

# **ON COPYRIGHT AND THE RELATED RIGHTS**

The Law of the Republic of Kazakhstan dated 10 June, 1996 No 6.

## **Chapter I. General provisions**

### **1. Subject of regulation**

This Law regulates relations in the field of intellectual property arising in relation to creation and use of scientific, literary and artistic works (copyright), performance, phonograms, programs of on-air and cable broadcasting organizations (the related rights).

### **2. Basic definitions, used in this Law**

In this Law the following basic definitions shall be used:

- 1) an author – is an individual, who created the works of science, literature and art;
- 2) the copyright – is the personal non-property and property rights of the author;
- 3) a technical device for protection of copyright and the related rights – is a technical (software and hardware) device or its components, controlling access to the works or objects of the related rights, preventing or restricting the actions that are not permitted by the author, the holder of the related rights or another owner of the exclusive rights to the works or objects of the related rights;
- 4) a counterfeit copy of an object of copyright and (or) the related rights – is a copy of a work, a recorded performance, a phonogram, a program of on-air and cable broadcasting organization, production, distribution or other use of which results in a violation of copyright and (or) the related rights of this Law, or the provisions of the international treaties, ratified by the Republic of Kazakhstan. Counterfeit objects are the objects of copyright and (or) the related rights in which the information about the rights management has been removed or changed without permission of the author, or which are manufactured by the illegally used devices, allowing to circumvent technical devices for protection of copyright and (or) the related rights;
- 5) an authorship agreement – is a contract the subject matter of which is the transfer of property rights to use one or more objects of copyright. The authorship agreement is a variation of a licensing agreement;
- 6) non-exclusive right – is a right when together with the copyright holder other persons can use the works, performance, productions, phonograms, programs of on-air and cable broadcasting organizations, having the corresponding permission from the author or other copyright holder, except for the cases, established by this Law;
- 7) exclusive right is the property right of the author and (or) other rightholder to carry out, allow and prohibit the use of the work and (or) the object of related rights by any means within the prescribed period;
- 8) accreditation – is a procedure of official recognition by the authorized body of the powers of organizations, managing the property rights on a collective basis in the collective management areas, established by this Law;
- 8-1) is excluded by the Law of the Republic of Kazakhstan dated 24.11.2015 № 419-V (shall be enforced from 01.01.2016);
- 9) database – is a range of data (articles, calculations, facts, and others), the selection and (or) the location of which is the result of creative work, systematized in the way that the data can be found and processed with the help of an electronic computer (hereafter – the PC). The concept of a database is not applied to the software for a PC, with which electronic access to the database may be performed;
- 10) an audiovisual work – is a work, consisting of a fixed series of interrelated shots or images (with or without sound accompaniment), designed for visual and auditory (if accompanied by sound) perception with the help of appropriate technical devices. Audiovisual works include cinematographic works and all the works, expressed by the devices, similar to cinematography (television and video films, slide strips and slide films, and the like), regardless of their method of initial or subsequent recording;
- 11) a producer of an audiovisual work – is an individual or a legal entity, that has initiated and taken responsibility for creation of such works. Unless the contrary is proved, the producer of audiovisual works is the person whose name is indicated on this work;

12) a record – is a fixation of sounds and (or) images, provided for a repeated vision, presentation or release through technical devices in any material form;

13) availability to the public – is the release of the objects of copyright and (or) the related rights through wire or wireless means, in which the public may access them from anywhere and at any time at their own option (in online mode);

14) publishing – is an offer to the public of copies of works, performances or phonograms in the amount that meets the reasonable needs of the public with the consent of the author or other holder of copyright or the related rights;

14-1) Internet resource is an electronic information resource displayed in text, graphic, audiovisual or other form, placed on the hardware and software complex, having a unique network address and (or) domain name and functioning on the Internet;

15) communication to the public by a cable – is a release of works, phonograms, performance, programs of on-air or cable broadcasting organizations to the public through cable, wire, optic fiber or similar devices;

16) public performance – is a performance of a work through recitation, playing, dancing, or in any other manner, including with the help of technical devices, in the places which may be attended by the persons who are not the members of the family;

17) public display – is a display of the original or a copy of the work directly or in the form of a slide, film, or tele-shot on the screen with the help of any other technical device or by any other means (for an audiovisual work - showing of individual shots out of their sequence) in the places which may be attended by the individuals who are not the members of the family;

18) reproduction (reproduction) – is a facsimile reproduction in any size and shape of one or more copies of the originals or copies of written or other graphic works through photocopying or other technical means other than publication. Reproduction does not include storage or reproduction of the mentioned copies in electronic (including digital), optical or other machine-readable form;

19) reproducing – is the manufacturing of one or more permanent or temporary copies of works or objects of the related rights by any means and in any form, wholly or partially, directly or indirectly. The types of reproducing are the manufacturing of audio or video recordings, the making of one or more copies of a two- or three-dimensional work, as well as any permanent or temporary storage of works or objects of the related rights in any physical form, including in the open information and communication network;

20) copyright holder – is an author (his heirs) in respect of the copyright, an artist ( his heirs), a producer of phonograms, an organization of on-air or cable broadcasting in respect of the related rights, as well as other individual or legal entities, who have received the exclusive right to use the work and (or ) the object of the related rights under a contract or other grounds, specified in this Law;

21) rights management information – is the information which identifies the work, the author, the performer, the performance, the phonogram producer, the phonogram, the owner of any intellectual property right to the work, performance or phonogram, or the information about the terms and conditions of use of the work, performance or phonogram. The rights management information is also any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a recorded performance or a phonogram or appears in view of the release of the work and (or) the recorded performance or phonogram to the general public;

22) a composite work – is a collection (encyclopedia, anthology, database) of works and other materials the selection and (or) arrangement of which is the result of creative activity;

23) performance – is a representation of works, phonograms, performances, productions through playing, singing, dancing, live performance or by any other technical means ( broadcasting, cable TV, etc.), as well as the audio-visual display of the work in its sequences with or without soundtracks;

24) an artist – is an actor, a singer, a musician, a dancer or other person who performs, sings, reads, recites, plays a musical instrument, interprets or otherwise performs literary and (or) art works (including variety, circus or puppet show), or works of folk art, as well as a director-producer of a play and a conductor;

25) a user – is an individual or legal entity, carrying out or organizing the use of the objects of copyright and the related rights;

26) hire (renting) – is a provision of copies of works or phonograms for temporary use for direct or indirect commercial advantage;

27) the related rights – are the property rights of a performer, a producer of a phonogram, an organization of on-air and cable broadcasting and the personal non-property rights of the performer;

28) a work of applied and decorative arts – is a two-dimensional or three-dimensional work of art, applied to the objects for practical use, including the works of art or the industrially produced works;

29) a production director of a play – is a person who directs a theater, circus, puppet, variety or other play (performance);

30) translation of a work – is the expression of work in a language other than the language of the original work. In this case, the translation must be authentic and not distorting the content or style of the original work;

31) copy of a work – is a copy of the work, manufactured in any physical form, including the information contained in an open information and communication network;

32) release of a work – is the action performed with the consent of the author to make the work available to the general public through its publication, public display, public performance, communication to the general public in other ways;

33) processing of a work - is a change of the original work from one genre to another. At that, the types of processing of works are the staging, production and adaptation of the original work;

34) a derivative work – is the work that is created as a result of creative processing of other work;

35) the authorized body – is the state body, defined by the Government of the Republic of Kazakhstan and exercising the state regulation in the field of copyright and the related rights;

36) soundtrack – is the recorded performances or other sounds, as well as the representation of sounds in any form, except for the record, included in an audiovisual work;

37) a copy of a phonogram – is a copy of a phonogram on any physical medium, including those contained in open information and communication networks, made directly or indirectly from a phonogram and including all the sounds or part of the sounds, recorded in that phonogram;

38) a phonogram producer – is an individual or a legal person, who has initiated and taken responsibility for the first sound recording of a performance or other sounds;

39) the work of folk art – is the work, containing the elements of traditional artistic heritage (folk tales, folk poetry, folk songs, instrumental folk music, folk dances and plays, artistic forms of folk rituals, etc.);

40) computer software program – is a set of instructions, expressed in the form of words, diagrams or any other form of expression, and when during its recording to a material computer-readable medium the implementation or achievement of certain computer tasks or result are provided, including the preparatory works, the nature of which is such that the computer program is its result at the later stage;

41) decompiling of a computer software program – is a method of converting of an object code into the source code in order to study the structure and coding of a computer software program;

42) adaptation of a software to a computer or a database – is the changing of computer program or database, carried out to ensure operation of a computer software program or database on specific user's hardware or under the management of specific user's programs;

43) modification (processing) of a computer program or a database – is any change of a computer program or a database, which are not an adaptation;

44) broadcasting – is the release of works, performances, productions, phonograms, programs of on-air or cable broadcasting organization to the general public (including display or performance) through their broadcasting in radio or television (with the exception of cable television). When broadcasting the works, performances, productions, phonograms, programs of broadcasting or cable organizations via satellite, the broadcasting is a signal reception from the ground station to the satellite and transmission of signals from the satellite through which the works, performances, productions, phonograms, programs of broadcasting or cable organizations may be communicated to the general public, regardless of their actual reception by the public. Transmission of encrypted code signals is the broadcasting, if the decrypting devices are provided to the public by the broadcasting organization or with its consent;

45) a following broadcasting - is the broadcasting of previously broadcast or released works or objects of the related rights to the general public through cable;

45-1) the organizations of on-air and cable broadcasting – are the individual and legal entities, engaged in broadcasting through cable, radio channels, radio and television programs (TV and radio) of works, performance, productions, phonograms. On-air and (or) cable broadcasting are performed through the analog broadcasting, multicasting (digital, satellite and cable broadcasting);

46) a program of an organization of on-air or cable broadcasting – is the program, created by the on-air or cable broadcasting organization itself, as well as at its request at its expense by another organization.

Footnote. Article 2 is in the wording of the Law of the Republic of Kazakhstan dated 10.07.2009 No 179-IV (the order of enforcement See Art. 2); as amended by the RK Law dated

12.01.2012 No 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2012 No 546-IV (shall be enforced upon expiry of thirty calendar days after its first official publication); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication) ; dated 24.11.2015 № 419-V (shall be enforced from 01.01.2016);

### **3. The legislation of the Republic of Kazakhstan on copyright and the related rights**

The legislation of the Republic of Kazakhstan on copyright and the related rights consists of the Civil Code of the Republic of Kazakhstan, this Law and other regulatory legal acts, published in accordance with it.

### **4. International treaties**

If an international treaty, ratified by the Republic of Kazakhstan, establishes rules other than those contained in this Law, the rules of the international treaty are applied.

## **Chapter II. Copyright**

### **5. The scope of application of copyright**

1. In accordance with this Law, the copyright is applied to:

1) the works, published in the Republic of Kazakhstan or those not published, but existing in any physical form in the territory of the Republic of Kazakhstan, regardless of the nationality of the authors and their assignees;

2) the works, published outside the Republic of Kazakhstan or those not published, but existing in some physical form outside the Republic of Kazakhstan, and is assigned to the authors - the citizens of the Republic of Kazakhstan and their assignees;

3) the works published outside the Republic of Kazakhstan or those not published, but existing in some physical form outside the Republic of Kazakhstan, and is assigned to the authors (and their assignees) – the foreigners, the stateless persons in accordance with the international treaties, ratified by the Republic of Kazakhstan.

2. The work is considered to be published in the Republic of Kazakhstan, if, within thirty days after the date of its first publication outside the Republic of Kazakhstan, it was published in the Republic of Kazakhstan.

3. When providing protection of the work in the territory of the Republic of Kazakhstan in accordance with the international treaties, the author of the work is determined by the law of the state where the action or the circumstances, giving rise to copyright, took place.

4. Protection of the work is provided in accordance with the international treaties, ratified by the Republic of Kazakhstan, if it is not in the public domain in the country of origin of the work, defined by the rules of the international treaty, ratified by the Republic of Kazakhstan, due to the expiration of the term of copyright in the country, and is not in the public domain in the Republic of Kazakhstan due to expiration of the term of the copyright.

Footnote. Article 5 as amended by the RK Law dated 9 July, 2004 No 586.

## **6. The subject matter of copyright. General provisions**

1. Copyright applies to the works of science, literature and art, which are the result of creative activity, regardless of their purpose, content, and dignity, as well as the form of its expression.

2. Copyright covers both the published (published, released, publicly performed, publicly displayed), and the unpublished works, existing in any physical form:

- 1) in a written form (manuscript, typescript, musical notation, and the like);
- 2) oral (public recitation, public performance, and the like);
- 3) sound or video recording (mechanical, digital, magnetic, optical, and similar);
- 4) in the form of an image (drawing, sketch, painting, plan, drawing, film, television, video or photo-shot, etc.);
- 5) three-dimensional (sculpture, model, dummy, construction and the like);
- 6) other forms.

3. Part of the work (including its title, the names of the characters), which has the characteristics, specified in paragraph 1 of this Law, and may be used independently, is the copyright object.

4. Copyright is not applied to the ideas, concepts, principles, methods, systems, processes, discoveries, and facts.

5. Copyright to the work is not associated with the property right to the material object in which the work is expressed.

The transfer of ownership or property right to any material object does not entail transfer of copyright to the work, expressed in this object, except for the cases, specified in this Law.

Footnote. Article 6 is amended by the RK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement see article 2 of the Law).

## **7. The works, that are the subject matter of copyright**

1. The subject matters of copyright are:

- 1) the literary works;
- 2) dramatic and musical-dramatic works;
- 3) scenarios;
- 4) pantomimes and choreographic works;
- 5) musical works with or without lyrics;
- 6) audiovisual works;
- 7) paintings, sculptures, drawings and other works of fine art;
- 8) the works of applied art;
- 9) works of architecture, town planning, design and landscape art;
- 10) photographic works and the works produced by the means, analogous to photography;
- 11) maps, plans, sketches, illustrations and three-dimensional works, relating to geography, topography and other sciences;
- 12) computer software programs;
- 13) other products.

2. Protection of computer software programs is applicable to all kinds of software ( including operating systems) that can be expressed in any language and in any form, including source code and object code.

3. The subject matters of copyright also include:

- 1) the derivative works (translations, adaptations, summaries, abstracts, summaries, reviews, stages, musical arrangements and other transformations of works of science, literature and art);
- 2) collections (encyclopedias, anthologies, databases) and other composite works, the selection and (or) the location of which is the result of creative work.

Derivative and composite works are protected by copyright, regardless of whether the works are the copyright objects on which they are based, or which they include.

Footnote. Article 7 as amended by the RoK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement see article 2 of the Law); dated 07.04.2015 № 300-V ( shall be enforced upon expiry of ten calendar days after the day its first official publication ).

## **8. The works that are not the subject matter of copyright**

The following shall not be the subject matter of copyright:

- 1) official documents (laws, court decisions, other texts of legislative, administrative, judicial or diplomatic nature), as well as their official translations;
- 2) state symbols and signs (flags, emblems, orders, banknotes, and other state symbols and signs);
- 3) works of folklore;
- 4) reports on events and facts that have informational nature.

## **9. Emergence of copyright. Presumption of authorship**

1. Copyright in a work of science, literature and art arises from the fact of its creation. The emergence and exercise of copyright shall not require registration of the work, other special registration of the work or compliance with any formalities.

In order to announce his exclusive property rights an author and (or) an owner has the right to use a copyright notice that is placed on each copy of the work and consists of the three elements:

- 1) the capital letter "C" in a circle;
- 2) the name (names) of the owner of the exclusive rights;
- 3) the year of the first publication of the work.

The author for the certificate of personal non-property rights to the unpublished work, as well as the rightholder to confirm possession of exclusive property rights to the work at any time during the period of protection of copyright or the operation of the relevant contracts may register them in the state register of rights to objects protected by copyright. Registration is carried out by the authorized body in the order established by this Law.

1-1. *Is excluded by the RoK Law dated 12.01.2012 № 537-IV* (shall be enforced upon expiry of ten calendar days after its first official publication.)

2. In the absence of any other proof, the author of the work is the person named as the author on the original or copy of the work, the presumption of authorship.

The presumption of authorship acts exclusively with respect to the author himself.

3. When a work is published anonymously or under a pseudonym (except for the case, when the author's pseudonym leaves no doubt about his identity), the publisher whose name is indicated on the work, unless proved otherwise, is the representative of the author in accordance with this Law and as such he has the right to protect the copyright and ensure their implementation. This applies as long as the author of the work reveals his identity and announces his authorship.

4. In the cases when an individual, who considers himself the author of a manuscript of the unpublished work, in order to avoid misuse or misappropriation, decides to put it in storage, the authorized body shall take the manuscript, and the person, who puts the manuscript in storage, receives a note indicating the date of its receipt.

The order of putting in storage, receipt and storage of manuscripts is defined by the authorized body.

Footnote. Article 9 as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 22.11.2005 N 90 (the order of enforcement See Art. 2 of the Law); dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

### **9-1. State registration of a copyrighted work**

1. The state registration of the copyrighted works (hereinafter - the state registration) is performed by the authorized body within twenty working days from the date of receipt of an application from the author (s) or the copyright owner.

The state registration is performed on the basis of the application of the author ( authors) or upon the application of the copyright owner.

Application forms for registration of the copyrighted works shall be approved by the authorized body.

2. The application for the state registration specifies the data about the author ( authors), surname, first name, middle name completely, the place of residence, contact numbers, details of an identity document of the applicant.

If the application is submitted by the copyright owner, his legal address is indicated there.

If it is a derivative work, the surname, name and patronymic of the author (authors) of the used work must be provided.

3. When registering the rights to literary, scientific, dramatic, stage works, the following documents shall be submitted:

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

4. When registering the rights to musical compositions with or without lyrics, and musical-dramatic works, the following documents shall be provided:

- 1) an application;
- 2) a media file carrier, the text, the notes in the form of scores or script;
- 3) a copy of the identity document of the applicant;
- 4) the original of the document, confirming payment of the state registration fee.

Rights to music works, created in the separate co-authorship, can be registered separately, observing the rights of a co-author, and jointly.

5. When registering choreographic works, pantomimes, audiovisual works, the following documents shall be provided:

- 1) an application;
- 2) a media file carrier with the work;
- 3) a description of the work;
- 4) a copy of the identity document of the applicant;
- 5) the original of the document, confirming payment of the state registration fee.

6. When registering rights to works of architecture, town planning, design, landscape art, the following documents shall be provided:

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

7. When registering the rights to the works of painting, sculpture, graphic arts, fine and applied arts, the following documents shall be provided:

- 1) an application;
- 2) a copy of the work or the photographed work;
- 3) a detailed description of the work;
- 4) a copy of the identity document of the applicant;
- 5) the original document, confirming the payment of the state registration fee.

8. When registering the rights to the photographic works and the works produced by the methods similar to photography, as well as maps, plans, sketches, illustrations and three-dimensional works, related to geography, topography and other sciences, the following documents shall be provided:

- 1) an application;
- 2) a copy of the work;

- 3) a copy of the identity document of the applicant;
- 4) the original document, confirming the payment of the state registration fee.

9. When registering the rights to a computer software program or a database, the following documents shall be provided:

- 1) an application;
- 2) a media file (floppy disk or other electronic media), containing the software and source code (source code) of a computer or database;
- 3) an abstract of a computer software program or a database that includes the name of the computer software program or the database, the name (last name, first name, patronymic) of the applicant, the date of creation, the scope of use, purpose, functional opportunities, basic technical characteristics, software programming language, the type of implementing computer;
- 4) a copy of the identity document of the applicant;
- 5) the original document, confirming the payment of the state registration fee.

Computer software programs (software systems), containing several computer programs, are to be registered in general.

10. Works that serve (intended) to distinguish goods (services) of certain individuals or legal entities from similar goods (services) of other individuals or legal entities (means of individualization of participants in the civil turnover of goods, works or services) are not registered as objects of copyright.

11. When registering the rights to the works for hire, created during official duties or official task of an employer, in addition to the documents, submitted for registration, a copy of an employment contract shall be provided, and in case of an additional agreement between the author and the employer on property rights to use the work for hire - a copy of such a contract, as well as a certificate of state registration (re-registration) of a legal entity shall be provided, if the employer is the organization.

If the owner, who has the rights to the work, is a legal entity, in addition to the documents, submitted for registration, a certificate of state registration (re-registration) of the legal entity shall be provided.

12. When registering the rights to the composite or derivative works, a copy of the authorship agreement, concluded with the author (s) or the copyright holder of the original work shall be provided.

13. The materials, submitted for registration, must be numbered, and bound and initialed by the author (authors) or the copyright owner.

14. Verification of the completeness of the submitted documents and correctness of their registration is carried out within ten working days.

If the documents are incomplete, the authorized body, within a specified time, gives a written detailed reasoned refusal to consider them and returns the submitted documents.

After removal of remarks of the authorized body, the author (the authors) or a copyright holder may re-apply for the state registration.

15. The works, submitted to the authorized body for the state registration, shall be checked at the media files in a physical form.

16. The confirmation of state registration of rights to works protected by copyright is the issue of a certificate of state registration of rights to the object of copyright and entry of information in the state register of rights to objects protected by copyright. The form of the certificate of state registration of rights to the object of copyright and a list of information entered in the state register of rights to objects protected by copyright is approved by the authorized body.

17. At the request of the author (the authors) or a copyright owner, within ten working days, in case of loss of the certificate of the state registration or its damage, the authorized body issues its duplicate.

18. In accordance with the order, defined by the tax legislation of the Republic of Kazakhstan, a fee is charged for the state registration of rights to the copyrighted works, as well as their re-registration, issuance of a duplicate of a document, certifying the registration of the rights to the copyrighted works.

Footnote. Chapter II is supplemented by Article 9-1 in accordance with the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); as amended by the RoK Law dated 24.12.2012 № 60-V (shall be enforced upon expiry of ten calendar days after its official publication.); dated 07.04.2015 № 300-V ( shall be enforced upon expiry of ten calendar

days after the day its first official publication ); dated 24.11.2015 № 419-V (shall be enforced from 01.01.2016).

## **10. Co-authorship**

1. Copyright to the work, created by a joint creative work of two or more persons ( co-authorship), is jointly owned by the co-authors, regardless of whether it is indivisible or consists of parts, each of which also has independent significance.

A part of a work is deemed to be independent, if it can be used independently from other parts of the work.

Each of the co-authors may use the part, created by him, which has independent significance, at his own discretion, unless otherwise provided by the agreement, concluded between them.

2.The right to use the work as a whole belongs to the co-authors jointly. Relations between the co-authors may be determined by the agreement concluded between them. If the work of the co-authors is indivisible, none of the authors is entitled to prohibit the use of the work without sufficient grounds.

3.Each of the authors, in their own name, including without permission of co-authors, has the right to take measures, provided by this Law and other legislative acts of the Republic of Kazakhstan, related to protection of his rights, unless otherwise provided by the agreement concluded between them.

Footnote. Article 10 as amended by the RoK Law dated July 9, 2004 N 586.

## **11. Copyright to the composite works**

1.An author of a collection or other composite works (an issuer) owns the copyright to select and (or) place the materials that are the result of creative work (compilation).

The issuer has copyright in case he observes the rights of the authors of each of the works, included in the composite work.

The authors of the works, included in the composite work, are entitled to use their works independently from the composite work, unless otherwise provided by the copyright agreement.

Copyright of the issuer does not prohibit other persons to make an independent selection and (or) placement of the same materials to create composite works.

2.A publisher, issuing encyclopedias, encyclopedic dictionaries, intermittent and continued collections of scientific works, newspapers, magazines and other periodicals, possesses exclusive rights to use such publications as a whole. The publisher, at any use of such publications, shall have the right to mention his name or to demand such mention.

The authors of the works, included in such publications, shall retain the exclusive rights to use their works independently from the publication as a whole.

Footnote. Article 11 as amended by the RoK Law dated July 9, 2004 N 586.

## **12. Copyright to the derivative works**

1.Translators and other authors of derivative works reserve the copyright to their translations, adaptations, arrangements and other transformations.

The translator and the author of another derivative work shall enjoy copyright to the work created by him, while observing the rights of the author of the work, which was translated, adapted, arranged or otherwise transformed.

2.Copyright of translators and authors of other derivative works does not prevent other persons to make their translations and transformation of the same works.

Footnote. Article 12 is amended by the RoK Law dated July 9, 2004 N 586.

## **13. Copyright to audiovisual works**

1.Authors (co-authors) of an audiovisual work are:

1) a scriptwriter;

- 2) an author of a musical work (with or without lyrics), specially created for this audiovisual work (composer);
- 3) a director;
- 4) a director of photography;
- 5) an art director.

An author of the previously created work, remade or incorporated as a part of the audiovisual work, is also considered a co-author of the audiovisual work.

2. Conclusion of an authorship agreement for creation of an audiovisual work (or for transference of the rights to the previously created works), except for the case, provided for by paragraph 3 of this Article, entails transference of the exclusive rights to the audiovisual work, unless otherwise provided by the copyright agreement, by the authors (or authors and other copyright owners to the previously created works) to the producer of the audiovisual work.

A producer of an audiovisual work may indicate his name or demand such indication at any use of this work.

3. An author of a musical work (with or without lyrics), created specifically for the audio-visual work, retains the right to remuneration for the use of this musical work for every public performance of the audiovisual work, its public release, as well as renting (hiring) of copies of the audiovisual work.

4. The authors of the works that are the parts of the audiovisual work, as well as the previously created (an author of the novel, used for scenario, and others), or those created during working on it (director of photography, production designer, and others), enjoy copyright to each of their works.

Footnote. Article 13 as amended by the RoK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement see article 2 of the Law).

## **14. Copyright for the works for hire**

1. Author's personal non-property right to the work, created during official duties or official task of the employer (work for hire), belongs to the author of the work for hire.

2. Property (exclusive) rights to a work for hire belong to the employer, unless otherwise provided in the contract concluded between him and the author.

3. An employer shall have the right to mention his name or to demand such mention at any use of the work for hire.

4. Is excluded by the RoK Law of 10.07.2009 N 179-IV (the order of enforcement see article 2).

5. Provisions of this Article shall not apply to creation of encyclopedias, encyclopedic dictionaries, intermittent and continued collections of scientific works, newspapers, magazines and other periodicals (paragraph 2 of Article 11 of this Law) during the official duties or the employer's official task.

Footnote. Article 14 as amended by the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2).

## **15. Personal non-property rights**

1. An author in relation to his works possesses the following personal non-property rights:

1) the right to be recognized as the author of the work and to demand such recognition, including through the mentioning of the author's name correctly on the copies of the work and at any of its public use, if it is practically possible (copyright);

2) the right to specify and require an indication of a fictitious name (pseudonym) instead of a true name on the copies of the work and at any its public use or refuse to specify a name that is anonymous (the right to be named);

3) the right to inviolability of work, including its title, the right to oppose any distortion, misrepresentation or other alteration of work, as well as any other infringement, capable to damage the author's honor or reputation (right to protection of the author's reputation);

4) the right to open access to the work to the general public (the right to public disclosure), with the exception of the works, created during the official duties or official task of the employer.

2. An author has the right to cancel the earlier taken decision to disclose the work (the right to withdrawal), if the damages, caused by such decision, will be reimbursed to the user, including the lost profits. If the work has already been disclosed, the author is required to give a public notice about its withdrawal. At that, he has the right to withdraw the previously produced copies of the work from the circulation at his own expense.

When creating a work for hire the provisions of this paragraph shall not apply.

3. Personal non-property rights belong to the author, regardless of his property rights, and he reserves the rights in case of transmission of the exclusive rights to use the work.

4. Personal non-property rights of the author, provided by this Article, are inalienable.

5. Personal non-property rights after the death of the author are implemented in the order, prescribed in Article 30 of this Law.

Footnote. Article 15, as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication.); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

## **16. Property rights**

1. An author or other copyright holder owns the property (exclusive) rights to use this work in any form or by any means.

2. An author's exclusive right to use a work means the right to perform, authorize or prohibit the following actions:

1) to reproduce the work (the right of reproduction);

2) to distribute the original or copies of the work in any way: to sell, change, rent (lease), perform other operations, including in an open telecommunications network (the right to distribute);

3) to import the copies of the work for distribution, including the copies made with permission of the author or other copyright holder (the right to import);

4) to perform the work publicly (the right of public display);

5) to perform the work publicly (the right of public performance);

6) to release the work publicly (to release the work to the general public), including on-air or by cable release (the right of public release);

7) to release the work on-air, including the first and (or) the subsequent broadcast to the general public (the right to broadcast);

8) to broadcast the work by cable, including the first and (or) subsequent broadcast by cable to the general public (the right of broadcast by cable);

9) to translate the work (the right of translation);

10) to remake, arrange or otherwise transform the work (the right to process);

10-1) to publicize the work (the right to publicize);

11) to perform other activities that do not contradict the legislative acts of the Republic of Kazakhstan.

3. If the copies of a lawfully published work have been put into circulation by means of sale, their subsequent distribution without the author's consent and without payment of remuneration is allowed.

The right to distribute the original or the copies of the work through leasing (and public renting), regardless of the property right to the copies, belongs to the author or the copyright owner to:

1) a musical work in the form of a music notation;

2) a work, fixed in a phonogram;

3) an audiovisual work;

4) a database;

5) a computer software program.

4.Exclusive rights to use architectural, urban and landscape designing projects also include practical implementation of such projects.

5.An author or other copyright holder is entitled to receive remuneration for each type of use of the work, the amount and the order of calculation of which are defined by the copyright agreement and the agreements, concluded by the administration, managing the property rights of the authors on a collective basis.

6. Limitations of property rights, provided for in paragraph 2 of this Article, shall be established by Articles 18-26 of this Law, provided that such restrictions do not hamper a normal exploitation of the work and do not unreasonably infringe the legitimate interests of the author or another copyright holder.

Footnote. Article 16, as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586I; dated 22.11.2005 N 90 (the order of enforcement see article 2 of the Law); dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); dated 12.01.2012 № 537-IV ( shall be enforced upon expiry of ten calendar days after its first official publication); dated 24.11.2015 № 419-V ((shall be enforced from 01.01.2016).

### **16-1. Minimum rates of an author's remuneration**

The Government of the Republic of Kazakhstan establishes minimum rates of an author's remuneration in the cases when practical implementation of property (exclusive) rights on an individual basis is impossible due to the nature of the work or particularities of its use ( public performance, including radio and television, releasing the works through mechanical, magnetic, or other recording, reproduction, releasing of the work for private purposes without the consent of the author and in other cases).

Footnote. It is supplemented by Article 16-1, in accordance with the RoK Law dated

09.07.2004 N 586; as amended by the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication.)

### **17. The right of access to the works of fine art. The resale royalty right**

1.An author of a work of art has the right to require the owner of the work to exercise the right of reproduction of his work (the right of access). However, the owner of the work must not deliver the work to the author.

2.For each public (through a bid, a gallery of fine art, an art shop, a shop, etc.) resale of the original of the works of fine art after the first alienation of the property right to such work of art, the author or his heirs are entitled to receive remuneration from the seller in the amount of five percent of the resale price (the resale royalty right). That right is inalienable during the author's life and goes solely to the author's heirs in compliance with the law or the will for the term of copyright.

3.Transfer of the property right to the work of fine art (on a remuneration basis or free of charge) from the author to another person means the first alienation of the work.

Footnote. Article 17 as amended by the RoK Law dated July 9, 2004 N 586.

### **18. Reproduction of a work for private purposes without the consent of an author or a copyright holder and without payment of an author's remuneration**

Footnote. The title of article 18 as amended by the RoK Law dated 10.07.2009 N 179-IV ( the order of enforcement see article 2).

1.Reproduction of one copy of a lawfully disclosed works by an individual for personal purposes and without income is permitted without the consent of the author or copyright holder and without payment of the author's remuneration, except for the cases, provided for in Article 26 of this Law.

2. Provisions of paragraph 1 of this Article shall not apply to:

- 1) reproduction of the works of architecture in the form of buildings and similar structures;
- 2) reproduction of databases or substantial parts of them;
- 3) reproduction of computer software programs, except for the cases, provided for in Article 24 of this Law;
- 4) reproduction (reprographic reproduction) of books (in full) and musical scores. Footnote. Article 18, as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 22.11.2005 N 90 (the order of enforcement see article 2); dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2).

## **19. Use of a work without the consent of an author or another copyright holder and without payment of an author's remuneration**

Footnote. The title of article 19 as amended by the RoK Law dated 10.07.2009 No 179-IV ( the order of enforcement see article 2).

The following is permitted without the consent of an author or another copyright holder and without payment of an author's remuneration, provided that the author's name, whose work is used and the source of borrowing are indicated:

- 1) quotation in the original or in translation for scientific, research, debate, criticism and informational purposes, taken from lawfully published works in the volume needed for the quotation, including reproduction of extracts from newspaper and magazine articles in press reviews;

- 2) the use of lawfully disclosed works and extracts from them as illustrations in publications, in radio and television broadcasts, audio and video educational recordings, to the extent justified by the purpose;

- 3) reproduction in newspapers, on-air or cable broadcasting to the general public of the articles, lawfully published in newspapers or periodicals on current economic, political, social and religious issues, or the broadcast works of the same character, in the cases when such reproduction, on-air or cable broadcasting were not specifically prohibited by the author;

- 4) reproduction in newspapers, on-air or cable broadcasting to the general public of official political speeches, addresses, reports and other similar works to the extent justified by the informational purpose. In this case, the author retains the right to publish such works in collections;

- 5) reproduction or broadcasting to the general public of the reviews on current events by means of photography or cinematography, on-air or cable broadcasting of the works that are becoming seen or heard during the events, to the extent justified for information purpose. In this case, the author retains the right to publish such works in collections;

- 6) reproduction of a lawfully published works without receiving income in a Braille system or other special means for the blind, except for the works, created especially for such means of reproduction.

- 7) the reproduction by libraries and archives of legally published works without extracting profit in a single copy of the work with transferring it to digital format in order to replace lost or damaged copies of the work, as well as providing copies of the work to other libraries that for some reason lost their work from their funds.

Footnote. Article 18 as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 10.07.2009 N 179-IV (the order of enforcement see article 2); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

## **20. The use of works by reproducing**

Reproducing of one copy without gaining income is permitted without the consent of the author or another copyright holder and without payment of an author's remuneration, provided that the author's name, whose work is used and the source of borrowing are indicated:

- 1) a lawfully published work by libraries and archives to recover or replace the lost or damaged copies, provision of copies of the work to other libraries that have lost the work from their own funds;

- 2) individual articles or succinct works, lawfully published in collections, newspapers and other periodicals, short extracts from lawfully published written works (with or without illustrations) by the libraries and archives at the request of individuals for educational and research purposes;

3) individual articles or succinct works, lawfully published in collections, newspapers and other periodicals, short extracts from lawfully published written works (with or without illustrations) by the education organizations for use in classes.

Footnote. Article 20 as amended by the RoK Law dated July 9, 2004 N 586; dated July 27, 2007 N 320 (the order of enforcement see article 2).

## **21. Free use of works, constantly located in the places of free public access**

Reproduction, on-air or cable broadcasting to the general public of the works of architecture, photography, fine art, permanently located in a place of open public access are permitted without the consent of the author or another copyright holder and without payment of an author's remuneration, except for the cases when the image of the work is the main object of such reproduction, on-air or cable broadcasting to the general public, or when the image of the work is used for commercial purposes.

Footnote. Article 21 is in the wording of the RoK Law dated 09.07.2004 N 586; as amended by the RK Law dated 10.07.2009 N 179-IV (the order of enforcement see article 2).

## **22. Public performance of the works during official and other ceremonies**

Public performance of lawfully published musical works in official and religious ceremonies, and funerals to the extent justified by the nature of the ceremonies is permitted without the consent of the author or another copyright holder and without payment of an author's remuneration.

Footnote. Article 22 as amended by the RoK Law dated July 9, 2004 N 586.

## **23. Reproduction of works for judicial and administrative purposes**

Reproduction of works for judicial and administrative proceedings, to the extent specified for that purpose is permitted without the consent of the author or another copyright holder and without payment of an author's remuneration.

Footnote. Article 23 is amended by the RoK Law dated July 9, 2004 N 586.

## **24. Free reproduction of computer software programs and databases. Decompiling of computer software programs**

1.A person, lawfully possessing a copy of a computer software program or a database, is entitled, without permission of an author or another owner of exclusive rights to use the work and without payment of additional remuneration, to:

1) amend a computer software program or a database, solely for its functioning at a user's PC, to perform any actions, necessary for functioning of a computer software program or a database in accordance with its intended purpose, including recording and storing in a computer's memory (one computer or one network user), as well as to correct obvious errors, unless otherwise provided by the contract with the author;

2) manufacture or instruct to make a copy of a computer software program or a database, provided that the copy is intended only for archival purposes and for replacement of a legally owned copy if the original of a computer software program or a database is lost, destroyed or became unusable. At that, the copy of the computer program or the database can not be used for other purposes other than those, specified in subparagraph 1) of this paragraph, and must be destroyed if possession of the copy of the computer program or the database ceases to be lawful.

2.A person, lawfully possessing a copy of a computer program, without the consent of the author or an owner of exclusive rights, and without payment of additional remuneration, may reproduce and convert an object code into a source code (decompile a computer program) or to instruct other persons to perform these actions if they are necessary to achieve interoperability of the software, created by that person independently, with other programs that can interact with the decompiled program, while observing the following conditions:

1) the information, necessary to achieve interoperability, was not previously accessible to the person from other sources;

2) these actions are performed in relation to the parts of the decompiled computer software program that are necessary to achieve interoperability;

3) the information, obtained after decompilation, may only be used to achieve interoperability of the independently created computer program with other programs, cannot be transferred to other persons, except for the cases when it is necessary to achieve interoperability of the independently created computer software with other programs, and cannot be used for development of a computer software program, substantially similar to the decompiled computer program, or for any other actions, violating the copyright.

3.Provisions of this Article shall not unjustifiably affect the normal use of a computer software program or a database, and should not unreasonably prejudice the legitimate interests of the author or another owner of exclusive rights to the computer software program or the database.

Footnote. Article 24 as amended by the RoK Law dated July 9, 2004 N 586.

## **25. Recordings of short-term use of works by broadcasting organizations**

Without the consent of an author or another copyright holder and without payment of additional remuneration, a broadcasting organization is entitled to record a short-term use of the work for which it has obtained the rights to broadcast, under the following conditions:

1) to make a record by a broadcasting organization, using its own facilities and for its own broadcast;

2) to destroy such records within six months after its creation, unless a longer period has been agreed with the author or another copyright holder of the recorded work. Such a record may be maintained without the consent of the author or a copyright holder in official archives, if it is exclusively documentary.

Footnote. Article 25 as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 10.07.2009 N 179-IV (the order of enforcement see article 2).

## **26. Reproduction of a work for personal purposes without the author's consent with an author's remuneration paid**

1.Reproduction of audio-visual work or audio-recording of work for private purposes and without earning income is permitted without the consent of an author, a performer, a producer of the audiovisual work and a producer of a phonogram, but with payment of their remuneration.

2.Remuneration for reproduction, specified in paragraph 1 of this Article, shall be paid by the persons, producing or importing equipment and material carriers, used for such reproduction.

The list of such equipment and material carriers is approved by the authorized body.

3.Collection and distribution of the remuneration is performed by one of the organizations, managing the property rights of authors, performers and producers of phonograms on a collective basis, in accordance with the agreement, concluded between the organizations ( Article 43 of this Law).

4.If this agreement provides otherwise, the established remuneration shall be distributed as follows: forty percent – to the authors, thirty percent – to the performers, thirty percent – to the phonogram producers.

5.The amount of remuneration and the terms for its payment shall be defined by the agreement, concluded between the mentioned manufacturers and importers on the one hand and the organizations, managing the property rights of authors, performers and producers of phonograms on a collective basis, on the other hand, and in the case if the parties fail to reach such an agreement – by the authorized body of the Republic of Kazakhstan.

6.No remuneration shall be paid for the equipment and material carriers, specified in paragraph 2 of this Article, which are the subject of export as well as to the professional equipment not intended for home use.

Footnote. Article 26 as amended by the RK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement see article 2 of the Law); dated 29.09.2014 № 239-V ( shall be enforced upon expiry of ten calendar days after the day its first official publication ).

## **27. Export of works for personal use**

Export of a copy of work by an individual is permitted for personal use only, without the consent of the author or another copyright holder and without an author's remuneration, except for the cases when export of the works would harm the national interests of the Republic, the list of which is defined in the prescribed order.

## **28. Duration of copyright**

1.Copyright is valid for the lifetime of the author and seventy years after his death.

2.Copyright, the right to a name and the right to protect reputation of the author are protected in perpetuity.

3.*Is excluded by the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement see article 2).*

4.Copyright in a work, published anonymously or under a pseudonym, is valid for seventy years after the date of its lawful disclosure. If within the period, the author of the work, published anonymously or under the pseudonym, discloses his identity or his identity is no longer in doubt, the provision of paragraph 1 of this Article is applied.

5.Copyright in a work of joint authorship, is valid for the life and seventy years after the death of the last author, who survive other co-authors.

6.Copyright in a work, first released to the public during thirty years after the author's death, is valid for seventy years after its release, as from the first of January of the year following the year of publication of the work.

7.If the author was repressed and rehabilitated posthumously, the term of protection of rights, provided by this Article, shall begin on the first of January of the year following the year of rehabilitation.

8.Calculation of time periods, provided for in this Article, shall begin from the first of January of the year following the year in which a legal fact occurred, marking the beginning of the period.

9.While protecting the work in accordance with the international treaties, ratified by the Republic of Kazakhstan, the term of copyright cannot exceed the term, established in the country of origin of the work, in accordance with paragraph 4 of Article 5 of this Law.

The terms provided for in this Article, shall apply in all cases when a legal fact, marking the beginning of the period, had taken place not earlier than seventy years before the enactment of this Law.

Footnote. Article 28 as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 22.11.2005 N 90 (the order of enforcement see article 2 of the Law); dated 10.07.2009 N 179-IV (the order of enforcement See Art.2).

## **29. Transference of the works to the public domain**

1.Expiration of copyright in the work shall mean its transference to the public domain.

2.*(Is excluded)*

3.The works that have passed into the public domain may be freely used by any person without payment of an author's remuneration. At that the copyright, the right to a name and the right to protect reputation of an author shall be observed.

4. Consumers of the works that have passed into the public domain, in order to support creativity of authors, to improve their material condition, may contribute to professional funds of the authors or the organizations, managing the authors' property rights on a collective basis.

Footnote. Article 29 is amended by the RoK Law dated July 9, 2004 N 586.

### **30. Transfer of copyright**

1. Copyright is transferred under the copyright agreements and by way of inheritance.

2. Copyright is transferred by way of inheritance in compliance with the law or the will.

3. Author's personal non-property rights, provided for in Article 15 of this Law, are not transferred by way of inheritance. The author's heirs shall be entitled to protect personal non-property rights. These powers of the heirs are not limited.

4. An author shall have the right, in the same order in which an executor is appointed, to specify the person to whom he entrusts protection of personal non-property rights. Such person shall exercise his powers for life. At the absence of such instruction of an author, the author's personal non-property rights after his death will be protected by his heirs or the authorized body of the Republic of Kazakhstan, which provides such protection, if there are no heirs or their copyright has expired.

### **31. Transfer of property rights. Authorship agreement**

1. Proprietary rights of an author, specified in Article 16 of this Law, may be assigned wholly or partially, or may be transferred for use under an authorship agreement on transference of exclusive rights or under a copyright agreement on transference of non-exclusive rights.

Any assignment of property rights must be registered in a written agreement, signed by the author and the person, who received the property rights.

2. An authorship agreement on transference of exclusive rights permits to use the work in a certain way and within the contractual limits only, by the person, to whom the rights are transferred, and gives that person the right to prohibit such use of the work by others. The right to prohibit the use of the work by other persons can be exercised by the author of the work, if the person to whom the exclusive rights were transferred, does not protect this right.

3. The authorship agreement on transference of non-exclusive rights allows the user to use the work along with the owner of exclusive rights, who transferred such rights, and (or) other persons, who were permitted to use the work in the same way.

4. The rights, transferred under the authorship agreement, shall be considered non-exclusive, unless the agreement provides otherwise.

Footnote. Article 31 as amended by the RoK Law dated July 9, 2004 N 586.

### **Article 32. Terms and form of the author's contract**

Footnote. The title of Article in the new wording of the Law of the Republic of Kazakhstan dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

1. An authorship agreement shall specify:

1) the ways of use of the work (the specific rights, assigned under the agreement);

2) timeframes and territory for which the rights are transferred;

3) the amount of remuneration and (or) the order for defining the amount of remuneration for each way of use of the work, the order and terms of its payment and other conditions, specified by the parties of the agreement.

2.If an authorship agreement does not specify the term for which the right is transferred, the contract may be terminated by the author upon expiry of one year from the date of its conclusion, if a user is notified in writing three months before the termination of the agreement.

3. If an authorship agreement does not specify the territory to which the rights are transferred, the right, transferred under the agreement, is limited by the territory of the Republic of Kazakhstan. 4. The rights to use the work, which are not transferred directly under an authorship agreement, shall be deemed not transferred.

5. The rights to use a work that is unknown at the time of the agreement conclusion may not be the subject of the authorship agreement.

6. Remuneration is defined in the authorship contract in the form of percentage from the revenue for the corresponding way of using the work, if that is impossible due to the nature of the work or peculiarities of its use - in the form of a sum, specified in the agreement or in any other way.

7.The rights, transferred under the authorship agreement, may be transferred wholly or partially to other persons only if it is expressly provided for by the agreement.

8.The right to use the works that can be created in the future by the author may not be a subject of the agreement, except for the cases, provided for in Articles 14 and 33 of this Law.

9.The condition of the authorship agreement, limiting the author in future creation of works on the given subject or in the specified field, is invalid.

10. The terms of the authorship agreement, contradicting the provisions of this Law, shall be null and void.

11. The authorship agreement shall be concluded in a written form. The authorship agreement on using a work in the periodical may be concluded orally.

12. Upon the sale of copies of works, made in electronic format, including computer software programs and databases, as well as providing public access to them, the use of other forms of agreements and order of their conclusion, established by the legislation of the Republic of Kazakhstan, is allowed.

13. A party that failed to fulfill or improperly fulfilled obligations of the authorship agreement shall compensate the losses, caused to the other party, including the lost profits.

Footnote. Article 32 as amended by the RoK Law dated July 9, 2004 N 586; dated 07.04.2015  
№ 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

### **33. Commissioning agreement**

1.According to the commissioning agreement an author shall create a work in compliance with the terms of the agreement and submit it to the customer.

The author's order contract must provide for the period during which the work must be transferred to the customer, as well as the transfer of property rights to use the work.

2.A customer must pay an advance to the author in consideration for the remuneration, specified by the agreement. The amount, the order and the terms of payment of the advance shall be established in the agreement under the mutual agreement.

3.If the author has not submitted the ordered work in accordance with the terms of the commissioning agreement, he shall reimburse the actual damage, caused to the customer.

Footnote. Article 33 as amended by the Law of the Republic of Kazakhstan dated 07.04.2015  
№ 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

## **Chapter III. The related rights**

### **34. Objects of the related rights**

The related rights apply to the productions, performance, phonograms, programs of on-air and cable broadcasting organizations, regardless of their purpose, content and dignity, as well as the way or form of its expression.

### **35. Subjects of the related rights**

1. Subjects of the related rights are the performers, phonogram producers and on-air and cable broadcasting organizations.

2. Producer of a phonogram and on-air and cable broadcasting organizations are exercising the rights, provided for in this chapter, within the rights under the agreement with a performer, as well as the author of the recorded or broadcast work.

3. A performer shall exercise the rights, provided for in this chapter while observing the rights of the authors of the performed work.

4. For emergence and implementation of the related rights, any formalities shall not be observed. Producer of a phonograms and (or) a performer in order to announce their rights shall be entitled to use a symbol of protection of the related rights, which is placed on each copy of the phonogram and (or) on each box, containing the phonogram and consists of three elements:

- 1) the capital Latin letter "P" in a circle;
- 2) the name (names) of a holder of the exclusive related rights;
- 3) the year of the first publication of the phonogram.

5. Unless proven otherwise, the phonogram producer shall be an individual or a legal person whose name is indicated on the phonogram and (or) on a box, containing it.

Footnote. Article 35, as amended by the laws of the Republic of Kazakhstan dated 22.11.2005 N 90 (the order of enforcement see article 2 of the Law); dated 10.07.2009 N 179-IV (the order of enforcement see article 2).

### **36. Scope of application of the related rights**

1. A performer's rights are recognized in accordance with this Law, if:

- 1) the performer is a national of the Republic of Kazakhstan;
- 2) the first performance and production took place on the territory of the Republic of Kazakhstan;
- 3) the performance, production have been recorded on a phonogram, protected in accordance with the provisions of paragraph 2 of this Article;

4) the performance, production, not recorded on a phonogram, are included in the program of on-air and cable broadcasting organization, which is protected in accordance with the provisions of paragraph 3 of this Article.

2. The rights of producers of phonograms are recognized in accordance with this Law, if:

- 1) the phonogram producer is a national of the Republic of Kazakhstan or a legal entity, officially located in the territory of the Republic of Kazakhstan;

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

3. The rights of on-air or cable broadcasting organization are recognized for it in accordance with this Law if the organization is officially located in the territory of the Republic of Kazakhstan and broadcasts from transmitters located in the territory of the Republic of Kazakhstan.

4. The related rights of foreign individuals and legal entities are recognized in the Republic of Kazakhstan in accordance with the international treaties, ratified by the Republic of Kazakhstan, unless the relevant performance, phonogram, program of on-air or cable broadcasting organization is not in the public domain in their country of origin, defined by the rules of the international treaty, ratified by the Republic of Kazakhstan, due to expiration of the related rights term in the country and are not in the public domain in the Republic of Kazakhstan due to expiration of the related rights term.

Footnote. Article 36 as amended by the RoK Law dated July 9, 2004 N 586.

### **37. Performer's rights**

1.A performer has the following personal non-property and property rights, except for the cases, provided for by this Law:

- 1) the right to a name;
- 2) the right to protection of the performance or production from any distortion or another infringement, able to prejudice honor or dignity of a performer (the right to protection of reputation);
- 3) the right to use performance or production in any form, including the right to receive remuneration for each type of use of the performance and production.

1-1. Personal non-property rights belong to the performer regardless of his property rights, and reserved to him in the case of assignment of exclusive property rights to use the performance.

2.The exclusive rights to use a performance or production mean the right to authorize or prohibit the following actions:

- 1) to record the previously unrecorded performance or production;
- 2) to play the record of the performance or production directly or indirectly in any form;
- 3) to broadcast, release to the general public through cable a performance or a production without the use of the record of the performance or the production;
- 4) to broadcast, release to the general public by cable a record of a performance or a production, except for the cases, provided for in paragraph 1 of Article 39 of this Law;
- 5) to rent (lease) a phonogram, published for commercial purposes, which has a record of a performance or a production with participation of a singer. When concluding an agreement, this right to record a performance on a phonogram goes to the producer of the phonogram. In this case, the performer shall retain the right to receive remuneration for renting (leasing) of the copies of the phonogram.

3.The exclusive right of the performer, provided by subparagraph 2) of paragraph 2 of this Article, shall not apply in the cases when:

- 1) the initial recording of the performance or production was made with the consent of the performer;
- 2) reproduction of the performance or production is made for the same purpose for which the performer's consent was obtained for recording the performance or production;
4. reproduction of the performance or production is made for the same purpose for which the recording was made in accordance with the provisions of Article 41 of this Law.

5.The permissions, specified in paragraph 2 of this Article, shall be issued by the performer, and by the head of a group of performers through entering into a written agreement with the user.

6.The permissions, specified in sub-paragraphs 1), 2) and 3) of paragraph 2 of this Article, the subsequent broadcasting of the performance or production, the recording for transmission and reproduction of that recording by on-air or cable broadcasting organizations, are not required, if they are provided by the agreement, concluded between the performer with the on-air or cable broadcasting organization. The remuneration to the performer for such use is also specified in the agreement.

7.Conclusion of an agreement between a performer and a producer of an audiovisual work entails fulfillment of the rights, specified in subparagraphs 1), 2), 3), 4) of paragraph 2 of this Article, by the performer. Provision of such rights by the performer is limited by the use of the audio-visual work, and, unless otherwise provided by the agreement, it does not include the right to a separate use of audio or video material, recorded in the audiovisual work.

8.The exclusive rights of a performer, provided in paragraph 2 of this Article, may be transferred to other parties under the agreement.

Footnote. Article 37 as amended by the RoK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement see article 2 of the Law).

### **38. The rights of producers of phonograms**

1.Phonogram producer in respect of his phonograms, in addition to the rights, provided by this Law, shall have the exclusive right to use the phonogram in any form, including the right to receive remuneration for each form of the phonogram's use.

2.The exclusive rights to use a phonogram mean the right to perform, authorize or prohibit the following actions:

- 1) to play the phonogram in direct and indirect order and in any form;
- 2) to distribute the original and the copies of the phonogram, including its import, through sale or other transference of property rights;
- 3) to hire (rent) the phonogram even after its distribution, conducted by the phonogram producer or under his authorization;
- 4) to adapt or process the phonogram in any form;
- 5) to release the phonogram to the general public.

3. If the copies of a lawfully published phonogram are put into circulation through sale, their subsequent distribution is permitted without the consent of the phonogram producer and without payment of remuneration. The right to distribute the copies of the phonogram through renting (hiring) belongs to the phonogram producer regardless of the property right to these copies.

4. The exclusive rights of the phonogram producer, provided for in paragraph 2 of this Article, may be transferred to other persons under the agreement.

Footnote. Article 38 as amended by the RoK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement see article 2 of the Law).

### **39. The use of phonogram, published for commercial purposes without the consent of a phonogram producer and performer**

1. The following is permitted without the consent of a producer of a phonogram, published for commercial purposes, and a performer whose performance is recorded on the phonogram, but with payment of remuneration:

- 1) public performance of the phonogram;
- 2) broadcasting of the phonogram;
- 3) broadcasting of the phonogram to the general public through cable.

, Collection, distribution and payment of remuneration, specified by paragraph 1 of this Article, shall be made by one of the organizations, managing the rights of phonogram producers and performers on a collective basis (Article 43 of this Law), in accordance with the agreement, concluded between these organizations. If this agreement provides otherwise, the remuneration shall be distributed among the phonogram producer and the performer equally.

3. The amount of remuneration and terms of its payment shall be defined by the agreement, concluded between the users of the phonogram or the unions (associations) of such users on the one hand and the organizations, managing the rights of the phonogram producers, on the other hand, and in the event that the parties fail to reach such an agreement - by the authorized body. The remuneration is established for each type of use of the phonograms.

4. The users of the phonograms shall provide the organization, specified in paragraph 2 of this article, with the programs, containing detailed information on the number of performances of the phonograms, as well as other information and documents, necessary for collection and distribution of remuneration.

### **40. The rights of on-air and cable broadcasting organization**

1. In addition to the rights, provided in this Law, the on-air and (or) cable broadcasting organization in relation to its program, has the exclusive right to use in any form and to grant permission to use the program, including the right to receive remuneration for such permission.

2. Exclusive rights to use the program mean the right to conduct, authorize or prohibit the following actions:

- 1) to broadcast the program;
  - 2) to broadcast the program to the general public by cable or broadcasting of the program;
  - 3) to record the program;
  - 4) to play the record of the program;
  - 5) to broadcast the program to the general public in the places with entrance fee;
  - 6) to release the program to the general public.
3. The exclusive right of on-air and (or) cable broadcasting organization, provided by subparagraph 4) of paragraph 2 of this Article, shall not apply in the following cases:
- 1) the program was recorded with the consent of the broadcasting or cable organization;
  - 2) reproduction of the program is made for the same purposes for which it was recorded in accordance with the provisions of Article 41 of this Law.
- Footnote. Article 40 as amended by the RoK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement see article 2 of the Law).

#### **40-1. Transference of exclusive rights. License agreement**

1. The exclusive rights, specified in Articles 37, 38, 40 of this Law, may be assigned wholly or partially, or may be transferred for use under the licensing agreement on transference of exclusive or non-exclusive rights. The requirements, established in Article 32 of this Law, are applied to such an agreement.
  2. *Is excluded by the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement see article 2).*
- Footnote. The Law is supplemented by Article 40-1 by the RoK Law dated July 9, 2004 N 586 ; as amended by the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement see article 2).

#### **40-2. Minimum rates of remuneration for performers and phonogram producers**

The Government of the Republic of Kazakhstan establishes minimum rates of remuneration for performers and phonogram producers in the cases when practical implementation of property ( exclusive) rights on an individual basis is impossible due to the nature of the use of the performances and phonograms (public performance, including in the radio and television, playing of the works through mechanical, magnetic or other recording, reproduction for private purposes without the consent of the performer and the phonogram producer and in other cases).

Footnote. Chapter III is supplemented by Article 40-2, in accordance with the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); as amended by the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **41. Restriction of rights of performers, phonogram producers and on-air or cable broadcasting organization**

1. The use of performance, production, program of on-air or cable broadcasting organization, as well as their records and phonogram reproduction is permitted without the consent of a performer, an on-air or cable broadcasting organization and without remuneration:
  - 1) for inclusion of short extracts from performances, phonograms, productions, programs of on-air or cable broadcasting organization in the review about the current events;
  - 2) for the purpose of teaching or scientific research;
  - 3) for citation in the form of short extracts from performances, productions, phonograms, programs of on-air or cable broadcasting organization, provided that such quotation is made for information purposes only. At that, an on-air or cable broadcasting organization is allowed to use the copies of phonograms, published for commercial purposes, for broadcasting to the general public by cable while observing the provisions of Article 39 of this Law;

4) in other cases, stipulated by Articles 18-26 of this Law, in relation to restriction of property rights of the author of works of science, literature and art.

2. Notwithstanding the provisions of Articles 37-40 of this Law, the use of a program of an on-air or cable broadcasting organization and reproduction of phonograms for personal purposes only is allowed without the consent of the performer, the phonogram producer and an on-air or cable broadcasting organization. Reproduction of a phonogram is allowed if remuneration is paid in accordance with Article 26 of this Law.

3. The provisions of Articles 37, 38, 40 of this Law on authorization of the performer and the on-air or cable broadcasting organization to record a short-term use of a performance, production or program, are not applied to the reproduction of such records and phonograms, published for commercial purposes, if the short-term use recording or reproduction is made by an on-air or cable broadcasting organization with the help of its own equipment and for its own program, provided that:

, the organization has previously obtained a permission to broadcast the performance, production or program, in respect of which, in accordance with the provisions of this paragraph, the recording of short-term use or reproduction of such records are made;

2) its destruction within the timeframes, established for recordings of a short-term use of the works of science, literature and art, made by an on-air or cable broadcasting organization in accordance with the provisions of Article 25 of this Law, except for the record that can be stored in the archives taking into account its exceptional documentary character.

4. The restrictions, provided for in this Article, shall not prejudice the normal use of phonograms, performances, programs, productions by an on-air or cable broadcasting organization and their records, and the works of science, literature and art, included in them, and without infringement of legitimate interests of the performer, the on-air or cable broadcasting organization and the authors of the works.

Footnote. Article 41 as amended by the RoK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement See Art. 2 of the Law).

## **42. Duration of the related rights**

1. The rights, provided for in this Chapter in relation to a performer, shall have effect for seventy years after the first performance or production. The performer's rights to the name and protection of a performance or production from any distortion or other infringement, able to prejudice the honor or dignity of a performer, established by Article 37 of this Law, shall be protected perpetually.

2. The rights, provided for in this Chapter in respect of a phonogram producer shall have effect for seventy years after the first publication of the phonogram or during seventy years after its first recording, if the phonogram has not been published within that period.

3. The rights, provided for in this Chapter in respect of a broadcasting organization shall have effect for seventy years after the first broadcasting of a program by the organization.

4. The rights, provided for by this Chapter in relation to a cable broadcasting organization shall have effect for seventy years after the first such cable broadcasting to the general public, implemented by the organization.

5. Radio and television programs (broadcast) in relation to which the seventy-year period has not expired since the establishment and lawful disclosure, if they have not been published

– from the date of the enactment of this Law they are protected for the remaining period as the objects of the related rights.

6. Calculation of time limits, provided for in paragraphs 1, 2, 3, 4 of this Article, shall begin with the first of January of the year following the year when the legal fact took place, marking the beginning of the period.

7.If a performer was arrested and rehabilitated posthumously, the term of protection of rights, provided by this Article, shall begin on the first of January of the year following the year of rehabilitation.

8.The right to authorize the use of performance, productions, phonograms, programs of an on- air or cable broadcasting organizations and remuneration within the limits of the remaining period of the terms, specified in paragraphs 1, 2, 3 and 4 of this Article, goes to the heirs ( for legal entities - successors) of the performer, the phonogram producer and the on- air or cable broadcasting organization.

9.Expiration of the related rights to performances, productions, phonograms, programs of on- air or cable broadcasting organizations shall mean their transference to the public domain.

The provisions of Article 29 of this Law taking into account the provisions of Articles 34-42 of this Law are applied to the objects of the related rights that have passed into the public domain.

Footnote. Article 42 as amended by the RoK Law dated July 9, 2004 N 586; dated November 22, 2005 N 90 (the order of enforcement See Art. 2 of the Law).

## **Chapter IV. Collective management of property rights**

### **43. The goals and scope of application of collective management of property rights**

1.The authors of works of science, literature and art, performers, phonogram producers and other holders of copyright and the related rights in order to implement their property rights are entitled to establish organizations to manage property rights on a collective basis.

2.The organization, managing the property rights on a collective basis, is not entitled to engage in commercial activities, as well as to use the works and objects of the related rights, received to manage on a collective basis.

3.It is allowed to establish separate organizations for various rights and different categories of owners of the rights, or the organizations, managing various rights for one category of owners, or the organizations, managing one type of rights for different categories of copyrights holders. These organizations are established directly by the owners of copyright and the related rights, and act within the powers, entrusted by them, on the basis of the charter.

The organizations, administering the property rights on a collective basis, can be created, particularly in the following areas of collective management:

1) management of exclusive rights to the published musical works (with or without lyrics), and extracts of musical-dramatic works for their public performance, broadcasting to the general public by cable or release, including by way of retransmission;

2) implementation of the rights of composers – the authors of musical works (with or without lyrics), used in the audiovisual works to receive remuneration for public performance or release to the public by cable or broadcast of this audio-visual work;

3) management of the resale royalty right for the works of fine art;

4) implementation of the rights of authors, performers, producers of phonograms and audiovisual works to receive remuneration for reproduction of phonograms and audiovisual works for personal use and without getting income;

5) implementation of the rights of performers to receive remuneration for public performance, as well as the broadcast to the public by cable or release of phonograms, published for commercial purposes;

6) implementation of the rights of phonogram producers to receive remuneration for public performance, as well as the broadcast to the public by cable or release of phonograms, published for commercial purposes;

7) management of the rights to reproduce (reproduction of) the published works;

8) implementation of the rights of broadcasting and cable organizations to receive remuneration for public performance, as well as the broadcast to the public by cable or release of programs, published for commercial purposes.

4. The powers for collective management of the property rights are transferred directly by the owners of copyright and the related rights on the basis of written contracts, and under the appropriate agreements with foreign organizations, managing similar rights, taking into account the provisions of paragraph 2 of Article 46-1 of this Law.

5. The charters of the organizations, managing the property rights on a collective basis, must contain the provisions that meet the requirements of this Law. The refusal to register the organization, managing the property rights on a collective basis, is allowed in the cases of violation of the provision of this Law and the legislation, establishing the order of registration of non-profit organizations.

6. The said organizations are run by the owners of copyright and the related rights, the property rights of whom it manages. Decision on remuneration and conditions of a license agreement with the users, the order of distribution and payment of the remuneration and other fundamental issues of such organization's activity are conducted exclusively by the owners of copyright and the related rights, collectively at the general meeting.

Footnote. Article 43 is in the wording of the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); as amended by the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **44. Activities of organizations, managing the property rights on a collective basis**

1. Any author, his heir or another owner of copyright and the related rights, protected in accordance with Chapter III of this Law, are entitled to transfer their property rights to the organization, managing the property rights on a collective basis, and the organization must agree to exercise those rights on a collective basis, if the management of this category of rights is related to the charter activity of the organization. These organizations are not entitled to use the works and objects of the related rights, received to manage on a collective basis.

2. Taking into account the powers, received in accordance with paragraph 3 of Article 43 of this Law, the organization, managing the property rights on a collective basis, enters into the licensing agreements with the users on corresponding ways of using the works and objects of the related rights. The terms of such licensing agreements should be equal for all users of a given category. These organizations are not entitled to refuse the user to enter into licensing agreements without sufficient grounds.

2-1. Users are required to submit a report of the organization managing collective property rights on the use of copyright and related rights objects, as well as other information and documents necessary for the collection and distribution of remuneration, the list and deadlines for submission of which are defined in the license agreement.

*3. Is excluded by the RoK Law dated 10.07.2012 № 36-V (shall be enforced upon expiry of ten calendar days after its first official publication.)*

4. All possible claims to property of owners of copyright and the related rights to the users, associated with the use of their works and objects of the related rights under such licensing agreements shall be settled by the organization, concluding licensing agreements.

5. An organization that manages property rights on a collective basis must take steps to distribute and pay the collected remuneration.

If it is not possible to distribute and identify the collected remuneration in connection with the failure to submit users' reports on the use of copyright and related rights, the organization that manages property

rights on a collective basis is required to maintain such unallocated remuneration, and after three years from the date of receipt to the organization's account, include it in distributed amounts in the manner determined by the general meeting of copyright and related rights holders.

Amounts of collected remuneration distributed and assessed to specific owners of copyright and related rights should be retained on the account of the organization managing property rights on a collective basis and be paid to the appropriate author and / or rightholder as they are located or addressed, regardless of the period of storage of such amounts on the account of the organization.

Footnote. Article 44, as amended by the laws of the Republic of Kazakhstan dated 09.07.2004 N 586; dated 10.07.2009 N 179-IV (the order of enforcement see article 2); dated 10.07.2012 № 36-V (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **45. Functions of the organizations, managing the property rights on a collective basis**

The organization, managing the property rights on a collective basis, on behalf of the holders of copyright and the related rights, and on the basis of the powers, entrusted by them, shall implement the following functions:

1) to enter into licensing agreements with users on the use of the rights, managed by such organization;

2) to coordinate with the users the remuneration and other conditions defined for licensing agreements;

3) to coordinate with the users the remuneration in the cases when the organization is responsible for collecting such remuneration without concluding a licensing agreement (Article 26, paragraphs 2 and 3 of Article 39 of this Law);

4) to collect remuneration, provided by the licensing agreement and (or) the remuneration, provided for in subparagraph 3) of this article;

5) to distribute and pay the remuneration, collected in accordance with subparagraph 4) of this Article, provided by the organization to the holders of copyright and the related rights;

6) to take any legal actions, necessary to protect the rights, managed by such organization.

Footnote. Article 45 as amended by the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement see article 2).

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

1. The organization, managing the property rights on a collective basis, is working for the interests of the holders of copyright and the related rights, represented by such organization.

To this end, the organization must:

1) together with the remuneration to the holders of copyright and the neighboring rights, to submit the reports, containing information about the use of their rights, including the amount of the collected remuneration and the sums, withheld from it;

2) to use the remuneration collected in accordance with the provisions of subparagraph 4) of Article 45 of this Law for distribution and payment to holders of copyright and related rights. At the same time, the organization has the right to deduct from the collected remuneration the amount to cover its actual expenses for collection, distribution and payment of such remuneration, as well as amounts that are sent to special funds created by this organization with the consent and in the interests of copyright and related rights holders it represents. The amounts to cover their actual expenses for collection, distribution and payment of remuneration should not exceed thirty percent of the total amount of the remuneration collected;

3) to distribute and at least once a quarter to pay collected amounts of remuneration to Kazakhstani owners of copyright and related rights and at least once a year to foreign organizations managing similar rights, minus the amounts specified in subparagraph 2) of this paragraph, in proportion to the actual use of works and objects of related rights. At the same time, the organization is obliged to take measures on establishing right holders entitled to receive remuneration in accordance with the licensing contracts and

remuneration agreements concluded by this organization and to use for this purpose information received from other organizations that manage property rights on a collective basis, mass media distributed throughout the territory of the Republic of Kazakhstan;

4) make the registers, containing information on the owners, on the rights transferred to it for management, as well as the objects of copyright and the related rights. The information, contained in these registers, shall be submitted to all the interested parties, with the exception of information that cannot be disclosed without the consent of the owner in accordance with the law;

5) create an Internet site to inform people about the activities of the organization, managing the property rights on a collective basis;

6) place the information on the rights, transferred to it for management, including the name of the object of copyright or the related rights, the name of the author or the copyright holder on an Internet site;

7) place the information on local representatives, involved in collecting, distributing and payment of remuneration for the use of the objects of copyright and the related rights on an Internet site.

8) to publish reports sent to the authorized body in the mass media distributed throughout the territory of the Republic of Kazakhstan on its Internet resource;

9) post on its Internet resource information about licensing agreements concluded with users.

2. The holders of copyright and the related rights, that did not mandate the organization, managing the economic rights on a collective basis, to collect the remuneration, provided for in subparagraph 4) of Article 45 of this Law, shall be entitled to require it to pay the remuneration to them in accordance with the distribution made and to exclude their works and objects of the related rights from the permits, issued by the organization to the users.

At the expiration of three months from the receipt date from the owner of copyright and ( or) related rights of the appropriate notification, the organization that manages the property rights on a collective basis is obliged to exclude the rights and (or) objects from the license agreements with all users indicated by them and place information about it in mass media disseminated throughout the territory of the Republic of Kazakhstan and on its Internet resource. The organization that manages property rights on a collective basis is obliged to pay to the owner of copyright and (or) related rights the remuneration due to him received from users in accordance with previously concluded licensing agreements and submit a report to him.

Footnote. Article 46 is in the wording of the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); as amended by the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated

07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **46-1. Accreditation of organizations, managing the property rights on a collective basis**

1.The organization, managing the property rights on a collective basis, is entitled to receive an accreditation certificate in the authorized body to work in the field of collective management, provided for by paragraph 3 of Article 43 of this Law.

2.Accreditation is made separately for each of the fields, specified in paragraph 3 of Article 43 of this Law.

The organization, managing the property rights on a collective basis, can obtain an accreditation certificate to operate in one, two or more areas of collective management, specified in paragraph 3 of Article 43 of this Law. The form of the accreditation certificate of the organization, managing the property rights on a collective basis, is established by the authorized body.

The organization, managing the property rights on a collective basis, that has received a certificate of accreditation, along with the management of the rights of the copyright holders, with whom it has entered into contracts for management of the rights, shall be entitled to collect remuneration for those owners with whom such agreements have not been concluded.

Footnote. Chapter IV is supplemented by Article 46-1, in accordance with the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement see article 2).

## **46-2. The order of accreditation of the organizations, managing the property rights on a collective basis**

1. Accreditation of organizations, managing the property rights on a collective basis, is voluntary and is performed by the authorized body on the basis of an application of the organization, managing the property rights on a collective basis, in accordance with this Law.

- Accreditation of an organization, managing the property rights on a collective basis, is performed by the authorized body on the basis of a conclusion of a commission for accrediting the organizations, managing the property rights on a collective basis (hereinafter - the Accreditation Commission).

3. The composition and the charter of the Accreditation Commission shall be approved by the authorized body.

Information on the date of meeting of accreditation commission on is placed by the authorized body in periodicals distributed throughout the territory of the Republic of Kazakhstan and on its Internet resource no later than thirty working days prior to the date of the meeting of the accreditation commission.

4. In order to pass accreditation, the applicant sends a written application to the authorized body. The application must be sent no later than ten working days prior to the date of the meeting of the accreditation commission. The form of the application and the list of documents to be submitted by the organization administering property rights on a collective basis for accreditation shall be established by the authorized body.

5. The authorized body shall admit the application and record it in the registration log book with indication of the number and the date of receipt.

6. The meeting of accreditation commission is authorized to accept the conclusion, if at least half of its members participate in the meeting. The conclusion of the accreditation commission is adopted by a majority of votes of the members present at the meeting. If the votes are equally divided, the chairman of the accreditation commission has a decisive vote.

Acceptance of the conclusion by the members of the accreditation commission by holding an absentee vote and delegating their authority to other persons is not allowed.

7. Following the meeting of the accreditation commission, the authorized body, no later than five working days after the date of the meeting, shall take a decision on accreditation and issue a certificate of accreditation for a period of five years.

In making a conclusion on the accreditation, the accreditation commission must take into account the following:

1) carrying out activities in this field for at least two years from the date of registration as a legal entity;

2) experience in the distribution and payment of collected remuneration not less than eight times;

3) positive feedback about the organization from the authors and users;

4) availability of existing agreements on mutual representation of interests with similar organizations for the collective management of the property rights of holders of other states.

5) proper performance of obligations provided in Article 46 of this Law by the organization;

6) the availability of supporting documents on the transfer of the relevant amounts of remuneration to organizations that manage property rights on a collective basis, other states on the basis of acting agreements on mutual representation of interests;

7) facts of bringing to administrative responsibility for obstructing officials of state control and supervision bodies in the performance of their official duties, as well as failure to comply with provisions, orders and other requirements.

The authorized body shall take a decision on refusal to accredit the organization in the following cases:

1) failure to submit the documents, specified by the legislation of the Republic of Kazakhstan;

2) incompleteness of the information contained in the documents.

3) bringing to administrative responsibility for obstructing officials of state control and supervision bodies in the performance of their official duties, as well as failure to comply with provisions, orders and other requirements;

4) failure to fulfill and (or) improper performance of the organization's obligations under Article 46 of this Law.

8. The decision to reject to accredit the organization, managing the property rights on a collective basis, can be appealed in the order, established by the legislation of the Republic of Kazakhstan.

9. Information about the accredited organizations is hosted by the authorized body on its Internet site.

10. In case of re-registration or reorganization, the accredited organizations shall notify the authorized body on re-registration or reorganization with the documents attached, confirming the specified data, and return the accreditation certificate within ten working days.

Within ten working days from the receipt of the written notification of the applicant, the authorized body shall issue the accreditation certificate.

11. In case of loss of an accreditation certificate, the authorized body, upon a written request of the organization, managing the property rights on a collective basis, within ten working days, shall issue a duplicate of the accreditation certificate.

Footnote. Chapter IV is supplemented by Article 46-2, in accordance with the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); as amended by the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **47. Monitoring the activities of organizations, managing the property rights on a collective basis**

1. The organization managing the property rights of authors, performers, producers of phonograms or other holders of copyright and (or) related rights on a collective basis shall annually, not later than April 15th of the year following the reporting year, provide the following information about its activity to the authorized body.

1) changes made to the charter and other constituent documents of such organization;

2) bilateral and multilateral agreements concluded by such organization with foreign organizations that manage similar rights;

3) decisions of the general meeting;

4) annual balance sheet, annual report, including information on unclaimed awards, as well as an audit report of such organization;

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

2. The authorized body shall have the right to request from organizations that manage property rights on a collective basis, additional information and documents necessary to verify the compliance of the organization's activities with this Law, the legislation of the Republic of Kazakhstan on non-profit organizations or other legislation, and the charter of such organization.

Footnote. Article 47 as amended by the laws of the Republic of Kazakhstan dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **47-1. Revocation of accreditation certificate from the organizations, managing the property rights on a collective basis**

An accreditation certificate of the organization, managing the property rights on a collective basis may be revoked by the authorized body in the following cases:

1) revelation of false information in the documents that were used as a ground for accreditation issuance;

2) failure to submit timely annual reports on the organization's activities to the authorized body;

3) submission of an annual report on activities of the accredited organization that contains false information, to the authorized body;

- 4) commercial activities;
- 5) failure to perform duties, established by Article 46 of this Law;
- 6) late payment of remuneration;
- 7) failure to find authors, performers and producers of phonograms for transfer of the collected remuneration.

8) bringing to administrative responsibility for obstructing officials of state control and supervision bodies in the performance of their official duties, as well as failure to comply with orders, orders and other requirements.

Footnote. Chapter IV is supplemented by Article 47-1, in accordance with the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); as amended by the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.04.2015 № 300-V (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **47-2. Termination of accreditation certificate of organizations, managing the property rights on a collective basis**

1. An accreditation certificate of an organization, managing the property rights on a collective basis, shall terminate in the following cases:

- 1) expiration of the term for which the accreditation certificate was issued;
- 2) a decision taken on voluntarily return of the accreditation certificate to the authorized body;
- 3) revocation of the accreditation certificate;

4) liquidation of the organization, managing the property rights on a collective basis.

2. Upon termination of the accreditation certificate of the organization, managing the property rights on a collective basis, the certificate is returned to the authorized body within one month from the date of occurrence of the cases, specified in paragraph 1 of this Article.

Footnote. Chapter IV is supplemented by Article 47-1, in accordance with the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement see article 2).

### **Chapter V. Protection of copyright and the related rights**

#### **48. Violation of copyright and the related rights**

1. For violation of copyright and (or) related rights provided for by this Law, liability is imposed in accordance with the laws of the Republic of Kazakhstan.

2. In relation to works or objects of the related rights the following is not permitted:

1) without permission of the author or the copyright holder to fulfill actions, aimed at lifting restrictions on use of the works or objects of the related rights, established by technical devices used for protection of copyright and the related rights;

2) manufacturing, distribution, sale, rent, lending, importation, advertising of any device or its components, their use in order to earn income or provide services in the cases when such actions result in impossibility to use the technical devices for protection of copyright and the related rights or the technical devices cannot provide adequate protection of such rights;

3) removal or changing the information about the rights management without the permission of the author or copyright holder;

4) reproduction, distribution, import for distribution, public performance, on-air or cable broadcasting of the works or objects of the related rights, for which the information of

property rights management was removed or changed without permission of the author or copyright holder.

Footnote. Article 48 is in the wording of the RoK Law dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); as amended by the RoK Law dated 12.01.2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 22.11.2005 № 90 (the order of enforcement see Art.2).

#### **48-1. Monitoring the activities of individual and legal entities, using the objects of copyright and the related rights**

1. Monitoring the activities of individual and legal entities, using the objects of copyright and the related rights is performed by the authorized body.

2. The persons, specified in paragraph 1 of this Article, at the request of the authorized body, shall provide information about the used works or objects of the related rights, the income, earned from the use of the objects of copyright or the related rights, as well as the information and documents, related to payment of remunerations.

Footnote. Supplemented by Article 48-1 by the RoK Law dated 09.07.2004 N 586; dated 22.11.2005 N 90 (the order of enforcement see article 2).

#### **49. Protection of copyright and the related rights**

1. Protection of copyright and the related rights is performed by the courts through:

- 1) recognition of the rights;
- 2) restoration of the situation that was before the violation of the rights;
- 3) suppression of actions that infringe or threaten to infringe the rights;
- 4) compensation of damages, including the lost profits;
- 5) recovery of the income, received by the infringer after violation of copyright and (or ) the related rights;
- 6) payment of compensation in the amount from one hundred monthly calculated indices to fifteen thousand monthly calculated indices determined at the discretion of the court, or twice the value of the copies of the work or twice the value of the right to use the work, determined on the basis of the price, which in comparable circumstances is usually charged for the lawful use of the work. The amount of compensation is determined by the court instead of compensation for losses or collection of income;
- 7) taking of any other measures, provided for by the legislation on protection of their rights.

The measures, specified in subparagraphs 4), 5) and 6) of this paragraph shall apply at the discretion of the copyright holder.

1-1. The claim is brought to the court after the appeal of the subject of copyright or related rights, whose rights and legal interests are violated, to the user of these rights or to another person, unless otherwise provided by the contract.

2. Before considering the case, the judge may independently render a decision to prohibit the respondent to manufacture, reproduce, sell, use the copies of the objects of copyright and (or) the related rights, in relation to which it is assumed that they are counterfeit. The judge is also entitled to render a decision on seizure and confiscation of all copies of the objects of copyright and (or) the related rights in relation to which it is assumed that they are counterfeit, and the materials and equipment, used for their production and reproduction.

3. The court may render a decision on confiscation of the counterfeit copies of the objects of copyright and (or) the related rights, as well as the materials and equipment, used for their production. Counterfeit copies of the objects of copyright and (or) the related rights can be submitted to the holder of copyright or the related rights upon his request or shall be destroyed under the court decision.

Materials and equipment used for their production are to be destructed under the court decision or transferred to the state revenue.

Footnote. Article 49 as amended by the laws of the Republic of Kazakhstan dated 22.11.2005 N 90 (the order of enforcement see article 2 of the Law); dated 10.07.2009 N 179-IV (the order of enforcement See Art. 2); dated 12.01. 2012 № 537-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 07.04.2015 № 300-V ( shall be enforced upon expiry of ten calendar days after the day its first official publication ); dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).

The President  
of the Republic of Kazakhstan