



CHECKLIST OF ISSUES ON ENFORCEMENT¹

RESPONSES FROM KAZAKHSTAN

Civil and Administrative Procedures and Remedies

(a) *Civil judicial procedures and remedies*

1. Specify the courts which have jurisdiction over IPR infringement cases.

According to the legislation in force, civil and administrative courts have jurisdiction over IPR infringement cases. In addition, IPR infringement cases may be reviewed in an arbitration court.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

The IPR right holder, its authorized representative, governmental authorities within their competence, as well as non-governmental organizations that carry out activities in this field have standing to assert IPRs.

According to the Civil Procedure Code of the Republic of Kazakhstan (Article 57), citizens have the right to process their cases in court in person or via their representatives. Personal participation does not deprive the right holder of the right to have a representative in this case.

Cases initiated by juridical persons are processed by their heads, acting within their competences provided by the law, other regulations or founding documents, and (or) by their representatives. Heads of juridical persons shall submit to the court the documents proving their official position or authority.

Any competent person who has a duly executed authority to process the case in the court, based on the power of attorney, laws of the Republic of Kazakhstan, court decision or administrative act may serve as a representative in the court.

According to the current legislation, personal presence of the right holder in the court is not mandatory in the event of presence of his/her/its representative.

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?

According to Article 69 of the Civil Procedure Code of the Republic of Kazakhstan, the persons, participating in the case and having a reason to doubt that submission of evidence necessary for them will subsequently become impossible or difficult, can request the court to secure this evidence.

¹ Document [IP/C/5](#)

Securing evidence shall be provided by the court by questioning of witnesses, appointing and performing expertise, examining evidence in places where they are stored, sending letters of request and in other ways.

According to Article 70 of the Civil Procedure Code of the Republic of Kazakhstan, application for securing of the evidence is brought to the court where the case is being reviewed.

The application requesting securing evidence should indicate evidence to be secured, circumstances of the case for confirmation or refutation of which the evidence is required and reasons proving that the submission of the necessary evidence is difficult. The application should indicate the case for which the requested evidence is necessary to secure and the provision of which was refused.

Upon the results of consideration of the application on securing evidence, the court issues a ruling according to which it performs procedural actions to secure evidence or refuses to do so. The ruling can be appealed to the court of appeal, whose decision is final and cannot be challenged.

According to Article 770 of the Administrative Offences Code of the Republic of Kazakhstan, the parties that have a reason to doubt that provision of necessary evidences will be impossible or difficult, may ask a judge or state body (official) reviewing the case on administrative offences, to secure these evidences.

Securing of evidences is carried out by requesting organizations to provide documents, information, opinions, expertise and on-site inspection as well as by other means regardless of their participation in the case.

According to Article 771 of the Administrative Offences Code of the Republic of Kazakhstan, the application for securing evidence must specify: evidence which is necessary to provide; circumstances to be confirmed by this evidence; reasons to apply for securing evidence and the case which require this evidence.

Application shall be submitted in writing or in the form of electronic document certified by electronic digital signature, to the court or to the body (official), reviewing the case of an administrative offence.

4. What means exist to identify and protect confidential information brought forward as evidence?

According to paragraph 1 Article 19 of the Civil Procedure Code of the Republic of Kazakhstan, legal proceedings of civil cases in all courts are open. Judicial acts are announced in public.

At the same time, pursuant to paragraph 2 of this Article, examination and resolution of the cases, including announcement of decisions that contain state secrets, are held in a closed court session.

At the request of a person participating in the case, it can be considered and resolved in a closed court session if it is necessary to ensure secrecy of adoption, privacy, preservation of personal, family, commercial or other secret information protected by law or there are other circumstances that impede open proceedings.

According to Article 16 of the Code of the Administrative Offences of the Republic of Kazakhstan, privacy as well as personal, family, commercial and other secret information is protected by law. Everyone has the right to secrecy of personal deposits and savings, correspondence, telephone conversations, postal, telegraphic and other communications. Limitations of these rights in the course of administrative proceedings are allowed only in cases and manner expressly established by law.

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

According to Article 970 of the Civil Code of the Republic of Kazakhstan, protection of exclusive intellectual property rights is carried out by the means provided in Article 9:

recognition of rights; restoration of situation that existed before infringement of right; suppression of actions that infringe the right or create a threat of infringement thereof; judgment for specific performance of an obligation; recovery of damages; recognition of a transaction as invalid; compensation for moral damage; termination or modification of legal relations; recognition of an act of a government body as invalid; collection of fine from a state body or official preventing a citizen or legal entity from acquiring or exercising the right, as well as by other means provided in legislative acts.

Protection of exclusive rights may also be carried out by:

- 1) seizure of material objects, use of which infringe exclusive rights as well as material objects created as a result of such infringement;
- 2) publication about infringement, including information about right holders;
- 3) other means provided by legislative [acts](#).

Damages mean expenses that were made or had to be made by the person whose right was violated, loss or injury of his/her property (actual damage) and profit that this person could receive if his right was not violated (lost profit).

Moreover, in accordance with Article 111 of the Civil Procedure Code of the Republic of Kazakhstan, the court can order the infringer to compensate attorney's fees born by the winning party; however, the amount cannot exceed 10% of the amount of the claim.

According to Article 1032 of the Civil Code of the Republic of Kazakhstan, any person unlawfully using trademark shall be obliged to destroy goods and packaging bearing illegal trademark or confusingly similar designation, except original goods with trademark applied by the right holder himself/herself.

Similar liability is provided in Article 1037 of the Civil Code of the Republic of Kazakhstan in respect of appellation of origin.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?

Provisions with regard to authorities specified in question are not directly stipulated in legislation of the Republic of Kazakhstan. However, according to Article 73 of the Civil Procedure Code of the Republic of Kazakhstan, in cases when provision of evidence by the parties and other persons involved in the case is difficult, the court assists them in requesting of evidence.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

According to Article 22 of the Civil Procedure Code of the Republic of Kazakhstan, court decisions may be appealed by persons participating in the case, as well as persons with regard to rights and obligations of which these judicial acts were issued.

Pursuant to Article 227 of the Civil Procedure Code of the Republic of Kazakhstan, after recognition of application on unlawful actions (inactions) and decisions of state bodies as substantiated, local government bodies, public associations, organizations, officials and civil servants, the court issues a decision to satisfy the application. The court decision specifies the laws violated by these actions (inactions) and decisions, and the period during which the court decision must be enforced.

The court obliges state body, local government body, public association, organization, official and civil servant eliminate admitted violation and restore the rights, freedoms and legitimate interests of citizen or legal entity, terminate penalties applied to the person or otherwise restore violated rights, freedoms and legitimate interests to the fullest extent.

The court shall refuse to satisfy the application if during consideration it finds out that the disputed action (inaction) or decision is taken in accordance with legislation of the Republic of Kazakhstan.

According to Article 228 of the Civil Procedure Code of the Republic of Kazakhstan, after recognition of application on invalidation of the normative legal act as substantiated, the court issues a decision to satisfy the application. The court decision specifies the law and provisions that were violated and invalidate the legal act in full or in part from the moment of its adoption.

The court decision on invalidating of a legal act or information about this decision must be published in mass media at the expense of authority which issued this legal act. Publication must be carried out not later than ten days from the date of entry of the court decision into force.

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

According to Article 183 of the Civil Procedure Code of the Republic of Kazakhstan, the period for review of civil case by a first-instance court should correspond to its actual complexity and to the interests of the persons participating in the case.

Civil cases shall be reviewed and resolved by the court within the period of up to two months from the date of completion of the preparatory work of the case for the court trial.

According to Article 817 of the Administrative Offences Code of the Republic of Kazakhstan, the cases on administrative offences shall be reviewed within fifteen days from the date of receipt of a protocol on administrative offence and other case materials by judge, body (civil servant) legally competent to consider a case.

In case of receipt of request from participants of the proceeding on administrative offence or necessity of additional clarification of the circumstances of the case the duration of review of the case may be extended by judge or body (official) reviewing the case but not more than for one month. A reasoned ruling shall be issued explaining extension of the duration.

Pursuant to Article 108 of the Civil Procedure Code of the Republic of Kazakhstan, the following expenses are incidental to proceedings: amounts payable to witnesses, experts and specialists; expenses related to production of on-sight inspection; expenses related to storage of material evidence; expenses for search of a defendant and (or) a child; expenses for publication of announcements and notifications related to the case; expenses for notification and summons to the court of parties and other participants of the case; travel expenses of the parties and third parties and rent of housing, incurred in connection with attendance in the court; expenses for representatives' assistance; other expenses recognized as subject to reimbursement by the court, including those incurred by the parties in the procedures for compulsory pre-trial settlement of the dispute at subsequent court proceedings.

Pursuant to Article 109 of the Civil Procedure Code of the Republic of Kazakhstan, the Party, in favour of which the decision was made, is awarded by the court with all the legal expenses incurred in the case by the other party. If the claim is satisfied partially, the expenses are awarded to the plaintiff in proportion to the size of the claims satisfied by the court, and to the defendant - in proportion to that part of the claim in which the claimant was refused.

According to Article 764 of the Administrative Offences Code of the Republic of Kazakhstan, the costs related to the proceedings include reimbursement of expenses to the injured party, witness, expert, specialist, interpreter or attesting witness.

Injured party, witness, expert, specialist, interpreter and attesting witness are compensated for expenses incurred by them due to appearance in court, body (civil servant) the proceeding of which includes the case on administrative offence in the manner established by the [civil procedure legislation](#), including the cost of traveling of the mentioned persons from the place of residence or stay to the place of proceeding and return, and in cases when it is associated with staying at the other place – the cost of rent of a residential premise, as well as per diem.

The average salary of the person called upon to the court as injured party, witness, expert, specialist, interpreter and attesting witness shall be preserved for the time period of their absence due to appearance in court, body (civil servant) reviewing the administrative proceeding.

Work of an expert, specialist and interpreter shall be paid in the manner established by the [legislation](#).

(b) Administrative procedures and remedies

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

See the answers for each civil judicial procedures and remedies above.

Provisional Measures

(a) Judicial measures

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

Pursuant to Article 155 of Chapter 15 of the Civil Procedure Code of the Republic of Kazakhstan, upon application of persons participating in the case of arbitration or court proceedings, the court may take measures to secure the claim, if the failure to take such measures may make the court decision difficult or impossible to fulfil. According to Article 156, the measures to secure the claim can be the following: (i) seize the defendant's property; (ii) prohibit the defendant from taking certain actions; (iii) prohibit other persons from transferring property or performing certain actions in respect to the defendant; (iv) suspend the sale of property in cases where a claim was filed to cancel the seizure of property; (v) suspend a contested legal act issued by a State body, organization or an official; (vi) suspend a penalty imposed by an executive document contested by the debtor in court; (vii) suspend tenders for enforcement of the pledge out of court; (viii) suspend contested acts and actions of the executor related to the foreclosure of property performed in enforcement proceedings. If necessary, the court may take other measures to secure a claim that meet the purposes specified in part one of [Article 155](#) of present Code. The court may take several measures to secure the claim. In case of violation of the prohibitions specified in this article, the offender shall bear responsibility established by laws. In addition, the plaintiff has the right to demand the compensation of losses caused by failure to fulfil the ruling on securing the claim.

11. In what circumstances may such measures be ordered *inaudita altera parte*?

Pursuant to Article 157 of the Civil Procedure Code of the Republic of Kazakhstan, the application for securing the claim shall be reviewed and resolved by judge on the day of issuing the ruling on initiation of a civil case if it was attached to the statement of claim or indicated in the statement of

claim. In other cases, the application for securing the claim shall be resolved by the judge on the day of its submission to the court.

The application for securing the claim shall be reviewed and resolved by the judge without notifying the participants of the case or the parties to the arbitration and without holding a court session.

Based on results of examination of the application, the judge issues a ruling on securing the claim, indicating the provisional measure provided for in [Article 156](#) of the Code, or on refusing to satisfy the application.

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

Pursuant to Article 158 of the Civil Procedure Code of the Republic of Kazakhstan, the ruling on securing the claim shall be sent by the court or handed to the person who applied for provisional measures in order to be presented to the relevant persons for its immediate execution.

Articles 159 and 160 provide for possibility of replacing or cancelling the measure on securing a claim that can be carried out by court at the request of the participant of the case or parties to the arbitration.

In accordance with Article 161, it is also allowed to appeal or protest the rulings on matters of securing the claim in the court of appeal, the decision of which is final.

With the purpose of protecting the defendant's legitimate interests, the court, by allowing secure of claim according to Article 162, may require the plaintiff to provide collateral for the defendant's losses. Provision of collateral for possible losses shall be carried out by depositing an amount specified in the court's ruling to the authorized body.

After entry into legal force of the decision the claim for which is refused, defendant has the right to bring a claim for compensation of losses caused by provisional measures.

13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

According to Article 157 of the Civil Procedure Code of the Republic of Kazakhstan, the application for securing the claim shall be reviewed and resolved by the judge on the day of issuing the ruling on initiation of a civil case if it was attached to the statement of claim or indicated in the statement of claim. In other cases, the application for securing the claim shall be resolved by the judge on the day of its submission to the court.

(b) Administrative measures

14. Reply to the above questions in relation to any administrative provisional measures.

As it was mentioned in reply to question 3 above, according to Article 770 of the Administrative Offences Code of the Republic of Kazakhstan, the parties that have a reason to doubt that provision of necessary evidences will be impossible or difficult, may ask a judge or state body (official) reviewing the case on administrative offences, to secure these evidences.

Securing of evidences is carried out by requesting organizations to provide documents, information, opinions, expertise and on-site inspection as well as by other means regardless of their participation in the case.

According to Article 771 of the Administrative Offences Code of the Republic of Kazakhstan, the application for securing evidence must specify: evidence which is necessary to provide; circumstances to be confirmed by this evidence; reasons to apply for securing evidence and the case which require this evidence.

Application shall be submitted in writing or in the form of electronic document certified by electronic digital signature, to the court or to the body (official), reviewing the case of an administrative offence.

Special Requirements Related to Border Measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

According to Chapter 53 of the Code of the Republic of Kazakhstan "On Customs Affairs", measures on suspension of customs release are allowed with respect to goods, violating the rights of trademarks, copyrights and related rights, as well as service marks and appellations of origin of goods.

Measures on protection of the rights in respect of objects of intellectual property are not applied by the customs bodies in respect of goods moved across the customs border of the Customs Union:

- 1) by physical persons for personal use, including those sent to their residential addresses by international mail;
- 2) in accordance with the customs procedure of customs transit;
- 3) for official or personal use by diplomatic missions, consular offices, or other official representatives of foreign governments, international organizations, and staff of these offices, institutions and organizations.

As the same time, these measures apply to imports of goods placed on the market in another country by or with the consent of the right holder and to goods destined for exportation.

16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?

Suspension of release of goods by customs authorities (Article 51)

Pursuant to Article 436 of the Customs Code of the Republic of Kazakhstan, the customs bodies take measures to protect the rights in respect of objects of intellectual property, included in the [customs registry](#) of intellectual property, and objects of intellectual property included in the [unified customs registry](#) of intellectual property of the Member-states of the Customs Union, and those which are not included in these customs registers.

According to Article 439 of the Customs Code of the Republic of Kazakhstan, the inclusion of objects of copyrights and related rights, trademarks, service marks and appellations of origin of goods (hereinafter - the intellectual property objects) into the [customs registry](#) of intellectual property is carried out by the authorized body in customs affairs at the request of the right holder.

The right holder or other person representing the interests of right holder, who has sufficient justification to believe that movement of the goods across the customs border of the Customs Union may violate their rights to the intellectual property, is entitled to submit an application using the form [approved](#) by the authorized body in customs affairs requesting the protection of their intellectual property rights to the authorized body in customs affairs.

Requirements for filing of application (Article 52)

According to paragraph 3 Article 439 of the Customs Code of the Republic of Kazakhstan, the application shall contain the following information:

- 1) application to protect their intellectual property rights;
- 2) information about the applicant;
- 3) information, inter alia in electronic form, in respect of the relevant objects of intellectual property, the period during which the right holder requires the assistance of the customs bodies to protect his or her rights, and description of goods containing the objects of intellectual property, with indications of the product HS code on six digit level in accordance with the unified [Commodity Nomenclature](#) for Foreign Economic Activity of the Customs Union, and detailed information about the goods from the right holder which enable the customs bodies to identify goods violating intellectual property rights;
- 4) obligation of the applicant on compensation of damages to the declarant and other persons, as well as the costs of customs bodies which may arise in connection with suspension of release of the goods containing objects of intellectual property, suspected to be the goods violating intellectual property rights - in cases, where these goods are proven as not violating intellectual property rights;
- 5) application shall be accompanied by documents (originals or notarized copies thereof) confirming the existence and ownership of the intellectual property right (certificate, license agreement, extract from the state register of trademarks of the Republic of Kazakhstan, certificate on the legal status of the trademark for international registration), power of attorney issued by the right holder to the person representing his/her interests and the insurance contract on liability of the applicant for causing harm to other persons.

A description of distinguishing features of the goods violating intellectual property rights shall be submitted along with the application.

If possible, samples of the goods containing the objects of intellectual property and goods violating intellectual property rights, including their electronic images, are also can be submitted.

Pledge or equivalent guarantee (Article 53)

According to paragraph 4 Article 439 of the Customs Code of the Republic of Kazakhstan, the application shall be accompanied with a range of documents including insurance contract protecting against civil liability of the applicant in cases of injury caused to third persons.

The insured amount should not be less than 1,000 times the monthly calculation index established for the appropriate financial year by the law on the national budget.

Requirements related to the duration of suspension (Article 55)

According to Article 440 of the Customs Code of the Republic of Kazakhstan, if, in the course of carrying out of customs operations involving the goods containing the objects of intellectual property included in the customs registry of intellectual property, and the unified customs registry of intellectual property of the member-states of the Customs Union, the customs bodies detect the evidence of violation of intellectual property rights then the release of such goods shall be suspended for a period of ten business days.

This period may be extended by the customs body upon request of the right holder or a person representing his or her interests but not more than for ten business days.

The decision on suspension of release of goods and extension of suspension of release of goods shall be made in writing by the head of the customs body or his (her) authorized representative.

Compensation for damage to the importer and the owner of the goods (Article 56)

According to Article 442, the right holder is liable for property damage caused as a result of suspension of goods to the declarant, owner and consignee of the goods containing the objects of intellectual property if there is no violation found with respect to the rights of the right holder.

Right for inspections and information (Article 57)

According to paragraph 2 of Article 440 of the Customs Code of the Republic of Kazakhstan, the customs body, not later than one business day following the day of the decision on suspension of goods containing the objects of intellectual property, shall notify the declarant, right holder or their representatives of such suspension as well as the reasons and the period of the suspension. The customs body also informs the declarant of the last name, name, patronymic (if available) and the location (address) of the right holder and (or) a person, representing his or her interests, as well as informs the right holder and (or) a person, representing his or her interests of the name, last name, first name, patronymic (if available) and place of location (address) of the declarant.

17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

Inclusion of objects of intellectual property into the [customs register](#), and in the [unified customs register](#) of intellectual property objects of the member-states of the Customs Union is free of charge.

As it was mentioned before, pursuant to Article 440 of the Customs Code of the Republic of Kazakhstan, if, in the course of carrying out of customs operations involving the goods containing the objects of intellectual property included in the customs registry of intellectual property, and the unified customs registry of intellectual property of the member-states of the Customs Union, the customs bodies detect evidence of violation of intellectual property rights, then the release of such goods shall be suspended for a period of ten business days.

This period may be extended by the customs body upon the request of the right holder or a person representing his or her interests, but not more than for ten business days.

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?

The customs authorities are entitled to act *ex officio* in accordance with Article 441 of the Customs Code of the Republic of Kazakhstan.

The customs bodies are entitled to suspend the release of goods containing the objects of intellectual property not included into the [customs registry](#) of intellectual property or the [unified customs registry](#) of intellectual property of the member-states of the Customs Union, when there is a sign that the goods moving across the customs border of the Customs Union are the goods violating intellectual property rights.

In exercising of its competence to protect the trademarks, service marks and appellations of origin of goods, the customs bodies may use the information obtained from the State Register of the [authorized state body](#) of the Republic of Kazakhstan in the field of intellectual property rights. The competence of the customs bodies on protection of copyright and related rights shall be implemented in collaboration with the [authorized state body](#) of the Republic of Kazakhstan in the field of intellectual property rights.

Once signs of a violation of intellectual property rights have been detected, the customs body shall suspend the goods containing objects of intellectual property pursuant to the procedure provided in Article 441 and immediately notify the right holder and declarant. Upon receipt of such notice, within the period prescribed in paragraph 4 of the Article indicated above, the right holder shall respond to the customs bodies in writing on the measures taken by him/her in respect of the declarant.

The decision on suspension of goods shall be cancelled and the goods shall be subject to immediate customs declaration and customs release in the manner specified by the Customs Code if, within the period specified in paragraph 4 of Article 441, the right holder:

did not submit to the customs body a written request to extend the period of suspension of release of goods to ten business days;
submit a written request for cancellation of the decision to suspend the release of goods.

If within the period specified in paragraph 4 Article 441, the customs bodies receive application from the right holder to extend suspension of the release of goods, the goods shall be suspended for up to ten business days from the date of the initial suspension of the release of the goods.

In case if within ten business days from the date of the initial suspension of the goods the right holder submits the documents specified in paragraph 6 Article 441, the period of suspension and the period of temporary storage of goods shall be extended until the entry into force of the court decision in respect of the claim.

If within ten business days from the date of initial suspension of the goods the right holder does not comply with provisions established by paragraph 6 Article 441, the customs body shall repeal the decision to suspend the release of the goods and shall carry out the customs declaration of goods according to the procedure specified by the Code. At the same time, the expenses of the declarant and the customs bodies related to suspension of goods for a period up to ten business days are assigned to the right holder.

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

Pursuant to Article 445 of the Customs Code of the Republic of Kazakhstan, customs bodies shall deliver goods that are found to be in violation of intellectual property rights and subject to be destroyed according to the court decision, to the authorized body of the Republic of Kazakhstan.

If the court orders the destruction of goods found to be in violation of intellectual property rights, the appropriate authorized state body of the Republic of Kazakhstan shall immediately take measures to destroy them in accordance with the laws of the Republic of Kazakhstan and the regulatory resolutions of the Government of the Republic of Kazakhstan.

Criminal Procedures

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.

According to Article 51 of the Criminal Procedure Code of the Republic of Kazakhstan, any criminal case in the Republic of Kazakhstan including the cases on violation of intellectual property are performed by: Supreme Court of the Republic of Kazakhstan; regional and equated courts, military courts; district and equated courts; specialized inter-district criminal courts, specialized inter-district military criminal courts, specialized inter-district juvenile courts, military courts of garrisons.

21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?

Criminal sanctions under the Criminal Code of the Republic of Kazakhstan are applied in relation to:

- (1) illegal use of objects of copyright and (or) related rights, as well as the acquisition, storage, transfer or production of pirated copies of objects of copyright and (or) related rights for the purpose of sale or appropriation of authorship or compulsion to co-authorship;

- the same actions, if they are committed in significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly;
 - the same actions, committed:
 - 1) by group of persons based on prior agreement;
 - 2) on a large scale or inflicted heavy damage;
 - 3) by person with the use of his or her official position.
 - the same actions, committed by criminal group.
- (2) disclosure without consent of author or applicant of the nature of invention, utility model, industrial design, selective achievement or integrated circuit layout before official publication of details about them, as well as appropriation of authorship or compulsion to co-authorship or illegal use of invention, utility model, industrial design, selective achievement or integrated circuit layout;
- the same actions, if they are committed in significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly;
 - the same actions, committed:
 - 1) by group of persons based on prior agreement;
 - 2) on a large scale or inflicted heavy damage;
 - 3) by person with the use of his or her official position.
 - the same actions, committed by criminal group.

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

Liability for initiating criminal proceedings shall be borne by state bodies and officials carrying out the functions of criminal prosecution, including the investigator, the head of the investigative authority, the investigative authority and the prosecutor.

Criminal cases indicated in paragraph 1 Article 198 and paragraph 2 Article 199 (cases of private-public prosecution) of the Criminal Code of the Republic of Kazakhstan are initiated only based on the complaint of the injured party.

Criminal cases indicated in paragraphs 2 and 3 Article 198 and paragraphs 2 and 3 of Article 199 of the Criminal Code of the Republic of Kazakhstan are considered as cases of public prosecution, for which criminal prosecution shall be carried out irrespective of the filing of an application by the injured party, since it has a socially dangerous character.

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

See response to the question 22.

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- **imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

According to Article 198 of the Criminal Code of the Republic of Kazakhstan, the sanctions for infringement of copyright and (or) related rights are as follows:

illegal use of objects of copyright and (or) related rights, as well as acquisition, storage, transfer or production of pirated copies of objects of copyright and (or) related rights with the purpose of sale or appropriation of authorship or compulsion to co-authorship – are punished by a fine in the amount of up to one hundred monthly calculation indices or correction works for the same amount, or community services for the term of up to one hundred twenty hours.

the same actions, if they are committed in significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other right holder, or committed repeatedly, - are punished by a fine in the amount of up to three hundred monthly calculation indices or correction works in the same amount, or community services for the term of up to two hundred forty hours, or arrest for the term of up to seventy five days.

the actions, indicated in second part of Article 198, committed by a group of persons based on prior agreement; on a large scale or inflicted a heavy damage; by a person with the use of his or her official position, - are subject to fine in the amount of up to five thousand monthly calculation indices or correction works in the same amount, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with deprivation of the right to occupy certain positions or to engage in a certain activity for the term of up to three years or without it.

the actions, indicated in second or third parts of the Article, committed by criminal group, - are punished by imprisonment for the term of three to six years.

Pursuant to Article 199 of the Criminal Code of the Republic of Kazakhstan, for infringement of rights to invention, utility model, industrial design, selective achievement or integrated circuit layout, the following types of sanctions are provided:

disclosure without the consent of author or applicant of the nature of invention, utility model, industrial design, selective achievement or integrated circuit layout before official publication of details about them, as well as appropriation of authorship or compulsion to co-authorship or illegal use of invention, utility model, industrial design, selective achievement or integrated circuit layout - are subject to fine in the amount of up to one hundred monthly calculation indices or correction works in the same amount, or community services for the term of up to one hundred twenty hours.

the same actions, if they are committed in a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other right holder, or committed repeatedly, - are punished by a fine in the amount of up to three hundred monthly calculation indices or correction works in the same amount, or community services for the term of up to two hundred forty hours, or arrest for the term of up to seventy five days.

the actions, provided by second part of Article 199, committed by a group of persons based on prior agreement; on a large scale or inflicted heavy damage; by a person with the use of his or her official position, - are punished by a fine in the amount of up to five thousand monthly calculation indices or correction works in the same amount, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with deprivation of the right to occupy certain positions or to engage in a certain activity for the term of up to three years or without it.

the actions, provided by second or third parts of this Article, committed by criminal group, - are punished by imprisonment for the term of three to six years.

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

The national legislation of Kazakhstan does not set limits for the consideration of the case in court, since the time limits for its review depend on the circumstances of each specific case.

Compensation of expenses, incurred by persons involved in criminal proceedings is regulated by Article 176 of the Criminal Procedure Code of the Republic of Kazakhstan. By way of criminal proceedings the expenses of the injured party, civil claimant, their legal representatives, lawyers providing legal assistance as a defence counsel or representative of the injured party (private prosecutor) on the appointment of the body, conducting the criminal proceedings, attesting witness, interpreter, specialist, expert, witness, potential jurors, called to court, but not selected for the jury, are compensated at the expense of budget funds.
