

Annex 28

Government Resolution No. 1102 as of 28 October 2004

On Draft Law of the Republic of Kazakhstan "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on Intellectual Property Rights Issues"

The Government of the Republic of Kazakhstan RESOLVES:

Submit Draft Law of the Republic of Kazakhstan "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on Intellectual Property Rights Issues" to Mazhilis of the Parliament of the Republic of Kazakhstan for consideration.

Prime Minister,
Republic of Kazakhstan

Draft

Law of the Republic of Kazakhstan "On Amendments and Addenda to Legal Acts of the Republic of Kazakhstan on Intellectual Property Rights Issues"

Article 1. Make changes and addenda to the following legal acts of the Republic of Kazakhstan:

1. Criminal Code of the Republic of Kazakhstan as of 16 July 1997 (Newsletter of the Parliament of the Republic of Kazakhstan, Nos. 15-16, 1997, p. 211; 1998, No. 16, p. 219; No. 17-18, p. 225; 1999, No. 20, p. 721; No. 21, p. 774; 2000, No. 6, p. 141; 2001, No. 8, p. 53, 54; 2002, No. 4, p. 32, 33; No. 10, p. 106; No. 17, p. 155; No. 23-24, p. 192; 2003, No. 15, p. 137; No. 18, p. 142; 2004, No. 5, p. 22; No. 17, p. 37):

1) add words ", *except for article 184 and 184-1 herein*" after words "*this article*" in paragraph 2 of comments to article 175;

2) set article 184 as follows:

"Article 184. Infringement of Copyright and Related Rights

1. Usurpation of the authorship or coercion into joint authorship shall result in - fines equal to 100-500 monthly calculation indexes, or to the amount of wages or other income received by the convict for a period of one to five months, or in public works from 100 to 180 hours, or in a prison term of up to two years,

if the action was performed with the view to receive profits and resulted in severe damages.

2. Illicit use of copyrighted works and works covered by relating rights as well as purchase, storage or transportation of pirated copies of works and (or) phonograms on a large scale and with the view to receive profits (commercially) shall result in –

finest equal to 500-700 monthly calculation indices, or to the amount of wages or other income received by the convict for a period of five to ten months, or in public works from 100 to 180 hours, or in detention for three to six months.

3. If the actions covered in part two herein were committed:

a) repeatedly;

b) by a group of persons upon preliminary agreement or by an organized group;

c) on a large scale;

d) with prevarication (abusing official title/position)

shall result in a prison term from two to five years with or without deprivation of the convict's property.

Notes:

1. Actions covered in article 184 and 184-1 herein shall be qualified as resulting in a severe damage or made on a large scale if the cost of the use of intellectual property rights or cost of copies of works and (or) phonograms or goods containing inventions, utility models, industrial, designs, selection achievements or integrated-circuit layouts exceeds one hundred monthly calculation indices, the amount of the latter being defined by the laws of the Republic of Kazakhstan at the time of committing the crime.

2. Actions covered in article 184 and 184-1 herein shall be qualified as resulting in a specially severe damage or made on a specially large scale if the cost of the use of intellectual property rights or cost of copies of works and (or) phonograms or goods containing inventions, utility models, industrial, designs, selection achievements or integrated-circuit layouts exceeds five hundred monthly calculation indices, the amount of the latter being defined by the laws of the Republic of Kazakhstan at the time of committing the crime.";

3) add article 184-1 as follows:

"Article 184-1. Infringing of the rights for inventions, utility models, industrial designs, selection achievements or integrated-circuit layouts

1. Disclosure without consent of an author or an applicant of the subject matter of an invention, utility model, industrial design, selection achievement or integrated-circuit layout prior to its official publication, as well as usurpation of the authorship or coercion into joint authorship shall result in -

finest equal to 100-500 monthly calculation indices, or to the amount of wages or other income received by the convict for a period of one to five months, or in public works for 180 to 240 hours, or in a detention term from three to six months,

if such an action resulted in a severe damage to the author or other right holder.

2. Illicit use of an invention, utility model, industrial design, selection achievement or integrated-circuit layout on a large scale and with the view to receive profits (commercially) shall result in -

finest equal to 500-700 monthly calculation indices, or to the amount of wages or other income received by the convict for a period of five to ten months, or in detention for three to six months.

3. If the actions covered in part two herein were committed:

a) repeatedly;

b) by a group of persons upon preliminary agreement or by an organized group;

c) on a specially large scale;

d) with prevarication (abusing official title/position)

shall result in a prison term from two to five years with or without deprivation of the convict's property.";

2. Procedural Criminal Code of the Republic of Kazakhstan as of 13 December 1997 (Newsletter of the Parliament of the Republic of Kazakhstan, 1997, No. 23, p. 335; 1998, No. 23, p. 416; 2000, Nos. 3-4, p. 66; No. 6, p. 141; 2001, No. 8, p. 53; No. 15-16, p. 239; No. 17-18, p. 245; No. 21-22, p. 281; 2002, No. 4, p. 32, 33; No. 17, p. 155; No. 23-24, p. 192; 2003, No. 18, p. 142; 2004, No. 5, p. 22):

1) add words "184-1 (part one)," after words "184 (part one)" in part one of article 34;

2) in article 192:

remove figures "184" from part two and three;

add figures "184, 184-1" after words "182 (*part two and three*)," in part four.

3. Civil Code of the Republic of Kazakhstan (Special Part) as of 1 July 1999 (Newsletter of the Parliament of the Republic of Kazakhstan, 1999, No. 16-17, p. 642; No. 23, p. 929; 2000, No. 3-4, p. 66; No. 10, p. 244; No. 22, p. 408; 2001, No. 23, p. 309; No. 24, p. 338; 2002, No. 10, p. 102; 2003, No. 1-2, p. 7; No. 4, p. 25; No. 11, p. 56; No. 14, p. 103; No. 15, p. 138, 139; 2004, No. 3-4, p. 16; No. 6, p. 42; No. 16, p. 91):

1) replace word "*intellektualdyk*" with "*ziyatkerlik*" in the state language throughout the entire text;

2) set subparagraph (2) of paragraph 2 of article 961 as follows:

"2) *performance, staging, phonogram and program of a cable or broadcast organization*";

3) in article 971:

in paragraph 2:

replace words "*and videorecording*" with "*or videorecording*" in subparagraph (3);

replace word "*drugih*" with "*inyh*" (Russian) in subparagraph (6);

add words "*, names of characters*" after words "*including its title*" in paragraph 3;

4) in article 972:

in paragraph 1:

in remove words "*(literary, belles-lettres, scientific, educational, journalistic, etc)*" from subparagraph (1);

replace conjunction "*and*" with word "*or*" in subparagraph (5);

remove words "*cinema, TV and video films/pictures, slide films and other cinematographic, television and radio works*" from subparagraph (6);

set part two of paragraph 3 as follows:

"*Derivative and compiles works shall be protected by copyright regardless of whether the works they are based upon or incorporate are copyrighted works or not.*";

5) in article 975:

add word "*state*" to words "*official documents*" in the heading;

in paragraph 1:

replace word "*draft*" with "*drafts*";

add word "*state*" to words "*official documents*";

add word "*state*" to words "*official documents*" in part two of paragraph 2;

set paragraph 3 as follows:

"*3. After the authorized body accepts a draft, the draft may be used without referring to the name of the developer and for free from author's fee.*";

6) replace words "*designated in the protection mark*" with words "*designated as the author in the original and (or) copy of the work*" in paragraph 2 of article 976;

7) in article 978:

in paragraph 1:

add words "*in regard of his/her work*" after "*author*";

add word "*property*" after "*exclusive*";

replace word "*vnaem*" with "*v prokat (vnayem)*" (Russian) in subparagraph (2) of paragraph 2;

set paragraph 4 as follows:

"4. If copies of a legally published work were put into circulation by means of sale, it is allowed to further distribute them without the consent of the author and for free from payment of the author's fee, until otherwise stipulated in the laws.";

8) replace word *"fifty"* with *"seventy"* in paragraphs 1 and 2, in part one of paragraphs 3 and 5 of article 982;

9) remove part two of paragraph 1 of article 983;

10) in article 986:

replace word *"organization"* with words *"cable or broadcasting organizations"* in paragraph 2;

replace words *"manufacturer of a phonogram"* with *"producer of a phonogram"* in paragraph 5;

add paragraph 6 as follows:

"6. Until otherwise proved, the natural or legal person whose name is on the phonogram and (or) on its box/case shall be qualified as the producer of the phonogram.";

11) in article 987:

in part one and to of paragraph 2:

replace words *"the right of the phonogram creator's"* with words *"the rights of the producer of the phonogram"*;

set paragraph 4 as follows:

"4. The rights of foreign performers, producers of phonograms, cable or broadcasting organizations shall be protected in the territory of the Republic of Kazakhstan in accordance with international treaties ratified by the Republic of Kazakhstan.";

12) replace words *"person who made the record of performance or a phonogram"* with *"producer of phonogram"* in article 988;

13) in article 989:

replace word *"fifty"* with *"seventy"* in paragraphs 1, 2, 3 and 4;

remove words *"performance record"* from paragraph 2;

14) in article 990:

replace words *"creators of the performance record"* with *"producers of phonograms"* in the heading;

replace *"creators of the performance record"* with *"producers"*;

replace *"international agreements of the Republic of Kazakhstan"* with *"international treaties ratified by the Republic of Kazakhstan"*.

4. Administrative Infringements Code of the Republic of Kazakhstan as of 30 January 2001 (Newsletter of the Parliament of the Republic of Kazakhstan, 2001, Nos. 5-6, p. 24; Nos. 17-18, p. 241; Nos. 21-22, p. 281; 2002, No. 4, p. 33; No. 17, p. 155; 2003, Nos. 1-2, p. 3; No. 4, p. 25; No. 5, p. 30; No. 11, p. 56, 64, 68; No. 14, p. 109; No. 15, p. 122, 139; No. 18, p. 142; Nos. 21-22, p. 160; No. 23, p. 171; 2004, No. 6, p. 42; No. 17, p. 97):

1) set articles 128 and 129 as follows:

"Article 128. Infringement of the right for inventions, utility models, industrial designs, selection achievements, and integrated circuit layouts

1. *Illicit use of an invention, utility model, industrial design, selection achievement or integrated-circuit layout, as well as disclosure of the subject matter of an invention, utility model, industrial design, selection achievement, or an integrated circuit lay-out without the consent of the author or the applicant prior to its official publication, as well as usurpation of the authorship or coercion into joint authorship (if such actions are not qualified as criminal) shall result in -*

finest equal to 20-50 monthly calculation indices for natural persons, from 50 to 100 calculation indices for officers, and 300-400 monthly calculation indices for legal entities.

2. *The same actions committed repeatedly within one year since the administrative penalty shall result in -*

finest equal to 50-100 monthly calculation indices for natural persons, 100-200 calculation indices for officers, and 400-700 monthly calculation indices for legal entities."

"Article 129. Infringement of copyright and related rights

1. *Illicit use of works covered by the copyright or related rights as well as purchase, storage or transportation of pirated copies of works and (or) phonograms in commercial purposes, as well as usurpation of the authorship or coercion into joint authorship (if such actions are not qualified as criminal) shall result in -*

finest equal to 5-10 monthly calculation indices for natural persons, 10-20 calculation indices for officers, and 50-100 monthly calculation indices for legal entities with expropriation of copies of works and phonograms in question as well as the tools that were used as the instrument of crime.

2. *The same actions committed repeatedly within one year since the administrative penalty stipulated in part one herein shall result in -*

finest equal to 10-20 monthly calculation indices for natural persons, 20-50 calculation indices for officers, and 100-200 monthly calculation indices for legal entities with expropriation of copies of works and phonograms in question as well as the tools that were used as the instrument of crime.

Note. The copies of works and phonograms expropriated in accordance with part one and two herein shall be disposed of in accordance with the procedure stipulated in article 628 herein, except for cases when they are transferred to the copyright or related rights holder upon his/her request.

The tools expropriated in accordance with part one and two of this article shall be made the property of the state in accordance with the procedure established by the law.";

2) set article 145 as follows:

"Article 145. Illicit appellation of a trademark, service mark, brand or name of place of origin of a good

1. *Illicit appellation of a trademark, service mark, or name of place of origin of a good, or name similar to the extent of confusion for denomination of identical or similar goods and services as well as illicit appellation of a brand name shall result in the following, if such actions have not been qualified as criminal:*

finest equal to 10-30 monthly calculation indices for natural persons, 30-50 calculation indices for officers, and 50-100 monthly calculation indices for legal entities.

2. *The same actions committed repeatedly within one year since the administrative penalty stipulated in part one of this article shall result in:*

finest equal to 30-50 monthly calculation indices for natural persons, 50-100 calculation indices for officers, and 100-200 monthly calculation indices for legal entities.";

3) replace "copyrights" and "copyright and related rights" with "intellectual property rights" in the heading and throughout article 551;

4) replace *"copyright and related rights"* with *"intellectual property rights"* in paragraph thirty-four of subparagraph (1) of part one of article 636.

5. Code of the Republic of Kazakhstan "On Taxes and Other Payments to the Budget" of 12 June 2001 (Tax Code) (Newsletter of the Parliament of the Republic of Kazakhstan, 2001, No. 11-12, p. 168; 2002, No. 6, p. 73, 75; Nos. 19-20, p. 171; 2003, No. 1-2, p. 6; No. 4, p. 25; No. 11, p. 56; No. 15, p. 133, 139; No. 21-22, p. 160; No. 24, p. 178; 2004, No. 5, p. 30; No. 14, p. 82):

1) add paragraph 8-1 to article 61 as follows:

"8-1. Fee for State Registration of Copyright and Related Rights, License Contracts for the Use of Works and Related Rights Objects";

2) add articles 422-1, 422-2 and 422-3, and chapter 75-1 as follows:

"Chapter 75-1. Fee for State Registration of Copyright and Related Rights, License Contracts for the Use of Works and Related Rights Objects

Article 422-1. General Provisions

1. A fee shall be charged for the state registration of the copyright and related rights, license contracts for the use of works and related rights objects (hereinafter referred to as the fee) during the first registration as well as for obtaining a copy of the document certifying the state registration (hereinafter referred to as the registration).

2. The authorized body on intellectual property (hereinafter referred to as the registering body) shall make the registration in accordance with the procedure and in cases stipulated by the laws of the Republic of Kazakhstan.

Article 422-2. Fee payers

Natural and legal persons, for whom the authorized body makes registration, shall pay the fee.

Article 422-3. Procedure on Fee Computation, Payment and Repayment

1. The amount of fee shall be computed at the rates defined by the Government of the Republic of Kazakhstan and paid before submission of application to the registering body.

2. The fee shall be transferred to the budget locally in the place of the taxpayer's registration.

3. No fees shall be paid back except for the cases when the applicant refuses the registration before submission of an application to the registering body.

In such a case the fee amount shall be paid back to the applicant upon presenting a documents issued by the registering body to certify that the applicant has not submitted the application for registration.";

3) add subparagraph (14) to paragraph 1 of article 495 as follows:

"14) for committing legally significant actions by the authorized body on intellectual property as stipulated in article 499-1 of this Code.";

4) add article 499-1 as follows:

"Article 499-1. Rates for the State Fee for Legally Significant Actions by the Authorized Body on Intellectual Property

A fee shall be charged for committing legally significant actions by the body authorized in intellectual property in the following amount:

1) 100 percent for issuing a provisional/preliminary patent, patent or certificate;

2) 100 percent for issuing a certificate for a renown trademark;

3) 150 percent for registration of industrial property use related agreement of cession, security agreement, or sublicense contract;

- 4) 1,500 percent for certification of a patent agent;
- 5) 100 percent for issuing a patent agent registration certificate.";

5) add article 505-1 as follows:

"Article 505-1. Exemption from the State Fee for Legally Significant Actions by the Authorized Body on Intellectual Property

The following persons shall be exempted from the state fee for legally significant actions by the authorized body on intellectual property:

- 1) aged and disabled people living in old people's homes and nursing homes;
- 2) pupils of boarding schools, professional schools and lyceums completely funded by the state and pupils living in dormitories;
- 3) repatriates (oralmans) before obtaining the citizenship of the Republic of Kazakhstan;
- 4) persons with the honored rank of Hero of the Soviet Union, Hero of Socialist Labor, and persons awarded with the Orders of: Glory of three grades, Labor Glory of three degrees, "Altyn kyan", "Halyk kaharmany", "Otan"; and mothers with many children, mothers awarded with honorary titles of "Mother Heroine", "Altyn alka", and "Kumis alka";
- 5) participants and disabled veterans of the Great Patriotic War and persons qualified as equal to this category in accordance with the legal acts of the Republic of Kazakhstan, born disabled, category (and I and II disabled persons, and victims of Chernobyl disaster.";

6) add subparagraph (12) to paragraph 2 of article 507 as follows:

"12) for legally significant actions by the authorized body on intellectual property pertaining to issuing provisional/preliminary patents, patents, certificates, registration of agreements, certification and registration of patent agents prior to issuing the correspondent documents."

6. Budget Code of the Republic of Kazakhstan as of 24 April 2004 (Newsletter of the Parliament of the Republic of Kazakhstan, Nos. 8-9, 2004, p. 54):

add subparagraphs (13-1) and (32) to paragraph 1 of article 46 as follows:

"13-1) fee for state registration of copyright and related rights, license contracts for the use of works and related rights objects;"

"32) state fee for the legally significant actions by the authorized body on intellectual property."

7. Law of the Republic of Kazakhstan "On Copyright and Related Rights" of 10 July 1996 (Newsletter of the Parliament of the Republic of Kazakhstan, 1996, Nos. 8-9, p. 237; 2004, No. 17, p.100):

1) replace "sanatkerlik" with "ziyatkerlik" (Kazakh) in the state language in article 1;

2) in article 2:

replace "sredstvam" with "sredstvami" (Russian) in subparagraph (8);

in subparagraph (11):

replace "other right holder" with "related rights holder";

add "staging" after "performance,";

add "(vnayem)" after "vnaem" (Russian) in subparagraph (18);

add "staging" after "performance" in subparagraph (20);

remove second sentence from subparagraph (29);

3) in article 6:

in paragraph 2:

add words *"(published, printed, performed, shown in public)"* after *"works"* instead of *"published"*;

remove words *"and in other formats"* from subparagraph (5);

add subparagraph (6) as follows:

"6) in other forms.";

add words *", names of characters"* after words *"including titles"* in paragraph 3;

4) replace words *"sculptures, paintings"* with *"sculptures, paintings"* in subparagraph (7) of paragraph 1 of article 7;

5) add part to paragraph 4 of article 9 as follows:

"The authorized body shall define the procedure on submission, acceptance and storage of manuscripts.";

6) replace *"vnayem"* with *"v prokat (vnayem)"* (Russian) in paragraph 3 of article 13;

7) replace *"vnayem"* with *"v prokat (vnayem)"* (Russian) in subparagraph (2) of paragraph 2 of article 16;

8) in article 18:

add words *"and without the view to obtain proceeds"* after *"exclusively for personal purpose"* in paragraph 1;

add words *"(reprographic reproduction)"* after *"reproduction"* in subparagraph (4) of paragraph 2;

9) paragraph 1 of article 26:

add words *", producer of audiovisual work"* after *"performer"*;

add words *"without obtaining proceeds"*;

10) replace *"fifty"* with *"seventy"* in paragraphs 1, 4, 5, 6, and 9 of article 28;

11) add paragraph 5 to article 35 as follows:

"5. Until otherwise proved, the natural or legal person whose name is on the phonogram and (or) on its box/case shall be qualified as the producer of the phonogram.";

12) in article 37:

add words *"or staging"* after *"performance"* in subparagraph (2) of paragraph 1;

in paragraph 2:

add words *"or staging"* after *"performance"* in subparagraphs (1)-(4) of the first paragraph;

in subparagraph (5):

add words *"or staging"* after *"performance"*;

replace *"for record"* with *"on record"*;

replace *"manufacturer"* with *"producer"* in item 5;

13) add word *"to make"* after *"right"* in the first paragraph of paragraph 2 of article 38;

14) in article 40:

add word *"to make"* after *"right"* in the first paragraph of paragraph 2;

replace *"and"* with *"or"* in subparagraph (1) of paragraph 3;

15) add words *"or staging"* after *"performance"* in subparagraph (3) of paragraph 1 of article 41;

16) in article 42:

replace word *"fifty"* with *"seventy"* in paragraphs 1, 2, 3 and 4;

replace word *"fifty years old"* with *"seventy years old"* in paragraph 5;

17) add words *"equivalents of minimal wage"* after words *"twenty"* and *"five hundred"* in subparagraph (6) of paragraph 1 of article 49.

8. Law of the Republic of Kazakhstan "On Protection of Selection Achievements" of 13 July (Newsletter of the Parliament of the Republic of Kazakhstan, 1999, No. 19, p. 655; 2004, No. 17, p.100):

add part two to article 25 as follows:

"A fee shall be charged for issue of a patent, registration of contracts by the authorized body in accordance with the tax laws of the Republic of Kazakhstan."

9. Law of the Republic of Kazakhstan "Patent Law" of 16 July 1999 (Newsletter of the Parliament of the Republic of Kazakhstan, 1999, No. 20, p. 718; 2004, No. 17, p.100):

1) replace word *"intellektualdyk"* with *"ziyatkerlik"* in the state language throughout the entire text;

2) set article 35 as follows:

"Article 35. State Fee and Payment for Expert Organization

A state fee shall be charged for issuing documents of title, registration of contracts, certification and registration of patent agents by the authorized body in accordance with the tax laws of the Republic of Kazakhstan.

The expert organization shall charge a payment in accordance with the laws of the Republic of Kazakhstan for the actions stipulated in this Law, including filing applications for documents of title, their registration, examination of industrial property objects and other actions entailing the rights and liabilities for their participants."

3) replace words *"and registration"* with words *", registration and issuing the patent agent registration certificate"* in part two of paragraph 1 of article 36;

10. Law of the Republic of Kazakhstan "On Trademarks, Service Marks, and Names of Places of Origin of Goods" of 26 July 1999 (Newsletter of the Parliament of the Republic of Kazakhstan, 1999, No. 21, p.776; 2004, No. 17, p.100):

1) set article 45 as follows:

"Article 45. State Fee and Payment for Work of Expert Organization

A state fee shall be charged for issuing certificates, registration of contracts, certification and registration of patent agents by the authorized body in accordance with the tax laws of the Republic of Kazakhstan.

The expert organization shall charge a payment in accordance with the laws of the Republic of Kazakhstan for the actions stipulated in this Law, including filing applications for trademark registration, applications for registration and for the right to use names of places of origin of goods, examination and other actions entailing the rights and liabilities for their participants."

2) replace words "*and registration*" with words "*, registration and issuing the patent agent registration certificate*" in paragraph 1 of article 46.

11. Law of the Republic of Kazakhstan "On Legal Protection of Integrated Circuit Layouts" of 29 June 2001 (Newsletter of the Parliament of the Republic of Kazakhstan, 2001, Nos. 13-14, p.181; 2004, No. 17, p.100):

set paragraph 6 of article 11 as follows:

"6. A state fee shall be charged for issuing certificates and registration of contracts by the authorized body in accordance with the tax laws of the Republic of Kazakhstan."

Article 2. This law becomes effective on the day when it is officially published, except for paragraphs 5 and 6, which shall become effective since 1 January 2005.

President of the Republic of Kazakhstan