

18. CONSEQUENCES OF THE ACCESSION OF THE REPUBLIC OF UZBEKISTAN TO THE PHONOGRAMS CONVENTION

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ABSTRACT

Uzbekistan acceded to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonograms Convention) in January 2019. The paper discusses potential legal and economic implication of the accession of Uzbekistan to the Phonogram Convention and possible impact on the Uzbek legislative system. The authors argue that the drastic change in the socio-political agenda of Uzbekistan and commitments to ensure the trade relations were the main reasons for accession to the Phonograms Convention. Uzbekistan is considered a country with weak intellectual property enforcement, especially in the field of copyright. Lack of analytical data precluded the country from being listed in Global Innovation Index. Nevertheless, Uzbekistan has repeatedly been included in the Special 301 Report by the United States Trade Representative to Congress. One of the main recommendations made in the reports was to advocate for Uzbekistan to accede to the Phonograms Convention. The desire of Uzbekistan to improve its ranking and to improve trade relationships have forced it to comply with these recommendations. Although the domestic legislation of Uzbekistan is fully in compliance with the main standards of the Phonograms Convention, accession

to the Convention would create a clash between the works protected under the Berne Convention and under the Phonograms Convention. Moreover, the merging system of collective management of rights would negatively affect the development of the market of creative works in the country. It is crucial to improve the protection of copyrights and to create a beneficial legal system that would trigger the development of creative industry in Uzbekistan.

Keywords: *Phonograms Convention; Uzbekistan; phonograms; producers of phonograms; collective management; copyright; related rights*

1. INTRODUCTION

Lack of effective law enforcement mechanisms against copyright infringement, in particular piracy, in the context of audiovisual works and sound recordings, remains one of the most significant challenges for the Republic of Uzbekistan (hereafter 'Uzbekistan') in providing sound IP protection infrastructure. Although Uzbekistan joined the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)¹ in 2005, piracy level remains incredibly high.

Major music labels such as Sony Music,² Universal Music³ and Warner Music Group⁴ do not have offices or representatives in Uzbekistan. Although Uzbekistan is one of the biggest

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¹ Berne Convention for the Protection of Artistic and Literary Works (adopted 9 September 1886, entered into force 5 December 1887)

828 U.N.T.S. 221 [hereinafter Berne Convention].

<<https://wipolex.wipo.int/en/treaties/textdetails/12214>> accessed 7 January 2020.

² Sony Music offices in different countries

<<https://www.sonymusic.com/facts-and-figures/>> accessed 17 May 2020.

³ Universal Music Group owns and operates a broad array of

businesses engaged in recorded music, music publishing, merchandising, and audiovisual content in more than 60.

countries.<<https://www.universalmusic.com/labels/global/>> 1 May 2020.

⁴ Warner Music Group is a global music company, which operates in more than 50 countries through various subsidiaries, affiliates and non-affiliated licensees. <<https://www.wmg.com/faq>> 1 May 2020.

markets in Central Asia⁵ with a population of more than 33 million, the presence of foreign businesses and levels of investment remain relatively low.⁶

Since 2017, Uzbekistan has been implementing an ambitious social-economic development agenda and has renewed its commitment to join the World Trade Organization (WTO). The government adopted the Strategy for Innovative Development in September 2018,⁷ which includes quantitative targets for 81 indicators to be achieved through 2030.⁸ Uzbekistan is committed to joining the list of top 50 innovative countries of the Global Innovation Index⁹ by 2030. The Global Innovation Index ranks and breaks down the innovation performance of 129 countries and economics around the world. Notably, Uzbekistan's last ranking was in 2015, when the country took the 122nd place in the 2015 Global Innovation Index¹⁰ among 141 countries of the world.¹¹

Although it was mentioned that Uzbekistan is making a progress in data collection, the country was not included in the Global Innovation Index rankings for 2019.¹²

Uzbekistan is considered as a jurisdiction with weak enforcement of intellectual property rights, specifically in the area of copyrights. Uzbekistan has been listed in the US Special 301 Report (301 Report),¹³ from 2011¹⁴ to 2019¹⁵ respectively. The 301 Report, as prepared by the United States Trade Representatives indicates the main jurisdictions where United States companies are facing trade barriers due to intellectual property protection, such as copyright, patents and trademarks. All the reports continually listed Uzbekistan as a country with lack of copyright protection for foreign sound recordings. Other concerns raised in previous Special 301 Reports included the areas of border enforcement, resourcing administrative and enforcement IP agencies, and

⁵ Uzbekistan is the 89th largest export economy in the world and the 96th most complex economy according to the Economic Complexity Index (ECI) <<https://oec.world/en/profile/country/uzb/>> assessed 15 May 2020.

⁶ 'Foreign direct investment, net inflows (BoP, current US\$) – Uzbekistan' (World Bank) <<https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?locations=UZ>> assessed 27 July 2020.

⁷ Resolution on Measures to Implement the National Goals and Tasks on the Sustainable Development for 2030, No.841 of 20 October 2018 (Uzbekistan) <<http://lex.uz/ru/docs/4013358>> accessed 9 October 2019 (Resolution on Goals and Tasks for 2030) 'On measures to implement the national goals and tasks on the sustainable development for 2030.'

⁸ Trushin Eskender, 'Uzbekistan - Toward a New Economy: Country Economic Update' (World Bank Group, Washington DC, 2019) <<http://documents.worldbank.org/curated/en/866501562572675697/Uzbekistan-Toward-a-New-Economy-Country-Economic-Update>> accessed 7 January 2020.

⁹ *The Global Innovation Index 2018: Energizing the World with Innovation* (Cornell University, INSEAD and WIPO, Ithaca, Fontainebleau, and Geneva 2018) <https://www.wipo.int/global_innovation_index/en/> accessed 7 January 2020.

¹⁰ *The Global Innovation Index 2015: Effective Innovation Policies for Development* (Cornell University, INSEAD and WIPO, Ithaca, Fontainebleau, and Geneva 2015)

<https://www.wipo.int/edocs/pubdocs/en/wipo_gii_2015.pdf> accessed 9 October 2019.

¹¹ See *ibid.* Uzbekistan has not been included into Global Innovation Index since 2016 due to the absence of data. Uzbekistan took the 122nd place in the Global Innovation Index among 141 countries of the world.

¹² *The Global Innovation Index 2019: Creating Healthy Lives—The Future of Medical Innovation* (Cornell University, INSEAD and WIPO, Ithaca, Fontainebleau, and Geneva 2019) <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2019.pdf> accessed 9 October 2019.

¹³ Office of the United States Trade Representative, Special 301 Report <<https://ustr.gov/issue-areas/intellectual-property/Special-301>> accessed 9 October 2019. 'The "Special 301" Report reflects the outcome of a Congressionally-mandated annual review of the global state of intellectual property rights (IPR) protection and enforcement' <<https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf>> accessed 9 October 2019.

¹⁴ Special 301 Report (Office of the United States Trade Representative, 2011) <<https://ustr.gov/sites/default/files/uploads/gsp/speeches/reports/2011/301/2011%20Special%20301%20Report.pdf>> assessed 09 October 2019.

¹⁵ Special 301 Report (Office of the United States Trade Representative, 2019) [hereinafter 2019 Special 301 Report] 71 <https://ustr.gov/sites/default/files/2019_Special_301_Report.pdf> accessed 9 October 2019.

addressing software piracy. Each Special 301 Report stated that Uzbekistan had not acceded to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonogram Convention),¹⁶ and included a recommendation to accede to the Phonogram Convention. The United States attaches great importance to the accession of its trading partners to the Phonogram Convention, since the United States is not a member of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention).¹⁷

The Phonograms Convention¹⁸ allows for protection of phonograms in its 94 member countries. Considering that in the world music industry, the United States remains the largest market with music sales growing by 10.5%,¹⁹ the need to protect rights of its local phonogram producers seems natural.

For the first time, the President of Uzbekistan, Sh. M. Mirziyoyev, made a political statement on the accession of Uzbekistan to the Geneva Convention at a meeting with the

US President in Washington in May 2018.²⁰ On 22 December 2018, the Law of the Republic of Uzbekistan 'On the Accession of the Republic of Uzbekistan to the Convention on the Protection of the Interests of Phonogram Producers from Unlawful Reproduction of their Phonograms (Geneva, 29 October 1971)'²¹ was published. While Uzbekistan remains on the 'Watch List' of the 2019 Special 301 Report,²² efforts made by Uzbekistan to join the Geneva Convention have been acknowledged. According to the 301 Report of 2019, 'Uzbekistan needs to make progress to address other concerns raised in previous Special 301 Reports, including with regard to ex officio authority for enhanced border enforcement, allocating resources to administrative and enforcement IP agencies, and mandating government use of licensed software via presidential decree, law, or regulation.'²³

In 2019, Uzbekistan took significant steps and joined two international Internet Treaties in the field of copyright and related rights, that is, WIPO Copyright Treaty (WCT)²⁴ and WIPO Performances and Phonograms Treaty (WPPT).²⁵

¹⁶ Office of the United States Trade Representative, Special 301 Report current and previous editions <<https://ustr.gov/issue-areas/intellectual-property/Special-301>> accessed 17 May 2020

¹⁷ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (adopted 26 October 1961, entered into force 18 May 1964) <<https://www.wipo.int/treaties/en/ip/rome/index.html>> accessed 9 Oct 2019.

¹⁸ The Phonograms Convention, adopted in Geneva in October 1971, provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the making of duplicates without that producer's consent, against the importation of such duplicates, where the making or importation is for the purpose of distribution to the public; and against the distribution of such duplicates to the public. <<https://www.wipo.int/treaties/en/ip/phonograms/>> accessed 1 May 2020.

¹⁹ IFPI annual Global Music Report (IFPI 2020) <<https://www.ifpi.org/news/IFPI-issues-annual-Global-Music-Report>> accessed 17 May 2020.

²⁰ 'Uzbekistan I SSHA zavavili o namerenii narashivat sotrudnichestvo v oboronnoysfere I ekonomike' (Sputnik, Astana, 17 May 2019)

<<https://ru.sputniknews.kz/politics/20180517/5659953/usa-uzbekistan-mirziyoev-vizit.html>> accessed 9 October 2019.

²¹ 'Zakon Respubliki Uzbekistan o Prisoedinenii Respubliki Uzbekistan k Konvencii ob Ochrane Interesov Proizvoditelei Fonogrammot Nezakonnogo Vosproizvodstva ix Fonogramm (Jeneva 29 oktyabrya 1971 goda) No. ZRU-511 26.12.2018 goda (obnovlen 27.12.2018 r., Ne 03/18/511/2376) // Accession of the Republic of Uzbekistan to the Convention on the Protection of the Interests of Phonogram Producers from Unlawful Reproduction of their Phonograms Act (Geneva, October 29, 1971) No. ZRU-511 dated as of 26 Dec 2018 (amended on 27.12.2018 r. Ne 03/18/511/2376) [hereinafter Phonogram Act 2018] <<http://lex.uz/ru/docs/4127872>> accessed 9 October 2019.

²² 2019 Special 301 Report (n 15) 71.

²³ *ibid* 71.

²⁴ WIPO Copyright Treaty (adopted 20 December 1996, entered into force 6 March 2002) 2186 U.N.T.S. 121; 36 I.L.M. 65 (1997). <<https://wipolex.wipo.int/en/text/295157>> accessed 9 October 2019 (WCT).

²⁵ WIPO Performances and Phonograms Treaty (adopted 20 December 1996, entered into force 2002) 2186 U.N.T.S. 203; 36 I.L.M. 76 (1997) [hereinafter WPPT] <<https://wipolex.wipo.int/en/text/295477>> accessed 9 October 2019.

Table 1. International treaties in the sphere of copyright and related rights, accessed by Uzbekistan

| Treaty/Convention | Accession | In Force |
|--|-------------------------------|-----------------------------|
| Berne Convention for the Protection of Literary and Artistic Works (Paris Act) | 19 January 2005 ²⁶ | 19 April 2005 ²⁷ |
| Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms | 25 January 2019 ²⁸ | 25 April 2019 ²⁹ |
| WIPO Copyright Treaty (WCT) | 17 April 2019 ³⁰ | 17 July 2019 ³¹ |
| WIPO Performances and Phonograms Treaty (WPPT) | 17 April 2019 ³² | 17 July 2019 ³³ |

2. ADVANTAGES AND DISADVANTAGES OF JOINING THE PHONOGRAM CONVENTION FOR COUNTRIES IN TRANSITION

There is little research on the advantages and disadvantages for the countries in transition after joining the Phonograms Convention. The paper intends to analyse potential advantages and disadvantages of Uzbekistan's accession to the Phonograms Convention.

²⁶ Accession by the Republic of Uzbekistan to the Berne Convention for the Protection of Literary and Artistic Works [hereinafter Berne Notification No. 244] <https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_244.html> accessed 9 October 2019.

²⁷ *ibid.*

²⁸ Accession by the Republic of Uzbekistan to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonogram [hereinafter Phonograms Notification No. 89] <https://www.wipo.int/treaties/en/notifications/phonograms/treaty_phonograms_89.html> accessed 9 October 2019 (Phonograms Notification No. 89).

²⁹ *ibid.*

³⁰ Accession by the Republic of Uzbekistan to the WIPO Copyright Treaty [hereinafter WCT Notification No. 92] <https://www.wipo.int/treaties/en/notifications/wct/treaty_wct_92.html> accessed 9 October 2019.

³¹ *ibid.*

The main provisions of the Phonograms Convention³⁴ are reflected in Chapter 61 of the Civil Code of the Republic of Uzbekistan³⁵ and the 'Law of the Republic of Uzbekistan On Copyright and Related Rights' (hereinafter, copyright Law).³⁶ Historically, the Law on copyright and related rights had existed since the 1990s, and was reintroduced in 2006 when Uzbekistan acceded to the Berne Convention. While developing the draft Law during the period from 2003 to 2006, legislators took into account requirements of most international conventions and treaties concerning copyright and related rights that were in force at that time.

The approach of voluntary implementation of international standards was justified with the aim to create a modern law that would meet all current international standards. The rapid development of the Internet and developing trends in the creative industry were also taken into account, and the list of exclusive rights was amended to grant a right of communication to the public.

Therefore, all the main provisions and minimum requirements for the protection of phonogram producers established by the Phonograms Convention were implemented into the Law. Most provisions regarding terms of protection, scope of rights and exclusive economic rights concerning phonograms

³² Accession by the Republic of Uzbekistan to the WIPO Performances and Phonograms Treaty [hereinafter WPPT Notification No. 97] <https://www.wipo.int/treaties/en/notifications/wppt/treaty_wppt_97.html> accessed 9 October 2019.

³³ *ibid.*

³⁴ Phonograms Convention (n 18), art 2. 'Each Contracting State shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public.'

³⁵ Civil Code of the Republic of Uzbekistan (Part II) 1996 (amended 04 December 2019) [hereinafter Civil Code 1996] <<http://lex.uz/docs/180550>> accessed 9 October 2019.

³⁶ Copyright and Related Rights Act of the Republic of Uzbekistan 2006 (amended 24 May 2019) [hereinafter Copyright Act 2006] <<http://lex.uz/docs/1023494>> accessed 9 October 2019.

reflected in the Law provide even more extensive protection than required by the Phonograms Convention. Thus, the Law provides even broader protection for phonograms. In particular, the Law provides for a period of protection within 50 years after the first publication of the phonogram or within 50 years after its first recording, if the phonogram was not published during this period.³⁷

Phonogram producers treated as separate right-owners and enjoy a full range of economic rights such as the right to reproduce, distribute, rental rights, right to communicate to the public, right to broadcast, right to import phonograms, and the right to alter.³⁸

Phonogram producers should exercise their rights with due respect for the rights of authors and performers of used works and performances.³⁹ Phonogram producers are entitled to remuneration for each type of use of his phonogram. Phonograms are deemed to have been used regardless of whether it was used for generating income or not.⁴⁰

The use of phonograms without authorization, with payment of remuneration is allowed in case of public performance of the phonogram, broadcasting, or cable communication of the phonogram, including its retransmission.⁴¹ According to the Law, the collection of remuneration can be conducted by collective management organizations (CMO).⁴²

The system of collective management of copyright and related rights was introduced in 2006, in time for the accession of Uzbekistan to the Berne Convention.⁴³ Although CMOs are crucial for establishing a legal platform for users, only one CMO, 'The Guild of Authors and Performers' was created and functioned from 2006 to 2013 in Uzbekistan. Currently, the number of CMO have increased to three organizations, registered as non-profit, non-governmental organizations at the Ministry of Justice of the Republic of Uzbekistan.

One of the provisions absent in the current Law and legislation of Uzbekistan is the concept of compulsory licenses. However, the absence of the provision for compulsory license for sound recordings is in compliance with the minimum standards of the Phonograms Convention. Member States have the right to provide a mechanism for obtaining compulsory licenses, but are not obligated to do so. The main advantages for the industry are that foreign phonograms, after 25 April 2019, are protected in Uzbekistan through the Phonograms Convention without any exemptions and retroactive effect as well as Uzbek phonograms in other member states.⁴⁴ Before accession to the Phonograms Convention, phonograms of Uzbek producers were not under legal protection in the territories of the Member States of the Geneva Convention. CMO's functioning in the Phonograms Convention Member States used to classify Uzbek phonograms published before 25 April 2019, as fallen into public domain. The disadvantages from accession to the Phonograms Convention are hard to estimate since the creative industry market is merging in Uzbekistan and has no significant presence of foreign music labels.

3. EXPECTED CONSEQUENCES OF UZBEKISTAN JOINING THE PHONOGRAM CONVENTION:

A. LEGAL IMPLICATIONS

It is necessary to consider the issues related to the implementation of the Phonogram Convention within the legal system of Uzbekistan and the assessment of possible consequences of the accession of Uzbekistan to the Convention. Ensuring effective law enforcement and protection for rights of producers of phonograms, especially those belonging to Member States of the Phonograms Convention, is an unfinished agenda in Uzbekistan.

The Phonograms Convention entered into force for Uzbekistan on 25 April 2019, three months after the

³⁷ *ibid*, art 35.

³⁸ *ibid*, art 50.

³⁹ *ibid*, art 50.

⁴⁰ *ibid*, art 50.

⁴¹ *ibid*, art 51.

⁴² *ibid*, art 51.

⁴³ *ibid*, Chapter 4.

⁴⁴ Phonograms Convention (n 18), art 7.

notification to the WIPO of the deposit of the instrument of accession by Uzbekistan.⁴⁵ Thus, as per Article 2 of the Phonograms Convention, all phonograms created on 25 April 2019⁴⁶ and later, will be subject to automatic protection on the territory of Uzbekistan. Phonograms created in Uzbekistan will also be automatically protected in the Member States, starting from 25 April 2019.⁴⁷ The inclusion of phonograms created in the territory of the Member States on 25 April 2019 and later to the scope protected phonograms is stipulated in paragraph 4⁴⁸ of the Law on the Accession of the Republic of Uzbekistan to the Convention on the Protection of the Interests of Phonogram Producers from Unlawful Reproduction of their Phonograms: 'In accordance with this Law, the related rights of foreign legal entities and individuals are also recognized protected in the Republic of Uzbekistan in accordance with international treaties of the Republic of Uzbekistan.'

However, all the phonograms created before 25 April 2019, the date on which the provisions of the Phonograms Convention came into force in Uzbekistan, fell within public domain. Until Uzbekistan joined the Phonograms Convention, the provisions of the Law in Part 2 of Article 43 provided that:

The rights of the producer of a phonogram are protected under this Law subject to one of the following conditions:

- the phonogram producer is a citizen of the Republic of Uzbekistan or a legal entity located in the territory of the Republic of Uzbekistan;

- the phonogram was first published on the territory of the Republic of Uzbekistan, regardless of the citizenship or location of the phonogram producers.⁴⁹

In accordance with paragraph 3 of Article 7 of the Phonograms Convention, Member Countries are not entitled to demand the implementation of the provisions of the Convention with respect to phonograms recorded before the entry into force of the Convention on the territory of the acceding state. On the other hand, Uzbekistan has been a member of the Berne Convention since 2005, which has a retroactive effect. The accession of Uzbekistan to the Berne Convention was subject to the following declaration: 'The Republic of Uzbekistan declares that the above-mentioned Convention shall not apply to the literary and artistic works which on the date of entering into force of this Convention for the Republic of Uzbekistan are already public domain on its territory.'⁵⁰ The declaration under Article 18 of the Berne Convention was withdrawn on 8 January 2014.⁵¹ Thus, works that are not in public domain in the country of origin, are protected in Uzbekistan through the Berne Convention, including copyright for phonograms.

⁴⁵ Parties to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms <<https://www.wipo.int/export/sites/www/treaties/en/documents/pdf/phonograms.pdf>> accessed 9 October 2019.

⁴⁶ Phonograms Notification No. 89 (n 28).

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ The Law of the Republic of Uzbekistan 'On the Accession of the Republic of Uzbekistan to the Convention on the Protection of the Interests of Phonogram Producers from Unlawful Reproduction of

their Phonograms (Geneva, October 29, 1971), art 2 <<http://lex.uz/ru/docs/4127872>> accessed 9 October 2019.

⁴⁹ Copyright Act 2006 (n 36), art 43, Part 2.

⁵⁰ Berne Notification No. 244 (n 26).

⁵¹ Parties to the Paris Act 1971 of the Berne Convention <https://www.wipo.int/treaties/en/ActResults.jsp?act_id=26> accessed 15 May 2020; Notification by the Republic of Uzbekistan: Withdrawal of Declaration Concerning Article 18 of the Paris Act (1971) [hereinafter Berne Notification No. 261] <https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_261.html> accessed 15 May 2020.

Table 2. Comparison on consequences of accession to the Berne Convention and the Phonogram conventions

| The Phonograms Convention came into force on 25 April 2019 | The Berne Convention came into force on 19 April 2005 |
|---|--|
| No retroactive effect | Retroactive effect since 7 October 2013 |
| Protection granted to phonograms created after 25 April 2019 | Protection granted to works after 19 April 2005 |
| Phonograms created before 25 April, 2019 are in public domain | Works created before 19 April 2005, are not in public domain |

It is resulted in a situation when a large volume of phonograms published in foreign countries before Uzbekistan's accession to the Phonograms Convention would be in the public domain, and *de jure* devoid from legal protection in the territory of Uzbekistan.

At the same time, there will be another volume of phonograms published in the Member States of the Phonograms Convention after 25 April 2019, which will be protected in Uzbekistan. Moreover, following the Berne Convention, which has retroactive effect for Uzbekistan from October 2013, copyrights to musical works with or without text are being protected in the territory of Uzbekistan.

Such difference in the scope of protected work between the Phonograms Convention and the Berne Convention can cause difficulties for CMOs dealing with producers of phonograms and authors. It will be challenging to ensure efficient collection and distribution of remuneration for protected and unprotected phonograms in the territory of Uzbekistan. Alternatively, CMOs could collect and distribute remuneration

for the use of foreign phonograms, despite the date when phonograms were made public either before or after 25 April 2019. Subsequently, it would result in providing protection to phonograms published before 25 April 2019 through copyright. The lapse of phonograms into the public domain would happen after the expiration of the term of protection for copyright rather than sound recordings term of protection. Such practice, if accepted in Uzbekistan, could have a positive impact on the protection of Uzbek producers of phonograms outside Uzbekistan in the Member States of the Phonograms Convention. It would be similar to the principle of 'retroactive protection' under the Berne Convention and would provide an example of a broader application of the Phonograms Convention. However, applying the practice of collecting and distributing remuneration for all the phonograms under such 'retroactive protection' would affect the users and extend the term of protection for sound recordings.

Overall, the Phonograms Convention would have a positive impact on the further development of the legislation, specifically by providing the equal protection for domestic and foreign works. However, the long-term legislative impact of the convention could not be assessed at this point.

B. MARKET IMPLICATIONS

Surveys of piracy and market share of counterfeited works in Uzbekistan have never been conducted. There are no official statistics related to the number of phonograms produced or imported annually. However, the analysis of Uzbek Internet sources shows that the majority of web pages upload sound recordings and music videos of domestic and foreign authors without authorization⁵². Online music streaming services such as Spotify are not accessible in Uzbekistan and most users tend to download music from free Internet websites or watch YouTube.⁵³

⁵² The majority of the internet web-sites offering the foreign music for free download do not have any reference to the rightholders or license granted for making the works (phonograms) available to the public. <<https://musictop.uz/zarubezhnye-novinki/>> accessed 17 May 2020; <<http://tax.uz/music/>> assessed 17 May 2020; <<http://musical.uz/>> accessed 17 May 2020.

⁵³ The short survey conducted by the authors among 65 respondents using Google Forms showed that the majority of respondents (42%) downloads sound recordings for free. Moreover 43 % of the respondent use various websites and 12 % watch Youtube. Only 12% of the respondents use streaming services such as Apple Music, Google Music. 60 % of the respondent prefer foreign music and only

After joining the Berne Convention in 2005, some experts predicted that a large number of music companies and right owners would enter the Uzbek market with demands for royalties on the use of foreign works, which would cause a sharp rise in prices for accessing foreign works. There is no official data or cases where foreign rights owner or record labels a major music label has entered Uzbekistan to protect its rights or collect remuneration, since Uzbekistan acceded to the Berne Convention. It means that the legislation in force and even international treaties would not simply endorse the merging of the creative market. Market players need more favourable circumstances to place their interest and invest in the creative industry in Uzbekistan. To benefit from the system of international protections for copyright and phonograms, Uzbekistan should foster changes in the various fields.

In general, it can be asserted that the substantive Law regarding protection of phonograms in Uzbekistan fully complies with the provisions of not only the Phonograms Convention but also with the WIPO Performances and Phonograms Treaty. However, Uzbekistan's accession to the Phonograms Convention does not mean that companies that own phonograms are likely to enter the Uzbek market to protect their rights and begin to file multimillion-dollar lawsuits against violators.

There is no clear statistical information about the market for musical works in Uzbekistan. It is not known how many musical works are produced; what is the monetary capacity of the market; how many legal, semi-illegal, illegal players are on the market; what are their financial indicators; what segments does the market of phonograms consist of (shares of analog, digital sales, other ways of using phonograms). Thus, with the

merging of the domestic market for phonograms, it would be possible to estimate the economic ratio of foreign rights owners and major music labels.

Besides, the lack of information about the musical market makes it impossible to predict the development of the market; planning a return on investment; and predicting the amount of potential profit. Difficulties in doing business⁵⁴ in Uzbekistan negatively affect creative industries. In general, low rankings of Uzbekistan in various international business ratings, the rule of law index⁵⁵, and perception of corruption and others do not allow expectations of the imminent entry of major phonogram producers into the market.

One of the main areas to improve related to enforcement of copyright and related rights, including mechanisms to combat copyright infringement on the Internet is extensive educational and awareness campaigns. They aimed at increasing respect for intellectual property rights could trigger development of a culture of compliance with intellectual property laws by the general public and businesses.

Another important area is development of CMOs for managing the intellectual property rights of phonogram producers in Uzbekistan. The experience of many developed and developing countries demonstrates that the creation and promotion of CMOs is a crucial tool for providing adequate protection and collection of the remuneration for domestic and foreign authors and phonogram producers.

Finally, it is essential to impose the adequate monetary compensation and legal consequences for infringement of copyright and related rights in Uzbekistan, and to enhance administrative and criminal liability for the violation of exclusive economic rights of rights owners.

18 % of the respondents spent less than 1 dollar for purchasing the music. <<https://docs.google.com/forms/d/1ZNV-xD3hWhSpSMB8ZEqH-pxSIGEHJLRkDwlzFu7pg2s/edit?ts=5d70e0a8#responses>> accessed 28 October 2019.

⁵⁴ *Doing Business 2020* (The World Bank Group, 24 October 2019) <<https://russian.doingbusiness.org/ru/data/exploreconomies/uzbekistan>> accessed 28 October 2019. According to the World Bank Doing

Business 2020 Uzbekistan improved in ranking from 79 to 69 ranking score.

⁵⁵ Uzbekistan scores for overall rule of law from 2015 to 2020.

According to the Rule of Law Index 2020 the Uzbekistan ranked 92 across 128 countries. The World Justice Project Rule of Law Index 2020: Uzbekistan insights. <<https://worldjusticeproject.org/rule-of-law-index/country/Uzbekistan>> assessed 29 July 2020.

4. CONCLUSIONS

In general, the current legal system for copyright and related rights complies with the minimum standards stipulated by the Phonograms Convention and the Berne Convention. Phonograms, created in Member States of the Phonograms Convention, have been protected in Uzbekistan since 25 April 2019. The Uzbek Law even provides high level protection for the right owners. However, the possible legal clash in determining the scope of protected works under the Phonograms Convention and the Berne Convention could affect implications concerning copyright clearance and functioning of CMOs in the region.

The challenge for Uzbekistan is to become a part of the world's creative industry market, while the country continues to develop the system for the protection of copyright and related rights. But, accession to the main international treaties is neither a guarantee of changes in the market nor that it would lead to a raise in the creative industry's impact on economic benefits. The robust IP regime is a prerequisite for market development, but not the only incentive. It requires implementing effective enforcement mechanisms and introducing intensives for emerging of market of creative works.

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