

# Inheritance Problems of Domen's Names



Mamaraimova Gulrukh

**Abstract**— This article is devoted to the problem of legal issues which inherit the intellectual rights of a domain name administrator in the modern Republic of Uzbekistan from the perspective of global trends. Due to the special nature of intellectual rights to the results of creative activity and objects equated to them, there are some features of their transition in the order of inheritance, as well as registration of the rights of heirs, which are not reflected in the norms of the Civil Code of the Republic of Uzbekistan. Moreover, inheritance of administrator rights as domain names as a means of individualization is not regulated at all. Civil law of the Republic of Uzbekistan is devoted to the detailed regulation of general provisions on inheritance, grounds for inheritance, acquisition of inheritance, as well as inheritance of certain types of property. Special rules on the inheritance of administrator rights domain names are not included in the relevant chapters of the fifth section of the Civil Code of the Republic of Uzbekistan, and are not governed by other normative legal acts adopted in accordance with it. In this article, we have analyzed the legislation of foreign countries and the scientific research on inheritance in domain names. The possibility of inheritance of rights to domain names is analyzed and proposals are developed according to the legislation of the Republic of Uzbekistan.

**Keywords:** intellectual property rights, intellectual property, means of individualization, domain name, domain name administrator, inheritance, and testament.

## I. INTRODUCTION

Section V of the Civil Code of the Republic of Uzbekistan regulates inheritance issues. However, the norms of this section do not take into account the specific aspects of the inheritance of intellectual property objects and the means of individualization equal to them. The legal regime of domain names, including their inheritance, is not regulated at all.

In determining the legal status of domain names, the Civil Code In other cases provided by Article 1031, the means of individualization of participants of civil circulation, goods and services are regarded as means of individualization, using the rule that intellectual property is considered an object, and the application of the legal regime for intellectual property has become a custom. The Law of the Republic of Uzbekistan "On Telecommunications", the Law "On Trade Names", the Law "On Trademarks, Service Marks and Appellations of Origin" and the Procedure for Registration and Use of Domain Names In any provision of the

Regulatory and Legal Framework, the domain name is not recognized as an object of intellectual property (means of individualization).

In addition, according to the official website of the World Intellectual Property Organization (WIPO), there are currently 354.7 million (<https://en.antaranews.com>) domain names registered. This figure was 351.8 million (<https://finance.yahoo.com/news>) at the end of the first quarter of 2019, 330, 6 million (<https://blog.verisign.com/domain-names>) at the end of the first quarter of 2017, and 252 million (A quarter of a billion domains alone // nic.ru, 06) at the end of 2012. In addition, we can observe an increasing number of disputes related to intellectual property rights provided by WIPO, including domain names. The World Intellectual Property Organization's Arbitration and Mediation Center reviewed 2378 domain names in 2015, 2653 in 2016, 2603 in 2017, 2952 in 2018 and 2502 disputes between January 1 and October 12, 2019 (<https://www.wipo.int/amc/en/domains/casesx/all.html>). These figures indicate that domain names are getting deeper into civilian relations every year, and that the legal regulation of their relations is imperative.

## II. RESEARCH ON THE TOPIC AND ANALYSIS OF PUBLISHED WORKS.

This issue has been partially studied by Uzbek scientists. In particular, the scientific and legal analysis of the transfer of domain names by O. Akyulov, I.Rustambekov, A.Ogay. However, these researchers have not analyzed the inheritance of domain names.

In foreign countries, the issue of inheritance of domain names was given by S.A. Sudarikov, M.P. Melnikova and V.Savina, V.A. Dozortsev, N. Nazarova, Evenson Robert and Kanval Sunil, Alex Tadjirian, E.E. Blinkov, M.A. Verkholetov, A.V. Nikiforov has learned. We have referred to the work of these researchers in the preparation of this article.

## III. THE PURPOSE OF THE ARTICLE

This article analyzes the problem of inheritance of domain names and develops legislative proposals to address these issues.

## IV. DESCRIPTION OF THE MAIN MATERIAL

Before analyzing the inheritance of domain names, it is necessary to briefly dwell on the concept of domain names.

Manuscript published on November 30, 2019.

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The Law of the Republic of Uzbekistan “On Telecommunications” provides the basic definitions of this law, including the legal definition of a domain name (The Law of the Republic of Uzbekistan, 1999). According to this law, a domain name is a unique name given to an information resource or information system, which allows the Internet to identify them in the global information network. **Domain**

**Name System** - The procedure for granting, registering and using domain names in the World Wide Web. In addition, the Regulation on the order of registration (The regulation of the Republic of Uzbekistan, 2008) and use of domain names in the “UZ” domain clarifies the concept of domain and domain “UZ” according to it **domain** is part of the Internet, which is allocated for ownership of the organization, which is responsible for its support. It is a top-level domain that contains the following level domain names.

According to the opinion of experts on the domain name, the commercial integration of the Internet has led to the fact that nowadays the issue of competition for the choice of domain name for the site advertising the specific goods and services is very important. Evenson Robert and Kanval Sunil pointed out that domain name is not only a convenient sign for digital address but also a means of individualizing goods and services and offering it to consumers (Evenson Robert, 2003).

## V. RESULTS & DISCUSSIONS

According to O. Akyulov on domain names, domain names are a means of individualization in a virtual space that allows consumers and users to easily find well-known names in business transactions (Akyulov O. 2013).

In this regard, I. Rustambekov: the domain name as a stand-alone tool for individualization has several features, namely, the first - the individualization of the information resource, not the product, the work to be done or the services provided; second - the domain cannot be relatively new, it can only be absolutely new; third - the domain can be owned by only one person; fourth - the domain can be owned not only by the person engaged in entrepreneurial activity, but by any subject of the law; Fifth - the domain name is a unique feature not only for the country in which it is registered, but also for all countries of the world (Rustambekov I. 2011).

From the foregoing, a domain name is a means of individualizing the Internet user to offer their goods, works, services, or communicate with other virtual space entities. The domain name is legally called **a domain name administrator** (Collection of legislation of the Republic of Uzbekistan, 2008) and in some countries **a domain administrator**. According to the law and theory, any subject of civil law can be a natural person, a legal entity, an individual entrepreneur, entities engaged in entrepreneurial activity without the establishment of a legal entity, as well as a public domain administrator. However, the legislation of Uzbekistan does not stipulate that only individuals and legal entities can own domain. This gap in the law restricts the right to act as a sole proprietor, a peasant farm created without a legal entity, and a domain administrator of a family-owned enterprise, without a legal entity. It is also clear from the norm in our legislation that a state can also be a domain administrator. That is, **the domain name** is the state

authority and administration of the Republic of Uzbekistan, including the names of state authorities and administrative units (region, city, town, town, etc.), or otherwise expressing their signs or names including acronyms and abbreviations. However, the state has also fallen out of the rules for who can be a domain name administrator. Regarding the legislation of Belorussia, a domain administrator name is an individual, an individual entrepreneur or a legal entity who has concluded a domain name registration agreement and managed a domain or acquired the rights of **a domain administrator** in the manner prescribed by law. The range of subjects that can be domain administrators in Belarussian legislation is wider than the legislation of Uzbekistan. It means that an individual entrepreneur can also be a domain administrator. The rights of the domain name owner are transferred to his heirs on the basis of universal legal succession. In particular, the death of an individual domain name administrator should result in his inherited rights as a domain name administrator. However, the legislation of Uzbekistan does not contain special norms on inheritance of domain names. As regards the inheritance of copyright to the results of intellectual activity, taking into account the domain name as intellectual property, Article 1035 of the Civil Code provides that the exclusive rights to the objects of intellectual property are inherited (Civil Code of the Republic of Uzbekistan, 1996). However, the domain name does not have exclusive rights. The domain owner owns this vertical address, uses and disposes of it for its own benefit. However, the domain name owner does not have exclusive rights. The domain owner owns this vertical address and uses it to his advantage and disposes of it. This means that the domain name can be transferred on a contractual basis. About this the researcher, I. Rustambekov noted that (Rustambekov I., 2011). The right to a domain name is a subjective right, that is, an information system on the Internet and (or) the right to use a specific domain name to identify the domain. The right to a domain name is a subjective right, that is, an information system on the Internet and (or) the right to use a specific domain name to identify the domain. The right to a domain name is a subjective right that includes the following powers: - use of a domain name for identification of information systems; - use in any manner not contrary to law; - transfer of the right, in whole or in part, to an alias under a contract. We would like to add that the domain name administrator can also transfer these rights to other persons through a testament, although this right does not exist in national law. Analysts in the case of domain names inheritance, there is a great deal of controversy among the families about whether or not the domain names are intellectual property. In addition, we can observe that the practice of enforcement is different in the case of inheritance of domain names. In particular, the Russian expert O.E. According to Bilinkov, the problem of real participants in civil legal relations related to domain names in Russian courts has not been solved due to the lack of a uniform approach to the transfer of rights to the domain name administrator. These entities themselves create a legal instrument to regulate these issues through contracts and agreements.

At the same time, they enjoy the freedom to conclude Article 421 of the Civil Code of the Russian Federation (Blinkov O.E. 2009). The fact that there is no unanimous opinion on the issue is that the courts make different decisions on the same issue (Nikiforov A.V. 2016). In the judicial practice of the Republic of Uzbekistan so far there are no issues related to the inheritance of domain names.

Appeals related to the inheritance of domain names or rights in the Russian Federation have increased over the last decade. This issue was considered on January 23, 2014 at the Scientific Advisory Board on Intellectual Rights in the Courts of the Russian Federation. Speaking at the meeting, the Chairman of the Court on Intellectual Property Rights LA Novoselova noted that the cases related to the inheritance of the means of individualization were studied.

For example, a court in Moscow's Mitishin District concluded that the domain name could not be inherited (Verkholetov M.A. 2016). This is explained by the fact that the domain name is a network forwarding service and that services are not inherited. Another reason for the conclusion of the courts is that, despite the legal nature of the domain name, the trademark or brand name is not included in the objects of intellectual property under the Russian Federation Intellectual Property Law (Article 1225 of the Russian Civil Code).

The European Court of Human Rights ruled on September 18, 2007, to settle a domain name dispute and sought to establish a legal domain name. This decision recognizes the following legal features of a domain name:

First, the Convention on Human Rights

Article 1 of the Protocol No. 1 Each person has the right to freely use and dispose of his property no one shall be deprived of his property except in the interests of the society and in the national and international law.

Secondly, the European Court of Human Rights acknowledges that the subject of property rights is not limited to material things and objects as determined by national law. Article 1 of the Protocol Article 1 may also recognize other rights and interests of a person as property rights

Thirdly, it is sufficient to have an economic value and to use it financially for the purpose of considering an object as an object of property rights. Based on this interpretation, the European Court of Human Rights considers intellectual property and license objects as objects of property rights.

Based on the above, a domain name is a property. The registrar (domain name administrator) has proprietary rights, not exclusive rights to the domain name. At the same time, the court recognizes that the domain name has the same legal status as any other inheritance.

According to Alex Tajirian, head of consulting firm Domain Mart, which currently provides consulting services on legal disputes over domain names, domain names can be inherited, including bequests. Since 2005, this consulting firm has provided consulting services in many legal disputes related to the inheritance of domain names (hudoc.echr.coe.int › app › conversion).

Based on the above, we can acknowledge the following. In fact, domain names can be thought of as a means of individualization that equals intellectual property. According to Article 97 of the Civil Code of the Republic of Uzbekistan, the objects of intellectual property and means of

individualization are intangible assets. However, intangible assets are also the objects of property rights, such as tangible assets, in particular property (<https://website101.com/domain-name>).

Domain names, unlike other intellectual property objects, are protected by proprietary rights and not by exclusive rights, and these rights or the domain itself may be transferred and inherited.

It is necessary to familiarize with the foreign experience of inheritance of domain names. In particular, paragraph 38 of the Instruction (<https://cctld.by/documents/instruction-on-the-procedure-of-registration-of-domain-names-in-the-space-of-hierarchical-names-of-t/>) on the Registration of Domain Names in the **Belarusian** National Internet Sigma space states that the rights of the domain administrator may be inherited. In addition, paragraph 41 of this Instruction specifies the procedure for registration of the successor administrator of the domain administrator as a domain name administrator, the deadlines, the documents to be submitted, and so on.

## VI. SUGGESTIONS AND RECOMMENDATIONS

Based on the above analysis, we would like to propose the following. **First**, we propose amendments to the laws on inheritance of exclusive rights of the author and owner of exclusive rights to intellectual property subject matters. It should be recognized that intellectual rights are not just exclusive rights, but are inherently the result of intellectual activity and the same rights (or means of individualization) that can be inherited and transferred to others, or those objects themselves. That is, the Civil Code of the Republic of Uzbekistan. The first part of Article 1035 shall have the following meaning: *Proprietary rights to an object of intellectual property may be transferred by the right holder in whole or in part to another person, unless otherwise provided by this Code or other law, and these property rights are in the case of reorganization of the right holder in the order of succession.*

**Secondly**, we must also revise our rules of testament. Because the object of the testament is that the property and the rights to the property are bequeathed. However, the domain name is an intellectual property and is not a property (the Civil Code of the Republic of Uzbekistan). Rather, it is an independent object of civil law, separated from the property (The Civil Code of the Republic of Uzbekistan, 2018, section 6).

**THIRDLY**, THE DOMAIN ADMINISTRATOR'S RIGHTS MUST BE COMPLEMENTED BY THE PROVISION THAT A DOMAIN ADMINISTRATOR CAN INHERIT HIS RIGHTS, INCLUDING A TESTAMENT.

**Fourthly**, the grounds for the transfer of the domain name administrator rights should be the basics of inheritance rights.

**Fifthly**, it is necessary to develop the legal basis for accessing the domain name registration information in the main registry, its legal mechanisms, to those who inherit the rights of the domain name administrator.

**Sixth**, it is advisable to revise the range of subjects for which a domain name may be known. This is because the current legislation defines that an individual or a legal entity is a domain administrator. We consider it necessary to include the sole proprietor, the family business without a legal entity, and business entities engaged in farming without the legal entity and the state. It is necessary to re-explain the

**VII.CONCLUSION**

concept of *domain name Administrator* in paragraph 2 of paragraph 4 of the Regulation “On the order of registration and use of domain names in the “UZ” domain. *Domain Administrator* is a physical person, a legal entity, an individual entrepreneur, a peasant farm operating without a legal entity, a family entrepreneur operating without a legal entity.

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