

## *Summary*

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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 transferred 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 be 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 resolutions 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, while 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'