for the final performance. Therefore, it is essential to clearly delineate risks and liabilities within the contracts of every party involved in the project. Ultimately, a prompt author holds no legal standing unless they have a recognized status, such as playwright, scriptwriter, etc.

D.B.: Do you see generative technology as a threat to emerging playwrights and composers, or could it, conversely, serve as a gateway into the profession?

Adil: I do not believe AI poses any threat to genuine emerging playwrights or composers. If an author is original, AI is no competitor to them. For those creating generic pop songs, however, perhaps it is. AI-driven artists are currently popular, and those generating AI-songs are earning well. But that is a question not for the AI, but for the people. All these contemporary pop songs sound the same; listeners cannot distinguish between them. Mediocre music will be squeezed out by AI, but true creators will remain. I genuinely believe that.

D.B.: Can the theatre serve as a platform where society can safely and honestly "deconstruct" the legal and technological shifts we are witnessing today?

Violetta: The theatre has already become such a platform. Everyone has touched upon the topic of AI at least once, whether in a performance or in post-show discussions.

However, the theatrical community is quite small, and not everyone is eager to watch a play about copyright law or listen to lectures on its significance. It is likely only of interest to those whom it affects directly. I doubt it is a subject that resonates with a broad audience, and in terms of our repertoire, we are still focused on a broad audience.

D.B.: Violetta, thank you for sharing your perspective. As a lawyer, a civil law educator, and a co-founder of the Online School of Intellectual Property Law, I must emphasize how vital it is to educate creators! I see tremendous potential in creative collaborations between legal professionals and theatrical troupes.

It is through art itself that we can best illustrate the risks posed by generative technologies. I fear we are at risk of losing our creative authenticity. When you can generate a result in mere seconds, there's no need for creative torment. We risk drowning in a sea of mediocre outputs, masquerading as genuine artistic achievements under the guise of "keeping up with the times." But such works will lack the most essential element: the soul. We must legislate the regulation of every stage in the creation and subsequent use of these results. Throughout this interview, you have rightly emphasized your contribution in crafting prompts, documenting the creative process, and preserving your drafts. Yet, there is a "hidden pitfall" the primary risk for creators who utilize AI.

When you upload an original song to SUNO and request an arrangement, even with the creative effort behind your prompts and the documentation of your process, you are not the author of that arrangement. You are the author of the song, yes, and the author of the prompt (per the AI Law), but not the arrangement itself – unless, that is, you have "manually" refined it. After all, arrangement also involves writing parts for various instruments, creating melodic lines to enrich the composition, and so on. If you have manually reworked this arrangement after receiving it, that changes the situation entirely. That is what the law dictates. We have already touched upon the risks of using generated results, but creators must understand that there is a legal framework in place. If you grasp these nuances, you will be better equipped to mitigate your legal risks. For example, while no one can use your AI-generated arrangement without your permission – since you are the authors and rights holders of the original song you, in turn, cannot transfer exclusive rights to that AI-generated arrangement alone.

D.B.: The Moscow Theatre of Labor staged a play titled d-AI-logues a production about artificial intelligence written with the assistance of neural networks. The play's description reads: "...Who knows, perhaps I will be able to overcome my own boundaries and create something so astounding that I never even dreamed of it!" They have chosen the method of personifying AI, elevating it to the rank of a full-fledged participant in the performance and a creator in its own right. Do you see this as a paradigm shift in the concept of authorship? In the age of AI, what is more important: protecting the human author or learning to redefine our understanding of authorship?

Adil: I believe that protecting the human author is paramount. We do not need to redefine authorship.

Violetta: Shifts are certainly taking place. We are accustomed to the idea that an author is a human who conceived an idea and brought it to life for instance, by writing a play and who made a distinct creative contribution. In the example you provided, the play was written by a neural network via a prompt, and the creators posit the AI as a participant in the work. The line is blurring; AI is being positioned as both a co-author and a tool simultaneously. Tickets to the performance are being sold. I would love to ask the creators: will the AI be receiving its share of the royalties, too (smiles)? It is a fascinating question. Of course, we must protect the human author, but there is no point in ignoring the emergence of a tool like AI.

D.B.: Adil, Violetta, thank you for such an open, honest, and engaging conversation. Our goal is to highlight the challenges at hand and demonstrate that a meaningful dialogue with creators is essential. Legal professionals work with the "living matter" of the law, and our Magazine serves as an open forum for these vital discussions. We wish you and your project every success!

УДК / UDC 347.786; 7.067

ГЕНЕРАТИВНЫЙ ИНТЕЛЛЕКТ – АВТОР, СОАВТОР, ИНСТРУМЕНТ ИЛИ СПОСОБ БЫТЬ В ТРЕНДЕ?

Мы побеседовали с **Адилем Соло** и **Виолеттой Березовской** – основателями GPT_THEATRE об Искусственном Интеллекте (ИИ), ИИ-спектаклях, авторских правах на генеративный контент в Казахстане, творческих планах и охраноспособности результатов, создаваемых командой Театра.

Информационная справка:

GPT_THEATRE (далее – Театр) – один из первых театральных проектов в Казахстане, который экспериментально работает с генеративными ИИ-инструментами. Новый мюзикл, создаваемый командой Театра с использованием ИИ-инструментов, поднимает не только художественные, но и правовые вопросы. Кто является автором сгенерированных произведений? Как защищать такие работы? Являются ли такие результаты охраноспособными? В чем заключается главная цель использования генеративных инструментов в театральной сфере? И другие вопросы.

В свете принятия Закона Республики Казахстан от 17 ноября 2025 г. № 230-VIII «Об искусственном интеллекте» интересно узнать, насколько руководители театра учли правовые риски на стадии планирования подобного проекта, подробно обсудить правовое сопровождение данного проекта.

Интервьюер: Диана Валерьевна Братусь, кандидат юридических наук, шеф-редактор Евразийского журнала права интеллектуальной собственности, сооснователь и руководитель Онлайн-школы права интеллектуальной собственности «Online School of Intellectual Property Law».

Д.В.: Адиль, Виолетта, здравствуйте! Спасибо, что нашли время для беседы с нами.

Как Вам пришла идея создания генеративного мюзикла?

В 2021 г. чешский режиссер Даниэль Грбек (Daniel Hrbek) поставил на сцене Театра «Svanda» в Праге спектакль «ИИ: когда робот пишет пьесу» («AI: When a Robot Writes a Play»). Было заявлено, что это первый в мире проект, в котором 90% текста сгенерировано через GPT-2. Команда ставила перед собой исключительно исследовательскую цель: проверить, способен ли ИИ генерировать драматические тексты.

Какие цели преследует Ваша команда?

Адиль: Создать свой мюзикл – моя давняя мечта. Это мой любимый театральный киножанр. Все ведь из детства. Меня вдохновили «Король Лев», «Книга Джунглей», диснеевские мюзиклы, после – «Вестсайдская история». Идея мюзикла давно зрела у меня в голове. Два года назад мы делали эскиз другого авторского мюзикла. Это был увлекательный эксперимент. Именно тогда мы создали наше театральное объединение.

Про цели. В вашем примере озвучена исследовательская цель. У нашей команды цель исключительно творческо-экспериментальная. Плюс – внедрение генеративных ИИ-технологий изначально было обосновано экономически. Хорошо, когда у театра есть бюджет для реализации всех идей, например,

для привлечения оркестра. Когда таких ресурсов нет, приходится что-то придумывать.

У нас остро встал финансовый вопрос создания аранжировок. В SUNO можно создать аранжировку недорого и за считанные минуты. И мы подумали, а что, если попробовать поработать с ИИ и об этом эксперименте рассказать зрителю. Творческий и одновременно экономически выгодный вариант. Родился мюзикл на стыке человеческого творчества и новых технологий.

Д.В.: Важно «подсветить» Ваши мысли и отметить, что уведомление об использовании генеративных технологий с 2026 года является обязательным. Статья 21 Закона РК об ИИ возлагает на создателей контента обязанность информировать пользователей о том, что товары, работы и услуги произведены или оказываются с использованием ИИ-систем.

Виолетта: Дополню про сам процесс создания нашего мюзикла. После того, как у Адиля оформилась идея, мы стали думать, что из этой истории можно поставить спектакль. Ранее мы посмотрели запись мюзикла «Frozen». Мы собрали команду, написали сценарий. Авторские права на сценарий принадлежат Адилю и мне. После начался долгий процесс написания песен. Когда получался результат, который нас устраивает, мы записывали на диктофон демо: Адиль – на гитаре, я – на синтезаторе. Вокал записывали по-разному. Все эти записи мы храним – это доказательство нашего авторства и творческого вклада. Демоверсию мы отправляли в SUNO, прописывали промпт, подробно объясняли, какую аранжировку мы хотим, и детально генерировали до того момента, пока нам не понравится результат.

SUNO мы решили использовать по той причине, что это очень-очень удобный инструмент, с помощью которого мы можем за несколько минут получить две готовые аранжировки в том стиле, в каком необходимо (поп-панк, баллада, K-pop и др.). А потом через несколько даже не минут, а секунд – ещё несколько вариантов.

Сначала мы пробовали короткие промпты: нужна песня в таком-то жанре, поет девушка. Но результатом были не очень довольны. Потом промпты стали более подробными. Мы творчески подошли к созданию промптов, креативили, пробовали и стало получаться. Попыток было очень много!

Про экономические причины Адиль рассказал. У нас в мюзикле есть песни, которые должен исполнять симфонический оркестр, а финансовой возможности привлечь реальный оркестр не было.

В будущем, конечно, хотелось бы всю музыку переписать с музыкантами, а возможно когда-нибудь и выступать с живым оркестром.

И конечно, использование для создания спектакля генеративных технологий – очень современно. Кому еще в голову придет идея сделать мюзикл, аранжировки в котором будут сгенерированы в SUNO?

Д.В.: То, о чем вы рассказываете про ИИ как современный инструмент и др. Какую роль генеративные технологии играют в Вашем театре концептуально?

Виолетта: Разные, мы экспериментируем (улыбается). Для мюзикла «Кристоферина» сценарий, тексты, персонажей писали и придумывали мы сами, к ИИ прибегали только для создания аранжировок.

В рамках «GPT-читок» (наш первый проект) мы представляли зрителям тексты казахстанских авторов и тексты, сгенерированные с помощью ИИ. Перед зрителями стояла задача угадать, какие из представленных текстов были написаны людьми, а какие сгенерированы с помощью ИИ.

Ещё был опыт в рамках коммерческого проекта для журнала «Sozday». С помощью ИИ мы написали пьесу, за основу которой взяли отрывок из «Гамлета». Место действия – современный офис. В этом случае мы получили ИИ-переработку известного произведения с заданными нами параметрами.

С музыкальной группой «50/50» мы делали GPT-концерт. Ребята исполняли кавер-версии малоизвестных рок-песен и песни, сгенерированные с помощью ИИ.

По аналогии с «GPT-читками» зрителям предлагалось угадать, какую песню создал человек, а какая сгенерирована с помощью ИИ.

Д.В.: В своих интервью Вы принципиально подчеркиваете, что ИИ лишь инструмент и отрицаете соавторство и уж тем более его автономное авторство. С точки зрения юриста – рациональная позиция. Технология не субъект и автором быть не может. Хочется понять, зачем вообще такие талантливые и творческие профессионалы как вы используют генеративные технологии для создания спектаклей и мюзиклов, музыкальных аранжировок?

Адиль: Талантливые мы или нет, решает зритель. Мы, скорее, ремесленники.

Подлинное авторство – это когда песня, например, полностью (идейно, структурно, содержательно…) написана человеком. Всё остальное – полное генерирование песен с помощью ИИ – конечно, не авторский продукт и не творческий результат. Парадоксально, но большинство людей (не являющихся профессионалами в творческой сфере) не могут различить подлинный текст и сгенерированный. Как у А.С. Пушкина: «Ах, обмануть меня не трудно! Я сам обманываться рад!»

ИИ – замечательный инструмент. Когда ты сочинил песню на гитаре или на синтезаторе, понимаешь, как она должна звучать, но для этого нужен саксофон, тромбон или какие-то звуковые эффекты, и эти эффекты есть в ИИ, а у тебя нет денег для записи звука реальных инструментов, ИИ – находка. Особенно для молодёжи.

Когда появился синтезатор, музыканты были против. Считалось, что только на фортепиано и при использовании других общеизвестных инструментов можно получить «живой» звук. Сейчас синтезатором никого не удивишь. Творческие люди внедряют технологии, чтобы открывать новые грани своего творчества.

Величайшая Лайза Миннелли приняла участие в эксперименте компании Eleven Labs. Песня Миннелли «Kids, Wait Till You Hear This» вошла в альбом «Eleven Album». Аранжировки для треков написаны с использованием генеративного ИИ. Некоторые поклонники осудили Лайзу Миннелли за этот эксперимент. А ведь Миннелли не представляла новых песен с 2013 года. Казалось бы, радуйтесь новому звучанию.

Я прочитал интервью Миннелли: «Меня заинтересовала идея применения новых инструментов для самовыражения. Этот проект уважает голос артиста, его выбор и право собственности на творчество», – ответила легенда. На мой взгляд, очевидно, что творцы используют новые технологии для различных целей, экспериментальных, желая получить новое звучание, для актуализации своего творчества, как в случае с Миннелли – полагаю, что именно для этого. Имеет полное право.

Д.В.: На известном фестивале «Edinburgh Fringe Festival» в 2025 году была представлена пьеса «Мёртвый дух» (Dead Air), в которой драматург Альфрун Роуз (Alfrun Rose) предлагает «женскую версию Гамлета». Отец главной героини не призрак, а ИИ. Допустимы ли такие переработки с Вашей точки зрения? Противники сетуют: «испортили классику», «мы утратим культурный код», «чему мы учим наших детей». Должны ли быть какие-либо ограничения и контроль в этой сфере? Или каждый креативит, о чем пожелает? Ведь театр – одна из важнейших культурных сфер.

Адиль: На мой взгляд, Владимир Высоцкий в джинсах был более экстравагантен в своё время, чем ИИ-герой Гамлета. Прогресс – развитие. Отказ от технологий, на мой взгляд, приведет к застою. Запретить современное прочтение классики равно вернуть цензуру. Театр должен заставлять думать, переживать. И, на мой взгляд, эта пьеса – удачный пример философского осмысления тех изменений, которые происходят в обществе.

Виолетта: Подобные переработки допустимы. Оригинал ведь не исчезает, и люди всегда могут обратиться к аутентичному тексту. Если вам не нравится переработка с ИИ, то не смотрите и не читайте.

Сетовать, расстраиваться и переживать за детей не стоит. Как раз наоборот – новые технологии мотивируют творить, создавать что-то новое, смотреть на уже существующие вещи под другим углом. Каждый должен иметь возможность создавать что хочет и как хочет.

Что касается ограничений, на законодательном уровне нужно их вводить обязательно, чтобы пресечь обман и введение аудитории в заблуждение относительно подлинного авторства. Если человек не приложил никаких усилий для создания творческого результата, а просто ввел банальный промпт: «Хочу стихотворение о грязных кедах», получил сгенерированный ИИ-результат и выдал этот результат за свой, то подобное недопустимо. Он не может считаться автором или должен доказать свой творческий вклад.

Когда без разрешения автора берут текст, переделывают с помощью генеративных ИИ-технологий – тоже некрасиво. Нужны законодательные ограничения подобного использования.

Д.В.: 17 ноября 2025 года в Республике Казахстан принят Закон об ИИ. Пункт 1 статьи 23 гласит: «Произведения, созданные с использованием систем искусственного интеллекта, охраняются авторским правом только в случае наличия творческого вклада человека в их создание». Можно ли, на ваш взгляд, считать подлинным автором человека, который ограничился только написанием промпта? Отмечу, что согласно п. 2 ст. 23 этого же закона промпты признаются охраноспособными самостоятельными результатами при условии, что они отвечают критерию оригинальности.

Адиль: Не считаю, что написание промпта равносильно человеческому вкладу в создание творческого результата. Даже обезьянка, если ее посадить за клавиатуру, вполне себе наберет какой-то случайный промпт. Даже если это будет просто набор букв, искусственный интеллект что-то выдаст. Мы можем провести эксперимент и приложить скрин такого запроса к нашему интервью. В итоге какой-то результат мы получим. Другое дело, что животное не обладает разумом, а человек может оценить, подходит ему этот результат или нет, доработать его.

Виолетта: О подлинном авторстве можно говорить тогда, когда человек полностью все придумал самостоятельно от идеи до ее воплощения. Контролировал весь процесс. Стремился к тому результату, который изначально был у него в голове. Когда человек просто написал в GPT-чат задание: «Напиши песню про девушку с розовыми волосами», получил готовый результат, а потом заявляет, что он – автор, для меня он не творец. Обманщик, вводящий всех в заблуждение относительно своего таланта и творческих способностей.

Д.В.: Кому, по вашему мнению, принадлежат права на музыку или аранжировки, созданные с помощью SUNO или других нейросетей, если исходный материал – авторский?

Виолетта: Мы как авторы пишем оригинальные тексты, авторскую музыку, детально придумываем и

создаем промпты для генерации, а вот аранжировки делаем в SUNO. Мы выкупили подписку на SUNO Premier. Это означает, что Компания передаёт нам все права.

Это позволяет нам использовать и монетизировать исключительные права на созданные нами творческие результаты как угодно. SUNO не претендует на наши права или вознаграждения.

Конечно, есть нюансы. SUNO не может гарантировать, что на территории РК сгенерированные нами аранжировки будут признаваться охраноспособными.

Д.В.: Не могу не прокомментировать ваш ответ. Нас будут читать ваши коллеги и наша цель – рассказать о том, какие права возникают на сгенерированные результаты.

В пользовательском соглашении SUNO есть оговорка, которая, на мой взгляд, может «обнулить» все ваши интеллектуальные права.

Во-первых, никаких гарантий даже для клиентов с платной подпиской SUNO не дает: «However, due to the nature of machine learning, Suno makes no representation or warranty to you that any copyright will vest in any Output». В правилах прямо сказано, что в силу особенностей машинного обучения сгенерированные результаты могут быть неуникальны. Сервис может сгенерировать одинаковые или похожие результаты… Приведу выдержку из правил: «Due to the nature of machine learning, Output may not be unique across users and the Service may generate the same or similar output for a third party. Other users may provide similar submissions and receive the same output. Output that is requested by and generated for other users is not your Content».

Это означает, что вы можете загрузить оригинальное произведение, а на выходе получить результат, который будет включать чужие творческие результаты. Вы не можете быть уверены, что сгенерированный результат – оригинальный, и разработчики SUNO вас об этом прямо предупреждают. Это относится ко всем подпискам – и платным, и бесплатным. Если Вы не уверены в оригинальности итогового результата, вы не сможете гарантировать это в договоре, и об этих рисках нужно предупреждать вашего контрагента.

Творцы должны понимать, что SUNO обучается на произведениях реальных авторов и что возможно получить результат, нарушающий чьи-то права или схожий. Это большие риски, и ответственность будет нести создатель, а не SUNO. Ведь именно создатель использует сгенерированный результат.

Д.В.: Кто, по вашему мнению, должен нести ответственность за содержание ИИ-сгенерированного произведения: автор промпта, режиссер-постановщик спектакля, продюсер?

Виолетта: Автор промпта. Режиссер ставит спектакль и отвечает за то, как это всё будет выглядеть. Продюсер ищет деньги для проекта.

Автор промпта отвечает за то, что будет ставить режиссер, какие реплики будут говорить актеры. Это его зона ответственности.

Д.В.: За спектакль всегда отвечает правообладатель, как правило, права на спектакль принадлежат театру. По общему правилу, исключительные права автоматически переходят на основании трудовых договоров театру. Бывает, что правообладателем на спектакль является продюсер. Если речь идет о коммерческих театрах, то могут заключаться отдельные договоры на передачу исключительного права, и в этом случае драматург отвечает в рамках своего договора перед театром, режиссёр-поставщик в рам-

ках своего соглашения. Они ответственны перед театром, но за итоговый спектакль ответственность несет только театр. Важно в договоре с каждым привлеченным лицом прописывать риски и ответственность. А автор промпта – никто, если у него нет статуса – драматург, автор пьесы и т.д.

Д.В.: Видите ли вы угрозу для молодых драматургов и композиторов, связанную с развитием генеративных технологий, или, наоборот, ИИ может стать для них точкой входа в профессию?

Адиль: Полагаю, никакой угрозы для молодых драматургов и композиторов ИИ не несёт. Если автор самобытен, то ИИ ему не конкурент. Для создателей каких-то обычных поп-песен – возможно. Сейчас, например, ИИ-исполнители пользуются популярностью, и люди, генерирующие ИИ-песни, хорошо зарабатывают. Но тут вопрос не к ИИ, а к людям. Все эти современные песни похожи друг на друга. Слушатели не могут их отличить. Посредственная музыка будет вытеснена ИИ, а подлинные творцы останутся. Я искренне в это верю.

Д.В.: Может ли театр стать площадкой, где общество безопасно и честно «проговаривает» происходящие сейчас правовые и технологические изменения?

Виолетта: Театр стал такой площадкой. Каждый хоть раз, да затронул тему ИИ в спектакле или в каком-то обсуждении после.

Но театральное «комьюнити» очень небольшое, да и не каждый придет смотреть спектакль об авторских правах или слушать о том, как это важно. Наверное, это важно только тем, кого это касается напрямую. Сомневаюсь, что широкому кругу зрителей это интересно. Мы все-таки ориентируемся репертуарно на широкую аудиторию.

Д.В.: Виолетта, спасибо за Ваше мнение. Будучи юристом, преподавателем права гражданского и сооснователем онлайн-школы по праву интеллектуальной собственности, отмечу, что очень важно просвещать творцов! Вижу большую перспективу в творческих коллаборациях юристов и театральных трупп.

Именно через творчество можно показать, какие риски несут генеративные технологии. Я считаю, что мы можем потерять творческую аутентичность. Когда за секунды можешь получить результат, то не нужны творческие муки. Мы можем захлебнуться в посредственных результатах, выдаваемых за подлинные творческие под соусом «мы идем в ногу со временем». Но там не будет главного – души. Законодательно нужно регламентировать все этапы создания и дальнейшего использования таких результатов. В этом интервью Вы абсолютно правильно подчеркивали свой вклад в создание промптов, говорили о фиксации стадий процесса, сохранении записей. Но тут есть «подводный камень», в котором заключается главный риск для творцов при использовании ими ИИ.

Когда Вы «заливаете» в SUNO авторскую песню и просите сделать аранжировку, даже при условии творческой составляющей вашего промпта и фиксации процесса создания итогового результата, вы не являетесь автором аранжировки. Песни – да, автором промпта – да (согласно нормам Закона об ИИ), но не аранжировки. Если Вы не дорабатывали ее «вручную», так сказать. Ведь аранжировка – это, в том числе, написание партий для разных инструментов, создание мелодических линий, обогащающих композицию и т.д. Если после ее получения Вы эту аранжировку доработали, то это меняет дело. Так гласит Закон. О рисках использования сгенерированных результатов мы уже говорили. Творцы должны понимать, что есть закон, и если Вы будете разбираться в этих нюансах, то сможете нивелировать правовые

риски. Например, такую аранжировку никто без Вашего разрешения использовать, конечно, не сможет, ведь вы – авторы (правообладатели) песни. Но и Вы передать исключительные права отдельно на ИИ-аранжировку не можете.

Д.В.: Московский театр труда поставил спектакль «дИИалоги» – спектакль про ИИ, написанный с помощью нейросетей. Описание к спектаклю: «...Кто знает, быть может, я смогу преодолеть свои собственные границы и создать нечто настолько удивительное, что мне и не снилось!». Выбран метод одушевления ИИ. Возведение его в ранг полноценного участника спектакля и творца. Не усматриваете ли вы в этом изменение парадигмы авторства? Что важнее в эпоху ИИ: защитить автора-человека или научиться по-новому понимать авторство?

Адиль: А я думаю, что важно защитить автора, человека. Понимать авторство по-новому не нужно.

Виолетта: Изменения, конечно, есть. Мы привыкли, что автор – это человек, который придумал идею и реализовал её, например, написал пьесу. Внес свой творческий вклад. В Вашем примере спектакль написан нейросетью, по промпту, и ИИ, по мнению создателей спектакля, является участником пьесы. Граница размывается, ИИ позиционируется в качестве соавтора и инструмента одновременно. Билеты на спектакль продаются. Хочется спросить у создателей спектакля: ИИ тоже будет получать свой процент (улыбается)? Очень интересный вопрос. Конечно, нужно защищать автора-человека. Но закрывать глаза на то, что появился такой инструмент, как ИИ, нет смысла.

Д.В.: Адиль, Виолетта, благодарим Вас за такой открытый, честный и интересный разговор. Наша задача – показать, что проблемы есть и что необходим диалог с творцами. Юристы работают с живой материей. И наш Журнал – открытая площадка для столь важных диалогов. Удачи Вам и Вашему детищу!

EXPERT COMMENTS / САРАПШЫЛАРДЫҢ ПІКІРЛЕРІ / КОММЕНТАРИИ ЭКСПЕРТОВ

УДК / UDC 347.78; 004.853

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ON THE TECHNICAL ASPECTS OF RESULT GENERATION IN ARTIFICIAL INTELLIGENCE SYSTEMS

Public and professional perceptions of Artificial Intelligence (AI) systems are often built upon simplified mental models. It is a common misconception that generative AI systems "understand" user prompts, "create" content, or "guess" answers. While these interpretations provide a convenient shorthand for explanation, they do not reflect the underlying generative processes.

The objective of this review is not to provide a legal assessment, but rather to analyze the technical principles governing the operation of generative systems.

If you were asked to guess a random number, the probability of success would be extremely low. However, if constraints are introduced – for instance, specifying that the number must be less than ten, even, and prime the solution space narrows to a single.

In this scenario, "guessing" is no longer a matter of chance; it becomes the consequence of the given parameters.

Interaction with a generative model follows a similar logic. From a technical standpoint, a user's prompt is not a question, but rather a set of constraints. Based on these constraints, the system calculates the most probable output.

Modern AI models do not operate on words, nor do they perceive them in the way humans do. It is more accurate to speak of abstractions infused with meaning, context, and experience. Text is converted into tokens – elemental units mapped to numerical representations within a pre-established vocabulary.

This vocabulary is constructed through the analysis of vast datasets. The broader and more diverse this corpus, the more statistical dependencies the model is capable of identifying.

Data sources for this purpose are highly varied, encompassing books, scientific papers, articles, and other materials. Consequently, the intellectual labor of countless individuals, often entirely unrelated to one another, indirectly contributes to the creation of the generative corpus (or database).

As a general rule, the model does not store data in the form of complete works or structured fragments (though there are exceptions). During the training process, data is transformed into numerical parameters known as weight coefficients and vector representations, which reflect the statistical relationships between data elements.

Model training is an extensive process involving repeated mathematical operations, during which the system develops the parameters required to generate future responses.

The model does not store texts, nor does it retrieve them again, with some exceptions. Instead, it utilizes established dependencies to calculate the most probable sequence of tokens within a given context.

The output does not exist beforehand; it is generated at the moment of the request as the result of a computation. This selection process may also incorporate stochastic sampling procedures, which ensures output variability.

This is particularly evident in image generation.

In a simplified model, this process can be visualized as follows: the image begins as "noise" (a random set of pixels). Guided by the user's prompt, the system iteratively refines this noise, gradually sculpting a structure that aligns with the provided description.

This process is more akin to a sculptor extracting form from raw material than to a painter creating an image from scratch.

In this sense, an AI system functions as a tool that operates based on parameters established during training and the specific input provided by the user.

Unlike traditional tools, it does not merely transmit or reproduce information; it performs a transformation, the result of which is perceived as meaningful or even creative.

Where the creation of text or imagery was previously an exclusively human undertaking, a significant portion of the process can now be delegated to AI.

To simplify this further, we can look at everyday analogies.

A multicooker prepares a dish according to a pre-set program. A coffee machine brews coffee based on selected parameters. This raises the question: who is the "creator" of the result – the human or the machine?

While these examples are not perfect equivalents of AI, it is more accurate to compare AI systems to tools with probabilistic behavior. However, the core concept remains clear: this tool has begun to perform operations that were previously the exclusive domain of human cognition.

If a tool carries out a portion of the workload instead of a human, the question arises: whose contribution holds more weight?

Attempting to quantify the "share" of participation proves to be insufficient. What matters is the nature, not the volume, of that contribution.

The operator of an automated harvester initiates the harvesting process, defines the parameters, and monitors the system's performance. Yet, the vast majority of the physical labor is executed by the machine. Can we definitively state that it was the operator who performed the harvest?

A similar dilemma arises with AI. If a text is generated using an AI system, while a human crafts the prompt, selects the output, and performs the editing, does that human remain the author?

A simpler case: an article is written by a human but edited using AI. Does this alter the author's status?

It is often said that a well-posed question contains half (or even the entirety) of the answer. In the context of AI usage, this idea takes on new significance.

A user's prompt defines the space of possible solutions. The more precisely and rigorously the constraints are formulated, the more predictable the resulting output becomes.

This leads to a question: can the framing of a prompt be considered a creative act in itself?

If so, where does the boundary lie between defining a task and generating the resulting work?

Artificial intelligence systems are not agents; they possess neither understanding nor intent. They are, fundamentally, instruments that perform complex data transformations based on predefined parameters and input conditions.

Nevertheless, these instruments are already capable of executing a significant portion of operations previously reserved exclusively for human activity. This evolution is shifting the human role from direct creation to task definition, the constraint of the solution space, and the curation of the output.

Given these circumstances, conventional notions of authorship require a profound rethinking. The definitive answer to these questions lies beyond the scope of this review and necessitates a legal assessment.

LEADING CASES / ҚҰҚЫҚ ҚОЛДАНУ ТАЛДАУЫ / АНАЛИТИКА ПРАВОПРИМЕНЕНИЯ

AN OVERVIEW OF LANDMARK HIGH-TECH LEGAL DISPUTES AND PRECEDENTS

Abstract. This article provides an analysis of key international legal disputes concerning the regulation of relations arising from the creation and use of AI models and the protection of creators' rights. The review examines the case facts, the parties' arguments, and the resulting judicial decisions in Getty Images v. Stability AI, GEMA v. OpenAI, and Li v. Liu, as adjudicated by courts in the United Kingdom, Germany, and China, respectively. The article addresses critical issues, including copyright infringement in the training of AI models, the liability of developers and end-users for AI-generated content, and the criteria for the protectability of AI outputs.

Keywords: artificial intelligence; generative technologies; intellectual property; copyright; judicial practice; legal protection.

Introduction

The rapid evolution of generative artificial intelligence (AI), capable of creating original content – including imagery, text, and music poses unprecedented challenges to global legal systems. Traditional legal frameworks and existing statutes often fall short when applied to the creation and utilization of generative outputs, resulting in significant legal uncertainty. Analyzing landmark litigation has become essential to understanding current trends in law enforcement and to developing robust mechanisms for protecting the rights of authors and intellectual property owners.

This review provides a comprehensive analysis of the legal positions and judicial decisions from the United Kingdom, Germany, and China regarding three seminal disputes: Getty Images v. Stability AI, GEMA v. OpenAI and Li v. Liu. The cases examined herein address the primary dilemmas currently confronting the global community: from the unlicensed use of protected works to train AI models and the infringement of trademark rights, to the evolving criteria for determining human creative contribution in AI-assisted content production. Studying these precedents provides insight into how the technical mechanisms of neural networks influence the legal characterization of the parties' actions and the allocation of liability between developers and users.

Getty Images v. Stability AI (UK) (1)

Background of the Dispute

The plaintiffs, a group of companies collectively known as Getty Images, own one of the world's largest digital image archives, with intellectual property rights for over 12 million assets held under exclusive license. The defendant, Stability AI, is the developer behind the open-source deep learning model Stable Diffusion (SD), designed to generate images based on textual prompts.

Notably, in 2023, Getty Images launched its own AI software tools, developed in partnership with NVIDIA – Generative AI by Getty Images and "Generative AI by iStock. These tools were trained exclusively on Getty Images'

library of licensed creative content.

In the proceedings, the plaintiffs asserted several claims arising from direct and secondary copyright infringement, database right infringement, trademark infringement, and consumer deception. The latter claim stems from the SD model's generation of images featuring watermarks closely resembling the Getty and iStock logos, which are typically affixed to the plaintiffs' stock assets.

During the pre-trial phase, the plaintiffs withdrew their claims regarding the direct copying of works during the AI training process, citing a lack of evidence that the training occurred within the United Kingdom, as well as claims regarding infringement of database rights.

The Plaintiff's Position

The procedural strategy of the plaintiffs was centered on the assertion that the SD model itself constitutes an infringing copy under Section 27(3) of the Copyright, Designs and Patents Act (CDPA). The plaintiffs argued that the creation of the model's weights the numerical parameters within the neural network that determine the strength of connections between nodes would constitute copyright infringement if executed within the UK, thereby amounting to what is known as secondary infringement.

Regarding trademark infringement, the Getty Images group companies insisted that the generation of "synthetic watermarks" damages the brand's reputation and misleads consumers, particularly as these marks appear on images of inferior quality or inappropriate content.

(For an example of a Getty Images watermark as presented in the court's ruling, see: https://www.judiciary.uk/wp-content/uploads/2025/11/Getty-Images-v-Stability-AI.pdf)

The Defendant's Position

Stability AI structured its legal defense by emphasizing the technical intricacies of the SD model.

Regarding the copyright infringement claims related to the images, the defendant argued that the model neither stores the images nor functions as a copy of them in a legal sense. The model's weights are merely mathematical parameters that do not fix any part of the copyrighted works. Furthermore, the model was trained on AWS cloud servers located outside the UK, thereby precluding the application of British law to the model's creation phase.

While the defendant acknowledged that SD could be used to generate synthetic images containing Getty Images watermarks, it raised the following counter-arguments:

(1) If such images are generated by a user, that creation is the result of third-party use of Stable Diffusion, rather than a representation or commercial communication for which Stability AI bears liability under its Terms of Service;

(2) The generation of watermarks does not constitute the use of any mark contained within those watermarks in the course of the defendant's trade;

(3) Any "watermarks" appearing in synthetic images are generated solely at the user's specific request.

The Court's Decision

The High Court of Justice in London delivered a judgment that may establish a precedent for similar disputes.

The Court rejected the argument that the model's weights constitute an "infringing copy" of the protected

works. The presiding judge ruled that the law requires the existence of a tangible or digital object that visually or structurally reproduces the work. The model's mathematical weights do not qualify as a "copy" of the Getty Images files.

However, the Court found that the generation of watermarks constitutes trademark infringement. As established by the Court and supported by expert testimony presented during the proceedings, Stable Diffusion indeed generates images that incorporate, albeit often in a distorted form, the Getty Images watermark. This outcome is a consequence of training the model on a subset of the plaintiff's images that contained visible watermarks. The Court held that the appearance of Getty Images' marks on synthetic images may create consumer confusion and damage the rights holder's reputation, particularly given that AI-generated images frequently exhibit artifacts or quality defects.

Consequently, this ruling establishes a precedent that shields AI developers from claims of "automatic" intellectual property infringement, yet it simultaneously imposes liability on developers regarding the content of their models' output.

The ruling also clarifies jurisdictional rules for intellectual property disputes involving the training of generative models: plaintiffs must file their claims in the jurisdictions where the physical servers are located.

(For an example of an image generated by a user via Stable Diffusion containing a distorted watermark, refer to the court's ruling: https://www.judiciary.uk/wp-content/uploads/2025/11/Getty-Images-v-Stability-AI.pdf)

This case is also significant for its analytical approach to the technical mechanics of the AI image generation process. The judgment incorporates the findings of several authoritative experts in generative technologies, the results of both pre-existing and court-ordered experimental image generations, and professional expert opinions and recommendations.

GEMA v. OpenAI (Germany) (2)

Background of the Dispute

The plaintiff in this case, GEMA (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte), is the German collective management organization representing the interests of authors of nine popular musical works, including hits such as "Atemlos" and "Männer". The lawsuit was brought against the OpenAI group companies (both the Irish and U.S. divisions), which are responsible for the development and operation of the GPT-4 language models and the associated chatbots built upon them.

In its ruling, the court noted that the servers hosting the AI language models and the chatbot are located within the European Economic Area, including the Federal Republic of Germany.

The core of the dispute centered on OpenAI's use of protected song lyrics as training data without obtaining the requisite licenses. During the proceedings, it was established that upon entering simple textual prompts such as requests for the lyrics of a specific song or a portion thereof – the chatbots provided outputs that were either identical or similar to the originals.

GEMA sought an injunction to prevent the reproduction of these texts within the models and their output to

users, as well as an accounting of profits and damages.

The Plaintiff's Position

GEMA's legal argument was predicated on the assertion that the "memorization" of musical works during the training of a generative model constitutes a form of unauthorized reproduction under § 16 of the German Copyright Act. The plaintiff contended that the song lyrics are effectively fixed within the model's parameters, rendering them accessible for subsequent retrieval.

Furthermore, GEMA asserted an infringement of the right of communication to the public under § 19a of the German Copyright Act. The plaintiff argued that chatbots effectively substitute for the copyright holders' original websites, diverting audiences away from the creators and rights holders.

Moreover, GEMA emphasized that it had timely exercised its right to opt-out, explicitly prohibiting the use of its repertoire for the purposes of training generative models (Text and Data Mining, or TDM).

The Defendant's Position

OpenAI based its defense on the underlying technical nature of large language models (LLMs). The defendant argued that the model is neither a database nor a repository of stored texts; rather, it merely encodes statistical probabilities and relationships between words (tokens). Consequently, the model's weights cannot be considered a physical fixation of a work within the meaning of copyright law.

Furthermore, the defendant asserted that a generative AI operator has no knowledge of the specific output that will be produced in response to a user's prompt until the moment of generation. The result is not fixed until the step-by-step generative process is completed; therefore, it is non-deterministic, and the models themselves are not designed to replicate their training data.

Similarly, OpenAI argued that it does not violate the right of reproduction, as such reproduction is initiated solely by the user, who determines the content of the result through their prompt and thereby triggers the automated generative process.

OpenAI also relied on the legislative exceptions for TDM, characterizing instances of exact text reproduction as "rare anomalies" triggered by highly specific user prompts. The company insisted that liability for the generated content should rest with the user, who, by virtue of their prompts, "provokes" the model into producing the specific content.

The Court's Decision.

The Munich Court ruled that OpenAI's actions constituted copyright infringement and upheld the primary claims brought by GEMA. The court concluded that the "memorization" of musical works by a generative model constitutes a form of reproduction, as the lyrics are stored in their entirety and without alteration. Regarding the omissions and other modifications observed in the output, the court found these to be a byproduct of the model's decoding mechanisms which trigger "hallucinations" during content generation – rather than an absence of the original information within the model.

Such alterations to the lyrics were also deemed a violation of Article 14 of the German Copyright Act. The distortions were the result of the defendant's deliberate configuration of randomization mechanisms, which intentionally introduced deviations from the correctly stored text.

The court rejected the defendant's argument regarding the application of TDM exceptions to this situation. The ruling specified that while such exceptions permit copying for the purpose of analysis and data extraction, they do not grant the right to retain works within a model for the purpose of subsequent output to users. The court emphasized that this form of usage extends beyond mere data preparation and infringes upon the legitimate interests of rights holders.

A significant aspect of the judgment pertains to the court's clarification on the allocation of liability. Thus, OpenAI bears direct liability for the generated results, given that the developer holds a dominant position, curates the training datasets, configures the model architecture, and defines the filters. Because the lyrics in this case were retrieved via simple (natural language) prompts, the court found no grounds to hold users liable, instead identifying OpenAI as the primary infringer.

Li v. Liu (Beijing) (3)

Factual Background

The plaintiff, Mr. Li, generated an image titled "Spring Breeze Brings Tenderness" using Stable Diffusion software, incorporating specific fine-tuned models. He subsequently published the work on the Little Red Book platform, accompanying the post with hashtags acknowledging the use of AI. The defendant, Ms. Liu, later published an article on her Baijiahao platform account featuring an original poem, using Mr. Li's image as an illustration. Crucially, the original watermark and the plaintiff's user identifier were removed.

The plaintiff filed a lawsuit seeking a court order for the defendant to issue a public apology to mitigate the impact of the infringement and demanded 5,000 RMB in compensation. In her defense, Ms. Liu argued that the plaintiff's claim was baseless, asserting that generative images are not entitled to legal protection. She also contended a lack of malicious intent, cited health issues, and submitted evidence suggesting an extremely low market value for AI-generated images (ranging from 3 to 40 RMB) in an attempt to minimize the potential damages award.

The Plaintiff's Position

The plaintiff's legal position was predicated on the classification of the image as a work protected under the Copyright Law of the PRC. Mr. Li contended that the image was the result of his own intellectual effort, emphasizing that he maintained rigorous creative control throughout every stage of the process: from selecting specific models and configuring parameters to the iterative refinement of positive and negative textual prompts. In the plaintiff's view, the AI served merely as a technical instrument for the realization of his aesthetic vision rather than as an independent creator.

Furthermore, the plaintiff submitted the terms of the license agreement concluded with the developers of Stable Diffusion, which explicitly stipulates that the licensor claims no rights over the output generated by users through the model.

The Defendant's Position

The defendant maintained that the image was obtained from open-access sources on the Internet and was utilized solely as a decorative element for her original poetry. Furthermore, Ms. Liu claimed she could not precisely recall the circumstances surrounding the removal of the watermark and denied any intent to infringe upon third-party rights.

Ms. Liu contested the plaintiff's copyright ownership of AI-generated content, further arguing that the compensation claimed was grossly disproportionate to prevailing market valuations.

The Court's Decision

In determining whether the image in question constitutes a protectable work, the court observed that the generative model functions in a manner analogous to a human being: it acquires certain capabilities and skills through a process of learning and knowledge accumulation, which enables the creation of a cohesive image.

The court found that throughout the entire creative process from the initial conception of the idea to the finalized output – the plaintiff exerted significant intellectual effort. This was manifested in the development of the

character's appearance, the selection and ordering of keywords, the configuration of technical parameters, and the final selection of the desired image. Because the image reflects the plaintiff's intellectual effort, the court held that it satisfies the criterion of creative contribution inherent in copyrightable works.

Furthermore, the court took into account that the image serves as a form of the author's personal expression. The court noted significant differences between the image in question and previous works, observing that the model allows different users to create distinct outputs by inputting various keywords and adjusting configuration parameters. Consequently, the court ruled that the image is not a mere "mechanical achievement".

(For images generated by the plaintiff during the process of achieving the final result, refer to the court's ruling: https://english.bjinternetcourt.gov.cn/pdf/BeijingInternetCourtCivilJudgment112792023.pdf)

As the court noted, the new generation of generative AI technologies is increasingly being utilized by individuals for creative endeavors. These models can produce remarkable images from textual descriptions. Many people, including those without artistic skills, are now employing generative models to realize their creative visions, thereby enhancing the efficiency of content creation. The court opined that generative AI technology has transformed human creativity, much like many other technological advancements throughout history (e.g., the advent of photography and the enhanced capabilities of mobile phone cameras).

It is crucial to note that while the court determined Mr. Li holds copyright in the disputed image, it emphasized that the plaintiff had an obligation to clearly indicate the AI technology or model used. This obligation stems from the principle of good faith and the public's right to accurate information. In this instance, the court deemed the plaintiff's use of the hashtag "AI illustration" sufficient to inform the public that the content was created by the plaintiff using AI technologies.

Consequently, the court affirmed legal protection for the disputed image, recognized the existence of infringement, and ordered Ms. Liu to issue a public apology and pay compensation amounting to 500 RMB. This sum was reduced from the initially claimed 5,000 RMB, taking into consideration the specifics of the case and the market value for the right to use AI-generated works.

Conclusion

The judicial disputes examined herein illustrate the absence of a unified approach to the legal regulation of generative AI across different jurisdictions, yet they reveal several key emerging trends. Courts appear increasingly inclined to reject the classification of AI model weights as "infringing copies" of protected works. Nevertheless, they are simultaneously imposing liability on developers for outputs that infringe upon trademark rights or reproduce

protected content. Furthermore, there is a trend toward recognizing legal protection for AI-assisted works, provided that the human user demonstrates sufficient intellectual effort and creative control throughout the generative process.

These rulings reinforce critical procedural norms regarding jurisdiction and the necessity of adhering to the principle of good faith when utilizing AI technologies – specifically, the requirement to inform the public about the use of such tools. These cases may well lay the foundation for future legislative initiatives and international cooperation in the intersection of intellectual property law and AI application.

The continued evolution of judicial practice will require a more granular refinement of liability criteria and the harmonization of national legal frameworks to ensure a sustainable balance of interests among all participants in the creative process.

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ОБЗОР РЕЗОНАНСНЫХ СУДЕБНЫХ ДЕЛ И ПРЕЦЕДЕНТОВ В СФЕРЕ ВЫСОКИХ ТЕХНОЛОГИЙ

Аннотация. Настоящая статья представляет собой обзор ключевых международных судебных споров в сфере правового регулирования отношений, возникающих в связи с использованием генеративного искусственного интеллекта, и защиты интеллектуальной собственности. В обзоре анализируются обстоятельства спора, позиции сторон и решения по делам Getty Images против Stability AI, GEMA против OpenAI и Li против Liu, вынесенные судами Великобритании, Германии и Китая соответственно. В работе рассматриваются вопросы нарушения авторских прав при обучении ИИ-моделей, проблемы ответственности разработчиков и пользователей за генерируемый контент, а также критерии охраноспособности выходных данных.

Ключевые слова: искусственный интеллект; генеративный ИИ; интеллектуальная собственность; авторское право; судебная практика; нарушение прав; правоприменение; правовая охрана.

Введение

Развитие технологий генеративного искусственного интеллекта (далее – ИИ), способного создавать новый контент, включая изображения, тексты и музыку, ставит перед мировым правопорядком новые вызовы. Традиционные правовые подходы и существующие законы не всегда эффективно применимы

для регулирования отношений по созданию и использованию генеративных результатов, что приводит к возникновению правовой неопределенности. Анализ резонансных судебных дел становится необходим для понимания текущих тенденций правоприменения и выработки эффективных подходов к защите прав авторов и правообладателей.

Настоящий обзор направлен на комплексное исследование правовых позиций и решений судов Великобритании, Германии и Китая по трем спорам: Getty Images против Stability AI, GEMA против OpenAI и Li против Liu. Рассмотренные далее дела охватывают основные проблемы, стоящие перед мировым сообществом: от нелицензионного использования охраняемых произведений для обучения ИИ и нарушения прав на товарные знаки до определения критериев наличия творческого вклада человека при создании контента с помощью ИИ. Изучение данных прецедентов позволяет оценить, как технические особенности работы нейросетей влияют на юридическую квалификацию действий сторон и распределение ответственности между разработчиками и пользователями.

Дело Getty Images против Stability AI (Великобритания) (1)

Обстоятельства спора

Истцы (группа компаний Getty Images) являются владельцами одного из крупнейших в мире архивов цифровых изображений, имущественное право на которые передано организациям на условиях исключительной лицензии (более 12 миллионов объектов). Ответчик (Stability AI) – компания, разработавшая и выпустившая в открытый доступ модель глубокого обучения Stable Diffusion (далее также – SD), предназначенную для генерации изображений по текстовым запросам.

Примечательно, что в 2023 году Getty Images запустила собственные программные инструменты искусственного интеллекта, разработанные совместно с NVIDIA («Generative AI by Getty Images» и «Generative AI by iStock»). GAI обучен на библиотеке предварительно отснятого креативного контента Getty Images (весь контент является лицензированным).

При производстве по делу истцами предъявлено несколько требований, вытекающих из прямого и вторичного нарушения авторских прав на изображения, нарушения прав на базы данных, нарушения прав на товарные знаки и введение потребителей в заблуждение ввиду генерации моделью SD изображений с водяными знаками, схожими с логотипами Getty и iStock, которые обычно наносятся на стоковые объекты истцов.

В ходе подготовки дела к разбирательству истцы отказались от исковых требований в части прямого копирования произведений при обучении ИИ ввиду отсутствия доказательств осуществления обучения на территории Великобритании, а также от требований в части нарушения прав на базы данных.

Позиция истца

Процессуальная позиция истцов построена на утверждении, что модель SD сама по себе является нарушающей авторские права копией согласно разделу 27(3) Закона об авторском праве (CDPA). По мнению истцов, изготовление весовых коэффициентов модели (числовых параметров внутри нейронной сети, которые определяют силу связи между узлами) представляет собой нарушение авторских прав, если бы оно было произведено в Великобритании, что является так называемым вторичным нарушением.

В части требований, вытекающих из нарушения права на товарные знаки, компании группы Getty Images настаивали на том, что генерация «синтетических водяных знаков» наносит ущерб репутации бренда и вводит потребителей в заблуждение, так как знаки появляются на изображениях низкого качества или неуместного содержания.

Позиция ответчика

Компания Stability AI выстроила процессуальную защиту на доказывании технических особенностей модели SD.

В частности, в отношении требований, связанных с нарушением авторских прав на изображения, ответчик утверждал, что модель не хранит изображения и не является их копией в юридическом смысле. Весовые коэффициенты представляют собой только математические параметры и не фиксируют части произведений. Кроме того, обучение модели происходило на облачных серверах AWS за пределами Великобритании, что исключает применение британского права к этапу создания модели.

(пример изображения Getty Images с нанесенным водяным знаком, изображение взято из решения суда: https://www.judiciary.uk/wp-content/uploads/2025/11/Getty-Images-v-Stability-AI.pdf)

Ответчик признал, что SD может использоваться для создания синтетических изображений, содержащих водяные знаки Getty Images. Вместе с тем компания утверждает следующее:

(1) если такие изображения создаются пользователем, то такое создание является результатом использования Stable Diffusion третьими лицами, а не заявлением или коммерческим сообщением, за которое StabilityAI несет ответственность по условиям пользовательского соглашения;

(2) любое создание водяных знаков не является использованием какого-либо знака в таких водяных знаках в ходе коммерческой деятельности ответчика;

(3) «водяные знаки» в результате создания синтетических изображений могут быть сгенерированы только по запросу пользователя.

Решение суда

Высокий суд Лондона вынес решение, которое может задать вектор развития практики по аналогичным спорам.

Суд отклонил аргумент о том, что весовые коэффициенты модели являются «контрафактным экземпляром» произведений. Судья постановила, что закон требует наличия вещественного или цифрового объекта, который визуально или структурно воспроизводит произведение. Математические веса модели не являются «копией» изображений Getty Images.

Однако суд признал наличие нарушения прав на товарные знаки при генерации водяных знаков. Как установлено судом и подтверждается приведенными в рамках рассмотрения спора заключениями экспертов, Stable Diffusion действительно генерирует изображения, копирующие водяной знак Getty Images (хотя часто и искаженный), что связано с обучением модели на некотором количестве изображений истца, содержащих такие видимые водяные знаки. По мнению суда, появление знаков Getty Images на синтетических изображениях может вызвать путаницу у потребителей и нанести вред репутации правообладателя, так как ИИ-изображения часто имеют дефекты.

(пример изображения, сгенерированного пользователем с использованием модели Stable Diffusion, с искаженным водяным знаком, изображение взято из решения суда: https://www.judiciary.uk/wp-content/uploads/2025/11/Getty-Images-v-Stability-AI.pdf)

Таким образом, решение создает прецедент, защищающий разработчиков ИИ от обвинений в «автоматическом» нарушении интеллектуальных прав, однако накладывает на разработчиков ответственность за содержание выходных данных.

Решение также установило правила подсудности в отношении споров о нарушении прав интеллектуальной собственности при обучении генеративных моделей: истцам необходимо обращаться в суды тех стран, где физически расположены серверы.

Рассмотренное дело представляет интерес и с точки зрения анализа технической составляющей процесса генерации изображений ИИ. В решении нашли отражение результаты анализа мнений нескольких авторитетных специалистов в области генеративных технологий, результатов реальных и проведенных в рамках судебного процесса экспериментальных генераций изображений, а также рекомендаций (заключений) экспертов.

Дело GEMA против OpenAI (Германия) (2)

Обстоятельства спора

Истцом по делу выступило германское общество по коллективному управлению правами на публичное исполнение и механическое воспроизведение музыки GEMA, представляющее интересы авторов девяти популярных музыкальных произведений (включая такие хиты как «Atemlos» и «Männer»). Иск предъявлен к компаниям группы OpenAI (ирландское и американское подразделения), ответственным за разработку и эксплуатацию языковых моделей GPT-4 и созданных на их основе чат-ботов.

В решении суд отметил, что серверы языковой модели ИИ и чат-бота расположены в пределах Европейской экономической зоны, включая Федеративную Республику Германия.

Суть спора заключалась в том, что OpenAI использовала защищенные тексты песен в качестве обучающих данных без получения соответствующих лицензий. В ходе судебного разбирательства установлено, что чат-боты при вводе простых текстовых запросов (например, просьбы предоставить текст конкретной песни или ее часть) выдавали результаты, идентичные оригиналам или схожие с ними.

GEMA обратилась с требованием о запрете воспроизведения данных текстов внутри моделей и их выдачи пользователям, а также о предоставлении отчетности о доходах и взыскании соответствующей суммы убытков.

Позиция истца

Правовое обоснование компании GEMA строилось на утверждении, что процесс «запоминания» произведений в ходе обучения генеративной модели является формой незаконного воспроизведения согласно § 16 Закона об авторском праве Германии. Истец настаивал на том, что тексты песен фиксируются в параметрах модели, что делает их доступными для последующего извлечения.

Дополнительно GEMA указала на нарушение права на доведение произведений до всеобщего сведения согласно § 19a Закона об авторском праве Германии. По мнению истца, чат-боты заменяют собой оригинальные веб-сайты правообладателей, привлекая новую аудиторию в обход автора и иных правообладателей.

Также истец подчеркнул, что GEMA своевременно заявила оговорку об использовании (opt-out), прямо запретив использование своего репертуара для обучения генеративных моделей (TDM).

Позиция ответчика

OpenAI основывала свою защиту на технической природе больших языковых моделей. Ответчик утверждал, что модель не является базой данных и не хранит копии текстов, а лишь фиксирует статистические вероятности и связи между словами (токенами). Следовательно, весовые коэффициенты модели не могут считаться физической фиксацией произведения по смыслу авторского права.

Ответчик указал, что оператор генеративного ИИ не знает до момента вывода данных, что именно будет сгенерировано в ответ на конкретный пользовательский промпт. Результат не фиксируется до завершения пошагового процесса генерации и, следовательно, не является детерминированным, а сами модели не предназначены для повторной генерации обучающих данных.

Аналогичным образом, по мнению ответчика, не нарушается и право на воспроизведение, поскольку такое воспроизведение осуществляет только пользователь, который своим запросом определяет содержание соответствующего результата и тем самым запускает процесс автоматической генерации.

OpenAI также сослалась на законодательные исключения TDM, а случаи точного воспроизведения текстов песен назвала «редкой ошибкой», вызванной специфическими запросами пользователей. Компания настаивала на том, что ответственность за результат генерации должен нести пользователь, который своими промптами «провоцирует» модель на выдачу конкретного контента.

Решение суда

Мюнхенский суд признал действия OpenAI нарушением авторских прав и удовлетворил основные требования GEMA. Суд пришел к выводу о том, что «запоминание» произведений генеративной моделью представляет собой форму воспроизведения, поскольку текст песни запоминается полностью и без изменений. При воспроизведении запомненного контента возникают сокращения и иные изменения текста, что происходит не из-за содержащейся в модели информации, а из-за механизмов декодирования, которые провоцируют такие «галлюцинации» при создании выходных данных.

Изменения в тексте песни также признаны нарушением в силу статьи 14 Закона Германии об авторском праве. Искажения стали результатом преднамеренных запросов ответчика, который намеренно создавал отклонения от правильно запомненного текста, используя механизмы рандомизации.

Суд также отклонил довод ответчика о применении исключений TDM к данной ситуации. В решении указано, что такое исключение разрешает копирование для анализа и извлечения информации, но не дает права на сохранение произведений внутри модели с целью их последующей выдачи пользователям. Суд подчеркнул, что подобное использование выходит за рамки подготовки данных и нарушает законные интересы правообладателей.

Важным аспектом решения стали разъяснения суда о распределении ответственности. Так, OpenAI несет прямую ответственность за результаты генерации, так как разработчик обладает доминирующим положением, выбирает обучающие данные, настраивает архитектуру и определяет фильтры. Поскольку в данном деле тексты песен выдавались по простым (естественным) запросам, суд не нашел оснований для возложения ответственности на пользователей, признав OpenAI непосредственным нарушителем.

Дело Li против Liu (Пекин) (3)

Фактические обстоятельства

Истец, г-н Ли, сгенерировал изображение «Весенний ветерок приносит нежность», используя программное обеспечение Stable Diffusion с применением специфических моделей. Истец опубликовал работу на платформе Little Red Book, сопроводив её хэштегами, указывающими на использование ИИ. Ответчик, г-жа Лю, опубликовала в своем аккаунте на платформе Baijiahao статью с авторской поэмой, использовав изображение истца в качестве иллюстрации. При этом оригинальный водяной знак платформы и идентификатор пользователя истца были удалены.

Истец обратился в суд с требованиями обязать ответчика опубликовать публичное извинение для устранения последствий нарушения и взыскать компенсацию в размере 5000 юаней. Ответчик в свою защиту указала на отсутствие оснований для удовлетворения иска ввиду отсутствия правовой охраны в отношении генеративных изображений, а также на отсутствие умысла, состояние здоровья и предоставила данные о крайне низкой рыночной стоимости ИИ-изображений (от 3 до 40 юаней) в целях снижения размера компенсации в случае признания судом правовой охраны спорного изображения.

Позиция истца

Правовое обоснование истца строилось на признании изображения произведением, защищенным Законом КНР об авторском праве. Истец утверждал, что работа является результатом его интеллектуального труда, так как лично осуществлял творческий контроль на каждом этапе: от выбора конкретных моделей и настройки параметров до последовательного подбора позитивных и негативных текстовых подсказок (промптов). По мнению истца, ИИ выступал лишь инструментом для реализации его эстетического замысла, а не самостоятельным творцом.

Кроме того, истец представил условия лицензионного соглашения, заключенного с разработчиками модели Stable Diffusion, в соответствии с которым лицензиар не претендует на какие-либо права на выходные данные, которые пользователь генерирует с использованием модели.

Позиция ответчика

Ответчик настаивала на том, что изображение было получено из открытых источников в Интернете и использовалось исключительно как оформительский элемент для ее авторской поэзии. Также ответчик указала, что не может точно вспомнить обстоятельства удаления водяного знака и не была намерена нарушить чьи-либо права.

Г-жа Лю оспаривала наличие у истца авторских прав на контент, созданный искусственным интеллектом, и утверждала, что сумма исковых требований чрезмерно завышена относительно рыночных реалий.

Решение суда

При разрешении вопроса о том, является ли спорное изображение охраняемым произведением, суд отметил, что генеративная модель работает так же, как и человек: приобретает некоторые способности и навыки, которые формируются в процессе обучения и накопления знаний, что позволяет создать целостную картину.

Суд установил, что в ходе всего процесса создания спорного изображения – от момента возникновения идеи изображения и до его появления в окончательном виде – истец прикладывал интеллектуальные усилия, выраженные в разработке образа персонажа, выборе ключевых слов, их упорядочивании, установке параметров и выборе желаемого изображения. Поскольку изображение отражает интеллектуальные усилия истца, постольку оно соответствует критерию наличия творческого вклада, присущего

охраняемым объектам авторского права.

Кроме того, суд учел, что изображение является личным самовыражением автора. В данном случае присутствуют заметные различия между спорным изображением и предыдущими работами, с помощью данной модели разные люди могут создавать разные изображения, вводя разные ключевые слова и задавая разные параметры настройки. Следовательно, спорное изображение не является «механическим достижением».

(изображения, сгенерированные истцом для получения итогового результата, изображения взяты из решения суда: https://english.bjinternetcourt.gov.cn/pdf/BeijingInternetCourtCivilJudgment112792023.pdf)

Как отметил суд, новое поколение технологий генеративного ИИ все чаще используется людьми для творчества. Модели могут создавать удивительные изображения на основе текстовых описаний. Многие люди, в том числе и те, кто не умеет рисовать, пытаются использовать генеративные модели для воплощения своего творчества, в результате чего повышается эффективность создания произведений. Технология генеративного ИИ, по мнению суда, изменила способ творчества людей, как и многие другие технологические достижения в истории (например, появление фотоаппаратов и улучшение способностей камер на мобильных телефонах).

Важно отметить, что, хотя суд установил, что г-н Ли владеет авторскими правами на спорное изображение, истец должен был четко обозначить используемую технологию или модель ИИ в соответствии с принципом добросовестности и необходимостью защиты права общественности на получение достоверной информации. В данном случае суд признал, что использование истцом хэштега «иллюстрация ИИ» достаточно, чтобы сообщить общественности, что контент создан истцом с использованием ИИ-технологий.

Таким образом, суд установил правовую охрану в отношении спорного изображения, признал наличие нарушений и обязал г-жу Лю принести публичные извинения и выплатить компенсацию в размере 500 юаней, снизив её с заявленных 5000 юаней с учетом обстоятельств дела и рыночной стоимости права использования объектов, созданные ИИ.

Заключение

Рассмотренные дела демонстрируют отсутствие единого подхода к правовому регулированию генеративного ИИ в различных странах, однако позволяют выделить некоторые ключевые тенденции. Суды

склонны отказывать в признании весовых коэффициентов моделей ИИ «контрафактными экземплярами» произведений, однако при этом возлагают на разработчиков ответственность за выходные данные, нарушающие права на товарные знаки или воспроизводящие охраняемый контент. Также наблюдается тенденция к признанию правовой охраны в отношении объектов, созданных человеком с использованием генеративных моделей при условии наличия достаточного интеллектуального вклада и творческого контроля со стороны пользователя.

Решения подкрепляют важные процессуальные правила, касающиеся подсудности и необходимости соблюдения принципа добросовестности при использовании ИИ-технологий, включая требование об информировании общественности о применении таких инструментов. Возможно, проанализированные судебные споры заложат основу для будущих законодательных инициатив и международного сотрудничества в сфере интеллектуальной собственности и ИИ.

По мнению автора настоящего обзора, дальнейшее развитие правоприменительной практики потребует более детальной проработки критериев ответственности и гармонизации национальных законодательств для обеспечения баланса интересов всех участников творческого процесса.

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ARTIFICIAL INTELLIGENCE IN CIVIL COMMERCE: AN ANALYSIS OF LEGISLATIVE NOVELTIES

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Аннотация. В статье представлен анализ новейшего законодательства Казахстана, США, Китая, Франции и Великобритании в области правового регулирования отношений по созданию и использованию генеративных результатов за период с 2025 года по начало 2026 года. Автор исследует трансформацию нормативно-правового регулирования под влиянием генеративных технологий. В работе выявляются глобальные тренды законотворчества, а именно закрепление антропоцентрического подхода к авторству, защита цифровой идентичности от ИИ-имитаций и внедрение механизмов прозрачности обучающих выборок. Сделан вывод о переходе от правовой неопределенности к созданию специализированных национальных режимов, требующих дальнейшей международной гармонизации.

Ключевые слова: искусственный интеллект; интеллектуальная собственность; авторское право; цифровой объект; цифровая идентичность; генеративные модели.

Abstract. This article presents an analysis of the latest legislation in Kazakhstan, the United States, China, France, and the United Kingdom concerning the legal regulation of relations regarding the creation and use of generative outputs from 2025 to early 2026. The author examines the transformation of regulatory frameworks driven by generative technologies. The research identifies global legislative trends, specifically the entrenchment of an anthropocentric approach to authorship, the protection of digital identity against AI-generated deepfakes, and the implementation of transparency mechanisms for training datasets. The article concludes that there is a transition from legal uncertainty toward the establishment of specialized national regimes that require further international harmonization.

Keywords: artificial intelligence; intellectual property; copyright; digital object; digital identity; generative models.

Introduction

The rapid development of generative artificial intelligence (AI) in the mid-decade has triggered an extensive doctrinal discussion within the realm of intellectual property law. The year 2025 marked a transition from fragmented discourse to a phase of active legislative action, aimed at finding a balance between incentivizing technological innovation and protecting the intellectual property rights of content creators. A key challenge for modern legislators has been the legal characterization of two critically important processes: the use of protected works for training neural networks and the determination of the legal status of outputs generated without direct human creative intervention.

The contemporary legal paradigm is characterized by a departure from "one-size-fits-all" solutions in favor of specialized national regulations that account for the economic and cultural priorities of individual jurisdictions. While some nations, such as France and China, prioritize enhancing the transparency of training datasets and safeguarding digital sovereignty, others, including the United Kingdom, are focused on creating flexible institutional frameworks to legalize AI-generated content within civil commerce. This overview provides a comparative legal

analysis of the latest regulatory acts from leading nations, which are currently shaping global approaches to understanding the nature of generative technologies.

The Digital Code of the Republic of Kazakhstan and the Law on Artificial Intelligence

On January 18, 2026, Law of the Republic of Kazakhstan No. 230-VIII of November 17, 2025, "On Artificial Intelligence" (1) entered into force.

Article 1 of this Law defines artificial intelligence as the functional capacity to simulate human cognitive functions, producing results comparable to or exceeding those of human intellectual activity; it also provides definitions for other terms within the field of generative technologies.

The Law has effectively concluded the debate regarding authorship of content created using AI: copyright is recognized exclusively for natural persons who have made a creative contribution. The mere use of AI as a tool does not confer the status of author upon the system itself, and works created with the assistance of generative technologies are eligible for protection only if they result from a human's creative contribution (Article 23 of the Law).

Notably, the legislator has established legal protection for text queries submitted to artificial intelligence systems (prompts), provided that these prompts demonstrate signs of human intellectual and creative activity in their creation.

It is noteworthy that Article 3 of the Law provides for a prohibition on the creation and operation of artificial intelligence systems possessing certain functional capabilities, including those used for cognitive manipulation, the exploitation of the moral and/or physical vulnerabilities of a natural person, or the detection of a natural person's emotions without their consent.

Furthermore, an imperative requirement has been introduced for the mandatory labeling of goods, works, and services created using AI, aimed at ensuring transparency for consumers (Article 21 of the Law).

The use of copyrighted works for training artificial intelligence models does not fall under the provisions for the free use of works for educational or scientific purposes.

Consequently, the adoption of this Law places Kazakhstan among the global leaders in terms of regulatory maturity within the sphere of digital technologies. The Law successfully balances the incentivization of innovation with the protection of the fundamental civil rights, establishing clear liability rules for both developers and operators of AI systems.

Another significant legal development in the Republic of Kazakhstan was the adoption of the Digital Code of the Republic of Kazakhstan (Law No. 255-VIII of January 9, 2026, entering into force on July 12, 2026). As stipulated in Article 1, the Code serves as a consolidated body of law regulating social relations within the digital environment regarding the creation, circulation, storage, transfer, and use of digital data and digital objects (2).

The Code introduces unified principles for digital legislation. The document is based on the legislator's endeavor to harmonize technological progress with the protection of individual rights by establishing clear goals and objectives for the regulation of the digital sphere. Pursuant to Article 4 of the Code, regulation is based on the principles of the primacy of human rights and freedoms and, simultaneously, the technological neutrality of legal regulation (2), which predetermines an anthropocentric approach to AI-generated outputs. The legislator aims to create a cohesive legal framework in which innovation does not conflict with the rights of authors and developers.

A key innovation is the elaborately detailed legal regime for digital objects. Under Article 20 of the Code, the legislator classifies digital records, assets, resources, software, digital systems, platforms, digital infrastructure objects, digital data products, and other digital objects provided for by the laws of the Republic of Kazakhstan into this category (2).

Of significant doctrinal weight is the body of provisions dedicated to the rights and obligations of participants within the digital environment. Article 15 of the Code codifies the category of "digital rights" for the first time, with the right to the protection of digital identity holding a position of particular prominence. In the context of generative AI, this provision serves as a protective mechanism for authorial sovereignty, as it enables the suppression of unauthorized replication of an author's unique persona or artistic style – elements that previously often occupied a legal "gray area". This framework is further reinforced by the provisions of Chapter 6 of the Code, which govern digital identification and biometrics (2). The protection of identity thus acts as a legal barrier against the unauthorized exploitation of an individual's likeness, voice, or unique creative characteristics in the production of synthetic content. It is evident that the regulation of digital identification is designed to provide the legal toolkit necessary for authenticating creative contributions. Furthermore, the use of digital data identifiers allows for the verification of authorship within automated systems, thereby preventing the anonymous dissemination of counterfeit content generated by neural networks.

A critical instrument for the commercialization of intellectual property under the Code is the introduction of a statutory definition for smart contracts and automated solutions. Article 48 defines a smart contract as software code that facilitates the automated execution and fulfillment of obligations, thereby paving the way for self-executing licensing agreements and the instantaneous distribution of royalties. Simultaneously, Article 50 establishes the legal framework for automated decision-making by AI systems, imposing an obligation upon developers to ensure algorithm transparency (2). Such regulation allows for the integration of automated creativity into civil commerce while maintaining oversight regarding the ethics and legality of neural network decision-making processes.

The final element of the protective system within the Digital Code consists of the provisions on cybersecurity and data governance, concentrated in Section 5. The Code imposes duties on participants within the digital ecosystem to ensure the integrity and confidentiality of digital data, which directly correlates with the protection of databases and trade secrets (know-how) utilized in AI development. The established measures for safeguarding digital architecture, combined with mandatory platform security requirements, create a secure environment for the storage of intellectual assets, preventing unauthorized scraping and asset leakage; this renders Kazakhstan an increasingly attractive jurisdiction for creators and high-tech startups.

Legislative Developments in the United States of America

The contemporary legal paradigm in the United States regarding AI is anchored in a steadfast anthropocentric approach, which is reflected in the key regulatory document: the USPTO Guidance on Inventorship for AI-Assisted Inventions (3). Drawing upon current case law from 2024–2025, the USPTO has reinforced the doctrine that patent protection is granted only when a natural person provides a "significant contribution" to every claim in a patent application. Pursuant to Title 35 of the U.S. Code, AI cannot be recognized as an inventor; the use of neural networks to generate hypotheses without subsequent critical refinement by a human being deprives the technical solution of legal protection (3). This establishes a rigorous filter for "automated" innovations, ensuring that human capital remains the priority.

A pivotal step in the protection of personality rights was the passage of the federal NO FAKES Act (S.1367) (4). This legislative act introduces a new category of rights at the federal level: the right to a "digital replica". In contrast to the fragmented patchwork of state "right of publicity" laws, this Act establishes a uniform prohibition against the unauthorized use of AI to create highly realistic replicas of an individual's voice or likeness using deepfake technology. This legislative act prohibits the creation, distribution, or exploitation of digital replicas of an individual's voice and likeness without their express consent. The decision to adopt such a measure was a direct response to the widespread proliferation of synthetic tracks and deepfakes, which undermine the commercial value of artists'

original works. Pursuant to Section 2 of the Act, the right to digital identity is recognized as a transferable property right that persists for the benefit of the rights holder for 70 years following the individual's death (4).

In the field of copyright, the USCO issued a critically important update in 2025 to the USPTO Guidance on Inventorship for AI-Assisted Inventions (5). Relying on the provisions of the Copyright Act (17 U.S.C. § 101), the Office solidified the obligation for applicants to disclose the use of generative models if the AI-generated contribution is "more than de minimis". A significant development in 2025 was the introduction of a partial protection procedure: an author may now claim protection for the selection, coordination, and arrangement of material, even if individual elements within the work were generated by AI. This framework provides a path for the legal recognition of complex multimedia projects (5).

Furthermore, the aforementioned Act establishes a rigorous Significant Contribution Test. Patent protection is deemed invalid if a key technical element of an invention is proposed autonomously by an AI, with the human inventor merely recording the result. However, if a human utilizes AI to verify hypotheses or optimize parameters within a strictly defined scope established by the human, such an invention remains eligible for protection (5). This approach is aimed at incentivizing innovation in which the human retains the role of a strategic architect, while the AI functions as a computational tool.

The issue of training models on protected data has acquired particular significance and is currently regulated by the doctrine of "fair use" (17 U.S.C. § 107) (6). In light of emerging judicial precedents, the focus has shifted toward the determination of the fourth factor: the effect of the original upon the market. Furthering this development, the AI Foundation Model Transparency Act is expected to enter into force in 2026, which will mandate that developers provide detailed reports regarding the composition of their training datasets. Simultaneously, as part of the implementation of Executive Order 14110, the U.S. Department of Commerce has introduced mandatory labeling standards for all commercial AI-generated content (7).

Consequently, these measures are aimed at fostering an open ecosystem in which rights holders can effectively track the utilization of their intellectual assets within the digital environment by leveraging standardized technological identification methods.

The Regulatory Framework of China

The Chinese model for regulating the legal relations surrounding the creation and use of generative outputs is characterized by a transition from fragmented, sector-specific rules toward a comprehensive legislative framework, anchored by the Draft Artificial Intelligence Law of the People's Republic of China (9). Unlike Western jurisdictions, the Chinese legal framework closely integrates intellectual property protection with the imperatives of national security and social stability. Pursuant to the provisions of this law, developers of AI systems are mandated to ensure the legitimacy of the data sources used for model training a requirement further reinforced by the updated Interim Measures for the Management of Generative AI Services (10).

China maintains a pragmatic approach regarding the authorship of content created through neural networks. Drawing upon the Copyright Law of the People's Republic of China (11), courts—specifically the Beijing Internet Court in the Li v. Liu case — have affirmed that AI-generated works may be eligible for protection if the user has made a substantial intellectual contribution through detailed prompting and parameter configuration. However, 2026 legislation introduces a mandatory requirement: such objects must bear clear labeling regarding their provenance, pursuant to the Administrative Provisions on Deep Synthesis in Internet Information Services (12). This measure is designed to prevent consumer deception and shield the "human" labor market from unfair competition posed by unlabeled synthetic content.

In the PRC's legal landscape, particular emphasis is placed on the administrative algorithm filing system (bèi'àn). Under the Administrative Provisions on Algorithm Recommendation in Internet Information Services,

developers of AI services are required to disclose to the regulator information regarding the types of data utilized and the underlying operational logic of their algorithms. This procedure is supplemented by a requirement to verify the legality of the training datasets' origin, thereby establishing a mechanism for preventative state oversight. Consequently, the regulator monitors intellectual property rights compliance during the model training phase, rather than relying solely on subsequent litigation (13).

The Legislative Initiative of France

French legislation represents the most conservative model for the protection of traditional copyright in the era of artificial intelligence. The French approach is predicated on the implementation of the pan-European Regulation (EU) 2024/1689 on Artificial Intelligence (EU AI Act) (14), supplemented by specific national regulations.

One of the most pivotal and widely debated developments has been the introduction of the French AI Transparency Bill No. 1513 (15), which is aimed at ensuring transparency in AI operations. Under the provisions of this bill, a presumption of the use of protected content by AI providers is established through the addition of a clause to Article L. 331-4-1 of the Code de la propriété intellectuelle (16), which states: «Sauf preuve contraire, l'objet protégé par un droit d'auteur ou par un droit voisin, au sens du présent code, est présumé avoir été exploité par le système d'intelligence artificielle, dès lors qu'un indice afférent au développement ou au déploiement de ce système ou au résultat généré par celui-ci rend vraisemblable cette exploitation». Consequently, rights holders are granted the standing to bring claims against AI developers if they possess evidence indicating the probable use of protected content during the generative process.

Furthermore, the bill proposes the introduction of a system of mandatory collective rights management for AI training. Under the new rules set forth in Article 3 of the draft law, the use of content for text and data mining (TDM) purposes in commercial AI models will require the payment of royalties through accredited organizations. However, the adoption of such a measure could effectively preclude the free use of data under the "technological exceptions" (TDM exceptions) provided for in Article 4 of the EU Copyright Directive 2019/790 (17), in cases where an author has explicitly exercised their right to opt-out.

Finally, the bill proposes a mandatory labeling requirement for all AI-generated content, specifically utilizing the phrase "AI-generated". This measure is to be integrated into Article L121-1 of the Code de la propriété intellectuelle and is aimed at protecting the moral rights of authors while preventing the deception of consumers.

Legal Landscape of the United Kingdom

Following the unsuccessful attempt in 2022–2023 to introduce a broad copyright exception for AI training which drew fierce criticism from the creative industries the UK government consolidated a more balanced approach in its AI Regulation White Paper (18). Moving away from "free access", the UK has begun implementing a model similar to the European framework, wherein commercial AI training is permitted provided the author has not explicitly exercised an opt-out. Notably, the government has committed to conducting an in-depth economic impact analysis of the use of intellectual property assets by neural networks prior to the final adoption of these regulations.

Furthermore, the UK Intellectual Property Office (IPO) developed a Code of Practice on Copyright and Artificial Intelligence (19), which has effectively transitioned from a voluntary agreement into a "soft law" regulatory standard. The doctrinal significance of the Code lies in its establishment of standards for fair conduct in data collection.

The core provisions of this instrument mandate that developers publish summaries of their training datasets, recognize the legal validity of machine-readable opt-out mechanisms, and prioritize market-led licensing schemes.

In UK judicial practice, when considering copyright infringement claims, courts evaluate the compliance of a defendant's actions with the standards set forth in the Code. The failure to adhere to established rights identification procedures is viewed by judges as evidence of bad faith (mala fides), which effectively precludes technology companies from relying on the doctrine of "incidental inclusion".

Conclusion

In conclusion, it can be stated that by 2026, intellectual property law has definitively solidified an anthropocentric vector for the development of legal relations within the sphere of AI technologies. None of the leading jurisdictions have recognized AI as a legal entity or subject, reserving the status of author and inventor exclusively for human beings.

The primary regulatory struggle has shifted away from the theoretical recognition of "machine creativity" toward the practical control of data, achieved through both transparency mechanisms for training datasets and the protection of digital identity.

The paramount challenge remains finding a sustainable balance between the protection of creators and the incentivization of innovation. The current divergence in approaches underscores the inevitability of future international harmonization. Intellectual property law has ceased to be merely a tool for protecting the fruits of labor; it has transformed into the primary regulator of the ethical development of technology, where algorithmic transparency and respect for the original data source have become mandatory standards.

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YOUNG SCHOLARS' FORUM / ЖАС ҒАЛЫМДАР МІНБЕРІ / ТРИБУНА МОЛОДЫХ УЧЁНЫХ

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ON THE LEGAL NATURAL OF A SOCIAL NETWORK ACCOUNT AND THE INHERITANCE OF ACCESS RIGHT

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Abstract. The relevance of the topic is due to the rapid transformation of social media accounts from personal profiles into digital assets. The author conducts comprehensive research of the legal nature of an account as an object of civil rights. The study analyzes the legislation and judicial practice of the United States and the European Union, as well as restrictive provisions of the user agreements. The main conclusions lie in the absence of a need to recognize an account as an object of civil law. The most balanced mechanism for transferring access to an account is recognized as a model based on the priority of the testator's will (following the example of Spain and Italy), which requires a legislative limitation on the force of user agreements.

Keywords: social media account; username; personal data; digital assets; digital rights inheritance; intellectual property.

With each passing day, we are moving closer to a digital society. A significant part of human life takes place in virtual space. The statistics show that approximately 5.41 billion people worldwide use social networks, which is 65.7% of the world's population (1). Communication tools have been transformed into powerful platforms for business, promoting personal brand, creative self-realization and capital accumulation. In this context, user accounts are no longer just a set of personal data and acquire the characteristics of a digital asset with intangible and economic value. The disposal of such an asset presents challenges, including the issue of inheriting the social network account as another inherited property.

Before moving on to inheritance issues, it is necessary to understand the nature of an account as an object of civil rights. The concept of an account is not enshrined in Russian legislation. Back in 2015, attempts were made to specify the status of a blogger as a person who registered a profile on the social network and define the account as the personal page of the user of the social network (2). However, such amendments were not adopted and were introduced to fill gaps in public law. In 2014, the Delaware State Code determined the digital account as electronic system for generating, sending, sharing, communicating information which provides access to a digital asset which currently exist or may exist as technology develops, including but not in any way limited to, email accounts, social network accounts, health insurance accounts and other online accounts which currently exist or may exist (3). The US legislator has formulated a broad definition of a digital account by listing possible options, but this descriptive approach does not provide clear criteria for unambiguous qualification.

In 2022, The European Law Institute published Principles on the Use of Digital Assets as a Security (4). Declaration identifies the criteria for classifying an object as a digital asset: 1) the existence of an object in digital form only, 2) it can be controllable or usable, 3) it may be transferred, including through voluntary disposal; 4) it embodies the value. However, it is important to note that these provisions apply only to online gaming accounts and

those that provide access to virtual property. Personal accounts cannot be recognized as a digital asset. In the sense of the Principles, the specificity of an online gaming account as a digital asset lies in its contractual nature. Therefore, only if divestiture is provided for by agreement, the account will be a fully usable digital asset. To ensure control and access for heirs, the will must include the blockchain's public keys, user account, and private keys. Generally, the data cannot be inherited due to its legal nature, however, a will may contain instructions for heirs as a condition.

The legal nature of the account can be considered in three aspects. First, any account represents the information required for user authorization (usually login and password) and program code, entry about the account in the site database (5, p. 306). This technical side connects the user and the owner of the information system (operator) and is regulated largely by the user agreement. The right to use and access the account (6, p.83) is granted by this relationship. Thus, users of the VKontakte network have the right to free access to information about themselves by uploading their personal pages on the Site and using a login and password, «adjust» the level of privacy, delete the data or ask for the removing information from the site, send requests, etc. (7) However, the account is linked to a particular person through personal data (e-mail address or mobile phone number). The transfer of input data to third parties is prohibited. The account may be blocked if site rules are not observed.

The second aspect refers to the privacy of account content. It's about an information protected by the right to privacy: personal correspondence and its content. If secrecy is violated, such as hacking, the account holder has the right to ask for the moral compensation, prevent the violator from sharing information or seek damages. To minimize legal risks, VKontakte administration places responsibility for the transfer and storage of user data on the user. Users are not permitted to share their login and password with third parties (8). It is interesting the qualification of the Supreme Court of the Federal Republic of Germany, which decided on the claim of the father of the deceased daughter to inherit the account in Facebook. The court granted access to the heir and interpreted the account as personal diaries and letters that are inherited in the German legal order. According to the Court, digital property inheritance should follow the same rules as physical object inheritance. After a user's death, the agreement made between them and the social network administrator is purely technical and becomes a part of the hereditary mass (9).

However, the blogger is remembered in a certain image and forms a unique personal brand. The username is an integral part of it. The US legislator establishes the defensibility of an intangible username as a property asset. Such extension of the category of property is not typical for the continental law system (5, p.307).

Thus, «Dodo Franchising», which owns a franchise of pizzerias worldwide, has filed a lawsuit against Telegram Free Zone LCC for the transfer of username @dodopizza. The plaintiff demanded make changes to the terms of use of the Telegram, according to which it will be prohibited to acquire identical or closely related trademarks of right holders (10). Dodo has a number of trademarks registered on the territory of the Russian Federation, including in the form of word expression (11). However, an unknown person at the Fragment auction acquired the mentioned nickname for 70,000 TONS ($507,720). The paragraph 1.2 of the Fragment Terms clarifies that ownership of purchased lots is «indefinite and cannot be revoked even by a company. Owners may at any time sell their collectibles to private individuals or put it up for auction» (12). In addition, the right of owners to use purchased items in Telegram or keep it inactive for an unlimited time is set out. Thus, a situation arises in which the user follows the rules of the auction and acquires rights to an asset in the form of an exclusive set of symbols. The second party wants to expand its monopoly on the use of specific terminology through a registered trademark and explains this by possible reputational losses and the need to counter unfair competition. This approach is understandable if the owner of the social network account with controversial username engages in business on behalf of «Dodo», thereby misleading other followers about the company's activities. In the current dispute, the user does not use the

account at all, and «Dodo» requests to change the user agreement, because of which the username must be transferred to the company by virtue of the registered trademark.

The attempt to extend a copyright monopoly to an entirely technical authenticator in a messenger is an incorrect mixture of different legal regimes. The nickname is not an object to intellectual property rights (by analogy with domain names (13, p.12). The claim for changing the user agreement essentialy means prioritizing the national trademark registration system over rules for decentralized platforms. Judicial satisfaction of such demands imposes on the platforms an additional duty to continuously monitor government registers and create the instruments for identifying right holders in order to signing up. Moreover, it creates a dangerous situation that allows large copyright holders to "cleanse" digital platforms of any mention of their trademarks, even in personal, non-commercial accounts. The similar legal nature of the domain names and the usernames indicates that solutions should be pursued along the same lines: not by passive obedience of one regime to another, but by developing specific dispute resolution procedures that take into account the good-faith registration and the nature of use of a username. Otherwise, if the absolute priority of a trademark over a username is recognized, the absurd situation would arise where any word registered as a trademark in any NCL class could be removed from public digital circulation as a commercial identifier. This will render the system of user names itself unworkable and undermine the main principles of the open communication platforms.

As noted, the meaning of the existence and content of an account are determined by the right holders themselves. It can be identified as just some valuable good for a particular person (personal accounts), and acquire quite definite property value (14, p.135).

How to determine the asset value of an account? In the case of PnoneDog v. Kravitz, the plaintiff argued damage from misappropriation of a corporate account on Twitter and explained that value lies in the number of subscribers and the traffic generated by followers because the account brought in the advertising revenue (15). The Eagle v. Morgan case also highlighted factors such as time, effort, and resources spent on attracting an audience and building an online reputation (16). Other valuable elements of a business social network account include the password (that is protected as a trade secret in American practice) and the content itself (5, p.317).

The third aspect in examining the nature of a social media account is the digital content. Copyright law governs relationships involving the creation of original works and the use of exclusive rights. According to some specialists, an account can be considered as a composite work: a database (17, p. 27), web site or multimedia product (18, p. 130). The proposed approaches do not provide an unequivocal answer about the legal qualification of the account as an object of civil rights, because this focus only on its content. The problem is when an account is moved to a copyright regulation plane, only its visual component is considered and the technical nature of the account is ignored. When an account is recognized by a database, the creative nature of the selection and systematization of materials is emphasized. However, the users are limited by the functionality provided by the platforms. They do not create structure and design for the database, but only fill in the already prepared form, downloading materials in chronological order. The qualification as a web site is incorrect, because the account owner does not create software codes that make the page work and therefore does not acquire exclusive rights to the technical structure of the page. This again brings up the issue of the unlawfulness of protecting a visual account as a composite work because the user cannot decide on the layout and arrangement of materials and is not responsible for interface design decisions of an account. Qualification as a complex object also raises a number of questions. It is difficult to recognize an account as a single, complete and finished work, since the essence of blog maintenance lies in the constant updating of content. Then at what moment can an account creation be considered complete as a complex object? In addition, who would be considered the creator of a complex object – the owner of the account or the content manager who developed the concept of the blog and the content plan? Moreover, neither approach

takes into account the heterogeneity of the content, where protective works (photos, videos, text) are adjacent to non-copyrightable elements (personal data). As a result, the qualifications offered by specialists do not give a universal legal assessment of an account.

To summarize the study of the nature of a social network account, it should be noted that it can not be recognized as a full-fledged object of law. An account is not a thing, property right or the result of intellectual activity. The asset value stems from its popularity and the activity that other social network users provide. Therefore, it acquires significance not on its own, but as a channel of communication with the audience, which makes it an effective tool for sales and customer attraction. Thus, a social network account should be seen as a way of doing business or personal positioning in a digital environment, allowing the user to post content and interact with potential customers within the functionality provided by the digital platform.

The complexity of resolving the issue of inheritance of an account is in its inseparable connection with the identity of the heir, as well as in the user agreements, that are essentially a contract for the use of Internet resources and protect the owner's personal data. It is important to note that when talking about the inheritance of an account, we are talking about obtaining access by the heirs. Currently, IT-platforms allow the right of access to third parties upon presentation of a death certificate and notification by the owner of the appointment of an heir. However, the options of the heir are reduced to the choice either to delete the account or to assign him the status of «memorial». Apple's digital heir is accessible for three years through a special record, and then the heir's ID is permanently removed (19). However, subscriptions, purchased books, music and other assets held by the testator are not transferred to access. Google allows choosing the data to access if your account is inactive for a certain period of time (20).

Let's consider the legal approaches adopted in progressive jurisdictions at the legislative level. In France, the account holder is authorized to contact the social network administrator to grant access to a third party after user's passing, as data protection ends after the data subject's death. While in Italy and Spain such an application is only necessary if the testator does not wish to transfer the rights to the account to the heirs (21, c.15-16). According to article 96 of the Organic Law on the Protection of Personal Data and Guarantee of Digital Rights (LOPD-GDD) persons related to deceased family or factual relationships, as well as the heirs have the right to contact the information service provider in order to obtain access to the contents of the account and to provide instructions on using and deleting data, except when this is expressly prohibited by the heirs (22). The United States regional law provides for the possibility to appoint a trustee with digital assets or indicate in the testament the heir's access to the email and social media profiles (23). If the User Agreement restricts a Trusted Party's access to or control of the Digital Account provision is void. There is a case law that family members also have the right to access the deceased's account and can legally consent to the disclosure of the email account content on their behalf (24). However, such inheritance limitation apply only to personal accounts. Business accounts are transferred without restrictions (25, p.161).

In summary, a social network account is a tool used for personal and commercial purposes that does not have to be recognized as an autonomous object of civil law. To form a universal mechanism for transferring access to an account after the death of its owner, it is advisable to use the legal model in force in Spain and Italy. This model prioritizes the user's will, who determines the fate of the account during lifetime and only contacts the platform administrator if do not wish to transfer access to heirs. This indicated approach introduces legal permission to grant the rights of a previous user to third parties. It would allow for the full stability of property turnover and respect for one of the fundamental principles of inheritance law – respect for the will of the deceased.

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GENERATIVE MUSICAL OUTPUTS: LEGAL PARADOXES OF AUTHORSHIP IN THE ERA OF GLOBAL ARTIFICIAL INTELLIGENCE DEVELOPMENT

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Statement of Scientific Novelty and International Contribution

The scientific novelty of the article lies in a comprehensive comparative legal analysis of the issue of authorship of generative musical works, conducted at the intersection of doctrinal approaches, judicial precedents, legislative initiatives, and user agreements of leading AI platforms. Unlike existing works that focus on general issues of AI and copyright, this article examines in detail the legal paradox through specific cases and judicial precedents, demonstrating the conflict between the presumption of authorship of a natural person and the inability of the legal system to identify the actual creative contribution of humans and machines. It compares four jurisdictional regulatory models (the United States, Poland as a representative of the EU, China, and Russia), with an emphasis on recent precedents, and proposes a systemic solution to the problem. Furthermore, it substantiates the need to revise the traditional criterion of "creative contribution" as applied to generative music. The results of the study can be used to improve national legislation and to develop unified international standards for the legal protection of results created with the assistance of artificial intelligence in the music industry.

Abstract. This article proposes a contemporary legal approach to understanding "authorship" in relation to generative musical outputs. By analyzing current legislation, existing judicial decisions of foreign courts, legislative initiatives, and the user agreements of leading platforms, the author identifies a significant conflict between the traditional understanding of human authorship and the technological reality of so-called "machine creativity." The article presents evidence that copyright law urgently needs reform and that a unified approach to resolving emerging problems must be developed at both the international and national levels. The aim of this scientific research is to provide a comprehensive analysis of the legal status of the "author" of generative musical results through the lens of legal doctrine, foreign legislation, established case law, and the terms of use of various AI platforms.

Keywords: Artificial intelligence, AI, author, copyright law, law, judicial precedent, creative contribution, legal doctrine, human, legislation, jurisdiction, technology, generation, music, performer, song.

Introduction

The digital "BOOM" triggered by the emergence of generative artificial intelligence (hereinafter – AI) has led to a radical transformation of the conventional understanding of creativity. The music industry has not been left untouched by this phenomenon. These changes are manifested in the rapid growth in the share of works created with the help of generative technologies or substantially augmented by generative algorithms. According to various expert estimates, between 10% and 20% of new music uploaded to streaming platforms constitutes fully generative content (representatives of the National Federation of the Music Industry (NFMI) noted this in a commentary for the RosBusinessConsulting group of companies) (1). As Nikita Danilov, General Director of the National Federation of the Music Industry (NFMI), points out, the annual volume of the streaming market in Russia is estimated at 38 billion rubles, which implies potential losses for real authors and rights holders of up to 7.6 billion rubles annually due to the substitution of human creativity with machine-generated output (2). Forecasts by Goldenmedia, according to their report "AI and music market development of AI in the music sector and impact on music authors and creators in Germany and France" (3), indicate that without proper legal regulation, losses could reach 27% of potential revenues by 2028.

This sharp technological breakthrough has exposed the existing gap between the pace of development of new technologies and the ability of legal systems to keep pace with these changes. The key question facing us in the era of AI is: "Who is the author?" This question cannot be answered unequivocally and precisely at once, and despite the considerable time that has passed since the emergence of generative creativity, the debate continues to this day.

Main body

1. The case of the work "Fair of Fates" ("Yarmarka Sudeb").

One of the most striking examples in national practice – the case of the song "Fair of Fates" (Yarmarka Sudeb), which was performed in January 2026 on television by Alena Tarasenko but, according to public claims, was actually generated by a neural network – has become a vivid illustration of legal uncertainty. To address the numerous existing questions, a comprehensive analysis of the entire body of theoretical and legislative frameworks governing the creation and use of generative musical outputs is necessary.

Singer Alena Tarasenko performed the musical composition "Fair of Fates" (Yarmarka Sudeb) on the federal channel "Russia-1," on the show "Songs from the Heart" (Pesni ot vsey dushi) (4). The track and the performance on the show were well-received by listeners, but afterwards, suspicions arose online that what was heard on air was an AI phonogram disguised as live sound, and that Alena Tarasenko herself had no musical education and could not sing. One comment from a user on an online platform read: "I also heard this song; the song itself is actually excellent. So it was unpleasant to learn that this song wasn't being performed by this same Alena Tarasenko, but by AI." (5). Information is also available online that Alena had previously been active on the "TikTok" entertainment platform, where her videos consisted of AI-generated images (6).

Social media users claimed that Tarasenko's voice sounds different in various recordings (in one track it resembles a male voice, and elsewhere it is even a copy of the unique voice of singer Alla Pugacheva). Internet users believe that Alena Tarasenko generates her songs using the program Suno (artificial intelligence), which allows for the creation of music and various arrangements in mere seconds. However, the website "Stikhi.ru" contains information indicating that the lyrics for the song "Fair of Fates" were written by poetess Tatyana Olekseychuk, and the chorus was completed by Alena Tarasenko (7). Producer Iosif Prigozhin, in a conversation with ForPost (a Sevastopol news portal), commented on this phenomenon as follows: "AI is becoming a competitor to authors, especially those who are no longer able or simply too lazy to write. Social networks need content; it has to come from somewhere. So they use AI as a tool for making money." (8).

The situation surrounding the song "Fair of Fates" and Alena Tarasenko presents an excellent example of the contemporary legal paradox at hand. According to Russian legislation, the person named as the author on a copy of a work benefits from the presumption of authorship. They are considered the author until proven otherwise. Formally, Alena Tarasenko, who performed the song on national television and asserted her copyright claims, falls under this protection. However, if it is proven that the music, arrangement, and vocals were entirely generated by the neural network "Suno" without subsequent substantial creative input from Alena herself, a legal conflict arises from a juridical standpoint. Possible scenarios for this situation are:

1. The creative contribution required by law from Alena Tarasenko may be entirely absent, her role being reduced merely to voicing a finished technical product, which does not create a new musical work or phonogram within the context of the traditional approach.

2. The developers of Suno, according to their user agreement, do not guarantee the emergence of copyright for the user and, moreover, explicitly warn about the possibility of generating non-unique content, and consequently, content that infringes upon the rights of others.

3. A Suno user who generated the song could only claim rights under the contract with the platform, but these rights could be challenged relatively easily if a creative contribution to the result, going beyond simply formulating prompts, is not proven.

It is necessary to separately outline the principles and operating rules of the Suno AI platform. Free users of Suno may create music only for non-commercial use, while subscribers to the "Pro" and "Premier" plans have the right to monetize it in accordance with the platform's terms and conditions. Free tier users must always acknowledge that the rights to the created content belong to Suno. Paid subscribers may do so at their own discretion ("If you are a user of the free or Basic tier of the Service then, you covenant and agree that you will only use Outputs generated from Submissions made by you through the Service solely for your lawful, internal, personal and non-commercial purposes, provided that you give attribution credit to Suno in each case.") (9).

Thus, at present, the presumption of authorship confronts the legal system's inability to identify the true creator and precisely determine the extent and proportion of the creative input of humans versus machines. The song exists de facto, is used for commercial purposes, but its legal status remains undefined, rendering it vulnerable to copying and use by third parties in violation of the rights of the true authors.

2. Theoretical foundations of copyright law

The traditional copyright system is based on several fundamental principles:

1. **The principle of authorship by a natural person.** According to doctrinal provisions, the author is recognized as a natural person (a human being) by whose creative labor the work is created. The law protects not ideas and thoughts, but the form of their expression, created through human intellectual effort. In U.S. practice, this has been repeatedly confirmed by court decisions (for example, on March 21, 2025, the U.S. Court of Appeals issued a historic ruling according to which works created with the assistance of artificial intelligence are not eligible for copyright protection, reaffirming the long-standing requirement of human authorship in copyright law) (10) and the position of the U.S. Copyright Office, which has consistently denied claims for copyright protection of content generated by artificial intelligence (11).

2. **The main criteria for protectability - creative contribution and objective form of expression.** For an object to be recognized as a protectable work, a creative contribution is necessary, as opposed to a merely technical one.

The widespread adoption and application of generative technologies compel us to reconsider these basic principles. On one hand, AI is merely a technical tool, created to assist humans and controlled by humans, analogous to any other technology. On the other hand, the ability of neural networks to independently combine samples and models and generate new results unpredictable to the user erases the direct causal link, familiar to our understanding, between the human's conception and the final form in which that conception is reproduced. A neural network is neither a legal subject nor an author in the classical sense, but its activity goes beyond the scope of a purely technical tool, like a camera. This paradox leads to a situation where a result exists, yet a legally recognized author may be absent.

3. Comparative analysis of legal approaches in different jurisdictions

The international community's response to the challenges posed by artificial intelligence is ambiguous. To date, several key approaches have emerged regarding the regulation of relations surrounding the creation and use of rights to generative outputs.

The United States. The United States of America adheres to a conservative-traditional approach to regulating AI-generated works. The key principle is the requirement of human authorship (12).

On October 13, 2023, music publishers Universal Music (UMG), ABKCO, and Concord filed a lawsuit against

Anthropic, an artificial intelligence development company, concerning its chatbot Claude, which creates music using AI (13). The lawsuit alleged that Anthropic infringed authors' rights by providing Claude access to a database containing the lyrics of over 500 popular contemporary songs protected by copyright.

Currently, according to the position of the U.S. Copyright Office, works of art created with the help of artificial intelligence cannot be protected by copyright due to the "Human Authorship Requirement" (14). Specifically, this requirement originates from the three conditions outlined in the Copyright Act of 1909 that a work of art must meet to be deemed protectable. The first condition is that the work must be "fixed in a tangible medium of expression"; the second, that it must be "original"; and the third, that it must be "created by an author" (15).

The consequences of how AI impacts music can be observed in the context of the Grammy music awards. With the growing popularity of AI-generated music, a logical question arises: can a song written with the help of neural networks and special applications win a Grammy Award? The Recording Academy has taken a firm stance: despite generative technologies potentially aiding the creative process, they cannot completely replace the creative contribution of a natural person. To be eligible for a Grammy Award, a song must be written by a human. Tracks entirely created with AI cannot be considered for the award but works in which AI-generated elements are combined with human creative input are considered as participating works.

A landmark event in the music world involving AI occurred at the Grammy Awards ceremony in 2025 when the Beatles received the award for "Best Rock Performance" for the song "Now and Then" (16). The song, originally recorded by John Lennon in the late 1970s, faced technical issues due to poor sound quality. Director Peter Jackson's team developed a specific technology that allowed Paul McCartney and Ringo Starr to complete the work on the song. It is important to note that in this case, AI did not create new music but rather restored existing material, for which the band was awarded the Grammy (17).

Furthermore, one of the most influential figures in contemporary music, Kanye West, recently confirmed that he is using AI for the vocal production on his upcoming album "Bully" (the studio album's release is scheduled for March 20, 2026, under the labels YZY and Gamma). Kanye presented a track where his voice is transformed into the voice of 10-year-old trap rapper Lil RT using AI. In an interview with Justin Laboy for the podcast "The Download," which aired on the night of the Grammy Awards, Kanye compared AI to auto-tune – a tool that is an equally controversial "technical assistant" in the music industry (18).

The CEO of the Recording Academy, Harvey Mason Jr., very astutely emphasized that the Grammy Awards are open to new technologies, but preference will always be given to human talent.

The European Union, using Poland as a case study. The primary legislative act in the field of copyright law in Poland is the Act of February 4, 1994, on Copyright and Related Rights. For a work to be protectable, certain conditions must be met: it must 1) be created by a human (the output of artificial intelligence is not protected by copyright), 2) be an object of creativity and stand out, 3) bear an individual character, reflecting the inner world and "signature" of the author. If a work is created under the "inspiration" of another's work, this does not constitute an adaptation or derivative work (19).

On June 1, 2024, ZAiKS (the Polish Society of Authors) announced that works created exclusively by AI would not be protected by copyright or subject to licensing. Milosz Bembinow, speaking on behalf of the Board of the Association of Authors ZAiKS and the AI working group, asserts: "We oppose granting generative AI producers any protection akin to legal protection or protection arising from related rights." (20). Only works created by a human will be protected at the legislative level, while works created with the assistance of AI, where the creator has freedom of choice, may be registered in accordance with existing rules.

China. This country applies an expansive approach to regulating AI-generated works. According to Article 2 of

the Interim Measures for the Management of Generative Artificial Intelligence Services of the PRC, generative AI technologies are defined as "models and related technologies that have the functionality of creating content in the form of text, graphics, audio, video information, as well as content in other formats." (21). This legal definition implies a broad scope of application, encompassing generative music as well.

Currently, there are two established positions regarding the approach to understanding AI creativity:

1. **The traditional,** whose proponents (for example, Wang Qian, Professor at East China University of Political Science and Law) consider it inappropriate to grant copyright protection to AI-generated content, insisting that generative content is a product of algorithmic activity, not the result of the author's spiritual and volitional expression. Consequently, there are no legal grounds or necessity for protecting such content with copyright. In Wang Qian's work "On the Legal Qualification of Content Created by Artificial Intelligence in Copyright Law" (22) the idea is put forward that "originality" in the copyright sense is inseparably linked to the human personality.

2. **The adaptive** – the opposite stance, most vividly represented in the works of Xu Xiaoben (Professor at Zhongnan University of Economics and Law) (23), where he argues that it is appropriate to grant copyright protection to content created by generative artificial intelligence because AI has the capacity to create works possessing a high degree of originality and significant literary, artistic, and economic value.

Zhang Xinbao and Bian Long, in their study "Copyright Protection of Content Created by Artificial Intelligence" (24) propose a "compromise" model: recognizing a work as protectable provided there is sufficiently proven human "control" over the generation process.

This approach is confirmed by the precedent-setting decision of the Beijing Internet Court of December 8, 2023, in the case **"Li Yunkai v. Liu Yuanchun".** In this case, the court recognized the plaintiff's copyright in an image generated by artificial intelligence (Stable Diffusion). A citizen, Li, filed a lawsuit demanding compensation of 5,000 yuan from citizen Liu for copyright infringement of an image of a girl generated by Li, titled "Spring Breeze Brings Tenderness," and to publish information about the copyright infringement, crediting Li as the author of the image (25). The plaintiff pointed to the unauthorized use of the image he generated to illustrate a poem, "Love in March..." (the watermark and Li's authorship information had been removed). The defendant believed there was no copyright infringement by Li, as he had found the image freely available on the internet and used it for non-commercial purposes. The court ruled that throughout the entire generation process, the plaintiff made his creative contribution. Furthermore, Li provided video recordings of the entire image creation process, namely: selecting the AI model; sequentially and repeatedly formulating prompts; and customizing technical parameters.

The court noted that generative artificial intelligence "changes the way people create" and compared the emergence of AI technologies to the invention of the camera: in the past, people required drawing skills to reproduce a certain picture of the world, while today the camera function in smartphones instantly "captures" necessary subjects, yet it reflects the creative conception of the photographer and is protected by copyright law as a photographic work. The court emphasized: "In essence, it is a process of man using tools to create, that is, it is man who does intellectual investment throughout the creation process, not the AI model. The core purpose of the copyright system is to encourage creation. And creation and AI technology can only prosper by properly applying the copyright system and using the legal means to encourage more people to use the latest tools to create. Under such context, as long as the AI-generated images can reflect people's original intellectual investment, they should be recognized as works and protected by the Copyright Law.".

Professor Jiang Ge (Tsinghua University) argues that copyright law should not impose overly stringent evidentiary requirements on AI users. In cases of obvious copying of AI-generated content, rigidly demanding to separate human contribution from algorithmic contribution could lead to encouraging plagiarism. Meanwhile, his

colleague, Professor Xiong Wencong (Central University for Nationalities), emphasizes a different aspect, namely that originality must satisfy two requirements: independent execution and a certain "creative height." Individualized expression proves only the former, not the latter (26).

A very interesting rule/tool in regulating AI content within the PRC jurisdiction, in the author's opinion, is the "predictability exclusion rule." The essence of this rule is that when the generated AI content clearly exceeds the user's expectations (for example, a request for "ancient style song" yields a jazz composition), copyright may be attributed to the algorithm's developer. This rule was first applied in 2022 in a case involving AI-assisted copywriting, emphasizing that "the intention of the algorithm's developer takes precedence over simple instructions" (27).

In the case of musical works, this rule could be applied as follows: a user sets a simple parameter (prompt), and the AI independently generates a complex arrangement, resulting in the algorithm's contribution being deemed dominant.

As an example, consider the 2024-year case "Yin v. Company A and Others". The essence was that a voice actress discovered her voice had been used without permission to create a TTS model (a system that converts written text into synthesized human speech), which was distributed for commercial purposes. The total number of plays of the generated voice exceeded 3.2 billion.

The key legal positions of the Supreme People's Court of the PRC, reflected in the decision on this case, were (28):

1) A human voice is unique: "A real person's voice is unique and stable, and it can evoke thoughts and emotions associated with that person in people's minds.".

2) A synthesized voice is subject to legal protection: "If a voice synthesized by artificial intelligence can be associated with a real person by the general public or professionals in relevant fields in terms of timbre, intonation, and pronunciation style, it can be considered identifiable. Companies A, B, and C used artificial intelligence to process [Yin Momo's] voice without permission, which constitutes a violation of his copyright and interests and entails corresponding legal liability.".

3) The copyright holder of a specific phonogram is not entitled to authorize the use of a specific person's voice without the direct consent of the voice's bearer. The companies that illegally used the woman's voice were ordered to issue an apology and compensate damages in the amount of 250,000 yuan.

This precedent establishes a regime in China for protecting voice as a personal non-property right. Using a singer's voice to train generative models without the artist's direct permission constitutes an offense, regardless of the existence of copyright in the phonograms. The author is recognized as the human (user) who made a proven intellectual, creative contribution through precise prompts, selection, and other actions. The algorithm's developer is not the author by default but may claim co-authorship upon proof of a "substantial algorithmic contribution" to a specific work.

Russian Federation. In the Russian Federation, an adaptive-evaluative approach to regulating AI content has currently emerged. As indicated by the Supreme Court of the Russian Federation (decision of the Arbitration Court of the City of Moscow dated November 30, 2023, in case No. A40-200471/23) (29), the use of technical means does not negate the creative nature of the work if the author retains control over the process. By Ruling of the Intellectual Property Rights Court dated August 19, 2024, No. C01-1330/2024 in case No. A40-200471/23 (30), the judicial decisions to recover compensation for violation of the exclusive right to a work were left unchanged, as the case materials confirmed the plaintiff's ownership of the exclusive right to the audiovisual work. The court emphasized that the script, editing, video filming, and audio accompaniment of the video clip were created by a

group of authors, and only the visual image of the actor (Keanu Reeves) was used from the original footage. Furthermore, the court noted that deep-fake technology is not a method of creating an intellectual property object but an additional tool for processing video materials. Drawing an analogy with a musical work, it would be protectable if a human made a creative contribution to the final result.

The most established position is that of the USA and the EU, which directly denies the protectability of purely AI-generated works. Russian practice, while remaining within the traditional doctrine, demonstrates flexibility by allowing for the recognition of creative contribution at stages preceding direct generation. Meanwhile, the user agreements of commercial platforms create a parallel, contractual reality of rights that often contradicts the norms of national legislation.

4. Recommendations for resolving existing conflicts

Given the scale of application and the speed of development of generative technologies, systemic changes are required at several levels. At the international level, it is necessary to initiate a dialogue to develop unified minimum standards for regulating works created by artificial intelligence in the field of copyright.

At the national level, consideration could be given to introducing mandatory labeling of AI content indicating the degree of human involvement, which would help mitigate uncertainty regarding the true author of a work.

This method of conflict resolution is applied in the Republic of Kazakhstan, where on January 18, 2026, **the Law of the Republic of Kazakhstan dated November 17, 2025, No. 230-VIII "On Artificial Intelligence"** came into force (31). This law ensures transparency in the use of artificial intelligence systems (Article 21 of the RK Law No. 230-VIII: "Users must be informed that goods, works, and services are produced or rendered using artificial intelligence systems. The dissemination of synthetic results of the activities of artificial intelligence systems is permitted only subject to their labeling in a machine-readable form and accompanied by a visual or other form of warning that ensures the possibility of perception by the user without the use of methods hindering such perception. Responsibility for informing users about the synthetic results of the activities of artificial intelligence systems rests with the owners or proprietors of such systems."), a controlled environment for the development, training, and trial operation of platform software products and artificial intelligence models for a limited period through the introduction of a national artificial intelligence platform (Article 25 of the RK Law No. 230-VIII). Furthermore, according to paragraph 2 of Article 23 of the RK Law No. 230-VIII, text queries/prompts that the user inputs to the AI are recognized as protectable by copyright: "Text queries directed to artificial intelligence systems, which are the result of human intellectual creative activity, are recognized as objects of copyright in accordance with the legislation of the Republic of Kazakhstan on copyright and related rights.".

Regarding the possibility of using such methods of legal regulation in the Russian Federation, it was reported in August 2025 that the State Duma of the Russian Federation plans to discuss **amendments to Article 1259 of the Civil Code of the Russian Federation,** which would for the first time establish copyright for works created with the participation of neural networks (32). Additionally, it is necessary to clarify in the law the precise definition of "creative contribution" in relation to working with AI, and to determine its minimum sufficient level for recognizing authorship as human. Another option lies in strict regulation and the complete exclusion of the possibility of copyright arising for works in the creation of which AI systems were used in any way, regardless of the degree of involvement, with the aim of protecting specifically "human" authors, which seems objectively impossible given the current technological breakthrough.

Creators in the music industry can also take certain actions to protect their rights. Firstly, not to accept the first generated version based on a single given prompt as final, but to make substantial changes, arrange, rework, and add live instruments or vocals. Secondly, not to forget about detailed documentation and to record the entire creative process. Thirdly, it is necessary to exercise due legal diligence: thoroughly and carefully study the user

agreements of the AI services used and constantly keep in mind that even a paid subscription does not guarantee the emergence of exclusive copyright but only grants a license for commercial use.

In April 2024, more than 200 musicians, including Billie Eilish, Nicki Minaj, Stevie Wonder, Jon Bon Jovi, and others, signed an open letter addressed to developers of AI services and streaming platforms. This letter was published on behalf of the non-profit organization Artist Rights Alliance (ARA), which is dedicated to protecting artists' rights. In their appeal, the musicians expressed dissatisfaction with the use of artificial intelligence for creating music and called upon AI development companies and digital music services to refrain from developing or using AI-based technologies that undermine the rights of songwriters and artists.

Conclusion

The phenomenon of music created with the assistance of artificial intelligence or entirely generated by AI has revealed an existing crisis in the copyright system, which was formed around the human creator. Technological capability has currently outpaced legal capacity. Existing norms are not always adequate, sufficient, or applicable for allocating rights and responsibilities between the algorithm developer and the user. Resolving this crisis lies in a complete rethinking of previously established approaches. A balance must be found between protecting traditional human-authored work and further stimulating technological progress. The future of music, as it seems, will be "hybrid," and the legal system of each state must learn to see and protect human creativity in symbiosis with artificial intelligence, creating unified and fair rules of the game in this new legal field.

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REVIEWS AND ESSAYS ON BOOKS, SCIENTIFIC ARTICLES AND MONOGRAPHS / КІТАПТАРҒА, ҒЫЛЫМИ МАҚАЛАЛАРҒА ЖӘНЕ МОНОГРАФИЯЛАРҒА ШОЛУЛАР МЕН ЭССЕЛЕР / РЕЦЕНЗИИ И ЭССЕ НА КНИГИ, НАУЧНЫЕ СТАТЬИ И МОНОГРАФИИ

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A REVIEW OF "FAIR USE DEFENSES IN DISRUPTIVE TECHNOLOGY CASES" BY PROFESSOR PAMELA SAMUELSON, UC BERKELEY SCHOOL OF LAW

Аннотация. В статье анализируется работа Профессора П. Самуэльсон на тему «Fair Use Defenses in Disruptive Technology Cases», посвященная правомерности обучения генеративных ИИ охраноспособными произведениями. Особое внимание уделяется выводам, сформулированным в судебной практике США относительно доктрины добросовестного использования в контексте «подрывных инноваций» (disruptive technologies). Правовой подход США по поставленному вопросу сравнивается с подходами Европейского Союза и Японии. В заключение формулируется выделяется единый подход к решению вопроса об обучении ИИ, формулируемый авторитетными представителями различных правопорядков.

Ключевые слова: доктрина добросовестного использования; машинное обучение; генеративный искусственный интеллект; авторское право; коллективное управление.

Abstract. The article analyzes the work of Professor P. Samuelson on the topic «Fair Use Defenses in Disruptive Technology Cases», devoted to the legality of teaching generative AI with protected works. Particular attention is paid to the conclusions formulated in the judicial practice of the United States regarding the doctrine of fair use in the context of disruptive technologies. The legal approach of the United States on this issue is compared with the approaches of the European Union and Japan. In conclusion, a unified approach to solving the issue of AI training is formulated and highlighted, formulated by authoritative representatives of various legal systems.

Keywords: fair use doctrine; machine learning; generative artificial intelligence; copyright; collective management.

The challenge of developing legal frameworks for AI regulation – amidst harmonized legislation and escalating technological shifts within similar digital landscapes has intensified interest in the research of international scholars. The analysis and application of approaches adopted by our Western counterparts hold both scientific and practical value. This review focuses on the research paper "Fair Use Defenses in Disruptive Technology Cases" (1) by Professor Pamela Samuelson.

The work investigates the practical aspects of copyright protection in the era of emerging generative technologies. Pamela Samuelson examines the established judicial practice and legal doctrines concerning the concept of fair use. The theoretical component of the study analyzes the permissibility of utilizing copyrighted works for training purposes through the lens of the fair use doctrine. Pamela Samuelson also provides a detailed analysis of landmark judicial disputes related to various aspects of digital use, such as the copying of scientific articles and the use of online course materials.

The fair use doctrine permits a limited exception to the autonomous copyright regime, allowing third parties to

utilize a work for their own purposes without the explicit authorization of the rights holder. The U.S. Copyright Act (17 U.S.C. § 107) (2) establishes four factors to be considered in determining whether the use is a fair use: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use upon the potential market for or value of the copyrighted work.

The "purpose and character of the use" factor is more likely to be satisfied in cases of non-commercial use, such as for educational purposes. The more evident the commercial benefit derived from the use, the lower the probability that such use will be deemed fair.

The "nature of the copyrighted work" factor accounts for the specific characteristics of the original work. For instance, the use of scientific publications is more likely to be deemed fair than the use of artistic works.

The "amount and substantiality of the portion used" factor involves an analysis not only of the quantity of the portion utilized but also of the justification for using that specific volume. Generally, the greater the amount used, the less likely the use is to be considered fair.

The "effect of the use upon the potential market for or value of the copyrighted work" factor entails an assessment of the potential revenue streams the rights holder might expect, both currently and in the future.

The final factor mentioned above remains the most contentious.

For a long time, the prevailing view among American legal scholars was that any use of a copyrighted work inherently causes economic harm to the rights holder; however, contemporary experts are increasingly adopting opposing perspectives. In today's legal climate, the burden of proof rests with the rights holder. It is they who must substantiate the existence of actual harm, or the risk of such harm, resulting from the use of their work. Without sufficient evidence, it becomes impossible to establish a claim of copyright infringement.

This approach was solidified in the landmark Supreme Court case Sony Corp. of America v. Universal City Studios (1984) (3), in which the Court dismissed the motion picture studio's lawsuit, ruling that the practice of home video recording of television broadcasts constituted fair use. Subsequently, this approach was upheld in the cases of Campbell v. Acuff-Rose Music (1994) (4) and Google LLC v. Oracle America, Inc. (2021) (5). Currently, if the demand for the original product remains unaffected and the defendant's output differs substantially from the original, courts typically find no threat to the owner's economic interests.

This judicial doctrine is not without its drawbacks. Parties often encounter difficulties in quantifying the extent of the harm. Measuring the financial damage resulting from the use of a copyrighted work is frequently problematic. Furthermore, in most instances, it is nearly impossible to forecast consumer demand or account for the variables that influence it.

In the chapter "Copyright Lawsuits Challenging Generative AI," the author provides a detailed analysis of the numerous lawsuits filed against AI technology developers. These actions generally identify two categories of infringement: the unauthorized use of copyrighted works as training data for AI algorithms and the generation of infringing outputs, which are purportedly derivative works.

To provide a legal framework for interpreting the use of copyrighted works in AI development, plaintiffs primarily rely on two legal theories: infringement of the right of reproduction (§ 106(1) of the U.S. Copyright Act) and the unauthorized creation of derivative works (§ 106(2)).

It should be noted that the latter is invoked specifically when AI technologies generate outputs that bear a substantial similarity to an original work. From a theoretical standpoint, evaluating this application of AI technology hinges on whether the generated output can be classified as a copyrightable subject matter.

Pamela Samuelson highlights the challenges of applying the fair use doctrine in this context, noting that the object of the alleged infringement is not the original work itself, but rather the derivative output produced by the

generative AI. The author questions whether a product generated by an AI system can even qualify as a derivative work, given that these technologies draw upon massive datasets encompassing the works of numerous other authors.

A purely textual analysis reveals an ambiguity in the statutory definition of a derivative work. Under U.S. law, a derivative work is defined as a result of recasting, transforming, or adapting an original work that retains its creative core and substantial elements.

The author concludes that there is a need for the regulatory oversight of generative AI development, as well as a rethinking of existing copyright categories and legal doctrines.

The professor illustrates this challenge by citing the prevailing judicial approach, under which AI-generated outputs are generally not recognized as derivative works due to the absence of clear evidence that significant portions of any specific protected work were utilized.

Another problematic aspect of AI technology is the dynamic nature of its output generation, which yields different results with every new query.

It has become increasingly clear that generative AI systems necessitate a resolution to fundamental questions regarding the nature of creative labor and the boundaries of intellectual property protection.

Summarizing her extensive research into current case law, Pamela Samuelson notes the inadequacy of existing U.S. legal regulations in addressing these emerging conflicts. She advocates for the development of unified standards that would strike a proper balance between protecting the rights of authors and fostering technological innovation.

Notably, the challenges of copyright protection in the age of AI are global in scale. The question of the legality and permissible scope of using protected works to train generative AI models is being approached in various ways worldwide, and the U.S. framework described by Samuelson is merely one of many possible solutions. To gain a more comprehensive understanding, it is necessary to examine other legal approaches.

The European model is founded on the Directive on Copyright in the Digital Single Market (6), the Directive on the Legal Protection of Databases (7), the Directive on the Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society (8), and the Artificial Intelligence Act (9). It is noteworthy that the European Union's regulatory framework has been recognized in China as a robust normative model (10).

Within the European Union, research organizations and cultural heritage institutions are permitted to train AI models using protected works, provided this is done for scientific research purposes. In such instances, rights holders are prohibited from restricting or opting out of the use of their works. Regarding AI training activities unrelated to scientific research, the provisions of the EU Artificial Intelligence Act, which took effect on 01.08.2024, apply.

Finally, the Law of the Republic of Kazakhstan "On Artificial Intelligence," which entered into force on January 18, 2026 (11), deserves particular attention. Article 23 of this law defines the eligibility criteria for the copyright protection of AI-generated results, classifies text prompts as works of authorship, and establishes specific rules governing the use of works in AI training. Thus, the use of works for AI training does not fall under the category of fair use for educational or scientific purposes. AI training using protected works is permitted only in the absence of an explicit prohibition from the rights holder, expressed in a machine-readable format. The content of this legal provision indicates that the legislator of the Republic of Kazakhstan has adopted a calibrated, permissive approach similar to that of the European Union.

Japan's experience is particularly noteworthy; the country first regulated the use of intellectual property for such purposes in 2009 by establishing a freedom of use provision within its Copyright Act (12). Subsequently, the

approach toward copyright compliance in AI training was further liberalized, with restrictions limited solely to cases where such use causes unreasonable harm to the author's interests.

In 2023, Japan's Ministry of Education, Culture, Sports, Science, and Technology issued guidance clarifying that generating outputs substantially similar to an original work constitutes copyright infringement (13).

A common feature of these approaches is the recognized validity of voluntary licensing agreements. The most widely debated initiative aimed at achieving a balance between the interests of rights holders and AI developers is the establishment of a mandatory licensing regime.

In her study, Pamela Samuelson appropriately examines the proposal for collective licensing of works used for training generative AI technologies — a suggestion that was formally put forward by the U.S. Copyright Office, an agency within the Library of Congress, in its notice of inquiry regarding copyright and generative AI (14).

The author of the analyzed article considers this initiative to be ineffective and impractical, arguing that it could create substantial barriers to technological development.

Collective licensing requires a proportional distribution of royalties for the use of copyrighted works. In Pamela Samuelson's view, accurately tracking the frequency of a specific work's usage, ensuring transparency in reporting, and managing the equitable distribution of payments present formidable challenges.

Continuing her critique of the proposed collective licensing scheme, the author expresses concerns regarding the potential for increased costs and the resulting technological "brain drain". If mandatory licensing were implemented solely within the United StatesmeIn rendering it a purely national requirement — it would inevitably lead to a shift in technological development toward jurisdictions that do not impose such mandates on generative AI activities.

Given these identified risks, the author proposes alternative solutions which, in her opinion, are free from these negative consequences. Pamela Samuelson suggests the adoption of a voluntary licensing framework, under which rights holders retain the autonomy to decide whether to permit the use of their works for generative activities.

It is worth noting that the critical assessment of the voluntary licensing model by experts also extends to their analysis of the European approach. Regardless of whether licensing is voluntary or mandatory, the issues of transparency in tracking the usage of works, as well as the time and additional financial costs associated with concluding license agreements, remain unresolved.

Pamela Samuelson suggests that the solution lies in creating transparent systems to monitor the use of works for AI training; however, she does not specify the methods for implementing such a proposal.

Given the global impact of AI technologies and the fact that each of the legal approaches examined involves some form of licensing, it is evident that a resolution requires coordinated international efforts.

Doctor of Legal Sciences, Professor L.A. Novoselova, proposes the development of a global digital accounting system based on blockchain technology. This system would allow for "tracking the frequency with which objects are used for AI training, as well as automatically calculating and distributing royalties to rights holders through the use of smart contracts" (15).

Professor L.A. Novoselova considers the most preferable and comprehensive solution to be the simultaneous authorization of both individual licensing and collective rights management. The activities of a collective management organization (CMO) could minimize the costs associated with concluding agreements and provide a centralized mechanism for managing the exclusive rights of rights holders. Drawing an analogy to the resolution regarding orphan works, it is conceivable to grant a collective management organization the right to represent the interests of rights holders even in the absence of corresponding agreements with them.

Proposals to engage CMOs in the legal regulation of the AI training process using protected works are also being advanced by international experts. Professor M.L. Vazquez likewise advocates for collective rights management supported by blockchain technology as an optimal solution, noting that it would significantly streamline the procedure for obtaining consent for the use of works while ensuring the transparency of royalty payments (16).

A review of Pamela Samuelson's research, in conjunction with an analysis of other legal frameworks, confirms the global nature of the challenges surrounding AI regulation and the protection of intellectual property rights. Despite existing differences in legal frameworks, the scope of regulatory standards, and the criteria for determining the permissible use of works in AI training, legal experts across various jurisdictions increasingly view the solution to this conflict of interests between rights holders and AI developers as lying in the deployment of collective management organizations, bolstered by blockchain technology.

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COLUMN OF THE PRIVATE INSTITUTION «NON-PROFIT ORGANIZATION FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS «AMANAT»

«АМАНАТ» АВТОРЛЫҚ ЖӘНЕ САБАҚТАС ҚҰҚЫҚТАРДЫ ҚОРҒАУ ЖӨНІНДЕГІ КОММЕРЦИЯЛЫҚ ЕМЕС ҰЙЫМ» ЖЕКЕ МЕКЕМЕСІНІҢ БАҒАНАСЫ

КОЛОНКА ЧАСТНОГО УЧРЕЖДЕНИЯ «НЕКОММЕРЧЕСКАЯ ОРГАНИЗАЦИЯ ПО ЗАЩИТЕ АВТОРСКИХ И СМЕЖНЫХ ПРАВ «АМАНАТ»

FIERY KOBYZ OF LAYLA TAZHIBAYEVA

«She will definitely go down in history as the first in the world to invent the electric kobyz and parachute jump while playing the kobyz at an altitude of 3500 m!»

Alzhan Kusainova

Education

Layla graduated from the K. Baiseitova Republican Secondary Specialized Music Boarding School for Gifted Children.

She received her bachelor's degree from the Kurmangazy Kazakh National Conservatory, and completed postgraduate studies there, specializing in kobyz under the guidance of Professor M.K. Kalenbayeva. All degrees were awarded with honors.

She is a laureate of:

- XIX Republican Competition of Young Performers, Almaty 1998;
- III International Competition of Creative Youth "Shabyt", Astana 2000;
- V International Competition of Folk Instruments named after Kurmangazy, Astana 2003;
- winner of gold medals at the World Championship of Performing Arts, Los Angeles, USA in 2005 and 2006, where she gave her debut vocal performance and was awarded a silver medal.

From 2006 to the present, Layla Tazhibayeva is the founder and art director of the pop ethno-instrumental groups Art DALA, Inzhu, Ayaulym and Layla-Qobyz.

In 2006, she recorded a DVD with the State Academic Symphony Orchestra of the Republic of Kazakhstan, conducted by T. Abdrashev, featuring Sibelius' Violin Concerto.

She worked for 11 years as a senior lecturer at the Kurmangazy Conservatory in the kobyz and bayan department. During her years of work, she trained several laureates of republican competitions and also gave annual solo concerts in the city's concert halls.

From 2016 to the present, she is the founder of the online School of Qobyz, where she conducts workshops, master classes, and regular courses. She currently travels around Kazakhstan, giving master classes for students of music schools and colleges. She also provides Mentorship for those who want to improve their kobyz performance skills, enhance their stage presence, boost their artistic self-esteem, prepare for competitions, and find a way out of creative stagnation.

In 2020, Layla and her student created and organized the Kobyz Players Championship, which gained international status in 2021 following the participation of performers skilled in kobyz-related bowed instruments from neighboring Russia. The championship is held annually under the auspices of the Ministry of Culture and Information of the Republic of Kazakhstan.

Concerts and Tours

- In 2009, Layla Tazhibayeva gave a solo concert in the Conservatory's Grand Hall in honor of Professor M.K. Kalenbayeva's anniversary, featuring the Camerata of Kazakhstan State Ensemble conducted by P. Tarasevich. The program showcased works by both international and Kazakh composers.
- In 2016, her project Inzhu-Marzhan performed a solo concert at the Ykhlas Museum of Folk Instruments in Almaty.
- In 2017, she gave a solo concert at the Astana Opera theatre. Prominent musical figures of Kazakhstan took part in this concert.
- In 2018, she performed a solo concert-presentation of the new Layla-Qobyz project on the stage of the legendary Hard Rock Café (Almaty).
- In the same year, she performed a solo concert at The Bus club (Astana).
- In 2019, she created the world's first electric kobyz in collaboration with master V. Kachanov.
- In December of the same year, she gave a concert-presentation of the electric kobyz on the stage of the iconic Muzcafe restaurant.

Layla annually gives concerts of academic and contemporary music, performing on the best stages in Kazakhstan and abroad. She eagerly participates in experimental musical events.

For instance, in 2022, Layla performed an open-air concert at Abai Square in Almaty alongside the trendy DJ Koknja and Honored Artist of Russia Chyltys Tannagasheva. The performance featured experimental compositions, showcasing a synthesis of electronic music and folklore.

She has performed concerts in almost all cities of Kazakhstan, and also in the following countries: Japan, USA, China, South Korea, Italy, Germany, Austria, England, Romania, Italy, Belgium, Turkey.

The International Championship for Kobyz and Related Instruments Qobyz Amanat is a cultural and educational project aimed at supporting and developing performers of traditional bowed instruments. Held annually,

the championship was founded in 2020 by Layla Tazhibayeva and her graduate Diana Abisheva.

The first season was held online on Instagram and YouTube platforms, which united participants from different regions of Kazakhstan. In the very first year, 68 kobyz players participated in the championship.

In 2021, musicians from Bashkortostan joined the project, and the championship gained international status. In the same year, the initiative was supported by the Ministry of Culture and Sports of the Republic of Kazakhstan – Minister of Culture Dauren Abayev proposed to give the championship official status, endorsing it with the ministry's signature.

In 2025, the sixth season of the championship was held with the support of Amanat non-profit copyright organization. This partnership enabled the organizers to offer commemorative awards to the participants for the first time.

The championship's mission is to draw attention to performers of traditional bowed instruments, create an accessible professional platform for them, and provide an opportunity to showcase their talents. The project is aimed not only at participants from Kazakhstan and Russia but also at musicians from far abroad.

Folk instruments today need more open competitions with a broad award system and an accessible participation program. The Qobyz Amanat Championship fosters an environment where both emerging and established performers can gain stage experience, earn recognition, and find the motivation for continued professional growth.

«ЛӘЙЛӘ ТӘЖІБАЕВАНЫҢ ОТТЫ ҚОБЫЗЫ»

«Ол 3500 метр биіктікте қобызда ойнап парашютпен секірген және электр қобызды алғаш ойлап тапқан адам ретінде тарихта қалатыны сөзсіз!»

Әлжан Құсайынова

Білімі К. Байсейітова атындағы дарынды балаларға арналған Республикалық мамандандырылған музыкалық орта мектеп-интернатын бітірді.

Бакалавр дәрежесін Құрманғазы атындағы Қазақ Ұлттық консерваториясын тәмамдау арқылы алды, сондай-ақ осы оқу орнында қобыз мамандығы бойынша профессор М.К.Каленбаеваның жетекшілігімен аспирантураны аяқтады. Барлық дипломдары үздік.

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2006 жылдан бері Ләйлә Тәжібаева Art DALA, Інжу, Аяулым және Лайла-Қобыз этно-аспаптық эстрадалық топтарының негізін қалаушы және көркемдік жетекшісі болып табылады.

2006 жылы Т. Әбдірашев басқаратын ҚР Мемлекеттік академиялық симфониялық оркестрімен Дж. Сибелиустың «Скрипка мен оркестрге арналған концертін» DVD жазды.

Құрманғазы атындағы консерваторияда қобыз және баян кафедрасында аға оқытушы болып 11 жыл қызмет етті. Ұстаздық еткен жылдары ол бірнеше республикалық байқаулардың жеңімпаздарын тәрбиелеп, сонымен қатар жыл сайын қаланың концерт залдарында жеке концерттерін берді.

2016 жылы «School of Qobyz» онлайн мектебін құрып, осы платформада ол марафондар, сабақтар және шеберлік сыныптарын өткізеді. Қазіргі уақытта Қазақстан қалаларын аралап, музыка мектептері мен колледждер оқушыларына арналған шеберлік сабақтарын өткізеді. Сондай-ақ, қобызда орындаушылық шеберлікті жетілдіруді, сахнаға бағдарламаны шығару дағдыларын жақсартуды, орындаушының өзін-өзі бағалауын арттыруды, байқауға дайындалуды және шығармашылық тығырықтан шығу жолдарын табуды қалайтындарға арналған тәлімгерлік жүргізеді.

2020 жылы Ләйлә мен оның шәкірттері қобызшылар чемпионатын ұйымдастырды. 2021 жылы көрші Ресей Федерациясынан қобызға туыстас ыспалы аспаптарда орындаушылардың қатысуынан кейін ол халықаралық мәртебеге ие болды. Чемпионат жыл сайын Қазақстан Республикасының Мәдениет және ақпарат министрлігінің қамқорлығымен өткізіледі.

Концерттер мен гастрольдер:

- 2009 жылы П. Тарасевич жетекшілік ететін «Камерата Казахстана» Мемлекеттік ансамблінің қатысуамен консерваторияның үлкен залында профессор М.К. Каленбаеваның мерейтойына арналған концертін берді. Бағдарламада шетелдік және Қазақстан композиторларының шығармалары орындалды.
- 2016 жылы оның «Інжу-Маржан» жобасы Алматыдағы «Ықлас» атындағы халық аспаптары мұражайында жеке концертін берді.
- 2017 жылы «Астана Опера» театрында жеке концертін берді. Бұл концертке қазақтың көрнекті музыка қайраткерлері қатысты.
- 2018 жылы Алматыда «Layla-Qobyz» жаңа жобасының жеке концерт-презентациясымен аңызға айналған «Hard Rock Café» сахнасында өнер көрсетті.
- Сол жылы Астанада «The Bus club» клубында жеке концертін берді.
- 2019 жылы шебер В. Качановпен бірлесе отырып, әлемдегі алғашқы электр-қобызын жасап шығарды.
- Сол жылдың желтоқсан айында «Muzcafe» культтік мейрамханасының сахнасында электр қобыздың концерт-презентациясын өткізді.

Ләйлә жыл сайын академиялық және заманауи музыка концерттерін беріп, Қазақстанның және шетелдің үздік сахналарында өнер көрсетеді. Сондай-ақ эксперименттік музыкалық жобаларға белсе-

не қатысады.

Мысалы, 2022 жылы Алматыда Абай алаңында ашық аспан астында Ләйлә танымал DJ Koknja және Ресейдің еңбек сіңірген әртісі Чылтыс Таннагашевамен бірге эксперименттік шығармалар орындады. Электронды музыка мен фольклордың синтезі ұсынылды.

Ол концерттік бағдарламалармен Қазақстанның дерлік барлық қалаларында өнер көрсетті, сондай-ақ Жапония, АҚШ, Қытай, Оңтүстік Корея, Италия, Германия, Австрия, Англия, Румыния, Бельгия, Түркия сияқты елдерде концерттер берді.

Қобыз және туыстас аспаптарда орындаушылардың халықаралық чемпионаты «Qobyz Amanat» – халықтық ыспалы аспап орындаушыларын қолдау және дамытуға бағытталған мәдени-ағартушылық жоба. Жыл сайын өткізіледі.

Чемпионат 2020 жылы Ләйлә Тәжібаяева мен оның түлегі Диана Әбішеваның бастамасымен құрылған. Алғашқы маусым Instagram және YouTube платформаларында онлайн форматта өтіп, Қазақстанның түрлі өңірлерінен қатысушыларды біріктірді. Сол жылыақ чемпионатқа 68 қобызшы қатысты.

2021 жылы жобаға Башқұртстаннан музыканттар қосылып, чемпионат халықаралық мәртебеге ие болды. Сол жылы Қазақстан Республикасының Мәдениет және спорт министрлігі жобаны қолдап, министр Дәурен Абаев чемпионатқа ресми мәртебе беруді ұсынды және ведомство тарапынан қолдау білдірді.

2025 жылы «Аманат» авторлық құқықтарды қорғау коммерциялық емес ұйымының қолдауымен чемпионаттың алтыншы маусымы өтті. Осы серіктестіктің арқасында ұйымдастырушылар алғаш рет қатысушыларға естелік сыйлықтар табыстау мүмкіндігіне ие болды.

Чемпионаттың миссиясы — халықтық ыспалы аспап орындаушыларына назар аударту, оларға қолжетімді кәсіби сахна құру және өздерін көрсетуге мүмкіндік беру. Жоба тек Қазақстан мен Ресей қатысушыларына ғана емес, алыс шетел музыканттарына да бағытталған.

Бүгінгі таңда халық аспаптары ашық конкурстар мен кең марапат жүйесіне ие алаңдарға мұқтаж. «Qobyz Amanat» чемпионаты жас және тәжірибелі орындаушыларға сахналық тәжірибе, мойындау және кәсіби өсуге мотивация беретін орта қалыптастырады.

«ОГНЕННЫЙ КОБЫЗ» ЛЯЙЛИ ТАЖИБАЕВОЙ

«Она точно войдет в историю как первая в мире, кто придумал электрокобыз и прыгнул с парашютом, играя на кобызе на высоте 3500 м.!»

Альжан Кусаинова

Образование

Ляйля Тажибаева окончила Республиканскую среднюю специализированную музыкальную школу-интернат для одаренных детей имени К. Байсеитовой.

Степень бакалавра она получила в Казахской национальной консерватории имени Курмангазы, там же окончила аспирантуру по специальности «кобыз» в классе профессора М. К. Каленбаевой. Все дипломы – с отличием.

Достижения

Ляйля Тажибаева является лауреатом:

- XIX Республиканского конкурса молодых исполнителей (Алматы, 1998),
- III Международного конкурса творческой молодежи «Шабыт» (Астана, 2000),
- V Международного конкурса исполнителей на народных инструментах имени Курмангазы (Астана, 2003),

а также обладателем золотых медалей World Championship of Performing Arts (Лос-Анджелес, США, 2005 и 2006), где также впервые выступила с вокальным номером и была удостоена серебряной медали.

С 2006 года по настоящее время Ляйля Тажибаева является создателем и художественным руководителем эстрадных этно-инструментальных групп «Арт ДАЛА», «Инжу», «Аяулым» и «Layla-Qobyz».

В 2006 году записала DVD-диск с Государственным Академическим симфоническим оркестром Республики Казахстан под управлением Т. Абдрашева – «Концерт для скрипки с оркестром» Я.Сибелиуса.

Ляйля 11 лет проработала старшим преподавателем в Консерватории имени Курмангазы на кафедре кобыза и баяна. За годы работы воспитала нескольких лауреатов республиканских конкурсов, а также ежегодно давала сольные концерты в концертных залах города.

С 2016 года по настоящее время является основателей Онлайн-школы School of Qobyz, на базе которой проводит марафоны, занятия, мастер-классы. Ляйля регулярно выезжает в города Казахстана с мастер-классами для учащихся музыкальных школ и колледжей. Также ведет наставничество для тех, кто хочет улучшить исполнительское мастерство на кобызе, работу над сценической подачей, уверенность в себе, подготовку к конкурсам или найти выход из творческого тупика.

С 2020 года Ляйля вместе со своей ученицей Дианой Абишевой организует Чемпионат кобызистов, который с 2021 года приобрел статус международного – после участия в нем исполнителей на родственных кобызу смычковых инструментах из России. Чемпионат проводится ежегодно под патронажем Министерства культуры и информации Республики Казахстан.

Концерты и гастрольная деятельность

- В 2009 году дала сольный концерт в Большом зале консерватории в честь юбилея профессора М.К. Каленбаевой с участием Государственного ансамбля «Камерата Казахстана» под управлением П. Тарасевича. В программе прозвучали произведения зарубежных и казахстанских композиторов.
- В 2016 году ее проект «Инжу-маржан» выступил с сольным концертом в Музее народных инструментов имени Ыхласа в г. Алматы.

- В 2017 году дала сольный концерт в театре «Астана Опера», в котором приняли участие видные музыкальные деятели Казахстана.
- В 2018 году выступила с сольным концертом-презентацией нового проекта «Layla-Qobyz» на сцене легендарного Hard Rock Café (Алматы).
- В том же году выступила с сольным концертом в клубе The Bus (Астана).
- В 2019 в соавторстве с мастером В. Качановым создала первый в мире электрокобыз.
- В декабре того же года на сцене культового ресторана «Музкафе» дала концерт-презентацию электрокобыза.

Ляйля ежегодно дает концерты академической и современной музыки, выступает на лучших сценах Казахстана и за рубежом, охотно участвует в экспериментальных музыкальных событиях.

Так, например, в 2022 году на открытом воздухе на площади Абая в Алматы Ляйля выступала с модным DJ Koknja и Заслуженной артисткой России Чылтыс Таннагашевой с экспериментальными композициями на стыке электронной музыки и фольклора.

С концертными выступлениями она побывала почти во всех городах Казахстана, а также гастролировала в Японии, США, Китае, Южной Корее, Италии, Германии, Австрии, Великобритании, Румынии, Бельгии, Турции.

Международный чемпионат «Qobyz Amanat»

Международный чемпионат исполнителей на кобызе и родственных инструментах Qobyz Amanat – это культурно-образовательный проект, направленный на поддержку и развитие исполнителей народных смычковых инструментов. Чемпионат проводится ежегодно.

Чемпионат был основан в 2020 году Ляйлей Тажибаевой и ее выпускницей Дианой Абишевой. Первый сезон прошел в онлайн-формате на платформах Instagram и YouTube, что позволило объединить участников из разных регионов Казахстана. Уже в первый год в чемпионате приняли участие 68 кобызистов.

В 2021 году к проекту присоединились музыканты из Республики Башкортостан, в связи с чем Чемпионат получил статус международного. В том же году инициативу поддержало Министерство культуры и спорта Республики Казахстан: министр культуры Даурен Абаев предложил придать Чемпионату официальный статус и поддержал его подписью ведомства.

В 2025 году состоялся шестой сезон Чемпионата при поддержке некоммерческой организации авторских прав «Аманат». Благодаря этому партнёрству организаторы впервые смогли вручить участникам памятные призы.

Миссия Чемпионата – привлечь внимание к исполнителям народных смычковых инструментов, создать для них доступную профессиональную площадку и дать возможность проявить себя. Проект ориентирован не только на участников из Казахстана и России, но и на музыкантов из дальнего зарубежья.

Народные инструменты сегодня нуждаются в большем количестве открытых конкурсов с широкой системой награждения и доступной программой участия. Чемпионат «Qobyz Amanat» создает среду, в которой молодые и продолжающие исполнители могут получить сценический опыт, признание и мотивацию для дальнейшего профессионального роста.

CONFERENCE REVIEWS. REPORTS ON SCIENTIFIC EVENTS AND ACTIVITIES OF ORGANIZATIONS

КОНФЕРЕНЦИЯ ШОЛУЛАРЫ. ҒЫЛЫМИ ІС-ШАРАЛАР МЕН ҰЙЫМДАСТЫРУ ШАРАЛАРЫ ТУРАЛЫ ЕСЕПТЕР

ОБЗОРЫ КОНФЕРЕНЦИЙ. ОТЧЕТЫ О НАУЧНЫХ МЕРОПРИЯТИЯХ И ДЕЯТЕЛЬНОСТИ ОРГАНИЗАЦИЙ

WIPO LAUNCHES ARTIFICIAL INTELLIGENCE INFRASTRUCTURE INTERCHANGE

Geneva, March 17, 2026
PR/2026/949

WIPO launched the Artificial Intelligence Infrastructure Interchange (AIII), a new initiative for expert dialogue on IP and AI issues that will focus on technical and operational issues and complement ongoing discussions at other WIPO forums.

More than 1,700 participants – including government Ministers, industry leaders in the field of AI and IP as well as other stakeholders – registered to join the launch event held at WIPO headquarters in Geneva, Switzerland.

In his opening address, WIPO Director General Daren Tang said: "AI has the power to change the nature of innovation and creativity. This poses challenges for the global IP ecosystem, but also gives us an opening to identify and seize new opportunities."

"History shows that new technologies only reach their full potential when the systems around them evolve too. Railways transformed economies once networks became interoperable. Music streaming scaled once the industry built the metadata and rights infrastructure needed for content to move efficiently through the digital ecosystem. AI is now at a similar moment," Mr. Tang said.

He added: "By building strong and healthy infrastructure networks, we can help AI achieve its potential of creating new opportunities while supporting, enabling and empowering human innovators and creators."

Conversations that include creators, rights-holders, developers and technical experts and others will revolve around issues like facilitating access to data at scale, identification and attribution standards, watermarking, fingerprinting, rights management and even the use of AI to address IP enforcement and infrastructure.

To support the detailed, technical-level discussions envisioned for AIII, a Technical Exchange Network has been assembled with over 90 experts from dozens of countries, spanning technology firms, AI developers, rightsholders, individual creators, academia, and civil society.

This global network of experts will initially focus on undertaking a first-of-its-kind mapping exercise of both existing copyright infrastructure and the technical challenges and opportunities arising from the intersection of AI and the creative economy. The results of this mapping will lead to identification of targeted areas for further work.

The results and the status of the work of the Technical Exchange Network will be shared at the annual public meeting of the AIII scheduled for October 2, 2026 where Member State representatives and other stakeholders will give input on the ongoing work of the Technical Exchange Network.

The launch ceremony featured opening remarks from Morocco's Minister for Digital Transition and Reform of the Administration of Morocco Amal El Fallah Seghrouchni and Spain's Minister for Culture Ernest Urtasun Domènech.

The event also featured a lineup of international speakers reflecting on the importance of the new initiative, many of whom represent companies that will be part of the Technical Exchange Network, including:

WIPO/BERROD

1. Ariana Arciniega, Executive Vice President, Global Operations and Business Development Strategy, Intercept Music, Mexico
2. Solange Cesarovna, Singer-Songwriter, Cabo Verde
3. Dante Cid, President, Brazilian Publishers Association and Executive Committee Member, International Publishers Association, Brazil
4. Imogen Heap, Recording Artist and Technologist, United Kingdom
5. Matt Hervey, Senior Associate General Counsel, AI Strategy, Cloudflare, United Kingdom
6. Vered Horesh, Chief AI Strategy Officer, Bria Artificial Intelligence, Ltd., Israel
7. Chris Horton, Executive Vice President, Strategic Technology, Universal Music Group, United States of America
8. Mark Isherwood, Secretariat, Digital Data Exchange (DDEX), United Kingdom
9. Ren Ito, Co-Founder and Chief Operating Officer, Sakana AI, Japan
10. Bruce MacCormack, Principal, Neural Transform, Canada
11. Malumbo Mkandawire, Director of Operations, Copyright Society of Malawi, Malawi
12. Ana da Motta, Senior Manager, Digital Affairs & Artificial Intelligence, Amazon Web Services Public Policy Europe, Middle East and Africa, Brazil
13. Alessandra Sala, Senior Director of Artificial Intelligence and Data Science, Shutterstock, Italy
14. Guoyi Zhao, Director, Government Affairs, RELX, China
15. Andy Carne, Special Projects Lead, Imogen Heap, United Kingdom
16. Utkarsh Saxena, Chief Executive Officer, Adalat.ai, India

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ДАН СТАРТ ИНИЦИАТИВЕ ВОИС «ОБМЕН ИНФОРМАЦИЕЙ ОБ ИНФРАСТРУКТУРЕ ИСКУССТВЕННОГО ИНТЕЛЛЕКТА»

Женева, 17-03-2026
PR/2026/949

Всемирная Организация Интеллектуальной Собственности (далее – ВОИС) официально запустила новую инициативу «Обмен информацией об инфраструктуре искусственного интеллекта» (далее – Инициатива), призванную способствовать экспертному диалогу по вопросам права интеллектуальной собственности (далее – ИС) и искусственного интеллекта (далее – ИИ). Данная инициатива посвящена техническим и операционным аспектам и служит дополнением к тем обсуждениям, которые уже ведутся на других площадках ВОИС.

Для участия в мероприятии по случаю запуска Инициативы, прошедшем в штаб-квартире ВОИС в Женеве (Швейцария), зарегистрировались более 1 700 участников, включая министров различных стран, лидеров отрасли в сфере ИИ и ИС, а также другие заинтересованные стороны.

В своем вступительном слове Генеральный директор ВОИС Дарен Танг заявил: «ИИ способен изменить саму природу инновационной и творческой деятельности. Это ставит перед глобальной экосистемой интеллектуальной собственности новые вызовы, но также открывает перед нами новые перспективы по выявлению и реализации невиданных ранее возможностей». Как показывает история, потенциал новых технологий раскрывается в полной мере только с развитием сопутствующих систем. Железнодорожное сообщение преобразовало экономику тогда, когда железнодорожные сети стали взаимно совместимыми. Потоковое вещание музыки получило широкое распространение лишь после того, как отрасль создала инфраструктуру метаданных и прав, необходимую для эффективной передачи контента в цифровой экосистеме. ИИ сейчас находится на схожем этапе».

Генеральный директор ВОИС также добавил: «Строя мощные и надежные инфраструктурные сети, мы можем помочь ИИ реализовать свой потенциал в создании новых возможностей, одновременно поддерживая, стимулируя и расширяя возможности новаторов и авторов – людей».

Дискуссии с участием авторов, правообладателей, разработчиков, технических экспертов и других заинтересованных сторон будут затрагивать такие вопросы, как обеспечение широкомасштабного доступа к данным, стандарты идентификации и указания авторства, водяные знаки, цифровые отпечатки, управление правами, а также использование ИИ для решения задач в области защиты ИС и развития инфраструктуры.

Для целей поддержки подробных обсуждений на техническом уровне, которые планируются в рамках Инициативы, была сформирована Сеть технического сотрудничества, в которую вошли более 90 экспертов из десятков стран: технологические компании, разработчики ИИ, правообладатели, отдельные авторы, представители научно-академических кругов и гражданского общества.

На первом этапе данная глобальная сеть экспертов сосредоточится на проведении единственного в своем роде анализа как существующей инфраструктуры авторского права, так и технических вызовов и возможностей, возникающих на стыке ИИ и творческой экономики. Результаты этого анализа позволят определить приоритетные направления для дальнейших усилий.

Результаты и ход работы Сети технического сотрудничества будут представлены на ежегодном открытом заседании Инициативы, запланированном на 2 октября 2026 года, где представители госу-

дарств-членов и другие заинтересованные стороны смогут поделиться комментариями относительно текущей деятельности Сети технического сотрудничества.

Желающие присоединиться к Сети технического сотрудничества могут направить соответствующий запрос, заполнив бланк заявки на сайте ВОИС.

На церемонии открытия с вступительными речами выступили Ее Превосходительство г-жа Амаль Эль Фаллах Сегрушни, министр цифрового перехода и административной реформы Марокко и Его Превосходительство г-н Эрнест Уртасун Доменек, министр культуры Испании.

WIPO/BERROD

В мероприятии также приняли участие ряд международных докладчиков, которые рассказали о важности новой инициативы; многие из них представляют компании, которые будут частью Сети технического сотрудничества, в том числе:

- г-жа Ариана Арсиньега, вице-президент, курирующий международную деятельность и стратегию коммерческого развития «Intercept Music», Мексика;
- г-жа Соланж Сезаровна, автор и исполнитель песен, Кабо-Верде;
- г-н Данте Сид, президент Ассоциации бразильских издателей и член правления Международной ассоциации издателей, Бразилия;
- г-жа Имоджен Хип, музыкант и исполнитель, проводник технических новинок в музыке, Соединенное Королевство;
- г-н Мет Херви, старший советник руководителя юридического отдела, куратор стратегии в области ИИ «Cloudflare», Соединенное Королевство;

- г-жа Веред Хореш, руководитель направления Стратегии в области ИИ «Bria Artificial Intelligence, Ltd.», Израиль;
- г-н Крис Хортон, вице-президент, ответственный за стратегические технологии, «Universal Music Group», Соединенные Штаты Америки;
- г-н Марк Ишервуд, представитель Секретариата «Digital Data Exchange» (DDEX), Соединенное Королевство;
- г-н Рен Ито, соучредитель и главный исполнительный директор «Sakana AI», Япония;
- г-н Брюс МакКормак, руководитель «Neural Transform», Канада;
- г-н Малумбо Мкандавире, директор по оперативной работе «Общество авторского права» Малави, Малави;
- Ана да Мотта, старший менеджер по цифровым вопросам и искусственному интеллекту «Amazon Web Services», отдел государственной политики в Европе, на Ближнем Востоке и в Африке, Бразилия;
- г-жа Алессандра Сала, старший директор по искусственному интеллекту и исследованию данных «Shutterstock», Италия;
- г-н Гои Чжао, директор по взаимодействию с государственными структурами «RELX», Китай;
- г-н Энди Карни, ответственный за специальные проекты «Imogen Heap», Соединенное Королевство;
- г-н Уткарш Саксена, генеральный директор «Adalat.ai», Индия.

Данная публикация подготовлена с использованием материалов, доступных на веб-сайте: https://www.wipo.int/pressroom/en/articles/2026/article_0005.html

ANNOUNCEMENT FOR AUTHORS

Dear Colleagues,

You are welcome to join the community of our Popular Science Journal.

We are now in the process of collecting material for our next issue, which marks the beginning of a major initiative aimed at integrating research and practical approaches to the study of intellectual property rights in an international format.

We would be pleased to receive your research articles at: ejofipl@gmail.com

Not only original research articles but also materials for op-ed page will be welcome:

1. Law Enforcement Insights.
2. Rising Scholars Forum.
3. International Law and Comparative Studies.
4. Reviews of Intellectual Property Law Related Books and Monographs.
5. Debates on Theoretical and Applied Issues.
6. Legislative Gaps.

ARTICLE SUBMISSION GUIDELINES

Articles shall be written in academic English.

The length of the paper should be between 3,000 and 8,000 words.

The originality must be no less than 95%.

Submit your paper to the editorial office in .doc or .docx format.

Text editor parameters:

- margins – 2 cm;
- font – Times New Roman;
- font size – 12;
- line spacing – 1;
- justified alignment;
- paragraph indent – 1 cm;
- page orientation – portrait.

Bold-faced type should be used for titles and subheadings.

Visual objects (if any) should be provided in jpeg or png format. You must provide a figure number and caption (e.g., Figure 1. "..." [CAPTION]). All figures must be clear, and the legends clearly visible.

Tables (if any) should be placed within the paper itself. Provide a table number and caption. Any table shall have a description in the text of the paper.

Formatting of the paper metadata (English):

1. Full title of the article.

2. Running title.

3. By-line: First Name, Patronymic, Last Name (full) of the article's author(s).

4. Academic rank, academic degree, position.

5. Place of employment: department, faculty, higher educational establishment.

6. City, country.

7. Work address with postal code, work phone number.

8. E-mail.

For multiple authors of the article, the above details shall be given separately for each author.

The article shall have the following sections (headings shall be labeled):

1. Abstract

2. Keywords

3. Introduction

4. Literature Review

5. Materials and methods

6. Results

7. Discussion

8. Conclusions

9. Acknowledgements (if any)

10. References

More details on the content and formatting of the article sections:

1. **Abstract.** The optimal length of the abstract is from 150 to 250 words in English. The publisher reserves the right to partially change, shorten, or lengthen the abstract if it does not meet the requirements.

The abstract should include the thematic justification and rationale of the research issue; the key findings of the research; and the practical and theoretical relevance of the findings.

2. **Keywords.** The optimal number is 4-6 words relevant to the substance of the article. Keywords shall be listed in order of importance, separated by a semicolon.

3. **Introduction.** The introduction formulates the subject, goals, and objectives of the research, and justifies its relevance and implications. The text of this section should be structured from general to specific.

4. **Literature Review.** The section should contain an analysis of literature references of the research that confirms the absence of solutions to the stated problems in literary sources and identifies the predecessors whose studies underly the research paper.

The literature review must cite only recognizable (verifiable) sources.

Foreign-language articles should be cited with a DOI number, while books and other materials should be cited with a link to the access mode.

The Literature Review section must not: 1) create a list of sources that were not studied or used in the preparation of the paper, if you have neither studied nor used the specified sources, and 2) quote authors without citing them.

5. **Materials and methods.** The section should include the designation of the experimental base and research sample; a substantive and concise description of each method and technique individually; a brief description of the research design.

6. **Results.** The section is recommended to be presented primarily in the form of tables, graphs, and other illustrations. When used, all figures and tables should be accompanied by explanations. This section is part of the main body of the research and must include an analysis of the findings, their interpretation, and a comparison with the findings of other authors (references to the papers of other authors are mandatory).

7. **Discussion.** This section is part of the main body of the research and should contain a brief overview of the research, a summary of the most significant findings of the previous section, a comparison with other studies on a similar topic, and identification of areas of concern.

8. **Conclusion.** The section includes a brief presentation of the research findings, and a summary of the conclusions. The conclusions should logically correspond to the objectives stated at the head of the article.

9. **Acknowledgements.** This section may contain information about grants, funding, subsidies as well as acknowledgements (if any). If there is no need to provide such information, the section can be omitted.

10. **References.** References should be provided in alphabetical order with continuous numbering. In-text citations to the corresponding source from the reference list should be formatted in parentheses. For example: (1, p. 56). No automatic page links are allowed. References should contain at least 35 sources issued during the last 3 years, of which at least 15 sources should be foreign. It is a must to use articles published in **Scopus and Web of Science** databases within the last 3-5 years. Self-citation by the article's authors is allowed, but no more than 1-2 reference(s) to the papers of each author.

It is necessary to include a reference to the UDC – https://teacode.com/online/udc/ (according to the topic of the article).

It is a must to submit a separate file describing **the scientific novelty of the article for an international audience**, the contribution your article makes to the development of international academic knowledge, the increment of academic knowledge, etc. – maximum 200 words.

АВТОРЛАРҒА АРНАЛҒАН ХАБАРЛАНДЫРУ

Құрметті әріптестер!

Сізді ғылыми-көпшілік журналымыздың қауымдастығына қосылуға шақырамыз.

Біз халықаралық форматтағы интеллектуалдық құқықтарды зерделеуге қатысты зерттеу және практикалық тәсілдерді біріктіруге бағытталған маңызды бастаманың алғашқы қадамын білдіретін кезекті нөмірді дайындап жатырмыз.

Ғылыми мақалаларыңызды мына мекенжайға жіберсеңіз, біз қуана қарсы аламыз: ejofipl@gmail.com

Біз тек түпнұсқа ғылыми-зерттеу мақалаларын ғана емес, сонымен қатар келесідей авторлық бағаналардағы материалдарды да қабылдауға дайынбыз:

1. Құқық қолдану аналитикасы.
2. Жас ғалымдар мінбері.
3. Халықаралық құқық және салыстырмалы зерттеулер.
4. Интеллектуалдық меншік құқығы бойынша кітаптар мен монографияларға рецензиялар.
5. Теориялық және қолданбалы мәселелер бойынша пікірталас.
6. Заңнамадағы олқылықтар.

МАҚАЛАЛАРДЫ РӘСІМДЕУГЕ ҚОЙЫЛАТЫН ТАЛАПТАР

Мақалалар академиялық ағылшын тілінде қабылданады.

Мақала көлемі: 3000 сөзден 8000 сөзге дейін.

Мәтіннің бірегейлігі: кемінде 95%.

Мақала мәтіндері редакцияға .doc, .docx форматында ұсынылады.

Мәтіндік редактор параметрлері:

- жиектері – 2 см;
- қаріп – Times New Roman;
- кегль – 12;
- жоларалық интервал – 1;
- ені бойынша туралау;
- абзацтық шегініс – 1 см;
- парақ бағыты – кітаптық.

Атаулар мен кіші тақырыптар үшін қою қара түсті қаріп қолданылады.

Көрнекі нысандар (бар болса) jpeg немесе png форматында ұсынылуы тиіс. Сурет нөмірі мен атауын көрсету қажет (мысалы, 1-сурет. «...» (атауын көрсету). Барлық сурет анық, жазулар айқын көрінуі керек.

Кестелер (бар болса) мақаланың өзінде орналастырылады. Кесте нөмірі мен оның атауын көрсету қажет. Кесте мақала мәтінінде сипатталуы тиіс.

Мақала метадеректерін рәсімдеу (ағылшын тілінен Ағылшын тіліне аудармасымен):

1. Мақаланың толық атауы.

2. Мақала атауының қысқартылған нұсқасы (Running title).

3. Мақала авторының/авторларының аты, әкесінің аты, тегі (толық).

4. Ғылыми атағы, ғылыми дәрежесі, лауазымы.

5. Жұмыс орны: кафедра, факультет, жоғары оқу орнының атауы.

6. Қала, ел.

7. Пошта индексі бар жұмыс мекенжайы, жұмыс телефоны.

8. E-mail.

Егер мақала авторлары бірнешеу болса, онда ақпарат әр автор үшін қайталанады.

Мақала құрылымы келесі бөлімдерді қамтуы тиіс (тақырыпшалар көрсетілуі керек):

1. Аннотация / Abstract

2. Түйінді сөздер / Keywords

3. Кіріспе / Introduction

4. Әдеби шолу / Literature Review

5. Материалдар мен әдістер / Materials and methods

6. Нәтижелер / Results

7. Талқылау / Discussion

8. Қорытынды / Conclusions

9. Алғыс білдіру (бар болса) / Acknowledgements

10. Әдебиеттер тізімі / References

Мақала бөлімдерінің мазмұны мен рәсімделуі туралы толығырақ:

1. **Аннотация.** Аннотацияның оңтайлы көлемі ағылшын тілдерінде 150 сөзден 250 сөзге дейін. Баспа талаптарға сәйкес келмеген жағдайда аннотация көлемін ішінара өзгертуге, қысқартуға немесе ұлғайтуға құқылы.

Аннотация зерттеу мәселесінің өзектілігі мен мақсаттылығын, зерттеудің негізгі нәтижелерін, алынған нәтижелердің практикалық және теориялық маңыздылығын қамтуы тиіс.

2. **Түйінді сөздер.** Оңтайлы көлемі – мақаланың мәні бойынша 4-6 сөз. Түйінді сөздер маңыздылығына қарай ретпен беріледі, олар бір-бірінен нүктелі үтірмен бөлінеді.

3. **Кіріспе.** Кіріспеде зерттеудің пәні, мақсаттары мен міндеттері тұжырымдалады, зерттеудің өзектілігі мен маңыздылығы негізделеді. Бұл бөлімнің мәтіні жалпыдан жекеге қарай тұжырымдалуы тиіс.

4. **Әдеби шолу.** Бұл бөлімде қойылған міндеттерді шешудің әдеби деректерде жоқ екенін растайтын және жұмыс негізделген зерттеулердің бастаушыларын көрсететін зерттеудің дереккөздер базасына талдау жасалуы тиіс.

Әдеби шолуда тек танымал (тексерілетін) дереккөздерге сілтеме жасау қажет.

Шетелдік мақалалар DOI нөмірімен, ал кітаптар және басқа да материалдар қолжетімділік режиміне сілтемемен көрсетіледі.

«Әдеби шолу» бөлімінде мыналарға тыйым салынады: 1) егер сіз көрсетілген дереккөздерді зерттемеген және пайдаланбаған болсаңыз, мақаланы дайындау кезінде зерттелмеген немесе пайдаланылмаған дереккөздер тізімін жасауға және 2) авторларға сілтеме жасамай, олардан үзінді келтіруге.

5. **Материалдар мен әдістер.** Бөлім зерттеудің эксперименттік базасы мен іріктеуін белгілеуді, әрбір әдіс пен әдістемені жеке-жеке мазмұнды және сыйымды сипаттауды, зерттеу схемасының қысқаша сипаттамасын қамтуы тиіс.

6. **Нәтижелер.** Бұл бөлімді негізінен кестелер, графиктер және басқа да иллюстрациялар түрінде ұсыну ұсынылады. Пайдаланылған кезде барлық сурет пен кесте түсініктемелермен берілуі тиіс. Бұл бөлім зерттеудің негізгі бөлігіне жатады және міндетті түрде алынған нәтижелерді талдауды, оларды түсіндіруді, басқа авторлардың нәтижелерімен салыстыруды (басқа авторлардың жұмыстарына сілтемелер міндетті түрде көрсетіледі) қамтиды.

7. **Талқылау.** Бұл бөлім зерттеудің негізгі бөлігіне жатады және зерттеуге қысқаша шолуды, алдыңғы бөлімде анықталған ең маңызды нәтижелердің қысқаша сипаттамасын, оларды ұқсас тақырыптағы басқа зерттеулермен салыстыруды, проблемалық аймақтарды бөліп көрсетуді қамтуы тиіс.

8. **Қорытынды.** Бұл бөлім зерттеу нәтижелерін қысқаша ұсынуды, қорытындыларды жинақтауды қамтиды. Қорытындылар мақаланың басында қойылған міндеттерге логикалық тұрғыдан сәйкес болуы тиіс.

9. **Алғыс білдіру.** Бұл бөлімде грант, қаржыландыру, субсидия туралы ақпарат, сондай-ақ алғыс білдіру (бар болса) орналастырылуы мүмкін. Мұндай ақпаратты көрсету қажет болмаған жағдайда, бөлімді өткізіп жіберуге болады.

10. **Әдебиеттер тізімі.** Әдебиеттер тізімі алфавиттік тәртіппен, тұтас нөмірлену арқылы беріледі. Мәтіндегі әдебиеттер тізіміндегі тиісті дереккөзге сілтемелер дөңгелек жақшаның ішінде рәсімделеді. Мысалы: (1, 56-б.). Автоматты беттік сілтемелерді пайдалануға рұқсат етілмейді. Әдебиеттер тізімі соңғы 3 жылдағы кемінде 35 дереккөзді қамтуы тиіс, оның ішінде шетелдік дереккөздер кемінде 15 болуы керек. Соңғы 3-5 жыл ішінде **Scopus және Web of Science** базаларында жарияланған мақалаларды пайдалану міндетті. Мақала авторларының өзін-өзі дәйексөз етуіне рұқсат етіледі, бірақ мақаланың әр авторының жұмысына 1-2 сілтемеден аспауы керек.

ӘОЖ – https://teacode.com/online/udc/ сілтемесін қосу қажет (мақала тақырыбына сәйкес).

Мақаланың халықаралық аудиторияға арналған ғылыми жаңалығының сипаттамасын, мақаланың халықаралық ғылыми білімді дамытуға қосқан үлесін, ғылыми білімнің өсуін және т.б. сипаттайтын бөлек файлды ұсыну міндетті – 200 сөзден аспауы керек.

ОБЪЯВЛЕНИЕ ДЛЯ АВТОРОВ

Уважаемые коллеги!

Приглашаем Вас присоединиться к сообществу нашего научно-практического журнала.

Мы готовим очередной номер, который знаменует собой начало важной инициативы, направленной на объединение исследовательских и практических подходов к изучению интеллектуальных прав в международном формате.

Будем рады, если Вы пришлете нам свои научные статьи на адрес: ejofipl@gmail.com

Мы готовы принять не только оригинальные научно-исследовательские статьи, но и материалы в авторские колонки:

1. Аналитика правоприменения.
2. Трибуна молодых ученых.
3. Международное право и сравнительные исследования.
4. Рецензии на книги и монографии по праву интеллектуальной собственности.
5. Полемика по теоретическим и прикладным вопросам.
6. Пробелы законодательства.

ТРЕБОВАНИЯ К ОФОРМЛЕНИЮ СТАТЕЙ

Статьи принимаются на академическом английском языке.

Объем статьи от 3000 до 8000 слов.

Оригинальность текста статьи не менее 95%.

Тексты статей предоставляются в редакцию в формате .doc, .docx.

Параметры текстового редактора:

- поля – 2 см.;
- шрифт – Times New Roman;
- кегль – 12;
- межстрочный интервал – 1;
- выравнивание по ширине;
- абзацный отступ – 1 см.;
- ориентация листа – книжная.

Для названий и подзаголовков используется полужирное начертание текста.

Визуальные объекты (при наличии) должны быть предоставлены в формате jpeg или png. Необходимо дать номер рисунка и название (например, Рисунок 1. «...» (указать название). Все рисунки должны быть четкими, надписи хорошо видны.

Таблицы (при наличии) размещаются в самой статье. Необходимо дать номер таблицы и ее название. Таблица должна иметь описание в тексте статьи.

Оформление метаданных статьи (анг. с пер. на русский или казахский яз.):

1. Полное название статьи.

2. Укороченный вариант названия статьи (Running title).

3. Имя, Отчество, Фамилия (полностью) автора/-ов статьи.

4. Ученое звание, ученая степень, должность.

5. Место работы: кафедра, факультет, название вуза.

6. Город, страна.

7. Рабочий адрес с почтовым индексом, рабочий телефон.

8. E-mail.

Если авторов статьи несколько, то информация повторяется для каждого автора.

Необходимо включить указание на УДК – https://teacode.com/online/udc/ (согласно тематике статьи).

Структура статьи должна содержать следующие разделы (заголовки должны быть подписаны):

1. Аннотация / Abstract
2. Ключевые слова / Keywords
3. Введение / Introduction
4. Литературный обзор / Literature Review
5. Материалы и методы / Materials and methods
6. Результаты / Results
7. Обсуждение / Discussion
8. Заключение / Conclusions
9. Благодарности (при наличии) / Acknowledgements
10. Список литературы / References

Подробнее о содержании и оформлении разделов статьи:

1. **Аннотация (Abstract).** Оптимальный объём аннотации от 150 до 250 слов на русском и английском языках. Издательство оставляет за собой право частичного изменить сократить или увеличить объем аннотации в случае несоответствия требованиям.

Аннотация должна включать в себя актуальность и целесообразность исследования проблемы; основные результаты исследования; практическую и теоретическую значимость полученных результатов.

2. **Ключевые слова (Keywords).** Оптимальный объем – 4-6 слов по сути статьи. Ключевые слова приводятся в порядке значимости, отделяются друг от друга точкой с запятой.

3. **Введение (Introduction).** Во введении формулируется предмет, цели и задачи исследования, обосновывается актуальность и значимость исследования. Текст данного раздела должен быть сформулирован от общего к частному.

4. **Литературный обзор (Literature Review).** Раздел должен содержать анализ источниковой базы исследования, подтверждающий отсутствие в литературных источниках решений поставленных задач и указывающий предшественников, на исследованиях которых базируется работа.

В обзоре литературы необходимо ссылаться только на узнаваемые (проверяемые) источники.

Иностранные статьи указываются с номером DOI, книги и прочее – со ссылкой на режим доступа.

В разделе «Литературный обзор» запрещается: 1) формировать список из источников, которые не были изучены или использованы при подготовке статьи, если вы не изучали и не использовали указанные источники и 2) цитировать авторов, не ссылаясь на них.

5. **Материалы и методы (Materials and methods).** Раздел должен включать в себя обозначение экспериментальной базы и выборки исследования; содержательное и емкое описание каждого метода и методики в отдельности; краткое описание схемы исследования.

6. **Результаты (Results).** Раздел относится к основной части исследования и обязательно включает анализ полученных результатов, их интерпретацию, сравнение с результатами других авторов (обязательно указываются ссылки на работы других авторов).

7. **Обсуждение (Discussion).** Раздел относится к основной части исследования и должен содержать краткий обзор исследования, краткое описание наиболее значимых выявленных в предшествующем разделе результатов, их сравнение с другими исследованиями по аналогичной тематике, выделение проблемных областей.

8. **Заключение (Conclusion).** Раздел включает краткое представление результатов исследования, обобщение выводов. Выводы должны логически соответствовать поставленным в начале статьи задачам.

9. **Благодарности / Acknowledgements.** В разделе может быть размещена информация о гранте, финансировании, субсидии, а также благодарностей (при наличии). В случае отсутствия необходимости указания такой информации раздел может быть пропущен.

10. **Список литературы (References).** Список литературы приводится в алфавитном порядке, со сквозной нумерацией. Ссылки в тексте на соответствующий источник из списка литературы оформляются в круглых скобках. Например: (1, с. 56). Использование автоматических постраничных ссылок не допускается. Список литературы должен содержать не менее 35 источников за последние 3 года, из которых иностранных источников – не менее

Обязательно использование статей, опубликованных в базах **Scopus и Web of Science**, за последние 3 - 5 лет. Самоцитирование авторов статьи допускается, но не более 1-2 ссылки на работы каждого автора статьи.

Обязательным является **представление описания научной новизны** (Statement of Scientific Novelty and International Contribution) статьи для международной аудитории, вклада статьи в развитие международного научного знания, приращение научного знания и т.п. – не более 200 слов (на английском языке).


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