

## **Annex 28**

Government Resolution No. 1102 as of 28 October 2004

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

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

Prime Minister,  
Republic of Kazakhstan

Draft

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



add figures

set paragraph 4 as follows:

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

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

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

10) in article 986:

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

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

add paragraph 6 as follows:

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

11) in article 987:

in part one and to of paragraph 2:

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

set paragraph 4 as follows:

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

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

13) in article 989:

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

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

14) in article 990:

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

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

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

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

1) set articles 128 and 129 as follows:

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

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

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

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

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

*"Article 129. Infringement of copyright and related rights*

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

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

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

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

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

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

2) set article 145 as follows:

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

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

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

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

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

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

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

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

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

5) add article 505-1 as follows:

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

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

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

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

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

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

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

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

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

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

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

2) in article 2:

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

in subparagraph (11):

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

add "staging" after "performance,";

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

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

remove second sentence from subparagraph (29);

3) in article 6:

in paragraph 2:

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

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

add subparagraph (6) as follows:

*"6) in other forms."*;

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

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

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

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

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

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

8) in article 18:

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

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

9) paragraph 1 of article 26:

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

add words "*without obtaining proceeds*";

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

11) add paragraph 5 to article 35 as follows:

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

12) in article 37:

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

in paragraph 2:

add words





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

11. Law of the Republic of Kazakhstan "On Le