

Lecture 3. The related rights

- ▶ 1. The concept of the related rights
- ▶ 2. Legislative basis of the related rights in Kazakhstan
- ▶ The main **objective** of this lecture is to consider the theoretical and legislative basics of the related rights.

Related rights

Related rights, also referred to as **neighboring rights**, protect the legal interests of certain persons and legal entities **that contribute to making works available to the public** or that produce subject matter which, while not qualifying as works under the copyright systems of all countries, **contains sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right**.

The law of related rights deems that the productions that result from the activities of such persons and entities merit legal protection as they are related to the protection of works of authorship under copyright. Some laws make clear, however, that the exercise of related rights should leave intact, and in no way affect, the protection of copyright.

The rights of performers are recognized because **their creative intervention is necessary to give life** to, for example, motion pictures or musical, dramatic and choreographic works, and because they have a justifiable interest in the legal protection of their individual interpretations.

The rights of producers of sound recordings are recognized because **their creative, financial and organizational resources are necessary to make sound recordings**, often based on musical works, available to the public in commercial form, and because of their legitimate interest in having the legal resources to take action against unauthorized uses - be this the making and distribution of unauthorized copies (piracy) or the unauthorized broadcasting or communication to the public of their sound recordings.

Likewise, the rights of broadcasting organizations are recognized because of **their role in making works available to the public**, and in light of their justified interest in controlling the transmission and retransmission of their broadcasts.



International protection of related rights

- ▶ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations signed in 1961.
- ▶ Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva Phonograms Convention, 1971)
- ▶ Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels Convention, 1974)
- ▶ Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty, 1989)
- ▶ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994)
- ▶ WIPO Performances and Phonograms Treaty (WPPT, 1996)

Performers

- ▶ Performers have the right to prevent fixation (recording), broadcasting and communication to the public of their live performances without their consent, and the right to prevent reproduction of fixations of their performances under certain circumstances.
- ▶ The rights in respect of broadcasting and communication to the public may be in the form of equitable remuneration rather than a right to prevent.
- ▶ Due to the personal nature of their creations, some national laws also grant performers moral rights, which may be exercised to prevent unauthorized use of their name and image, or modifications of their performances that present them in an unfavorable light.
- ▶ When the Beijing Treaty enters into force, these rights will extend to performers in relation to their audiovisual performances.

Producers of sound recordings

- ▶ Producers of sound recordings have the right to authorize or prohibit reproduction, importation and distribution of their sound recordings and copies thereof, and the right to equitable remuneration for broadcasting and communication to the public of their sound recordings.

Broadcasting organizations

Broadcasting organizations have the right to authorize or prohibit rebroadcasting, fixation and reproduction of their broadcasts. Under some laws, additional rights are granted. For example, in a growing number of countries, a right of rental is granted to producers of sound recordings in respect of sound recordings, and to performers in respect of audiovisual works. Some countries also grant specific rights over cable transmissions. Likewise, under the WPPT producers of sound recordings (as well as any other right holders of sound recordings under national law) are granted a right of rental. When the Beijing Treaty enters into force, the right of rental will be extended to performers in relation to their audiovisual performances.

Duration

- ▶ The duration of protection of related rights under the Rome Convention is 20 years from the end of the year in which:
 - ▶ (a) the recording is made, in the case of sound recordings and performances included in sound recordings;
 - ▶ (b) the performance took place, in the case of performances not incorporated in sound recordings; or
 - ▶ (c) the broadcast took place, for broadcasts.
- ▶ Under the TRIPS Agreement, the rights of broadcasting organizations are also to be protected for 20 years from the date of the broadcast.
- ▶ In the TRIPS Agreement and the WPPT, however, the rights of performers and producers of sound recordings are to be protected for 50 years from the date of the fixation or the performance.
- ▶ The Beijing Treaty, when it enters into force, will also provide for a term of protection of 50 years.

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 III. The related rights
- ▶ Article 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.



Article 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.

Article 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.

Article 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.

Article 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.

Article 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.
- ▶ 2. 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.

Article 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.

Article 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.

► **Literature:**

1. Lionel Bently, Brad Sherman. Intellectual Property Law 4th Edition. Oxford University Press; 4th edition (December 10, 2014), 1296 pages
2. Commercialization and legal protection of the results of intellectual activity: textbook / ed. A.N. Soldatova, S.L. Minkov. - Tomsk: Tomsk State University, 2011. - 334 p.
3. Kudashov V.I. Intellectual property: protection and realization of rights, management: Textbook / V.I. Kudashov. - Minsk: BNTU, 2004. - 321 p. Dyzhova A.A. Fundamentals of intellectual property management: Lecture notes for students of all specialties. - Mogilev: UO MGUP, 2007. - 129 p.
4. Melissa Schilling: Strategic Management of Technological Innovation, McGrawHill, International Edition 2017.
5. Tidd, J., Bessant, J.R. 2014. Strategic innovation management. Wiley, Hoboken.
6. https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf
7. https://en.wikipedia.org/wiki/Related_rights#:~:text=In%20copyright%20law%2C%20related%20rights,term%20%22authors'%20rights%22.&text=A%20practical%20definition%20is%20that,couered%20by%20the%20Berne%20Convention.

For further consideration:

- ▶ Law “On copyright and the related rights”.
- ▶ Chapter IV. Collective management of property rights
- ▶ <http://www.kazak.kz/?lang=rus>
- ▶ <https://koupi.kz/>
- ▶ <https://www.kazamanat.kz/about/>

Thank you for your attention!