

Lecture 6. Protecting intellectual property

- ▶ General terms and rules for protecting intellectual property
- ▶ Consequences of IP violation
- ▶ The main objective of this lecture is to consider the consequences of IP rights infringement according to Kazakhstani legislation.

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.

Kazakhstan's legislative base on IP: +

- ▶ **On Administrative Infractions.**

The Code of the Republic of Kazakhstan dated 5 July 2014 No. 235-V.

<https://adilet.zan.kz/eng/docs/K1400000235>

- ▶ **Penal Code of the Republic of Kazakhstan.**

The Code of the Republic of Kazakhstan dated 3 July 2014 No. 226-V of the Law of the Republic of Kazakhstan.

<https://adilet.zan.kz/eng/docs/K1400000226>

- ▶ **Civil Code of the Republic of Kazakhstan (General part)**

Enforced by the Decree of the Supreme Council of the Republic of Kazakhstan dated December 27, 1994.

<https://adilet.zan.kz/eng/docs/K940001000>

- ▶ **Civil Code of the Republic of Kazakhstan (Special part)**

Code of the Republic of Kazakhstan No 409 dated July 1, 1999.

<https://adilet.zan.kz/eng/docs/K990000409>

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

- ▶ **Chapter V. Protection of copyright and the related rights**
- ▶ **Article 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.

Article 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. shall be excluded by the Law of the Republic of Kazakhstan dated 20.06.2018 № 161-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication).

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.

On Administrative Infractions. The Code of the Republic of Kazakhstan dated 5 July 2014 No. 235-V.

- ▶ **Article 158. Illegal use of another's trademark, service mark, name of place of goods origin or brand name**
- ▶ Illegal use of another's trademark, service mark or name of place of goods origin or designations for homogeneous goods or services, being confusingly similar to them, as well as illegal use of another's brand name, with the exception of cases related to exhaustion of exclusive right to trademark, if these actions shall not contain elements of criminally punishable act, -
- ▶ shall entail a fine on individuals in amount of twenty, on subjects of small entrepreneurship or non-profit organization - in amount of thirty, on subjects of medium entrepreneurship - in amount of forty, on subjects of large entrepreneurship - in amount of eighty monthly calculation indices, with confiscation of goods containing illegal image of trademark, service mark or name of place of goods origin or designations for homogeneous goods or services, being confusingly similar to them.
- ▶ Note. The infringing goods, confiscated in accordance with this Article shall be subject to destruction in the manner provided by Article 795 of this Code, with the exception of cases when introduction of such goods into circulation shall be necessary in the public interest and shall not breach the requirements of the legislation of the Republic of Kazakhstan on protection of consumers' rights (pursuant to the removal from the goods and its packaging of an illegally used trademark or designation confusingly similar to it).

Penal Code of the Republic of Kazakhstan.

The Code of the Republic of Kazakhstan dated 3 July 2014 No. 226-V of the Law of the Republic of Kazakhstan.

Article 198. Infringement of copyright and (or) related rights

1. Illegal use of objects of copyright and (or) related rights, as well as acquisition, storage, transfer or production of pirated copies of objects of copyright and (or) related rights in order of sale or appropriation of authorship or compulsion to co-authorship -

shall be punished by a fine in the amount of up to eighty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to eighty hours.

2. The same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly,

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shall be punished by a fine in the amount of up to one hundred and sixty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one hundred and sixty hours, or arrest for a term of up to forty days.

3. The actions, provided by second part of this Article, committed:

- 1) by group of persons on previous concert;
- 2) on a large scale or inflicted heavy damage;
- 3) by person with the use of his (her) official position, -

shall be punished by a fine in the amount of up to five thousand monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one thousand two hundred hours, or restriction of liberty for a term of up to five years, or deprivation of liberty for the same term, with deprivation of the right to hold certain positions or engage in certain activity for a term of up to three years or without it.

4. The actions, provided by second or third parts of this Article, committed by criminal group, -
shall be punished by restriction of liberty for a term of three to six years or by deprivation of liberty for the same term.

Article 199. Infringement of rights to invention, utility models, industrial designs, selection achievements or topologies of integrated microcircuits

1. Disclosure of details before official publication without the consent of author or applicant of nature of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit, as well as appropriation of authorship or compulsion to co-authorship or illegal use of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit -

shall be punished by a fine in the amount of up to eighty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to eighty hours.

2. The same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly, -

shall be punished by a fine in the amount of up to one hundred and sixty monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one hundred and sixty hours, or arrest for a term of up to forty days.

3. The actions, provided by second part of this Article, committed:

1) by group of persons on previous concert;

2) on a large scale or inflicted heavy damage;

3) by person with the use of his (her) official position, -

shall be punished by a fine in the amount of up to five thousand monthly calculation indices or corrective labors in the same amount, or community services for a term of up to one thousand two hundred hours, or restriction of liberty for a term of up to five years, or deprivation of liberty for the same term, with deprivation of the right to hold certain positions or engage in certain activity for a term of up to three years or without it.

4. The actions, provided by second or third parts of this Article, committed by criminal group, -

shall be punished by restriction of liberty for a term of three to six years or by deprivation of liberty for the same term.

► **Literature:**

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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.

Thank you for your attention!