

LAW OF THE REPUBLIC OF AZERBAIJAN

On Enforcement of the Intellectual Property Rights and Fight Against Piracy

This Law shall regulate the relations with respect to ensuring the enforcement of rights of those, who are holders of intellectual property rights, protection of their interests, and preventing infringements, including illegal production and distribution of the copies of intellectual property objects.

Chapter I. General Provisions

Article 1. Main definitions

1.0. Main definitions used in this Law have the following meaning:

1.0.1. Intellectual property rights – are the rights to works, performances, phonograms, programs of broadcasting organizations, topologies of integrated circuit, databases, folklore expressions (traditional cultural expressions), inventions, utility models, industrial designs, trademarks and geographical indications

1.0.2.a holder of intellectual property rights (holder of right) – a physical person or legal entity, who holds intellectual property rights, also Azerbaijan Republic with regard to folklore models (traditional cultural expressions);

1.0.3. audiovisual work - cinematographic work that consists of a series of related images with or without accompanying sound, which is intended to be made visible (audible) as a moving image through use of relevant technical devices and is fixed in relevant tangible medium, or other works expressed in mediums similar to cinematographic products (telefilms, video films, diafilms, slide films, animation films and etc.);

1.0.4.a phonogram – is exceptional voice recording of performances or any other sounds on respective tangible medium;

1.0.5.a computer program – is a set of instructions (this term covers both operating system and applied program, expressed in a source or object codes) in the form of words, codes, schemes and etc. expressed in a way suitable for reading by a computer and that put it in action to achieve a certain goal or result;

1.0.6. database – is an objective form of presentation of works, data and other materials, compiled in systematic and methodical order and accessible through electronic and other means, on respective tangible medium;

1.0.7.a copy of audiovisual works, phonograms, videograms, computer programs, databases and books – is a copy of audiovisual works, phonograms, videograms, computer programs, databases and books on respective tangible medium made directly or indirectly;

1.0.8. dissemination of copies - putting into civil circulation of copies of audiovisual works, phonograms, videograms, computer programs, databases and books by means of their sale or in other way of transmission of property rights;

1.0.9.pirated product – is a copy of audiovisual works, phonograms, computer programs, databases and books manufactured (produced) and distributed without right holder’s consent (such copies manufactured (produced) in the country of origin are considered as pirated product also in the country of import (export)).

1.0.10. piracy – is preparation (production) and dissemination of pirated products;

1.0.11.counterfeit product – products including trademarks, geographical indications or goods illegally provided with marks indistinguishably similar to those;

1.0.12. international standard identification numbers (ISBN, ISSN, ISAN, ISRC, ISMN) – are unique digital codes that ensure identification of books, music notes, periodical publications, audiovisual works, audio and video records and etc.;

1.0.13.control mark - is a special sign for single use confirming the production of copies of audiovisual works, phonograms, videograms, computer programs, databases, books and etc. in compliance with copyright and related rights, entitling to disseminate those copies and possessing alpha-numeric code stuck on copies and being a holographic security means.

Article 2. Scope of the Law

2.1. The measures prescribed by present Law shall aim at ensuring the rights of holders to intellectual property and protecting their interests, and be applicable in case of breach of intellectual property rights in accordance with the appropriate legislation.

2.2 The issues in the field of Intellectual Property Law not considered by this law are regulated by the Constitution of Republic of Azerbaijan, Law on Copyrights and Related Rights, Law on Patent, Law on Trademarks and Geographical Indications, Law on the Protection of Database, Law on protection of topographies of integrated circuit, , Law on protection of the Azerbaijani Folklore Expressions, Laws of Azerbaijan Republic, other normative-legal acts and International agreements signed and ratified by the Republic of Azerbaijan.

2.3. This Law shall not deny the provisions on ensuring the rights prescribed by existing legislation in the area of intellectual property rights, the exceptions and restrictions.

2.4. From the moment when the present Law enters into force it shall apply to the copyright and other intellectual property right objects the term of protection of which is not expired in accordance with intellectual property legislation.

Chapter II. Civil, administrative procedures and remedies for infringement of intellectual property rights

Article 3. Procedures providing protection of civil law

Implementation of Intellectual property rights providing civil law protection shall be provided in accordance with the rules of Civil Procedural legislation of

Azerbaijan Republic, taking into account justice, simplicity, without irrational delays.

Article 4 Evidences

In the civil law cases related to the infringement of intellectual property rights the evidences shall be requested and provided in accordance with the rules established in the Civil Procedural Code Azerbaijan Republic.

Article 5. Right of information

5.1. When reviewing the case on infringement of intellectual property rights, the court shall be entitled to order the defendant to inform the right holder or his/her representative about third parties, directly or indirectly involved in the production, distribution of pirated copies and infringing goods or services, and of their channels of distribution upon the request of the tight holder or his/her representative.

5.2. Court may order the following information in the situation described in Article 5.1 of the present Law:

5.2.1.names and addresses of persons engaged in production, distribution, also in sale of pirated and counterfeited goods;

5.2.2. The quantity and prices of the prepared (produced), sent, received or ordered pirated or counterfeited goods.

Article 6. Reimbursement of Damages

6.1. Court shall have the authority to order the infringer, who knowingly or with reasonable grounds to know, engaged in infringing activity through illegal use of right holder's intellectual property, to pay the right holder damages.

6.2. The following shall be taken into account when setting the damages:

6.2.1income obtained or to be obtained by infringer as a result of illegal use of intellectual property of a person, whose rights were infringed;

6.2.2.costs incurred or to be incurred, including appropriate attorney's fees provided by the right holder for restoration of his/her infringed rights;

6.2.3.income (lost profit) to be obtained by the right holder, through legal exploitation of intellectual property, if his/her rights weren't infringed.

Article 7. Measures resulting from the judicial decision

Court shall have the right to issue a judgement on removal of the goods causing infringements from commercial network, also, on withdrawal, confiscation or demolition of the materials and equipment utilized in production of such goods from user. Third parties' interests shall be taken into consideration when reviewing such questions.

Article 8. Transparency of judicial decisions

8.1. The decisions of the courts shall be available in internet resources in accordance with the rules defined in the legislation

8.2. Court may issue a judgement on taking relevant steps with regard to dissemination of information on judicial decisions, partial or full publication thereof based on injured party's application and at the expense of the infringer.

8.3. For the purposes shown in Article 8.2 of the Present Law, Court shall have the authority to provide further transparency measures such as making available the information on the boards visible for everyone.

Article 9. Provisional remedies

9.1. Court shall have the authority to issue a decision on prompt and effective provisional measures to satisfy a claim in line with the present Law and the Civil Procedural Code of Republic of Azerbaijan.

9.2. Measures related to provisional remedy aims at the following:

9.2.1 to prevent the manufacturing (production) and distribution in different ways of pirated copies and counterfeit goods leading to infringement of any intellectual property rights;

9.2.2 to prevent the entry of pirated copies and counterfeit goods into the channels of commerce;

9.2.3 to preserve relevant evidence in regard to the alleged infringement of intellectual property rights.

9.3. The Court may apply provisional measures listed in the Civil Procedural Code of the Republic of Azerbaijan

9.4. If the delay with regard to the provisional measures decision may bring about damage that cannot be restored or there is a reasonable risk of destruction of the evidences, the Court may take decision about provisional measures without participation of defendant or other case participants, but under the condition of their immediate information about the decision.

9.5 Upon the request of the Court, the claimant shall have to provide, at request of the court, any reasonably available evidence proving that he/she is the right holder and that his/her rights are being infringed or that such infringement is imminent.

9.6 While executing provisional measures, the Court may request the applicant to leave the deposit or any other guarantee for the purpose to reimburse the damage of the defendant in case if the fact of infringement is not proved

9.7. The judicial authority that will execute the provisional measures may order the applicant to supply necessary information for identification of the relevant goods.

9.8. If within 20 days after submission of the civil law claim on intellectual property infringement the hearings on the merits of the cases has not started as a result of action (absence of action) of the applicant, the court may cancel the measures upon the request of the defendant but after listening to the participants of the case.

9.9. Where the provisional measures are revoked or where they lapse due to any act (omission) or carelessness by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, court may have the right to issue a decision to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation.

Article 10. Border measures

Protection of intellectual property rights, also the prevention of the import (export) of pirated copies or counterfeit goods at the customs border shall be governed by the Customs Code of the Republic of Azerbaijan

Article 11. Administrative and criminal procedures

Administrative and criminal procedures and hearings in relation to infringement of intellectual property rights, shall be carried out accordance with provisions of the Administrative Sanctions, Criminal, Criminal-Procedural and Administrative-Procedural Codes of the Republic of Azerbaijan.

Chapter III. Administrative measures against the production and distribution of pirated copies of the copyright and related rights object (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.)

Article 12. Identification numbers (codes)

12.1. Standard digital codes shall be used to provide legal protection of the objects of copyright and related rights. Such codes shall enable the identification of information on the source of production of copyright and related rights objects.

12.2. The relevant executive BODY shall arrange and implement appropriate works regarding the issuance of the international standard identification numbers (codes) such as ISBN, ISSN, ISAN, ISRC and etc.

12.3. Rules and amount of fees for issuing the international standard identification numbers shall be established by the relevant executive agency. These rules must also define the cases when obtaining of international standard identification code is voluntarily or mandatory.

12.4. The relevant executive agency dealing with the copyright issues shall control over the use of property rights of authors, performers and phonogram producers in digital rights, arrange their management on collective grounds in accordance with interests and aims of right holders, take appropriate measures, within its authority, when the rights are infringed, technical protection facilities providing restrictions on the use of rights are illegally disrupted, also the information on management of rights is destroyed or changed without a right holder's consent.

Article 13. Control marks

13.1. Copies of the objects of copyright and related rights (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.) shall be marked with control mark issued by the relevant executive agency for copyright issues.

13.2. Coverage of people having the right to acquire control marks, also a sample control mark and application to acquire it, date of issuance, place and method of marking with control marks, directions for use of control marks and grounds for refusal to issue them shall be specified by the relevant executive authority functioning in the area of copyright issues.

13.3. Control mark models and amount payable to acquire them shall be defined by the relevant executive authority.

13.4. Control mark shall be designed by or at the order of the relevant executive authority for copyright issues in accordance with legislation.

Article 14. Issuance of control marks and international standard identification numbers

14.1. The funds generated from the sale of control marks and issuance of the international standard identification numbers shall be transferred to the off-budget account of the relevant executive agency for copyright issues. These funds shall be utilized for the purposes of preparation and issuance of control marks, as well as for realization of measures concerning the issuance of the international standard identification numbers, and for enforcement of this Law.

14.2. The use of the funds generated from the sale of control marks and issuance of the international standard identification numbers transferred to the off-budget special treasury account of the relevant executive body and the rules of publishing report on the use of these funds is defined by the relevant executive body.

Article 15. Control over the dissemination of copies of the copyright and related rights objects (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.)

15.1. For the purpose of issuing control marks, primary examination and control over the distribution of the objects of copyright and related rights (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.) shall be provided by the relevant executive authority for copyright issues.

15.2. Copies of audiovisual works shall be marked with control marks upon fulfillment of appropriate procedures according to the Law of the Republic of Azerbaijan “On Cinematography”.

15.3. Distribution of copies of the objects of copyright and related rights (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.) not marked with control marks shall not be allowed.

15.4. The relevant executive agency for copyright issues shall maintain the State Register of the copies of the copyright and related rights objects (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.), establish and govern the national foundation thereof, also, record the agreements for distribution of such products (goods) between the right holders and the subjects of distribution network, publish the relevant information and take necessary measures, within its authority, to regulate the issues resulting from the provisions of the Chapter III of this Law.

15.5. Regulations for maintaining the State Register of the objects of copyright and related rights marked with control marks (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.), recording the agreements for their distribution and protecting the National Fund of these objects shall be established by the relevant executive authority.

15.46 The procedure of marking the copies of copyright and related rights objects (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.), imported to the country, with control marks shall be accomplished after the relevant customs formalities.

Article 16. Liability for illegal use of copies and control marks of copyright and related rights objects (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.)

16.1. Deliberate destruction, falsification, illegal production, utilization and sale of control marks provided for in this Law shall be prohibited.

16.2. Pirated copies of the copyright and related rights objects (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.) and control marks produced, utilized and sold through violation of provisions of present Law, including the materials, equipment used in the production and distribution of control marks, and other resources leading to infringement shall be confiscated in accordance with legislation.

16.3. Control over the prevention of production and distribution of copies of the copyright and related rights objects (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.) and control marks shall be carried out by the relevant executive authority for copyright issues and other competent institutions.

16.4. Illegal utilization of legal copies of the copyright and related rights objects (audiovisual works, phonograms, videograms, computer programs, databases, books and etc.), also, of control marks shall entail civil, administrative and criminal liability in accordance with the legislation of the Republic of Azerbaijan.

Chapter IV. Final provisions

Article 17. Entry into force of the Law

This Law shall enter into force after 90 days of its publication.

Ilham Aliyev
President of the Republic of Azerbaijan

Baku, "22 May" _____ 2012
No. 365-IVQ
