

# THE LAW No. 6 of 10 JUNE 1996 OF THE REPUBLIC OF KAZAKHSTAN

## “ON COPYRIGHT AND RELATED RIGHTS”

### 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 of science, literature and art;
- 2) **copyright** – shall mean property and personal non-property rights of the author;
- 3) **technical means of copyright and related right protection** – shall mean technology (programme technology) or its components that control access to copyright works or objects of related rights and prevent or restrict actions prohibited by the author, owner of related rights, or other owner of exclusive copyright or related rights;
- 4) **pirated copy of copyright and (or) related rights object** – shall mean a copy of work, recorded performance, phonogram, program of broadcasting and cable distribution, manufacturing, distribution or other use of which entails a violation of copyright and (or) related rights in the view of the provisions of this Law or the rules of international treaties ratified by the Republic of Kazakhstan. Copies of copyright and (or) related rights objects shall also be acknowledged as pirated if their information on management rights has been removed or changed without permission of the right holder or if they were produced with illegal use of devices that enable circumvention of technical protection of copyright and (or) related rights;
- 5) **copyright contract** - a contract which subject is the transfer of property rights to use one or more objects of copyright. The copyright contract is variation of license agreement;
- 6) **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;
- 7) **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;
- 8) **accreditation** – shall mean procedure of acknowledgement by the authorized body of competence of organizations on collective management of rights stipulated by the present Law;

- 8-1) **information and communications network** – shall mean a set of technical and hardware and software interoperability between information systems, or their components, as well as transmission of information resources;
- 9) **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;
- 10) **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;
- 11) **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;
- 12) **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;
- 13) **communication for general information (making available for public)** - shall mean communication 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);
- 14) **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;
- 14-1) **internet recourse** – shall mean an electronic information resource, technology of its operation and (or) use in the open information and communication network, as well as organizational structure providing information interaction;
- 15) **communication for general information (making available for public) 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;
- 16) **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,

- 19) reproduction** - shall mean production of one or more permanent or temporary copies of copyright or related rights objects in any way or in any form, in whole or in part, directly or indirectly. Types of reproduction are manufacture of audio or video recording of one or more copies of the two-dimensional or three-dimensional work, as well as any permanent or temporary storage of copyright or related rights objects in any material form, including open information and communication network;;
- 20) 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), produc

- 33) 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;
- 34) derivative work** - shall mean a work that was created as a result of creative processing of another work;
- 35) authorized body** – shall mean a state body determined by the Government of the Republic of Kazakhstan and exercising state regulation in the field of copyright and related rights;
- 36) phonogram** – shall mean recording of performances or other sounds, also presentation of sounds in any form, except for recording incorporated into the audiovisual work;
- 37) a copy of the phonogram** – a copy of the phonogram in any tangible medium, including the one contained in public information and communication network, produced directly or indirectly from a phonogram and incorporating all or part of the sounds of the sounds recorded thereon;
- 38) 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;
- 39) 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);
- 40) 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;
- 41) 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;
- 42) 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;
- 43) modification (processing) of the electronic computer or database program**– shall mean any change of the electronic computer or database program that are not adaptation;
- 44) 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 of7 i50001

performed by analogue on-air, multichannel broadcasting (digital, on-air, satellite, cable tele- and radio broadcasting)

**46) 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;

### **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**

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**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, tei(-0ner2.04..c-.00s8hTJcg, cin0l-27.2.

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.

### **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 copyri

The procedure for submission, acceptance and storage of typescripts shall be determined by the authorized body.

### **Article 9-1. The state registration of rights protected by copyright**

1. The state registration of rights protected by copyright (hereinafter - state registration) is produced by the authority within twenty working days from receipt of the application author (s) or copyright owner.

State registration is based on the application of the author (s) or right holder.

Application forms for registration of copyright are approved by the competent authority.

2. The application for state registration shall consist of the data about the author (s), surname, first name in full, residence, contact telephone numbers, data of the document certifying the identity of the applicant.

If the application is submitted by the right holder - his legal address is stated.

If the copyright work is derivative, it is necessary to specify the name and surname of the author (s) of the used product.

3. The following documents are presented in registration of rights on literary, scientific, dramatic, a scenario works:

- 1) application;
- 2) copy of the work;
- 3) copy of the document certifying the identity of the applicant;
- 4) original of the document confirming payment of fee for state registration.

4. The following documents are presented in registration of rights on musical work with or without text, and musical-dramatic work:

- 1) application;
- 2) recording of work, text, notes in a score or piano-vocal score;
- 3) copy of the document certifying the identity of the applicant;
- 4) original of the document confirming payment of fee for state registration.

The rights on musical work created in separate co-authorship can be registered either separately, providing the rights of co-author, or jointly.

5. The following documents are presented in the registration rights on the work of choreography, pantomimes, audiovisual work:

- 1) application;
- 2) recording of work;
- 3) description of the work;
- 4) copy of the document certifying the identity of the applicant;
- 5) original of the document confirming payment of state registration fee.

6. The following documents are presented in registration of rights on works of architecture, urban planning and landscape architecture:

- 1) application;
- 2) sketches, blueprints, drawings;
- 3) detailed description of the work;
- 4) copy of the document certifying the identity of the applicant;
- 5) original of the document confirming payment of fee for state registration.

7. The following documents are presented in registration of rights on the works of painting, sculpture, graphics, fine and applied art:

- 1) application;
- 2) copy of work or image of a work in the form of photographs;
- 3) detailed description of the work;
- 4) copy of the document certifying the identity of the applicant;



5) original of the document confirming payment of fee for state registration.

8. The following documents are presented in the registration of rights on photographic works and works obtained by processes similar to photography, as well

**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

**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.

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>1</sup>

**Article 14**  
**Copyright to Official Service Works**

1. Persona7oesi (a)is nove21.2e

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 disclosure), with the exception of works created in the performance of official duties or of duty of the employer..
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.
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>2</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 works by any means: to sell, to modify, to rent (lease), to perform other operations, including in public information and communication network (right of 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);

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<sup>2</sup> Changes are made into Article 15 by the RK Law #586 as of 09.07.2004

- 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>3</sup>

### **Article 16-1** **Minimal Rates of Royalties**

Government of the Republic of Kazakhstan sets minimum rates of remuneration in cases where the practical realization of the property (exclusive) rights on an individual basis cannot be done due to the nature of the work or the peculiarities of its use (public performance, including radio and television, reproduction of works by means of mechanical, magnetic or other recording, reproducing, reproduction of works for private purposes without the consent of the author and other cases).

### **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.

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<sup>3</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)

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.

### **Article 18**



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. 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.
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.

**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

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.

### **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.

### **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.

### **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

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**Chapter III  
Related Rights**

**Article 34  
Objects of Related Rights**

Related rights shall extend to staging, performa

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.

### **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 c.1( At thiswfpTJ-1884 perform)8.1(e)-.9(ial pb0 TD.6T.



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.

#### **Article 40-1**

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

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.

#### **Article 40-2.**

##### **The minimum rates of remuneration for performers and phonogram producers**

Government of the Republic of Kazakhstan sets minimum rates of remuneration for performers and phonogram producers in cases where the practical realization of the property (exclusive) rights on an individual basis cannot be done due to the nature of performances or phonograms (public performance, including radio and television, reproduction of works by mechanical , magnetic or other recording, reproducing, reproduction for private purposes without the consent of the performer and the phonogram producer and in other cases).



**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

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



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. 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.

#### **Article 45**

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

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 deal with.

#### **Article 46.**

#### **Responsibilities of the organizations managing the property rights on a collective basis**

1. The Organization that manages the property rights on a collective basis acts in the interests of the copyright and related rights holders it represents. In pursuing these aims, the organization must:

1) simultaneously with the payment of royalties provide the report to the copyright and related rights holders, which contain information about the use of their rights, including the amount of the royalties collected and the amounts withheld from it;

2) in accordance with the provisions of subparagraph 4) of Article 45 of the Law to use the royalties for distribution and payment to the copyright and related rights holders. The organization has the right to deduct certain amount from the royalties to cover their actual costs for the Tw(eir ac0,niz)9.2

4) create registries containing information about right holders and the rights assigned to it by the right holders, as well as about the objects of copyright and related rights. Information contained in the registers can be provided to all interested parties, except of the information that according to the law cannot be disclosed without the consent of the holder;

5) create a web site to inform about the organization managing the property rights on a

4. In order to receive accreditation applicant must submit to the authority a written application. The application must be sent no later than thirty calendar days before the meeting of the Commission on Accreditation. Application form and the list of documents that must submit the organization managing the property rights on a collective basis in order to receive the accreditation are establishing by the authorized body.

5. Authorized body receives a statement and makes a record in the registration statement together with assignment of a number and the date of admission.

6. Meeting of the Commission on Accreditation is entitled to make decisions when there are at least hal8ipli



- 1) actions aimed at the removal of restrictions on use of objects of copyright and (or) related rights established by the application of technical means of protection of copyright and related rights;
- 2) manufacture, distribution, lease, temporary use, importation, advertising of any device or its components, their use in order to generate income or provide services in cases where as a result of these actions it is impossible to



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.

**President of the Republic of Kazakhstan**