ISSN 2078-4503. Вісник Львівського університету. Серія юридична. 2023. Випуск 76. С. 168–176
Visnyk of the Lviv University. Series Law. 2023. Issue 76. P. 168–176

УДК 347

INTANGIBLE OBJECTS AND PROPERTY LEGISLATION IN THE REPUBLIC OF KAZAKHSTAN

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The legal regulation of public relations related to intangible objects in their relationship with the institution of property is very relevant in the context of the digital revolution and the development of information law. In this regard, it is important to make a scientific understanding of the question of what is the modern meaning of intangible property, why a different legal regime should be applied to intangible objects in contrast to property law, to what extent Kazakh legislation reflects the general trends in the development of legislation in this area in developed countries and the international system.

The purpose of the article is to analyze the concept of «intangible objects» and related terms in the Kazakh legislation, as well as to study the issues of how information technologies can be the object of civil law relations. The author shows the positions of researchers from different countries regarding approaches to these legal categories. The article reveals the relationship and difference between the legal regulation of tangible and intangible property. It is clarified that in the context of the introduction of digital technologies, intangible objects can be considered as objects of property rights. At the same time, in order for intangible objects to be considered in the system of civil law relations, such a condition is necessary when their transfer to other subjects of law was carried out in the process of property turnover.

Conclusions are drawn regarding the underdevelopment of legal protection mechanisms for creators of intangible objects, in particular, authors of electronic books, from unauthorized copying and posting on Internet resources.

The conclusions and proposals obtained are of some importance for the development of a scientifically based doctrine of information law, which in turn will affect the improvement of legislation and the effectiveness of the mechanism of legal regulation of the public relations under consideration.

Keywords: intangible assets; information law; copyright; ownership; electronic book; information resources.

DOI: http://dx.doi.org/10.30970/vla.2023.76.168

Introduction. The analysis of the system of legal regulation of public relations related to intangible objects and in connection with the institution of ownership of a particular country, the definition of its forms and types, cannot be complete if such an analysis is not based on modern scientific doctrine and the experience of legislation of other countries, which, on the one hand, enshrine in law the established social relations dictated by the development of digital technologies, on the other hand, models these relations, directing them in the right direction for social development.

Despite significant progress in this direction, legal practice in many countries still faces many problematic issues, which are addressed by the efforts of many researchers, whose opinions may differ on various aspects and views.

In the Republic of Kazakhstan, the Parliament and the Government have adopted a number of important regulatory legal acts that contribute to the development of information law, improvement of legal regulations concerning the institution of property, including intangible objects [9]. At the same time, the scientific doctrine of Kazakhstan in this matter, in our opinion, did not play the role that it is usually assigned in the sense of an indirect source of law, giving the legislator an idea of state-legal laws, giving him the opportunity to choose the optimal model of regulation. [7, p. 105].

In this regard, many issues reflecting the difference between digital objects and their non-digital counterparts have not been sufficiently developed in the scientific research in Kazakhstan, and, as a result, the different regime of legal regulation has not been studied and scientifically substantiated.

The issues of differentiation of tangible and intangible goods remain debatable, which, according to some researchers, relate to «their» good, in contrast to «someone else's» right, where tangible goods as property and intangible goods as objects of exclusive rights form a single whole and are «their» rights [12].

Consequently, the definition of the concepts of intangible objects, intangible property, their relationship with tangible objects in civil law, as well as with issues of legal protection of such property is of great importance for the development and effectiveness of the legislative system, given that the civil legislation of the Republic of Kazakhstan does not provide an accurate definition of intangible objects.

The issues of intangible objects and intangible property in the context of digital technologies have not been sufficiently studied in Kazakh scientific research. In the legal literature, more attention is traditionally paid to general issues of copyright and related rights protection [3, p. 36–40].

Despite the importance of the problem of determining the legal nature of intangible objects in relation to information law, this topic was often only the subject of individual comments of a fragmentary nature, considered when describing other topical issues of civil law. Thus, analyzing the issues of civil law turnover of information, G. E. Abdrasulova indirectly touches on the topic of intangible objects, emphasizing that information in domestic and international civil circulation should be understood as information products, trade secrets, results of intellectual activity (intellectual property) and equated means of individualization of products, information work and services performed [1, p. 77–82].

In addition, in some works, property rights to a software product acting as an intangible object are interpreted in a new way: if an enterprise acquires a software product under an author's contract or an agreement for the transfer of part of exclusive property rights and uses it in accordance with the terms of the contract to extract income, this object is identified as intangible assets [2, p. 173].

It is possible to point out as special works several scientific articles by the Kazakh researcher N. M. Zaynutdinova devoted to this topic, but the essence of the problem in these studies was not sufficiently disclosed, although they indirectly characterize intangible objects. For example, the author touches on the content of information objects, noting their ability to be an object of law that exists independently of the rights to a material carrier. Since information is not material and cannot be measured in physical units, they are called information objects by the author, which is identical to the concept of immaterial objects [18, p. 100–101].

In this regard, the article is aimed at analyzing the concept and content of intangible objects, the modern economic significance of intangible property, often called intangible property. The article pays attention to foreign scientific doctrine and legislation on intangible objects, which have a positive impact on the formation and development of Kazakhstan private law.

Research methods. For the purpose of qualitative research of issues related to intangible objects in civil law, an expanded review of the literature devoted directly or indirectly to the problems of property rights to intangible objects in the system of absolute rights, issues of copyright on intangible objects, including those related to the legal collection, preservation and accessibility of electronic books as intangible objects, was carried out. The author provides a deep theoretical analysis of scientific sources, norms of national and foreign legislation in order to implement the goals and objectives proposed above.

The author uses a comparative legal method to compare the norms of national legislation and international agreements in the field of intangible objects, intellectual property and copyright, as well as a system-structural method in order to identify the relationship between the achievements of scientific doctrine and the degree of its reflection in legislation.

Analysis of research and publications. For a full-fledged study of the category of «intangible objects» in the system of Kazakh property rights, the author has made an attempt to analyze the research works of Kazakhstani and foreign scholars devoted to this area.

The author came to certain conclusions on this work through the use of system analysis, comparison, theoretical and legal forecasting, which became the methodological basis of this article.

The study pays enough attention to the works of foreign authors who studied directly or indirectly the problems of intangible objects in the system of property rights: Hardy Trotter, Johan David Michels, Christopher Millard, Katrina M. Wyman, M. A. Rozhkova, O. V. Kirichenko, etc.

Among the Kazakh authors, the works of M. K. Suleimenov, M. N. Zaynutdinova, S. A. Alzhankulova, K. Zh. Abdualipova, Sh. T. Myrzakhanova and others should be highlighted.

Results and discussions. It is known that we refer information and the results of intellectual activity to intangible objects, despite the fact that the distinction between tangible and intangible property in the modern world is becoming increasingly blurred and the category of intangible property is expanding more and more.

However, even though intangible objects are more difficult to recognize than material objects, they have their external expression, are objectified externally, and this peculiar form is fixed on one or another material medium (electronic books, electronic information resources, etc.).

In the Republic of Kazakhstan, the foundations of this approach are fixed in the Civil Code of the Republic of Kazakhstan (general and special parts), in which property and personal non-property benefits and rights are provided as objects of civil rights. The property includes things, money, objectified results of creative intellectual activity, brand names, trademarks and other means of individualization of products, property rights, digital assets and other property [6].

The possibility of applying special conditions, other forms of contracts and the procedure for their conclusion in the case of the purchase and sale of copies of works expressed in electronic form and being intangible objects is established in paragraph 12

of Article 32 of the Law of the Republic of Kazakhstan «On Copyright and Related Rights». Special conditions are also applicable in the case of providing mass users with access to works expressed in electronic form [16]. However, the content of such special conditions is not specified in the legislation.

The Law of November 24, 2015 No. 418-V «On Informatization» details the external expression of intangible objects with the enumeration of the main objects of informatization. The law, in particular, provides that the grounds for the emergence, modification and termination of ownership rights and other property rights to electronic information resources are established by the civil legislation of the Republic of Kazakhstan [10].

The Law of the Republic of Kazakhstan «On Science» also provides regulation of relations related to intangible objects through the concept of intellectual property, which means the exclusive right of a citizen or legal entity to the results of intellectual creative activity obtained as a result of research, development and technological work, and means of individualization of participants in civil turnover, goods, works or services. Consequently, intellectual property in this case represents everything that is united by immateriality, the creative nature of creation [17].

The Law of the Republic of Kazakhstan «On Culture» defines the concept of a library that has an organized collection of documents, including on electronic media. In addition, the law separately defines the concept of an electronic library that provides services using information and telecommunication means with mediated (at a distance) or not fully mediated interaction with users [14].

It can be stated that the Kazakh legislator legitimized the ownership of intangible objects, provided that they are considered as material carriers of information.

This means that in this case, the right to a material carrier is differentiated and, on the other hand, the right to distribute and use information. This is due to the fact that the latter is attributed within the meaning of the provisions of paragraph 3 of Article 115 of the Civil Code of the Republic of Kazakhstan to personal non-property benefits and rights, in particular, the right to a name, the right to authorship, the right to inviolability of the work and other intangible benefits and rights.

At the same time, there are significant differences in property rights to tangible and intangible objects. Describing these properties of tangible and intangible objects, researcher Trotter Hardy emphasizes that the real difference between concrete things (a horse, a loaf of bread or a toothbrush), on the one hand, and «information» or «knowledge», on the other hand, is not the difference between tangible and intangible things, as is usually claimed. Rather, it is the difference between a «concrete object» and a «generalization about objects». A horse is an object. Information is not an object or comparability with an object, but rather a generalized label - abstraction, i. e. a concept rather than a thing. If a person sells his horse, he will not be able to ride it after the sale. If he sells an e-book, he can continue to use it by reading and rereading this book [17].

The next difference between tangible and intangible objects, if we take ordinary paper and electronic books as the basis of comparison, is that when copying the former, their quality will decrease each time, and when copying to other material carriers of electronic books, their quality is practically not harmed at all. In addition, such actions do not entail any material costs. These circumstances require special legislative regulation of the protection of the property rights of the authors of certain electronic works.

The differences can also be illustrated by concepts similar to intangible objects, such as intangible assets in their relation to tangible assets in the accounting system. Tangible assets usually include what can be visually identified: cash, property, technical mechanisms

or investments. Intangible assets are intangible and invisible objects, including a company's business reputation, trademark and intellectual property rights. This means that intangible assets can act as part of the legally protected results of intellectual activity, designed in accordance with intellectual property law [8, p. 47].

These intangible objects are clearly distinguishable and can often have more value than tangible assets. At the same time, in practice, there are always difficulties with determining the nature of certain assets. An example is given in the foreign press when, in one case of the court of appeal, the question was discussed whether certificates of shares of a corporation in close possession could be considered tangible assets. Despite the plaintiff's attempt to classify the share certificates as tangible personal property, the court ultimately concluded that these items were immaterial and, therefore, did not fall under the personal possession clause in the last will of the deceased. This decision was made in accordance with the established law. Despite the fact that the share certificates themselves were physical, the document only reflected the actual interest of the corporation and was not its manifestation. The article emphasizes that when distributing property, it is always important to pay close attention to how the contractor classifies items for distribution. The classification of items either as tangible or intangible assets can lead to a radically different distribution [13].

The analysis of the legislation and scientific doctrine of Kazakhstan allows to come to the conclusion that there is no clear theoretical conceptual basis underlying approaches to intangible objects, except for the indirect removal of intangible property in the legislation from the list of tangible objects.

If we proceed from the general concept of property rights reflected in Article 188 of the Civil Code of the Republic of Kazakhstan and establishing that the right of ownership is the right of a subject recognized and protected by legislative acts to own, use and dispose of property belonging to him at his discretion [7], then it is difficult to recognize the right of ownership in this sense for objects that lose their materiality due to their transformation into digital form. In this aspect, we are talking about such a kind of absolute rights as intellectual property, which implies the right to intangible objects. Here, the immaterial nature of the results of intellectual activity determines the fact that they, not having the property of being in civil circulation, presuppose the possession of such a property by other categories. Firstly, exclusive rights have such a property, and secondly, material carriers that embody the results of intellectual activity. When the alienation of ownership of such an intangible object occurs, the transfer of the right from one entity to another must be carried out. At the same time, we understand that the transfer cannot take place due to the immateriality of the object. In this regard, we are talking only about the transfer of material carriers containing certain objects.

However, such an objectively established procedure is not precisely fixed in the legislation of the Republic of Kazakhstan. In this regard, we believe to use the experience of other countries and specify paragraphs 3-1 and 4 of Article 116 of the Civil Code of the Republic of Kazakhstan, supplementing them with a provision on the possibility of alienation of rights to the results of intellectual activity and tangible media that reflect the results of such activities.

Characterizing the essential features of intangible objects in civil law, we can give them the following definition. Intangible objects are not matter or a thing that can be touched in the literal sense, but immaterial assets with economic significance, but without a traditional material nature that would allow them to physically possess these objects and establish property rights in relation to them.

At the same time, it should be noted that there are other definitions and classifications proposed by various authors. Thus, in the legal literature, the concept of intangible objects is considered by some authors in relation to the concept of ownership and is defined as assets whose value should be capitalized, and the object is definable, significant and reliable [11].

Other researchers also define intangible objects as disembodied property [17], which is intangible in nature, which causes the need for more detailed legal regulation in the Republic of Kazakhstan. In particular, legislative measures should be taken to minimize the leakage or theft of intangible objects, including confidential information.

Intangible objects can be classified into two large types: a) intangible objects not related to digital technologies, and b) digital objects. Intangible objects that are not related to digital technologies can include, for example, the right to a name and business reputation (Clause 3. Article 115 of the Civil Code of the Republic of Kazakhstan), when they have property value when one party (user) uses the business reputation of the other party (copyright holder) or when using the image of a citizen after his death spouse and children.

Digital intangible objects include digital financial assets, big data, virtual or augmented reality objects, e-books, etc.

Classification can also be carried out according to another criterion, when the distinction between intellectual property and intangible goods is taken as the basis. In this case, intangible objects are divided into: a) intangible benefits; b) the results of intellectual activity; including exclusive rights to them; c) information.

At the same time, the civil legislation of Kazakhstan does not protect all information, limiting itself only to regulating its part that is related to official and commercial secrets (Article 126 of the Civil Code of the Republic of Kazakhstan). Although it should be emphasized that information in today's conditions is actually an intangible object of property rights, but such a provision is not enshrined in Kazakh legislation and the required civil law regime has not been created.

Conclusions. The results obtained by us on the basis of the analysis of the concept of «intangible objects» in the scientific doctrine and in the legislation of the Republic of Kazakhstan allow us to say that further research and theoretical and legal grounds determining the content and legal regime of intangible objects in civil law are needed, since their number is increasing every year. Foreign researchers also write about this, noting that it is necessary to recognize the presence in real civil relations of new intangible objects that are not named, are not reflected in legislation, but which give rise to subjective civil rights and obligations. Such new intangible objects should be called big data, big user data, domain name, virtual objects, artificial intelligence, robots, etc. [4, p. 32–43].

It is desirable that the definition of intangible objects, as well as their signs, be fixed in the civil legislation not only of individual countries, but also in the law of the regional integration entity, the Eurasian Economic Union, in a unified form.

The definition and classification proposed by us can be taken into account to a certain extent when establishing the concept, signs and types of intangible objects in the civil legislation of the Republic of Kazakhstan.

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ЗАКОНОДАВСТВО ПРО НЕМАТЕРІАЛЬНІ ОБ'ЄКТИ ТА ВЛАСНІСТЬ В РЕСПУБЛІЦІ КАЗАХСТАН

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Правове регулювання суспільних відносин, пов'язаних із нематеріальними об'єктами у їх співвідношенні з інститутом власності, є вкрай актуальним в умовах цифрової революції та розвитку інформаційного права. У зв'язку з цим важливо науково висвітлити питання про те, яким є сучасне розуміння нематеріальної власності, і чому до нематеріальних об'єктів повинен застосовуватися інший правовий режим на відміну від речового права, а також, наскільки законодавство Республіки Казахстан відображає загальні тенденції розвитку права у цій сфері в розвинених країнах та міжнародній системі.

Метою статті є аналіз поняття «нематеріальні об'єкти» та суміжних термінів у законодавстві Республіки Казахстан, а також дослідження питань про те, як інформаційні технології можуть бути об'єктом цивільно-правових відносин. Автор висвітлила позиції вчених різних країн щодо підходів до цих правових категорій. Розкрито співвідношення та відмінність правового регулювання матеріальної і нематеріальної власності. Встановлено, що у контексті впровадження цифрових технологій нематеріальні об'єкти можна розглядати як об'єкти майнових прав. Водночас для розгляду нематеріальних об'єктів у системі цивільно-правових відносин необхідною є така умова, що їх передача іншим суб'єктам права була здійснена в процесі майнового обороту.

Зроблено висновки щодо нерозвиненості правових механізмів захисту творців нематеріальних об'єктів, зокрема, авторів електронних книг, від несанкціонованого копіювання та розміщення на Інтернет-ресурсах.

Отримані висновки та пропозиції мають вагоме значення для розвитку науково обґрунтованої доктрини інформаційного права, що своєю чергою вплине на вдосконалення законодавства та ефективність механізму правового регулювання розглянутих суспільних відносин.

Ключові слова: нематеріальні активи; інформаційне право; авторське право; власність; електронна книга; інформаційні ресурси.

Стаття: надійшла до редакції 01.03.2023
прийнята до друку 16.05.2023

*This research has received funding from the European Union's Horizon 2020 Innovative Training Networks programme under Grant Agreement No. 956562

*Це дослідження було профінансовано програмою Європейського Союзу «Інноваційні навчальні мережі Horizon 2020» згідно з грантовою угодою № 956562