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Author's rights in Kazakhstan... They exist and they should be protected and used



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"...Writing in hot sweat is like plowing fields!

But we know yet zeal:

Gentle dancing flame over curls won't freeze,-

It's a breath of fresh inspiration breeze!"¹

I regard myself an author², and I highly respect creative workers. Creativity is multifaceted, it includes technical creativity of engineers, scientists and specialists working in different fields of knowledge, however in this article, and in general, I will focus on copyright. In particular, copyrights within the framework of the Law on Copyright and Related Rights. In other words, on the form of the work, not on its essence, as, for example, it is protected by patents for inventions, utility models, selection achievements and so on. If we focus for a moment on technical solutions, copyright is closest to such patentability criteria as *inventive step* for inventions and *originality* for industrial designs.

¹ Marina Tsvetayeva, 14 May 1918

² I won't take your time with my poems and articles on the physical chemistry of silicates, check out the publications on intellectual property and follow the link (<https://ru.bolotovip.com/publications/>) and particularly a book for children "How do they say it?" (<https://ru.bolotovip.com/company-news/publication/i-kak-zhe-oni-govoryat/>).

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This is about the rights of artists, writers, poets, programmers and others who create artistic and scientific works. It is about those who use the rights of creators, who protect these rights and profit from them. These are not necessarily different people at all, and an entrepreneur can be an artist, and a writer or programmer can be a talented entrepreneur and protector of their rights.

Realizing that in this small review we are only lawyers, we will not touch upon the issues of creative torment and the joy of creating works, but, hopefully, we will help you understand what you need to do in order not to “be left high and dry”.

First comes the idea, then this idea is implemented in its original or changed in the process of implementation.

By the way, ideas themselves are not protected and if you own an idea that you share with artists or programmers, you are not automatically a co-author of the work. The line between idea leader and co-author is blurred, but your creative contribution to the creation of the work must be clear and justified. This applies to the contributions of all co-authors who will eventually share the royalties and fame, so the relationship between them must be clear and formalized in the form of an agreement.

This agreement is also necessary for those who will acquire the rights to the created work - there will be no need to listen to the complaints of disagreeing co-authors, to participate in disputes, which will take, perhaps, not money, but nerves and time. Again, by the way, the agreement between the co-authors should provide for the possibility and rules of use of the collective work by each of the co-authors independently.

In order to be protected as an object of copyright, the work must be original, creative, and the object of copyright is protected regardless of its merits - both the picture of a famous artist and the picture of an amateur will be protected in exactly the same way. There are some features concerning the correlation between copyright and trademark rights; however this is, perhaps, a separate and deeper topic.

When a work has been created, it can be registered with the National Institute of Intellectual Property (NIIP). You may not do this, but a certificate of registration is useful to confirm that (i) what you have made is indeed a work of art, (ii) that it is the work and (iii) it was filed for registration with the NIIP on this very day, (iv) who is claimed that she or he is the author or authors of exactly this work.

In details, registration of the work with the NIIP is appropriate for the following reasons:

- The fact of registration confirms that the object indicated in the certificate is a work of science, literature and art and is protected as an object of copyright;
- The identity of the author of the work is specified, and this author (authors) is considered to be the author until the court establishes the contrary;

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- The date of creation of the work is established, and the date of receipt of the work by the authorized body is definitely evidence that, at least on that date, the work already existed;
- The copyright certificate is issued by a public authority and bears the official seal, which is accepted by the courts as proof of both the existence and ownership of copyright;
- The existence of a copyright certificate is also often required for appraisers to assess the value of copyright;
- The work itself is kept by the authorized body and, in case of a dispute, for example, the court may compare the disputed work with the copy submitted with the application for copyright registration for the work;
- If the property rights to a work of art or a computer program belong to a person other than the author, which is now not indicated in the certificate, it is necessary to have agreements (labor agreements, agreements on the transfer of rights and etc.) and acts of transfer of property rights confirming their ownership;
- When participating in tenders, it is no longer sufficient to have a certificate and, as indicated in the line above, other proofs of transfer of property rights are also required, but a certificate of their creation is very useful.

In almost all countries where such registration is provided for, the owner of registered copyright acquires additional means of legal protection, in particular, in the USA, the right to a punitive payment without the obligation to prove in court the amount of damage caused.

Finally, the certificate, the information in which is a confirmation of the existence and ownership of copyright and is certainly recognized by most of the publishing houses and other public and private organizations not only in Kazakhstan, but also abroad.

In Kazakhstan, as in most countries of the world, copyright arises from the author by virtue of the fact of creation of a work and does not require mandatory registration. Copyrights in works created by Kazakhstanis are protected in all countries that are parties to the Berne Convention (181 countries as of 2022), regardless of where the rights were registered or whether they were registered at all. Also, the copyright of citizens of other Berne Convention countries are protected in Kazakhstan on an equal basis with the copyright of Kazakhstanis.

A legal entity cannot be an author, but can be a right owner that is someone to whom the author has transferred his property (exclusive) rights to his work and who has the right to use the work at his discretion in any way in the framework of appropriate legislation.

It used to be possible to specify in the application for registration who owns the property rights, but now it is impossible to do so. The application is prepared and submitted by the authors (or their representative under the power of attorney) and all registration procedures concern only individuals. In cases where there is a dispute regarding authorship or dates of creation of a work, it is better to keep all intermediate results of labor (drafts, sketches, correspondence on them, written approvals of an art or other commission and etc.) in a separate folder and present them on demand to confirm your rights.

To confirm the transfer of property rights (non-property rights cannot be transferred) it is necessary to collect all documents evidencing the transfer of rights (agreements, acceptance certificates, proof of payment for the acquisition of rights from the authors). This is also a separate important folder, take it carefully, do not lose, and keep it during the life of the co-authors and another 70 years, starting from 1 January of the year following the year of death of the last of the co-authors. This is not a very pleasant and unhappy topic, but following the law, this is the period for which copyright protection extends.

Legislative recognition, consolidation and protection of copyright and related rights at the state and international level is intended, first of all, to stimulate interest in the creation of new and original objects - works of art, music, literature, science, as well as to encourage the creative self-expression of authors and performers, and in the pursuit of profit, violations of rights guaranteed by the state should be avoided. In a different form than in the case of patents, there is also a monopoly on the use of works, a monopoly that is recognized and supported by the state.

The author and/or copyright owner may use a copyright mark consisting of the Latin letter "C" in a circle, the name of the exclusive copyright owner and the year of the first publication of the work to notify them of their rights. They may, but are not obliged to do so, so before using a work, you should check whether someone else has rights to it and ask for permission to use it, otherwise there may be a dispute.

Sincere advice: authors and entrepreneurs, if a copyright dispute cannot be resolved amicably, please seek for help the lawyers. You will feel better, and the efficiency of dispute resolution is usually higher. Definitely you will have to pay to lawyers, and sometimes pay a lot. Therefore, it is better not to argue between themselves and to discuss and to decide in advance.

Create, generate, publish and use works of science and art, make the world a better place! We will try to help you preserve and protect your rights.