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WORLD ANTI PIRACY OBSERVATORY

REPUBLIC OF KAZAKHSTAN

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I. Legislation

1. Copyright laws

The main copyright legislation in Kazakhstan is:

- Civil Code of the Republic of Kazakhstan No. 409 (chapter 5) (special section) of 1 July 1999;
- Law No. 6 of the Republic of Kazakhstan of 10 July 1996 (Закон Республики Казахстан от 10 июня 1996 года N 6), "On copyright and neighbouring rights";
- Decree No. 1083 of the Government of the Republic of Kazakhstan of 20 October 2004, "On the approval of the minimal rates of royalties for certain uses of works";
- Order No. 362 of the Vice Minister of Justice of the Republic of Kazakhstan of 15 December 2004, "On the approval of the procedure for the application of the minimal rates of royalties for the use of works through public performance, communication to the public, and for the reproduction and (or) distribution of works";
- Order No. 145 of the Minister of Justice of the Republic of Kazakhstan of 27 September 2002, "On the approval of the procedure concerning the State registration of licensing agreements for the use of works and creations governed by neighbouring rights"; and
- Order No. 146 of the Minister of Justice of the Republic of Kazakhstan of 27 September 2002, "On the approval of the procedure concerning the State registration of rights to works protected by copyright and neighbouring rights".

2. Other laws

The other laws having an impact on the protection of copyright in Kazakhstan are:

- Code of Administrative Violations No. 155 of the Republic of Kazakhstan of 30 January 2001 (Article 129, "Infringements of copyright and neighbouring rights");
- Criminal Code of the Republic of Kazakhstan No. 167 of 16 July 1997 (Article 184, "Infringements of copyright and neighbouring rights");
- Customs Code of the Republic of Kazakhstan No. 401 of 5 April 2003 (Part 10);
- Decree No. 371 of the Government of the Republic of Kazakhstan of 21 April 2005,
 "On the approval of rules governing domestic trade" (paragraph 2); and
- Decree no. 1100 of the Government of the Republic of Kazakhstan of 27 October 2004, "On the approval of the registration of equipment and tangible media used for the reproduction of audiovisual works or audio recordings for personal use".

3. Latest developments and perspectives

The Kazakhstan Government recently elaborated a draft law "On the introduction of amendments and additions to certain legislative acts of the Republic of Kazakhstan pertaining to intellectual property". The aim of the draft Law is to refine the existing legislation in this area. The draft Law makes provisions for the introduction of amendments and additions to the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights", and in particular for its enforcement in accordance with the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). For example, there are a number of additions relating to technical devices that control access to protected works and prevent or restrict acts that are not authorized by the copyright holder. Moreover, the draft Law makes provisions for ensuring the transparency of organizations for the collective administration of rights.

Decree No. 658 of the Government of the Republic of Kazakhstan of 30 June 2008 (draft Law) was submitted for the consideration of the members of the Majilis, the Parliament of the Republic of Kazakhstan. The draft Law is currently being considered by the members of the Parliament.

4. Summary of legislation

• Exclusive rights of the authors and of the owners of neighbouring rights

Exclusive Rights of the authors

In accordance with the Civil Code and the Law of the Republic of Kazakhstan "On copyright and neighbouring rights", an author shall enjoy the following moral rights in relation to his work:

- (1) the right to have his authorship of the work recognized, including the right to require that his name be duly shown on copies of the work and in relation to each public use of the work, where such is feasible (right of authorship);
- (2) the right to use a fictitious name (pseudonym) in place of his true name and to require that it be shown on copies of a work and in relation to each public use of the work, or to refuse any mention of a name, that is to say to choose to be anonymous (right to be named);
- (3) the right to the integrity of the work, including its title, and the right to oppose any distortion, deformation or other derogatory act in relation to the work and to any other act liable to prejudice his honour or reputation (right to the protection of the author's reputation); and
- (4) the right to provide access to the work to an unspecified group of individuals (right to disclosure).

The exclusive right to exploit a work shall mean the right to carry out, authorize or prohibit the following acts:

- (1) reproduction of the work (right of reproduction);
- (2) distribution of the original or copies of the works by any means, including sale, rental, public lending, etc. (right of distribution);
- (3) importing copies of the work for the purposes of distribution, including copies made with the authorization of the author or other holder of copyright (right of importation);
- (4) presentation of the work in public (right of public presentation);
- (5) performance of the work in public (right of public performance);
- (6) communication of the work to the public, including broadcasting or cable distribution (right of communication to the public);
- (7) communication of the work to the public by broadcasting, including initial broadcasting or rebroadcasting (right of broadcasting);
- (8) communication of the work to the public by cable, including initial transmission or subsequent transmission (right of communication by cable);
- (9) translation of the work (right of translation);
- (10) adaptation, arrangement or other transformation of the work (right of adaptation); and
- (11) any other acts that do not contradict the legislation of the Republic of Kazakhstan (Articles 15 and 16 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

Exclusive right of the owners of neighbouring rights

Performers shall be granted the following moral rights and economic rights:

- (1) the right to be named;
- (2) the right to protection of their performances against any distortion, mutilation or other derogatory act liable to prejudice the honour or dignity of the performer (right to protection of reputation); and
- (3) the right to exploit a performance in any form whatsoever, including the right to remuneration for each form of use of the performance.

Moral rights shall belong to the performer independently of his economic rights and the performer shall retain them even if his exclusive right to exploit the work is assigned.

The exclusive right to exploit a performance means the right to authorize or prohibit the following acts:

(1) record the performance if it has not hitherto been recorded;

- (2) reproduce the recording of the performance directly or indirectly by any means;
- (3) broadcast or communicate to the public by cable the performance if it does not utilize a recording;
- (4) broadcast or transmit by cable the recording of the performance, except in the cases laid out in paragraph 1 of Article 39 of the Law of the Republic of Kazakhstan "On copyright and neighbouring rights"; and
- (5) rent a phonogram published for commercial purposes on which a performance has been recorded with the participation of the performer; this right shall be transferred to the phonogram producer on conclusion of a contract relating to the recording of the performance on the phonogram; however, the performer shall retain his right to remuneration for the rental of copies of the phonogram (Article 37 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

Phonogram producers shall enjoy the exclusive right to exploit their phonograms in any form, including the right to remuneration for each type of use of the phonogram.

The exclusive right to exploit a phonogram means the right to carry out or authorize the following acts:

- (1) direct or indirect reproduction of the phonogram by any means;
- (2) distribution of the original or copies of the phonogram, including import, by sale or assignment of property;
- (3) rental of the phonogram following distribution by the producer or with his authorization;
- (4) adaptation or any other transformation of the phonogram;
- (5) communication to the public of the phonogram (Article 38 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

A broadcasting or cable distribution organization shall enjoy the exclusive right in its programme to exploit it in any form and to authorize its use, including the right to remuneration for the grant of such authorization.

The exclusive right to authorize use of the program means the right to carry out, authorize or prohibit the following acts:

- (1) the broadcasting of the programme;
- (2) the communication of the programme to the public by cable or by broadcasting;
- (3) the recording of the programme;

- (4) the reproduction of the recording of the programme;
- (5) the communication of the programme to the public in places where a charge is made for admission; and
- (6) the communication of the programme to the public (Article 40 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").
- Exceptions and limitations to copyright

The Civil Code and the Law of the Republic of Kazakhstan, "On copyright and neighbouring rights" make provisions for the free use of works subject to copyright, in particular:

- 1. The reproduction of a lawfully disclosed work for exclusively personal purposes shall be permitted in one single copy without the author's consent and without payment of remuneration, except in the cases laid down in Article 26 of the Law of the Republic of Kazakhstan "On copyright and neighbouring rights";
- **2**. The provisions of paragraph 1 shall not apply:
 - (1) to the reproduction of works of architecture in the form of similar buildings and structures;
 - (2) to the reproduction of databases or substantial parts of databases;
 - (3) to the reproduction of computer programs, except in the cases laid down in Article 24 of the Law of the Republic of Kazakhstan, "On copyright and neighbouring rights"; and
 - (4) to the reproduction of books (in their entirety) and musical scores (Article 18 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

The following shall be authorized without the author's consent and without payment of remuneration, provided that the name of the author whose work is used and the source of the borrowing shall be mentioned:

- (1) the quotation, in the original language or in translation, for scientific or for research, polemic, critical or informational purposes and to the extent justified by the intended purpose, of extracts from lawfully disclosed works, including the reproduction of extracts from newspaper and magazine Articles in press reviews;
- (2) the use of lawfully disclosed works and extracts from such works for the purpose of illustration in publications, radio or television broadcasts or sound or visual recordings of educational character, and to the extent justified by the intended purpose;

- (3) the reproduction in newspapers, the broadcasting or communication to the public by cable of Articles published in newspapers or magazines on economic, political, social or religious topics, or broadcast works of the same nature, insofar as the author has not expressly prohibited such reproduction, broadcasting or cable communication;
- (4) the reproduction in newspapers, the broadcasting or communication to the public by cable of political speeches, addresses, lectures and other works of the same nature given in public, to the extent justified by an informational purpose. The author shall nevertheless retain the right to publish such works in collections;
- (5) the reproduction or communication to the public, in connection with the reporting of current events by means of photography or cinematography, broadcasting or public cable communication, of works that are seen or heard in the course of such events, to the extent justified by an informational purpose. The author shall nevertheless retain the right to publish such works in collection; and
- 6) the reproduction in Braille or by other special means for the benefit of the blind, done without gainful intent, of lawfully disclosed works, with the exception of works created specially for such means of reproduction (Article 19 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

It shall be permissible, without the author's consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned, to make a reprographic reproduction in one copy and without gainful intent:

- (1) of a lawfully published work insofar as the reproduction is carried out by a library or archive service and its purpose is to restore or replace lost or damaged copies, or to place copies at the disposal of other libraries that for any reason have lost works from their own collections;
- (2) of isolated Articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works (with or without illustration), if the reproduction is the work of a library or archive service and it is done to meet the requirements of natural persons who use the copies obtained for study or research purposes;
- (3) of isolated Articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works (with or without illustration), if the reproduction is carried out by an educational establishment and the copy obtained is intended for classroom use (Article 20 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

The reproduction, broadcasting or communication to the public by cable of architectural works, photographic works or works of fine art permanently located in a public place

shall be permissible without the author's consent and without payment of remuneration, except where the presentation of the work constitutes the main feature of such reproduction, broadcast or communication to the public by cable, or if used for commercial purposes (Article 21 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

The public performance of lawfully published musical works during official or religious ceremonies and at funerals shall be permissible without the author's consent and without payment of remuneration, to the extent justified by the ceremonies (Article 22 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

The reproduction of works for the purposes of judicial or administrative proceedings shall be permissible without the author's consent and without payment of remuneration, to the extent justified by those purposes (Article 23 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

- 1. Any person lawfully in possession of a copy of a computer program or database may, without the permission of the author or other holder of the exclusive right to exploit the work and without paying any additional remuneration:
 - (a) make alterations to the computer program or the database, where the purpose is solely to ensure their operation on the user's material, and perform any act in relation to the operation of the computer program or database according to its intended purpose, included any inputting or storing in a memory (that of an individual computer or of a computer in a network), and also correct obvious errors, except where otherwise provided in the contract concluded with the author; and
 - (b) make a copy of the computer program or the database, provided that the copy is intended solely for archiving and for the replacement of a lawfully acquired copy in the event of the latter having been lost, destroyed or rendered useless, on the understanding that the copy of the computer program or database may not be used for purposes other than those specified in item (1) and that it must be destroyed should possession of the copy of the computer program or database cease to be lawful.
- 2. Any person lawfully in possession of a copy of a computer program may, without the consent of the author or other holder of exclusive rights and without paying any additional remuneration, reproduce or convert the object code to a source code (decompile the program) or have such acts carried out by others if they are essential to ensure the interactive capabilities of a computer program independently created by such person with other programs compatible with the programs decompiled, in which case the following conditions have to be fulfilled or observed:
 - (1) the person concerned must not previously have had access to other sources capable of providing him with the information necessary to ensure interactive capability;

- (2) the above-mentioned acts may only be performed in relation to the parts of the computer program whose decompilation is essential for the achievement of the interactive capability; and
- (3) the information obtained by a decompilation may only be used for the achievement of the interactive capability of an independently created computer program with other programs; the information may not be transmitted to other persons, except where necessary to ensure the interactive capability of the independently created computer program with other programs and may not be used for the development of a computer program of a type essentially comparable to the decompiled program, or for carrying out any other act that infringes copyright.
- 3. The application of this Article may neither unjustifiably affect the normal exploitation of the computer program or database nor, without valid reason, prejudice the legitimate interests of the author or other holder of exclusive rights in the program or database (Article 24 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

A broadcasting organization may, without the author's consent and without payment of any additional remuneration, make an ephemeral recording of a work in which it has obtained a right of broadcasting, subject to respect for the following conditions:

- (1) the recording is made with its own equipment and for the purposes of its own broadcasts;
- the recording is destroyed within six months after having been made, except where a longer period has been agreed with the author of the recorded work; the recording may be preserved without the consent of the author of the work in official archives if it is of a purely documentary nature (Article 25 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").
- 1. The reproduction for personal purposes of an audiovisual work or of the sound recording of a work shall be permissible without the consent of the author of the work, the performer or the phonogram producer, but subject to payment of remuneration to them.
- 2. The remuneration for reproduction as referred to in paragraph (1) shall be paid by the manufacturers or importers of the equipment and of the recording material used for the reproduction.
 - A list of such equipment and recording material is contained in Decree No. 1100 of the Government of the Republic of Kazakhstan of 27 October 2004.
- 3. The collection and distribution of such remuneration shall be carried out by one of the organizations for collective administration of the economic rights of authors, of phonogram producers and performers under an agreement concluded with such organization (Article 43 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

- **4.** Unless otherwise agreed, remuneration shall be distributed as follows: 40 percent to the authors, 30 percent to the performers and 30 percent to the phonogram producers.
- 5. The amount of the remuneration and the manner of payment shall be determined by agreement between the aforementioned manufacturers and importers, on the one hand, and the organizations for collective administration of the economic rights of authors, phonogram producers and performers, on the other, or, if the parties fail to agree, by a statutory body of the Republic of Kazakhstan.
- 6. No remuneration shall be paid for the recording equipment and material referred to in paragraph (2) that are exported or that constitute professional equipment and material not intended for use in home recording (Article 26 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

Protection of foreign works

The Civil Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On copyright and neighbouring rights" make provisions for protecting the rights of foreign authors in accordance with the international treaties ratified by the Republic of Kazakhstan.

Copyright extends to works, whether disclosed or not, on the territory of the Republic of Kazakhstan, regardless of the nationality of the authors and of their successors in title.

Protection is afforded to a work in accordance with the international treaties ratified by the Republic of Kazakhstan where the work entered the public domain in the country of origin, to be determined in accordance with the relevant international treaty ratified by the Republic of Kazakhstan, before expiry of the term of copyright specified in that country, and where the work entered the public domain in the Republic of Kazakhstan before expiry of the term of copyright (Article 5 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

Period of copyright protection

Copyright shall subsist throughout the lifetime of the author and for 70 years after his death.

Copyright in a work of joint authorship shall subsist until the death of the last surviving joint author and for 70 years thereafter.

The author's right of authorship, right to be named and right to protection of his reputation, shall be protected without limitation in time (Article 28 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

Registration

It is not mandatory to register a work in order for it to be protected in the Republic of Kazakhstan, since a scientific, literary or artistic work shall enjoy copyright by the mere fact of its creation. The origin and exercise of copyright shall not require either the registration of the work or the accomplishment of any other act or formality.

The holder of copyright or of an exclusive right in a work, whether disclosed or not, may, in order to attest to the authorship of the work, the fact and date of publication of the work, or any contract in relation to copyright in the work, have the work recorded in the official registers at any time during the term of copyright protection.

Registration shall be carried out by the statutory body (the Committee for Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan) under the regulatory texts in force (Article 29 of the Law of the Republic of Kazakhstan of 10 June 1996, "On copyright and neighbouring rights").

The procedure for registering rights to works is governed by the Procedure on the State registration of rights to works protected by copyright and neighbouring rights, as approved by Order No. 146 of the Ministry of Justice of the Republic of Kazakhstan of 27 September 2002.

State registration of rights to works protected by copyright and neighbouring rights is carried out by the Committee within one month of receipt of the application of the author(s) or copyright holder(s). State registration is based on the application of the author(s) or copyright holder(s).

State registration of rights to works protected by copyright and neighbouring rights is only official once the relevant information has been entered into the State registry of rights to works protected by copyright and neighbouring rights and once an attestation of State registration of intellectual property, signed by the president of the Committee or his deputy, has been issued.

The attestation of State registration of intellectual property is issued for an unlimited period of time and remains valid unless due legal process establishes that another person is the author or copyright holder.

5. International treaties

- **1.** Universal Copyright Convention
- 2. Berne Convention for the Protection of Literary and Artistic Works (Law of the Republic of Kazakhstan of 10 November 1998, "On the accession of the Republic of Kazakhstan to the Berne Convention for the Protection of Literary and Artistic Works");
- 3. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Law of the Republic of Kazakhstan of 7 July 2000, "On the accession of the Republic of Kazakhstan to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms");
- **4.** WIPO Copyright Treaty (Law of the Republic of Kazakhstan of 16 April 2004, "On the accession of the Republic of Kazakhstan to the WIPO Copyright Treaty"); and
- 5. WIPO Performances and Phonograms Treaty (Law of the Republic of Kazakhstan of 16 April 2004, "On the accession of the Republic of Kazakhstan to the WIPO Performances and Phonograms Treaty").

Moreover, in cooperation with the countries of the Commonwealth of Independent States (CIS), Kazakhstan is also party to the following:

- 1. Cooperation agreement on prevention of intellectual property infringement (Law of the Republic of Kazakhstan of 11 May 2001, "On the ratification of the cooperation agreement on prevention of intellectual property infringement");
- 2. Cooperation agreement on protection of copyright and neighbouring rights (Decree of the Supreme Council of the Republic of Kazakhstan of 16 June 1994, "On the ratification of the cooperation agreement on protection of copyright and neighbouring rights"); and
- 3. Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Azerbaijan on cooperation for the protection of copyright and neighbouring rights (Decree No. 235 of the Government of the Republic of Kazakhstan of 14 February 2000, "On the approval of the agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Azerbaijan on cooperation for the protection of copyright and neighbouring rights").

II. Measures and Remedies

1. Copyright infringement

Infringement of copyright or neighbouring rights under the Law of the Republic of Kazakhstan "On copyright and neighbouring rights" shall make the infringer liable to civil, criminal and administrative sanctions in accordance with the legislation of the Republic of Kazakhstan.

Administrative sanctions shall apply for the illegal use of works subject to copyright and neighbouring rights, and for the acquisition, storage, transfer or manufacture of counterfeit copies of works and/or phonograms with gainful intent or for the purpose of acquiring authorship or claiming joint authorship (Article 129 of the Code on Administrative Violations of the Republic of Kazakhstan).

Criminal sanctions shall apply in case of:

- the acquisition of authorship or claiming of joint authorship where such an act might cause significant damage to the author or other copyright holder or cause substantial harm to their rights or legal interests; and
- the illegal use of works protected by copyright or neighbouring rights, including the acquisition, storage, transfer or manufacture of counterfeit copies of works and/or phonograms with gainful intent, in significant quantities (Article 184 of the Criminal Code of the Republic of Kazakhstan).

The law enforcement bodies of the Republic of Kazakhstan are particularly attentive to IT-related crime, including in the sphere of intellectual property. Currently, the pattern of such crime is changing significantly, and is marked by increased use of the Internet to distribute and exchange information prohibited from free circulation, unlicensed computer programs and other counterfeit products. In order to improve the prevention, detection and exposure of such crimes, the Ministry of Internal Affairs of the Republic of Kazakhstan has drawn up an agency programme to prevent IT crime for the period 2008-2010.

The programme sets out system-wide measures for structuring efforts in this field, including the introduction of new working methods, the improvement of employees' professional skills, the streamlining of the regulatory legal framework, the upgrading of technical equipment, and the broader involvement of society and interested organizations.

2. Remedies to protect copyright holders

Infringement of copyright or neighbouring rights shall make the infringer liable to civil, criminal and administrative sanctions in accordance with the legislation of the Republic of Kazakhstan (Article 48 of the Law of the Republic of Kazakhstan "On copyright and neighbouring rights").

The courts shall ensure protection for copyright and neighbouring rights through the following remedies:

- (1) recognition of the rights;
- (2) restoral of the prior situation;

- (3) cessation of the acts that infringe or are liable to infringe rights;
- (4) payment of damages, including loss of earnings;
- (5) surrender of revenue obtained by the infringer through the infringement of copyright and neighbouring rights;
- (6) payment of an indemnity of between 20 and 50,000 times the minimum salary set by the legislation of the Republic of Kazakhstan, and in the case of infringement of computer program or database copyright, an amount between 500 and 50,000 times the minimum salary set by the legislation of the Republic of Kazakhstan; the court shall determine the amount of the indemnity to be paid in place of damages or surrender of revenue; and
- (7) adoption of other measures provided for in the legislative texts as required to defend such rights.

The choice between the measures referred to in items (4), (5) and (6) shall be made by the holder of copyright or neighbouring rights (Article 49 of the Law of the Republic of Kazakhstan "On copyright and neighbouring rights").

It should be noted that, as a penalty for copyright infringement, the court may apply a fine, community service or, in certain cases, imprisonment.

In addition, the court may confiscate and destroy counterfeit copies and the equipment used to make them.

3. Provisional measures

The legislation of Kazakhstan provides for provisional measures in order to form a body of evidence. Before the case is heard, the court may prohibit the defendant from manufacturing, reproducing, making or using copies of works or phonograms presumed to be counterfeit. The court may order the seizure and confiscation of all copies of works and phonograms presumed to be infringing, and of the materials and equipment used in their manufacture and reproduction.

The court may order the confiscation of counterfeits of works or phonograms and the materials and equipment used in their manufacture. Counterfeits of a work or phonogram may be surrendered to the holder of copyright or neighbouring rights, at the latter's request, or destroyed on a court order.

The material and equipment used in their manufacture may be destroyed or confiscated by order of the court (Article 49 of the Law of the Republic of Kazakhstan "On copyright and neighbouring rights").

4. Penalties for copyright infringement

Civil rights are protected by the courts through the following means: recognition of rights; restoral of the prior situation; cessation of the acts that infringe or are liable to infringe rights; ordering the fulfilment of specific obligations; recovery of damages; forfeiture; annulment of business deals; compensation for moral damage; suspension or modification of legal relationships; annulling or invalidating actions that do not comply with legislation passed by State authorities or local representative bodies or statutory organs; penalty fines of the State authority or official for impeding a citizen or legal person in appropriating or exercising their rights; and other means provided for by legislative acts (Article 9 of the Civil Code of the Republic of Kazakhstan).

Exclusive rights are protected by Article 9 of the Civil Code. Exclusive rights may also be protected by the following means:

- (1) confiscation of material objects liable to infringe exclusive rights, and material objects created as a result of infringement;
- (2) mandatory publication of the offence committed, including information about the rightful copyright holder; and
- (3) other means provided for in legislative acts.

In the case of violations of contracts relating to the use of the products of intellectual and creative activity and means of individualizing, the general rules on sanctions for breach of obligations shall apply (Chapter 20 of the Civil Code of the Republic of Kazakhstan) (Article 970 of the Civil Code).

- 1. In the case of acquisition of authorship or coerced joint authorship, and where the act has caused significant damage to the author or to another copyright holder or has caused significant harm to their rights or legal interests, the following penalties may be applied: a fine in an amount of between 100 and 500 times the monthly assessment index, or in an amount of the wages or other income of a convicted offender for a period of one to five months; between 100 and 180 hours of community work or up to two years' imprisonment.
- 2. For the illegal use of works protected by copyright or neighbouring rights, and for the acquisition, storage, transfer or manufacture of counterfeit copies of works and/or phonograms for gainful purposes, and in significant quantities, the following penalties may be applied: a fine in an amount of between 500 and 700 times the monthly assessment index, or in an amount of the wages or other income of a convicted offender for a period of five to ten months; between 180 and 200 hours of community work; a period of custody of between three and six months.
- **3.** Where the aforementioned violations have been committed:
 - (a) on multiple occasions;
 - (b) by a group of individuals by previous concert or by an organized group;
 - (c) on a large scale or causing extensive damage; and

(d) by a person abusing their official position;

the penalty is imprisonment for a period of two to five years, with or without confiscation of property (Article 184 of the Criminal Code of the Republic of Kazakhstan).

According to the legislation of the Republic of Kazakhstan, the court may order the confiscation of counterfeit copies of works or phonograms and of the materials and equipment used in their reproduction. Infringing copies of a work or phonogram may be surrendered to the holder of copyright or neighbouring rights, at the latter's request, or destroyed on a court order.

Materials and equipment used in their reproduction may be destroyed on a court order or surrendered to public revenue (Article 49 of the Law of the Republic of Kazakhstan "On copyright and neighbouring rights").

Exclusive rights are protected by means of mandatory publication of the offences committed, including information about the rightful copyright holder (Article 970 of the Civil Code of the Republic of Kazakhstan).

The legislation of the Republic of Kazakhstan provides for:

- compensation for damages, including loss of profit;
- repayment of revenue obtained by the offender through the infringement of copyright and neighbouring rights; and
- payment of compensation.

5. Requirements for foreign persons

Foreign citizens and stateless persons, foreign organizations and internationals are entitled to apply to the courts of the Republic of Kazakhstan in order to protect their infringed or contested rights, freedoms and legal interests.

Foreign persons enjoy procedural rights and fulfil procedural obligations on the same basis as citizens and organizations of the Republic of Kazakhstan (Article 413 of the Code of Civil Procedure of the Republic of Kazakhstan).

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The statutory body in the field of copyright protection is the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan, which performs checks and other functions within its sphere of competence (status of the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan, as approved by Decree No. 102 of the Ministry of Justice of the Republic of Kazakhstan of 21 April 2008).

In addition, the Ministry of Internal Affairs, the Agency for Preventing Financial Crime and Corruption (financial law enforcement), the Customs Control Committee of the Ministry of Finance, and the Attorney General are responsible for monitoring copyright within their sphere of competence. These organs can bring criminal proceedings for copyright infringement.

b) Enforcement bodies entitles to act ex-officio in copyright infringement cases

In cases of copyright infringement that come under the Criminal Code, the law enforcement authorities can bring criminal proceedings.

In the case of the criminal acts or crimes provided for under Article 184 of the Criminal Code of the Republic of Kazakhstan (infringement of copyright and neighbouring rights), a preliminary inquiry is carried out by the internal affairs organ or the finance police bringing criminal proceedings (Article 192 of the Criminal Procedural Code of the Republic of Kazakhstan).

c) Courts dealing with copyright cases

Cases relating to copyright infringement are dealt with by all district, city and specialist administrative courts.

2. Enforcement at the border

In accordance with national legislation, the customs agencies may, within their sphere of competence, take steps to protect copyright at the border (Article 411 of the Customs Code of the Republic of Kazakhstan).

For the purposes of customs control, the statutory organ maintains and publishes a register (Article 411 of the Customs Code of the Republic of Kazakhstan).

- 1. Inclusion on the register is carried out by the statutory organ upon receipt of the application of the holder of copyright for intellectual property.
- 2. The copyright holder or other person representing the interests of the copyright holder (hereinafter referred to as "the applicant") who has reasonable grounds to suppose that his rights to intellectual property have been or may be infringed when transporting goods across the customs border of the Republic of Kazakhstan may submit a written application to the statutory organ regarding the protection of his rights to intellectual property.

- 3. The application must contain the following information:
 - (1) a statement by the applicant on the protection of rights to intellectual property;
 - (2) information about the applicant;
 - (3) information on the intellectual property in question; the period of time for which the copyright holder believes he requires the assistance of the customs organs in order to protect his rights; a description of the goods containing intellectual property; and detailed information on the goods that the copyright holder believes to be counterfeit, thus enabling the customs organs to identify said goods; and
 - (4) the applicant's agreement to compensate the declarant and other persons and to pay customs charges incurred in connection with the delay in releasing intellectual property goods that are claimed to be counterfeit, if the goods are subsequently found not to be counterfeit.
- 4. Documents confirming the presence and ownership of intellectual property rights (patent, certificate, licensing agreement or other document) must be attached to the application, together with a mandate issued by the copyright holder to his representative, and an insurance policy for third party damages in the name of the applicant. The sum insured must be no less than 1,000 times the monthly assessment index laid down by the State budget for the financial year in question.

A description of the identifying features of counterfeit goods must be presented with the application.

Where possible, specimens of the intellectual property goods and counterfeit goods should also be provided.

5. The statutory organ shall consider the application within 30 calendar days from the date of receipt, and will then decide whether to enter the goods into the register.

In order to verify the information provided by the applicant, the statutory organ may request written confirmation from a third party and the relevant State organs. Those persons are obliged to provide the documents requested within ten calendar days of receipt of the request.

If there are sufficient grounds for action, the statutory organ will extend the period for considering the application, but by no more than three months.

The decision of the statutory organ on whether to include the goods in the register is taken by order of the director of the statutory organ.

The goods will not be included in the register if the applicant provides insufficient information or if it has not been possible to confirm the features of the counterfeit goods.

The applicant will be informed in writing of the decision of the statutory organ.

6. Should the information contained in the application or its accompanying documents change, the applicant must inform the statutory organ to that effect within 15 calendar days.

- 7. Intellectual property goods may be excluded from the register:
 - (1) at the request of the applicant;
 - (2) if incomplete or false information comes to light when including the goods in the register;
 - (3) if the applicant fails to inform the statutory organ of any changes to the information contained in the application within the specified period;
 - (4) if the rights to the intellectual property in question cease; and
 - (5) if the applicant fails to comply with the provisions of this section.
- 8. The statutory organ shall inform the applicant in writing within three working days if the goods have been excluded from the register.
- 9. If the rights to the intellectual property in question cease, the copyright holder must inform the statutory organ accordingly within three working days (Article 413 of the Customs Code of the Republic of Kazakhstan).

If in the course of customs procedures and checks on the goods included in the register the customs organ detects signs that the goods are counterfeit, the release of the goods will be suspended (Article 416 of the Customs Code of the Republic of Kazakhstan).

Compliance with copyright legislation at borders is the responsibility of customs organs, which act within their sphere of competence to protect the rights of the copyright holder (Article 411 of the Customs Code of the Republic of Kazakhstan). In addition, judicial organs may also perform checks at customs borders in order to ensure compliance with copyright. This does not apply in cases where copyright goods are being transported in a single copy for personal use.

The importer and the copyright holder are informed in a timely manner if the release of their goods is to be suspended by customs organs. To that end, the customs organ shall inform the applicant and the declarant of the decision to suspend the release of intellectual property goods and the reasons for the suspension within one working day of the decision; the customs organ shall further inform the declarant of the name and address of the applicant, and shall inform the applicant of the name and address of the declarant (Article 416 of the Customs Code of the Republic of Kazakhstan).

The decision to suspend the release of goods will be made within ten working days by the director of the customs organ in charge of customs procedures, or by his deputy. At the request of the applicant, this period may be extended, but by no longer than ten working days.

Upon presentation of evidence of legal proceedings in the action relating to the infringement of intellectual property rights, the period of suspension in releasing the goods shall be extended until the decision in the action comes into legal force (Article 416 of the Customs Code of the Republic of Kazakhstan).

Current legislation does not empower customs organs the right to act on their own initiative.

However, the Republic of Kazakhstan has recently elaborated a draft Law aimed at normalizing customs legislation in accordance with the WTO TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights. It provides for additional powers to be granted to customs organs to enable them to suspend the release of intellectual property goods without the need for an application from the copyright holder (the *ex officio* principle).

The adoption of the draft Law will permit customs organs to act on their own initiative when they intercept copyright infringement at the customs border.

Customs organs do not apply measures to protect intellectual property rights in the case of goods subject to intellectual property rights that are transported across the customs border of the Republic of Kazakhstan:

- (1) by physical persons or in international postal packages, unless the goods are intended for industrial or business purposes; and
- (2) the transit of goods in accordance with the customs system (Article 420 of the Customs Code of the Republic of Kazakhstan).

IV. Public Awareness

1. Awareness campaigns and actions

The mass media institutions regularly publish articles or broadcast TV/radio programs on various issues related to copyright cases.

The Ministry of Justice organizes Republican promotional events aimed at preventing infringement and its consequences in the sphere of intellectual property by adopting a number of ideological and educational measures to raise legal consciousness among the general public and clarify legislation relating to intellectual property rights (Intellekt).

2. Promotion of legal exploitation

Information not available

4. Best practices

Operational procedures in Almaty in February 2008 led to the discovery of an underground workshop for manufacturing pirate DVDs.

V. Capacity-building

1. Training

The Ministry of Justice organizes promotional events aimed at preventing infringement and its consequences in the sphere of intellectual property by adopting a number of ideological and educational measures to raise legal consciousness among the general public and clarify legislation relating to intellectual property rights (Intellekt), both on national and municipal level.

2. Establishment of specialized units and intersectoral groups

The law enforcement authorities have established a subdivision that deals specifically with issues of copyright protection, and the Ministry of Internal Affairs has established a department to fight IT crime. As part of the Customs Control Committee of the Ministry of Finance, a division for protecting intellectual property has been established.

The Republic of Kazakhstan permits the formation of social organizations based on voluntarism, equality among members (participants), autonomy, legality, accountability and transparency. The Law of the Republic of Kazakhstan "On copyright and neighbouring rights" allows for the formation of organizations that govern economic rights on a collective basis (the Kazakhstan authors' society).

By means of the Republic's State budget-supported enterprise, the "National Intellectual Property Institute", the Ministry of Justice has established a learning centre to provide basic and advanced training for intellectual property specialists. The Ministry of Justice continues to organize seminars and round tables on issues relating to the protection of intellectual property rights with the participation of the law enforcement authorities and copyright holders.

3. Best practices

Information not available

VI. Other

1. TPM/DRM

The Republic of Kazakhstan is currently elaborating a draft Law "On amendments and additions to certain legislative acts of the Republic of Kazakhstan relating to intellectual property", which is aimed at further improving national legislation in this area. The amendments and additions pertain to technical devices that control access to and storage of works and prevent or limit actions not authorized by the copyright holder. The draft Law is currently before Parliament.

2. Licensing Schemes

Information not available

3. Optical Discs

Information not available

4. Hotlines

A confidential hotline for the whole Republic deals specifically with issues relating to the protection of intellectual property: 119. A call centre is currently being set up.

5. Contact Details

Industrial Property Office: Committee for Intellectual Property Rights Office 1016, 8A (3) 35th Street Left Bank Astana 010000

Tel.: (73.172) 14.87.21

14.87.53

Fax: (73.172) 77.47.77 E-mail: <u>kazpat@nursat.kz</u>