

**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 intell

- 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 a set 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 which consists of fixed series of interrelated shots or images (with or without accompanying sounds) that are intended for visual and aural (when accompanied with sounds) perception with the use of suitable technical devices. Audiovisual works include cinematographic works and all works that are expressed with devices similar to cinematographic (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 or legal person who took an

temporary storage of copyright or related rights objects in any material form, including open information and communication network;

- 20) **right holder** – shall mean the author (his/her successors) with respect to copyright, the performer (his/her successors), producer of a phonogram, an on-air and cable broadcasting organization with respect to related rights, as well as other natural or legal persons which obtained the rights to use the works and (or) objects of related rights under the contract or on other grounds stipulated by this Law;
- 21) **information on rights management** – shall mean information which identifies the work, the author of the work, performer, performance of the performer, producer of a phonogram, phonogram, right holder of the work, performance or phonogram or information on terms of use of the work, performance or phonogram. Information on rights management shall also mean any figures or codes that contain such information, when any of this information elements is attached to the copy of the work, recorded performance or phonogram or when it appears due to communication of the work and (or) making available of the recorded performance or phonogram to public;
- 22) **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;
- 23) **performance** – shall mean presentation of the work, phonogram, performance, staging through playing, singing, dancing alive or with use of technical devices (TV programs, broadcasting, cable TV etc) as well as presentation of the audiovisual work shots in their sequence with or without sound;
- 24) **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 production director and musical director;
- 25) **user** – natural or legal person who use or provide use of copyright and related rights objects;
- 26) **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;
- 27) **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;
- 28) **work of arts and crafts** – shall mean two-dl TD.0008 Tc.1142o43

- 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 and 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 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 shall ensure accomplishment or achievement of a certain task or result by the electronic computer, 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 programs or database solely for the purpose 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, plays, phonograms, transmissions of on-air or cable broadcasting organizations to public (including demonstration or performance) through their broadcasting on radio or TV (except for cable TV). When communicating works, performances, plays, 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, plays, phonograms, transmissions of on-air and cable broadcasting organizations may be communicated to public 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;
- 45) subsequent broadcasting** – shall mean transmission via cable of works or objects of related rights that were previously broadcasted or communicated to public;
- 45-1) on-air and cable broadcasting organizations** – natural and juridical persons providing on-air and (or) cable communication of TV and radio channels, TV and radio programs that include works, performances, plays and phonograms. On-air and (or) cable communication is performed by analogue on-air, multichannel broadcasting (digital,

**Article 3**  
**Legislation of the Republic of Kazakhstan on Copyright and Related Rights**

Legislation of the Republic of Kazakhstan on copyright and related 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:
  - 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 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 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 protected 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. Protection to the work in accordance with the international treaties ratified by the Republic of Kazakhstan shall be provided if:
  - it is not transferred 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 term of protection in that country, and
  - is not transferred to the public property in the Republic of Kazakhstan due to expiration of the copyright.

**Article 6**  
**Copyright Object. General Provisions**





1. The state registration of rights protected by copyright (hereinafter - state registration) shall be conducted by the authorized body within twenty working days from receipt of the application of the author (s) or copyright owner.

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

Application forms for registration of copyright are approved by the authorized body.

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 - 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 work.

3. The following documents are presented for registration of rights on literary, scientific, dramatic, and 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 for 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 for the registration of 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 for 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 for 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 for the registration of rights on photographic works and works obtained by processes similar to photography, as well as maps, plans, sketches, illustrations and three-dimensional works relative to geography, topography and other sciences:

- 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.

9. The following documents are presented for the registration of rights on computer programs or databases:

- 1) application;
- 2) media (floppy disk or other electronic media) with the program

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 his/her part of the work 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 none of the co-authors shall have the right to prohibit 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.

## **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 represent result of creative activity (compilation).

1. The following persons shall be the 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) camera operator;
  - 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 on creation of an audiovisual work (or transfer of the right on 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 copies of audiovisual work.

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 (camera operator ; stage director, etc) shall enjoy copyright each for his/her work. <sup>1</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

- 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.
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.

## **Article 16**

### **Property Rights**

1. The author or any other right holder shall have property (exclusive) rights to use this work in any form and by any means.
- 2.

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 right holder with respect 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 right holder 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 para

- 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.

### **Article 19**

#### **Use of the Work without Consent of the Author or Right holder and without Payment of Royalties**

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

- 1) 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) 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) reproduce in newspapers, broadcast or communicate to public via cable articles on current economic, 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 via cable were not specifically forbidden by the author;
- 4) reproduce in newspapers, broadcast or communicate to public via cable the publicly delivered political speeches, addresses, reports and other similar works in the volume justified for the information purposes. However, the author shall reserve the right to publish such works in work collections;
- 5) reproduce or communicate to public in the reviews of current events through photographic or cinematographic means, via broadcasting or communication to public via cable of works that become seen or heard in the course of such actions, in the volume justified for the information purposes. However, the author shall reserve the right to publish such works in work collections;
- 6) reproduce legally published works without profit, through relief-point printing or by other special means for blind people, except for works that are specifically created for such reproduction means.

### **Article 20**

#### **Use of Works though Reproducing**

It shall be allowed without consent of the author or another right holder and without payment of 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 profit:

- 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.

**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 right holder and without payment of royalties, to reproduce, broadcast and (or) communicate to public via cable of works of architecture, photography, fine arts, that are permanently located in the place open for free access, except for cases when the image of the work is the main object of such reproduction, broadcasting and (or) communication to public via cable, or when the image of the work is used for commercial purposes.

**Article 22**  
**Public Performance of Works during Official and Other Ceremonies**

It shall be allowed without consent of the author or another right holder, and without payment of 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.

**Article 23**  
**Reproduction of Works for Judicial and Administrative Purposes**

It shall be allowed without consent of the author or another right holder, and without payment of royalties, to reproduce works for judicial and administrative purposes in the volume justified with this purpose.

**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 payment of royalties:

1) make changes to the electronic computer or a database program solely for the purpose of its operation at the technical means of the user; 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) 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. However, a copy of the electronic computer or a database program cannot 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 payment of 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) information required to achieve the possibility for interaction, was not accessible to this person from other sources;
  - 2) 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) 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.

#### **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 right holder, and without payment of 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 right holder to the recorder work. Such recording may be kept without consent of the author or right holder in official archives, if the recording has exclusively documentary nature.

#### **Article 26**

#### **Reproduction of Works for Personal Use without Consent of the Author and With Payment of 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 payment of royalties, to reproduce audiovisual work or sound recording for personal use and without profit.
2. Royalty for the work indicated in paragraph 1 of this Article shall be paid 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, producers of phonograms 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 on one hand, and organizations that manage property rights of authors, producers of phonograms and performers on a 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 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 payment of 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** **Term of 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.

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 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.

4. 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.

5. 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.

6. If the author was subject to repression and rehabilitation after his/her death, the time period te13apu

2. Works that are transferred to public property shall be freely used by any person without payment of royalties. However, the

- 1) ways to use the work (concrete rights transferred under this agreement);
- 2) time period and territory on which the right is transferred;
- 3) 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 unknown at the moment of signing the agreement, cannot 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 invalid.
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 procedure for their conclusion 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.

### **Article 33**

#### **Copyright Commission Contract**

1. Under the copyright commission contract 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 by the parties and stipulated in the agreement.
3. The author who does not submit the ordered work in compliance with the copyright commission contract terms, shall be obliged to repair actual damages caused to the customer.



1) 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) phonogram is published for the first time at the territory of the Republic of Kazakhstan.

Phonogram is considered as published for the first time at 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 at the territory of the Republic of Kazakhstan.

3. The rights of the on-air or cable broadcasting organization shall be recognized in compliance with this Law in case when the organization is officially located at the territory of the Republic of Kazakhstan and carries out broadcasting with the help of transmitters located at the territory of the Republic of Kazakhstan.

4. Related rights of foreign natural persons and legal entities shall be recognized at 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 on-air or cable broadcasting organizations have 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 have 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 performance or staging in any form, including the right to get royalties for each type of use of performance or staging.

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 performer to use the performance or staging shall mean the right to allow or forbid taking the following actions:

1) record the performance or staging that were not recorded earlier;

2) reproduce directly or indirectly the performance or staging recording in any form;

3) transmit, communicate to public via cable or communicate to public the performance or staging without using the recording of the performance or staging, except for cases stipulated by Paragraph 1 Article 39 of this Law;

5) rent (lease) a phono-recorded performance or staging 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 be transferred to the producer of a phonogram. However, 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) of paragraph 2 of this Article shall not extend to cases when:

1) initial recording of the staging or performance is made with consent of the performer;

2) performance or staging is reproduced for the same purposes for which the consent of the performer was obtained when recording the staging or performance;

3) performance or staging is reproduced for the same purposes for which the recording was made in compliance with Article 41 of this Law.

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 performance or staging, 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 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 be limited 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.

### **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 form, 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) reproduce directly or indirectly the phonogram in any form;
- 2) distribute the original and copies of the phonogram, including importation, sale or any other transfer of the right of ownership;
- 3) rent (to lease) phonogram even after its distribution by the producer of the phonogram or upon his/her permission;
- 4) alter or process the phonogram in any way;
- 5) communicate the phonogram to public.

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 payment 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.

### **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 payment of royalties:

- 1) public performance of the phonogram;
- 2) broadcasting of the phonogram;
- 3) communication of the phonogram to public via cable.

2. Collection, distribution and payment of royalties stipulated by Paragraph 1 of this Article, shall be accomplished by one of the organizations that

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 and On-Air or Cable Broadcasting Organization**

1. It shall be allowed, without consent of the performer, producer of a phonogram, on-air or cable broadcasting organization and without payment of 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 of small extracts from a performance, staging, phonogram, transmissions of on-air or cable broadcasting organization provided, that such citation is made for information purposes. However, any use by on-air or cable broadcasting organization of copies of phonograms that are published for commercial purposes for broadcasting, communicating to public via cable or making available to public 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. As an exception from Articles 37-40 of this Law use of the transmission of 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 payment of royalty in compliance with Article 26 of this Law.

3. Provisions of Articles 37, 38, 40 of this Law on 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 subject to:

- 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.

#### **Article 42**

#### **Term 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 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 first recording, if the phonogram was not published within this time period.
3. Rights stipulated by this Chapter with respect to 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 to public via cable.
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 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 ge

categories of right holders. Such organizations shall be established directly by owners of copyright and related rights and shall operate within the authorities received from them under the Statute.

Organizations that manage the property rights on collective basis shall be created in the following fields:

1) management of the exclusive rights for public musical works (with or without text) and pieces of musical and dramatic works with regard to their public performance, communication to public via cable or on-air broadcasting, including retranslation;

2) exercise of rights of composers - authors of the musical works (with or without text), used in audiovisual work, to receive royalty for public performance or communication to public via cable or on-air broadcasting;

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 on the relevant methods of use of works and objects of related rights. 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. All possible property claims of the copyright and related rights owners to users related to use of their works and objects of related rights under licensing contracts shall be resolved by the organization concluded such licensing contracts.

4. 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 copyright 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) sign license contracts with users to use the rights the management of which is exercised by this organization;

2) negotiate with users the size of the royalty and other terms on which license contracts are signed;

3) 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) collect royalties stipulated under the license contract and (or) royalty stipulated by Paragraph 3 of this Article;

5) distribute and pay royalties collected in compliance with paragraph 4 of this Article to owners of copyrights and related rights whom it represents;

6) perform any legal actions required to protect the rights that it represents.

#### **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 shall:

1) simultaneously with the payment of royalties provide the report to the copyright and related rights holders, which contains informaticollection of

factual use of works and objects of related rights. Organization shall take reasonable and adequate measures to identify the holders who are entitled for payment of royalties in accordance with the concluded license contracts and contracts on payment of royalties;

4) create registries containing information about right holders and the rights assigned, as well as about the objects of copyright and related rights. Information contained in the registers shall 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 collective basis;

6) post on the Internet information on the rights assigned to organization by the right holders, including the name of the object of copyright or related rights, the name of the author or copyright holder;

7) post on the Internet information on the presence of representatives that exercise the functions on collection, distribution and payment of royalties for the use of copyright and related rights.

2. Those holders of copyright and related rights who did not assign authority to the organization managing the property rights on a collective basis to collect their royalties, provided for in paragraph 4) of Article 45 of the Law, shall be entitled to require payment of collected royalties and exclude their works and objects of related rights from permissions granted by this organization to users.

#### **Article 46-1.**

##### **Accreditation of Organizations Managing the Property Rights on a Collective Basis**

1. Organization that manages property rights on a collective basis shall be entitled to receive from the authorized body a certificate of accreditation on implementation of activities in the fields of collective management specified in paragraph 3 of Article 43 of the Law.

2. Accreditation shall be carried out for each of the fields specified in paragraph 3 of Article 43 of the Law.

Organization that manages property rights on a collective basis, can get a certificate of accreditation to operate in one, two or more fields of collective management, specified in paragraph 3 of Article 43 of the Law. The form of the certificate of accreditation of the organization managing the rights shall be determined by the Law.

Information on the date of meeting of the Commission on Accreditation shall be posted by the authorized body in the media that are distributed throughout the Republic of Kazakhstan, and on its Internet website not later than sixty days prior to the date of the meeting of the Commission on Accreditation.

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 shall be establishing by the authorized body.

5. Authorized body shall receive a statement and make a record in the registration statement together with assignment of a number and the date of admission.

6. Meeting of the Commission on Accreditation shall be entitled to make decisions when there are at least half of its members participating in the meeting. The Commission's decision on accreditation shall be made by a majority vote of the members. If the votes are equally divided, the Chairman shall have the decisive vote of the Commission on Accreditation.

Making a decision by the Commission members for accreditation by absente voting and delegation of its powers to other persons shall be prohibited.

7. Following the meeting of the Commission on Accreditation the authorized body within five business days after the completion of the meeting shall decide on the accreditation and issue to the applicant a certificate of accreditation for a period of five years.

In order to reach a conclusion on accreditation the Accreditation Commission shall take into account the following:

- 1) carrying out of activities in this field must be no less than one year from the date of registration as a legal entity;
- 2) work experience in distribution and payment of the royal





rights with respect to which it is believed that they are pirated, as well as materials and equipment designated for their production and reproduction.

3. The court shall have the right to make a decision to confiscate pirated copies of the works of copyright and object of related rights, as well materials and equipment used for their reproduction. Pirated 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.

**President of the Republic of Kazakhstan**