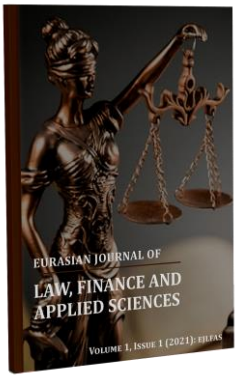
EURASIAN JOURNAL OF LAW, FINANCE AND APPLIED SCIENCES
Innovative Academy Research Support Center
UIF = 8.3 | SJIF = 5.961 www.in-academy.uz




# IMPLEMENTATION OF SUI GENERIS REGIME IN INTELLECTUAL PROPERTY LAW

**Dzhalilova Kamila Abdusaidovna**
Master`s student of Tashkent state university of law
Specialization: 70420123- "Intellectual property and information technology law"
E-mail: kamiladzhalil@gmail.com
https://www.doi.org/10.5281/zenodo.8055712

**ARTICLE INFO**

Received: 09th June 2023
Accepted: 18th June 2023
Online: 19th June 2023

**KEY WORDS**

*Intellectual property, non-traditional objects, sui generis, database, know-how, artificial intelligence.*

**ABSTRACT**

*This article is devoted to the consideration of the sui generis regime essence and peculiarities of the implementation of the sui generis right in relation to new non-traditional intellectual property objects. In particular, within the framework of this article, international experience and the practice of foreign countries in sui generis protection of such objects as databases, trade secrets (know-how) and artworks generated by artificial intelligence are investigated.*

Despite the fact that the pace of technology development is quite difficult to measure, it cannot be denied that change and progress are a characteristic feature of our society. When new challenges arise or modern trends are introduced into society, the legal system is often under pressure to "react" or "keep up with the times." As society and its standards change, new organizational structures, types of activities and social relations that differ from the existing ones appear. In order to eliminate uncertainty regarding the application of law in new contexts, it becomes necessary to adopt new laws, since existing norms are relatively outdated in order to resolve modern problems and challenges. Consequently, in order to reform legislation, new legal structures are being developed that are able to resolve the difficulties that have arisen in connection with the emergence of new objects of law. In other words, there is a tendency to consider new organizations, activities and legal relations as needing special regulation or special protection - sui generis.

**Sui generis** (lit. peculiar, of its own kind) is a Latin expression meaning the uniqueness of a legal structure (act, law, status, etc.), which, despite the presence of certain similarities with other similar structures, generally has no precedents[1]. This expression refers to an entity or concept that cannot be included in a broader concept. Thus, laws are unique (sui generis) to the extent that they consider a specific organization, activity or legal relationship as falling under a narrow legal regime.

The concept of "sui generis" is used in various scopes and disciplines to designate objects that have a unique character. For example, in biology, for species that do not fit into a

[1] https://dic.academic.ru/dic.nsf/ruwiki/1710062

genus that includes other species, the "sui generis" rule applies[2]. And analytical philosophy often uses the concept of "sui generis" to denote an idea, essence or reality that cannot be reduced to a higher or lower concept. It is worth noting that the very concept of "sui generis" can be applied in almost any industry and science in which there is an object or phenomenon that differs from the already known or has unique properties, be it medicine or creativity.

In the legal sphere, sui generis as a concept and regime can also be used in a number of law branches. One of these areas, which has been significantly influenced by technological progress, is intellectual property. Despite the fact that at the international level and in the legislation of most countries, the categories of intellectual property have been developed quite widely and include objects of copyright, patents and means of individualization, non-traditional objects arise that are partly similar to the classical results of creative activity, but their characteristic features do not allow them to be protected through existing legal instruments. In such a situation, the most appropriate protection regime is the sui generis regime.

For the first time, the concept of sui generis in the context of intellectual property was mentioned in 1996 in Directive 96/9/EC of the European Parliament and of the Council "On the legal protection of databases" and granted the right of a special kind of "sui generis" regarding **databases**, and defined the "sui generis" regime as a regime that is provided for the protection of databases based on significant investments. The Directive indicates that the creation of databases requires the investment of significant human, technical and financial resources and the illegal extraction and/or reuse of database content is an action with serious economic and technical consequences. However, in order to grant protection, the selection and location of the contents of the database must be the result of the personal creative work of its author[3].

Thus, sui generis law in the context of the Directive is understood as a property right similar to copyright, but different from it. It exists to recognize the substantial investments that are made in obtaining, verifying, or presenting the contents of a database, even if this is not related to the creative aspect reflected by copyright.

In addition to copyright mechanisms, the Directive establishes a number of sui generis measures so that the creator of the database can prohibit unauthorized extraction and/or reuse of its contents. Sui generis rights are economic rights and as such can be transferred, assigned or granted in accordance with a license contract. Legitimate users can extract and reuse non-essential parts of the database content without permission. However, they cannot perform actions that unreasonably infringe on the legitimate interests of the creator of the database or the person providing the works or services contained therein.

It is worth noting that databases have been around for a relatively long time and, thanks to the fundamental principles reflected in the Directive 96/9/EC, there are no difficulties in protecting databases by the sui generis special law regime.

[2] Bentham, George (1880). "Notes on Euphorbiaceæ". Journal of the Linnean Society, Botany.- P. 225

[3] Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases

Another type of non-traditional intellectual property is considered **know-how**. Currently, know-how, or in another way, trade secrets, as an object of civil relations, is actively being introduced into the business environment of developed countries. In this regard, there are lively discussions in foreign literature about the legal status of know-how and the proper regime for their protection.

Know-how is the result of creative activity, which is expressed in a certain set of information approaches, including formulas, methods, schemes and sets of tools that are necessary for the successful conduct of business in any field or profession[4]. Other terms used to refer to know-how are "trade secret", "confidential information" and "commercial secret". In some jurisdictions, they are called "classified information". Well-known examples of trade secrets include formulas or recipes for Coca-Cola, KFC chicken, McDonald's "special sauce", Krispy Kreme doughnuts, Google AdWords and Gillette razor designs.

At the international level, the issue of know-how protection is directly regulated in the Agreement on Trade Aspects of Intellectual Property Rights (TRIPS), in accordance with paragraph 2 of Article 39 of which individuals and legal entities are given the opportunity to prevent information lawfully under their control from being disclosed, obtained or used by other persons without their consent in a way contrary to honest commercial practice. In particular, article 39 of TRIPS also establishes standard minimum levels of protection of trade secrets and defines information that can be protected, paying particular attention to three requirements: secrecy, commercial value and reasonable measures to keep information secret[5].

At the same time, TRIPS gives Member States the freedom to determine the appropriate ways to implement its provisions within their legal systems and does not prescribe the choice of a model of protection through exclusive rights. Consequently, the sui generis regime can also be chosen by States as an effective regime for the protection of know-how. Some countries already use the sui generis regime as a regime for the protection of trade secrets. For example, know-how in Russian legislation is an object of intellectual property of a special kind - sui generis, despite the fact that it is not explicitly stated.

This is due to the fact that the general principles and rules applicable to other intellectual property objects do not apply to the know-how, since the know-how has the following distinctive features:

– it is not the result of intellectual activity itself that is recognized as know-how, but only information about it, as well as information about the ways of carrying out professional activities, therefore, the division of intellectual activity objects into intellectual activity results and means of individualization does not apply to know-how;

– the exclusive right to know-how is not subject to state registration, since this contradicts the essence of the confidentiality of its content;

– the exclusive right to know-how is valid as long as the confidentiality of the information constituting its content remains;

[4] https://www.audit-it.ru/terms/accounting/nou_khau.html

[5] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994)

– the exclusive right to know-how does not have all the scope of rights because the owner can not prohibit others from using it, but actually deprives them of such an opportunity;

– the exclusive right to know-how is not territorial because know-how is a cross-border monopoly;

– the specifics of the know-how do not allow the transfer of rights to it by concluding a traditional license agreement.

In view of the above-mentioned characteristics of know-how, protection through the "sui generis" regime is the most acceptable, since the trade secret has only some similar features to intellectual property objects and consists of significant investments, therefore, a special "sui generis" law can be applied to it to protect the rights and interests of the know-how holders.

Changes in the socio-economic situation associated with the introduction of modern technologies inevitably entail reforms in legal approaches to established concepts. After many years of debate among scientists and various legislative experiments in different countries, computer programs have taken their place among the objects protected by copyright. Today, the main technical problem that needs to be solved by legal means is **artificial intelligence**.

Artificial intelligence has firmly entered the daily life of mankind, including the creative industry. Currently, artificial intelligence-related technologies are often used in content creation, information analysis, music production and post-production of audiovisual works[6].

An actual example of artificial intelligence content creation is the recently appeared ChatGPT — a chatbot launched by OpenAI, an artificial intelligence company. Initially, the system was created to support online customer service, but the artificial intelligence underlying this program has exceeded all expectations and has become very popular.

The main legal problem today is the evaluation of autonomous computer systems that generate new objects that can be the object of copyright, provided that there is no human factor in the creation process. For a long time, the droit d'auteur copyright system has maintained the position that the author can only be a natural person, since the process of creating works is characterized by creativity, the main prerequisite of which is originality. In the absence of these criteria, copyright cannot protect the object, and therefore moral and economic rights do not arise.

As the results of studies of various legal systems show, currently existing copyright protection regimes cannot correspond to those objects that are created by artificial intelligence. The lack of human authorship, as well as originality, is a key factor in this issue. Nevertheless, stakeholders will inevitably demand some form of exclusive rights to protect the end results of computer-controlled processes. In this case, sui generis protection may be offered, which is a kind of protection that could stimulate the development and use of creative platforms with artificial intelligence, while at the same time preserving human ingenuity[7].

The advantage of a sui generis regime (as opposed to using the full scope of copyright to protect such works) would be that copyright holders could be granted only a limited amount of protection, allowing them to prevent other exact copies of the machine-created work from

[6] N Anantrasirichai, D Bull, Artificial Intelligence in the Creative Industries: A Review (2020).

[7] Anne Lauber-Rönsberg and Sven Hetmank, “The Concept of Authorship under Pressure: Does Artificial Intelligence Shift Paradigms?” (2019) 14 J.I.P.L. P. 509

being used. From this point of view, in fact, it would be protection only from literal copying. As for the term of protection, unlike the usual term of copyright, in the context of artificial intelligence, a very short period may apply, for example, three years from the date of publication of the work (the term proposed in the recent AIPPI "Educational question" of the Dutch delegates)[8].

The question of whether computer creativity can be protected by copyright is not really a new one, at least in the USA. Back in 1965, the US Copyright Registry informed Congress of concerns about the growth of computer technology and wondered whether a line should be drawn between human authorship and computer production. More than ten years later, in 1978, the US National Commission on the New Technological Use of Copyrighted Works (CONTU Commission) reported on this issue and came to the conclusion that the computers used to create works were just "inert creative tools" and did not have signs of artificial intelligence[9].

The UK was the first country decided to grant copyright protection to works created on a computer. A pragmatic approach is seen in the Copyright, Industrial Designs and Patents Act of 1988 (CDPA). According to section 9(3), "in the case of a literary, dramatic, musical or artistic work created using a computer, the author is considered to be the person who takes the measures necessary to create the work"[10].

A work created by a computer is defined as a work created by a computer under such circumstances when there is no human author. The law considers the author as a person who takes the measures necessary to create a work, and establishes 50 years of protection. A similar legal regime is provided for in some other common law countries, for example, in India and Ireland[11].

One of the first countries that granted sui generis protection to works created by artificial intelligence is Ukraine. In 2020, a draft of the new law of the Ukrainian Republic "On Copyright and Related Rights" was published, in which the most discussed change was the introduction of sui generis law in relation to non-original objects generated by computer technologies (computer generated object). The new version of the law came into force on January 1, 2023.

The law defined the non-original object generated by a computer program as an object that differs from existing similar objects and formed as a result of the operation of a computer program without the direct participation of an individual in the formation of this object. Moral rights do not apply to such objects. Economic rights arising from sui generis law are equated with the economic rights of the author. However, it follows from the meaning of Article 33 of the Law of the Ukrainian Republic "On Copyright and Related Rights" that sui generis law (special kind of law) lacks the concept of "author", and instead uses "subject of a special kind of law"[12].

[8] AIPPI Summary Report – 2019 Study Question on Copyright/Data Copyright in Artificially Generated Works, P.17
[9] National Commission on New Technological Uses of Copyrighted Works (CONTU Commission) – Final Report (1978), P.44
[10] UK Copyright, Industrial Designs and Patents Act of 1988 (CDPA)
[11] L Mayidanyk 'Artificial Intelligence and Sui Generis Right: A Perspective for Copyright of Ukraine?' 2021 3(11) Access to Justice in Eastern Europe, P. 150
[12] https://zakon.rada.gov.ua/laws/show/en/2811-20?lang=uk#n461

Such subjects entitled sui generis right include persons who own property rights or who have license rights to the computer program with the help of which the object was created. The term of protection according to the law is 25 years from the moment of creation of the corresponding object.

The sui generis regime as a way of protecting works created by artificial intelligence was chosen due to the fact that computer work as a whole is not considered original and does not reflect the author's own creation. But at the same time, significant investments can potentially be invested in such computerized work, and therefore the protection of such facilities is considered economically feasible. Moreover, granting protection to such works will encourage people to program computer technologies to create works and will positively affect the cultural development of the country in its modern sense.

In the context of changing attitudes and dogmas towards the results of creative activity, there is a tendency to treat new subjects, activities and relationships as needing special regulation sui generis or protection. It is also worth considering the possibility of developing uniform rules sui generis, taking into account the possibility of future technological changes, using technologically neutral formulations that do not significantly affect the clarity and ease of application. Therefore, the sui generis regime can provide protection to such objects that are somewhat similar to traditional intellectual property objects, but do not meet all the criteria of protectability, but at the same time investments can potentially be poured in such "non-traditional objects" or significant investments have already been made.

## References:

1. https://dic.academic.ru/dic.nsf/ruwiki/1710062 - Sui generis
2. Bentham, George (1880). "Notes on Euphorbiaceæ". Journal of the Linnean Society, Botany.
3. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases
4. https://www.audit-it.ru/terms/accounting/nou_khau.html- Know-how
5. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994)
6. N Anantrasirichai, D Bull, Artificial Intelligence in the Creative Industries: A Review (2020).
7. Anne Lauber-Rönsberg and Sven Hetmank, “The Concept of Authorship under Pressure: Does Artificial Intelligence Shift Paradigms?” (2019) 14 J.I.P.L.
8. AIPPI Summary Report – 2019 Study Question on Copyright/Data Copyright in Artificially Generated Works
9. National Commission on New Technological Uses of Copyrighted Works (CONTU Commission) – Final Report (1978)
10. UK Copyright, Industrial Designs and Patents Act of 1988 (CDPA)
11. L Mayidanyk ‘Artificial Intelligence and Sui Generis Right: A Perspective for Copyright of Ukraine?’ 2021 3(11) Access to Justice in Eastern Europe

12. https://zakon.rada.gov.ua/laws/show/en/2811-20?lang=uk#n461- Law of the Ukrainian Republic "On Copyright and Related Rights"