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Concept of Protection of Intellectual Property Rights

1. Introduction

System of intellectual property protection has become an integral part of the national infrastructure. There is every reason to believe that the twenty-first century will become an era of knowledge-based economy, development of which will mainly depend on creativity and reliable system of its legal protection. Being an active participant of international cultural and scientific exchange as well as a member of the World Intellectual Property Organization (WIPO), the Republic of Kazakhstan should ensure protection of both national and foreign intellectual property rights at the level corresponding to international standards.

State policy in the field of intellectual property rights protection should serve as a link between creation of works and other results of intellectual activity and their use in new technologies. The system of protection of intellectual property rights contributes to:

strengthening of scientific and technological potential of the country and fostering creative activity;

development and use of new technologies and production of competitive goods;

creation of conditions for development of innovations;

creation of conditions for domestic and international exchange of new facilities and technologies; creation of conditions that promote fair competition;

protection of domestic market from counterfeit goods;

creation of favorable investment climate and attraction of investments into high-tech industries;

creation and dissemination of information about new achievements and developments.

Effective functioning of the system of intellectual property rights should be one of the priority activities of state bodies based on clearly defined national policy in this area.

2. The current state of protection of intellectual property rights

It is necessary to admit that at the present time counterfeit goods distributed at the territory of the Republic of Kazakhstan mainly come from abroad. Taking into account that measures on prevention of distribution of such goods as well as on protection of intellectual property rights in the Republic of Kazakhstan are not always sufficient, it is necessary to adopt more stringent governmental measures. They will promote a positive image of the Republic of Kazakhstan within the world community as a state that protects intellectual property rights. Still we can note weak enforcement, lack of control and absence of such mechanisms as licensing of certain activities.

The Republic of Kazakhstan established a system of state bodies that ensure protection of intellectual property rights. However, effective implementation of this work requires closer cooperation of all state bodies and other organizations.

Besides, there is an improved system of examination and issuance of protection documents for objects of copyright and industrial property and newly created staff of highly qualified patent attorneys. Government coordinates interaction of executive bodies and non-governmental organizations as well as contributes to creation of civilized relations between owners and users of intellectual property.

Currently, main functions on providing protection of intellectual property rights are carried out by the Committee Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan and other competent authorities in accordance with applicable legislation.

3. Legislation of the Republic of Kazakhstan and international treaties on protection of intellectual property rights

At the present time, it can be noted that work on creation of legal framework on protection of intellectual property rights, which began in 1992, became more focused. Adoption in 1999 of the Special Part of the Civil Code of the Republic of Kazakhstan with an entire Section on intellectual property rights was an important step in development of legal regulation in this area. Protection of intellectual property rights in the Republic of Kazakhstan is currently governed by the following laws:

- Civil Code of the Republic of Kazakhstan;
- Law "On Copyright and Related Rights";
- Patent Law of the Republic of Kazakhstan;
- Law "On Trade Marks, Service Marks and Appellations of Origin";
- Law "On Protection of Selective Achievements";
- Law "On the Legal Protection of Layout Design of Integrated Microcircuits".

Since 1992 a number of by-laws on various issues of protection of industrial property has been adopted.

An important step in ensuring of protection of intellectual property rights was also adoption of the Criminal Code and the Code on Administrative Offences that provide liability for infringement of intellectual property rights.

Currently, Kazakhstan is a full member of the Convention Establishing the World Intellectual Property Organization of 14 July 1967.

In the field of copyright protection the Republic of Kazakhstan acceded to the Berne Convention for the Protection of Literary and Artistic Works (1886) and Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (1971).

In accordance with the "Declaration of the Republic of Kazakhstan on International Treaties in the Field of Industrial Property" of 5 February 1993 Kazakhstan is a member of a number of main treaties, agreements and conventions under the auspices of the WIPO, including:

- Paris Convention for the Protection of Industrial Property of 20 March 1883;
- Madrid Agreement Concerning the International Registration of Marks of 14 April 1891;
- Patent Cooperation Treaty of 19 June 1970.

4. Purpose and objectives of the Concept

Purpose of the Concept is to present the fundamentals of governmental policy in the field of legal use (implementation) and protection (enforcement) of intellectual property at the territory of the Republic of Kazakhstan.

Main objectives of the Concept are as follows:

- provision of adequate standards and principles of legal protection of intellectual property as well as effective measures for their implementation;

- creation of conditions for development of scientific and technical progress, inventive activity and free competition;

- provision of economic, technological and informational security of the Republic of Kazakhstan in the field of intellectual property;

- increasing use of intellectual property by small businesses;

- strengthening the role of government in shaping policies to ensure access of small businesses to intellectual property.

5. Basic principles of governmental policy in the field of protection of intellectual property rights

The concept of governmental policy in the field of intellectual property protection is designed to facilitate implementation of governmental strategy of the Republic of Kazakhstan for sustainable cultural and socio-economic development of the country.

The concept is based on the following principles:

constitutional guarantees of protection of intellectual property rights;
implementation of international commitments in the field of intellectual property protection;
national security;
governmental regulation of relations in the field of intellectual property;
promotion of legal knowledge in the field of intellectual property rights;
balance of interests of all participants of legal relations including the government.

6. Main directions of development of protection of intellectual property

6.1. Improvement of legislation in the field of protection of intellectual property

Currently the laws of the Republic of Kazakhstan in the field of intellectual property comply with the main provisions of international treaties and conventions signed by the Republic of Kazakhstan.

In the field of copyright it is necessary to complete the work on accession of the Republic of Kazakhstan to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention of 1961).

In the field of industrial property rights in order to ensure better protection of biotechnological inventions, active participation in integration processes of the global patent community and harmonization of national patent legislation it is necessary to accede to the following international conventions and treaties:

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977;

Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957;

Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968;

Strasbourg Agreement Concerning the International Patent Classification of 24 March 1971;
Trademark Law Treaty of 27 October 1994.

In order to complete creation of legal and regulatory framework for all objects of intellectual property listed in the Civil Code it is necessary to develop and enact legislation governing:

- legal protection of such objects of intellectual property as computer programs, trade names, undisclosed information and protection of rights in the Internet;
- protection of secret inventions created in the Republic of Kazakhstan.

In addition, there is a need in further improvement of legislation establishing competence of state bodies on development and adoption of legal acts regulating:

- activity of users of cinematographic works;
- activity of executive bodies on issues of protection of intellectual property rights;
- criteria and procedure for recognition of a trademark as well known;
- rules on compiling, filing and considering applications for patents for selection achievements, including size and order of payment for these procedures;
- rules on customs control of movement of goods infringing intellectual property rights.

6.2. Cooperation of the Republic of Kazakhstan with international organizations and foreign states

An important area of international cooperation of the Republic of Kazakhstan was participation in the Interstate Council on Protection of Industrial Property, which developed the

concept of a regional system of legal protection of inventions and led to signing of the Eurasian Patent Convention ratified by Kazakhstan in 1995.

In February 2001 during a visit of the WIPO Director General Kamil Idris the Republic of Kazakhstan signed the Program of Cooperation between the Government of the Republic of Kazakhstan and the WIPO.

Purpose of the program is to conduct joint activities aimed at:

improvement of legislation of the Republic of Kazakhstan in the field of intellectual property based on experience of other countries and international standards of harmonization;

improvement of enforcement in the Republic of Kazakhstan in the field of intellectual property in order to detect and prevent infringements of intellectual property rights;

strengthening of role of intellectual property in the relevant fields of scientific, technical and economic activities carried out at the territory of the Republic of Kazakhstan by various business entities.

It is necessary to implement the full range of activities provided by the Program.

Cooperation with the CIS countries in the field of intellectual property protection is actively developing. Agreement on cooperation in the field of copyright and related rights was signed by the heads of the CIS states on 24 September 1993. The Republic of Kazakhstan signed a number of bilateral intergovernmental agreements on protection of industrial property, including those with the Russian Federation, the Kyrgyz Republic, the Republic of Uzbekistan, Georgia and the Republic of Azerbaijan. Kazakhstan signed and ratified agreements with the CIS countries on cooperation in the field of copyright and related rights: "On cooperation in prevention of infringements in the area of intellectual property", "On measures on prevention of use of false trademarks and geographical indications", "On mutual protection of state secrets in the field of legal protection of inventions".

6.3. Training of specialists in the field of protection of intellectual property rights

Effectiveness of system of protection of intellectual property rights depends on fast and expert court (and competent authorities) examination of cases involving infringement of these rights.

At the same time, the main objective is to improve enforcement practice on prevention, detection and suppression of infringements in the field of intellectual property.

In order to ensure fast and competent examination of cases involving infringement of intellectual property rights there is a need in timely trainings and improvement of qualification of experts of the Center of Judicial Examination of the Ministry of Justice that carry out examinations on establishment of facts of illegal use of intellectual property.

Improvement of enforcement of intellectual property rights implies the need in experts of new formation. Preparation, training and retraining of staff is also an important task.

Consideration of cases related to protection of rights for computer programs, databases as well as protection of copyright in the Internet and objects of industrial property is very specific and causes certain difficulties. For effective consideration of such cases it is necessary to provide improvement of qualification of judges in application of legislation on protection of intellectual property rights.

In order to effectively educate experts in intellectual property rights it is necessary to take advantage of participation of the Republic of Kazakhstan in the WIPO, including:

training of experts of state bodies and commercial organizations as well as teachers in the field of intellectual property rights within the programs administered by the WIPO;

joint organization of seminars, workshops and symposiums designed to improve general knowledge of various professionals in the field of intellectual property;

joint development of teaching methods, curricula, programs, specialized courses and distance learning.

6.4. Mechanisms for implementation of the Concept

This Concept provides plan for development of protection of intellectual property rights and defines main directions and objectives to be performed by the executive bodies of the Republic of Kazakhstan. In order to achieve these goals it is assumed:

- to conduct ongoing work on improvement of legislative, regulatory and legal framework in the field of intellectual property;

- taking into account the prospects for development and protection of intellectual property rights to develop the Program for implementation of the Concept;

- carry out targeted training and retraining of expert involved in protection of intellectual property rights;

- on the basis of bilateral and multilateral intergovernmental and interagency agreements to share experience in the field of intellectual property;

- through adoption of legal acts to strengthen the joint work of state bodies authorized to carry out protection of intellectual property rights;

- to identify financial sources for implementation of certain provisions of the Concept also by attracting funds from international organizations and individual investors.