
International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO
In collaboration with the Kazakhstan National Commission for UNESCO
ICHCAP, a UNESCO Category 2 Centre, has carried out activities for safeguarding intangible cultural heritage (ICH) in the Asia-Pacific region with a centralised function in ICH information and networking. In this role, the Centre has worked towards protecting intellectual property rights related to ICH information. The Centre held expert meetings on ICH safeguarding and intellectual property rights in 2009 and 2010, and in 2011, the Centre proposed a project for protecting ICH intellectual property (IP) rights in the process of ICH information building and sharing.

In 2011 and 2012, as part of the new project, field surveys were conducted with the cooperation of ICH information–related institutes in the Asia-Pacific region to examine IP issues that could arise in the process of ICH information building and sharing. The survey was conducted in eleven countries—Cook Islands, Fiji, India, Kazakhstan, Korea, Kyrgyzstan, Mongolia, Pakistan, Philippines, Sri Lanka, and Viet Nam. The purpose of the surveys was to highlight the IP-related problems that ICH-related organisations may encounter while conducting ICH information–related activities, such as identification, documentation, digitisation, etc., and promoting the groundwork for a guide to protect IP-related aspects of ICH in the process of information building and sharing.

For the field surveys, a questionnaire developed by ICHCAP was provided to key organisations, and surveys were carried out by each organisation according to the questionnaire. A research team based in each organisation lead the surveys. Upon completing the surveys, the organisations involved compiled a report. ICHCAP collected the submitted reports and is now making them available in this publication, Field Survey on IP Issues in the Process of ICH Information Building and Sharing.

The survey reports from each country are being provided as a resource to exchange experiences related to the IP aspects of ICH information. Also, it is expected that publishing reports can foster an environment to understand and resolve problems related to IP aspects of ICH information in the Asia-Pacific region.
IP Issues in the Process of ICH Information Building and Sharing

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I. Introduction

The intangible cultural heritage (ICH) of Kazakh people, in its traditional sense, represents a deep spiritual legacy and a rich treasury of human creativity and wisdom belonging to a culture located on the intersection of settled and nomadic civilisations and on the point of historic, cultural, and social contact between Asia and Europe.

For centuries, the people of the Kazakh steppe lived inspired by poetic eloquence, soulful music compositions, and sacred ancient rituals related to the cycles of nature and astronomic phases. Distinctive traditional craftsmanship and performing arts were also a source of inspiration.

After standing through centuries-old tests of socio-political turmoil such ICH elements have acquired deep historic significance and cultural-artistic value for the Kazakh people, the direct inheritors of Kazakh ICH, and these elements have become an axis of intercultural convergence and mutual respect among all ethnic groups residing in Kazakhstan.

For instance, celebration of Nauryz is commonly perceived as the most anticipated, vibrant, and joyfully celebrated national holiday of Kazakhstan. The holiday symbolises the unity of Kazakhstani people without making any distinctions in ethnic, religious, or social background.

According to Article 2 of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (the Convention), ICH represents the practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artifacts, and cultural spaces associated therewith—that communities, groups, and in some cases, individuals recognise as part of their cultural heritage, transmit from generation to generation, and constantly

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1 Nauryz, Nevruz, Nooruz, Novruz—the festival of the New Year is celebrated according to the spring equinox on the lunar calendar (March 21–23) in Iran, Central Asia, Russia, China, Turkey, Iraq, Pakistan, India, and other nations. It was inscribed on the UNESCO Representative List of the ICH in 2009.
recreate in response to their environment and interactions with nature and history, thus providing them with the sense of identity and continuity and promoting, in such a manner, respect for cultural diversity and human creativity on a global scale.\footnote{UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage adopted in Paris, October 2003.}

Transmission of traditional knowledge and skills on the basis of succession and continuity of generations not only secures historically accumulated experience of practical activities of any multinational society, such as Kazakhstan, but also forms its ethnic identity and national historic background, regulates the norms of social behavior, constitutes cultural perception of an individual, society, and state, and most importantly, shapes its future role and mission in the universal development of humankind.

Preserving its fundamental values till today, the manifestation of ICH exists through folklore, traditional music, arts, crafts, sports and national games, customs, and rituals as well as through the knowledge and skills of cosmogony, astronomy, and ethnic philosophy. ICH includes ways of perceiving life, which bears in itself the key properties and qualities of a society’s ethnic and cultural development.

ICH is a distinctive cultural phenomenon, unlike material constructions, works of art, and written manuscripts—things that can be seen and touched—ICH is something elusive, ephemeral, transmitted from mouth to mouth and existing in the memory of its bearers and practitioners. As forms of social, cultural, and psychological mechanisms that reproduce tradition and art, ICH survives only through certain individuals. Therefore, the death of the direct holders and custodians of ICH can lead to irretrievable loss of certain types of ICH.

In this regard, current field survey provided by the International Information and Networking Center for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP) to detect intellectual property issues arising in the process of ICH information building and sharing activities was carried out by ICH-related institutes of Kazakhstan to shed light on the questions of legal protection not solely in regards to ICH, but intellectual property rights in general.
II. ICH in Kazakhstan

1. ICH of Kazakhstan

Kazakhstan, like any other country of the world, comprises a rich variety of the ICH elements scattered all over its territory and represented among all its ethnic groups, despite the fact that the twentieth century played a catastrophically destructive role to the native cultures of all nations under the Soviet Union, including the tangible or intangible cultural heritage of Kazakh people.

Communist ideas of cultural heritage were rather double-sided and inconsistent. On the one hand, expressions of national (traditional) art, such as folk art, was welcomed, protected, and celebrated as manifestations of the state's cultural diversity; on the other hand, every element representing cultural heritage carried a threat to the existing political system and had to undergo rigid ideological censorship.

Folk art was regarded exclusively as a material for processing, as an impulse for a professional compositional process and artistic creativity. Practically, independent artistic and cultural value of folk traditions and the need to support the representatives and masters of such traditions were regarded more nominally rather than functionally.

Since gaining independence in 1991, the state authorities of Kazakhstan have seriously taken into consideration the importance of reviving ancestral cultural values, traditions, and practices, and later the state transformed these into practical applications.

Thus, for instance, the official celebration of Nauryz was endorsed by the decree of the President of the Kazakh SSR, 'On the National Spring Holiday—Nauryz'. And in 2004, after overcoming certain socio-economic hardships, the government launched a nationwide programme called 'Madeni Mura' (Cultural Heritage). This programme lasted until the end of 2011, and it created a wide public resonance not only in Kazakhstan, but throughout the international community, giving a sense of pride and restitution to the people of Kazakhstan.
The Law on Culture of the Republic of Kazakhstan was introduced by the government in 2006, pinpointing the need for major investment and development in the cultural sector of Kazakhstan.

2. ‘Madeni Mura’

State Program on Safeguarding of Cultural Heritage 2004–2011

As mentioned, one of the major achievements of the government, and mainly the Ministry of Culture and Information of the Republic of Kazakhstan, was the 2004 launch of the state programme, ‘Madeni Mura’ (Cultural Heritage). Work in identifying, researching, reviving, and promoting cultural heritage was initiated since the early days of independence with the support of the President Nursultan Nazarbayev of Kazakhstan.

From our point of view, it is essential to highlight the mechanisms of realisation and the results attained within the state policy on protecting and popularising national cultural heritage since such scrutiny may explain the current situation on the status of ICH in Kazakhstan and its legal protection.

‘Madeni Mura’ first targeted tangible cultural heritage—mainly conserving and protecting architectural, archaeological, and ecological sites and historical masterpieces located within the territory of Kazakhstan.

In 2004, such a nationwide project was unprecedented in the CIS region, and soon it was realised that the initial two-year plan needed to be extended. Thus, two additional implementation stages were developed, the first between 2007 and 2009 and the second between 2009 and 2011.3

Key target areas of ‘Madeni Mura’ are as follows:

- Reconstructing historical cultural and architectural monuments representing special importance for national culture
- Conducting archeological expeditions and research activities within the territory of Kazakhstan and neighboring states
- Publishing scientific work on the cultural heritage of Kazakhstan
- Accumulating and inventorying the centuries-old experience and knowledge reflected in national literature and publishing expanded

3 Official website of the National Project of Kazakhstan ‘Madeni Mura’ http://www.madenimura.kz/en/
manuscripts and scientific series with their translation from ancient scripts into Kazakh, Russian, and English languages.\textsuperscript{4}

Since the start of the program in 2004, restoration work at more than a hundred national historic and cultural monuments have been carried out, but only seventy-three of them were fully completed by the end of 2011. Numerous domestic and international archeological expeditions and field research projects at thirty-nine ancient settlements have been organised and funded by the state. State archives of ancient literature and museums of ancient artifacts have been enriched with thousands of artifacts and manuscripts, thus providing a clear sequence of the history and cultural legacy of the Kazakh people.

In 2008, for the first time since gaining independence, Kazakhstan developed and adopted a large scale national inventory list of cultural heritage within the framework of the programme, and today this list comprises 218 cultural monuments of national significance, 11,277 monuments of regional significance, and 30 works of applied scientific research conducted on architectural monuments and archeological sites of national significance. And, two public museums—Issyk in the Almaty region and Berel in East Kazakhstan region—were opened through 'Madeni Mura'. Kazakhfilm,\textsuperscript{5} a state film studio, finished shooting a series of ten films on historical and cultural monuments restored as a result of the programme.

The programme also included the development of a domestic and international tourist cluster (pilgrimages to sacred places; endorsement of the national cultural heritage of Kazakhstan via local and international media; organisation of national, regional, and international archeological expeditions; and promotion of ecotourism).

As a result of scientific research expeditions to China, Turkey, Mongolia, Russia, Japan, Egypt, United States, and countries of Western Europe, over five thousand valuable archival documents on the history, ethnography, and art of the Kazakh people were retrieved and put into circulation among the state institutes in the education and culture fields. In China alone, nearly 3,500 previously unstudied sources on the history and culture of Kazakhstan were introduced to the public.

\textsuperscript{4} Official website of the National Project of Kazakhstan ‘Madeni Mura’ http://www.madenimura.kz/en/

\textsuperscript{5} Kazakhfilm was named after Shaken Aimanov, the first film and documentary studio established in Almaty (Alma-Ata) in 1934.
Among the findings were correspondences of Kazakh khans and sultans with the rulers of China, Kokand, Khiva, and other neighboring territories. The Kypchak manuscripts of the fourteenth and fifteenth centuries were identified and discovered during the expedition in Armenia in cooperation with the research institute named after M. Mashtots, Matenadaran, the National Archive and the Archive of Hypchahavankta Monastery (Kipchak Monastery in the city of Kharichev, Armenia).

An archaeological expedition to Mongolia has allowed the discovery of new burial sites of ancient Turkic tribes. The practical result was issuing copies of the ancient Turkic stone monuments with runic inscriptions dating from the eighth century. Named after L.N. Gumilev of Astana, they are currently installed in the atrium of the Eurasian National University named after L.N. Gumilev.

Hundreds of written records on Kazakh history were found in national libraries and diplomatic archives in Europe. Thus, scientific and exploratory expeditions organised to the British Library; national libraries of Paris, Madrid, Seville, Florence, and Berlin; the Archive of the French Foreign Ministry; and the secret Vatican archives have yielded Kazakhstan with seventy-seven copies of manuscripts and two hundred printed editions. Among them are a letter of Pope Urban IV to Hulagu Khan and copies of correspondences between the khans of Golden Horde and the Popes of Vatican, such as the manuscript of Al-Al-sah Taurihi (World History, 1440), which contains the history of the Turks, Mongols, and Timurids. A unique copy of the Korkyt Dede Kitabi manuscript (The book of Korkyt, 1585) was purchased by the government,

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6 Kokand (Kokand khanate)—historic region associated with Ferghana Valley, located in modern Uzbekistan
7 Khiva—one of the biggest cities of ancient Khorezm (ancient sultanate located on the western part of Central Asia in modern Uzbekistan and Turkmenistan)
8 Kypchak—an ancient semi-nomadic Turkic tribe residing on the vast territory of Eurasia and is now part of Kazakh ethnic composition
9 Khulagu Khan—Mongolian military commander and governor; the grandson of Genghis Khan, who ruled in the state he founded in Asia Minor
10 Golden Horde or Ulus Djuchi—medieval state in Eurasia established under the Mongol empire
11 The dynasty of Timurids—the descendents of Emir Timur, who reigned in Mavveranakhr, Iran, and India between 1370 and 1858
and a wide range of research texts of OmelyanPritsakafroKarluks¹² to Karahanids¹³ was copied and distributed in Kazakhstan.

The programmeoperatednot merely within the scope of the national level, but in the framework of regional, transboundary, and international cooperation. Thus, a series of reconstruction and preservation work had been carried out under bilateral agreements signed to protect common cultural heritage located outside the country, such renovating a multi-facility complex consisting of a mausoleum, schools, and archives of Sultan Beibars;¹⁴ the Al-Farabi¹⁵ mausoleum in Damask, Arab Syrian Republic in 2007; and the mosque of Sultan Az-ZakhirBeibars in Cairo,Egypt.

Over the years, two cultural heritage monuments of Kazakhstan have been listed as UNESCO World Heritage Sites: the mausoleum of HodjaAkhmedYassawi¹⁶ and the Tamgalyarchaeological complex.¹⁷

Of course, the programme’s success is easily explained by the attention the state authorities paid to the nation’s cultural sector, providing proper financing and attracting interested scientists, researchers, experts, and specialists to this nationwide project. Previously, most cultural programmes were funded as a residual source. However, since the launch of the programme, public funds are allocated to provide all the necessary conditions to carry out research not only within the Kazakh territory, but in many other countries, such as countries of the Commonwealth of Independent States and Western Europe as well as China, Japan, Egypt, and even the United States, who all have keys to unlock certain parts of Kazakhstani history.

As a result of the research expeditions conducted within the framework of ‘Madeni Muru,’ more than 5000 valuable archival documents were returned

¹² Karluk Kaganate – Turkic state entity existing in 8th–9th centuries and encompassing the territory of modern Kazakhstan, Kyrgyzstan, China, Uzbekistan; ¹³ Karakhanids—Turkic dynasty, ruling in Karakhanid Khanate between the nineth and thirteenth centuries ¹⁴ Sultan Beibars—the sultan of Egypt and Syria (1260-1277) who hailed are from the territory now located in modern Kazakhstan. He was known for successful wars in Syria and Palestine against Mongol and European crusaders ¹⁵ Al-Farabi(873–950)—renowned philosopher, mathematician, and music theorist of Central Asia ¹⁶ Hodja Akhmed Yassawi (1093-1166)—the founder of Sufi poetry and the spiritual leader of the Muslims of the East; ¹⁷ Tamgaly—petroglyphs within the archaeological landscape of Tamgaly are some of the oldest and most colorful rock art sites of Central Asia, included on the UNESCO World Heritage List in 2004.
from abroad. Archaeological research on thirty-seven settlements, parks, and cemeteries located on Kazakh territory found thousands of artifacts, which contribute to better understanding of the life of ancient nomads. Over one million copies of 442 works on Kazakhstan history and culture have been published and circulated.

Within the scope of the programme, Kazakhstani ICH had also received wide publicity from different projects, such as the project related to the sixty-six volumes of philosophic manuscript *BabalarSozi* (Words of Ancestors), which examines the oral literary works of the Kazakh people of the past.

Kazakhstan has undertaken significant efforts to preserve and promote its ICH within the scope of ‘Madeni Mura’ programme, such as the ambitious projects called *MangilikSaryn: 1000 Traditional Kazakh Kyus and 1000 Traditional Kazakh Songs* (Eternal Melody: 1000 Traditional Kazakh Kyus and 1000 Traditional Kazakh Songs)\(^1\) and *BatyrlarShyry*,\(^2\) whereas extensive anthology of traditional music and poetic art had previously been published inline with numerous festivals and competitions of traditional arts and crafts.

Such works associated with the oral forms of ICH had been initiated by independent experts and artists fully relying on their enthusiasm, professional approach, and knowledge of the theme. Among such projects and activities is *Kazakh Dombra: History, Music System, and Its Acoustic Features*, which investigates the tradition and manufacturing technologies of *dombra*\(^3\).

Another project investigated the cultural life of Kazakh people residing in the Altai region.\(^4\) Over the course of the expedition, collecting and systematising works in archives, bibliographic data, field research, and museum materials were performed with pragmatic descriptions of the arts and crafts of the region. A collection of articles defining the problems of

\(^1\)The state project on the anthology of Kazakh traditional music was launched within the framework of the national programme ‘Madeni Mura’ comprising 1000 traditional kyus and 1000 traditional songs. It represents mass-scale and unique work on collecting, preparing, processing, restoring, and digitising music data and producing CDs of the traditional Kazakh music recorded in its authentic form.

\(^2\)*Batyrlar Shyry* is a state project initiated by the Ministry of Culture and Information of Kazakhstan as a sequel to *Mangilik Saryn: 1000 Traditional Kazakh Kyus and 1000 Traditional Kazakh Songs*, embodying a collection of epic and lyric works depicting life of the renowned Kazakh *batyrs*, the great warriors of Kazakh steppe.

\(^3\)*Dombra*—a Kazakh two-stringed musical instrument.

\(^4\)Geographic region of the Altai Mountains is located on the boundaries of present-day nations of the Russian Federation, Mongolia, China, and Kazakhstan.
preservation and the development of the national culture of the Altai region has been published.

An analysis of written sources depicting historical information about Kazakh wintering areas, wells, monuments, archaeology, and architecture of Mangistau, Pavlodar, East Kazakhstan, Aktobe, and Kyzylorda regions was conducted in a form of inventorying the equipment and documentaries found.

To broaden the scope and area of research, an exploratory trip to the municipal archives of Orenburg, Russia, was organised by the Ministry of Culture and Information of Kazakhstan. The mission was to overlook and record all the notes of previous expeditions that depict the life on the Kazakh steppe, including folk customs, ethnic studies, archaeological treasures (such as silver coins, brick rubble in the tract of the Kara-Yar\(^{22} \)), and ancient documents and letters issued by the Kazakh nomadic elite.

Survey called ‘Expeditionary Ethnographic Study of Commemorative Historical Sites and Monuments of Material Culture’ was conducted on archival topographical materials found in East Kazakhstan, Pavlodar, Kyzylorda, Aktobe, and Mangistau regions of the country. This survey on traditional Kazakh culture truly reflects the roots of cultural identity of the nation as well as the intertwined relationship between humanity, society, and nature that exists in a nomadic environment.

In the scope of the programme, aspects of ethno-cultural life, such as the proverbs, old sayings, poems, and folk songs, as well as their use in modern daily life, social function, and significance were investigated for the purpose of their reviving and popularising them on the national level.

The textual study and comparative analysis of manuscripts and written works of prominent figures in Kazakh literature and philosophy, such as Abai Kunanbaev, Turagul Abayuly, Murseit Bikeuly, and Ahat Shakarimuly, are to be endorsed in the national educational curricula.

As an example of scientific and social revival of literary works, a project called *Museum Sources of the Spiritual Culture of the Kazakhs in the Nineteenth and the Beginning of Twentieth Centuries: Publication, Religion, and Education* was launched within a cooperation system among the museums of Kazakhstan.

\(^{22}\) Geographic region in Bashkortostan, Russia
During the years of the programme, six hundred books on the history, archeology, ethnography, and culture of Kazakhstan were published, and interestingly to note, demand for such works was rather high. Among the popular titles were *Babalar Sozi, Library of World Literature, History of Kazakh Literature, Philosphic Heritage of Kazakh People from Ancient Times to the Present, The World Vision of Cultural Studies,* and *The World Philosophical Heritage.*

In response to the positive feedback, more than twenty documentaries focusing on the Kazakh ICH were filmed and produced at national studios.

Every year, more than two hundred activities aimed at promoting historic and cultural heritage of Kazakhstan and actively engaging professional knowledge and experience of the representatives of academic institutions, libraries, and diplomatic entities along with the creative potential of Kazakhstani youth are organised inside the country and abroad.

Thus, to commemorate The Day of Cultural Heritage, held in the framework of 'Twenty Peaks of Independence', an information portal 'Madeni Mura' ([http://www.madenimura.kz/en/](http://www.madenimura.kz/en/)) was officially launched. The portal contains a wide range of information on cultural heritage of Kazakhstan with more than 70 GB comprising 1 million files, 2,000 images, 360 books, and 50 video materials posted.

Overall, the success of the 'Madeni Mura' programme can be explained by the ideological and financial support of the government and the common understanding of all Kazakhstani people that cultural heritage represents the foundation of the historical memory of the people, without which there can be no true patriotism. 'Madeni Mura’ gave a powerful impetus to the revival of the national spirit of Kazakhstan, and moreover, it can serve as a tested ground for developing further policies targeting ICH.

In a summary, considering that the question of safeguarding and promoting Kazakh ICH was seriously raised with the adoption of the National Law 'On Ratification of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003' signed by President Nursultan Nazarbayev of the Republic of Kazakhstan in December 21, 2011, there is no doubt that there is a close link and correlation between the tangible and intangible cultural

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23 'Twenty Peaks of Independence,' a Kazakh programme on celebrating the twentieth anniversary of gaining independence

heritage. Currently, the idea of extending the ‘Madeni Mura’ programme towards ICH shall be revised with close consultations of state authorities, experts, and communities involved. However, prior to discussing such possibilities, the conceptual documents on protecting ICH have to be legally processed and a national ICH inventory list has to be drawn up and published.
### III. Legislations in Kazakhstan

#### 1. National Legislative System

Adopted on 15 December 2006, the Law of the Republic of Kazakhstan on Culture (hereinafter, ‘the Law’) regulates public relations in the sphere of creating, revitalising, protecting, safeguarding, developing, disseminating, and using culture and its values in the Republic of Kazakhstan and defines the legal, economic, social, and organisational foundations of public policy in the sphere of culture.

According to Article 1, paragraph 3 of the Law, ‘Cultural heritage of the people of the Republic of Kazakhstan is a set of cultural values that have national significance, solely owned by the Republic of Kazakhstan without the right to transfer them to other states.’

And paragraph 14 of the same article gives the following definition of the concept of national cultural heritage: ‘cultural values of particular importance for the history and culture of the country’

The Law establishes a special regime for the elements of the national cultural heritage—measures taken by the state to preserve, maintain, restore, protect, and use historic and cultural heritage. To preserve the existing cultural heritage, the elements referred to in the Article 32 of the Law are inscribed to the State Inventory List of National Cultural Heritage.

The cultural values are:

1) The archaeological excavations (including common and secret) archaeological discoveries;
2) Rare collections and specimens of flora and fauna, mineralogy, anatomy, and objects of palaeontological interest;
3) Property relating to history, including the history of science and technology and of war and society as well as the values related to
the heritage left by profound thinkers, scientists, and artists and the values related to events of national importance;
4) Rare manuscripts, ancient books, documents, and publications of special interest (historic, artistic, scientific, and literary), in single volume or in collections;
5) Postage, tax stamps, and similar items, as single pieces or in collections;
6) Coins, except for the coins representing the national currency of the Republic Kazakhstan, regardless of the metal alloy or their manufacture, including coins of other states made not later than one hundred years ago, medals, seals, and other collectable materials;
7) Ancient and unique musical instruments;
8) Archives, archival funds, and collections, including sound, photographic, video, and movie archives as well as scientific and technical documentation;
9) Works of art bearing historic and cultural significance;
10) Ethnographic, anthropological, ethnological, and paleontological materials;
11) Antiquities older than one hundred years that have special historic and cultural value;
12) Objects associated with the Kazakh historic events, such as the development of society and the state, history, science, and technology; the objects associated with the lives and legacies of prominent figures in science, statehood, and culture; and museum objects and museum collections;
13) Value of art in the form of paintings, drawings, and handmade art on any basis and by means of any material (excluding industrial designs and manufactured articles decorated by hand);
14) Original work of statuary art and sculptures from any material;
15) Original engravings, prints, and lithographs;
16) The component parts of the dismantled artistic or historical monuments and archaeological sites.

As it is seen from the contents of the article, the legislation of Kazakhstan attributes both tangible and intangible cultural heritage to its cultural values.

Article 34 of the Law establishes the following special treatment of national cultural heritage:

1) Collection or compilation of objects representing special artistic or historical value can not be separated.
Destruction, displacement, modification, reproduction, or renovation of the national cultural heritage, included in the State Inventory List is not permitted without specific permission from an authorised organ, issued on the basis of recommendations provided by an expert commission and established on each particular item.

2) The use of national cultural heritage in a manner that is incompatible with its historic, artistic, and religious purpose. Items belonging to religious cult organisations and constituting the objects of national cultural heritage can be used in accordance with their religious purpose.

3) Particular treatment of national cultural heritage objects does not apply to objects of copyright and related rights.

4) Preemptive rights to use landmarks are owned by organisations in the sphere of culture.

5) Responsibilities for proper maintenance of the status and conservation of national cultural heritage are entrusted to users or owners. Failure to comply with this obligation entails a court-granted removal of the rights on a reimbursable basis. In cases when the owners’ or users’ financial or technical opportunities are limited, the responsibility to maintain national cultural heritage is borne by the state.

Implementing the rights of the owner of national cultural heritage objects in the manner prescribed is under the control of the Law of the Republic of Kazakhstan, with a priority right to acquire objects of national cultural heritage of the Republic of Kazakhstan in the case of their sale.

6) State-owned objects of national cultural heritage are not subject to privatisation.

7) For the deliberate destruction, demolition, or damage of national cultural heritage objects, individuals and legal persons are liable in accordance with the laws of the Republic of Kazakhstan.

According to the Article 35 of the Law, exporting cultural property and national cultural heritage from the Republic of Kazakhstan is prohibited, except in cases of a temporary exhibition, tour activities, restoration work, scientific research, presentations, exhibitions, and international cultural events as well as other situations as provided by the Law.

Cultural values and objects of national cultural heritage illegally exported from the Republic of Kazakhstan and (or) illegally imported to its territory are
subject to mandatory return. In such cases, the return of illegally exported cultural objects as well as the objects confiscated by the court shall be deposited in state museums of national importance or relevant status.

The author, whether he/she travels outside the Republic of Kazakhstan, temporarily or permanently, has the right to export cultural values created by him/her. Regulation of exported and imported cultural values also applies to the objects created by foreigners and stateless persons within the territory of the Republic of Kazakhstan.

8) Cultural values, as well as the rights to own, use, and dispose of these values may not be transferred by its owners, as such a provision can contribute to the illegal export and import of cultural property.

The provisions of the paragraphs 3 and 5 of the Law ‘On Culture’ and articles 15 and 16 of the Law ‘On Copyright and Related Rights’ are mentioned later.

In regards to the execution of the order of the Head of State N.A. Nazarbayev and prior to the ratification of the Convention, the government of the Republic of Kazakhstan developed and adopted the concept of a strategic national programme ‘Madeni Mura’ (hereinafter, ‘the Concept’).

The focus of the Concept is to systematically improve the relationship and approach of the state to the values of historic and cultural heritage of the people of Kazakhstan.

Its text says: ‘at the present time, when the reassessment of political and socio-economic processes of the past are becoming more widespread, it is essential to raise awareness of the necessity of the safeguarding mechanisms and the efficient use of cultural heritage in response to contemporary processes.’ The Concept defines cultural heritage, as ‘the spiritual, cultural, economic, and social capital of irreplaceable value.’ It also states that heritage nourishes modern science, education, and culture. Along with natural resources, it represents the basis of national self-respect and recognition on the international arena.

The Concept became the basis for developing an action plan to further implement the state programme ‘Madeni Mura’, the strategic national project mentioned earlier in Chapter I.

The work conducted within the framework of the programme highlighted the synthesis of a centuries-old experience and knowledge of national culture and
literature, affirmation of the status of the state language, and composition of a comprehensive national fund for cultural heritage on the basis of world's most ambitious achievements in science, culture, and literature—which are all evidenced and reflected in the questionnaires filled out and submitted by target universities and institutes performing research in the sphere of tangible and intangible cultural heritage.

As indicated in the Concept, the state programme is not limited to purely utilitarian purposes of restoring historic and cultural heritage. Its main purpose is to achieve positive change in public consciousness, and in this context, it bears important ideological potential. The state programme also concludes that:

First, it is a question of strengthening and expanding the limits of historic memory of the nation, which is one of the most important spiritual foundations of statehood.

Second, the state programme was a response to inquiries concerning the formation and fortification of national identity.

Third, the realisation of the state programme led to the development of a new cultural and historic perception of the country.

Fourth, implementing the state programme helped increase the Kazakhstani people's interest in their native history and culture.

Fifth, the substantive potential of the state programme should be noted in terms of growth of the inter-ethnic understanding and harmonisation of intercultural relations domestically.

In general, the state programme led to significant results. However, it should be noted that its practical realisation also revealed certain difficulties in the development and implementation of the programme, particularly in identifying, collecting, systemising, processing, digitising, using, and disseminating in a relatively short period of time the spiritual, cultural, and humanistic potential that had accumulated over centuries.

If the state programme was previously characterised by identification, acquisition, accumulation, and study of general definitions of cultural heritage, including folklore, traditions, and customs of particular importance to national culture, the synthesis of centuries-old experience of Kazakh literature and writing, the codification, and the documentation of cultural heritage, then the subsequent stage of work should be in transforming the accumulated heritage
into the commonwealth of society and including the most valuable and historically significant elements on the UNESCO ICH Lists. This requires a logical conclusion of the processes already launched, which also includes the legitimisation of the elements. To move on to the next stage, the legal issues need to be resolved first.

In this regard, close attention should be paid to the conflicting norms contained in the Law of the Republic of Kazakhstan on 'On Culture' and the Law 'On the Copyright and Related Rights.' For example, paragraph 3 of Article 34 of the Law 'On Culture' says 'special treatment of the elements of national cultural heritage does not apply to the objects of copyright and neighboring rights.' In such case, what should be done regarding the rules in the Law 'On Copyright and Related Rights' that state, according to Article 15, 'moral rights of authors are inalienable.'

For example, we can mention kyu compositions of Kurmangazy Dauletkeri, Tattimbet and other renowned composers. Their kyus authorship is not in doubt, and their work has been transmitted for centuries. Thus, according to our opinion, they should also be placed under a special protection as a cultural heritage and should be included not only in the National ICH List, but also in the UNESCO ICH Lists. It seems that regarding the abovementioned arguments, certain amendments relating to the individual, non-property rights of authors whose works have become public assets should be infused in the text of the Law of the Republic of Kazakhstan ‘On Culture’.

Paragraph 5 of the same article reads: ‘The transfer of legal powers on ownership, use, and disposal of cultural property by their owners is prohibited; as such actions may contribute to the illegal export and import of cultural property.’ Then the Article 16 of the Law ‘On Copyright and Related Rights’ states that the author has exclusive property rights on his/her works, which means that he/she is entitled to use the element to its maximum extent and can transfer the rights on its use to the third person, including foreigners. Such standards should be implemented, according to the renowned Russian lawyer, E. Gavrilov, and the rights on protecting objects that have

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25 Kyu—traditional music composition performed on national instruments and lasting between one and three minutes.
26 Profound Kazakh composers of the past.
become public assets is quite legitimate according to the Berne Convention for the Protection of Literary and Artistic Works.\(^{28}\)

## 2. Related Legislation

Another important issue, as indicated in the questionnaire (paragraph D, IP issues) by the representatives of the Kazakh National University of Arts, is the need of legal assistance in identifying works protected by copyright law as well as in answering questions of systematisation and registration of IP rights.

It should be noted that in dealing with legal issues, it is not enough to rely solely on the status of a copyright and related rights, but also to regard the standard rights on the intellectual property, such as patent law, trademark law, and appellations of origin.

Knowledge and correct application of current legislation on intellectual property is required in identifying the owner of the intellectual property rights and transferring elements from the communities and bearers of ICH to the universities that deal with collecting, processing, practicing, and distributing the ICH elements, particularly in matters relating to the recreation, commercial use, maintenance of secrecy, identification of the owners, and benefit-sharing.

With clear knowledge and correct application of current legislation of the Republic of Kazakhstan on intellectual property, many legal issues can be solved. Legislation of the Republic of Kazakhstan in the sphere of intellectual property consists of Kazakh Civil Law, the Law 'On Copyright and Related Rights' (hereinafter, 'Copyright Law'), Kazakh Patent Law, the Law 'On Trademarks, Service Marks and Appellations of Origin', the Law 'On Protection of New Varieties of Plants,' the Law 'On Legal Protection of Topographies of Integrated Circuits', and other adopted normative legal acts.

The legislation sets all kinds of liability (criminal, civil, legal, and administrative) for violating intellectual property rights. Both the Law and the Civil Law of the Republic of Kazakhstan attribute literary, dramatic, music, and audiovisual works; paintings, sculptures, drawings, and other works of fine art and crafts; and other compositions to the objects of copyright. The objects of copyright also include collections, encyclopedias, anthologies, databases, and

\(^{28}\)The Berne Convention for the Protection of Literary and Artistic Works—an international agreement governing copyright, which was first accepted in Bern, Switzerland, in 1886.
other composite works representing the results of creative effort due to the selection and arrangement of their contents (Article 7 of the Copyright Law). All of them, according to the form and content, could relate to ICH elements in cases of obtaining the status of ICH. However, such works mainly include works of authors whose names are unknown and therefore considered works of folk art or works with the expired copyright terms.

Paragraph 3 of the Article 8 of the Copyright Law attributes works of folk art that make up the bulk of ICH to the works that are not subject to copyright. It seems that the legislator based the argument on the fact that it is impossible to identify the author of work, and secondly, the implication of a copyright’s term equaling to seventy years after the death of an author.

Calculation of the period starts from 1 January of the year following the author's death. The duration of related rights for performers and producers of phonograms also equals to seventy years. Calculating this term is somewhat different from calculating the duration of a copyright for an individual author; it is counted from the date of the first execution of the work for performers and the date of the first publication of the phonogram to the rights of producers of phonograms.

As stated above, under the Article 2 of the Convention, ICH includes practices, representations, ways of expression, knowledge, and skills, including instruments, different kinds of inventory, artifacts and cultural spaces associated with communities, groups, etc. In form and content, they are similar to such objects of intellectual property as the performance, the work of fine art—namely, items of decorative art and industrial designs—and appellations of origin. However, current legislation on intellectual property can not fully protect the rights on ICH due to certain circumstances.

First of all, it is due to the fact that the subject of the copyright is an individual whose creative effort have constituted a product. The author possesses an individual right on a name. In regard to ICH, it is impossible to identify a specific author since ICH might belong to the whole community and sometimes the entire nation.

For instance, no one questions the identity of the ‘Manas’

29 ‘Manas’— national epos of Kyrgyz people on the heroic deeds of the warrior named Manas

30 ‘KyzZhibek’—Kazakh traditional lyric and epic poem depicting a love story between a girl named Zhibek and a boy named Tolegen;
traditional knowledge, as the process of manufacturing yurts\textsuperscript{31}, traditional dairy products like kumys\textsuperscript{32} and shubat\textsuperscript{33}, it all represents common cultural heritage of many Oriental nations. Whoshould be given the preference then, since many Asian cultures assume this cultural heritage belongs to them? How can intellectual property rights be protected in such cases?

Referring to the Patent Law, subjects of industrial property rights have twenty-year term of protection, with possible extension for another fiveyears in respect to their invention, and industrial designs have a ten-year term that starts on the date of submitting the application. Again, the same question arises—who should be given preference? According to current legislation on industrial property rights, preference is given to the individual who has first applied for the document protecting property rights—the patent or certificate. Moreover, there is a condition of such property, as the novelty of an object. How fair is this application in regards to ICH?

As for the Law ‘On Trademarks, Service Marks and Appellations of Origin’, Article 7, paragraph 2, subparagraph 4 states: ‘they shall not be registered, without the permission of acompetent authority, as trademarks reproducing the surnames, names, and pseudonyms and their derivatives, portraits, and facsimile, violating individual non-property rights of these individuals, their heirs or assigns, and when such names are a part of the historic and cultural heritage of the Republic of Kazakhstan.’

There are different opinions on whether it is possible to ensure the protection of ICH by laws regulating intellectual property rights and more importantly Copyright Law.

In particular, the prominent Russian lawyer E.P. Gavrilov\textsuperscript{34} states: ‘Even though the aforementioned standards provide sufficient legal basis to ensure the protection of the national folklore, they find no practical application. The norm contained in Article 15, paragraph 4 of the Berne Convention on the Protection of Literary and Artistic Works\textsuperscript{35} also remains unrealised. This

\textsuperscript{31}Yurt—a portable, bent wood-framed dwelling structure traditionally used by Turkic nomads in the steppes of Central Asia;

\textsuperscript{32}Kumys/kumis/koumiss—a fermented dairy product traditionally made from mare's milk. The drink remains important to the peoples of the Central Asian steppes, of Turkic and Mongol origin.

\textsuperscript{33}Shubat—beverage of fermented camel milk, sparkling white with a sour flavor, popular in Central Asia—particularly in Kazakhstan and Turkmenistan.


\textsuperscript{35}The Berne Convention for the Protection of Literary and Artistic Works—an international agreement governing copyright, which was first accepted in Bern, Switzerland, in 1886.
provision reads as follows: (4) (a) 'In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union. (b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.'

We certainly agree with the distinguished lawyer. Here, he implies the right of the primary creators of the intellectual property. The inalienability of moral, private, non-property rights was mentioned earlier concerning cases where the names of the creators are known, and as for the issues of exclusive property rights, it is clear that the term of their protection has generally expired.

But the focus is on the secondary rights—the rights of those individuals through whom ICH has reached us today. Their noble work is not worth just mere encouragement or a one-time fee. They could become the owners of ICH on condition that they would not just be engaged in the mechanical collection of information, but involved in creative approach to compile collections, databases, albums, and recordings of traditional folk performances and other elements. This work could be recognised by the Law of Republic of Kazakhstan ‘On Copyright and Related Rights’ as subjects of copyright in accordance with Article 11, whereby the author of a collection or other composite work (compiler) is entitled to a copyright on the selection and (or) the arrangement of materials representing the result of creative effort (compilation). The compiler shall enjoy the copyright in respect for the rights of authors of each of the works included in the composite work. The focus is on the authors whose copyright term has not yet expired.

This article also entitles the publishers issuing encyclopedias, encyclopedic dictionaries, collections of scientific works, newspapers, magazines, and other periodicals with the exclusive right on the use of such media in general. The publisher may, with any use of such publications, mention his/her name or otherwise demand such reference.

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36The Berne Convention for the Protection of Literary and Artistic Works—an international agreement governing copyright, which was first accepted in Bern, Switzerland, in 1886.
In addition, Article 12 of the Copyright Law entitles interpreters and authors of other derivative works with the copyright on translation, correction, adaptation, and other kinds of alterations performed.

Translators and authors of other derivative work shall enjoy the copyright on the work created by them as long as they comply with the rights of the author’s work that was subject to translation, adaptation, arrangement, or any other transformation. The focus is on the rights of those authors whose term of copyright has not expired. It is well known that many of the objects are subject to translation from ancient languages or obsolete scripts (runic inscriptions, Sanskrit, etc.) into modern interpretations. In such cases, copyright compliance is not required due to the expiration of a term, and the creative work of an interpreter is invaluable. Accordingly, the translator’s entitlement to a copyright on the translation performed on unprotected works relating to ICH is clearly justified.

Moreover, Article 16 of the Copyright Law empowers the compilers of databases with the exclusive property right relevant to the work with the ICH elements. Articles 36, 37, 38, and 39, governing the rights of performers and phonogram producers, may also protect the rights of performers of ancient dances and rituals and other individuals who have recorded the sounds of a performance—singing, dancing, etc.—for the first time. After all, the collected materials are fixed via documentation or photography, and thus take the form of objects.

Accordingly, the right of the individuals engaged in collecting and documenting ICH elements—oral traditions, performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe, and traditional crafts—can also be protected by the National Copyright Law.

However, in all of these cases the focus is on the secondary law since the primary right has not yet been fixed, and even if it were fixed, then its validity would have expired. This does not imply that all the problems can be saved via the provisions of the Law. Anyway, the problems of legal regulation related to the field of ICH safeguarding and the development and enforcement of the existing mechanisms to protect ICH rights remain unimplemented to their fullest extent.

It is widely accepted that ICH represents a big part of common human heritage and a powerful means of bringing people and different social groups together, thus forming their cultural identity. However, there is a certain risk of
extinction, especially in relation to oral traditions. Therefore, within the next few years, all possible measures should be taken to ensure that humanity can use the results of centuries-old work, preserving these values and multiplying them.

There is a perspective for the Ministry of Education and Science of the Republic of Kazakhstan to introduce courses on ICH in the curriculum of the elementary, secondary, and university education programs, and for the government of Kazakhstan to provide financial and moral support to individuals and organisations studying and cultivating ICH, and thus, further encourage research in this area. For it is mentioned in the Concept that ‘the effective solution of the problem of bringing fourth generations of professional staff workers is the guarantee of stable and progressive development of any society’.

Currently, there is an urgent need for highly qualified personnel. There is a serious shortage of professional translators able to perform high-quality translation of historic Kazakh heritage and folklore into different languages to provide meaningful translation of world science and social thought into the Kazakh language. Professionals trained on renovating and restoring are needed as well. Considering all the abovementioned arguments, the following work has to be done:

- Provide traineeship courses for interpreters, historians, and anthropologists
- Ensure the participation of young professionals in international educational programs
- Organise traineeship courses at the best cultural institutions domestically and internationally for the representatives in the cultural sector
- Exchange cultural experiences at the regional and international levels

Questions of international cooperation are regulated by the the Kazakh Law ‘On culture’. According to Article 37, the Republic of Kazakhstan promotes international cultural cooperation, including the exchange of creative teams, professionals, cultural values, and the results of cultural activities as well as experience in organisational activities in various areas of culture. Obviously, such activities are a matter of time. But this rule should be fully implemented in ensuring the preservation, revitalisation, and augmentation of ICH. And, most importantly, the rulemaking process shall be mainstreamed towards effective implementation and proper functioning. To do so, we should take part in enhancing international law via the Intergovernmental Committee of
the World Intellectual Property Organization (hereinafter, ‘WIPO’) on intellectual property and genetic resources since the Republic of Kazakhstan is a member.

The Committee deals with:

- Preparing standard contract provisions on intellectual property rights relating to accessing genetic resources and benefit sharing with respect to traditional knowledge and folklore
- Identifying components that could be protected through intellectual property law, with respect to folklore
- Ensuring the protection of national laws on copyright and related rights, taking into account the recommendations of the WIPO Model Provisions and UNESCO that aimed at protecting ICH from the illegal use or activities.

It should be noted that the staff of the Committee on Intellectual Property Rights under the Ministry of Justice of the Republic of Kazakhstan participates in the annual meetings of the working group functioning under the Committee, for it could significantly contribute to the rulemaking process in this area. The outcomes of the Intergovernmental Committee are discussed at the WIPO Assemblies and sometimes at the diplomatic conferences targeting more concrete problems on protecting intellectual property, where the leaders of competent authorities in the field of intellectual property rights of WIPO Member States actively participate. If necessary, they initiate amendments and alterations in the text of existing international conventions and treaties to identify subjects and objects of the rights and the entitlement of such rights—all to effectively protect ICH.

To improve national legislation and to effectively safeguard the rights of ICH subjects, it is necessary to create an interdepartmental commission on changes and amendments to existing legislation in the field of intellectual property. At the same time, ICH should not be simply understood as the restoration of traditional ethnic forms of cultural life and the enrichment of modern culture with the national content, but as the creation of conditions and mechanisms for the formation of national culture as an integrated system, playing a dignified role within the universal culture, still representing its originality and uniqueness.

Therefore, the commission along with the lawyers should include the representatives of creative unions and other ICH-related public organisations. It is also necessary to solve the issue of permanent and mandatory financial encouragement of individuals performing technical work on collecting,
organising, and safeguarding ICH. An additional issue that needs to be resolved is paying compensation to the owners of ICH and other individuals involved in the study and restoration of ICH and promoting and encouraging other individuals, especially the so-called informants.

With regard to the abovementioned matters, public administration entities shall coordinate and monitor the work undertaken by various agencies, public organisations, and individuals, including enthusiasts, especially considering that the work is carried out on a state budget. It is a duty of public authorities to develop partnership relations with public and private sectors. Additionally, a multi-agency approach should be applied to conserve cultural heritage using all available resources and means. The task of preservation must be addressed not only by the central executive bodies, but also by local executive authorities.
IV. IP Issues in Information Building and Sharing

1. Kazakh National University of Arts

A. Brief Overview of the Institute

Kazakh National University of Arts (hereinafter, ‘KazNUA’) was established as the Kazakh National Music Academy in Astana on 31 March 1998 in response to an initiative of President Nursultan Nazarbayev of the Republic of Kazakhstan to open in northern Kazakhstan the first innovative music academy offering graduate and postgraduate studies.

KazNUA is a public institution operating under the national budget. In addition to the general educational curriculum, KazNUA offers training courses and master classes to the representatives and teaching staff of the institutions working in the sphere of music.

Research Activities

To deepen the scientific focus of the university, the Scientific Research Institute of Art (Art Institute) was opened within KazNUA’s premises, offering a unique opportunity for scientists and experts in the sphere of music and art to jointly conduct their studies and research projects. General study courses are divided into theater studies, film studies, musicology, art, and ballet. In addition, there is a folklore research laboratory and soon there will be a UNESCO Chair on ethnomusicology.

The main directions of research activities are as follows:

1) Improving the system of innovative education in the field of art and enabling education process with the provision of scientific and methodical literature, including electronic textbooks
2) Developing fundamental research topics in the sphere of music and arts
3) Conducting activities on the collection, organisation, research, and safeguarding of traditional music heritage
4) Offering postgraduate studies and refresher courses

B. IP Issues in Information Building and Sharing

In 2011, a center of folklore and traditional art (hereinafter, 'folklore laboratory') was established at KazNUA. Its music and folkloric funds are formed by expert musicologists and folklorists, such as Saida Yelemanova, who previously worked in Kazakh National Conservatory, and Bazaraly Muptekeyev, a music expert engaged in digitising the audio fund of Kazakh Radio.

The main task of the folklore laboratory is to identify, collect, and organise samples of music and folklore and compiling them into electronic and paper inventory lists and catalogs.

Samples of folklore (traditional art) have to be collected during the students' field practice and the laboratory staff's field expeditions. Unfortunately, funding of such field trips and practical works is often poorly organised and there are a number of technical problems. For expedition work to be successful, there needs to be a highly skilled collector with a good knowledge of Kazakh folklore. Furthermore, this collector would also need to have knowledge of folkloristic principles in a specific field and geographical location, knowledge of genres and genre formation process, knowledge of the specifics of various local/regional schools, knowledge of previously recorded folk songs and those adapted for modern musical practice to avoid duplication. This point is crucial since it determines the distribution of materials from catalogs and their description. The database is often updated with the use of private folk-music archives and records of traditional art discovered in the course of realising similar projects (as in the case of 1000 Traditional Kazakh Kyus and 1000 Traditional Kazakh Songs37 in 2010).

In regards to the activities related to database/archive building, creating a database on the folklore samples is now in its initial phase and fully associated with the activities of the folklore laboratory. The main reason

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37The state project on the anthology of Kazakh traditional music launched in the framework of the national program ‘Madeni Mura’ (Cultural Heritage) comprising 1000 traditional kyus and 1000 traditional songs. It represents mass-scale and unique work on collecting, preparing, processing, restoring, and digitising music data and producing CDs on traditional Kazakh music in its authentic form.
for the long-term process of database creation is the need to purchase expensive software.

The main way of obtaining ICH-related data and archives by the institute is through fieldwork and documentation performed within the scope of the study curriculum. In the course of such fieldwork, traditional songs, kyus\textsuperscript{38}, termes\textsuperscript{39}, and other narrative works are being documented as video and audio recordings. The text of poetic works and prose, information on the bearers of such knowledge, authors, genres, and other related information is being recorded through diaries by compiling inventory lists. Sometimes the data is obtained in the form of a donation that is generally registered in the same form.

Although KazNUA has no practical experience in dealing with projects relating to the intellectual property aspects of ICH, the folklore laboratory has been designated to be responsible for all aspects of ICH, including intellectual property. Its main tasks include: studying the current state of folk traditions in Kazakh culture, collecting and systematising the specimens of ancient and modern folk art, using the laboratory's funds in educational programmes, particularly study courses on the analysing works of folk music, folk music, traditional music and folklore, and musical and ethnographic practices.

Recording of folklore is voluntary, and bearers tend to freely demonstrate and pass on their knowledge of traditional music. In folk consciousness, ownership rights are absent since any ordinary individual is welcome to perform and compose.

Contrary to customary perception of folk art, the practice of professional authorship in Kazakh oral traditions has existed for long time and has been officially recognised since the nineteenth century. The authorship of a song or kyu\textsuperscript{40} was anchored in different ways. For instance, it could be mentioned in a lyrical performance, thus preserving and protecting the copyright in its oral record and transmission. Individual contributions of a kyushi\textsuperscript{40} or songwriter have always been stated and could not be assigned to anyone else due to complying with the traditions of a performance or so to say 'customary law'. Now, however, intellectual property of creators and bearers has to be considered.

\textsuperscript{38}Kyus—improvised instrumental piece lasting one to four minutes, usually performed by using various folk instruments.

\textsuperscript{39}Termes—a type of lyrical singing within Kazakh national poetry

\textsuperscript{40}A person performing kyus, a lyric improviser
performers of ICH is not seriously supported by national laws or legal norms.

In exchange for the authors’ consent to transmit their songs, kyus, and performances to the collectors of native folklore, a publication of the collected data referencing the performers is promised, but even such a practical manner is not always properly implemented.

In 1958, during the Soviet period, the Resolution of the Council of Ministers on payment (five rubles) for each folklore sample was adopted in Kazakhstan. Such payment could be obtained after the commission of the folk laboratory processed the results of the expedition. Unfortunately, the practice of financial rewards and proper documentation as well as mass-scale expeditions vanished with the collapse of the Soviet Union.

Documentation, proper storage, and use (publication) of works of oral creativity is a guarantee that the work will not be assigned to someone else. Heads of educational institutions that have folkloric foundations (such as Kazakh National Conservatory named after Kurmangazy) are entitled with particular civil liabilities for their preservation, considering that there is no legal framework on ICH safeguarding. To the knowledge of the respondents, the folklore laboratory within the Kazakh National Conservatory has almost completely lost its funding. In 2005 the fund comprised nearly 11,000 entries listed in electronic and hardcopy catalogs, but nowadays, these funds have vanished due to certain circumstances. Considering the abovementioned matter, KazNUA has not developed any principles for protecting the intellectual property aspects of ICH.

As the questionnaire suggests, there is a series of activities that build and use ICH information (identification, inventory making, documentation, and digitisation), which is processed in several stages: preparing, collecting and creating information, maintaining information, processing and producing information, and using and disseminating information.

Since the abovementioned activities were carried out within the scope of academic work and were not sufficiently supported by national legislation, during the stages of preparing, collecting, creating, and maintaining information, no legal questions were raised in relation to ownership; prior informed consent or approval of concerned communities, groups, and individuals; maintenance of collected information; unauthorised adaptations of ICH; disclosure of secret, sacred, or confidential ICH; improper access, control, and use of the ICH; infringement of intellectual
property rights existing in the ICH information; licensing; bearers’ moral rights; the sharing of benefits; unfair use or misuse of the ICH; or the commercial use and reproduction of ICH materials.

According the opinion of respondents, as national legislation regulating intellectual property issues shall be enforced, all the abovementioned problems may easily arise on all stages of information building and sharing activities. At the moment, the institute has no legal basis to streamline its guiding policy or protocol regarding legal issues that could arise during each stage.

Since the respondents of the questionnaire representing the staff of the folklore laboratory of the KazNUI simultaneously play the role of informants, collectors, and researchers of ICH via field expeditions and surveys, the institute has direct contact with ICH subjects and bearers, as well as cooperative partnerships with other ICH-related institutes and their staff.

Because of the absence of properly functioning national legislation and underdevelopment of the intellectual property sphere in the legal system of modern Kazakhstan, the nation simply does not have the legal dispute practice with the personnel designated to solve such disputes, guidelines for protecting intellectual property rights of ICH, and practical cases on which to draw experience.

Therefore, since the solid legal structure is absent, there are certain difficulties in planning activities for organising guidelines and regulations for protecting ICH intellectual property rights.

In this regard, ICH subjects and bearers remain equally disadvantaged while their work receives no proper financial or legal support from state authorities, and ICH remains existant based on the bearers’ enthusiasm and professional interest.

2. LLP 'Institute of Cultural Politics and Art Studies'
   under the Ministry of Culture of the Republic of Kazakhstan

A. Brief Overview of the Institute

Established in 1934, the Kazakh Institute of National Culture has a long history. The first head of the Institute was AhmetBaitursynov, a prominent political and academic figure in the history of Kazakhstan. In subsequent
years, the Institute was reorganised into different cultural institutions, such as the Republican Scientific and Methodological Center of Folk Art (RSMCFA) and later the National Research Center for Culture. The main activity of RSMCFA was in supporting ordinary people and amateur groups performing traditional folk art. Additionally, many large-scale events, such as folk festivals; Aitys, a traditional lyrical contest of Kazakh performers; concerts; and other cultural activities on regional and international levels were held by the Institute.

Since reorganisation of the Institute into the LLP 'Institute of Cultural Politics and Art studies' in 2005, the Institute conducts applied research studies in the culture field as well as professional training courses for the personnel working in the culture field, mainly targeting representatives of folk art.

The institute specialises in traditional Kazakh culture (traditional poetry, music, theatre and performing arts, folk dances, and history of arts and culture) and artistic creativity of modern Kazakhstan (the art of music performance, theatre, and dance arts).

Activities of the Committee on Culture of the Ministry of Culture and Information of Kazakhstan is aimed at conserving and rationally using cultural and historical heritage, reviving and developing cultural traditions, and supporting artistic and cultural organisations and local community centers that are in direct contact with ICH elements.

The types of activities carried out by the institute include: developing and implementing scientific and applied projects in the field of culture and art and cultural policy; participating in the provision of the international exchange of information on culture and art studies on the territory of Kazakhstan’s; cooperating with organisations and cultural institutions of foreign countries (symposia, conferences, master classes, information sharing, etc.); preparing and publishing information on the current state of culture and arts in Kazakhstan (collections of scientific work, thematic materials, and analytical data); participating in the development of scientific-methodological and normative-methodical projects; regulating and stimulating research in the field of culture and art; supporting the revival of national culture as well as cultural and political propaganda; preparing materials on the work of creative folk (traditional) and amateur groups; researching the folk art of Kazakhstan; and collecting materials for the study of traditional Kazakh culture (tangible and intangible cultural heritage).
In the focus of the Institute of Cultural Politics and Art Studies is the development and implementation of scientific and applied research projects in the field of culture and art and cultural policy—various sociological studies conducted on designated themes of projects in the field of culture and art. Research projects may include holding workshops, scientific seminars, creative labs, conferences, publication of scientific works (anthologies, monographs, sheetmusic editions of the musical material, etc.), and other activities necessary to implement the goals and objectives of the project.

Among the projects carried out by the institute are:

- Trends in the Development of Folk Art in Kazakhstan
- The Symbolism of Kazakh Dance
- Traditional Musical Art of Kazakh People
- Vectors of Integrating the Culture of Kazakhstan into the Global Community
- Others

The ICH-related data is collected from republican, regional, and rural cultural institutes and artistic unions in the form of text, photographs, and audio-video materials resulting from field surveys, folklore expeditions within Kazakhstan and abroad—China, Russia, Mongolia—by means of conducting interdepartmental registration of the creative groups in the framework of different projects or from the publications of monographs on specific research subjects.

B. IP Issues in Information Building and Sharing

Even though the Institute of Cultural Politics and Art studies has experience in the ICH field, such as preparing the nomination files Nowruz and Aitys 41 for the inclusion in the UNESCO Representative List of ICH, intellectual property issues have remained irrelevant. As it is commonly accepted in traditional practice of Kazakhstan the custodians and bearers willingly provide their consent on the materials provided, and in most cases, these individuals are unaware of the necessity to protect their intellectual property rights.

41 Aitys—music and lyrical competition of akyns (improvising poet and singer in many Turkic countries) common in countries like Kazakhstan, Kyrgyzstan, and certain regions of Russia.
In the course of joint realisation with the Ministry of Culture and Information of the Republic of Kazakhstan of various projects (Complex Investigation of the Traditional Art of Kazakh Diaspora of Altai Region in Mongolia; Kazakh Dombra: History, Musical Sequence, and Acoustic Features; Symbolism of Kazakh National Dance; Trends in the Development of Traditional Music Genres), the Institute carried out extensive research in the state and international museum databases and archives, which resulted in the creation of a digital database to classify and process collected information.

Because the Institute is in constant contact with regional and local communities working in the ICH sphere, there is no officially designated department or person dealing with intellectual property issues to provide proper legal consultations or develop a guiding policy on protecting the custodians’ intellectual property rights.

For the same reasons, the activities of the Institute on identification, inventory making, documentation, and digitisation of ICH elements during the processes of preparing, collecting, maintaining, processing, using, and disseminating information, no intellectual property issues were raised.

However, the respondents of the Institute suggest that conflicting questions might arise in the future as result of the popularisation and dissemination of the ICH collected from the bearers. Some matters may include the equitable sharing of the benefits and system of financial compensation or reward for the bearers and custodians of the ICH. To avoid controversy in relationships with the direct bearers of ICH, the Institute suggests developing a legally binding national act that would regulate intellectual property rights protection in the sphere of ICH. Such an act must contain paragraphs on the rights and obligations of the state, the involved institutions, and the bearers themselves.

Considering the abovementioned recommendations, we acknowledge that unless there is no public policy regulating the protection of ICH-related intellectual property rights that could be executed in the form of the official Concept, including all the measures intended with fixed dates and the appointment of responsible state bodies, current national legislation shall function in regards to ICH.
3. Institute of Literature and Art Named after M. Auezov

A. Brief Overview of the Institute

The Institute of Literature and Art named after M. Auezov, as a subordinate agency of the Ministry of Education and Science of Kazakhstan, was established as the Kazakh Research Institute of National Culture in 1934. Since its establishment, the Institute has grown into a major research center for studies conducted on Kazakh literature, folklore, and art history.

One of the key research areas of the Institute during its early years was publishing and promoting the creative heritage left by M.O. Auezov. The broader scope for research was the exploration of the history of Kazakh literature of ancient periods.

From 2004 to 2011, the Institute actively participated in implementing a strategically important national project on safeguarding and promoting cultural heritage of Kazakhstan—‘Madeni Mura’. As a result of this state programme, a series of books on the history of Kazakh literature and anthologies of Kazakh music, world literature, world folklore science, ancestral heritage, literary monuments, and many other thematic areas have been published by the Institute. Currently, the Department of Historic Manuscripts and Catalogues of the Institute is carrying out work on preparing and publishing the samples of Kazakh folklore, representing deep scientific, historical, and cultural value.

Under the guidance of the Ministry of Education and Science of Kazakhstan, the Institute is working on a programme of basic research aiming to restore a true and complete history of Kazakh folklore; studying main historic stages in the formation of Kazakh literature during ancient and medieval times; analysing the socio-historic and cultural legacy left by prominent Kazakh poets and writers of the nineteenth and twentieth centuries and their effect on subsequent generations; and introducing the major genres of Kazakh literature (poetry, prose, and drama) from the 1960s to the 1990s in the context of world literature.

Since 2006, the institute entered a new stage of scientific research, broadening the scope of its study areas. The staff of the Institute focuses on examining contemporary processes in literary studies and art history of independent Kazakhstan and introduce the notion of independence in the text of fiction books and in the sphere of music, theater, fine arts, decorative-applied arts, sculpture, and architecture. In this regard, the
artistic perception of independence reflected in Soviet literature in the context of its relationship with common Turkic literary processes was thoroughly scrutinised by the Institute to better understand the historic and modern relationships between artistic sphere and public policy.

Aside from research on Kazakh literature, the Institute conducted many studies on collective monographs reflecting ancient and modern foreign literature. These studies summarise the current literature trends in different cultures and countries, revealing a variety of approaches in understanding the role of the individual in contemporary social processes in the era of globalisation. Special focus is given to the literature of CIS countries and the Central Asian region via traditionally established connections with literary specialists and critics of these countries.

One of the main tasks of the Institute is to transfer and rescale folklore and music heritage of the past into modern digital formats, making it more accessible for the public.

**B. IP Issues in Information Building and Sharing**

One of the major projects carried out by the Institute was the preparation of nomination files of Kyz-Zhibek\(^\text{42}\) national epics for inscription onto the UNESCO List of Masterpieces of Oral and Intangible Cultural Heritage in 2004. The process included three stages: organisation and preparation, production, and post-production.

Considering that no prior works were done by the Institute in this field, a series of consultations were held with UNESCO representatives. Moreover, the respondents of the questionnaire, G.Zhumasseitova and R.Yergaliyeva, who were directly involved in preparing the nomination file, participated in ICH seminars organised by ICHCAP of the Republic of Korea. The context of the project comprised vast research activities on identifying illustrative, written, documental, photo, audio, and video materials collected from key state archives, libraries, and museums.

After analysing the gathered materials, a working group of experts and consultants was organised and the action plan and estimated budget was adopted in the form of a contract signed with UNESCO in 2004.

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\(^{42}\)Kyz Zhibek—Kazakh traditional lyric and epic poem depicting a love story between a girl named Zhibek and a boy named Tolegen
As the project finished in 2004, the nomination file was sent for evaluation by UNESCO. However, it was rejected for inscription, since it was not recognised as a living and contemporary heritage.

At the moment, the institute is involved with a joint project with the Cultural Asian Center located in the Republic of Korea. The project focuses on studying and researching epics and fairytales to be posted on an online platform of common Korean-Central Asian (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan) ICH. The site will be available in the Korean and English languages. Thus in March 2011, the fourth Central Asian-Korean meeting on developing cultural resources 'Modern Culture and Modern Heritage' was organised by the Institute. In addition, an international competition on the knowledge of myths, fairytales, and heroic epics of Korean and Central Asian culture was held in 2011.

For such purposes, a digital database was created by the Institute to enhance the effectiveness of the research carried out by the departments of folklore, manuscripts, cataloguing, ancient Kazakh literature, fine arts, theatre and music arts. For instance, the Center of Manuscripts of the Institute comprises more than a million units of nineteenth and twentieth century manuscripts as well as summaries of field surveys on Kazakh oral and music folklore recorded in traditional formats. At the moment, work on digitisation the compiled materials is underway.

The ICH-related data mainly on traditional culture of Kazakhstan is often obtained via fieldwork, documentation, direct audio-video and textual recording, questionnaires, and donation. What is important to note is that the guiding principle in collecting and using ICH-related data is the obligatory indication of copyright information and valid documents reflecting prior and informed consent of the bearers.

Despite the long history of work in ICH, the Institute has no practical experience of dealing with the intellectual property issues. However, as was mentioned earlier, the scientists of the institute on an obligatory basis indicate the authorship of the ICH bearers in their works. In publishing books, the institute reserves the copyright on the research. The Institute consistently monitors the work to identify the illegal use of research materials (absence of authorship references) collected by the university staff. With regards to the records on epic heritage, the principle of inviolability of the text is being respected.
The relationship between the institute and the ICH subjects can be described as asymmetrical since the Institute does not conduct consistent interaction with ICH bearers.

The Institute's research work manifested in collective monographs, copyright books, various scientific journals, conference proceedings represents the intellectual property of their creators, i.e. authors. The administration of the Institute is liable only for the issues of publication and distribution of its work among universities, schools, and bookshops. The copyright protection of the intellectual property of the Institute's documentaries is not reflected in its statute, concepts, objectives, functions, and policies, and therefore, there is no practice on their protection.

The Institute has no regular practice of guaranteeing rights and participating with the ICH subjects in the institute's information building and sharing activities. There were isolated cases when such issues were raised. For instance, while preparing the Kyz-Zhibek nomination file for the UNESCO List of Masterpieces of Oral and Intangible Cultural Heritage, particularly while preparing the video file that included photographs and frames belonging to the exhibits of the State Museum, the Central Scientific Library, and the Central State Archive of Kazakhstan as well as illustrations from books and paintings by G. Ismailova, E. Sidorkina, and A. Duzelhanov and photographs from the archives of a renown Kazakhstani academician, A. Margulan, the rights of the ICH subjects were guaranteed by the institute by signing the contracts fully reflecting the terms of use, consent of the owners, and financial compensation. Therefore, even though there is no fixed formulation of ICH-related IP rights included in the Institute's statute, nor any definite structure or person responsible for protecting IP rights, there were no violations of IP rights recorded within the practical realisation of the ICH-related projects since the interests of the ICH subjects have always been taken into practical account. Although there is no contractual relationship with the ICH authors and bearers or any opportunities of financially rewarding the ICH subjects, the names of ICH owners and custodians are always mentioned in the textbooks published by the Institute.

Today the Institute collaborates with the National Committee for the Safeguarding of ICH to acquire specific knowledge and experience of IP mechanisms regulating the ICH field.
V. Conclusion

1. Summary

Based on the analysis of the answers provided by the key state institutes working in the ICH field (in particular the representatives of the Kazakh National University of Arts, the Kazakh Institute of Literature and Art named after M.O.Auezov under the Ministry of Science and Education of the Republic of Kazakhstan, and the Institute of Cultural Politics and Art Studies under the Ministry of Culture and Information of the Republic of Kazakhstan) for ICHCAP, we came to conclusion that there is a number of problematic issues in terms of legal protection of IP rights in the process of ICH information building and sharing.

It is important to mention that certain areas of the questionnaire were filled out by the respondents rather scarcely, and these sections lacked sufficient descriptions, such as the paragraphs focusing on the projects carried out by the institutes in the field of ICH intellectual property issues, which in turn, draws our attention towards the existence of a need to develop concrete and precise state policy and the lack of a systematic approach and qualitative experience of the government in dealing with ICH safeguarding by means of legal tools.

Of course, this gap is easily explained by the fact that Kazakhstan just recently became a State Party to the Convention, and as any other country of the former Soviet Union, it is still in transitioning from a closed economy to an open market.

Therefore, the priorities of implementing state policy in the ICH field shall first underline the specific character of the ICH elements, which should ultimately produce a reasonable outcome in the form of a properly drawn and effectively functioning protection mechanism based on the state programme ‘Madenimura’. Current legislation of the Republic of Kazakhstan, mainly the Law of the Republic of Kazakhstan ‘On Culture’, advocates common protection policy with respect to all elements of cultural heritage with no differentiation margin between its tangible or intangible properties.
The answers provided in the questionnaire point out that the institutes fully conduct ICH-related activities, such as collecting, acquiring, decrpyting, codifying, digitising, using, and disseminating data, but most of these activities are carried out without the application of national legislation to protect intellectual property rights.

Protecting intellectual property rights is being discussed modestly because such questions seem unclear in the respondents' perception, whereas all the questionnaires refer to the absence of appropriate legal standards of protection as well as the need of legal consultation.

In our opinion, this phenomenon has several causes.

First of all, there is a lack of specialists dealing with such specific issues of intellectual property law. There is also the need to allocate funds for such purposes. Indeed, to conduct such work, there should be financial support provided for specialists in copyright and other rights-related fields. In addition, there should be a registration of rights for secondary users in the established order, the development of various agreements on the assignment of rights, and transferance of the ICH elements from one holder to another.

This refers to the registration of the compilers' rights on the use of databases, collections of works, photo albums, video and audio records, phonograms, and other works created as a result of intellectual and creative human effort.

For the abovementioned reasons the issues of legal protection in these organisations are still at the initial stages of development as it is evidenced by the brief description of projects realised and implemented by institutes within their exclusive jurisdiction.

It should be noted that the activities of most of these institutions are financed from the state budget, meaning that the realisation of most relevant projects is funded by government sources, which limit their functional autonomy in certain ways.

2. Conclusion

Acknowledging all the outlined problematic areas reflected in this report, it is important to note that the Ministry of Culture and Information of the Republic of Kazakhstan in cooperation with the UNESCO agencies operating in Kazakhstan (National Commission of the Republic of Kazakhstan for UNESCO and ISESCO, UNESCO Observatory in Central Asia, Kazakhstan National Federation of UNESCO Clubs), renown national experts in the field of ICH, and
communities concerned are currently involved in the process of developing the National Concept on the Safeguarding and Popularisation of Kazakhstani ICH.

Taking into account all of the recommendations listed, we standby the opinion that adopting the Concept on the national level shall facilitate in efficiently implementing long- and short-term state ICH projects, simultaneously fostering a more functional environment in the sphere of intellectual property rights protection.

As a result of implementing the abovementioned Concept, the most significant outcome would be the support of ICH bearers who are responsible for maintaining a spiritual connection between generations, disseminating traditional knowledge and skills as well as the rituals and norms of family life and social behavior, and overall contributing to safeguarding the ICH accumulated and possessed by the ethnically and religiously diverse population of Kazakhstan.

In this regard, we assume that, under the circumstances of recently ratifying the 2003 UNESCO Convention, the next strategic step towards the safeguarding and popularising Kazakhstani ICH following the adoption of the National Concept would be creating and legally registering a national ICH inventory list, compiling an electronic database on the basis of this list and its centralised management by the public body or its subordinate agency, and providing free access of the public concerned to the registry of the new ICH elements as well as the regular informational updates collected as a result of specialised surveys, field trips, and other ICH-related events.

The Ministry of Culture and Information of the Republic of Kazakhstan in this regard is a key state entity to centralising all the efforts and endorsing effective public policy in the sphere of ICH protection.

Moreover, joint collaborations between the Ministry of Culture and Information, the Ministry of Science and Education, the Ministry of Justice, and other relevant state entities shall contribute to the creation of a more favorable environment for ICH bearers, institutions functioning in this sphere, and the general public, simply because even the most outstanding and enthusiastic scientists and experts on ICH do not possess any legal authority to carry through such mass-scale projects and policies on the provision of the ICH protection.

With the adoption of the Concept on Safeguarding of the National ICH, the government of Kazakhstan shall assign to its subordinate ministries tasks to
work out gaps, such as the absence of proper financing, the lack of legal and financial support for ICH bearers, a low awareness index in the questions concerning intellectual property rights; a dysfunctional system of providing legal expertise and proper training courses for the personnel of ICH-related institutes and communities, and many other relevant issues.
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2. E.Gavrilov ‘Russia does not infringe international obligations on the protection of intellectual property rights’

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Kazakhstan Report is divided in three main parts; ICH in Kazakhstan, IP issues in Kazakhstan legislation and IP issues in information building and sharing activities.

1. IP issues in Information Building and Sharing

The State of Kazakhstan has undertaken significant efforts to preserve and promote its ICH.

- ‘Madeni Mura’, State program on the safeguarding of ICH. This program consists on identification, research, revival, and promotion of Kazakhstan ICH. It is also characterized by the identification, acquisition, accumulation, and study of general definition of cultural heritage, including folklore, traditions and customs of particular importance to the national culture, the synthesis of centuries’ old experience of Kazakh literature and writing, also, codification and documentation of cultural heritage.
- Initiation of oral forms of ICH by independent experts.
- Books on Kazakhstan history.
- Ethnography of Kazakhstan.
- Cultural heritage information portal containing wide information on cultural heritage of Kazakhstan: images, books, and video posted.

On December 20th 2011, the national law ratifying UNESCO 2003 Convention was adopted. The report has mentioned in relation to it the issue of further policies, and targeting intangible cultural heritage.

Two plans of action have been considered:

- Processing ICH protection on legal grounds.
- Drawing and publishing the national inventory list of ICH.

2. National IP laws

The Constitution of Kazakhstan.

The right to own property (Article 6, 26), protection of state symbols (Article 9), the freedom of speech and dissemination of information (Article 20), the right of free secondary education (Article 30), the protection of the environment (Article 31), the protection of historical and cultural heritage (Article 37), the preservation of natural resources (Article 38).
Art.6. The Republic of Kazakhstan recognizes and protects private property. Subjects and objects of ownership, the scope and limits of the rights.
Art.9. The Republic of Kazakhstan shall have its State symbols.
Art.37. Citizens of the Republic of Kazakhstan must care for the protection of historical and cultural heritage, and preserve monuments of history and culture.

**Tradition bearers Copyright**

In Kazakhstan particular treatments of the objects of national cultural heritage do not apply to objects of copyright and related rights. The author has the right to export cultural values created by him/her. In such a case, article 37 prohibiting the right to export cultural values created by him/her does not apply.

**Patent law of the Republic of Kazakhstan 2007**

Traditional knowledge protected under industrial designs and Patent law. The report has mentioned in this area the issue related to individual industrial designs rights as opposed to collective ICH rights.

**Trademark law**

Kazakhstan law ‘On Trademarks, Service Marks and Appellations of Origin’, article 7, paragraph 2, subparagraph 4 states: ‘they shall not be registered without the permission of the competent authority as trademarks reproducing the surnames, names, pseudonyms and their derivatives, portraits and facsimile violating individual non property rights of these individuals, their heirs or assigns, and when such names are a part of the historic and cultural heritage of the Republic of Kazakhstan.’

**3. IP Issues**

- Identifying intellectual property rights owners’.
- Identifying ICH bearers and elements transfered from the communities to universities that deal with collecting, processing, practicing, and distributing the ICH elements.
- Matters relating to ICH recreation.
- Commercial use of ICH.
- Maintenance of secrecy.
- Benefit-sharing.
- Correct application of current Kazakhstan legislation on intellectual property.
• Need of training of ICH research Institutes, stakeholders, etc.
• Expiring term of Copyright protection of ICH related works.
• Impossibility of identification of ICH authors’ works.
• Unknown authors of works of art.
• ICH conflict with Copyright: Impossibility to identify ICH specific author, as opposed to copyright individual right based on creative effort.
• IP protection of common IP rights.

4. Legal availabilities of ICH-IP Protection in Kazakhstan

Kazakhstan law does offer several avenues for ICH-IP Protection:
• Criminal, civil, legal and administrative liability for the violations of intellectual property rights under Kazakhstan legislation.
• Article 12 of the Copyright law entitles the interpreters and the authors of other derivative works with the copyright on translation, correction, adaptation, and other kinds of alterations performed.
• Article 16 of the Copyright law empowers the compilers of databases with the exclusive property right relevant to the work with the ICH elements. Articles 36, 37, 38 and 39, governing the rights of performers and phonogram producers, may also protect the rights of performers of ancient dances, rituals, and other individuals who had recorded for the first time the sounds of a performance, singing, dancing, and etc.) After all the collected materials are fixed via documentation or photography, thus, taking the form of objects.
• Accordingly, the right of the individuals engaged in collection and documentation of such ICH elements as the oral traditions, performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe, traditional crafts can also be protected by the national Copyright law.
• Right to translation of the historic national heritage and the national folklore of Kazakhstan to different foreign languages.

Suggestions:
• Engagement of tradition bearers in the mechanical collection of information, and creative approach to the compilation of collections, databases, albums and recordings of traditional folk performances and other elements.
• Also, publishers issuing encyclopaedias, encyclopaedic dictionaries, collections of scientific works, newspapers, magazines, and other periodicals with the exclusive right on the use of such media in general. The publisher may at any use of such publications mention his/her name or otherwise demand such reference.

• To improve the national legislation it is necessary to create an interdepartmental commission on changes and amendments to existing legislation in the field of intellectual property, in order to effectively safeguard the rights of subjects of ICH.

• Necessity of elaborating concrete and precise State policy and the lack of a systematic approach and qualitative experience of the Government in dealing with the safeguarding of the ICH elements by means of legal tools.

The report also mentioned that the development and enforcement of existing mechanisms protecting the ICH rights in the country remain unimplemented till its fullest extent. There could therefore a risk of ICH extinction, since the financial and moral supports constitute incentive to create to individuals studying and cultivating ICH.

5. IP Issues in Information Building and Sharing

Kazakh National University of Arts

• Database/Archive building
• Creation of a database on the folklore samples
• Use of software for database compilation
• Documentation of traditional songs and narrative works in the form of video and audio recording.
• Issue related to information with tradition bearers collected during field work.
• Copyright on compilation of inventory lists, documentation, etc.
• Issue of ownership of right (record of folklore, demonstration of traditional knowledge related to folklore, etc.)

Also, the institute has no legal basis to streamline its guiding policy or protocol regarding legal issues that could arise during each stage. On another side, regarding the practice of legal resolutins to solve such disputes, the guidelines
for protecting intellectual property rights of the ICH and practical cases are absent. ICH subjects and bearers remain equally disadvantaged, whiles their work receives no proper financial or legal support.

**Institute of Cultural Politics and Art studies**

- Unawareness of custodians and bearers about the necessity to protect their intellectual property rights (willingly provide their consent on the materials provided).
- IP rights in the digital database created in order to classify and process the information collected.
- Controversy in relationships between the institute and direct bearers of ICH, and related to IPR protection.

**Institute of Literature and Art**

The Institute has been involved in many ICH related activities among which:

- Publication and promotion of the creative heritage left by M.O. Auezov, and research on the exploration of the history of Kazakh literature of ancient period.
- Project on safeguarding and promotion of the cultural heritage of Kazakhstan – ‘Madeni Mura’.
- Publication of a series of books on the history of Kazakh literature, anthology of Kazakh music, world literature, world folklore science, ancestral heritage, literary monuments, etc.

One of the main tasks of the institute is to transfer and rescale folklore and music heritage of the past into modern digital format, making it more accessible for the public. As IP protection, since the institute does not conduct consistent interaction with the bearers of ICH, many IP issues could therefore arise:

- Identification of IP owners in the written, documental, photo, audio and video materials collected from the key State archives, libraries and museums.
- Copyright in the folklore and music heritage past into digital format.
- Ownership and management of IP rights in the digital database containing the manuscripts, catalogues, ancient Kazakh literature, fine arts, theatre and music arts.
• Related rights in the audio-video and textual recording on the traditional culture of Kazakhstan.
• Copyright protection of institute’s documentaries. Copyright is not reflected in the institute statute, concepts, objectives, functions and policies, and therefore there is no practice on their protection.
• ICH bearers’ rights in relation to their participation in the institute’s information building and sharing activities.
• Registration of the compilers’ rights on the use of databases, collections of works, photo albums, video and audio records, phonograms and other works created as a result of intellectual and creative human effort.

6. Conclusion

Kazakhstan ICH-IP policy is oriented towards the support of ICH bearers that are responsible for the maintenance of the spiritual connection between generations and dissemination of ICH. Unfortunately, ICH IP question seems unclear in the field of art, while receiving a limited protection under national legislation.

The report did mention some good points in terms of IP policy, among which some practices under the Institute of Literature and Art. The Institute of Literature and Art is applying a guiding principle in the collection and use of ICH related data. In the mentioned institute, indication of copyright information is mandatory for the validity and ICH related documents. It symbolizes the bearers’ prior and informed. It is mandatory for the institute scientists also to indicate the authorship of the ICH bearers in their works. In the publication of books, the institute reserves the copyright on the research. The institute consistently monitors the work on the identification of the illegal use of research materials (absence of the reference on the authorship) collected by the university staff.

Also, the institute sometimes refers to the use of contracts in order to guarantee the terms of use, consent of the owners, and financial compensation of ICH bearers’
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Annex 1 | *Questionnaire*
1. Introduction

Intangible cultural heritage (ICH), which is the source of human creativity and cultural diversity, has been diminishing since the onset of globalisation and urbanisation. In this regard, international society, working in tandem with UNESCO, has garnered public attention on ICH safeguarding, and the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted in 2003.

According to Article 13, d.iii of the 2003 Convention, States Parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party’s territory. This is to say, the Convention encourages managing an institute related to information building and sharing—one that collects, produces, and disseminates ICH information.

The process of ICH information building and sharing could be the cornerstone to safeguarding ICH. However, as with most kinds of information activities in other fields, the process of ICH information building and sharing includes many intellectual property (IP) issues.

Many problems could arise while collecting and creating ICH information, while processing and producing ICH information, and while disseminating and utilising ICH information. Additional, diverse problems could also develop from the communities, institutes, or individuals involved in the process.

In particular, with the development of technology and the appearance of new media, ICH intellectual property issues can manifest themselves in many ways, and these problems have expanded into much more complicated arenas.

The International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP) has been concerned with IP issues related to ICH information building and sharing. To cope with these concerns, ICHCAP has endeavoured to develop a guideline for protecting IP in the process of ICH information building and sharing.

ICHCAP has proposed a project for a field survey to examine IP issues, focusing on activities of ICH information–related institutes in the Asia-Pacific region and on cases about how to deal with problems that arise in the process of ICH information building and sharing.

The survey is expected to contribute by allowing an exchange of experiences and know-how in the Asia-Pacific region to foster an environment to understand and resolve problems related to IP aspects of ICH. Furthermore, the survey results could be the foundation for developing a guideline for protecting IP rights during ICH information building and sharing.
2. Glossary

For the current survey, the terms below will have the given meanings.

1) Bearer
   A member of a community who recognises, reproduces, transmits, transforms, creates, and forms a certain culture in and for a community. A bearer can, in addition, play one or more of the following roles: practitioner, creator, and custodian.¹

2) Community
   People who share a self-ascribed sense of connectedness. This may be manifested, for example, in a feeling of identity or in common behaviour, as well as in activities and territories. Individuals can belong to more than one community.²

3) Custodian
   A practitioner who has been entrusted by the community with the responsibility of safeguarding their intangible cultural heritage.³

4) Documentation
   The recording of ICH in tangible forms.⁴

5) Identification
   Technical description of a specific element constitutive of the ICH, often done in the context of a systematic inventory.⁵

6) Information Building and Sharing
   A series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information.

7) Informants
   Local experts from whom information about particular cultural practices is obtained, in the context of cultural field research.⁶

²Ibid.
³Ibid.
⁴Ibid. p.5
⁵Ibid. p.5
⁶ Peter Seitel, Proposed Terminology for Intangible Cultural Heritage: Towards Anthropological and Folkloristic Common Sense in a Global Era. UNESCO International Round Table 'Intangible Cultural Heritage', 2001 p.9
8) Intangible Cultural Heritage (ICH)

Practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artefacts, and cultural spaces associated therewith—that communities, groups, and in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and it provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.\(^7\)

9) Intellectual Property (IP)

Legal rights that result from intellectual activity in the industrial, scientific, literary, or artistic fields.\(^8\) Common types of intellectual property rights include copyrights, trademarks, patents, industrial design rights, and trade secrets.

10) Inventory Making

Drawing up one or more inventories of the intangible cultural heritage present in territories to ensure identification with a view to safeguarding.\(^9\)

11) Moral Rights

Owner’s right to claim authorship of the work and to object to any distortion, mutilation, or other modification or derogatory action in relation to the said work that would be prejudicial to the owner’s honour or reputation.\(^10\)

12) Practitioner

A member of a community who actively reproduces, transmits, transforms, creates, and forms culture in and for the community by performing and otherwise maintaining social practices based on specialised knowledge and skills.\(^11\)

13) Stakeholder

Various levels of agency in ICH information building and sharing activities, including public and private institutions, and more specifically artists and creators of the cultural communities concerned.\(^12\)

14) Subjects of ICH

Bearers, practitioners, and communities.

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\(^7\) Art.2 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003
\(^9\) Art.12.1. UNESCO Convention for the Safeguarding. *opcit*
\(^10\) Art.6 *Berne Convention for the Protection of literary and Artistic Works, Paris Text 1971*
\(^11\) UNESCO Glossary Intangible Cultural Heritage. *opcit* p.5
\(^12\) Noriko Aikawa, *State of Intangible Heritage Development in the Lead Up to the 2003 Convention*. UNESCO Shanghai meeting in the lead up to the adoption of ICH Convention. Training of the trainers. Asia and Pacific. Module 1. p.21
3. Specific Questionnaire

A. Institute Overview

1) Profile of the institute
   a) What is the name of institute?
   b) Where is the institute located? (City/Country)
   c) Please introduce the history of institute.
   d) What are objectives and functions of the institute?
   e) In what country/region have your institute’s activities been carried out?
   f) What kind of ICH is your institute specialised in?
      Ex) performing arts, dance, music, rituals, ceremonies, etc.

2) Characteristics of the institute
   a) Your institute can be classified as
      □ Government department
      □ Public institution
      □ Public enterprise
      □ Private enterprise
      □ NGO
      □ Other (Please explain the classification)
   b) Is your institute affiliated with other organisations? If yes, please describe the parent or affiliated organisations—name, classification, objectives and functions, specialisation, etc. (over 200 words in English)
   c) What are the institution’s sources of budget?
      Ex) a national budget, fund-raising activities, etc.

B. Information Building and Sharing Activities of Institute

3) Information building and sharing activities of the institute
   a) Please indicate the kinds of activities your institute has done or is doing.
      □ Identification
      □ Documentation
      □ Inventory making
      □ Database/Archive building
      □ Publication and distribution
      □ Utilising digital contents
      □ Other (Please explain other activities your institute has done)
b) Among your answers in [B-3-a], which activity does your institute mainly focus on? (multiple answers allowed)
   (1) Please explain the activity (over 250 words in English)
   (2) If any, please also provide guidelines, internal regulations, or other principles regarding the activity.
c) Regarding your answers in [B-3-b], please describe specific projects related to the activity by giving a set of answers below. If you have more than one project, please provide a set of answers for each one (One to three examples are recommended, but you can also give more than three examples)
   (1) Name of project
   (2) Duty department
   (3) Background of project (over 150 words in English)
   (4) Context of project (over 250 words in English)
   (5) Procedures of project
   (6) Outcomes/Effects
d) If you indicated in [B-3-a] that your institute did activities related to database/archive building, please provide an additional explanation about the activities.
   (1) How did/does your institute obtain ICH-related data or archives?
      □ Field work and documentation
      □ Purchase
      □ Donation
      □ Other (Please explain how your institute obtains(ed) ICH-related data or archives)
      If you checked more than one answer, what is the primary way your institute obtains(ed) ICH-related data or archives? Please arrange your answer according to the order of priority.
   (2) Please provide an index of data or archives of your institute by giving a set of answers below.
      (a) Name of data
      (b) Online/Offline data
      (c) Type of data
         Ex) text, photograph, recording, video, etc.
      (d) Source of data
         (Where did the data originate?)
      (e) Context of data
      (f) Person/Organisation who has rights on the data
      (g) Principle/Guideline of data management, if any.
C. Intellectual Property Issues in Institute

4) Does your institute have experience with a project regarding IP aspects of ICH?
   □ Yes  
   □ No
If yes, please describe the project by answering the questions below. If you have more than one project, please provide a set of answers for each one.
   a) Name of project  
   b) Duty department  
   c) Background of project (over 150 words in English)  
   d) Context of project (over 250 words in English)  
   e) Procedures of project  
   f) Outcomes/Effects

5) Is there a department, a unit, or an individual undertaking tasks related to intellectual property?
   □ Yes  
   □ No
If yes, please provide information below.
   a) Name of department (which covers the unit or the individual)  
   b) Name of duty person (in the department, the unit)  
   c) Tasks of department
      (a) Main task
         (What is the main task of the department? [over 100 words in English])  
      (b) Tasks relating to intellectual property
         (Please describe the tasks that are related to intellectual property [over 100 words in English])  
   d) Contact information
      (a) Contact number and e-mail of department  
      (b) Contact number and e-mail of duty person

6) Does your institute have a principle for protecting IP aspects of ICH?
   □ Yes  
   □ No
If yes,  
   a) Please describe the principle (over 150 words in English)  
   b) If any, please attach documents related to answers in [C-6-a].

ICH information building and sharing constitutes a series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information. Each stage is detailed below.

- The stage for preparation: conducting preliminary investigations, planning activities, selecting ICH objects to be investigated, undergoing prior consultation on an activity, etc.
- The stage for collecting and creating information: conducting field surveys (interviews, recording, filming, etc.), purchasing data, receiving donations, etc.
- The stage for maintaining information: building a database, keeping the data in its original form, classifying the data, constructing a security system for the data, etc.
- The stage for processing and producing information: editing, modifying, and upgrading information collected and maintained in the previous stages towards forms of documents, videos, web pages, etc.
- The stage for utilising and disseminating information: disclosing and disseminating information produced, distributing commercially, and utilising existing information for broadcasting, advertising, publicity, etc.

The management of ICH information raises equally different intellectual property issues from one category to another, be it in the phase of preparation, collection, production, or dissemination.

In the stage for preparation, intellectual property issues that could arise are below.

- Problems regarding identifying the nature of rights existing in ICH that will be targeted in information building and sharing activities
  - Identifying copyrighted works
  - Identifying unpublished or unknown authors’ works
- Problems regarding compliance with a country’s laws and regulations or customs concerning ICH information building and sharing activities
- Identifying a country’s laws and regulations or customs that could affect information building and sharing activities
- Examining the range of protection under national statutes of IP rights of ICH practitioners and creators

**Others**
- Other intellectual property issues that could arise during the preparation stage

**In the stage for collecting and creating information, the stage for maintaining information, the stage for processing and producing information, and the stage for utilising and disseminating information**, intellectual property issues that could arise are below, grouped into categories of IP rights.

**Ownership**

- Identification of the owner of the copyright and related rights in the recordings, films, or manuscripts embodying ICH
- Determination of ownership of both the database itself and its contents
- Issue of bearers’ ownership rights in adaptations such as lawful inspiration or the borrowing of work based on one or several pre-existing ICH work(s)
- Custodians’, owners’, and/or managers’ rights of ownership of secondary materials embodying ICH (secondary materials include items such as films, sound recordings, photographs, and written documents.)
- Bearers’ ownership of ICH-derived materials that are legally owned by the creator of the document, recording, and/or database embodying ICH
- Issue of joint ownership in work involving ICH material

**Prior Informed Consent or Approval**

- Issue of an approval or an agreement related to collecting ICH information
  - Identifying the authority who has been granted power to approve (permission or agreement from bearers, practitioners, communities, or other stakeholders)
  - Determining the terms and scope of the approval or agreement from bearers, practitioners, communities, or other stakeholders
• Prior informed consent to the reproduction, use, and display of ICH material
• Bearer's, practitioner's, or community's objections to utilising and disseminating information
• Determination of the format of agreements: consent forms to access and use ICH materials, licenses, undertakings, etc.

Maintenance of Collected Information

• Determination of data classification in an area of protection under IP related law
• Determination of the database to be built according to its uniqueness in IP related law

Adaptations

• The issue of unauthorised adaptations
• Issue of legal rights that could arise during secondary utilisation of information
  - Permission from stakeholders about secondary utilisation, such as broadcasting, advertising, publicity, etc.
  - Intellectual property of the secondarily used information

Secret, Sacred, or Confidential ICH

• Issue of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected
• Problems regarding disclosure of secret information

Access, Control, and Use

Communities’ Involvement

• Determination of communities’ participation in the recording, digitisation, and dissemination of ICH for safeguarding, promotional, and income-generating purposes
• Communities’ involvement in the decision-making processes related to the management of ICH elements held by institutes
• Authority of ICH subjects and their capacity to manage information once produced
• Bearers’ agreement on modification or transformation of ICH materials
• Determination of communities’ legitimate rights holders
• Management of access and use of ICH information by communities
• General public’s interests to benefit from and enjoy the information building and sharing activities of ICH

**Relationships**
• Issue of database users’ interaction with bearers for use of ICH
• Issue of relationships between an institution that holds the material, and a bearer, be it the owner, custodian, or manager.

**Terms of Use of ICH Material**
• Code on management, access, and use of ICH information
• Compliance with restricted ICH use under customary laws and practices
• Establishment of IP-related protocols, policies, and practices

**Infringement of Rights and Responsibilities**
• Infringement of intellectual property rights existing in the ICH information
  - Copyrights in literary, musical, and artistic expressions
  - Related rights (performers’, phonograms’, producers’, and broadcasting organisations’ rights) in performances, rituals, recordings, etc.
  - Trademark in cultural names, signs, indications, marks, symbols, etc.
  - Indigenous know-how and knowledge protected under trade secrets, patent law, etc.
  - Design rights in cultural textiles, poetry, etc.
• Legal responsibilities of institutes leading the activities
  - Vis-à-vis communities from which the ICH was collected
  - Vis-à-vis users to whom ICH is delivered
  - Vis-à-vis website viewers of digitised ICH collections

**Licensing**
• Licensing by institutions of ICH material in a recording, database, or collection
• Terms of licensing
• Content of ICH material to be licensed
• Identification of the exact licensee and licensor
Bearers’ Moral Rights

- Disclosure of ICH ownership information on any related use
- Problems regarding the determination of the range of disclosure
- Case of derogatory work related to ICH
- Respect of bearers’ right to integrity

Sharing of Benefits

- Issue of respect of bearers’ economic rights
  - Right to translation
  - Right to reproduction
  - Right to communication to the public
  - Others
- Problems regarding the distribution of profit that comes from utilising and disseminating information
  - Economic compensation for bearers, practitioners, or communities
  - Economic compensation for other affiliated organisations or individuals, such as collectors, researchers, agencies, or collective management organisations

Unfair Use or Misuse of ICH

- Misappropriation of ICH material by an institute
- Misappropriation of ICH material by a third party

Portraits, Filming, or Reproduction of ICH Material

- Right to use for commercial purposes
- Respect of motion pictures right in ICH digitisation
- Moral rights of bearers in portraits or films
- Respect of the sacredness, secret, or sanctity of portraits or films
- Right to reproduction in digitising a photograph
- Exception to copyright in cases of promotional or educational purposes

Use of ICH as Trademark, Geographical Indication, or Domain Name

- Bearers' approval in using ICH material as logos or product identifiers
- Misuse of cultural words as trade name, domain name, or geographical indication
7) Have any of the above issues arisen in any of the stages at your institute?
   □  Yes
   □  No

If yes, please describe the issue by answering the questions below. If you have more than one issue, please provide a set of answers for each one.

a) Please explain the activity your institute did.
   (a) Name of project
   (b) Sort of activity
      (What kind of information building and sharing activities did your institute do in the project?)
      Ex) identification, documentation, inventory making, database building, etc.
   (c) Objective of project

b) What kinds of issues have arisen?
   □  Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities
   □  Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities
   □  Problems regarding identifying the nature of rights existing in ICH
   □  Problems regarding ownership of ICH
   □  Problems regarding prior informed consent or approval
   □  Problems regarding maintenance of collected Information
   □  Problems regarding adaptations
   □  Problems regarding secret, sacred, or confidential ICH
   □  Problems regarding bearers' moral rights
   □  Problems regarding sharing of benefits
   □  Problems regarding unfair use or misuse of ICH material
   □  Problems regarding portraits, filming, and reproduction
   □  Problems regarding the use of ICH as a trademark, geographical indication, or domain
   □  Other (Please indicate the issue)

c) Please indicate all stages in which the issue has arisen.
   □  The stage for preparation
   □  The stage for collecting and creating information
   □  The stage for maintaining information
   □  The stage for processing and producing information
   □  The stage utilising and disseminating information
d) What was the cause and content of the issue? (over 500 words in English)

e) Who were the stakeholders involved with the issue?

f) What did the institute do to resolve the issue? Please describe the process and the results of the resolution. (over 500 words in English)

g) What was the institute's principle in the process of dealing with the issue?

h) Does your institute have a guideline, policy, or protocol regarding legal issues that could arise during the stage?

□ Yes
□ No

If yes, please attach the copy of the guidelines, policies, or protocols.

i) Please attach any other forms (ex. form of agreement) that were used during the stage.

8) Through your institute's experience, what kind of legal issues regarding IP aspects of ICH do you think could arise in each stage? (over 400 words in English)

9) In relation to [D-7] and [D-8], what kind of alternatives, guidelines, policies, or protocols do you think should be prepared? (over 400 words in English)

E. Institute's Activities

Here are questions on issues that could arise in the entire process of the institute's activities.

10) What kind of relationship does your institute have with ICH subjects, such as informants, collectors, researchers?

Ex: one-way asymmetrical relationship, one-way symmetrical relationship, two-way asymmetrical relationship, two-way symmetrical relationship, owner vs. custodian, etc.

11) Does your institute include intellectual property issues in the institute's vision, purpose, function, polices, etc.? If yes, please indicate your institute's vision, purpose, function, polices, etc. that addresses intellectual property issues.

12) Does your institute have a representative legal dispute regarding the institute's information building and sharing activities?

□ Yes
□ No
If yes, please describe the case. If you have had more than one case, please provide a set of answers for each one.

a) Name of project
b) Sort of activity
c) Purpose of project
d) Procedures and context (over 200 words in English)
e) Issue activated (over 200 words in English)
f) Response to the issue
   (Who or what department was in charge of the issue? How did the department cope with the issue? Were the principles or guidelines adjusted to the case? [over 300 words in English])

13) Does your institute have a case of guaranteeing the rights and the participation of ICH subjects (bearers, practitioners, or communities) in the institute’s information building and sharing activities?
   □ Yes
   □ No

If yes, please describe the case below. If you have more than one case, please provide a set of answers for each one.

a) Name of project
b) Sort of activity
c) Purpose of project
d) Participation of subject in the procedure (over 300 words in English)
e) Rights of subject guaranteed
f) Please attach related documents.

14) Have policies or guidelines for protecting intellectual property rights of ICH in the process of information building and sharing been well organised in your institute?
   □ Yes
   □ No

If yes, please provide information on the policy or the guideline, including
   a) Context of the policy or the guideline
   b) Please attach related forms. (ex. form of agreement)

F. Related Legislation

15) In your institute’s country, is legislation or the legal system for the protection of cultural heritage organised?
   □ Yes
   □ No
If yes, please describe the legislation or the legal system below.
   a) Full title
   b) The relevant sections or paragraphs
   c) Date of coming into force
   d) Details of the office responsible for administering the laws
   e) Copies of laws and regulations
   f) What are issues or problems regarding IP aspects of ICH that cannot be covered by the legislation or the legal system described above?
   g) What kind of legal systems or devices need to be added for the protection of IP aspects of ICH?
If no, please provide additional information below.
   h) Legal systems or regulations expected to be issued
   i) Status of processing

G. Future Plans

In case your institute has not been equipped with policies or guidelines for protecting intellectual property related aspects of ICH, please answer the following questions.

16) Does your institute have plans for organising guidelines or regulations for protecting ICH intellectual property related rights in the process of information building and sharing?
   □ Yes
   □ No
   a) If yes, please describe your institute's future plans (manner and context) for organising guidelines or regulations. (over 250 words in English)
   b) If a future plan is in the process of being organised, please provide additional information below.
      (1) Guidelines or regulations expected to be organised
      (2) Status of processing

17) Does your institute have plans for projects regarding the protection of intellectual property related rights in the process of information building and sharing?
   □ Yes
   □ No
   If yes, please describe the project below.
   a) Purpose of project
   b) Term and duration
   c) Context
   d) Anticipated procedures
H. Other Opinions

18) Please provide any kind of information related to the purpose of this survey.

4. Contacts

Please provide contact information of the person who is in charge of this survey report.

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Department</th>
<th>Address</th>
<th>E-mail</th>
<th>Telephone</th>
<th>Mobile</th>
<th>Fax</th>
</tr>
</thead>
</table>

5. Reference materials

Please provide all attached materials with information below.

<table>
<thead>
<tr>
<th>Distinction (relevant question)</th>
<th>Form of material</th>
<th>Name</th>
<th>Source</th>
<th>Context</th>
</tr>
</thead>
</table>
6. Results

Replies to this questionnaire should kindly be sent no later than the prearranged date to the following address.

Ms Saymin Lee (Information & Research Section)
Intangible Cultural Heritage Centre for Asia and the Pacific (ICHAP)
National Research Institute of Cultural Heritage Bldg (4F)
132 Munji-ro, Yuseong-gu, Deajeon 305-380
Republic of Korea
Tel. +82 42 820 3513 / Fax. +82 42 820 3500

The survey may also be e-mailed to the address below, but in addition to the e-mailed materials, please kindly send the requested references materials to the above address.

E-mail: ichcap@gmail.com
   smlee@ichcap.org

Reference materials can be submitted using Webhard.

Address: www.webhard.net
Id: ICHCAP
Password: ichcap

Thank you for your valuable contribution to the survey.
Annex 2 | **Institute Overview**

- Institute of Cultural Politics and Art studies
- Kazakh National University of Arts
- Institute of Literature and Art
The Institute comprises a long history since its establishment in 1934 as Kazakh Institute of National Culture. The first head of the Institute was Ahmet Baitsursynov, prominent political and academic figure in the history of Kazakhstan. In subsequent years, Institute was reorganized into different cultural institutions, such as the Republican Scientific and Methodological Center of Folk Art (RSMCFA) and later the National Research Center for Culture, on basis of which the status of the institute was restored till its present form. The main activity of RSMCFA was supporting ordinary people and amateur groups performing traditional folk art. Additionally, many large-scale events, such as folk festivals, ‘Aitys’ – traditional lyrical contest of Kazakh performers, concerts and other cultural activities on regional and international levels were held by the institute.

Since reorganization of the institute into the LLP 'Institute of Cultural Politics and Art studies' in 2005, the institute conducts applied research studies in the field of culture as well as professional training courses for the personnel working in the field of culture, mainly targeting representatives of folk art.

**Main objectives and functions of the institution**

- Participation in the formation of major principles and guide marks in cultural life of Kazakhstan along with the system of values that reinforce identification of national consciousness and inclusion of national priorities into political and socio-economic development of Kazakhstan;
- Academic and scientific support for the implementation of social and cultural programs launched in the country;
- Implementation of applied science and art projects;
- Conducting professional training courses for the personnel working in the field of culture;

**Status of the Institute**

- LLP with 100% participation of state;
- LLP ‘Institute of Cultural Policy and Art’ is a subordinate agency of the Committee on Culture, Ministry of Culture of the Republic of Kazakhstan, the sole shareholder of the institute.
Activities on creation and exchange of information

- Development and implementation of various applied science projects in the field of culture, art, and cultural policy in general;
- Participation in the provision of interstate information exchange on culture and art sciences within the territory of Kazakhstan;
- Cooperation with state, regional and foreign organizations and institutions in the sphere of culture (organization of various conferences, symposia, meetings, and discussions);
- Preparation of information and materials for publication; mainly focusing on the condition and problems of culture and art in Kazakhstan (collections of scientific works, various collections on thematic literature and other analytical materials);
- Participation in the development of scientific-methodological, normative-methodological projects, regulating and stimulating research in the field of culture and art, as well as collection of data and materials needed to draft laws and official state documents on different projects of socio-cultural infrastructure of Kazakhstan;
- Scientific and academic support for the revival of national culture and promotion of socio-cultural values;

Overall, institute plays an important role in the formation of cultural policy of the country, conducting numerous research works and case studies in the sphere of culture and art. These research projects include: organization of workshops, scientific seminars, creative labs, scientific conferences, publication of scientific works (anthologies, monographs, etc.) and many other activities directed to implement interstate, regional and international projects in the sphere of culture.
Kazakh National University of Arts

Kazakh National University of Arts (KazNUA) was first established as Kazakh National Music Academy in Astana on March 31, 1998 in regards to the initiative of the president of the Republic of Kazakhstan, Nursultan Nazarbayev, to open the first innovative music academy offering graduate and postgraduate studies in northern Kazakhstan.

From its early days, Kazakh national music academy was headed by world renowned Kazakh violinist, Ayman Musakhodzhayeva. An outstanding violinist performs with leading chamber music orchestras in all parts of the world, conducts master classes in Austria, Germany, USA, Korea and other countries, and among her pupils are winners of prestigious international and republican competitions.

With the government resolution on October 12, 2009 academy received a new status and was renamed to 'Kazakh National University of Arts', marking a new period of its development.

**Research Activities**

In order to deepen scientific focus of the university, Scientific-Research Institute of Art (Art Institute) was opened within its premises, offering unique opportunity for the scientists and experts in the sphere of music and art to jointly conduct their studies and research projects. General study course is divided into: theater studies, film studies, musicology, art, ballet. In addition, there is the Folklore Research laboratory functioning at the university and soon to be opened UNESCO Chair on ethnomusicology.

Main directions of research activities:

1. Improving the system of innovative education in the field of art and enabling education process with the provision of scientific and methodical literature, including electronic textbooks.
2. Development of fundamental research topics in the sphere of music and arts.
3. Activities on collection, organization, research and safeguarding of traditional music heritage.
4. Postgraduate studies and refresher courses.
International Activity
KazNUA is an associate member of numerous European conservatories, academies and music high schools and also is an active participant in many international music and artistic events and activities all over the world.

Despite its fairly young age, many cooperation memorandums on developing creative interaction and scientific collaboration with many foreign universities have been signed; therefore, many master-classes, scientific conferences and symposiums are held in KazNUA with the participation of highly ranked foreign professors and music experts. Moreover, Bologna education standards have been successfully launched within the education system of the university.

Kazakh National University of Arts is a member of different international organizations in the sphere of music and arts, such as: the European Association of Conservatories, the Magna Charta Universitatum, and the Council of Conservatories of the CIS member-states. Among the partner universities of KazNUA are many world renowned music institutions, such as: the Moscow state Conservatory named after Tchaikovsky; Sankt-Petersburg’s State Conservatory named after Rimsky-Korsakov; State Conservatory of Uzbekistan; State Conservatory of Uralsk named after Mussorgsky; National Conservatory of Tajikistan; Russian Academy of Music named after Gnessins; State Academy of Music in Belarus; University of Central Florida; Koln high school of music; Conservatory of the University of Vienna; Milan State Conservatory; Conservatory of Santa-Cecilia (Italy); Conservatory of The West Czech University, and others.

Creative Activity
More than 550 students of the Kazakh National University of Arts have been noted down as the winners of the prestigious international competitions such as: the music contest named after Mravinsky (Saint-Petersburg), 'DEMYUKS' (Ekaterinburg), the music contest named after Rimsky-Korsakov (Saint-Petersburg), ‘Friend, bayan’ (Kurgan), ‘Cup of Siberia’ (Barnaul), the contest of the bayan-players and accordionists (Moscow), ‘Prague spring’ (Prague), ‘Jeunesse musicales’ (Bucharest), festival named after J.S. Bach (Leipzig), the ‘RovereD’oro’ competition, the ‘Giovanni talenti’ contest (San-Bartolome), ‘PremioNiccolo Paganini’ (Genoa), the ‘Michelangelo Abbado’ competition (Milan), ‘East – West Musicfestival’ (Vienna), the violin competition named after Mozart (Salzburg), the violin competition named after TiborVarga (Zion, Switzerland), the festival of chamber music (Helsinki).
Both the student body and teaching stuff take part in various concerts, music events taking place in Kazakhstan and far beyond. There are several performing teams of different genres functioning within the university, such as the youth symphonic orchestra, the violin ensembles: ‘Capricci’, ‘Aigolek’; the ensembles of dombra players ‘SHAT’, kobyz players ensemble ‘Nazerke’, dancing ensemble ‘GaukharBilezik’, cellist ensemble ‘Yapurai’, and many other ensembles and solo performers.

KazNUA is also noted as an initiator and co-founder of annual international competitions and festivals held in Astana.

- International competition of creative Youth ‘Shabyt’
- International competition of music performers ‘Shabyt-Inspiration’
- Festival of Organ Music
- International Violin competition
- Republic festival of Choral Music ‘Astana – an kanatyn da’
- Republic competition of child performers ‘BolashakZhuldyzy’ – for orphans and socially disadvantaged children
- International competition ‘Astana-Merei’
- International Summer music academy ‘Baldauren’
Institute of Literature and Art named after M.Auezov as a subordinate agency of the Ministry of Education and Science of Kazakhstan was first established as Kazakh Research Institute of National Culture in 1934. Later in May 1961 on its basis was formed the Institute of Literature and Art of the Academy of Sciences of Kazakh SSR and received the name of the prominent Kazakh writer, Mukhtar Auezov.

Since its establishment the institute has grown into a major research center for studies conducted on Kazakh literature, folklore and art history.

Within different periods of time, many outstanding writers, scientists, and politically important figures in Kazakh history, such as Z.A. Akhmetov, M.O.Auezov, L.M. Auezov, M. Bazarbayev, I.H. Gabdirov, M. Gabdullin, worked in the institute.

One of the key research areas of the institute during its early years was publication and promotion of the creative heritage left by M.O.Auezov. The broader scope for research was the exploration of the history of Kazakh literature of ancient period. In 1986, for the first time in the history, the Turkic literary monuments of the XIII-XIV centuries ‘Oguz-name’ and ‘Mukhabbat-name’ were translated from the original ancient Turcik text to Kazakh language. In 1993 historically significant manuscript, the book ‘DiuaniHikmet’ of the outstanding Central Asian poet and philosopher of the 12th century, AkhmedYassaui was published and translated in independent Kazakhstan.


More importantly, activities on rehabilitation of repressed participants of the Alash national movement – bright representatives of Kazakh literature and culture, such as S.Kudaiberdiev, M.J.Kopeev, A.Baitursynov, M.Dulatov, G.Karashev, M.Zhumabayev, S.Toraigyrov, J.Aymauytov, S.Saduakasov and many
Institute Overview

other historic figures leaving rich academic and creative legacy were carried out by the institute.

In 2004-2011, the Institute took active part in the implementation process of strategically important national project on safeguarding and promotion of cultural heritage of Kazakhstan – 'Madeni Mura'. As a result of this state program, a series of books on the history of Kazakh literature, anthology of Kazakh music, world literature, world folklore science, ancestral heritage, literary monuments, and many other thematic areas have been published by the institute. Currently a purposeful work on the preparation and publication of the samples of Kazakh folklore, representing deep scientific, historical and cultural value is carried out by the department of manuscripts and catalogues of the Institute.

Under the guidance of the Ministry of Education and Science of Kazakhstan, the Institute is working on the program of basic research aiming to restore true and complete history of Kazakh folklore; studying main historic stages in the formation of Kazakh literature during ancient and medieval times; analyzing socio-historic and cultural legacy left by prominent Kazakh poets and writers of 19th - early 20th centuries, and its impact on the development of future generations as well as introduction to the major genres of Kazakh literature of 1960-1990s (poetry, prose, drama) in the context of the world literature.

Since 2006, the institute entered a new stage of scientific research, broadening the scope of its study areas. The staff of the Institute focuses on the examination of the contemporary processes in literary studies and art history of independent Kazakhstan as well as introduction of the notion of independence in the text of fiction books and in the sphere of music, theater, fine arts, decorative-applied arts, sculpture and architecture. In these regards, comprehension of the artistic perception of the idea of independence reflected in Soviet literature in the context of its relationship with common Turkic literary processes was thoroughly scrutinized by the institute for better understanding of the relationship between artistic sphere and public policy in past and modern times.

Aside from studies on Kazakh literature, many studies on the collective monographs reflecting ancient and modern foreign literature were conducted by the institute. These studies summarize current trends in literature in different cultures and countries, revealing a broad variety of approaches in understanding the role of individual in contemporary social processes of the era of globalization. Special focus is given to the literature of the CIS countries and Central Asian region via traditionally established connections with literary specialists and critics of these countries.
One of the main tasks of the institute is to transfer and rescale folklore and music heritage of the past into modern electronic and internet format, making it more accessible and popularized.

Institute offers postgraduate degrees, professional training courses and workshops on literary studies, folklore and art history for aspiring researchers and experts from other institutions working in the field of literature and culture, and staff members of the institute. Joint research projects, studies in cooperation with the governments of foreign states, joint folklore expeditions, international conferences, temporary exchange of research stuff are conducted by the institute in collaboration with foreign partner universities, publishing houses, agencies and institutes.

Since 2005 a scientific-popular and literary art journal 'Keruen' is published by the institute. It includes publications of scientific articles published by literary critics and specialists in art history from foreign countries (Germany, France, Romania, Turkey, Korea, etc.) and CIS (Russia, Belarus, Uzbekistan, Moldova, Azerbaijan, Kyrgyzstan, etc.). The journal is registered in the International ISSN Centre in Paris.
Annex 2 | Photographs
▲ 1st meeting of the National Committee on the Safeguarding of the ICH (16 February 2012)

▲ Archive and Library of KazNUA (1)
▲ Archive and Library of KazNUA (2)

▲ Archive of the Literature and Art Institute named after M.Auezov
▲ Junior assistants conducting research in the Archive of the Literature and Art Institute named after M.Auezov

▲ Junior research assistant working in the Archive of the Institute of Literature and Art named after M.Auezov
▲ Junior research assistant working navigating the database of KazNUA

▲ Respondents - KazNUA at their discussion panel on ICH IP issues
▲ Respondents and junior assistants of KazNUA at their panel discussion on ICH IP questions

▲ Respondents - Institute of Literature and Art named after M.Auezov
Translation of the ancient manuscript in the Institute of Literature and Art named after M.Auezov

Respondents - KazNUA at their panel discussion on ICH IP questions
▲IP Survey Legal expert, E.Azimova