

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 Kyusand 1000 Traditional Kazakh Songs*³⁷ 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

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 kyusand 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*³⁸, *termes*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* 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*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

³⁸ *Kyu*—improvised instrumental piece lasting one to four minutes, usually performed by using various folk instruments.

³⁹ *Terme*—a type of lyrical singing within Kazakh national poetry

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 abovelisted 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 to 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 existent 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 Ahmet Baitursynov, 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, sheet music 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 Aitys⁴¹ 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.

⁴¹Aitys—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 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 of 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-Zhibek⁴² national epos 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.

⁴²Kyz 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 eposes 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 eposes 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 of 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 renowned 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.