

Section V Intellectual property

Article 57. Basic notions on intellectual property

Article 1125. The notion of intellectual property

1. Intellectual property is property and (or) personal non property rights with regard to outcomes of intellectual activity, means of identification of participants of civil circulation, identification of products, executed works or services (means of identification) as well as other equated to them objects.

Content, creation and the order of implementation and termination of property and personal non property rights with regard to separate objects of intellectual property are determined by the present Code and other laws.

2. Present Code determines the basic types of objects of intellectual property and determines general principles of regulation connected with them property and personal non property rights.

3. Norms of present Code are applied to intellectual property relations in particular provisions on obligations and contracts if other is not provided by laws and does not come from existing regulated relations.

Article 1126. Objects of intellectual property law

Objects of intellectual property law comprise:

- 1) Results of intellectual creative activity;
 - Works of science, art and literature including programs for electronic calculating equipment, computers and database;
 - Performances, phonograms, on-air broadcasting or cable casting;
 - inventions, utility models, industrial designs;
 - selection achievements;
 - topology of IC devices;
 - data which is official or commercial secret.
- 2) means of identification of participants of civil circulation, products, works or services:
 - firm name;
 - trade marks and service marks;
 - name of place of goods origin and indication of origin.
- 3) Other results of intellectual activity and equated to them means of identification preserved in accordance with laws and international legal acts adopted by the Republic of Tajikistan.

Article 1127. Appearance of intellectual property right

The law on intellectual property on corresponding objects appears in the result of their creation or at the beginning of their applying or in the result of state registration and upon other reasons provided by the laws or international legal acts adopted by the Republic of Tajikistan.

Article 1128. Content of intellectual property right

1. Holder of intellectual property rights possesses exclusive rights with regard to results of intellectual property and means of identification preserved with regard to all and each.

2. Exclusive rights on the result of intellectual property activity or means of identification comprise personal non property and property legal powers the appliance of which with regard to separate objects of intellectual property is determined by the Law taking into account the provisions of the present Code.

3. The rights of the holders of intellectual property rights can be restricted by the law. Such kind of restrictions should not cause damage to normal usage of the objects of intellectual property and infringe non property rights of an author.

Article 1129. Intellectual property right and the right of property on material object

1. Intellectual property rights do not depend on the right of property or other property rights on material object in which object of intellectual property is expressed.

2. Lapse of property right on material object of the result of intellectual activity or means of individualization does not lead to transfer or concession of rights to use corresponding object of intellectual property expressed in the object if other is not stipulated by the law.

3. Exercise of rights by an owner or any other individual with regard to material object in which the object of intellectual property is expressed should not violate the rights and interests of the holder of property and personal non property rights preserved by the law on such kind of object.

Article 1130. Personal non property rights

1. Right of authorship, right of name and other personal non property intellectual property rights are implemented and protected in accordance with the present Code and other laws.

2. Personal non property rights included into intellectual property law and stipulated by corresponding laws do not depend on property rights and cannot be transferred to other individuals and are preserved permanently.

3. Full or partial refuse of a creator (author, executor) of the result of creative activity from his personal non property rights on such a result is null and void.

4. In cases provided by the law separate personal non property rights of intellectual property can be assigned to legal entities.

Article 1131. Property rights of intellectual property.

1. Holder of property rights of intellectual property is entitled at his discretion to implement, allow and forbid the usage of corresponding object of intellectual property in any way and in any form if it is not prohibited by the present Code and other laws.

2. Property rights with regard to object of intellectual property may belong to an individual or individuals jointly. In cases provided by the law property rights with regard to the same object of intellectual property may belong to different individuals and be implemented irrespective each other.

3. Mutual relations with regard to applying of the object of intellectual property, the rights of which belong to some individuals jointly, are determined by the agreement between them. If there is not such an agreement the dispute on intellectual property rights is settled in legal procedure.

Article 1132. Terms of validity of property rights

1. Terms of validity of property rights with regard to separate kinds of objects of intellectual property, the order of their calculation, grounds and the order of their prolonging or restoration as well as grounds and the order of early termination of such kinds of rights are determined by the law.

2. Upon termination of property rights terms as well as in case of early termination of such kind rights corresponding object of intellectual property transfer to public property if other is not stipulated by the law and if the rights and interests of other individuals preserved by the law are not violated.

3. Holder of property rights can make a decision on earlier termination and transfer of corresponding object of intellectual property to public property if other is not stipulated by the law and if the rights and interests preserved by the law are not violated.

Article 1133. Transfer of property rights

1. Property rights on objects of intellectual property may transfer to other individuals upon agreement or transfer based upon law.

2. Transfer of property rights upon agreement with regard to some kinds of intellectual property can be restricted or prohibited by the law.

3. Contracts on transfer of property rights on objects of intellectual property should be signed in written or other provided by the law form.

4. Conditions of agreements, which make the conditions of holders of intellectual property right worse, are declared invalid.

5. State registration of separate types of agreements connected with transfer of property rights on objects of intellectual property can be fixed by the law as well as in other cases of transfer of rights on such kinds of objects.

Article 1134. Official objects of intellectual property

1. Property rights on objects of intellectual property created by an employee due to implementation of official duties or official task given by an employer (official object of intellectual property) belong to employer if other is not stipulated by the law or by an agreement between an employee and employer.

2. An employee who has created an official object of intellectual property possesses personal non property rights on such kind object; and the fee, the amount of fee, conditions and order of payment are determined by the agreement between an employee and employer if other is not provided by the law.

3. In cases and order fixed by legislation, rights indicated in item 1 of the present Article can transfer to an employee who has created the object of intellectual property.

Article 1135. Rights on intellectual property objects created under implementation of state contracts (orders)

1. Property rights on intellectual property object created upon state contract (order) for state needs belong to the Republic of Tajikistan if other is not provided by state contract (order).

2. If property rights on the object of intellectual property created upon state contract (order) for state needs do not belong to Republic of Tajikistan in accordance with item 1 of the present Article, the holder of property right upon state requirement should provide with the right of the object of intellectual property usage free of charge for state needs.

3. In cases provided by the present Article the creator (author) of the result of creative activity who is not a holder of property rights possesses personal non property rights on the result and the right for fee paid by the holder of property right on the result. The amount, conditions and the order of fee payment are determined by the agreement between a creator (author) and holder of property rights if other is not stipulated by the law.

Article 1136. Implementation of intellectual property rights

1. Intellectual property rights are implemented at discretion of a holder. A holder of property rights of intellectual property as a condition of implementation of such rights may be charged to use corresponding object of intellectual property in cases provided by the law.

2. Rights of holders of other objects of intellectual property should not be violated when implementing intellectual property rights.

3. Property rights on objects of intellectual property can be implemented individually or on collective basis.

The law determines key requirements regarding property rights management based on collective basis.

Article 1137. Protection of intellectual property rights

Protection of intellectual property rights is implemented by the methods provided in Article 12 of the present Code by means of:

- paying compensation fixed in judicial order;
- seizure of materials and equipment with the help of which violation is implemented, and material objects created in the result of such violation;
- publication of violations in mass media;
- other means provided by the law.