COMPARATIVE ANALYSIS IN THE AREA OF DEVELOPMENT OF INFORMATIONAL AND COMMUNICATIONAL TECHNOLOGIES: CONTEMPORARY U.S. AND UZBEKISTAN LEGISLATION

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INTRODUCTION

The evolution and wide application of information and communication technologies (ICT) constitutes a general tendency of the international community in the past few decades. The current global community can rightfully be termed an "information society," and eight leading nations agree enough to have adopted the "Okinawa Charter on Global Information Society" in the summer of 2000.[1] Currently, the information revolution demands that countries with lower indexes of information and technological development, including Uzbekistan, to make strong and even critical efforts in overcoming the said backwardness.[2] At the same time, an information revolution provides individuals, nations, and mankind as a whole with tremendous development opportunities.

The application of sophisticated information processing and transmission technologies has crucial significance for the increase of competitiveness and better integration qualities of the economy as well as to substantial growth of national governance efficacy at all levels including state and private sectors of the economy. The introduction of technological prerequisites for development of open and democratic society based on the right of citizen to free and operative access to information through Internet is another important consequence of ICT development and its filtering into all spheres of public life.

Within the last decade, Uzbekistan has made some progress in creation and development of informational infrastructure. A number of technical and

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1. G-8, Summit Declaration "Okinawa Charter of Global Information Society."
2. Antoine Blua, *Central Asia: Efforts Under Way to Bring Region Up to Speed With the Internet*.

technological projects are being carried out in different areas, including those oriented to state institutions and organizations. Substantial work has been undertaken to develop corresponding legislation. There is now a pool of highly qualified ICT specialists, and cooperation with international institutions in this field is also successful.

The current level and existing problems of ICT development give rise to the need for a new approach that focuses on the formation of a general strategy of entry into the global informational space instead of solely concentrating on the development of certain communication branches within the country. Based on the available technological capabilities, the focus can be on framing the uniform information space, information resources development, creation of databases, and infrastructure accessible to state institutions as well as to the general public. This in turn will affect ICT related legislation as well as provide for updating of its technological basis.

To implement the above strategy, due regard must be given to the examples of leading nations' attempts at drafting ICT legal regulations, as well as to an analysis of Uzbekistan's current policy and legislation in the field. This will give us an idea of what must be done to establish more favorable national, political, and legislative environments for the development of ICT and integration of the country into the global informational community.

To be able to make proper assessment of foreign laws with purpose of implementation of the ideas and legal principles contained in the pieces of foreign legislation into domestic law, it is indispensable to have necessary educational basis and correct perception of the structure and mechanisms of their functioning. Attempts to inoculate foreign laws into the body of domestic legislation directly, made in some CIS countries lately, proved to be ineffective if not futile. Such practices were soon discontinued. However, since the need to enrich domestic legal systems with new ideas has proven to be highly beneficial abroad, the choice was twofold: either to attract foreign experts to work within the groups developing new laws or to educate local experts abroad.

I happen to have had just such a chance along with several others of my compatriots. When returned to Uzbekistan upon the completion of my study course, I shared my experience with them and realized how lucky I had been. Setting aside the excellent teaching faculty of internationally recognized quality at the University of Pittsburgh School of Law (Pitt Law), such as Professor Harry Flechtner, Professor Ronald Brand, and others, the very structure of the work with foreign students was the best method for producing high educational results as well as providing comfort and peace of mind. The opportunity given to us to study among American students proved to be a

serious incentive to compete and grow from both an educational and linguistic standpoints. At the same time, not being separated from our LL.M. fellows, we could always share our experiences and compare our accomplishments. Being in touch with other LL.M.s of my year, I definitely know that they feel similarly.

With respect to current topic of ICT development in Uzbekistan, I can mention that during the last several years, I was in charge of the legal part of work on two ICT related projects co-sponsored by the government of Uzbekistan and foreign, mostly American, funds. Simultaneously, as a legal expert, I was involved in the preparation of two laws (E-signature and E-commerce) by the working groups under the Cabinet of Ministers of Uzbekistan. In my work I definitely relied on and widely used the experiences received during my study at Pitt Law.

Based on the spirit of the Roundtable, my current work will be more a descriptive discussion rather than a deep exploration of the details of the laws. Although it could be interesting to add the analysis of, say, European, Russian, or Chinese laws on the subject, I did not take up the risk of overspending the participants' attention. Therefore, the main focus will be on the U.S. legislation as a global leader in the area with only a slight allusion to EU and international pieces of legislation.

I. General Notions and Main Principles of ICT Regulation

The internet as a means of mass communication has achieved a stage of development and influence in the public life of society that it requires state involvement through the adoption of laws regulating its operation and further development. To identify the direction of such regulation, a number of countries conduct special research, establish public associations, adopt legislation, and develop codes of conduct for the internet. Almost all the above documents are accessible on-line, which make their analysis futile. However, a brief description lets us understand the main direction of legislative evolution as well as the experience of the Internet regulation. The global nature of the internet makes it possible to assert that the problems of its legislative regulation have a generic character and are more or less similar for all nations of the world.

When attempting to regulate the internet, it is worth keeping in mind its peculiar features compared to other media. Even lawyers and state officials well familiar with international ICT legal principles, often disregard existing differences between the internet and other forms of communication enterprises.

The following properties make the internet unique in its essence. The Internet is first and foremost, global. The internet is the first truly global medium allowing, for instance, a message transmission to the other side of the world to be as inexpensive as the same transmission to the neighboring house. The internet is incredibly decentralized. The internet was originally meant to operate without control. It is not dependant on a set of broadcasting towers or satellites. The internet is easily accessible. Anyone can publish on the internet. The cost of reaching thousands is in essence for reaching a single person. Launching a webpage is the same cost whether it is being visited by millions or a single individual. The internet is controlled by user. The primary control compared to broadcast media or phone network is in the hand of a user who can employ cryptography to protect his or her privacy. Parents can obtain technologies to protect children from undesirable materials and individuals can be highly selective in what thy use the internet for.

Several legal principles facilitating the development of the Internet form general principles and are attributable to entrepreneurship and telecommunications area. Some of them are stated below:

Transparency: Law making and law enforcing processes are to be open and transparent. Citizens shall have access in print or through the internet to all laws, decrees, bylaws, and court decisions, including legal drafts and other norms.

Privatization and competition: In countries where the internet service providers (ISPs) are prosperous, they experience less controls than other communication industries, such as phone networks. There is a perception that privatization and competition facilitate development of all telecommunication services, including the internet. EU Directives make privatization highly desirable if not mandatory. They require that existing telecommunication networks shall be open for competition.

Nondiscrimination: ISPs shall have equal access to networks with the one that telecommunication companies provide to their subsidiaries. Goods and services shall be accessible for foreign competition, trade barriers shall be minimal.

Licensing: Licensing requirements shall not impede competition. Licensing shall not cut down access to markets. General and business laws in themselves shall satisfy consumer protection needs.

Technical standards: Technical standards shall not create obstacles to competition. There is no need for individual licensing or excessive and detailed equipment standardization. Open standards and functional compatibility facilitate innovations, growth and wider access.

Price control and universal services: Price phoning policy, especially per-minute rating of local connection can result in a slowing of internet growth. Uniform local calling rates as well as uniform price policies for internet services can better improve internet accessibility. The principle of universal services for basic telecommunication access is an internationally recognized norm. Competition based price policy can reduce prices and facilitate growth however, it has to be properly balanced among corporative and individual users and urban and rural populations.

Education: A state system of education is inevitable for professional growth of specialists in electronic communication, networks, and programming. Wider audiences perceive the internet as a tool of trade, state, and human development. Access to the Internet in libraries and other public places can help realize this fact.

Content in local language: Industry and NGOs shall support creation of Internet pages in local languages. Support shall be rendered to development of standards for browsers and other software products created in local language.

Upon describing the main prerequisites for ICT development due regard shall be give to specific issues attributable to the Internet:

Intellectual property: adequate protection of the intellectual property of the author.

Taxation: Taxation in the area of Internet shall not slow down development of e-commerce or hamper rendering electronic services.

Electronic transactions: The laws recognizing credit cards, e-money and e-signatures shall be introduced and incorporated into the legal field.

Privacy protection: OECR and EC[3] directives on protection of private life establish basic principles of privacy protection. All participants of networking communications shall adhere to these principles.

Computer crimes: Effective means of counteraction to computer crimes, on-line fraud and hacking, along with protection of anonymity and curtailing of state control shall be established.

ISP's liability: Authors and providers shall be liable for improper, fraudulent or obscene content. Users, parents and schools can opt to choose blocking and filtering software to protect minors from harmful content.

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3. Directive 2002/58/EC of the EU and of the Council of July 12, 2002; Directive 97/66/EC of the EU and of the Council of Dec. 15, 1997; Directive 95/46/EC of the EU and of the Council of Oct. 24, 1995, http://www.europa.eu.int/eur-lex/pri/en/oj/dat/2002.

The principles stated above will not only direct internet policy towards stimulating its economic potential, but also facilitate development of an open, democratic internet, contributing to a better observance of human rights throughout the world.

Information Society: State Policy

One can rightfully assert that ICT have drastically changed contemporary society. However, it is worth mentioning that even in the most developed countries and economies informational turnpike road is in the stage of formation. Current achievements in this field can be compared to bricks of future great constructions. And although in certain areas such as finance, industry, education, the effect of new technologies is quite conspicuous, the entire body of our civilization is still far from "informational ideal."

To achieve this goal, 80-90 countries have launched the process of state policy formation on ICT issues. This process was called to facilitate the construction of an informational society. Some nations, such as the U.S., Japan, and South Korea, plan to embody this idea autonomously. Developed European countries, also having national programs, offer to consolidate resources and coordinate programs. National perceptions coexist with programs and concepts adopted by international institutions and communities. It is apparent that the issue of transition to informational society provides wide space for exploration containing multiple *terra incognita* spots. Therefore, it is so important to scrutinize some of them. In this respect the experience of the United States deserves special attention and mentioning.

1. The U.S. ICT Policy and Legislation

The U.S. indisputably is the country with the most open policy and liberal legislation in the ICT area. As the internet's birth place the U.S. still remains as a banner in ICT development. Its ICT legislation unequivocally constitutes the most developed and vast body of law compared to other countries. Despite the tragic events of September 11th, after which the U.S. had introduced certain restrictions aiming to provide more effective safety measures, general policy and legislation is undoubtedly directed to further support of Internet growth and development. Unlike countries with transitional economies, where governments are dealing with establishing legal frames stimulating ICT development, in the U.S., the newest kinds of ICT, and the internet in particular, were initially developed without strong governmental interference. Personal creativity and profit were the basic incentives and propellant forces

of informational progress. Then, upon substantial increase of Internet mass that could not be self-regulated any longer the government entered the game, creating legal and economic conditions for further ICT development. For example, the report of the U.S. Federal Communication Committee titled "Digital Tornado: Internet and Telecommunication Policy"[4] demonstrates that the FCC had knowingly refused to regulate on-line informational services in accordance with the rules applicable to phone companies. The FCC emphasized the need not to overburden the internet with unnecessary state regulation. This limited governmental approach to interference explains the internet's rapid growth in the U.S.

For the purposes of the current research, it is not necessary to scrutinize particular legislative samples. However, it is important to introduce general picture of the U.S.'s legal development in this field as a mechanism of state policy and strategy procurement. I will only enlist some important examples of statutory laws in this area in order to avoid providing too much information from the immense body of American case law on the subject.

The followings are considered to be the main statutory laws regulating ICT area in the U.S.:

- The Telecommunication Act (Pub. L. 104-104,110 Stat. 56,47 U.S.C. § 609, 1996), amended Communication Act (Pub. L. 416, 48 Stat. 1064, 47 U.S.C. § 151 (1934) makes alterations related to the regulation of new kinds of communication with the purpose of creating a more favorable development environment.
- The Uniform Computer Information Transactions Act (UCITA) amends Article 2 of the UCC. This law determines general conditions for electronic transactions.
- The Uniform Electronic Transactions Act (UETA) (1999) was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Describes relationships connected with electronic transactions specifically and in details.
- The Electronic Signature in Global and National Commerce Act (E-Sign) (Pub. L. No. 106-229,114 Stat. 464,15 U.S.C. § 7001, 2000) establishes legal conditions for user's identification and application of e-signatures.
- U.S. anti cyber-crime laws (contained in Criminal code,[5] Homeland Security Act of 2002,[6] Patriot Act,[7] etc.) define principles of criminal

4. See FCC OPP Working Paper Series 29 "Digital Tornado: The Internet and Telecommunication Policy," 1997, http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp29.pdf.

5. U.S.C., tit. 18, para. 1, ch. 47, § 1030.

6. Homeland Security Act (H.R. No. 5002, 107th Cong., 1st Sess., 2002), http://www.news.findlaw

content as well as measures of administrative and criminal prosecution and punishment for computer crimes.

- The "E-Government Act" (H.R. No. 2458, 107 Cong., 2d Sess., 2002) creates conditions for electronic government in state and public institutions with the purpose of simplification and better efficacy of their mutual cooperation as well as their cooperation with civil society.
- The Children's Internet Protection Act (Pub. L. 106-554, 106 Cong., 1st Sess., 1998) supports more rapid technological and commercial development of the internet. The CIPA provides that U.S. policy in this field shall be based on private initiative and avoid as much as possible restrictions and limitations by the state. It states that regulation of Internet information services does not properly serve public interests.
- The Federal Internet Privacy Protection Act (H.R. No. 1367, 105th Cong., 1st Sess., 1997) creates prohibitions on federal institutions about providing access to confidential information and records of individuals through the internet.
- The Security and Freedom Through Encryption Act (SAFE) (H.R. No. 850, 106 Cong., 1st Sess., 1999) defines the legal scope of freedom to use and sell encryption means and devices and prohibits mandatory access by State and other structures to encryption keys. It authorizes the use of encryption despite utilized algorithms, code length, technologies and encryption means. No one shall be compelled to convey encryption keys to another person unless it is necessary for investigation in accordance with legal procedure.
- The Family-Friendly Internet Access Act (H.R. No. 1180, 105 Cong., 1st Sess., 1997) provides parents with the means of control over content accessible to children through the Internet. ISPs shall provide software that allows exercising such control.
- The Citizen's Right to Know Act (Pub. L. No. 104-231,110 Stat. 3048, 5U.S.C. § 552, 1996) aims to amend the election law by the requiring the federal election committee to make available information about candidates for U.S. Congress on the internet.
- The Internet Election Information Act (1997) describes the possibility of providing free of charge computer services to candidates being elected to

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.com/hdocs/docs/terrorism/hsa2002.pdf.

7. USA Patriot Act (H.R. No. 3162, 107th Cong., 1st Sess., 2001), http://www.congress.gov/cgi-bin/bdquery/z?d.107:H.R.3162.

federal organs and participating in public debates. Its purpose is to distribute such information to a broad audience.

- The Internet Gambling Prohibition and Enforcement Act (H.R. No. 4411, 109 Cong., 2nd Sess., 2006) addresses gambling, betting, and lotteries.
- The Promotion of Commerce On-Line in the Digital Era Act (S.1726, 105 Cong., 1st Sess., 1997) stresses that the internet and global informational infrastructure transform the ways of doing contemporary business. However, that potential cannot be fully realized unless businesses can be assured of the safety of information transmissions. To ensure the necessary level of safety cryptography means shall be available. Obsolete legislative bars on export of American "strong" ciphering means hamper development of electronic commerce. The proposal by the Department of Trade to allow sales of ciphering means abroad, provided that federal government possesses the keys, in fact, had turned into a form of prohibition on the export of cryptography technologies. The act proposes to encourage development of ciphering products and programs while prohibiting the federal government from taking steps that could prevent use and sales of cryptographic products.
- The Internet Tax Freedom Act (H.R. No. 1054, 105 Cong., 1st Sess., 1998) (Pub. L. No. 105-277) indicates that it is impossible to trace back the exact path of the message in the Internet. This gives rise to a possibility of multiple taxation that can limit Internet development. For example, in the USA consumers and businessmen can be subject to application of 30,000 taxation laws and by-laws. Therefore, there shall exist a well coordinated policy in the area of Internet taxation. This law introduces tax holiday for the Internet activity for a period through the end of 2006.

The above list of laws demonstrates that ICT related legislation in the U.S. is vast and relates to almost all spheres of public development. It reflects the U.S. strategy of establishing a favorable and harmonious, free to access and competitive environment for informational development.

Unfortunately, due to the rapid development of informational technologies, legislators are often late in reacting to newly emerging legal phenomena. Although fundamental approaches in formation and regulation of ICT's legal environment in the U.S. do not change drastically, law enforcement methods acquire new traits associated with ICT specifics. Therefore it seems to be important to reflect on the dynamic of ICT legislation development in the U.S.

Current ICT legislative development in the U.S. is affected by the tragic events of September 11th. Transparency and accessibility of state systems,

principles of state safety, and procurement of citizens' personal information appear to be the most vulnerable aspects for increased governmental control. As a consequence, the U.S. government has already introduced amendments to the existing laws as well as adopted some new ones limiting the freedom of the internet. The most serious alterations were made in the Internet Privacy Protection Act of 1997.[8] In particular, U.S. intelligence has the ability to check e-mails and trace suspects online with the purpose of prevention terrorists' activity. This also applies to the tracing of financial and banking operations.

As a whole, the government attempts to protect American society from the threat of international terrorism. In the meantime, ICT development, particularly in the scope of e-commerce, e-government, and e-financing receives full governmental support. As an example, one can mention prolongation of tax moratorium for e-transactions and establishing cyber courts in the U.S.

2. International Universal Legislation in ICT Sphere

By its very nature contemporary ICT has a global character. This in turn gives rise to attempts to legally regulate ICT issues by way of international legislation. Although each country's domestic law has its special features, the main legal principles in regulating ICT area are not irreconcilable. The future may well bring the possibility of application of uniform laws in this area. Even now one can observe certain inspiring accomplishments in this field.

On January 30th, 1997 General Assembly of the United Nations had adopted Model Law on Electronic Commerce (by UN Commission on International Trade Law).[9] It constituted the first step in the area of development of international law regulating the sphere of electronic commerce. This law does not bear mandatory character and is meant to be used by nations as a basis for development of their own national laws. This document has established the legal grounds for the activities in the sphere of e-commerce; it has provided core definitions such as data message, electronic data interchange, e-signature, originator, and information system. It recognized the legal authority of electronic documents and defined the demands made to e-signature as a proof of ingenuity and integrity of a document.

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8. Federal Internet Privacy Protection Act (H.R. No. 1367, 105th Cong., 1st Sess, 1997), http://www.cdt.org/legislation/105th/privacy; http://www.epic.org/privacy/internet/hr_98html.

9. Model Law on Electronic Commerce by UNCITRAL, Resolution by UN General Assembly, 51st Session, A/res/51/162, 30 Jan. 1997.

Another attempt at uniform international legislation in ICT is the Model Law on Electronic Signatures developed by UNCITRAL[10] and adopted in 2001. This law defines the legal status of E-signatures and institutes rules and requirements for their application.

3. Legal Analysis of State Policy and Legislation of the Republic of Uzbekistan in ICT Area

When developing the concept of entry into the informational society, each country should assess its domestic conditions and advantages. Legislation that does not only reflect the state policy but forms the rule of conduct for legal entities and individuals within the country's borders is the most important subject for such assessment. Legislation in the field of informational technologies is a body of legal norms that regulates the entire complexity of public relations associated with the development of information, its broadcast, use, and free accessibility. The general trend in the development of the global informational community compels the formation of informational legislation as an independent branch of law. Here I will try to describe the existing Uzbek legislation in order to define its current state and give assessment of its readiness for joining the international informational community.[11]

The Uzbekistan Government has approved a Program of Development of Computerization and Information and Communication Technologies for the Period including 2002-2010.[12] The Program has been approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 200 of 6 June 2002. Section 2.2. of the program is dedicated to developing a "national segment of the internet." Under the program the following estimated parameters of development of the internet in Uzbekistan are established for the year 2010:

- installing more that 45,000 ports for joint access to the internet;
- providing speed of access for international information networks higher that 512 Mb/sec.
- achieving a grade of usage of Internet up to 11/9 for 100 citizens;

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10. Model Law on Electronic Signature by UNCITRAL, Resolution by UN General Assembly, 56th Session, A/res/56/80, 24 Jan. 2002.

11. *See also* United Nations Economic Commission for Europe, *Towards a Knowledge Based Economy, Uzbekistan Country Readiness Assessment Report.*

12. WSIS, "Statement of the Government Delegation of the Republic of Uzbekistan," 2003, http://www.itu.int/wsis/geneva/coverage/statements/uzbekistan/uz.html (Accessed Aug. 29, 2005).

- connecting not less than 74% of all state bodies and 60% of rural administrations to the Internet; and
- by the end of 2010, all cities and settlements of the Republic shall be covered by ICT services.

It is planned to develop national data bases of laws and regulations, statistics, financial statement of open joint stock companies, patents etc. The program also contains provisions about educating specialists in ICT sphere.

Currently Uzbekistan possesses legal and normative basis regulating ICT relationships. Along with that there exist state programs determining the development of a certain ICT branches:

- Enactment by the Cabinet of Ministers of Republic of Uzbekistan #307 of 08.01.95 "On National program of reconstruction and development of telecommunication network of the Republic of Uzbekistan for the period through 2010"
- Enactment by the CM of RU #193 of 04.22.99 "On Program of modernization and development of a National data transmission network of Uzbekistan for a period of 1999 through 2003"
- Enactment by the CM of RU #230 of 05.23.01 "On Computer and informational programs development for the period of 2001-2005 and procurement of wide access to international informational systems by Internet."

Current Uzbekistan laws applicable in whole or in part to ICT relationships exist in several different areas. First, with respect to general issues of informational networks functioning and their state regulation, the following apply:

Legislation:

- Law of the Republic of Uzbekistan "On Principals and Guarantees of Freedom of Information" adopted December 12, 2002
- The Law of the Republic of Uzbekistan "On licensing of certain types of activity" adopted May 25, 2003
- The Law of the Republic of Uzbekistan "On radio-frequency spectrum" of December 25, 1998
- The Law of the Republic of Uzbekistan "On communication" of January 13, 1992 as amended
- The Law of the Republic of Uzbekistan "On telecommunications" of August 20,1999;
- The Law of the Republic of Uzbekistan "On legal protection of programs for electronic and calculation machines and data bases" of May 6, 1994

- The Law of the Republic of Uzbekistan "On mass media" of December 26, 1996
- The Law of the Republic of Uzbekistan "On electronic documents flow" of April 29, 2004
- The Law of the Republic of Uzbekistan "On electronic commerce" of April 29, 2004
- The Law of the Republic of Uzbekistan "On electronics digital signature" of December 11, 2003
- The Law of the Republic of Uzbekistan "On informatization" of December 11, 2003
- The Law of the Republic of Uzbekistan "On standards" of December 28, 1993
- The Law of the Republic of Uzbekistan "On protection of consumers' rights" of April 26, 1996.[13]

Presidential Decrees:

- Decree of the President of the Republic of Uzbekistan "On establishing of public educational information network of the Republic of Uzbekistan" No. PP-191 of September 28, 2005;
- Decree of the President of the Republic of Uzbekistan "On additional incentives for provision of computer security of national information and communication systems" No. PP-167 of September 25, 2005;
- Decree of the President of the Republic of Uzbekistan "On additional incentives for further development of information and communication technologies" No. PP-117 of July 8, 2005;
- Decree of the President of the Republic of Uzbekistan "On further development of computerization and implementation of information and communication technologies" No. UP-3080 of May 30, 2002.

With respect to protection of exclusive rights in ICT area:

- The Law of the Republic of Uzbekistan "On Copyright and Contiguous Rights" of August 30, 1996 (amend. May 12, 2002)[14];
- The Law of the Republic of Uzbekistan "On legal protection of Software and Databases" of May 6, 1994[15];

13. See all laws on http://www.pravo.uz.
14. See at http://www.pravo.uz.
15. See at http://www.gateway.uz/downloads/ICT/ICT2169.pdf.

- The Law of the Republic of Uzbekistan "On Trademarks and Service Labels" of May 7, 1993[16];
- Criminal Code of the Republic of Uzbekistan of April 1, 1995.[17]

It is necessary to mention that the larger part of the legislative body consists of the enactments, decrees, instructions arranged to define regulating mechanisms and establishing certain limitations in the area of ICT, whereas a general strategy on ICT development is not yet finalized. Similar to legislative systems of other nations, the legislation of Uzbekistan regulating the ICT area is in its incipient stage. At the same time, with due regard to availability of general norms of constitutional and civil law as well as certain number of other legislative acts, one can observe the absence of an effective legal basis in this respect. The reasons for this include insufficient theoretical preparation of certain fundamental normative acts as well as subjectively negative perception of the internet on the side of law enforcement agencies.

Nevertheless, lack of ICT legislative framing in Uzbekistan along with inability of their effective application, negatively affect development of public relationships (for instance, in the area of citizen's right to receive information, prevention of dissipation of defaming information, protection of intellectual property and other spheres of public life.) Moreover, with the growing impact of ICT on economic life, the weakness of legal framing not only slows down economic development but also compels Uzbek users to employ services located outside the country, which is easy to do technically taking into account the specific features of the internet.

Information Security

The basic legal document regulating information security is the Law of the Republic of Uzbekistan "On Principals and Guarantees of Freedom of Information" adopted 12 December 2002. The law defines information security as a "statement of security of interests of a person, society and the state in the sphere of information."

The law also establishes types of information which cannot be rendered as confidential and requires that the state shall perform state policy in a sphere of information security, which shall be dedicated to regulation of relationships in the informational sphere and shall stipulate tasks for state bodies in a sphere of information security procurement. Under the law, information security is

16. See at http://www.patent.uz/doclw01.htm.
17. See at http://www.pravo.uz/about/crime.php.

divided into the three categories of informational security of a person; informational security of the society; and informational security of the state.

Informational security of the person shall be provided by establishing of necessary conditions and guarantees for free access to information, protection of secrecy of private correspondence, protection against informational and psychological influence, protection of personal data.

Informational security of the society shall be achieved by procuring the development of democratic civil society and freedom of mass-media, disallowing unlawful informational and psychological influence to the social mentality; preserving and developing a spiritual, cultural and historical heritage of the society, and its scientific and technical potential of the country; and establishing of a system of counteraction to information, directed to destruction of national mentality, historical customs and traditions, destabilization of social and political system, etc.

Informational security of the state shall be provided by the implementation of various actions of economic, political or other character directed to counteraction to threats in the sphere of information security; protection of state secrecy and state information resources against unauthorized access; integration of the Republic of Uzbekistan into world informational space and advanced telecommunication systems; protection from distribution of information containing declarations to violent change of state power, breaking down of territorial integrity, sovereignty of the Republic of Uzbekistan, other encroachments for state power; and the counteraction of the distribution of information containing propaganda of war, violence, cruelty, terrorism and religious extremism.

Main Legal Problems of ICT Development

The number of key problems demanding fastest normative regulation to overcome backwardness of ICT development in Uzbekistan from leading global trends include:

1. Determination of liberal state policy of the Republic with respect to Uzbek segment of Internet;
2. Procurement of unobstructed access for Uzbek users to the internet and its informational resources as well as unlimited information exchange, including in the international sphere;
3. Determining the order and conditions of state institutions and bodies' connection to the internet (with due attention paid to providing broad audiences with the information concerning the activity of this

institutions.) This shall also cover the operation of public libraries, schools and other social and cultural entities.

4. Defining legal status of the information uploaded to the internet or communicated through internet media;

5. Prevention of publicly harmful activity in the internet (in particular, dissemination of defaming and obscene information) as well as the creation of normative conditions for the effective identification of wrongdoers;

6. Effective copyright protection and protection of other exclusive intellectual property rights for works uploaded to Internet;

7. Protection of private data, including those accumulated during the process of users' communication interchange and their communication with ISPs;

8. Creation of normative conditions for electronic data interchange; adhering to principles and order of use of Internet address space; confirmation of ingenuity and authorship rights of the information, visual and transferring means;

9. Providing a normative base for electronic commerce; recognizing the legal effect of transactions entered into through the internet; determining the order of electronic payments; and

10. Ensuring informational safety, including the prevention of computer viruses dissemination and prevention of unsanctioned access to private information.

Main Principles of Legal Regulation of the Relationships Connected with ICT Development in Uzbekistan

In the course of development of ICT legislation in Uzbekistan it would be expedient to uphold the principles following from the features of construction and functioning of the internet. The internet constitutes neither the subject nor object of legal regulation. The subject is formed by the relationships of ISPs and users amongst themselves, as well as with other individuals and state institutions with respect to information transmission and rendering services through the internet. ICT legislation associated with internet legal relationships has a global character. The application of domestic legal norms to such relationships without due regard and connection with the norms of other countries can prove to be ineffective. This requires primary attention to the development of legal norms addressing the internet on the international level by way of accession to international conventions on ICT law. Certain numbers of normative problems associated with the internet, including those

on the level of cooperation of Internet community members in the broadest sense, may and shall be solved without governmental interference. The social significance of the internet as a means of practically unlimited access to global informational resources requires establishing a legal frame regulating, first of all, the aspects of the internet specifically addressing vital rights and lawful interests of the person, society and the state (such as personal privacy protection, preservation of public morals, protection of state interests in the area of informational security and public order). The versatility and diversity of sources of public relationships on the internet does not allow, while developing corresponding legal basis, the focus on a relatively isolated, "specific" body of a legal regulation. Simultaneously, with the development of new legal norms associated with specificity of internet functioning, it is necessary to introduce corrections (sometimes significant) into existing laws.

The policy of state support to ICT development in Uzbekistan shall consist of, in particular, the following:

- Legislative affixing of the conditions of free access to the internet and inadmissibility of unreasonable ISP activity limitations (including incorporation, taxation and licensing);
- Implementation of state sponsored programs of internet connection for Uzbek users within the scope of the programs of informational and communication services development; free of charge access to the internet for libraries, schools and other public institutions by way of direct budget financing and attracting investments by ISPs;
- Establishing non-discriminative order of use of informational resources within the country as well as the order of international data interchange;
- Creating normative conditions for development of free Internet service markets in Uzbekistan, prohibiting monopolization and unfair competition;

While establishing a legal basis in the ICT sphere, due regard should be given to foreign experiences in adopting similar laws to ensure uniformity of the laws and practice of their implementation. The active participation of Uzbekistan in the international legal creative process should be sought as inevitable.

Other Directions of ICT Related Legal Development in Uzbekistan

Prevention of Computer Crimes

- The expansion of subjective sphere for objective side of publicly harmful activity committed in the Internet (including wrongs and crimes) requires the introduction of new criminal dispositions into the criminal and administrative codes of Uzbekistan.
- Special attention shall be paid to the legitimacy of electronic evidences (fixation of legal facts) as well as to the order of collecting information about individuals falsifying or misrepresenting their identity.
- The law shall also affix the obligations of the persons participating in data interchange in the Internet (ISPs, in the first place) during investigations conducted by law enforcement bodies of the state.
- Part of legal provisions related to prevention of illegal activity shall be incorporated into the "Mass media law" and "Advertisement law." It is necessary to bear in mind that majority of crimes perpetrated on the internet have analogues in the physical world. For instance, while analyzing Internet crimes, there is no reason to ignore legal provisions making illegal pornography turnover, liability for defamation and insults, or the inadmissibility of unethical and improper advertisements.

Legal Protection of Intellectual Property

As a whole there exist a stable system of legislative acts addressing protection of the results of creative activity and means of individualization (intellectual property). At the same time it is necessary to introduce certain rectifications associated with internet specifics into the civil code, the law "On authors and contiguous rights," "On trade marks, service marks and places of goods' origination," etc. If international organizations decide to refer to domain names as an isolated group of intellectual property objects,[18] a similar norm shall be incorporated into Uzbek laws. The protection of intellectual property in the internet is objectively hampered by the lack of effective means of control of exclusive copy rights. At that, it is unreasonable to assert impossibility of copyright law application to internet relationships. Only certain aspects of exclusive rights can be modified (for instance, alteration of

18. See ICANN, "CCTLD Sponsorship Agreement (.uz)," Mar. 27, 2003, http://www.icann.org/cctlds/uz/sponsorship-agmt-27mar03.htm (Accessed Aug. 18, 2005).

terms of their protection or a mechanism requiring mandatory author's consent to use the product, which is unreal when product is uploaded with a hypertext application). However, the final decision on a legislative level can be made only upon coordination of this issue at the international level.

Internet Taxation

While taxing the internet, it is necessary to distinguish operations associated with procurement of Internet access from ones to render services (informational, sale of goods, etc.). There seems to be no reasons to depart from general tendency to avoid or at least, to place a moratorium on the introduction of specific internet taxation. At that, internet access services are taxable on general conditions with other connection operators' activity, while other "networking" transactions in themselves are not subject to taxation. Corresponding provisions shall be incorporated into Taxation Code of Uzbekistan.

CONCLUSION

Summarizing the above, it is necessary to mention once more that development of ICT related legislation is most effective when is based upon reasonable and appropriate combination of domestic conditions and legal traditions with best examples of international legal thought and its enforcement (certainly, thoroughly scrutinized and adjusted). Globalizing tendencies of modern economy and other spheres of activity do not leave us any chance to focus upon local environment only, disregarding the life of international community unless we mean to preserve the existing backlog compared to leading nations of the world.

Appendix A

General Country Profile

Location: Central Asia, north of Afghanistan.

Access to sea: Country is encircled by land.

Note: border passes through Aral Sea (420 km. of seaside of Aral sea).

Neighbors: Afghanistan, Kazakhstan, Kirgizstan, Tajikistan, and Turkmenistan.

Coordinates: 41 00 N, 64 00 E

Area:

total	–	447,400	sq.	km.;
land	–	425,400	sq.	km.;

water – 22,000 sq. km.

Land boundaries:

total length – 6,221 km.

extent of borders with Afghanistan – 137 km., Kazakhstan – 2,203 km., Kirgizstan – 1,099 km., Tadjikistan – 1,161 km., Turkmenistan – 1,621 km.;

Coastline: 0 km. (not to count 420 km. of Aral Sea)

Terrain. Most of the territory of Uzbekistan is occupied by plains (near four fifth of the territory). One of the main is Turanian plain. In the east and northeast of country are situated spurs of Tien-Shan and the Pamirs, here is the highest spot of country (4 643 м). There is one of the largest desert of the world—Kizilkums on the north of central part of the territory of Uzbekistan.

- **Population of the country**

Population of the Republic of Uzbekistan is more than 27,33 mln people (est. end of 2006),[19] 37% urban and 63% rural.
Mainly populated by Uzbeks, who form almost 80% of population. Uzbekistan is a multicultural country; there are more than 100 nations here.
Republic of Uzbekistan, as other countries of the Central Asia, characterizes with comparatively "young" population and high portion of them in the structure of its populace at working age. Share of people below working age is 39% of total population6 at working age—54% and above—7%.

Languages: Uzbek 74.3%, Russian 14.2%, Tajik 4.4%, other 7.1%

Ethnicity/race: Uzbek 80%, Russian 5.5%, Tajik 5%, Kazak 3%, Karakalpak 2.5%, Tatar 1.5%, other 2.5% (1996 est.)

Religions: Islam (mostly Sunnis) 88%, Eastern Orthodox 9%

Literacy rate: 99% (2005 est.)[20]

Table 1. Total Number of Internet audience.[21]

YEARS	POPULATION	# OF USERS	PERCENTAGE
2003	25,620,000	---------	--------
2004	26,140,000	1,252,400	4.79%
2005	26,790,000	1,644,900	6.14%
June, 2006	27,000,000(est)	1,820,000	6.74%

19. World Gazetteer, "World," http://www.world-gazetteer.com/wg.php?x=1124295705&men=gpro&lng=en&gln=xx&dat=32&srt=npan&col=aohdq (Accessed Aug. 17, 2005).

20. SESRTCIC, "Search results for Uzbekistan," http://www.sesrtcic.org/statistics/couresults.php?lastyear=2004&coucode=UZB&catname=Agriculture&indclass=byInd&year%5B%5D=All&indcode%5B%5D=All (Accessed Aug. 8, 2005).

21. Maili Torma, "Number of Mobile Subscribers in Uzbekistan Up 38% in H1 2005," World Markets Analysis, Aug. 3, 2005, LexisNexis (Accessed Aug. 16, 2005).