Ost/Mag
Wissenschaftliche Beiträge
des Ostinstituts Wismar
Ostinstitut/Wismar

# Intellectual Property: Legislative Support Issues

**Author: L.T. Sadykova**[1]

This article contains some issues of intellectual property rights accordance with the legislation of the Republic of Kazakhstan. According to Clause 961 of the Civil Code of RK, the objects of intellectual property rights include the results of intellectual creative activity and the means of identification of participants of civil turnover of goods, works or services.

Key words: intellectual property rights, national legislation, intellectual creative activity, agreements, copyright.

In conditions of modern development of the Republic of Kazakhstan is observable the steady trend of further modernization of technologies, which leads to an increase in scope and fast growth in the use of intellectual property that is gradually becoming the most important factor of social production. In modern Kazakhstan the right to results of intellectual activities and means of identification assumes the importance of one of the main subjects of human activity.

In this context, we shall pay special attention to the fact that in recent decades the problem of creating an adequate legal support for social relations has become very urgent, and these relations are connected with creation and use of intellectual property. The reason is that in a number of foreign countries the copyright market brings to seven percent of the gross national product. Almost the same in developed countries brings the so-called industrial property. In the more number of countries the intellectual property ensures the formation of more than one sixth of the public budgets [1, p. 6].

However, in the international legal practice the term “intellectual property” appeared only in the sixties of XX century. In this aspect it should be pointed that for CIS countries the term “intellectual property” is cultivated only since nineties of XX century, and largely it is due to adoption of Principles of Civil Legislation of USSR and of Union Republics in 1991. This indicates the sufficient novelty of this legal category and the insufficient development of many of its legal mechanisms. It is enough to point out that in modern civil legislation and laws still there is no uniform definition of the concept of intellectual property [2, p.86].

[1] L.T. Sadykova, master in Law (profile direction), Faculty of Law, al-Farabi Kazakh National University, Almaty/Kazakhstan. The research advisor is B.A. Zhetpisbayev, Doctor of Law, Professor of Civil Law and Civil Procedure, Labor Law, Faculty of Law, al-Farabi Kazakh National University.

But this does not mean that in civil law and legislation in general there are no works analyzing this problem.

It is interesting to note that in Roman law certain views are known concerning the basic principles of the right to intellectual works.

Suffice to note that the institutions of Gaius analyze an example of Roman society life, when a Roman citizen has ordered a sculptor portrait of his wife, and that has made a figure of emperor from the customer's marble. Roman lawyers in consideration of dispute agreed that the main thing in this case is not the material from which the sculpture has been made, but the creative work of the creator [3].

Thus, when considering the regularity and mechanisms of intellectual property rights it is necessary, first of all, to define the concept of intellectual property rights.

According to Clause 961 of the Civil Code of RK, the objects of intellectual property rights include:

1) results of intellectual creative activity;
2) means of identification of participants of civil turnover of goods, works or services.

**The results of intellectual creative activity include:**

1) works of science, literature and art;
2) performance, phonograms and transmissions of broadcasting and cablecasting organizations;
3) inventions, utility models, industrial design samples;
4) selection achievements;
5) integrated circuit layout;
6) undisclosed information, including manufacturing secrets (know-how);
7) other results of intellectual creative activities in cases stipulated by the Civil Code or other legislative acts.

**The means of identification of participants in civil turnover of goods, works or services include:**

1) brand names;
2) trademarks (service marks);
3) places of origin (indication of origin) of the goods;
4) other means of identification for participants in civil turnover of goods, works and services in cases stipulated by the Civil Code and legislative acts.

If the items of property in their perfect understanding are the things, and material character is their main attribute, so the main characteristic of an intellectual property (works of science, literature or art, technical or artistic-design solution) is the fact that it is not a material, but ideal object, “intangible and immaterial things”, “unbodied property”, a result of sensory and mental activity, ideal solution of philosophical or technical problem.

This conclusion of ideal solution remains in force even if later it will be embodied in a material form of a particular product, sample etc. [2].

It should be noted that these characteristics of intangibility and immateriality are fully reflected by the term “information”. Any intellectual property, essentially, if we ignore certain specific features, is the information having esthetic, educational or commercial value from the point of view of embodied creative ideas, factors that individualize anything or contribute to economic efficiency.

But not all the information is an item of intellectual property. The intellectual property is only the information that is a subject to protection named so in legislation – the results of creative intellectual activity and means of identification for subjects of the market, their goods and services. For example, the messages of events and facts that have the character of mere information are not items of copyright.

At this, the unit of information - the result of intellectual creative activity or an equivalent of this item – has a consumer and market value, primarily due to **certain rights** appeared in this respect. If, for example, you take a book, its value is not reflected in materials this book is made from, no matter how expensive they were. The value of a book (movie, play, invention, original building design etc.) is the non-property and property right of author and other persons to the result of creativity. Thus, intellectual property is not a material object, more correctly – not the object but the right relating to such objects [2, p.86].

Here we conclude that the term “intellectual property” in interpretation of the meaning sounds like “the right to the right”, which at first glance looks like a tautology. But this is not the case, since the Clause 115 of the Civil Law of RK clearly includes the **right to the items of property.** In this case the term “intellectual property” already contains a reference to the fact that we are talking about the right to the result of creation or a means of identification, and it is equal to the term “item of intellectual property”.

The legal base of intellectual property in its quantitative composition is wide and it is a branched system, which includes acts of various legal forces. In general we can imagine it as follows:

1) International legal acts accepted in frames of the World Intellectual Property Organization;

2) Agreements between individual states;
3) National legislation.

Describing the international legal instruments accepted in frames of the World Intellectual Property Organization and agreement between individual states, it should be pointed out that the term of intellectual property was legally implemented first in 1967 by the Stockholm Convention establishing the WIPO. The Republic of Kazakhstan is its member.

Currently, Kazakhstan is a party to the following treaties and agreements:

1) In the sphere of copyright:
    - Berne Convention for Protection of Literary and Artistic Works (1886);
    - Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (1971);
    - Brussels Convention for Distribution of Program-Carrying Signals Transmitted by Satellite (1974).
2) Basic agreements in the sphere of industrial property:
    - Paris International Union for Protection of Industrial Property (1883);
    - Madrid Agreement Concerning the International Registration of Marks (1891);
    - Nice Union for International Classification of Goods and Services for Registration of Marks (1957);
    - Locarno Agreement Establishing an International Classification for Industrial Designs (1968);
    - Patent Cooperation Treaty (1970) etc.

It should be noted that the new standards of intellectual property protection as compared to those that at one time were specified in the above agreements have been established in the Agreement on Trade-Related Aspects of Intellectual Property Rights concluded under the Uruguay Round of GATT in December 1993. In international practice this Agreement commonly referred to as TRIPS.

Subjects of this Agreement are:

- copyright and related rights;
- trademarks;
- indications of origin;
- industrial designs and models;
- inventions;
- integrated circuit layouts;
- protection of trade secrets.

For the first time in multilateral international practice the agreement includes obligations of Member-States in relation to international standards of protection of intellectual property against any kind of violations, as well as rules of dispute resolution.

Legislation of RK on intellectual property can be considered in two aspects:

- broadly speaking, it is a set of legal norms regulating social relations in the sphere of intellectual (creative) activities;
- in a strict sense (according to Clause 3 of the Civil Code of RK), these are legal acts, Decrees of the President of RK, Government Resolutions regulating relations in the sphere of intellectual property.

Generally speaking, the legislation on IP is presented by the rules of civil, criminal, administrative, financial and other branches of the law. Mostly, the same relations about intellectual property lay in the civil law.

Foundation of the creation of national patent system is based on two special omnibus acts:

- Law of the Republic of Kazakhstan dated July 16, 1999 № 427-I «Patent Law of the Republic of Kazakhstan»;
- Law of the Republic of Kazakhstan dated July 26, 1999 № 456-I «On trademarks, service marks and designation of origin».

To develop these two laws it has been prepared and approved a number of regulations at the governmental level and some departmental regulations governing all the administrative and financial procedures for preparation, submission and consideration of applications for title of protection for intellectual property.

Unfortunately, the Constitution of RK does not contain the term “IP”. Protection of IP at the constitutional level is based on Clause 20, which guarantees freedom of expression and creativity, as well as on Clause 26, which guarantees the property rights of the Kazakhstan’s citizens.

At this, the Clause 14 of the Civil Code of RK states that “a citizen can… have the intellectual property right to inventions, works of science, literature, art and other results of intellectual activity”.

This incorporation of our rights into the civil legal capacity elements fills a gap in Constitution.

Civil Code of RK being the foundation of the entire legislation system in this sphere, in general part, contains the rules of the intellectual property (Clauses 14, 38, 59, 115, 119, 125, 126).

The special part of the Civil Code of the Republic of Kazakhstan includes Section 5 "Intellectual property rights", which contains 78 clauses regulating the most **common issues of the intellectual property law**.

In addition to the Civil Code regulations, essential for effective protection of intellectual property are the Clauses 128, 129 of the Administrative Code of RK and the Criminal Code (Clauses 184 and 199), specially devoted to responsibility for crimes against intellectual property. It should be noted that these rules have highly preventive force and significantly increase the effectiveness of the whole system of legal IP protection.

Total, in the sphere of IP are effective more than 100 laws and regulations.

REFERENCES:

1. Amangeldi, A.A., Intellectual property rights of the Republic of Kazakhstan", Almaty, IC SCF Interlignal, 2010, .p. 264.
2. Suleimenov, M.K/Besin, Yu.G., Civil Law, 3. Almaty, 2004, p. 522.
3. Amangeldi, A.A., Intellectual property rights of the Republic of Kazakhstan, Almaty, IC SCF Interlignal, 2010, p. 8.
4. Dozhdev, D.V., Roman Private Law, Moscow, Infra-M-Norma, 1996, pp. 324-325.
5. Chernilovskii, Z.M., Roman Private Law, Moscow, New lawyer, 1997, p. 133.



Redaktion:
Prof. Dr. Otto Luchterhandt,
Dimitri Olejnik,
Dr. Hans-Joachim Schramm
Prof. Dr. Andreas Steininger

Ostinstitut Wismar
Philipp-Müller-Straße 14
23966 Wismar
Tel +49 3841 753 75 17
Fax +49 3841 753 71 31
office@ostinstitut.de
www.ostinstitut.de

ISSN: 2366-2751