

Intellectual Property Management



Zhidebekkyzy Aknur
PhD, Associate Professor

Lecture 2. Copyright and the related rights

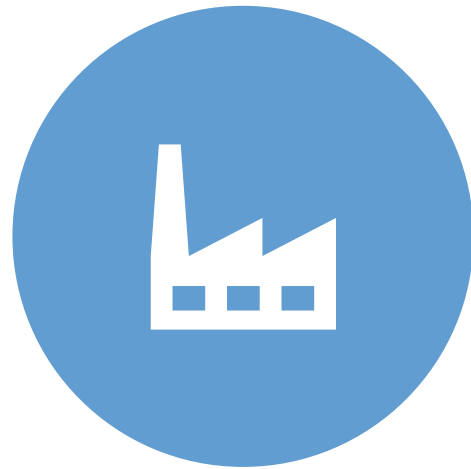
- ▶ 1. The concept of copyright
- ▶ 2. Legislative basis of copyright in Kazakhstan

- ▶ The main **objective** of this lecture is to consider the theoretical and legislative basics of copyright notion.

Intellectual Property

- ▶ The Convention Establishing the World Intellectual Property Organization (1967) does not seek to define IP, but lists the following as protected by IP rights:
 - ▶ • literary, artistic and scientific works;
 - ▶ • performances of performing artists, phonograms and broadcasts;
 - ▶ • inventions in all fields of human endeavor;
 - ▶ • scientific discoveries;
 - ▶ • industrial designs;
 - ▶ • trademarks, service marks, and commercial names and designations;
 - ▶ • protection against unfair competition; and
 - ▶ • “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.

Intellectual property is usually divided into two branches



INDUSTRIAL PROPERTY



COPYRIGHT



- ▶ Copyright relates to literary and artistic creations, such as books, music, paintings and sculptures, films and technology-based works (such as computer programs and electronic databases).

The copyright symbol

- ▶ The *Copyright Act* does not require that any symbols be used to indicate that works are subject to copyright. However, if you are going to distribute your work to the public, you should use the copyright symbol to let others know that the work is protected.
- ▶ **The copyright symbol consists of a letter “c” in a circle, followed by the name of the owner of the copyright and the year the work was first published.**
- ▶ For example, the copyright symbol, followed by Jane Doe, comma, 1999, indicates that Jane Doe is the author of the work that was first published in 1999. You can use the copyright symbol even if you have not registered your copyright.
- ▶ *For further reading: Universal Copyright Convention, Berne convention*



Works Protected by Copyright

- ▶ For the purposes of copyright protection, the term “literary and artistic works” includes every original work of authorship, irrespective of its literary or artistic merit. **The ideas in the work do not need to be original, but the form of expression must be an original creation by the author.**
- ▶ Article 2 of the Berne Convention states that: “The expression ‘literary and artistic works’ shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.”



The Convention lists the following examples of such works:

- ▶ books, pamphlets and other writings; • lectures, addresses, sermons;
- ▶ • dramatic or dramatico-musical works;
- ▶ • choreographic works and entertainments in dumb show;
- ▶ • musical compositions with or without words;
- ▶ • cinematographic works to which are assimilated works expressed by a process analogous to cinematography;
- ▶ • works of drawing, painting, architecture, sculpture, engraving and lithography;
- ▶ • photographic works to which are assimilated works expressed by a process analogous to photography;
- ▶ • works of applied art;
- ▶ • illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;
- ▶ • “translations, adaptations, arrangements of music and other alterations of a literary or artistic work,” which “shall be protected as original works without prejudice to the copyright in the original work”; and
- ▶ • “collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations” - again, the Convention provides that these “shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.”

Kazakhstan's legislative base on IP:

- ▶ **The Constitution** of the Republic of Kazakhstan (adopted on August 30, 1995 at the republican referendum)
- ▶ **Civil Code** of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No 409 dated July 1, 1999
- ▶ **On copyright and the related rights.** The Law of the Republic of Kazakhstan dated 10 June, 1996 No 6.
- ▶ **Patent law** of the Republic of Kazakhstan. The Law of the Republic of Kazakhstan of 16 July 1999 No. 427.
- ▶ **On Trademarks, Service Marks and Appellation of Origin.** Law of the Republic of Kazakhstan of July 26, 1999 No. 456.
- ▶ **On Protection of Selection Achievements.** The Law of the Republic of Kazakhstan dated 13 July 1999 No. 422-I.
- ▶ **On the legal protection of integrated circuits topologies.** Law of the Republic of Kazakhstan of June 29, 2001 N 217
- ▶ **On informatization.** Law of the Republic of Kazakhstan dated 24 November 2015 № 418-V.

On copyright and the related rights. The Law of the Republic of Kazakhstan dated 10 June, 1996 No 6.

- ▶ **Chapter I. General provisions**

- ▶ **Article 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).

- ▶ **Article 2. Basic definitions, used in this Law**

- ▶ 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;

- ▶ 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 (reprographic reproduction)** - facsimile reproduction of works by any technical means not for the purpose of publication. Reproduction does not include the reproduction of the work or the storage of copies in electronic (including digital), optical or other machine-readable form, except when temporary copies are made by technical means for the purpose of reproduction;
- ▶ 19) **reproduction** - production of one or more permanent or temporary copies of works or objects of related rights by any means and in any form, in whole or in part, directly or indirectly. Types of reproduction are the production of sound or video recordings, the production of one or more copies of a two- or three-dimensional work, reproduction (reprographic reproduction), as well as any permanent or temporary storage of works or objects of related rights in any material form, including in an 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.

Article 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.

Article 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.

Article 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.

Article 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.

Article 9. Emergence of copyright. Presumption of authorship

- ▶ 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 has the right to enter the necessary information into the State Register of Copyright Protected Objects (hereinafter referred to as the Register) at any time during the period of copyright protection in order to certify personal non-property rights to an unpublished work.

Article 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.
- ▶ 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.

► **Literature:**

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Thank you for your attention!