

# KAZAKSTAN

## Law on Copyright and Neighboring Rights

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1 *Entry into force*: June 10, 1996.

*Source*: Communication from the authorities of Kazakhstan. *Note*: Translation by the International Bureau of WI PO.

2 Added by the International Bureau of WI PO.

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## Chapter I General Provisions

(Subject of the Law)

*Art. 1.* This Law governs the intellectual property relations arising from the creation and exploitation of scientific, literary and artistic works (copyright) and of performances, of phonograms and of the programs of broadcasting and cable distribution organizations (neighboring rights).

(Basic Concepts)

*Art. 2.* For the purposes of this Law, the terms given below shall have the following meanings:

"author" means the natural person whose creative effort has brought about the creation of the work;

"copyright" means the economic and moral rights of an author;

"audiovisual work" means a work consisting of a fixed series of interconnected images (with or without sound) intended to be made visible and (where the images are accompanied by sounds) audible with the aid of appropriate technical devices; audiovisual works include cinematographic works and all works expressed by means similar to cinematography (television films, video films, fixed projections, slide shows and the like), regardless of the manner in which they are initially or subsequently fixed;

"database" means a set of data (articles, accounts, events, etc.) organized in such a manner as to be capable of retrieval and processing by means of a computer and which, with regard to the selection or arrangement of matter, constitutes the result of a creative effort;

"reproduction" means the making of one or more copies of a work or phonogram in any physical form whatsoever, including that of sound or visual recording; the recording of a work or of a phonogram for its transitory or permanent conservation on an electronic (including digital) medium or optical medium or in any other machine-readable form also constitutes reproduction;

"recording" means the fixing by technical means of sounds or images or both in a material form that permits them to be repeatedly perceived, reproduced or communicated;

"producer of an audiovisual work" means the natural or legal person who has taken the initiative and responsibility, including the material responsibility, for producing such work; in the absence of proof to the contrary, the natural or legal person whose name is given on the work shall be considered the producer of that work;

"intellectual property" means the property that subsists in the materialized results of creative activities;

"exclusive right" means the economic rights enjoyed by the author or the holder of neighboring rights in the exploitation of a work, a performance, a phonogram or a broadcast by any means he chooses during the period of time laid down by this Law;

"performance" means the performance of works or phonograms, performances carried out by acting, singing or dancing in a live show or by technical means (broadcasting, cable television, etc.), or the showing of images of an audiovisual work, with or without sound, in their normal sequence;

"performer" means an actor, singer, musician, dancer or any other person who performs, sings, recites, declaims, plays a musical instrument or performs in any other manner a literary or artistic work (including variety acts, circus acts or puppets) and also the producer or director of a show or the conductor of an orchestra;

"infringing copy" means any copy of a work or phonogram whose manufacture or distribution infringes copyright or neighboring rights or any copy of works or phonograms that are protected in the Republic of Kazakhstan under this Law and which is imported into the Republic of Kazakhstan

without the consent of the holder of copyright or neighboring rights from a State in which such work or phonogram has never been protected or has ceased to be protected;

"non-exclusive right" means the right to use a work that may be exercised by another person, concurrently with the holder of the copyright or neighboring rights, on condition that he is duly authorized to do so by the author, except in those cases laid down in this Law;

"holder of copyright or neighboring rights" means

- the author or the performer, where the economic rights belong to him, or
- the natural or legal person to whom the economic rights have been assigned, or
- a natural person other than the author or performer, or a legal person, where the economic rights originally belong to such natural or legal person;

"disclosure of a work" means an act performed with the author's consent which makes the work accessible to the public for the first time by publication, public performance, broadcasting or any other means;

"publication" means the putting into circulation of copies of a work or a phonogram with the consent of the author of the work or the producer of the phonogram in order to satisfy the requirements of the public; making access to a work or a phonogram possible by means of electronic information systems is also considered publication;

"broadcasting" means communication to the public of works, phonograms, performances or programs of broadcasting or cable distribution organizations (including presentation or performance) by means of transmission by radio or television, except for cable television; where works, phonograms, performances or programs of broadcasting and cable distribution organizations are broadcast by satellite, broadcasting means the acts of receiving signals from a ground station by a satellite and retransmission of the signals by the satellite in such a way that the works, phonograms, performances or programs of broadcasting or cable distribution organizations can be communicated to the public, irrespective of their actual reception by such public;

"program of a broadcasting or cable distribution organization" means a program created by a broadcasting organization or a cable distribution organization itself or, on its commission and using its funds, by another organization;

"presentation of a work" means the fact of showing the original or a copy of a work directly or on screen by means of film, slides, television pictures or other technical means or the fact of showing the individual images of an audiovisual work without concern for their order;

"rebroadcasting" means the broadcasting of works, phonograms, performances or programs of broadcasting or cable distribution organizations that have already been previously broadcast;

"computer program" means a set of instructions or rules expressed by means of words, figures, codes, symbols, signs, diagrams or in any other form, which a computer or other data processing machine can use in order to carry out a given function, accomplish a given task or obtain the desired result, including the preparatory literature produced during the preparation of the computer program and the audiovisual displays generated by the program itself;

"work of applied art" means a work of art in two or three dimensions applied to objects intended for practical use, whether craft works or works produced by an industrial process;

"phonogram producer" means the natural or legal person who takes the initiative and responsibility for the first fixation of the sounds of a performance or of other sounds; in the absence of proof to the contrary, the person whose name is shown on such phonogram or on its sleeve shall be deemed the phonogram producer;

"derived work" means the result of intellectual effort based on an existing work (translation, adaptation, transformation, etc.) whose original character depends on the creative transformation of the existing work or on its creative translation into another language;

"public presentation, public performance or communication to the public" means any presentation,

performance or communication of works, phonograms, performances or programs of broadcasting or cable distribution organizations, either directly or by technical means, in a place in which a large number of persons not belonging to the family circle are present, whether or not the works, phonograms, performances or programs of broadcasting or cable distribution organizations are perceived at the place of communication or in another place at the same time as the communication; "entertainment producer or director" means the person who directs a stage, circus, puppet, variety or other performance;

"reprographic reproduction" means the facsimile reproduction in one or more copies, in whatever dimensions or form, of originals or copies of written or other graphic works by means of photocopying or means other than those of publication; repro graphic reproduction does not include the storage or reproduction of such copies in an electronic (including digital) or optical form or in any other machine-readable form;

"rental" means making a copy of a work or a phonogram temporarily available for direct or indirect commercial profit;

"communicate" means to show, perform or broadcast or carry out any other act (except for the distribution of copies of a work or a phonogram) whereby the works, phonograms, performances or programs of broadcasting or cable distribution organizations are made audible or visible, whether or not they are actually perceived by the public;

"communicate to the public by cable" means to communicate works, phonograms, performances or programs of broadcasting or cable distribution organizations to the public by means of cable, wire, optical fiber or similar means;

"statutory body" means a public body of which the tasks in relation to regulating relationships deriving from the exercise of the rights of authors and of holders of neighboring rights are defined by the lawmaker, the President of the Republic of Kazakhstan or the Government of the Republic of Kazakhstan;

"phonogram" means any exclusively sound recording of performances or of other sounds, however made;

"copy of a work" means any copy of a work regardless of the material form in which it is made;

"copy of a phonogram" means any copy of a phonogram on any physical medium whatsoever made directly or indirectly from a phonogram and incorporating all or some of the sounds recorded thereon.

(Legislation of the Republic of Kazakhstan on Copyright and Neighboring Rights)

*Art. 3.* The legislation of the Republic of Kazakhstan on copyright and neighboring rights comprises the Civil Code of the Republic of Kazakhstan, this Law and other legislative texts promulgated in accordance with this Law.

(International Treaties)

*Art. 4.* Where an international treaty ratified by the Republic of Kazakhstan contains rules that differ from those set out in this Law, the provisions of the international treaty shall be applicable.

## Chapter II Copyright

(Scope of Copyright)

*Art. 5.*-(1) Copyright in accordance with this Law shall extend to:

1. works, whether disclosed or not, existing in an objective form on the territory of the Republic of Kazakhstan, regardless of the nationality of the authors and of their successors in title;
2. works, whether disclosed or not, existing in an objective form beyond the borders of the Republic of Kazakhstan, where the authors of such works and their successors in title are nationals of the Republic of Kazakhstan;
3. works, whether disclosed or not, existing in an objective form beyond the borders of the Republic of Kazakhstan, where the authors of such works and their successors in title are nationals of other States to whom it may be afforded in accordance with international treaties to which the Republic of Kazakhstan is party.

(2) A work shall be deemed to have been initially published on the territory of the Republic of Kazakhstan if it is published on that territory within 30 days of the date of its first publication abroad.

(3) Where protection is afforded to a work on the territory of the Republic of Kazakhstan in accordance with international treaties, the author of the work shall be determined in accordance with the legislation of the State on which the legal event or the circumstances giving rise to ownership of copyright have occurred.

(Subject Matter of Copyright. General Provisions)

*Art. 6.*-(1) Copyright shall extend to scientific, literary and artistic works that are the outcome of creative effort whatever their purpose, content, merit or manner or form of expression.

(2) Copyright shall protect both disclosed works and undisclosed works that exist in an objective form, namely:

1. written form (manuscript, typewritten text, musical score, etc.);
2. oral form (public recitation, public performance, etc.);
3. sound or visual recording (mechanical, digital, magnetic, optical, etc.);
4. figurative form (drawing, sketch, painting, plan, industrial design, still from a cinematographic or television or video film, photograph, etc.);
5. three-dimensional form (sculpture, model, mock-up, structure, etc.) or other form.

(3) Any part of a work, including its title, that meets the conditions of paragraph (1) and that can be used independently shall afford entitlement to copyright.

(4) Ideas, concepts, principles, methods, systems, means, discoveries and facts may not be protected as such by copyright.

(5) Copyright in a work shall be independent of the ownership of the material object in which

the work is expressed.

The transfer of ownership of a material object or of the right of possession of the material object shall not in itself imply transfer of any copyright in the work expressed in such object, except as provided in Article 18 of this Law.

(Works Protected by Copyright)

- Art. 7.*-(1) The following shall be protected by copyright:
1. literary works;
  2. dramatic or dramatico-musical works;
  3. works with a scenario;
  4. choreographic and mimed works;
  5. musical works, with or without words;
  6. audiovisual works (cinematographic, television and video films, slide shows and other cinematographic and television productions);
  7. works of sculpture and painting, graphic works and other works of figurative art;
  8. works of applied art;
  9. works of architecture, urban planning and park and garden design;
  10. photographic works and works obtained by processes analogous to photography;
  11. maps, plans, sketches, illustrations and three-dimensional works relating to geography, topography and other sciences;
  12. computer programs;
  13. other works.

(2) The protection of computer programs shall extend to all types of computer program (including operating systems) whatever the language and form in which they are expressed, including the source code and the object code.

(3) The following shall also be protected by copyright:

1. derived works (translations, adaptations, annotations, analyses, summaries, reviews, stage adaptations, musical arrangements and other transformations of scientific, literary and artistic works),
2. collections (encyclopedias, anthologies, databases) and other composite works which, by reason of the selection or arrangement of their contents, constitute the result of creative effort.

Derived works and composite works shall be protected by copyright whether or not the works on which they are based or which they themselves include are protected by copyright.

(Works Not Protected by Copyright)

*Art. 8.* The following shall not be protected by copyright:

1. official documents (laws, court decisions and other texts of a legislative, administrative, judicial or diplomatic nature) together with official translations thereof;
2. State emblems and official signs (flags, armorial bearings, decorations, monetary signs and other State symbols and official signs);
3. works of folklore,
4. communications concerning events and facts that have an informational character.

(Origin of Copyright. Presumption of Authorship)

*Art. 9.-(1)* A scientific, literary or artistic work shall enjoy copyright by the mere fact of its creation. The origin and exercise of copyright shall not require either a registration of the work or the accomplishment of any other act or formality.

In order to have his rights recognized, an owner may use a copyright notice, which should be placed on each copy of the work and should consist of the following three elements:

1. the Latin letter "C" within a circle: <9;
2. the name of the owner of the exclusive rights;
3. the year of first publication of the work.

The holder of copyright or of an exclusive right in a work, whether disclosed or not, may, in order to attest to the authorship of the work, the fact and date of publication of the work, or any contract in relation to copyright in the work, have the work recorded in the official registers at any time during the term of copyright protection.

Registration shall be carried out by the statutory body under the regulatory texts in force.

(2) In the absence of proof to the contrary, the person named as the author on the original or on a copy of the work shall be deemed the author thereof.

(3) Where a published work is anonymous or pseudonymous (unless the author's pseudonym leaves no doubt as to his identity), the publisher named on the work shall be presumed, in the absence of proof to the contrary, to represent the author in accordance with this Law and, in that capacity, shall be empowered to defend and exercise the author's rights. This provision shall remain in force until such time as the author of the work reveals his identity and claims authorship of the work.

(4) If a natural person who considers himself the author of the manuscript of an unpublished work deems it indispensable to deposit the work to avoid exploitation or unlawful appropriation of the work, the statutory body shall be required to accept deposit of the manuscript and shall issue to the depositor an attestation showing the date of receipt of the manuscript.

(Works of Joint Authorship)

*Art. 10.-(1)* Copyright in a work that is the product of the joint creative effort of two or more persons (work of joint authorship) shall belong jointly to the joint authors, regardless of whether the work constitutes an indivisible whole or is composed of parts of which each also has its own relevance.

A part of a work shall be deemed to have its own relevance if it can be exploited independently of the other parts of the work.

Unless otherwise agreed between the joint authors, each of them may exploit as he sees fit that part of a work with a relevance of his own that he has created.

(2) The right to exploit the whole work shall belong jointly to the joint authors. The relationships between the joint authors may be the subject of an agreement between them. If the work of the joint authors constitutes an indivisible whole, none of them shall be entitled to prohibit the exploitation of the work without valid reason.

(Copyright of Compilers of Collections and Other Composite Works)



*Art. 11.*-(1) The author of a collection or any other composite work (compiler) shall enjoy copyright in the selection or arrangement of the subject matter that he has made insofar as such selection or arrangement constitutes the result of a creative effort (compilation).

A compiler shall enjoy copyright subject to respect for the rights of the authors of each work included in the composite work.

The authors of the works included in the composite work shall each have the right to exploit their own works independently of the composite work, unless otherwise agreed in the author's contract.

Notwithstanding the copyright of the compiler, any other person may make an independent selection or arrangement of the same subject matter for the purposes of the creation of a composite work.

(2) The exclusive right to exploit encyclopedias, encyclopedic dictionaries, collections of scientific works - published in either one or several installments - newspapers, reviews and other periodical publications as a whole shall belong to the publisher of such publications. The publisher shall have the right to show his name or require that his name be shown for each exploitation of such publications.

Authors of works included in such publications shall maintain their exclusive rights to exploit their works independently of the publication of the whole work.

#### (Copyright of Translators and Other-Authors of Derived Works)

*Art. 12.*-(1) Translators and other authors of derived works shall enjoy copyright in the translations, adaptations, arrangements or any other transformations made by them.

The translator or other author of a derived work shall enjoy copyright in the work created by him, subject to the rights of the author of the work that has been translated, adapted, arranged or otherwise transformed.

(2) Notwithstanding the copyright of the translator or other author of a derived work, other persons may make their own translations or transformations of the same work.

#### (Copyright in Audiovisual Works)

*Art. 13.*-(1) The following shall be recognized as the authors (joint authors) of an audiovisual work:

1. the author of the scenario;
2. the author of the musical work (with or without words) that has been specially created for that audiovisual work (composer);
3. the director or film maker;
4. the director of photography;
5. the art director.

The author of an existing work that has been transformed or incorporated in an audiovisual work shall also be deemed a joint author of the audiovisual work.

(2) Except as provided in paragraph (3), the conclusion of an author's contract for the creation of an audiovisual work (or a contract of assignment of rights in an existing work) shall constitute assignment, unless otherwise provided in the contract, by the authors of such work (or by the authors or other holders of copyright in an existing work) to the producer of the audiovisual work of

exclusive rights of exploitation in that work.

The producer of an audiovisual work shall be entitled to show his name or to require that his name be shown at each exploitation of the work.

(3) The author of a musical work (with or without words) that has been created specifically for the audiovisual work shall maintain his right to receive remuneration for the exploitation of the musical work on each public performance of the audiovisual work when it is communicated to the public and also in the event of the renting of copies of the audiovisual work.

(4) The authors of the works constituting the audiovisual work, whether existing (for instance, the author of the novel from which a scenario is taken) or created in the making of the audiovisual work (for instance, the director of photography or the art director), shall each enjoy copyright in his work.

#### (Copyright in Service Creations)

*Art. 14.* -(1) The moral rights in a work created under a service relationship in the performance of an assignment expressly given by the employer (service creation) shall belong to the author of the work.

(2) The economic rights in the exploitation of a service creation shall belong to the employer if the contract concluded between such person and the author so provides and in the absence of any provisions to the contrary.

(3) The employer shall be entitled to show his name or require that his name be shown in relation to each exploitation of the service creation.

(4) On expiry of a period of ten years as from presentation of the work, or at an earlier date if so agreed with the employer, the right to exploit the work and to receive remuneration with respect to copyright shall belong in full to the author whatever the terms of the contract concluded with the employer.

(5) The provisions of this Article shall not apply to the making, in the course of service obligations or the performance of a task explicitly given by the employer, of encyclopedias, encyclopedic dictionaries, collections of scientific works - published in one or several installments - newspapers, reviews and other periodical publications (Article 11(2) of this Law).

#### (Moral Rights)

*Art. 15.*-(1) An author shall enjoy the following moral rights in relation to his work:

1. the right to have his authorship of the work recognized, including the right to require that his name be duly shown on copies of the work and in relation to each public use of the work, where such is feasible (right of authorship);
2. the right to use a fictitious name (pseudonym) in place of his true name and to require that it be shown on copies of a work and in relation to each public use of the work, or to refuse any mention of a name, that is to say to choose to be anonymous (right to be named);
3. the right to the integrity of the work, including its title, and the right to oppose any distortion, deformation or other derogatory act in relation to the work and to any other act liable to prejudice his honor or reputation (right to the protection of the author's reputation).

(2) The author shall have the right to reverse a previous decision to disclose his work (right to reconsider or- of withdrawal) provided that the user is indemnified for any damages, including lost earnings, attributable to such decision. If the work has already been disclosed, the author shall be required to make his withdrawal known to the public. He shall then have the right to withdraw from circulation, at his own expense, those copies of the work that have already been made. The provisions of this paragraph shall not apply to service creations.

(3) Moral rights shall belong to the author independently of his economic rights and the author shall retain them even if his exclusive right to exploit the work is assigned.

(4) The moral rights prerogatives of the author set out in this Article shall be inalienable.

(5) Following the death of the author, the defense of his moral rights shall be ensured in accordance with the conditions set out in Article 30 of this Law.

#### (Economic Rights)

*Art. 16.*-( 1) The economic rights, that is to say the exclusive right to exploit a work in all forms and by all means, shall belong to the author or to the person who is the holder of copyright in the work.

(2) The exclusive right to exploit a work shall mean the right to carry out, authorize or prohibit the following acts:

1. reproduction of the work (right of reproduction);
2. distribution of the original or copies of the works by any means, including sale, rental, public lending, etc. (right of distribution);
3. importing copies of the work for the purposes of distribution, including copies made with the authorization of the author or other holder of copyright (right of importation);
4. presentation of the work in public (right of public presentation);
5. performance of the work in public (right of public performance);
6. communication of the work to the public, including broadcasting or cable distribution (right of communication to the public);
7. communication of the work to the public by broadcasting, including initial broadcasting or rebroadcasting (right of broadcasting);
8. communication of the work to the public by cable, including initial transmission or subsequent transmission (right of communication by cable);
9. translation of the work (right of translation);
10. adaptation, arrangement or other transformation of the work (right of adaptation).

(3) Where copies of a lawfully published work have been put into circulation by means of sale, their subsequent distribution shall not require the authorization of the author and shall not give rise to payment of remuneration.

The right to distribute the original or copies of a work by means of rental (or of public lending) shall belong to the author with regard to the ownership of such copies where the work is:

1. a musical work in the form of a score;
2. a work fixed on a phonogram;
3. an audiovisual work;
4. a database;

5. a computer program.

(4) Exclusive rights in the exploitation of a project for an architectural work, an urban planning work or a work of park or garden design shall also extend to the practical implementation of the project.

(5) The amount and the manner of payment of remuneration to the author for each form of exploitation of a work shall be decided by the author's contract and by the contracts that the organizations for the collective administration of economic rights conclude with users.

(6) The economic rights referred to in paragraph (2) shall be subject to the limitations set out in Articles 18 to 26 of this Law, which shall apply so far as they do not unjustifiably prejudice the normal exploitation of the work and do not unjustifiably prejudice the legitimate interests of the author.

(Right of Access to Works of Fine Art. Resale Royalty)

*Art. 17.*-(1) The author of a work of fine art shall have the right to require of the owner of the work that he allow him to exercise the right of reproduction of his work (right of access). However, the owner of the work may not be required to deliver the work to the author to that end.

(2) For each public resale of a work of fine art (sale by auction or at an art gallery or exhibition, in a shop, etc.) subsequent to the first transfer of ownership of the work, the seller shall pay to the author or his heirs remuneration representing five percent of the resale price (resale royalty). This right shall be inalienable during the author's lifetime and shall be transferable, during the term of copyright, only to the author's legal heirs by succession or will.

(Reproduction of a Work for Personal Purposes Without the Author's Consent and Without Payment of Remuneration)

*Art. 18.*-(1) The reproduction of a lawfully disclosed work for exclusively personal purposes shall be permitted in one single copy without the author's consent and without payment of remuneration, except in the cases laid down in Article 26 of this Law.

(2) The provisions of paragraph (1) shall not apply:

1. to the reproduction of works of architecture in the form of similar buildings and structures;
2. to the reproduction of databases or substantial parts of databases;
3. to the reproduction of computer programs, except in the cases laid down in Article 24 of this Law;
4. to the reproduction of books (in their entirety) and musical scores.

(Use of a Work Without the Author's Consent and Without Payment of Remuneration)

*Art. 19.* The following shall be authorized without the author's consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing shall be mentioned:

1. the quotation, in the original language or in translation, for scientific or for research, polemic, critical or informational purposes and to the extent justified by the intended purpose, of extracts from lawfully disclosed works, including the reproduction of extracts from newspaper and magazine

articles in press reviews;

2. the use of lawfully disclosed works and extracts from such works for the purpose of illustration in publications, radio or television broadcasts or sound or visual recordings of educational character, and to the extent justified by the intended purpose;
3. the reproduction in newspapers, the broadcasting or communication to the public by cable of articles published in newspapers or magazines on economic, political, social or religious topics, or broadcast works of the same nature, insofar as the author has not expressly prohibited such reproduction, broadcasting or cable communication;
4. the reproduction in newspapers, the broadcasting or communication to the public by cable of political speeches, addresses, lectures and other works of the same nature given in public, to the extent justified by an informational purpose. The author shall nevertheless retain the right to publish such works in collections;
5. the reproduction or communication to the public, in connection with the reporting of current events by means of photography, broadcasting or public cable communication, of works that are seen or heard in the course of such events, to the extent justified by an informational purpose. The author shall nevertheless retain the right to publish such works in collections;
6. the reproduction in braille or by other special means for the benefit of the blind, done without gainful intent, of lawfully disclosed works, with the exception of works created specially for such means of reproduction.

#### (Use of Works by Reprographic Reproduction)

*Art. 20.* It shall be permissible, without the author's consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned, to make a reprographic reproduction in one copy and without gainful intent:

1. of a lawfully published work insofar as the reproduction is carried out by a library or archive service and its purpose is to restore or replace lost or damaged copies, or to place copies at the disposal of other libraries that for any reason have lost works from their own collections;
2. of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works (with or without illustration), if the reproduction is the work of a library or archive service and it is done to meet the requirements of natural persons who use the copies obtained for study or research purposes;
3. of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works (with or without illustration), if the reproduction is carried out by an educational establishment and the copy obtained is intended for classroom use.

#### (Free Use of Works Permanently Located in a Public Place)

*Art. 21.* The reproduction, broadcasting or communication to the public by cable of architectural works, photographic works or works of fine art permanently located in a public place shall be permissible without the author's consent and without payment of remuneration, except where the presentation of the work constitutes the main feature of such reproduction, broadcast or communication to the public by cable, or if used for commercial purposes.

#### (Public Performance of Works During Official or Other Ceremonies)

*Art. 22.* The public performance of lawfully published musical works during official or religious ceremonies and at funerals shall be permissible without the author's consent and without payment of remuneration, to the extent justified by the ceremonies.

(Reproduction of Works for Judicial or Administrative Purposes)

*Art. 23.* The reproduction of works for the purposes of judicial or administrative proceedings shall be permissible without the author's consent and without payment of remuneration, to the extent justified by those purposes.

(Free Reproduction of Computer Programs and Databases. Decompilation of Computer Programs)

*Art. 24.-(1)* Any person lawfully in possession of a copy of a computer program or database may, without the permission of the author or other holder of the exclusive right to exploit the work and without paying any additional remuneration:

1. make alterations to the computer program or the database, where the purpose is solely to ensure their operation on the user's material, and perform any act in relation to the operation of the computer program or database according to its intended purpose, including any inputting or storing in a memory (that of an individual computer or of a computer in a network), and also correct obvious errors, except where otherwise provided in the contract concluded with the author;

2. make a copy of the computer program or the database, provided that the copy is intended solely for archiving and for the replacement of a lawfully acquired copy in the event of the latter having been lost, destroyed or rendered useless, on the understanding that the copy of the computer program or database may not be used for purposes other than those specified in item 1 and that it must be destroyed should possession of the copy of the computer program or database cease to be lawful.

(2) Any person lawfully in possession of a copy of a computer program may, without the consent of the author or other holder of exclusive rights and without paying any additional remuneration, reproduce or convert the object code to a source code (decompile the program) or have such acts carried out by others if they are essential to ensure the interactive capabilities of a computer program independently created by such person with other programs compatible with the programs decompiled, in which case the following conditions have to be fulfilled or observed:

1. the person concerned must not previously have had access to other sources capable of providing him with the information necessary to ensure the interactive capability;

2. the above-mentioned acts may only be performed in relation to the parts of the computer program whose decompilation is essential for the achievement of the interactive capability;

3. the information obtained by a compilation may only be used for the achievement of the interactive capability of an independently created computer program with other programs; the information may not be transmitted to other persons, except where necessary to ensure the interactive capability of the independently created computer program with other programs and may not be used for the development of a computer program of a type essentially comparable to the decompiled program, or for carrying out any other act that infringes copyright.

(3) The application of this Article may neither unjustifiably affect the normal exploitation of the computer program or database nor, without valid reason, prejudice the legitimate interests of the author or other holder of exclusive rights in the program or database.

(Ephemeral Recording by Broadcasting Organizations)

*Art. 25.* A broadcasting organization may, without the author's consent and without payment of any additional remuneration, make an ephemeral recording of a work in which it has obtained a right of broadcasting, subject to respect for the following conditions:

1. the recording is made with its own equipment and for the purposes of its own broadcasts;
2. the recording is destroyed within six months after having been made, except where a longer period has been agreed with the author of the recorded work; the recording may be preserved without the consent of the author of the work in official archives if it is of a purely documentary nature.

(Free Reproduction for Personal Purposes Without the Consent of the Author, but Subject to Payment of Remuneration)

*Art. 26.-(1)* The reproduction for personal purposes of an audiovisual work or of the sound recording of a work shall be permissible without the consent of the author of the work, the performer or the phonogram producer, but subject to payment of remuneration to them.

(2) The remuneration for reproduction as referred to in paragraph (1) shall be paid by the manufacturers or importers of the equipment (sound recording equipment, videocassette recorders, etc.) and of the recording material (tape and cassettes for sound or video recording, compact discs, etc.) used for the reproduction.

(3) The collection and distribution of such remuneration shall be carried out by one of the organizations for collective administration of the economic rights of authors, of phonogram producers and performers under an agreement concluded with such organizations (Article 43 of this Law).

(4) Unless otherwise agreed, remuneration shall be distributed as follows: 40 percent to the authors, 30 percent to the performers and 30 percent to the phonogram producers.

(5) The amount of the remuneration and the manner of payment shall be determined by agreement between the aforementioned manufacturers and importers, on the one hand, and the organizations for collective administration of the economic rights of authors, phonogram producers and performers, on the other, or, if the parties fail to agree, by a statutory body of the Republic of Kazakhstan.

(6) No remuneration shall be paid for the recording equipment and material referred to in paragraph (2) that are exported or that constitute professional equipment and material not intended for use in home recording.

(Export of Works for Personal Purposes)

*Art. 27.* The export of a copy of a work by a natural person for exclusively personal purposes shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration, except for works whose export would prejudice the national interests of the Republic and of which a list shall be drawn up in accordance with the established procedure.

(Term of Copyright)

*Art. 28.*-(1) Copyright shall subsist throughout the lifetime of the author and for 50 years after his death, except as provided in this Article.

(2) The author's right of authorship, right to be named and right to protection of his reputation shall be protected without limitation in time.

(3) An author may, according to procedures identical to those for the appointment of an executor, specify the person to whom he entrusts the protection of the right of authorship, the right to be named and the right to protection for his reputation after his death. Such person shall fulfill his mandate throughout his life. Where no such person has been named, protection of the right of authorship, the right to be named and the right to protection for his reputation shall be ensured after the author's death either by his heirs or by a statutory body of the Republic of Kazakhstan which shall ensure such protection in the absence of heirs or where the heir's copyright has lapsed.

(4) Copyright in an anonymous or pseudonymous work shall subsist for 50 years following the date of lawful disclosure of the work. If, in the course of that period, the author of the anonymous or pseudonymous work reveals his identity or if his identity is no longer in doubt, the provisions of paragraph (1) shall apply.

(5) Copyright in a work of joint authorship shall subsist until the death of the last surviving joint author and for 50 years thereafter.

(6) Copyright in a work published for the first time within the 30 years following the death of the author shall subsist for 50 years after publication of the work. Such period shall be calculated as from January 1 of the year following that during which the work has been published.

(7) If the author has been subject to repressive measures and has been posthumously rehabilitated, the term of protection of the rights under this Article shall begin on January 1 of the year following that of his rehabilitation.

(8) Any period referred to in this Article shall be calculated as from January 1 of the year following that during which the legal act occurred that marks the starting point of the period.

(Public Domain)

*Art. 29.*-(1) On the expiry of the term of copyright in a work, the work shall fall into the public domain.

(2) Works that have never enjoyed protection on the territory of the Republic of Kazakhstan shall likewise be deemed to have fallen into the public domain.

(3) Works that have fallen into the public domain maybe used freely by any person without payment of remuneration. However, the author's right to authorship, his right to be named and his right to protection for his reputation shall be respected.

(4) In order to contribute to the creative activities of authors and the improvement of their conditions of life, the users of works that have fallen into the public domain may make contributions to the professional funds for authors or to the organizations for the collective administration of the economic rights of authors.



(Transfer of Rights)

*Art. 30.-{1}* Authors' rights may be transferred by contract or by succession.

(2) Copyright shall be transferred to the heirs by legal succession or will.

(3) The author's moral right specified in Article 15 of this Law may not be transferred by succession. However, the author's heirs may ensure its defense without limitation in time.

(4) An author may, according to procedures identical to those for the appointment of an executor, specify the person to whom he entrusts the protection of his moral rights. That person shall fulfill his mandate throughout his life. Where no such person has been named, the protection of the author's moral rights shall be ensured after his death by his heirs or by a statutory body of the Republic of Kazakhstan which shall ensure such protection in the absence of heirs or where the heirs' copyright has lapsed.

(Assignment or Licensing of Economic Rights. Author's Contracts)

*Art. 31.-{1}* The assignment or licensing of the economic rights referred to in Article 16 of this Law shall be effected by means of an author's contract, except as provided in Articles 18 to 26 of this Law. Economic rights may be the subject of an author's contract for the assignment of exclusive rights or an author's contract for the licensing of non-exclusive rights.

(2) The author's contract for the assignment of exclusive rights shall allow only that person to whom the rights have been assigned to exploit the work by a specified means and within the limits set by the contract and shall confer on such person the right to prohibit any comparable exploitation of the work by other parties. The right to prohibit other parties from exploiting the work may be exercised by the author of the work where the person to whom the exclusive rights have been assigned does not assert such right.

(3) The author's contract for the licensing of nonexclusive rights shall allow the licensee to exploit the work under the same conditions as the holder of the exclusive rights who has granted those rights to him or as other persons who have obtained permission to exploit the work by the same means.

(4) The rights to which an author's contract relates shall be deemed non-exclusive where the contract contains no express provisions to the contrary.

(Conditions Governing Authors' Contracts. Form of Authors' Contracts. Sanctions and Authors' Contracts)

*Art. 32.-(1)* An author's contract shall set out:

1. the modes of exploitation of the work (the specific rights assigned or licensed under the contract);

2. the period and territory for which the right is assigned or licensed;

3. the amount of remuneration or the methods for determining such amount for each of the exploitation modes of the work, the manner and time limits for paying the remuneration, together with such other conditions as the parties may consider essential for the contract concerned.

(2) If the author's contract does not specify the period for which the rights are assigned or

licensed, the author may terminate it on expiry of five years as from its conclusion, subject to six months' written notice.

(3) If the author's contract does not specify the territory for which the rights are assigned or licensed, the rights concerned by the contract shall have effect only on the territory of the Republic of Kazakhstan.

(4) All rights of exploitation of the work that are not expressly assigned or licensed by the author's contract shall be deemed not to have been assigned or licensed.

(5) The author's contract may not relate to exploitation rights that are not known at the time of its conclusion.

(6) The author's contract shall specify the remuneration as a percentage of revenue derived from exploitation of the work by the intended means or, where that is not possible in view of the nature of the work or of the particular circumstances of its exploitation, in the form of a lump sum or in any other manner.

(7) The rights assigned or licensed under the author's contract may only be the subject of further assignment or licensing, whether in whole or in part, to other parties if the contract expressly so provides.

(8) The author's contract may not relate to exploitation rights arising in connection with works that the author may create in the future.

(9) Any clause in an author's contract that imposes limits on the author regarding the future creation of works on a particular subject or in a particular field shall be deemed invalid.

(10) Any clauses in an author's contract that are contrary to the provisions of this Law shall be deemed invalid.

(11) An author's contract shall be in writing. If it relates to use of a work in the periodical press, it may be concluded by word of mouth.

(12) Special conditions laid down by the legislation of the Republic of Kazakhstan may be applied to contracts for use relating to the sale of copies of computer programs or databases or for large-scale access to computer programs or databases.

(13) A party that does not fulfill its obligations deriving from an author's contract or that does not fulfill them in the agreed manner shall be required to indemnify the other party for the prejudice, including loss of earnings, that it has caused.

(Commission Contracts)

*Art. 33.*-(1) Under a commission contract, the author shall undertake to create a work under the conditions specified in the contract and to transmit it to the commissioning party.

(2) The commissioning party shall be required to pay to the author an advance on the remuneration agreed by contract. The amount and conditions and time limits for paying the advance

shall be laid down in the contract by agreement between the parties.

(3) An author who does not deliver the commissioned work in accordance with the conditions set out in the commission contract shall be required to indemnify the commissioning party for the actual prejudice he has sustained.

### **Chapter III Neighboring Rights**

(Subject Matter of Neighboring Rights)

*Art. 34.* The subject matter of neighboring rights shall be constituted by performances, phonograms and the programs of broadcasting and cable distribution organizations, whatever their purpose, contents or merit and independently of their mode or form of expression.

(Beneficiaries of Neighboring Rights)

*Art. 35.-(1)* The beneficiaries of neighboring rights shall be performers, phonogram producers and broadcasting or cable distribution organizations.

(2) The phonogram producer or broadcasting or cable distribution organization shall exercise their rights, set out in this Chapter, within the limits of the rights that the performer and author of the work recorded on the phonogram or broadcast or transmitted by cable have granted to them by contract.

(3) A performer shall exercise the rights set out in this Chapter without prejudice to the rights of the author of the work performed.

(4) The origin and exercise of neighboring rights shall not be subject to compliance with any formality. The phonogram producer and the performer may, in order to publicize their rights, use a reserve that shall be placed on each copy of the phonogram or on each phonogram sleeve and shall consist of the following three elements:

1. the Latin letter "P" within a circle: ®;
2. the name of the holder of the exclusive neighboring rights;
3. the year of first publication of the phonogram.

(Scope of Neighboring Rights)

*Art. 36.-(1)* The rights of the performer shall be afforded in accordance with this Law if:

1. the performer is a national of the Republic of Kazakhstan,;
2. the first performance occurred on the territory of the Republic of Kazakhstan;
3. the performance was recorded on a phonogram protected in accordance with paragraph (2);
4. the performance has not been recorded on a phonogram, but included in a program broadcast or transmitted by cable that is protected in accordance with paragraph (3).

(2) The rights of phonogram producers shall be protected under this Law if:

1. the phonogram producer is a national of the Republic of Kazakhstan or a legal person with headquarters located on the territory of the Republic of Kazakhstan;

2. the first publication of the phonogram has taken place on the territory of the Republic of Kazakhstan; a phonogram shall also be deemed to have been initially published on the territory of the Republic of Kazakhstan if it has been published on that territory within 30 days of the date of its publication abroad.

(3) The rights of the broadcasting or cable distribution organization shall be protected under this Law if the organization has its headquarters on the territory of the Republic of Kazakhstan and broadcasts with the aid of transmitters located on the territory of the Republic of Kazakhstan.

(4) The rights of other performers, phonogram producers and broadcasting or cable distribution organizations shall be protected on the territory of the Republic of Kazakhstan in accordance with the international agreements to which the Republic of Kazakhstan is party.

#### (Rights of Performers)

*Art. 37.*-(1) Except as provided in this Law, performers shall be granted the following moral rights and economic rights:

1. the right to be named;
2. the right to protection of their performances against any distortion, mutilation or other derogatory act liable to prejudice the honor or dignity of the performer (right to protection of reputation);
3. the right to exploit a performance in any form whatsoever, including the right to remuneration for each form of use of the performance.

(2) The exclusive right to exploit a performance means the right to authorize or prohibit the following acts:

1. record the performance if it has not hitherto been recorded;
  2. reproduce the recording of the performance;
  3. broadcast or communicate to the public by cable the performance if it has not hitherto been broadcast and if it does not utilize a recording;
  4. broadcast or transmit by cable the recording of the performance if such recording was initially made for non-commercial purposes;
5. rent a phonogram published for commercial purposes on which a performance has been recorded with the participation of the performer; this right shall be transferred to the phonogram producer on conclusion of a contract relating to the recording of the performance on the phonogram; however, the performer shall retain his right to remuneration for the rental of copies of the phonogram (Article 38 of this Law).

(3) The exclusive right of performers referred to in paragraph (2) shall not apply if:

1. the initial recording of the performance was made with the consent of the performer;
2. the reproduction of the performance is made for the same purposes as the recording of the performance to which the performer consented;
3. the reproduction of the performance is made for the same purposes as the recording that was made pursuant to the provisions of Article 41 of this Law.

(4) The authorizations referred to in paragraph (2) shall be granted by the performer or, in the case of a collective performance, by the leader of the group in a written contract concluded with the user.

(5) The authorizations referred to in paragraph (2)1, (b) and (c) shall not be necessary for the rebroadcasting of a performance, the recording for broadcasting purposes and the reproduction of such recording by broadcasting or cable distribution organizations if such acts are stipulated in the contract concluded by the performer with the broadcasting or cable distribution organization. The amount of the remuneration to be paid to the performer for such use shall also be laid down in the contract.

(6) The conclusion of a contract between the performer and the maker of an audiovisual work shall imply the licensing by the performer of the rights referred to in paragraph (2)1,2,3 and 4. The rights licensed by the performer shall be confined to the use of the audiovisual work and, unless otherwise provided in the contract, shall not extend to separate use of the sounds or of the pictures embodied in the audiovisual work.

(7) The performer may assign or license the exclusive rights under paragraph (2) to others by contract.

#### (Rights of Phonogram Producers)

*Art. 38.*-(1) Except as provided in this Law, phonogram producers shall enjoy the exclusive right to exploit their phonograms in any form, including the right to remuneration for each type of use of the phonogram.

(2) The exclusive right to exploit a phonogram means the right to carry out or authorize the following acts:

1. reproduction of the phonogram;
2. adaptation or any other transformation of the phonogram;
3. distribution of copies of the phonogram, for instance by sale or rental;
4. importing of copies of the phonogram for distribution, including copies made with the authorization of the phonogram producer.

(3.) Where copies of a lawfully published phonogram have been placed on the market by sale, their subsequent distribution shall not require the consent of the phonogram producer nor payment of remuneration. The right to distribute copies of the phonogram by rental shall belong to the phonogram producer independently of the ownership of the copies.

(4) The phonogram producer may assign or license the exclusive rights under paragraph (2) to others by contract.

#### (Use of Published Phonograms for Commercial Purposes Without the Consent of the Phonogram Producer and the Performer)

*Art. 39.*-(1) The following shall be authorized without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on the phonogram, but subject to payment of remuneration:

1. public performance of the phonogram;
2. broadcasting of the phonogram;
3. communication to the public by cable of the phonogram.

(2) The collection, distribution and payment of the remuneration referred to in paragraph (1) shall

be effected by one of the organizations for the collective administration of the rights of producers of phonograms and performers (Article 43 of this Law) under an agreement concluded between those organizations. Except as otherwise provided in such agreement, the remuneration shall be distributed equally between the phonogram producer and the performer.

(3) The amount of the remuneration and the manner of its payment shall be determined by agreement between the user of the phonogram or the unions (associations) of users, on the one hand, and the organizations that administer the rights of phonogram producers and performers, on the other, or, if the parties fail to agree, by a statutory body. The amount of the remuneration shall be set for each form of use of the phonogram.

(4) The users of phonograms shall be required to submit programs to the organization referred to in paragraph (2) containing detailed information on the number of uses of the phonogram, together with such other information and material as is necessary for the collection and distribution of the remuneration.

(Rights of Broadcasting and Cable Distribution Organizations)

*Art. 40.-(1)* Except as provided in this Law, a broadcasting or cable distribution organization shall enjoy the exclusive right in its program to exploit it in any form and to authorize its use, including the right to remuneration for the grant of such authorization.

(2) The exclusive right to authorize use of the program means the right of the broadcasting or cable distribution organization to authorize;

1. the simultaneous broadcasting or communication by cable of its program by another broadcasting or cable distribution organization;
2. the communication of the program to the public by cable or by broadcasting;
3. the recording of the program;
4. the reproduction of the recording of the program;
5. the communication of the program to the public in places where a charge is made for admission.

(3) The exclusive right of a broadcasting or cable distribution organization referred to in paragraph (2)<sup>4</sup> shall not extend to the case in which

1. the program has been recorded with the consent of the broadcasting organization;
2. the program is reproduced for the same purposes as those for which it was recorded under the provisions of Article 41 of this Law.

(Limitation of the Rights of Performers, Phonogram Producers and Broadcasting or Cable Distribution Organizations)

*Art. 41.-(1)* Use of a performance, a program broadcast or transmitted by cable or recordings thereof and reproduction of phonograms shall be permitted without the consent of the performer, the phonogram producer or the broadcasting or cable distribution organization, and without payment of remuneration:

1. for inclusion in a report on current events of short extracts from the performance, the phonogram or the program broadcast or transmitted by cable;
2. for the exclusive purposes of teaching or scientific research;
3. in order to quote, in the form of short extracts, from the performance, the phonogram or the program broadcast or transmitted by cable, on condition that the quotation is made for informational purposes and on the understanding that a broadcasting or cable distribution organization may only make use, for the purposes of a program broadcast or transmitted by cable, of copies of a phonogram

published for commercial purposes if the provisions of Article 39 of this Law are respected;  
4. in the other cases of limitation of the economic rights of the authors of literary, scientific and artistic works referred to in Articles 18 to 26 of this Law.

(2) Notwithstanding the provisions of Articles 37 to 40 of this Law, it shall be permissible, without the consent of the performer, the phonogram producer or the radio or cable distribution organization, to make use of a program broadcast or transmitted by cable or of a recording thereof, and also to reproduce the phonogram, for personal purposes. Reproduction of the phonogram shall be permissible subject to payment of remuneration under Article 26 of this Law.

(3) The provisions of Articles 37, 38 and 40 of this Law concerning the authorization of the performer, the phonogram producer and the broadcasting organization shall not be applicable to the making of an ephemeral recording of a performance or program, to the reproduction of such recording or to the reproduction of a phonogram published for commercial purposes if the ephemeral recording or the reproduction is made by a broadcasting organization using its own equipment and for the purposes of its own broadcasts, on condition that:

1. the broadcasting organization has obtained prior authorization to broadcast the performance or the program of which an ephemeral recording has been made or reproduced under the provisions of this paragraph;
2. the ephemeral recording is destroyed within the period laid down for ephemeral recordings of literary, scientific and artistic works made by broadcasting organizations under the provisions of Article 25 of this Law; however, a single copy may be conserved in official archives if it is of a purely documentary nature.

(4) The application of the limitations provided for in this Article shall not prejudice either the normal exploitation of the phonogram, the performance or the program broadcast or transmitted by cable, or of recordings thereof, or the normal exploitation of literary, scientific or artistic works incorporated therein, and shall not prejudice either the legitimate interests of the performer, the phonogram producer or the broadcasting or cable distribution organization or those of the authors of the works concerned.

(Term of Neighboring Rights)

*Art. 42.*-(1) The rights of performers referred to in this Chapter shall subsist for 50 years as from the first performance. The right of the performer to be named and his right to protection of the performance against any distortion or other derogatory act, laid down by Article 37 of this Law, shall be protected without limitation in time.

(2) The rights of phonogram producers referred to in this Chapter shall subsist for 50 years after first publication of the phonogram or for 50 years after its first recording if the phonogram has not been published during that period of time.

(3) The rights of broadcasting organizations referred to in this Chapter shall subsist for 50 years as from the date of first broadcasting effected by such organization.

(4) The rights of cable distribution organizations referred to in this Chapter shall be protected for 50 years as from the date of first cable transmission made by such organization.

(5) Radio and television programs (broadcast programs) with respect to which the period of 50

years as from the date of lawful disclosure or, if the broadcast has not been disclosed, as from the date of making has not expired, shall be protected, as from the date of entry into force of this Law, as the subject matter of neighboring rights for that part of the term that remains.

(6) Any period under paragraphs (1), (2), (3) or (4) shall be calculated as from January 1 of the year following that during which the legal event has occurred that marks the starting point of the period.

(7) If the performer has been subject to measures of repression and has been posthumously rehabilitated, the term of protection for the rights under this Article shall begin on January 1 of the year following that of rehabilitation.

(8) The right to authorize use of a performance, a phonogram or a program broadcast or transmitted by cable and the right to remuneration shall be transmitted to the heirs (in the case of a legal person, to the successors in title) of the performer, the phonogram producer or the broadcasting or cable distribution organization, within the limits of the time remaining of the terms referred to in paragraphs (1), (2), (3) and (4).

## **Chapter IV**

### **Collective Administration of Economic Rights**

(Objectives of Collective Administration of Economic Rights)

*Art. 43.*-(1) The authors of scientific, literary or artistic works, performers, phonogram producers and other holders of copyright or neighboring rights may, in order to exercise their economic rights, set up collective organizations to administer those rights.

(2) An organization for the collective administration of economic rights shall not be entitled to carry on a commercial activity nor to exploit works and subject matter of neighboring rights for which it has been given a collective administration mandate.

(3) Separate organizations may be created for differing rights and differing categories of holders, or organizations administering differing rights on behalf of a single category of holders, or organizations administering a single category of rights on behalf of several categories of holders may be set up. Such organizations shall be set up directly by the holders of copyright or neighboring rights and shall act within the limits of the mandate entrusted to them and on the basis of statutes.

(4) The mandate for the collective administration of economic rights shall be either given directly by the holders of copyright or neighboring rights, by means of written contracts, or transferred under appropriate contracts concluded with foreign organizations administering similar rights.

(5) The statutes of organizations for the collective administration of economic rights shall contain provisions that satisfy the requirements of this Law. The registration of an organization for the collective administration of economic rights may be refused if the requirements of this Law or the legislation establishing the registration procedure for organizations are not complied with.

(6) The activities of a collective administration organization shall be directed by the holders of copyright or neighboring rights whose organization administers the economic rights. Decisions concerning the amount of remuneration, the conditions under which licensing contracts are



concluded with users, the manner of distribution and of payment of remuneration received and other matters affecting the operating policy of the organization shall be taken, in a collegiate manner, by the holders of copyright or neighboring rights only in a general meeting.

(7) A statutory body shall supervise the activities of the organizations for the collective administration of economic rights.

(Activities of the Organizations for the Collective Administration of Economic Rights)

*Art. 44.*-(1) Any author or his heir or any other holder of copyright or neighboring rights protected in accordance with Chapter III of this Law may entrust the exercise of his economic rights to a collective administration organization and such organization shall be required to accept the exercise of those rights on a collective basis if the administration of the category of rights concerned forms part of its statutory activities. Collective administration organizations shall not be entitled to engage in the exploitation of works and subject matter of neighboring rights for which they have received a collective administration mandate.

(2) By virtue of, the mandate received under Article 43(3) of this. Law» the organization for the collective administration of economic rights shall conclude license contracts with users for the use of works and of the subject matter of neighboring rights by appropriate means. The conditions under such license contracts shall be the same for all users in a given category. The organization shall not be entitled to refuse to conclude a license contract with a user without valid reason.

(3) Any user who has concluded a license contract shall be required to have it registered in accordance with the established procedure with a statutory body responsible for the protection of the rights of authors and of the holders of neighboring rights and to obtain an official attestation of registration of the regulation type. Such license contracts shall authorize the use, by the means that they specify, of all the works and subject matter of neighboring rights and shall be concluded on behalf of all holders of copyright or neighboring rights, including those who have not mandated the organization in accordance with Article 43(3) of this Law.

(4) The organization that has concluded a license contract shall settle problems arising from claims made by holders of copyright or neighboring rights against users with regard to the use of their works or subjects of neighboring rights under such license.

(5) If an organization for the collective administration of economic rights has remuneration in its possession and it has not been claimed for three years following the date of its collection, it may retain it and either include it in the sums that it distributes or assign it to other purposes of interest to the holders of copyright or neighboring rights that it represents.

(Functions of Organizations for the Collective Administration of Economic Rights)

*Art. 45.* An organization for the collective administration of economic rights shall perform, on behalf of the holders of copyright or neighboring rights that it represents and on the basis of the mandates it has received, the following functions:

1. conclusion of license contracts with users for the exploitation of the rights it administers;
2. negotiation with users of the amount of remuneration and other conditions under which license contracts are concluded;
3. negotiation with users of the amount of remuneration in those cases where it is responsible for

collecting such remuneration without a license contract having been concluded (Article 26 and Article 39(2) and (3) of this Law);

4. collection of the remuneration provided for in license contracts or referred to in item 3;

5. distribute the remuneration received in accordance with item 4 and pay it to the holders of copyright or neighboring rights that it represents;

6. carry out any legal act essential to the defense of the rights the administration of which forms part of its activities.

#### (Obligations of Organizations for the Collective Administration of Economic Rights)

*Art. 46.*-(1) An organization for the collective administration of economic rights shall act in the interests of the owners of copyright or neighboring rights that it represents. To that end, it shall discharge the following obligations:

1. at the same time as the remuneration is paid, it shall report to the holders of copyright or neighboring rights on the use of their rights;

2. it shall use the remuneration collected under item 4 of Article 45 of this Law exclusively for distribution and payment to the holders of copyright or neighboring rights; however, the organization shall be entitled to deduct from the amount of the remuneration collected a sum intended to cover expenditure actually incurred by it in the collection, distribution and payment of the remuneration and also a sum payable to a special fund established by it for the benefit of the holders of copyright and neighboring rights that it represents, and with their agreement;

3. it shall distribute the remuneration collected, after deduction of the sums referred to in item 2, and ensure regular payment thereof in proportion to the actual use of the works and subject matter of neighboring rights.

(2) The holders of copyright or neighboring rights who have not mandated the organization to collect the remuneration referred to in item 4 of Article 45 of this Law shall be entitled to require the organization to pay them the remuneration accruing to them according to the distribution that has been made or, alternatively, that it exclude their works or subject matter of neighboring rights from the licenses that they grant to users.

#### (Supervision of the Activities of Organizations for the Collective Administration of Economic Rights)

*Art. 47.*-(1) Each organization for the collective administration of economic rights of authors shall be required to communicate to the statutory body that supervises its activities the following information concerning those activities:

1. amendments to the statutes or other basic texts of the organization;

2. bilateral or multilateral agreements concluded by the organization with foreign organizations administering similar rights;

3. decisions taken by the general meeting;

4. the annual report and accounts, including a statement of unclaimed remuneration, together with the report of the auditors on the activities of the organization;

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

(2) The statutory body that supervises the activities of the organizations for the collective administration of economic rights may require an organization to provide it with any additional information that it needs to check that the organization is operating in compliance with this Law, with the legislation on organizations or with other legislative texts, and also with the statutes of the organization.

## **Chapter V**

### **Copyright and Neighboring Rights Sanctions**

(Infringement of Copyright and Neighboring Rights)

*Art. 48.* Infringement of copyright or neighboring rights under this Law shall make the infringer liable to civil, criminal and administrative sanctions in accordance with the legislation of the Republic of Kazakhstan.

(Copyright and Neighboring Rights Sanctions)

*Art. 49.-(1)* The courts shall ensure protection for copyright and neighboring rights through the following remedies:

1. recognition of the rights;
2. restoral of the prior situation;
3. cessation of the acts that infringe or are liable to infringe rights;
4. payment of damages, including loss of earnings;
5. surrender of revenue obtained by the infringer through the infringement;
6. payment of an indemnity of between 20 and 50,000 times the minimum salary set by the legislation of the Republic of Kazakhstan; the court shall determine the amount of the indemnity to be paid in place of damages or surrender of revenue;
7. adoption of other measures provided for in the legislative texts as required to defend such rights.

The choice between the measures referred to in items 4, 5 and 6 shall be made by the holder of copyright or neighboring rights.

(2) As a provisional measure, the court may prohibit the defendant from manufacturing, reproducing, selling or using copies of works or phonograms presumed to be infringing. The court may also order seizure, descriptive or real, of all copies of works or phonograms presumed to be infringing and of the materials and equipment used in their manufacture.

(3) The court may order the confiscation of infringing copies of a work or phonogram and of the materials and equipment used in their manufacture. Infringing copies of a work or phonogram may be surrendered to the holder of copyright or neighboring rights, at the latter's request, or destroyed on a court order.

The material and equipment used in their manufacture may be destroyed or confiscated by order of the court.