

## Annex 14

# THE LAW OF THE REPUBLIC OF KAZAKHSTAN ON COPYRIGHT AND RELATED RIGHTS

(Dated June 10, 1996 #6)

## Chapter 1 General Provisions

This Law regulates relations in the field of intellectual property that arise from creation and use of works of science, literature and art (copyright), staging, performances, phonograms, transmissions of on-air and cable broadcasting organizations (related rights).

## Article 2 Main Terms Used in This Law

The following main terms are used in this Law:

- 1) **author** – shall mean a natural person whose creative activity resulted in a work;
- 2) **copyright** – shall mean property and personal non-property rights of the author;
- 3) **adaptation of an electronic computer or database program** – shall mean making changes to electronic computer or database programs solely for the purposes to ensure operation of the electronic computer or database program on specific technical means of the user or under supervision of specific user`s programs;
- 4) **audiovisual work** - shall mean a work that consists of fixed series of interrelated shots or images (with or without accompanying sounds) which are intended for visual and aural (when accompanied by sounds) perception by the use of suitable technical devices. Audiovisual works include cinematographic works and all works that are expressed by devices similar to cinematographic ones (tele- and video-films, diapositive films and slide-films and other similar works) irrespective of the form of their initial and further fixation;
- 5) **database** – shall mean an aggregate of data (articles, calculations, facts etc) which presents the result of creative activity by nature of their selection and (or) layout of materials and is systematized in the way that makes it possible for them to be found and processed with use of electronic computers. The term of database does not apply to the electronic computer program which allows e-access to the materials stored in the database.;
- 6) **reproduction** - shall mean production of one or more permanent or temporary copies of the works or objects of related rights by any means and in any form, in full or partially, directly or indirectly. The following are the types of reproduction: production of audio- and video-records, making one or more copies of the two-dimensional or three-dimensional work, as well as any permanent or temporary storage of works or objects of related rights in any material form;
- 7) **decompiling the electronic computer program** – shall mean a technical method that includes changing of the object code to an incoming text with the aim to study the structure and code for the electronic computer program;
- 8) **communication for general information** - shall mean transmission of copyright objects and (or) objects of related rights by wire or wireless when the public may have access to them from any place and at any time at its option (interactive regime);
- 9) **recording** – shall mean fixation of sounds and (or) images with use of technical devices by any means and in any form that allows their repeated perception, reproduction or transmission;

- 10) **information on rights management** – shall mean information which identifies the work, the author of the work, its performer, performance of the performer, the producer of a phonogram, a phonogram, the right-owner of the work, performance or phonogram or information on terms for the work use, performance or phonogram. Information on rights management shall also mean any figures or codes that contain such information when any of this information element is attached to the copy of the work, recorded performance or phonogram or when appeared due to transmission of the work or transmission and (or) publication of the recorded performance or phonogram for general information;
- 11) **exclusive right** – shall mean the property right of the author or the owner of the related rights to use the work, performance, staging, phonogram, transmission of on-air and cable broadcasting organizations in any way at his/her discretion within the time period stipulated by this Law;
- 12) **performance** – shall mean presentation of the work, the phonogram, the performance, the staging through playing, singing, dancing alive or with use of technical devices (TV programs, broadcasting, cable TV etc). Show of the audiovisual work shots in their sequence with or without sounding;
- 13) **performer** – shall mean an actor, singer, musician, dancer and any other person who acts, sings, delivers, declaims, plays a musical instrument or otherwise performs literary and (or) artistic works (including pop, circus or puppet trick) or expressions of folklore, as well as conductor;
- 14) **counterfeit copy of the copyright or object of related rights** – shall mean a copy of the work, recorder performance, phonogram, transmissions of on-air and cable broadcasting organizations, which production, distribution or any other use entails infringement of copyrights and related rights under this Law or under international agreements ratified by the Republic of Kazakhstan. Counterfeit objects shall also include copyright objects and objects of related rights from which the information is deleted without consent of the owner of the right, or on which the information on management of the rights is changed, or which are produced with help of illegally used devices that allow to avoid technical means of protection of the objects;
- 15) **modification (processing) of the electronic computer or database program**– shall mean any change of the electronic computer or database program that are not adaptation;
- 16) **non-exclusive right** – shall mean the right when along with the owner of the right another person may use the work under the relevant permission of the author, except for cases stipulated by this Law;
- 17) **published works** – shall mean taking an action with the consent of the author that makes the work available to the public for the first time through its publication, public show, public performance, communication for general information and by other means;
- 18) **publication** – shall mean offering to the public with the consent of the author or another owner of the right to objects of copyright or related rights, copies of the work or phonograms in the quantity that satisfy reasonable needs of the public, through sale, renting (leasing) or other transfer of the ownership right or right of possession of the work or phonogram;
- 19) **translation of the work** – shall mean expression of the work in the language that differs from the language of the original work. At this, the translation must be reliable and to distort neither the content nor the style of the original work;
- 20) **broadcasting** – shall mean communication of works, performances, phonograms, transmissions of on-air and cable broadcasting organizations for general information (including demonstration or performance) through their broadcasting on radio or TV (except for cable TV). When communicating works, performances, phonograms, transmissions of on-air and cable broadcasting organizations via satellite, broadcasting shall mean receipt of signals from earth station to the satellite and transmission of the signal from the satellite through which works, performances, phonograms, transmissions

of on-air and cable broadcasting organizations may be communicated for general information irrespective of their actual receipt by the public. Transmission of coded signals shall be broadcasting if the decoding means are provided to the public by the on-air broadcasting organization or with its consent;

- 21) **transmissions of on-air and cable broadcasting organization-** shall mean a transmission created by the on-air and cable broadcasting organization itself, as well as upon its order at the expense of another organization;
- 22) **processing of the work** – shall mean change of the original work from one genre to another. At this, there are the following types of processing the work: staging, performance and arrangement of the original work;
- 23) **subsequent broadcasting** – shall mean transmission by cable of works or objects of related rights that were previously broadcasted or communicated for general information;
- 24) **owner of the right** – shall mean the author (persons specified in the will, his/her heirs) with respect to copyright, the performer (his/her heirs), producer of a phonogram, an on-air and cable broadcasting organization with respect to related rights, as well as other natural persons or legal entities who obtained the rights to use the works and (or) objects of related rights under the contract or on other grounds stipulated by this Law;
- 25) **electronic computer program** - shall mean a set of commands expressed in words, schemes or in any other form which writing on the machine-readable material medium accomplishment or achievement of a certain task or result by the electronic computer shall be ensured, including preparation materials, the nature of which is such that the electronic computer program is their result at a later stage;
- 26) **work of arts and crafts** – shall mean two-dimensional or three-dimensional work of art transferred to the objects of everyday use, including the work of art crafts or a work produced by industrial mean;
- 27) **work of amateur and folk arts** – shall mean a work including peculiar elements of traditional art heritage (folk fairy tales, folk poetry, folk songs, instrumental folk music, folk dances and plays, artistic forms of folk traditions etc);
- 28) **producer of an audiovisual work** - shall mean a natural person or a legal entity who took over an initiative and liability for creating such work . Unless otherwise proved, a person whose name or title is indicated on this work, shall be recognized as producer of the work;
- 29) **producer of a phonogram** – shall mean a natural person or a legal entity who took over an initiative and liability for the first audio recording of a certain performance or other sounds;
- 30) **derivative work** - shall mean a work that was created as a result of creative processing of another work;
- 31) **public performance** - shall mean performance of the work through declamation, play, dance or by any other way, also with help of technical means (with respect to an audiovisual work – demonstration of shots in their sequence, accompanied with sounds), in places where persons who do not belong to the family are present or may be present;
- 32) **public demonstration** – shall mean demonstration of the original or copy of the work directly or as a slide, film shot, tele-shot on the screen with help of any other technical means or by any other way (with respect to an audiovisual work – demonstration of separate shots without their sequence), in places where persons who do not belong to the family are present or may be present;
- 33) **producer of the play** – shall mean a person who accomplished staging of a theatre, circus, puppet, pop and other play (performance);
- 34) **reproducing (reprographic reproduction)** – shall mean facsimile reproduction in any size and form of one or more copies of originals or copies of written and other graphic works through photocopying or with help of other technical means, different from.

- publication; Reprographic reproduction does not mean storage or reproduction of indicated copies in electronic (including digital), optical or other machine-readable form;
- 35) **renting (leasing)** – shall mean providing a copy of the work or phonogram for temporary use for the purpose of obtaining direct or indirect commercial profit;
- 36) **related rights** - shall mean property rights of the performer, producer of phonogram, on-air and cable broadcasting organization and personal non-property rights of the performer’
- 37) **communication for general information via cable** - shall mean communication of the work, phonogram, performance, transmission of an on-air and cable broadcasting organization for general information via cable, wire, optical fiber or with help of similar means;
- 38) **compound work** – shall mean a collection (encyclopedia, anthology, database) of works and other materials that present, by its selection and (or) arrangement, the result of creative activity;
- 39) **technical means** – shall mean any device, article or component that is an integral part of the method, device or article designated to prevent infringement or to preventing from . infringement of any copyright or any related rights that are protected by this Law;
- 40) **authorized body** – shall means a state body determined by the Government of the Republic of Kazakhstan and exercising state regulation in the field of copyright and related rights;
- 41) **phonogram** – shall mean recording of performances or other sounds, also presentation of sounds in any form, except for recording incorporated into the audiovisual work;
- 42) **a copy of the work** – shall mean a copy of the work made in any material form;
- 43) **a copy of the phonogram** – shall mean a copy of the phonogram on any material medium made directly or indirectly from the phonogram and including all the sounds or part of sounds fixed in this phonogram.’<sup>1</sup>

### **Article 3**

#### **Legislation of the Republic of Kazakhstan on Copyright and Related Rights**

Legislation of the Republic of Kazakhstan on copyright and allied rights consists of the Civil Code, of this Law and other legal acts issued in accordance with this Law.

### **Article 4**

#### **International Agreements**

Where an international treaty which is ratified by the Republic of Kazakhstan stipulates rules that differ from those laid down in this Law, then the provisions of that international treaty shall apply.

### **Chapter II**

#### **Copyright**

### **Article 5**

#### **Scope of Validity of the Copyright**

1. Under this Law, the copyright shall apply to:

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<sup>1</sup> Article 2 in the text of the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect).

- 1) the works published in the territory of the Republic of Kazakhstan or not-published but staying in any objective form in the territory of the Republic of Kazakhstan, irrespective of citizenship of authors and their assignee;
  - 2) the works published outside the territory of the Republic of Kazakhstan or unpublished but staying in any objective form outside the territory of the Republic of Kazakhstan, and shall be recognized as belonging to the authors – citizens of the Republic of Kazakhstan and their assignees;
  - 3) the works published outside the territory of the Republic of Kazakhstan or unpublished but staying in any objective form outside the territory of the Republic of Kazakhstan, and shall be recognized as belonging to the authors (their assignees) – foreigners, persons without citizenship under the international treaties ratified by the Republic of Kazakhstan.
2. The work shall be considered as published in the territory of the Republic of Kazakhstan, if within thirty days from the date of its first publication outside the territory of the Republic of Kazakhstan it was published in the territory of the Republic of Kazakhstan.
3. When the work is provided protection in the territory of the Republic of Kazakhstan in compliance with international treaties, the author of the work shall be determined under the law of the state where an action or a circumstance that served as a basis for possessing copyright, took place.
4. Under the international treaties ratified by the Republic of Kazakhstan, protection shall be provided to the work if it not transfer to the public property in the originating country which is determined under the relevant international treaty, ratified by the Republic of Kazakhstan, due to expiration of the copyright in that country, and has not yet transferred to the public property in the Republic of Kazakhstan due to expiration of the copyrights.<sup>2</sup>

## **Article 6**

### **Copyright Object. General Provisions**

1. Copyright shall extend to works of science literature, and arts which are the result of the creative activity, irrespective of their designation, contents and merits, as well as of their expression method and form.
2. Copyright shall extend both to published (published, issued, publicly performed, publicly demonstrated), and to unpublished works which exist in some objective form:
  - 1) written form (manuscript, typewriting, note writing, etc.);
  - 2) verbal form (public announcement, public rendition, etc.);
  - 3) audio- or video recording (mechanical, digital, magnetic, optical, etc.);
  - 4) images (picture, sketch, painting, plan, drawing, cinematographic, television, video or photo shot, etc.);
  - 5) volume and spatial form (sculpture, pattern, model, construction, etc.);
  - 6) other forms.
3. Part of a work (including its title and names of characters) which possesses the properties indicated in Paragraph 1 of this Article and may be used independently, shall be the copyright object.
4. Copyright shall not apply to ideas, conceptions, principles, methods, systems, processes, discoveries, facts.
5. Copyright for a work shall not be associated with the proprietary right for the material object in which the work is embodied, except for cases specified in this Law.<sup>3</sup>

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<sup>2</sup> Changes are made into Article 5y the RK Law #586 as of 09.07.2004

<sup>3</sup> Changes are made into Article 6 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

## **Article 7**

### **Works That Are Copyright Objects**

1. The following shall be copyright objects:
  - 1) literary works;
  - 2) dramatic and musical-dramatic works;
  - 3) scenario works;
  - 4) choreographic works, pantomimes;
  - 5) musical works with or without a text;
  - 6) audiovisual works;
  - 7) works of painting, sculpture, graphics, and other graphic art works;
  - 8) applied arts works;
  - 9) works of architecture, town-planning and park and horticulture;
  - 10) photographic works and works made by means similar to photography;
  - 11) maps, plans, sketches, illustrations and three dimensional works related to geography, topography and other sciences;
  - 12) computer programs;
  - 12) other works.
2. Protection of electronic computer programs shall apply to all types of electronic computer programs (including operational systems) which may be expressed in any language and in any form, including the incoming text and object code.
3. The following shall also be referred to copyright objects:
  - 1) derivative works (translations, processing, annotations, reports, summaries, reviews, staging, musical arrangements and other remaking of works of science, literature, and art);
  - 2) collections (encyclopedias, anthologies, databases) and other compound works which present the result of creative activity according to an assortment and (or) an arrangement of materials.

Derivative and compound works shall be protected by the copyright, irrespective of whether the works on which they are based or which they include are the copyright objects.<sup>4</sup>

## **Article 8**

### **Works that are not Copyright Objects**

The following shall not be copyright objects:

- 1) official documents (laws, court decisions, other texts of legislative, administrative, judicial, and diplomatic nature), and their official translations;
- 2) state emblems and signs (flags, emblems, decorations, banknotes, and other state symbols and signs);
- 3) works of folklore;
- 4) messages about events and facts which are of informational nature.

## **Article 9**

### **Emergence of Copyright Authorship Presumption**

1. The copyright for works of science, literature and art shall emerge by virtue of the fact of their creation. Registration of a work or special legalization of a work or following formalities shall not be required for the copyright to emerge and enforce.

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<sup>4</sup> Changes are made into Article 7 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

To notify of his/her exclusive property rights, the author and (or) the right owner shall have the right to use a copyright protection sign which is placed on each copy of the work and mandatory consists of three elements:

- 1) of a circled Latin letter "C";
- 2) of a name (title) of the exclusive copyright owner;
- 3) of a year of the first publication of the work.

The author in order to prove personal non-property rights to the unpublished work, and the right owner in order to prove possession of exclusive property rights to the work at any time within the period of a copyright protection or within the period of validity of relevant agreements, shall have the right to register them in official registers. Registration shall be accomplished by the authorized body in compliance with legislation of the Republic of Kazakhstan.

1-1. Works that serve (are designated) to differentiate goods (services) of one natural or legal persons from similar goods (services) of other natural or legal persons shall not be registered as copyright objects.

2. Unless otherwise proved, a person indicated as an author on the original or copy of the work shall be considered the author of the work.

3. When publishing the work anonymously or under pseudonym (except for cases when the author's pseudonym does not cause doubt in his/her personality), and unless otherwise proved, the editor whose name or title is indicated on the work shall be considered as the author's representative in compliance with this Law, and this capacity shall have the right to protect the author's rights and ensure their enforcement. This provision shall apply until the author of the work does not disclose himself/herself and does not claim his/her authorship.

4. When a natural person who considers himself/herself the author of the non-published work typescript thinks it necessary to submit it for storage in order to prevent its illegal use or misappropriation, the authorized body shall accept the typescript and issue the person who submitted the typescript a certificate indicating the date of its acceptance.

The procedure for submission, acceptance and storage of typescripts shall be determined by the authorized body.<sup>5</sup>

## **Article 10** **Co-Authorship**

1. Copyright to the work created by joint creative activity of two or more persons (co-authorship) shall belong to the co-authors jointly irrespective of whether such work constitutes a single whole or consists of parts and each part has its own independent meaning.

A part of the work shall be recognized as having its own independent meaning if it can be used independently from other parts of this work.

Each of the co-authors shall have the right to use the part of the work created by him/her and that has its own independent meaning at his/her discretion unless otherwise provided by the agreement between them.

2. The right to use the work as a whole shall belong to co-authors jointly. Relations between the co-authors may be determined by the agreement between them. Where the work of the co-authors constitutes a single whole, then none of the co-authors shall have the right to prohibit from use of the work without sufficient grounds thereon.

3. Each of the co-authors shall have the right on his/her behalf, also without getting permission from other co-authors, to take measures stipulated by this Law and other legal acts of the Republic of Kazakhstan associated with protection of his/her rights unless otherwise provided by the agreement between them.<sup>6</sup>

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<sup>5</sup> Changes are made to Article 9 by the RK Law #586 as of 09.07.2004;

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## **Article 11**

### **Copyright to Compound Works**

1. The author of the collection and other compound works (compiler) shall possess the copyright to the selection and (or) layout of materials accomplished by him/her that result from creative activity (compilation).

The compiler shall enjoy the copyright under the condition to observe the rights of each author of each work included into the compound work.

Authors of the works included into the compound work shall have the right to use his/her works irrespective of the compound work unless otherwise provided by the author's agreement.

The copyright of the compiler shall not impede from other persons to accomplish independent selection and (or) layout of the same materials to create compound works.

2. The editor who publishes encyclopedias, encyclopedia reference books, periodic and continuous collections of scientific works, newspapers, magazines and other periodicals, shall have exclusive rights to use such works as a single whole. When using such works in any way, the editor shall have the right to indicate his/her name or to claim such indication.

Authors of works included in such periodicals shall keep exclusive rights to use their works irrespective of the periodical as a whole.<sup>7</sup>

## **Article 12**

### **Copyright to Derivative Works**

1. Translators and authors of other derivative works shall have the copyright to the translation, alteration, arrangement or other processing.

A translator and an author of another derivative work shall enjoy copyright to the work created by him/her provided that he/she observes the rights of the author of the work that was subject to translation, alteration, arrangement or other processing.

2. The copyright of translators and authors of other derivative works shall not prevent from other people to accomplish translations and processing of the same works.<sup>8</sup>

## **Article 13**

### **Copyright for Audiovisual Works**

1. The following persons shall be authors (co-authors) of audiovisual works:

- 1) author of the scenario;
- 2) author of the musical work (with or without words) that is specifically created for this audiovisual work (composer);
- 3) producer;
- 4) photography director;
- 5) stage director.**

The author of the previously created work that was processed and included into the audiovisual work as its integral part, shall also be considered co-author of the audiovisual work.

2. Signing an authorship agreement to create an audiovisual work (or transfer of the right to previously created works) except for the case stipulated by paragraph 3 of this Article shall entail transfer by the authors of this work (or authors and other right owners of the previously created works) of exclusive rights to the producer of the audiovisual work to use the audiovisual work unless otherwise provided by the authorship agreement.

Producer of the audiovisual work shall have the right to indicate his/her name or title or claim such indication when using this work in any way.

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<sup>7</sup> Changes are made to Article 11 by the RK Law #586 as of 09.07.2004

<sup>8</sup> Changes are made to Article 12 by the RK Law #586 as of 09.07.2004



3. The author of the musical work (with or without words) that is specifically created for the audiovisual work shall reserve the right to get royalty for use of this musical work for each public performance of the audiovisual work, its public announcement as well as for renting (leasing) the audiovisual work copies.
4. Authors of works that are included into the audiovisual work as its integral part that both existed earlier (author of the novel used as basis for scenario etc), and created in the course of work on it (photography director; **art director**, etc) shall enjoy copyright each for his/her work.<sup>9</sup>

#### **Article 14**

##### **Copyright to Official Service Works**

1. Personal non-property right of the author to the work created in the course of fulfilling official service functions or official service task by the employer (official service work) shall belong to the author of the official service work.
2. Property rights to use official service work shall belong to the employer if it is provided by the contract signed between him/her and the author and not otherwise provided.
3. In any use of the official service work, the employer shall have the right to indicate his/her name or to claim such indication.
4. On expiry of ten years from the moment of submission of the work or earlier, in case of the employer's consent, the right of the author to use the work and to get royalty shall belong to him/her in full irrespective of the contract signed with the employer.
5. Provisions of this Article shall not apply to creation of encyclopedias, encyclopedia reference-books, periodic and on-going collections of scientific works, newspapers, magazines and other periodicals (Paragraph 2 Article 11 of this law).

#### **Article 15**

##### **Personal Non-Property Rights**

1. The following personal non-property rights shall belong to the author with regard to his/her work:
  - 1) the right to be recognized as the author of the work and claim such recognition, also through due indication of the author's name on copies of the work and at any public use if appropriate (authorship right);
  - 2) the right to indicate and claim indication of a fictitious name (pseudonym) of the author instead of his/her real name or to refuse to indicate the name, i.e. anonymously (right to the name);
  - 3) the right to inviolability of the work including its name, to oppose to any distortion, misinterpretation or other change of the work, also to any other encroachment that may cause damage to honor and reputation of the author (the right to protection of the author's reputation);
  - 4) the right to open access to the work for indefinite circle of people (the right to publication).
2. The author shall have the right to renounce the decision that he/she made earlier on publication (the right to renounce) on the assumption of compensation of damages caused to the user by this decision, including loss of profit. If the work is already published, the author shall be obliged to notify on its recall publicly. In this respect, he/she shall have the right to withdraw copies of the work that were already made, from circulation at his/her expense.  
When creating official works, the provisions of this Article shall not apply.

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<sup>9</sup> Changes are made into Article 13 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

3. Personal non-property rights shall belong to the author irrespective of his/her property rights and shall stay as such in case of concession of exclusive rights to use the work.
4. Personal non-property rights provided by this Article shall be inalienable.
5. Personal non-property rights after the author's death shall be enforced according to the procedure stipulated in Article 30 of this Law.<sup>10</sup>

## **Article 16**

### **Property Rights**

1. The author or any owner of the right shall have property (exclusive) rights to use this work in any form and by any means.
2. Exclusive rights of the author to use the work shall mean the right to take, permit or forbid taking the following actions:
  - 1) to reproduce the work (right to reproduction);
  - 2) to distribute the original or copies of the work any way: to sell, to exchange, to rent (to lease), to accomplish other operations (right to distribution);
  - 3) to import copies of the work for distribution purposes, including copies made with consent of the author or other owner of the right (right to import);
  - 4) to publicly demonstrate the work (right to public demonstration);
  - 5) to publicly perform the work (right to public performance);
  - 6) to publicly communicate the work (to communicate the work for general information), including broadcasting or communication by cable (right to public communication);
  - 7) to broadcast the work, including the first and (or) subsequent broadcasting for general information (right to broadcast);
  - 8) to communicate the work by cable, including the first and (or) subsequent communication by cable for general information (right to communicate by cable);
  - 9) to translate the work (right to translation);
  - 10) to alter, arrange or otherwise process the work (right to processing);
  - 11) take other actions that do not contradict legislative acts of the Republic of Kazakhstan.
3. Where copies of the legally published work are put into circulation through their sale, their further distribution shall be possible without the author's consent and free of royalty.

The right to distribute the original or copies of the work through their renting (leasing) irrespective of the right of ownership to those copies shall belong to the author or to the owner of the right to:

  - 1) musical work (musical text);
  - 2) the work fixed in the phonogram;
  - 3) audiovisual work;
  - 4) database;
  - 5) electronic computer program.
4. Exclusive right to use architectural, town-planning and landscape projects shall include also practical implementation of such projects.
5. The author or other owner of the right shall have the right to royalties for each type of use of the work, the size and the procedure for calculation of which shall be determined by the author's contract, as well as contracts signed between organizations that manage property rights of authors on collective basis.
6. Limitations of property rights stipulated by Paragraph 2 of this Article shall be established by Articles 18-26 of this Law provided that such limitations do not cause damage to normal use of the work and do not infringe upon legal interest of the author and right holder.<sup>11</sup>

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<sup>10</sup> Changes are made into Article 15 by the RK Law #586 as of 09.07.2004

<sup>11</sup> Changes are made into Article 16 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

## **Article 16-1**

### **Minimal Rates of Royalties**

The Government of the Republic of Kazakhstan may establish minimal rates of royalties in cases where practical realization of property (exclusive) rights is not possible in each individual case due to the nature of the work or due to peculiarities of its use (public performance including broadcasting and showing on TV, reproduction of the work via mechanical, magnet or other recording, reproducing etc).<sup>12</sup>

## **Article 17**

### **The Right to Access to Fine Arts Works**

1. The author of the fine arts work shall have the right to claim from the owner of the work to grant opportunities to enforce the right to reproduce his/her work (right to access). At this, the owner of the work can not be claimed to deliver the work to the author.
2. In each case of public (via auction, fine arts gallery, fine arts salon, shop etc) re-sale of the original of the fine arts work after the first alienation of the right of ownership to such fine arts work, the author or his/her heirs shall have the right to get royalty from the seller in the amount of five per cent from the re-sale price (right to abidance). This right shall be inalienable during the life of the author and shall transfer exclusively to heirs of the author under the law or under will for the period of the copyright validity.
3. Transfer of the right of ownership to the fine arts work (for pay or gratis) from the author to another person shall mean the first alienation of this work.<sup>13</sup>

## **Article 18**

### **Reproduction of the Work for Personal Purposes Without Consent of the Author or Owner of the Right and Without Paying Out Royalties**

1. It shall be allowed for a natural person, without consent of the author or owner of the right and without paying out royalties, to reproduce in single copy the legally published works exclusively for personal use and without getting profits, except for cases stipulated by Article 26 of this Law.
2. The provision of Paragraph 1 of this Article shall not apply to:
  - 1) reproduction of works of architecture in the form of buildings and similar constructions;
  - 2) reproduction of data bases or their significant parts;
  - 3) reproduction of electronic computer programs, except for cases stipulated by Article 24 of this Law;
  - 4) reproducing (reprographic reproduction) of books (in full) and musical texts.<sup>14</sup>

## **Article 19**

### **Use of the Work Without Consent of the Author or Owner of the Right and Without Paying Out Royalties**

1. It shall be allowed, without consent of the author or owner of the right and without paying out royalties, but with compulsory indication of the author's name, whose work is being used, and of the borrowing resource:

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<sup>12</sup> Article 16-1 is added by the RK Law #586 as of 09.07.2004.

<sup>13</sup> Changes are made into Article 17 by the RK Law #586 as of 09.07.2004

<sup>14</sup> Changes are made into Article 18 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

- 1) to cite in the original and translations for scientific, research, polemic, critical and information purposes from the legally published works in the size that is justified for the citation purposes, including reproduction of extracts from newspaper and magazine articles in the form of periodical reviews;
- 2) to use legally published works and extracts thereof for the purpose of illustration in periodicals, in radio- and TV programs, in audio- and video-recordings of training nature, in the volume justified for this purpose;
- 3) to reproduce in newspapers, to broadcast or communicate by cable for general information articles on current economical, political, social and religious aspects that are legally published in newspapers and magazines or broadcasted works of such nature, where such reproduction, broadcasting or communication by cable were not specifically forbidden by the author;
- 4) to reproduce in newspapers, to broadcast or communicate by cables for general information the publicly delivered political speeches, addresses, reports and other similar works in the volume justified for the information purposes. At this, the author shall reserve the right to publish such works in work collections;
- 5) to reproduce or communicate for general information in the reviews of current events through photographic s or cinematographic means, via broadcasting or communication by cable for general information of works that become seen or heard in the course of such actions, in the volume justified for the information purposes. At this, the author shall reserve the right to publish such works in work collections;
- 6) to reproduce legally published works without profiting, through relief-point printing or by other special means for blind people, except for works that are specifically created for such reproduction means.<sup>15</sup>

## **Article 20**

### **Use of Works Though Reproducing**

It shall be allowed, without consent of the author or another owner of the right and without paying out royalties, but with compulsory indication of the author, whose work is being used, and of the borrowing resource, to reproduce in a single copy and without profiting:

- 1) by libraries and archives – of the legally published work with the purpose to recover, change of lost or damaged copies, to provide copies of the work to other libraries that lost for certain reasons the work from their funds;
- 2) by libraries and archives - of separate articles and small-sized works that are legally published in collections, newspapers and other periodicals, short extracts from legally published written works (with or without illustrations), upon request of natural persons for training and research purposes;
- 3) by educational institutions – of separate articles and small-sized works that are legally published in collections, newspapers and other periodicals, short extracts from legally published written works (with or without illustrations) for lecturing purposes.<sup>16</sup>

## **Article 21**

### **Free Use of Works That Are Permanently Located In Places Open For Free Access**

It shall be allowed, without consent of the author or owner of the right and without paying out royalties, to reproduce, to broadcast and (or) communicate for general information via cable of works of architecture, photography, fine arts, that are permanently located in the place open for

<sup>15</sup> Changes are made into Article 19 by the RK Law #586 as of 09.07.2004.

<sup>16</sup> Changes are made into Article 20 by the RK Law #586 as of 09.07.2004.

free access, except for cases when the image of the work is the main object of such reproduction, broadcasting and (or) communication for general information via cable, or when the image of the work is used for commercial purposes.<sup>17</sup>

## **Article 22**

### **Public Performance of Works During Official and Other Ceremonies**

It shall be allowed, without consent of the author or another owner of the right, and without paying out royalties, to publicly perform legally published musical works during official and religious ceremonies, as well as funerals, in the volume justified by nature of such ceremonies.<sup>18</sup>

## **Article 23**

### **Reproduction of Works for Judicial and Administrative Purposes**

It shall be allowed, without consent of the author or another owner of the right, and without paying out royalties, to reproduce works for judicial and administrative purposes in the volume justified with this purpose.<sup>19</sup>

## **Article 24**

### **Free Reproduction of Electronic Computer and Database Programs. Recompilation of Electronic Computer Programs**

1. The person who legally owns a copy of the electronic computer or a database program, shall have the right, without consent of the author or another owner of exclusive rights to use the work, and without paying out royalties:

1) to make changes to the electronic computer or a database program, solely for their operation purposes, on technical means of the user; to take any actions required for operation of the electronic computer or a database program in compliance with its functions, including recording and storing in the electronic computer memory (one electronic computer or one network user), as well as correction of obvious mistakes, unless otherwise provided by the contract with the author;

2) to make or instruct to make a copy of the electronic computer or a database program, provided that this copy is designated only for archive purposes and for change of legally purchased copy in cases when the original of the electronic computer or a database program is lost, destroyed or become unusable. At this, a copy of the electronic computer or a database program can not be used for purposes different from those mentioned in Sub-Paragraph 1) of this Paragraph and must be destroyed if ownership of the copy of this electronic computer or a database program cease to be lawful.

2. The person who lawfully owns a copy of an electronic computer program, shall have the right, without consent of the author or another owner of exclusive rights and without paying out additional royalties, to reproduce and change the object code into incoming text (decompile the electronic computer program) or to instruct other people take these actions if they are required to achieve the possibility for the electronic computer program that is independently developed by this person, to interact with other programs that can interact with the program being decompiled, provided the following conditions are observed:

1) the information required to achieve the possibility for interaction, was not accessible to this person from other sources;

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<sup>17</sup> Article 21 is given in the version approved by the RK Law #586 as of 09.07.2004.

<sup>18</sup> Changes are made into Article 22 by the RK Law #586 as of 09.07.2004.

<sup>19</sup> Changes are made into Article 23 by the RK Law #586 as of 09.07.2004.

- 2) the indicated actions are taken only with regard to those parts of the electronic computer program under recompilation that are required to achieve the possibility to interact;
- 3) the information obtained as a result of recompilation, may be used only to achieve the possibility for the electronic computer program that is independently developed, to interact with other programs, and can not be submitted to other persons, except for cases when it is required to achieve the possibility for the electronic computer program that is independently developed, to interact with other programs, and can not be used to develop an electronic computer program that is significantly similar by its nature with the electronic computer program under recompilation, or to perform any other operation infringing the copyright.
3. Application of the provision of this Article shall not cause unjustified damage to normal use of the electronic computer or a database program and shall not infringe legal interests of the author or any other holder of exclusive rights to an electronic computer or a database program.<sup>20</sup>

## **Article 25**

### **Records of Short-Term Use of Works by Broadcasting Organizations**

A broadcasting organization shall have the right, without consent of the author or owner of the right, and without paying out royalties, to record short-term use of the work with regard to which this organization obtained the right to broadcast, on the assumptions of the following conditions:

- 1) production of recording by broadcasting organization with use of its own equipment and for its own program;
- 2) destruction of such recording within six months from the date of its production, if a longer time period was not agreed upon with the author or owner of the right to the recorder work. Such recording may be kept without consent of the author or owner of the right in official archives, if the recording has exclusively documentary nature.<sup>21</sup>

## **Article 26**

### **Reproduction of Works for Personal Use Without Consent of the Author and With Paying Out Royalties**

1. It shall be allowed, without consent of the author of the work, performer, producer of the audiovisual work and producer of the phonogram, but with paying out royalties, to reproduce audiovisual work or sound recording for personal use and without profiting.
2. Royalty for the work indicated in Paragraph 1 of this Article shall be paid out by persons who manufacture or import equipment and material devices used for such reproduction. The list of such equipment and material devices shall be approved by the Government of the Republic of Kazakhstan.
3. Such royalty shall be collected and distributed by one of the organizations that manage property rights of authors, phonogram producers and performers on collective basis in compliance with the agreement between those organizations (Article 43 of this Law).
4. Unless otherwise provided by this agreement, this royalty shall be distributed in the following proportions: forty per cent – to authors; thirty per cent – to performers; thirty per cent – to phonogram producers.
5. The size of the royalty and the terms of its payment shall be determined by the agreement between the indicated producers and importers from one hand, and organizations that manage property rights of authors, phonogram producers and performers on collective basis, on the other hand; and if the parties do not come to such agreement – by the authorized body of the Republic of Kazakhstan.

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<sup>20</sup> Changes are made into Article 24 by the RK Law #586 as of 09.07.2004.

<sup>21</sup> Changes are made into Article 25 by the RK Law #586 as of 09.07.2004.

6. Royalty shall not be paid out with regard to the equipment and material devices which are indicated in Paragraph 2 of this Article and which are subject to exportation, as well as to professional equipment not intended for family use.<sup>22</sup>

## **Article 27**

### **Exportation of Works For Personal Use**

A natural person shall be allowed, without consent of the author of the work or other copyright owner and without paying out royalties, to export works abroad exclusively for personal use, except for works exportation of which will cause damage to national interests of the country and the list of which is determined under the established procedure.

## **Article 28**

### **Validity of Copyright**

1. Copyright shall be valid during the life of the author and for the period of seventy years after his/her death, except for cases stipulated by this Article.
2. The right to authorship, the right to name and the right to protection of the author's reputation shall be protected termless.
3. The author shall have the right, under the same procedure as an executor of a will is assigned, to assign a person whom he/she makes responsible to protect the right to authorship, the right to name and the right to protect his/her reputation after his/her death. This person shall fulfill his/her authorities for term of life. On absence of such instructions, protection of the right to authorship, the right to name and the right to protect the author's reputation after his/her death shall be exercised by his/her heir or by the authorized body of the Republic of Kazakhstan, which exercises such protection if there are no heirs or their right to authorship terminated.
4. The copyright to the work that is published anonymously or under pseudonym, shall be effective within seventy years after the date of its lawful publication. If within the indicated period the author of the work that is published anonymously or under pseudonym, discloses his/her personality or if his/her personality will not cause doubts, then provisions of Paragraph 1 of this Article shall apply.
5. The copyright to the work created in co-authorship, shall be effective during all his/her life and within seventy years after death of the last author who outlived other co-authors.
6. The copyright to the work that was published for the first time after thirty years from death of the author, shall be effective within seventy years after its publication starting from the first of January of a year following the year of its publishing.
7. If the author was subject to repression and rehabilitation after his/her death, the time period for the right protection stipulated by this Article, shall come into effect from the first of January of a year following the year of rehabilitation.
8. Calculation of time periods stipulated by this Article, shall start from the first of January of a year following the year in which a legal fact that is the basis for start of the time period, took place.
9. When granting protection to the work in compliance with international treaties ratified by the Republic of Kazakhstan, the validity of the copyright shall not exceed the time period determined in the originating country in compliance with Paragraph 4 Article 5 of this Law. Time periods stipulated by this Article, shall apply in all cases when a legal fact that is the basis for start of the time period, took place not earlier than seventy years prior to this Law to come into effect.<sup>23</sup>

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<sup>22</sup> Changes are made into Article 26 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

<sup>23</sup> Changes are made into Article 28 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

## **Article 29**

### **Transfer of Works to Public Property**

1. Expiration of the copyright to works shall mean their transfer to public property.
2. Excluded.
3. Works that are transferred to public property, may be freely used by any person without paying out royalties. At this, the right to authorship, the right to name and the right to protect the author's reputation shall be honored.
4. With the aim to contribute to creative activity of authors, improve their material welfare and life conditions, users of the works that are transferred to public property, shall have the right to allocate to professional funds of authors or to organizations that manage property rights of authors on collective basis.<sup>24</sup>

## **Article 30**

### **Transfer of Copyrights**

1. Copyrights shall transfer under author's contracts and under the procedure for inheritance.
2. Copyrights shall transfer under the procedure for inheritance in compliance with the law or will.
3. Personal property rights of the author, stipulated by Article 15 of this Law, shall not transfer under the procedure for inheritance. The author's heirs shall have the right to accomplish protection of personal non-property rights. The indicated authorities shall not be limited in time frame.
4. The author shall have the right, under the same procedure as an executor of a will is assigned, to assign a person on whom he/she places protection of his/her personal non-property rights. Such person shall fulfill his/her authorities for term of life. On absence of such instructions from the author, protection of personal non-property rights of the author after his/her death shall be exercised by his/her heirs or by the authorized body of the Republic of Kazakhstan, which exercises such protection if there are no heirs or their copyright terminated.

## **Article 31**

### **Transfer of Property Rights. Author's Agreement**

1. Property rights of the author specified in Article 16 of this Law may be ceded fully or partially, as well as may be transferred for use under the author's agreement on transfer of exclusive rights or under the author's agreement on transfer of exclusive rights.  
Any concession of property rights shall be confirmed by the written contract signed between the author and the person to whom the property rights are ceded.
2. The author's agreement on transfer of exclusive rights shall allow use of the work by certain way and in the limits specified in the agreement only by the person to whom these rights are transferred, and shall allow such person to forbid such use of the work by other people. The right to forbid use of the work by another person may be exercised by the author of the work, if the person to whom the exclusive rights are transferred, does not exercise protection of this right.
3. The author's agreement on transfer of exclusive rights shall allow the user to use the work on a par with the owner of exclusive rights who transferred such rights and (or) other people who obtained permission to use this work in the same way.
4. The rights transferred under the author's agreement shall be considered as non-exclusive, unless otherwise directly provided by the agreement.<sup>25</sup>

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<sup>24</sup> Changes are made into Article 29 by the RK Law #586 as of 09.07.2004.

<sup>25</sup> Changes are made into Article 31 by the RK Law #586 as of 09.07.2004.



**Article 32**  
**Terms of the Author's Agreement. The Form of the Author's Agreement.**  
**Liability Under the Author's Agreement**

1. The author's agreement shall provide:for:
  - 1) the ways to use the work (concrete rights transferred under this agreement);
  - 2) the time period and territory on which the right is transferred;
  - 3) the size of the royalty and (or) the procedure for determining the size of the royalty for each way of use of the work; the procedure and dates of its payment, as well as other terms that the parties may consider important for this agreement.
2. Where the author's agreement does not provide for the terms of the time period for which the right is transferred, the agreement may be annulled on expiration of one year from the date of its signing, if the user is notified thereon in written three months prior to annulment of the agreement.
3. Where the author's agreement does not provide for the terms of the territory for which the right is transferred, the validity of the right transferred under the agreement shall be limited by the territory of the Republic of Kazakhstan.
4. The rights to use the work that are not directly transferred under the author's agreement shall be considered as not-transferred.
5. Rights to use works that are not known at the moment of signing the agreement, can not be the subject of the author's agreement.
6. Royalty shall be determined in the author's agreement as a percentage from the profit obtained as result of relevant use of the work and, if it is possible due to the nature of the work or due to peculiarities of its use, as a fixed sum or in any other way.
7. The rights that are transferred under the author's agreement may be transferred fully or partially to other persons only if it directly provided for in the agreement.
8. The rights to use works that the author may create in the future, shall not be the subject of the author's agreement, except for cases stipulated by Articles 14 and 33 of this Law.
9. The term of the author's agreement that restricts the author from creating works in the given subject or in the given field in future, shall be ineffective.
10. The terms of the author's agreement that contradict provisions of this Law shall be ineffective.
11. The author's agreement shall be signed in written. The author's agreement on use of the work in a periodical press may be concluded verbally.
12. When selling electronic copies of works including electronic computer and data base programs, as well as when providing broad circle of users access to them, it shall be allowed to use other forms of agreements and the procedure for their concluding that are established by legislation of the Republic of Kazakhstan.
13. A party that has not fulfilled or has not duly fulfilled the liabilities under the author's agreement, shall be obliged to repair the damages caused to the other party including the lost profit.<sup>26</sup>

**Article 33**  
**The Author's Agreement on the Order**

1. Under the author's agreement on the order, the author shall be committed to create a work in compliance with the terms of the agreement, and to submit it to the customer.
2. The customer shall be committed to pay out an advance to the author on account of the agreed royalty. The size, the procedure and the dates of payment of an advance shall be agreed upon by the parties and stipulated in the agreement.

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<sup>26</sup> Changes are made into Article 32 by the RK Law #586 as of 09.07.2004.

3. The author who does not submit the ordered work in compliance with the order agreement terms, shall be obliged to repair actual damages caused to the customer.

### **Chapter III Related Rights**

#### **Article 34 Objects of Related Rights**

Related rights shall extend to staging, performances, phonograms, transmissions of broadcasting and cable broadcasting organizations irrespective of their designation, content and merit, as well as of the method and form of their expression.

#### **Article 35 Subjects of Related Rights**

1. Performers, producers of phonograms and broadcasting and cable broadcasting organizations shall be subjects of related rights.
2. Producer of a phonogram and a broadcasting organization shall exercise the rights stipulated in this Chapter, within the rights received under a contract with the performer and author of the work, which is recorded on a phonogram or broadcasted on the air or by a cable.
3. A performer shall exercise the rights stipulated in this Chapter, subject to the compliance with the rights of the authors of the work under creation.
4. For the emergence and performance of the related rights neither registration of the works nor the observance of some formal requirements shall be required. In order to notify on his/her rights, producer of a phonogram and (or) performer shall have the right to use protection sign of related rights which is fixed on each copy of a phonogram and (or) on each case where they are kept, and it shall consist of three elements:
  - 1) circled Latin letter "P";
  - 2) name (title) of the owner of exclusive related rights;
  - 3) date of first publishing of the phonogram.
5. Unless otherwise proved, a natural person or a legal entity whose name or title is indicated on the phonogram and (or) the case where it is embodied, shall be recognized as a producer of a phonogram.<sup>27</sup>

#### **Article 36 Validity of Related Rights**

1. The right of the performer shall be recognized as such in compliance with this Law in cases where:
  - 1) the performer is the citizen of the Republic of Kazakhstan;
  - 2) the staging, performance has first taken place in the territory of the Republic of Kazakhstan;
  - 3) the staging, performance are recorded on a phonogram that is protected in compliance with the provisions of Paragraph 2 of this Article;
  - 4) the staging, performance that are not recorded on a phonogram, are included in the transmission of a broadcasting and cable broadcasting organization that is protected in compliance with the provisions of Paragraph 3 of this Article.
2. The right of the producer of the phonogram shall be recognized as such in compliance with this Law in the following cases:

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<sup>27</sup> Changes are made into Article 35 by the RK Law #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

1) the producer of the phonogram is the citizen of the Republic of Kazakhstan or a legal entity that is officially located in the territory of the Republic of Kazakhstan;

2) the phonogram is first published in the territory of the Republic of Kazakhstan.

A phonogram is considered as first published in the territory of the Republic of Kazakhstan if within thirty days after the date of its publication outside the Republic of Kazakhstan, it was published in the territory of the Republic of Kazakhstan.

3. The right of the organization of the air or cable broadcasting shall be recognized as belonging to it in compliance with this Law in case when the organization is officially located in the territory of the Republic of Kazakhstan and carries out broadcasting with the help of transmitters located in the territory of the Republic of Kazakhstan.

4. Related rights of foreign natural persons and legal entities shall be recognized in the territory of the Republic of Kazakhstan in accordance with international treaties ratified by the Republic of Kazakhstan if a relevant staging, phonogram, transmission of an on-air broadcasting or cable broadcasting organizations has not been transferred to public property in the originating country, that is determined under the relevant international treaty ratified by the Republic of Kazakhstan, due to expiration of the related rights in such country and has not been transferred to public property in the Republic of Kazakhstan due to expiration of related rights.<sup>28</sup>

## **Article 37**

### **Rights of a Performer**

1. Additional to the cases stipulated by this Law, the following personal non-property and property rights shall belong to the performer:

- 1) right to name;
- 2) right to protection of the performance or staging from any distortion or any other infringement that may cause damage to honor and dignity of the performer (right to protect reputation);
- 3) right to use the staging or a performance in any way, including the right to get royalties for each type of use of the staging or performance.

1-1. Personal non-property rights shall belong to the performer irrespective of his/her property rights and shall remain with him/her in case of concession of exclusive property rights to use a performance.

2. Exclusive rights of a performer to use the performance or staging shall mean the right to allow or forbid taking the following actions:

- 1) to record the staging or the performance that were not recorded earlier;
- 2) to reproduce directly or indirectly the staging or performance recording in any way;
- 3) to transmit, communicate for general information via cable or communicate for general information the staging or performance without using the recording of the staging or performance, except for cases stipulated by Paragraph 1 Article 39 of this Law;
- 5) to rent (lease) a phono-recorded staging or performance with participation of the performer that was published for commercial purposes. When concluding a contract for recording the performance on a phonogram, this right shall transfer to the producer of a phonogram. At this, the performer shall reserve the right to royalty for renting (leasing) copies of such phonogram.

3. The exclusive right of the performer stipulated by Sub-Paragraph 2) Paragraph 2 of this Article shall not extend to cases when:

- 1) the initial recording of the staging or performance is made with consent of the performer;
- 2) the staging or performance is reproduced for the same purposes for which the consent of the performer was obtained when recording the staging or performance;
- 3) the staging or performance is reproduced for the same purposes for which the recording was made in compliance with Article 41 of this Law.

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<sup>28</sup> Changes are made into Article 36 by the RK Law #586 as of 09.07.2004

4. Permissions specified in Paragraph 2 of this Article shall be issued by the performer, and in case of performance by a group of performers – by the manager of such group through signing a written contract with the user.
5. Permissions specified in Sub-Paragraphs 1), 2) and 3) of Paragraph 2 of this Article for the next transmissions of the staging or performance, recording for transmission and reproduction of such record by on-air and cable broadcasting organizations shall not be required if they are stipulated by the contract signed between the performer and an on-air and cable broadcasting organization. The size of the royalty to the performer for such use shall also be determined in this contract.
6. Signing a contract between a performer and a producer of an audiovisual work shall entail provision of rights specified in Sub-Paragraphs 1), 2), 3) and 4) of Paragraph 2 of this Article by the performer. Provision of such rights by the performer shall limit to use of the audiovisual work and, unless otherwise stipulated in the contract, shall not include rights to separate use of the sound or image fixed in the audiovisual work.
7. Exclusive rights of the performer stipulated by Paragraph 2 of this Article may be transferred to third parties under the contract.<sup>29</sup>

### **Article 38**

#### **Rights of the Producer of the Phonogram**

1. Additional to the rights stipulated by this Law, the producer of the phonogram shall have exclusive rights to use phonograms in any way, including the right to get royalties for each type of use of the phonogram.
2. Exclusive rights to use the phonogram shall mean the right to take, allow or forbid taking the following actions:
  - 1) to reproduce directly or indirectly the phonogram in any way;
  - 3) to distribute the original and copies of the phonogram, including through importation, sale or any other transfer of the right of ownership;
  - 4) to rent (to lease) phonogram even after its distribution by the producer of the phonogram or upon his/her permission;
  - 5) to alter or process the phonogram in any way;
  - 6) to communicate the phonogram for general information.
3. If copies of the lawfully published phonogram are placed into civil circulation through their sale, then their further distribution shall be allowed without consent of the producer of the phonogram and without pay-out of royalties. The right to distribute copies of the phonogram through their renting (leasing) shall belong to the producer of the phonogram irrespective of the right of ownership to those copies.
4. Exclusive rights of the producer of the phonogram stipulated by Paragraph 2 of this Article may be transferred to third parties under the contract.<sup>30</sup>

### **Article 39**

#### **Use of the Phonogram Published for Commercial Purposes Without Consent of the Producer of the Phonogram and the Performer**

1. The following shall be allowed without consent of the producer of the phonogram that is published for commercial purposes and of the performer whose performance is recorded on such phonogram, but with paying out royalties:
  - 1) public performance of the phonogram;

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<sup>29</sup> Changes are made into Article 37 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

<sup>30</sup> Changes are made into Article 38 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

- 2) broadcasting of the phonogram;
- 3) communication of the phonogram for general information via cable.
2. Collection, distribution and pay-out of royalties stipulated by Paragraph 1 of this Article, shall be accomplished by one of the organizations that manage the rights of producers of phonograms and performers on collective basis (Article 43 of this Law), in compliance with the contract between these organizations. Unless otherwise stipulated by this contracts, the said royalty shall be equally shared between the producer of the phonogram and the performer.
3. The size of the royalty and the terms for its pay-out shall be determined in the agreement between the phonogram users or units (associations) of such users from one side, and organizations that manage the rights of producers of phonograms and performers, from the other side, and if the parties do not reach such agreement – by the authorized body. The size of the royalty shall be established for each type of use of a phonogram.
4. Phonogram users shall be obliged to provide the organizations specified in Paragraph 2 of this Article, programs that contain precise data on the quantity of the phonogram use, as well as other data and documents required for collection and distribution of the royalty.

## **Article 40**

### **Rights of the On-Air and Cable Broadcasting Organization**

1. Additional to the rights stipulated by this Law, on-air and (or) cable broadcasting organizations with regard to their transmissions shall have exclusive rights to use the transmission in any way and to permit use the transmission, including the right to get royalties for giving such permission.
2. Exclusive rights to use the transmission shall mean the right to take, allow or forbid taking the following actions:
  - 1) to broadcast the transmissions;
  - 2) to communicate the transmissions for general information via cable or to broadcast the transmission;
  - 3) to record the transmission;
  - 4) to reproduce the record of the transmission;
  - 5) to communicate the transmissions for general information in places with paid access;
  - 6) to communicate the transmission for general information.
3. The exclusive right of the on-air and (or) cable broadcasting organization stipulated by Sub-Paragraph 4) Paragraph 2 of this Article shall not extend to cases when:
  - 1) the transmission is recorded with consent of the on-air and (or) cable broadcasting organization;
  - 2) the transmission is reproduced for the same purposes for which it was recorder in compliance with Article 41 of this Law.<sup>31</sup>

## **Article 40-1**

### **Transfer of Exclusive Rights. Licensing Agreement**

1. Exclusive rights specified in Articles 37, 38, 40 of this Law may be conceded fully or partially and also may be transferred for use under the license agreement on transfer of exclusive or non-exclusive rights. Requirements stipulated by Article 32 of this Law shall apply to such agreement.
2. A license agreement shall be subject to compulsory state registration according to the procedure established by legislation of the Republic of Kazakhstan with the authorized body and getting a state registration certificate of the established pattern.<sup>32</sup>

<sup>31</sup> Changes are made into Article 37 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

<sup>32</sup> Article 40-1 was added by the RK Law #586 as of 09.07.2004

**Article 41**  
**Limitations of Rights of the Performer, Producer of a Phonogram,  
of On-Air or Cable Broadcasting Organization**

1. It shall be allowed, without consent of the performer, producer of a phonogram, of on-air or cable broadcasting organization and without paying out royalties to use performance, staging, transmissions of on-air or cable broadcasting organizations and their recordings as well as to reproduce phonograms for the following purposes:

- 1) for including small extracts from a performance, staging, phonogram, transmissions of on-air or cable broadcasting organization to the reviews on current events;
- 2) exclusively for training and scientific research purposes;
- 3) for citation small extracts from a performance, staging, phonogram, transmissions of on-air or cable broadcasting organization provided, that such citation is made for information purposes. At this, any use by an on-air or cable broadcasting organization of copies of phonograms that are published for commercial purposes for broadcasting, communicating for general information via cable or communication to the general information shall be possible subject to complying with the provisions of Article 39 of this Law;
- 4) in other cases stipulated by Articles 18-26 of this Law with regard to limitation of property rights of the author of a scientific, literature and fine art works.

2. For exception from Articles 37-40 of this Law, use of the transmission of the on-air or cable broadcasting organization and its recordings, as well as reproduction of the phonogram exclusively for personal use, shall be allowed without consent of the performer, producer of a phonogram, on-air or cable broadcasting organization. Reproduction of the phonogram shall be allowed subject to pay-out of the royalty in compliance with Article 26 of this Law.

3. Provisions of Articles 37, 38, 40 of this Law with regard to getting permission from the performer, producer of a phonogram, on-air or cable broadcasting organization to record a short-term use of the performance, staging or transmission, to reproduce such records and to reproduce phonograms published for commercial purposes shall not apply, if recording of a short-term use or reproduction is accomplished by the on-air or cable broadcasting organization with use of its own equipment and for its own transmission on the subject of:

- 1) preliminary obtaining by the on-air or cable broadcasting organization of a permission for transmission of the performance, staging or transmission with regard to which a recording of a short-term use or reproduction of such recording is being accomplished in compliance with the provisions of this Paragraph;
- 2) its destruction within the time period that is established with regard to the recording of short-term use of scientific, literature and fine arts works that are produced by the on-air or cable broadcasting organization in compliance with Article 25 of this Law, except for the recording that may be kept in archives due to its exclusive documentary nature.

4. Limitations stipulated by this Article shall apply without prejudice to normal use of the phonogram, performance, staging, transmission of the on-air or cable broadcasting organization and their recordings, as well as scientific, literature, fine arts works included therein, and without infringement of legal interests of the performer, producer of a phonogram, on-air or cable broadcasting organization and the authors of indicated works.<sup>33</sup>

**Article 42**  
**Period of Validity of Related Rights**

1. The rights stipulated by this Chapter with respect to the performer shall be effective within seventy years after the first performance or staging. The rights of the performer to name

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<sup>33</sup> Changes are made into Article 41 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

and to protection of the performance or staging from any distortions and any other infringement that may cause damage to honor and dignity of the performer that are stipulated by Article 37 of this law, shall be protected during an indefinite period.

2. Rights stipulated by this Chapter with respect to the producer of the phonogram shall be effective within seventy years from its the first recording, if the phonogram was not published within this time period.

3. Rights stipulated by this Chapter with respect to an the on-air broadcasting organization shall be effective within seventy years after conducting by such an organization of the first on-air broadcasting.

4. Rights stipulated by this Chapter with respect to the cable broadcasting organization shall be effective within seventy years after conducting by such an organization of the first broadcasting by cable for general information.

5. Radio – and TV programs (broadcastings) with respect to which the seventy year period did not expire from the moment of their legal publishing or creation, if they were not published, from the date of this Law came into effect, shall be protected within the remaining period as related rights objects.

6. Calculation of dates stipulated by Paragraphs 1,2,3,4 of this Article shall start from the first of January of the year following the year in which the legal fact that serves as basis for start of the period took place.

7. If the performer was subject to repression and rehabilitated after his/her death, then the date for protection of rights stipulated by this Article shall start from the first of January of the year following the year of rehabilitation.

8. The right to allow use of a performance, staging, phonogram, transmission of on-air or cable broadcasting organization and to get royalties within the limits of the remaining period specified in Paragraphs 1,2,3,4 of this Article shall transfer to heirs (with respect to legal entities – to assignees) of the performer, producer of a phonogram, of on-air or cable broadcasting organization.

9. Expiration of the related rights to performances, staging, phonograms, transmissions of on-air or cable broadcasting organizations shall mean their transfer to public property.

With respect to related rights that are transferred to public property, provisions of Article 29 of this Law shall apply taking into account provisions of Articles 34-42 of this Law.<sup>34</sup>

## **Chapter IV**

### **Collective Management of Property Rights**

#### **Article 43**

##### **Goals of the Collective Management of Property Rights**

1. Authors of works of science, literature and fine arts, performers, producers of phonograms and other owners of copyright and related rights for their practical realization shall have the right o establish organizations that manage their property rights on collective basis .

2. The organizations that manage the property rights on collective basis shall not be able to do commercial activity and to accomplish use of works and objects of related rights that are obtained to manage on collective basis.

3. It shall be allowed to establish separate organizations on various rights and of various categories of right holders, or organizations that manage various rights in the interests of one category of right holders, or organizations that manage one type of rights in the interests of various categories of right holders. Such organizations shall be established directly by owners of

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<sup>34</sup> Changes are made into Article 42 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)



copyrights and related rights and shall operate within the authorities received from them under the Statute.

4. Authorities for collective management of property rights shall transfer directly by owners of copyrights and related rights voluntarily based on written contacts as well as based on relevant contracts with foreign organizations that manage similar rights.

5. Statutes of organizations that manage property rights on collective basis shall contain provisions that meet the requirements of this Law. Refusal to register the organization that manage property rights on collective basis shall be allowed in case of infringement of the requirements of this Law and the legislation that stipulates the procedure for registration public organizations.

6. Management of the activity of the indicated organization shall be accomplished by owners of copyrights and related rights, whose property rights it manages. Making decision regarding the size of the royalty and the terms of concluding of a license contract with users, the method of distribution and pay-out of the collected royalty and other principal issues related to activity of such organization shall be accomplished exclusively by owners of copyrights and related rights jointly at the general meeting.

7. Excluded<sup>35</sup>.

#### **Article 44**

##### **Activity of Organizations That Manage Property Rights on Collective Basis**

1. Any author, his/her heir or any other owner of copyrights and related rights, that are protected in compliance with Chapter III of this Law, shall have the right to transfer enforcement of his/her property rights to the organization that manages property rights on collective basis, and the organization shall be obliged to take over enforcement of those rights on collective basis, if management of such category of rights is covered by the Statute of this organization. The specified organizations shall not have the right to exercise use of works and objects of related rights obtained for management on collective basis.

2. Based on the authorities obtained in compliance with Paragraph 3 of Article 43 of this Law, the organization that manages the property rights on collective basis shall sign license contracts with users for the relevant methods of use of works and objects of related rights. Such license contracts shall allow use of all works and objects of related rights by the methods stipulated by such license contracts, including those that are not transferred to management of the organization in compliance with paragraph 3 Article 43 of this Law. Terms of such licensing contracts shall be equal for all users of the same category. The indicated organizations shall not have the right to refuse to sign a licensing contract without providing sufficient reasons for that.

3. Users who signed a license contract shall be obliged to undergo state registration and to get a state registration certificate of the established form in the authorized body.

4. All the possible property claims of owners of copyright and related rights to users associated with use of their works and objects of related rights under such license contracts shall be settled by the organization that signs license contracts.

5. The organization that manages the property rights on collective basis, shall have the right to keep the unclaimed royalty and include it into the distributable sums or to allocate them for other purposes in the interests of owners of copyrights and related rights represented by this organization, upon expiration of three years from the date of its transfer to the organization's account.<sup>36</sup>

#### **Article 45**

##### **Functions of the Organization That Manages Property Rights on Collective Basis**

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<sup>35</sup> Changes are made into Article 43 by the RK Law #586 as of 09.07.2004

<sup>36</sup> Changes are made into Article 44 by the RK Law #586 as of 09.07.2004

The organization that manages the property rights on collective basis shall fulfill the following functions on behalf of the owners of copyrights and related rights represented by this organization, and based on the authorities received from them:

- 1) to sign license contracts with users to use the rights, the management of which is done by this organization;
- 2) to negotiate with users the size of the royalty and other terms on which license contracts are signed;
- 3) to negotiate with users the size of the royalty in cases when this organization deals with collection of such royalty without signing a license contract (Article 26 and Paragraphs 2 and 3 Article 39 of this Law);
- 4) to collect royalties stipulated under the license contract and (or) royalty stipulated by Paragraph 3 of this Article;
- 5) to distribute and pay-out the royalty collected in compliance with Paragraph 4 of this Article to owners of copyrights and related rights whom it represents;
- 6) to commit any legal actions required to protect the rights with the management of which such organizations deals with.

#### **Article 46**

##### **Liabilities of the Organization That Manages Property Rights on Collective Basis**

1. The activity of the organization that manages the property rights on collective basis shall be accomplished in the interests of owners of copyrights and related rights that are represented by such organizations. For these purposes, the organization shall fulfill the following functions:

- 1) along with payment of the royalty, submits to owners of copyrights and related rights reports that contain data on use of their rights;
- 2) uses the royalty collected in compliance with provisions of Paragraph 4 Article 45 of this Law for distribution and payment to owners of copyrights and related rights. At this, the organization shall have the right to deduct from the collected sum of royalties the sum to cover its actual expenses on collecting, distributing and paying such royalties, as well as sums that are transferred to special funds that are established by this organization with the consent and in the interests of owners of copyrights and related rights represented by it;
- 3) distributes and regularly pays out the collected sums of the royalty with deduction of the sums specified in Sub-paragraph 2) of this Paragraph, pro rata actual use of works and objects of related rights.

2. Owners of copyrights and related rights who did not grant authorities to the organization with respect to collection of royalty stipulated by Paragraph 4 Article 45 of this Law, shall have the right to claim the organization to pay out royalties payable to them in compliance with the accomplished distribution, and also to exclude their works and objects of related rights from the permissions issued to the users by the organization.

#### **Article 47**

##### **Control Over Activity of the Organizations That Manage Property Rights on Collective Basis**

1. The organization that manages the property rights on collective basis shall be committed to submit to the authorized body that exercises control over its activity, the following information on its activity:

- 1) changes made to the Statute and to other constituent documents of this organization;
- 2) bilateral and multilateral agreements signed by this organization with foreign organizations that manage similar rights;
- 3) decisions made at general meetings;

4) annual balance, annual report including data on unclaimed royalties, auditing inspections of the activity of the organization;

5) names of the persons authorized to represent such organization.

2. The authorized body that exercises control over activity of organizations that manage the property rights on collective basis, shall have the right to claim from such organization additional information required to check compliance of the activity of the organization with this Law, with legislation on public unions and with other legislation, with the Statute of such organization.

## **Chapter V**

### **Protection of Copyrights and Related Rights**

#### **Article 48**

#### **Infringement of Copyrights and Related Rights**

For infringement of copyrights and related rights stimulated by this Law, civil, criminal and administrative liability shall emerge in compliance with laws of the Republic of Kazakhstan.<sup>37</sup>

#### **Article 48-1**

#### **Control Over Activity of Natural Persons and Legal Entities Who Use Objects of Copyrights and Related Rights**

1. Control over activity of natural persons and legal entities who use objects of copyrights and related rights shall be exercised by the authorized body.
2. The persons, specified in Paragraph 1 of this Article shall be committed to submit, upon request of the authorized body, data on used works or objects of related rights, on incomes obtained as a result of use of objects of copyrights and related rights, as well as data and documents related to pay-out of royalties.<sup>38</sup>

#### **Article 49**

#### **Protection of Copyrights and Related Rights**

1. Protection of copyrights and related rights shall be accomplished by the court through:
  - 1) recognition of the right;
  - 2) rehabilitation of the status that existed before the infringement of the right;
  - 3) suppression of actions that infringe the right or create threat of its infringement;
  - 4) compensation of damages including lost profit;
  - 5) levying the profit obtained by pirates as a result of infringement of copyrights and related rights;
  - 6) pay-out of compensation in the sum from twenty to fifty minimal salaries, and in case of infringement of rights of authors of electronic computers and database programs - in the sum from five hundred to fifty hundred minimal salaries that are determined by legislation of the Republic of Kazakhstan. The size of the compensation shall be determined by the court instead of compensating damages or charging profit;
  - 7) taking other measures stipulated by legal acts related to protection of their rights.The measures specified in Subparagraphs 4), 5), 6) of this Article shall apply at choice of the owner of copyrights and related rights.
2. Prior to considering the case, the judge shall have the right to make a decision that forbids the defendant to produce, reproduce, sell, use copies of the works and phonograms, with respect to which it is believed that they are counterfeit. The judge shall also have the right to make a decision to arrest and withdraw all copies of the work and phonogram with respect to which it is believed that they are counterfeit, as well as materials and equipment designated for their productions and reproduction.
3. The court shall have the right to make a decision to confiscate counterfeit copies of the work and phonogram, as well as materials and equipment used for their reproduction. Counterfeit

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<sup>37</sup> Changes are made into Article 48 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

<sup>38</sup> Changes are made into Article 48-1 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)

copies of the works or phonograms may be transferred to the owner of copyrights or related rights upon his/her request, or shall be subject to destruction upon decision of the court. Materials and equipment used for their reproduction shall be subject to destruction upon decision of the court or transfer to the property of the state.<sup>39</sup>

## **President of the Republic of Kazakhstan**

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<sup>39</sup> Changes are made into Article 49 by the RK Law #586 as of 09.07.2004; #90 as of 22.11.2005 (see Art.2 of the Law on the procedure for bringing into effect)