

Civil Code
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TABLE OF CONTENTS

		<i>Article</i>
Section V:	Intellectual Property	
Chapter 53:	General Provisions	
	Objects of Intellectual Property.....	1037
	Legal Protection of Intellectual Property Objects	1038
	Personal Economic and Non-Economic Rights to the Objects of Intellectual Property.....	1039
	Exclusive Rights to the Objects of Intellectual Property.....	1040
	Transfer of the Exclusive Rights to Another Person	1041
	Licensing Agreement	1042
	The Agreement on Creation and Use the Results of Intellectual Activity.....	1043
	The Exclusive Right and Property Right.....	1044
	Effective Term of the Exclusive Right to the Objects of Intellectual Property.....	1045
	Methods of Protection of the Exclusive Rights to the Objects of Intellectual Property.....	1046
Chapter 54:	Copyright	
	Works Protected by Copyright (Objects of Copyright) .	1047
	Types of Objects of Copyright	1048
	Parts of a Work, Derivative and Composite Works	1049
	Works and Similar Results of Activity Which are not Objects of Copyright.....	1050
	Rights to the Drafts of Official Documents, Symbols and Signs.....	1051
	The Author of a Work. Presumption of Authorship.	1052
	Co-Authorship.....	1053
	The Authors of Derivative and Composite Works	1054
	Rights of Persons Organizing Creation of Works	1055
	The Mark of Protection Copyright	1056
	Personal Non-Economic Rights of the Author	1057
	Right of Authorship	1058
	Right to the Name	1059
	Right to Inviolability of the Work.....	1060
	Right to Promulgation of a Work.....	1061
	Author's Right to Use a Work.....	1062
	Disposal of the Right to Use a Work.....	1063
	Limits of Copyrights	1064
	Reproduction of Alien Work for Personal Purposes	1065
	Free Public Performance of Works	1066
	Free Reproduction of Works for Judicial Purposes.....	1067
	Right to the Work Product	1068
	Validity of Copyright in the Territory of the Kyrgyz Republic	1069
	Commencement of Copyright Effectiveness.....	1070
	Term of Copyright Validity	1071
	Transfer of a Work to the Public Domain	1072
	Author's Contract.....	1073
	Conditions of the Author's Contract	1074
	Form of the Author's Contract	1075
	Responsibility Under the Author's Contract	1076
	Term of Validity of the Author's Licensing Contract ...	1077
	Liability for Illegal Use of a Work Without Contract ..	1078
	Legal Regulation of Authors' Relations.....	1079
Chapter 55:	Neighboring Rights	
	Object of Neighboring Rights	1080
	Subjects of Neighboring Rights	1081
	Mark of Protection of Neighboring Rights.....	1082
	Rights of a Performer.....	1083

	Rights of a Producer of a Phonogram	1084
	Rights of a Cable Broadcasting Organization	1085
	Rights of a Cable Broadcasting Organization	1086
	Responsibility for Non-Implementation or Inappropriate Implementation of the Contract on the Use of Neighboring Rights and Illegal Use of a Work Without the Contract.....	1087
Chapter 56:	Right to Industrial Property (Right to Invention, Utility Model, Industrial Design) Legal Protection of Invention, Utility Model and Industrial Design.....	1088
	Right to Use an Invention, Utility Model, Industrial Design	1089
	Disposal of the Right to a Patent.....	1090
	The Right of Authorship	1091
	Co-Authors of an Invention, Utility Model or Industrial Design	1092
	Work Inventions, Utility Models and Industrial Designs.....	1093
	Form of the Contract on Transfer of Right to a Protected Document.....	1094
	Form of Permission (License) to Use an Invention, Utility Model, Industrial Design	1095
	Responsibility for Violation of a Protected Document..	1096
Chapter 57:	Rights to New Varieties of Plants and New Animal Breeds Protection of Right to New Varieties of Plants and New Animal Breeds.....	1097
	Rights of the Author of a Breeding Achievement to Remuneration.....	1098
	Rights of the Patent Owner	1099
	Obligations of the Patent Owner	1100
Chapter 58:	Protection of Undisclosed Information from Illegal Use Right to Protection of Undisclosed Information.....	1101
	Responsibility for Illegal Use of Undisclosed Information	1102
	Transfer of the Right to Protection of Undisclosed Information from Illegal Use.....	1103
Chapter 59:	Means of Individualization of Participants of the Civil Turnover, Goods, Works and Services	
Paragraph 1:	Trade Name Right to a Trade Name	1104
	Use of the Trade Name of a Legal Entity in a Trademark.....	1105
	Effectiveness of the Right to a Trade Name.....	1106
	Alienation of the Right to a Trade Name	1107
Paragraph 2:	Trademark (Service Mark) Legal Protection of a Trademark.....	1108
	Right to Use the Trademark	1109
	Consequences of Non-Exploitation of a Trademark	1110
	Transfer of the Right to the Trademark.....	1111
	Form of the Agreement on Transfer of the Right to a Trademark.....	1112
	Responsibility for Violation of the Right to a Trademark.....	1113
Paragraph 3:	Appellations of Origin of Goods Legal Protection of Appellations of Origin of Goods ...	1114
	The Right to Use the Appellation of the Origin of Goods	1115
	Scope of the Legal Protection of Appellation of Origin of Goods.....	1116
	Responsibility for Unlawful Use of Appellation of Place of Origin of Goods.....	1117

SECTION V
INTELLECTUAL PROPERTY

Chapter 53
General Provisions

Objects of Intellectual Property

1037. Objects of intellectual property shall include:

- 1) results of intellectual activities:
 - works of science, literature and art;
 - performances, phonograms, programs of a broadcasting organization;
 - programs of computer software and databases;
 - integrated circuits topographies;
 - inventions, utility models, industrial designs;
 - breeding achievements;
 - undisclosed information, including secrets of production (know-how);
- 2) means of individualization of participants of the civil turnover, goods, works and services:
 - trade names;
 - trademarks (service marks);
 - appellations of places of origin of goods;
- (3) other results of intellectual activity and means of individualization of participants of civil turnover, goods, works and services in the cases stipulated by this Code or other laws.

Legal Protection of Intellectual Property Objects

1038. Legal protection of intellectual property objects arises due to the fact of their creation or as a result of rendering legal protection by an authorized state body in the cases and in the procedure stipulated by this Code and by other statutes.

*Personal Economic and Non-Economic Rights to the
Objects of Intellectual Property*

1039.—(1) Authors of the results of intellectual activity shall have personal non-economic and economic rights in respect of these results.

Personal non-economic rights shall belong to the author irrespective of his economic rights and shall be retained by him in the case when his economic rights to the results of intellectual activity are transferred to another person.

(2) Owners of the right to the means of individualization of participants of civil turnover, goods, works or services (hereinafter referred to as “individualization means”) shall have economic rights in respect of these means.

(3) The right of authorship (the right to be recognized as the author of intellectual activity result) shall be a personal non-economic right and may belong only to the person who created the result of intellectual activity.

The right of authorship shall be inalienable and non-transferable.

(4) If the result is created by joint creative labor of two or more persons, they shall be considered co-authors.

Exclusive Rights to the Objects of Intellectual Property

1040.—(1) The owner of economic rights to the result of intellectual activity or individualization means shall enjoy the exclusive right to make legal use of this object of intellectual property at his discretion in any form and way.

Use of intellectual property objects by other persons in respect of which the owner of the right enjoys the exclusive right, shall be permitted only upon the consent of the owner of the right.

(2) The owner of the exclusive right to the intellectual property object shall have the right to delegate the right to another person fully or partially, to authorize another person to use an intellectual property object and to enjoy the right to dispose it at his discretion provided it does not collide with the rules of this Code and other laws.

(3) Limitation of the exclusive rights, including the cases of doing it through rendering possibility to use intellectual property objects by other persons, recognition of these rights to be ineffective and their annulment (cancellation), shall be permitted in the cases, limits and procedure stipulated by this Code and other laws.

Limitation of the exclusive rights shall be permitted provided that such a limitation does not cause damage to the normal use of an intellectual property object and does not infringe the legitimate interests of the right owners.

Transfer of the Exclusive Rights to Another Person

1041.—(1) The economic rights belonging to an owner of the exclusive rights to an intellectual property object, if it is not stipulated otherwise by this Code or other laws, may be transferred by the owner of the right fully or partially to another person on the basis of a contract as well as transferred on inheritance or in the procedure of succession in the course of reorganization of a legal entity—right owner.

(2) The transfer of economic rights on a contractual basis or their transfer in the procedure of universal legal succession does not entail transfer or limitation of the right of authorship and other personal non-economic rights. The terms of the contract on transfer or limitation of such rights are void.

The exclusive rights that are being transferred according to the contract, shall be defined in it. The rights which are not specified in the contract as alienable shall be assumed to be not transferred because otherwise has not been proved.

The rules of licensing agreement shall be applied to a contract, which stipulates granting of the exclusive right within the term of its effectiveness, to another person for a limited period of time.

Licensing Agreement

1042.—(1) According to the licensing agreement the party which holds the exclusive right to the result of intellectual activity or means of individualization (licenser) shall grant to other party (licensee) permission for the use of a certain object of intellectual property.

The licensing agreement shall be assumed to be compensable.

(2) The licensing agreement may stipulate the following to be granted to a licensee:

— the right to use an object of intellectual property with the right of a licenser to use it and the right to grant the license to other persons (non exclusive license);

— the right to use an object of intellectual property with the right of a licenser to use it within the part not transferred to the licensee to other persons (exclusive license);

— other types of license allowed by the law.

Unless otherwise provided in the licensing agreement, the license shall be presumed to be (non exclusive).

(3) An agreement under which a licensee grants the right to use the object of intellectual property to another person is considered to be sub-license agreement. The licensee has the right to conclude a sub-license agreement in the cases stipulated by the licensing agreement.

Responsibility to the licenser for actions of a sub-licensee shall be carried by the licensee unless the licensing agreement stipulates otherwise.

The Agreement on Creation and Use the Results of Intellectual Activity

1043.—(1) According to the agreement on creation and use the results of intellectual activity the author may assume an obligation to create in the future a work, invention or other result of intellectual activity and grant to the client, who is not his employer, the exclusive rights to use this result.

Such an agreement must determine the nature of the result of intellectual activity which is subject to creation, as well as purposes or methods of its use.

(2) An agreement binding the author to grant to any person the exclusive rights to use any results of intellectual activity, which this author will create in the future shall be deemed void.

Conditions of the agreement on creation and use the results of intellectual property limiting the author to create the results of intellectual activity of certain type or in certain area in the future shall be deemed void.

The Exclusive Right and Property Right

1044. The exclusive right to the result of intellectual property or means of individualization shall exist irrespective of property right to the material object in which such result or means of individualization are expressed.

*Effective Term of the Exclusive Right to the
Objects of Intellectual Property*

1045.—(1) The exclusive right to the objects of intellectual activity shall be effective for the term established by this Code or other laws.

(2) Personal non economic rights in respect of objects of intellectual property shall be effective without time-limits.

(3) In the cases stipulated by the law, validity of the exclusive right to the objects of intellectual property may be terminated in the result of failure to use it within certain period.

*Methods of Protection of the Exclusive Rights to the
Objects of Intellectual Property*

1046.—(1) Protection of the exclusive rights to the objects of intellectual property is implemented by the methods stipulated in Article 11 of this Code. Protection of the exclusive rights may be implemented by the following methods:

— withdrawal of material objects with the help of which the exclusive rights are violated and material objects created in the result of such violation;

— obligatory publication on the violation committed, with the inclusion of the information as to who owns the violated right;

— other methods stipulated by the law.

(2) In the case of violation the agreement on creation and use the results of intellectual activity and means of individualization, general rules on the responsibility for violation of obligations shall be applied.

**Chapter 54
Copyright**

Works Protected by Copyright (Objects of Copyright)

1047.—(1) The copyright shall extend to the works of science, literature and art which are the result of creative activity, irrespective of the purpose, the merit and the manner of expression thereof.

(2) The work must be expressed in verbal, written or other objective form allowing the possibility of its perception.

The work in the written or otherwise expressed in a material carrier (manuscript, typewritten, musical score, recording with the help of technical means, including audio or video recording, fixation of the imprint in three dimensional or optical form, etc.) shall be deemed to have an objective form irrespective of its availability to the third persons.

Verbal and other work not expressed in a material carrier shall be deemed to have an objective form if it became available for perception by third persons (public recitation, public performance, etc.).

(3) The copyright shall extend both to promulgated and non-promulgated works.

(4) The copyright shall not extend to ideas, procedures, methods, concepts, principles, systems, proposed solutions, discoveries of objectively existing phenomena.

(5) No registration of work or observation of any other formalities shall be required for a copyright to emerge.

Types of Objects of Copyright

1048. The following shall be referred to the objects of copyright:

- literary works (literary-artistic, scientific, educational, publicistic and etc.);
- dramatic and scenario works;
- musical works with text and without it;
- music-dramatic works;
- choreographic works and pantomime;
- audiovisual works (cinema, television and video films, slide films and other cinema, television and video works), radio works;
- works of painting, sculpture, graphics, design and other works of fine arts;
- works of applied art and stage designs;
- works of architecture, urban planning, garden and park designs;
- photographic works and works obtained by way analogous to photography;
- geographical, geological and other maps, plans and sketches and other works related to geography, topography and other sciences;
- computer software programs of all types including applied programs and operational systems;
- other works complying with the requirements established in Article 1047 of this Code.

Parts of a Work, Derivative and Composite Works

1049.—(1) The objects of copyright shall be deemed parts of works, their designations and derivative works which meet the requirements established in Article 1047 of this Code.

The derivative works are works that present re-works of other works (translations, processing, annotations, abstracts, resumes, surveys, screen versions, arrangements and other similar works of science, literature and art);

Composite works shall include compilations (encyclopedias, anthologies) and other composite works that present the result of creative labor due to their set and arrangement.

(2) Derivative and composite works shall be protected by copyright irrespective of whether or not the works, on which they are based on or which they include, are the objects of copyright.

Works and Similar Results of Activity Which are not Objects of Copyright

1050. The following shall not be deemed to be objects of copyright:

- official documents (laws, resolutions, decisions, etc.), as well as official translations thereof;

- official symbols and signs (flags, emblems, armorial bearings, monetary signs, etc.);
- works of folklore;
- information on daily news or information on current events which are of the common press nature;
- results gained with the help of technical means for production of a work of a certain type, but without creative activity of a man directly intended to create an individual work.

Rights to the Drafts of Official Documents, Symbols and Signs

1051.—(1) The right of authorship to a draft of official document, symbol or mark shall belong to an individual who developed the draft (the developer).

Developers of the drafts of official documents, symbols or marks shall have the right to publish such drafts if this is not prohibited by the body on whose order the draft was developed. Developers have the right to specify their names when publishing the draft.

(2) A draft may be used by a competent body to prepare an official document without developer's consent if the draft was published by him and sent to a relevant body.

In the course of preparation the official documents, symbols and marks on the basis of a draft, amendments and addenda may be introduced into it at the discretion of the body who prepares the official document, symbol or mark.

After the draft is approved by a competent body, it may be used without indication the name of developer.

*The Author of a Work
Presumption of Authorship*

1052.—(1) A citizen by whose creative labor the work is produced, shall be recognized as an author of the work.

A person, whose name is specified as an author's name at the first publication of a work, shall be considered its author unless otherwise is proved.

(2) Where a published work is anonymous or pseudonymous (except for the cases when the author's pseudonym leaves no doubt in his identity) the publisher, whose name is indicated on the work, unless proved otherwise, shall be considered the author's representative and have the right to defend and enforce the author's rights. This provision shall remain in force until the author of such a work discloses his identity and claims his authorship.

Co-Authorship

1053.—(1) The copyright to the work, created by joint creative labor of two or more citizens, shall belong to co-authors mutually, irrespective of whether such a work constitutes an indivisible whole or consists of the parts each of which also has an independent standing.

Part of a work shall be recognized as having its independent standing if it can be used independently from other parts of this work.

Each of the co-authors shall have the right to use part of the work created by him and having its independent standing at his discretion, unless otherwise is stipulated by the agreement between them.

(2) As a rule the relations between the co-authors are determined on the basis of the agreement. If there is not such an agreement, the copyright to the work shall be exercised by all the authors jointly and the remuneration shall be distributed among them equally.

If the work of co-authors forms an indivisible whole, none of the co-authors shall be entitled to prohibit the exploitation of the work without valid reasons.

The Authors of Derivative and Composite Works

1054.—(1) The authors of derivative and composite works shall be considered the persons who processed other works, translators, compilers of collections and other composite works that present the result of creative labor due to the set or arrangement.

The author of a derivative and composite work shall enjoy the copyright to such a work provided that he observes with the rights of the author of the work which was subject to processing, translation or incorporation into a composite work.

(2) The copyright of creators of derivative and composite works shall not prevent other persons from creating their own derivative works on the basis of the works used previously.

Rights of Persons Organizing Creation of Works

1055.—(1) Persons who organize creation of works (encyclopedia publishers, film makers, producers, etc.) shall not be recognized as authors of the appropriate works.

However, in the cases stipulated by this Code or other laws, such persons shall acquire the exclusive rights to use these works.

(2) Publishers of encyclopedia, encyclopedic dictionaries, periodical and continuous collections of scientific works, newspapers, magazines and other periodicals shall enjoy the exclusive right to use these publications. The publisher has the right to specify his name or require such specification at any use of such publication.

(3) The authors of the works included into such publications shall retain the exclusive right to use their own works irrespective of the publication in whole, unless otherwise is stipulated by the agreement to create the work.

(4) Conclusion of the agreement to create an audio-visual work, including a movie, does not entail transfer of the exclusive right from the author of the work to the producer to reproduction, distribution, public performance, cable communication for public information, broadcasting or any other public use of the product, subtitling or dubbing of the text of the movie, unless otherwise is stipulated by the agreement. The rights mentioned shall be in force for the term of validity of a copyright to an audio-visual work.

Producer of an audio-visual work shall have the right to specify its (his) name or demand such a specification at any use of this work.

At a public display (show) of an audio-visual work the author of a musical work (either with text or without it) shall retain the right to remuneration for public performance of his musical work, unless the agreement provides otherwise.

Destruction of the final version of the movie (original, negative) without consent of the author and other holders of economic rights to a movie shall be prohibited.

The Mark of Protection Copyright

1056.—(1) In order to inform about his rights, the owner of the exclusive copyright may use a copyright protection mark on each copy of the work. The mark consists of three elements:

- the Latin letter “C” in a circle;
- the name of the holder of the exclusive copyright;
- the year of the first publication of the work.

(2) A person specified on the copyright protection mark shall be deemed to be the right holder, unless proved otherwise.

Personal Non-Economic Rights of the Author

1057.—(1) The author of a work shall have the following personal non-economic rights:

- right of authorship;
- right to the name;
- right to promulgation including the right to revoke;
- right to work inviolability;

(2) The agreement of the author with somebody and application of the author on revocation of personal non-economic rights shall be void.

Right of Authorship

1058. The right of authorship to created work that belongs to an author (co-authors) shall exclude acknowledgment of authorship of other persons to the same work.

Right to the Name

1059. The author shall have the exclusive right to use or authorize the use of the work under his name, pseudonym or anonymously (right to the name).

Right to Inviolability of the Work

1060.—(1) The author shall have the exclusive right to introduce amendments and addenda to his work and to protect his work from the introduction of amendments and addenda by somebody without consent of the author (right to inviolability of the work).

In publishing, public performance or other use of a work any amendments may be introduced to the work itself as well as its name and the author’s name only with the consent of the author.

It shall be prohibited to include illustrations, prefaces, epilogues, comments and any other explanations in the work without the consent of the author.

(2) After the death of an author the inviolability of the work shall be provided by the person indicated in the will and in the absence of such indications—by the heirs of the author as well as the persons responsible for protection of copyright in accordance with the Law.

Right to Promulgation of a Work

1061.—(1) The author shall have the right to open an access to the work for an indefinite group of people (right to publication).

(2) The work shall be deemed promulgated when the access to the work for an indefinite group of people is opened for the first time by the author or under his consent by means of publication, public performance, public demonstration of the work or its issuance otherwise.

The author shall have the right to refuse from the previously made decision on promulgation of the work (right to revoke) under condition that the losses, including lost profits caused to the persons entitled to use the work, are covered. If the work was promulgated the author must publicly inform about its revocation. He shall have the right to withdraw from circulation the earlier produced copies of the work at his own expense. These provisions shall also apply to the work products unless the agreement with the author stipulates otherwise.

Author's Right to Use a Work

1062.—(1) An author shall have the exclusive rights to use the work in any form and way.

(2) The use of a work shall be considered its reproduction and distribution, as well as its sale in other ways, that, in particular shall include:

- public demonstration (exhibition, display) of the work;
- renting of a copy which is the material carrier of the work;
- public performance of the work;
- transmission of the work to air (broadcast by radio or TV) including transmission via cable or satellite;
- technical record of the work;
- reproduction of technical record of the work including by radio or television;
- translation or re-doing of the work for its further use;
- practical implementation of urban planning, architectural and design project.

Reproduction shall be considered repeated creation of an objective form of the work at least the one it had in the original form (publication of the work, copying of audio or video records etc.).

The distribution of the work shall include the sale, exchange, rent and other operations with copies of the work.

(3) When the copies of the work are alienated legally, their further distribution shall be allowed without consent of the author and without payment of author's remuneration, except for the cases stipulated by the Law.

(4) The work shall be deemed used irrespective of whether it is used in order to get income (profit) or it is not the purpose of the use.

(5) The practical application of principles composing the content of a work (invention, technical, economic, organizational and other similar solutions) shall not be deemed as the use of a work in terms of copyright.

Disposal of the Right to Use a Work

1063.—(1) The author or other owner of the right may transfer all the rights to use the work to another person in accordance with the agreement, including the one concluded at public auctions (alienation of the right to use).

(2) The right to use the work shall be transferred in accordance with the procedure of universal legal succession.

(3) The right-holder may grant the permission (license) to another person to use the work within certain limits. The permission is required to use the work both in the original and revised version, in particular—in the form of translation, arrangement, etc.

(4) Every method of use of the work requires special permission of the right holder.

Limits of Copyrights

1064. The exclusive rights of the author and other persons to use the work shall be allowed only in the cases stipulated by Articles 1065-1068 of this Code or other Laws.

The indicated restrictions shall be applied under condition that it neither damages the normal use of the work nor unreasonably infringes the legal interests of the author.

Reproduction of Alien Work for Personal Purposes

1065.—(1) The alien work which was publicly released shall be allowed to use for personal purposes without consent of the author and without payment of author's remuneration provided that the normal use of the work is not damaged and the legal interests of the author are not infringed.

(2) The rules of the first paragraph of this Article shall not apply in relation to:

- the use of architectural works in the form of buildings and similar structures;
- the use of data bases or their significant parts;
- the use of computer software, except for the cases stipulated by the Law;
- reproduction of books (as a whole) and musical scores;

(3) In the first paragraph of this Article the Law shall have an exception to stipulate that if an audiovisual work or work fixed on a phonogram is used for personal purposes, the author, performer and producer of the record shall be entitled to the commensurate remuneration.

The remuneration for reproduction shall be paid in the form of deductions (interests) by the producers and importers of equipment (audio electronics, video-tape recorders, etc.) and material carriers (audio and (or) video tapes, cassettes, laser disks, compact disks, etc.) which are used for such reproduction.

Free Public Performance of Works

1066. Public performance of the legally published musical compositions during the official religious and funeral ceremonies shall be allowed without consent of the author and without payment of author's remuneration in the volume justified by the nature of such ceremonies.

Free Reproduction of Works for Judicial Purposes

1067. The reproduction of works for the purposes of judicial and administrative work in the volume justified by the purpose of use shall be allowed without consent of the author and without the payment of author's remuneration.

Right to the Work Product

1068.—(1) Personal non-economic rights to the work created in the course of execution of service assignment (work product) shall belong to the author of the work.

(2) The right to use the work product in the way set by the purpose of the assignment and limits preconditioned by it, shall belong to the person on whose assignment the work has been created and with whom the author has labor relations (employer) unless the agreement between him and the author stipulates otherwise. The employer shall be entitled to transfer this right of use to another person.

The agreement of the employer with the author may stipulate payment of remuneration to the author for the use of the work product and contain other conditions of its use.

(3) After ten years from the date of submission of the work and with the consent of the employer—earlier, the author shall obtain the full right to use the work and receive author's remuneration, irrespective of the agreement concluded with the employer.

(4) The author's right to use a work product in a way not conditioned by the purpose of the assignment, shall not be limited.

Validity of Copyright in the Territory of the Kyrgyz Republic

1069.—(1) The copyright to the work promulgated in the territory of the Kyrgyz Republic or non-promulgated but the original copy of which in any form is located in the territory of the Republic, shall be valid in the territory of the Kyrgyz Republic. In this case the copyright shall belong to the author and his heirs as well as other legal successors of the author irrespective of their citizenship.

(2) The copyright shall also belong to the citizens of the Kyrgyz Republic whose works are promulgated or exist in some objective form in the territory of a foreign state, as well as to their heirs and other legal successors.

(3) When the author is protected legally in accordance with the international agreements the fact of promulgation in the territory of a foreign state shall be determined in accordance with the provisions of the appropriate international agreement.

In order to protect the work in the territory of the Kyrgyz Republic the person who is recognized as the author of the work shall be determined in accordance with the Laws of the state where the work commenced being protected for the first time.

Commencement of Copyright Effectiveness

1070.—(1) The copyright to the work shall be in force from the date of shaping it into an objective form simple for perception by the third parties irrespective of promulgation. The copyright to the oral work shall be in force from the moment of its communication to the third persons.

(2) Where the work does not come under Article 1069 of this Code the copyright to such a work shall be protected from the moment of promulgation of the work provided that it carried out in the Kyrgyz Republic.

Term of Copyright Validity

1071.—(1) The copyright shall be valid during the whole life of the author and fifty years after his death, beginning from the first of January of the year following the year of the author's death.

(2) The copyright to the work created in co-authorship shall be valid during the whole life of the co-authors and fifty years after the death of the last of co-author who outlived other co-authors.

(3) The copyright to the work issued for the first time under pseudonym or anonymously shall be valid during fifty years, beginning from January 1 of the year following the year when the work was issued.

Where the pseudonym or an anonymous author is disclosed, the terms indicated in the first paragraph of this Article shall be applied.

(4) During the period indicated in the first paragraph of this Article the copyright shall belong to the author's heirs and be inherited. During the same terms the copyright shall belong to the legal successors who obtained this right on the basis of the contract with the author, his heirs and future legal successors.

(5) The copyright to the work issued for the first time during fifty years after the author's death shall be valid during fifty years after its issue, beginning from January 1 of the year following the year when the work was issued.

(6) The authorship, name of the author and inviolability of the work shall be protected without fixed limits.

Transfer of a Work to the Public Domain

1072.—(1) Upon expiration of copyright validity term for the work, it shall become public domain.

The works which have never been protected in the territory of the Kyrgyz Republic shall be deemed to be public domain.

(2) The works which belong to public domain may be used freely by any person without payment of the author's remuneration. The right of authorship, right to the name and the right to inviolability of the work shall be observed.

Author's Contract

1073.—(1) The author or his heirs may transfer the right to use his work to another person by the way of conclusion of the author's contract. The author's contract shall be for pay.

(2) The author's contract may be concluded for a prepared work or for the work which will be created by the author under his obligation (order contract). The author's contract shall also be the contract permitting the use of the work within certain limits, which is concluded by the author or his heirs (author's licensing contract).

Conditions of the Author's Contract

1074.—(1) The author's contract must stipulate:

— methods of use of the work (specific rights transferred in accordance with this contract);

— term and territory for which the right is transferred;

— the amount of remuneration and (or) procedure for determination the amount of remuneration for every method of use of the work, procedure and terms of payment.

If the author's contract does not stipulate conditions on the term for which the right to use the work is transferred, the contract may be canceled by the author in five years from the date of its conclusion provided that the user is informed about it in writing, six month before the cancellation of the contract.

If the author's contract does not stipulate the conditions about the territory on which the right to use the work is valid, the validity of the right transferred in accordance with the contract shall be limited by the territory of the Kyrgyz Republic.

(2) The subject of the author's contract can not include the rights to use the work which are unknown at the moment of conclusion the contract.

(3) The amount of remuneration for the use of the work shall be specified in the author's contract under the agreement of the parties.

Where the author's contract on publication or other reproduction of performance of the work sets the fixed amount of the remuneration, the contract shall stipulate the maximum number of copies of the work.

The waiver of the author and his heirs from the right to remuneration is void.

(4) The rights transferred under the author's contract can be transferred by any party of the contract fully or partially to other persons only if it is directly stipulated by such a contract.

Form of the Author's Contract

1075. The author's contract shall be concluded in the written form except the cases stipulated by the Law.

Responsibility Under the Author's Contract

1076. The party which did not fulfill or improperly fulfilled the liabilities under the author's contract must cover the losses caused to the other party including lost profit.

Term of Validity of the Author's Licensing Contract

1077.—(1) The author's licensing contract shall be valid during the period stipulated by it, but not longer than the term of the copyright validity.

(2) Irrespective of whether the term of validity is included in the author's licensing contract or not, the author of the work and his heirs shall be entitled to cancel the contract unilaterally in ten years after the date of the conclusion of the contract, informing his contract agent about it in writing, six months prior to the cancellation of the contract. The author and his heirs shall have this right every ten years.

(3) The contract can stipulate the terms of use of the work, the violation of which results in the right of the legal successor to cancel the contract.

Liability for Illegal Use of a Work Without Contract

1078. In the event the work is used without a contract concluded with the owner of the right, the violator is obliged to indemnify the losses caused to the right owner, including lost profit. The right owner shall be entitled to disgorge from the violator the revenues obtained in the result of the violation instead of the losses.

The use of the work in a way which is not stipulated by the author's contract or after expiration of validity of such a contract shall be considered the use of the work without a contract.

Legal Regulation of Authors' Relations

1079. The authors' relations shall be regulated by this Code and other legislation.

Chapter 55 Neighboring Rights

Object of Neighboring Rights

1080. Neighboring rights shall extend to staging, performance, phonograms, programs of broadcasting and cable organizations.

Subjects of Neighboring Rights

1081.—(1) The right to performance shall belong to actors-performers, director-stagers, conductors. The right to use such a performance may be transferred to heirs and other legal successors.

(2) The right to record a performance shall belong to the person who created such a record or to his/her legal successors.

(3) The right to transmission shall belong to the broadcasting or cable organization that created a program or to its legal successors.

Mark of Protection of Neighboring Rights

1082. The producer of a phonogram and the performer may, in order to inform about his rights, use the mark of protection neighboring rights which is placed on each copy of a phonogram and (or) on each sleeve and consists of three elements:

- a circled Latin letter "P";
- name of the owner of the exclusive neighboring rights;
- year of the first publication of the recording.

Rights of a Performer

1083.—(1) The performer has the right for:

- indication of his/her name during performance, on copies of the record of performance or staging, in the course of broadcast or reproduction of the performance or staging;

- protection of the performance or staging against distortion;

- provision or permission to use the performance or staging;

(2) The right to use the performance or staging includes the right to allow:

- broadcast or cable transmission of the performance or staging;

- record of the performance or staging with the help of technical devices;

- broadcast and public reproduction of the produced record of a performance or staging;

- copying and distribution of the copies of a record of a performance and staging.

(3) Performers shall exercise their rights with the observation of the rights of authors of the works performed.

(4) Restrictions of the right to use or stage the performance shall be established by the law.

(5) The provisions of Article 1068 shall accordingly apply to the right to performance made in the course of execution of the work related assignment (work performance or staging).

Rights of a Producer of a Phonogram

1084.—(1) Producer of a phonogram and his legal successor shall have the exclusive right to this phonogram.

Exploitation of such a phonogram by other persons is allowed only upon the permission of the producer of a phonogram or his legal successor.

(2) Producer of a phonogram or his legal successor shall have the right to perform or to authorize the following:

- public reproduction of the phonogram;

- adaptation or any other transformation of the phonogram;

- distribution of copies of the phonogram (sale, rental etc.), including their transfer abroad;

- import copies of the phonogram.

(3) If the property right to the copy of the record of performance belongs not to its creator, the exclusive right to use the record, including its commercial rental belongs to the person who created the record.

(4) Restrictions of the rights of the producer of performance shall be established by the law.

(5) Holders of the right to the phonogram shall exercise their rights taking into account the rights of authors of the work and rights of the performers.

Rights of a Cable Broadcasting Organization

1085.—(1) Broadcasting company shall have the exclusive right to exploit its program in any form and give permission to third persons to use such a program.

Exploitation of the program by the third persons shall be done on the basis of a contract. The right-holder shall be entitled to remuneration for each type of use.

(2) Restrictions of the rights of a broadcasting company shall be established by the law.

(3) The broadcasting company shall implement its rights taking into account the rights of authors of works and rights of performers, and in certain cases - holders of the rights to the record of performance and other broadcasting companies.

Rights of a Cable Broadcasting Organization

1086. Rights of the cable broadcasting organization shall be established as applicable to the rights of a broadcasting organization established by this Code and the law.

*Responsibility for Non-Implementation or
Inappropriate Implementation of the Contract on the Use of
Neighboring Rights and Illegal Use of a Work Without the Contract*

1087. A person who failed to implement or who inappropriately implemented the contract on use of neighboring rights or used the work illegally without the contract, shall bear the responsibility in accordance with general rules on responsibilities for failure to implement or inappropriate implementation of the contract, or accordingly to responsibility for the damage caused.

Chapter 56
Right to Industrial Property
(Right to Invention, Utility Model, Industrial Design)

Legal Protection of Invention, Utility Model and Industrial Design

1088.—(1) The right to an invention and industrial design is protected under condition that a preliminary patent, patent and certificate for utility model is granted

(2) Requirements claimed to the invention, utility model, industrial design, under which the right to get preliminary patent, patent, certificate for utility model (hereinafter referred to as protected document), the procedure of their issuance by the patent agency shall be established by the law.

Right to Use an Invention, Utility Model, Industrial Design

1089.—(1) A patent owner shall have the exclusive right to use an invention, utility model, industrial design protected by a protected document, at his discretion; including the right to produce the good with application of protected decisions, apply technological processes protected by the patent in his own production, sell or offer for sale goods that contain protected decisions and import relevant goods.

Persons, other than the patent owner, shall not be entitled to use the invention, utility model, industrial design without his permission, except for the cases when such a use is not considered violation of the rights of the patent owner according to the present Code and other laws.

(2) Unauthorized manufacture, application, import, offer for sale, sale and any other introduction into the economic turnover or storage for that purpose of the good that contain patented invention, utility model or industrial design, as well as application of the method protected by a preliminary patent, patent for an invention or introduction to the economic turnover or storage for this purpose of the goods manufactured directly by the method protected by a preliminary patent, patent for an invention, device in the functioning or exploitation of which the method, pursuant to its purpose, is automatically realized shall be recognized as the violation of the exclusive right of the patent owner.

The good is considered to be manufacture by a patented method unless proved otherwise.

Disposal of the Right to a Patent

1090. The right to obtain a patent, the rights coming from registration of the application, the right to own the patent and rights coming from the patent may be transferred entirely or partially to the other person.

The Right of Authorship

1091.—(1) The author of invention, utility model or industrial design shall have the right to authorship and the right to give a special name to an invention, utility model or industrial design.

The right of authorship and other personal rights to an invention, utility model or industrial design shall arise from the moment of appearance of the rights based on the patent.

(2) The author of the invention, utility model or industrial design may have special rights, privileges and advantages of social nature according to the law.

(3) A person indicated in the application as the author shall be deemed the author unless otherwise is proved. Only the facts and the circumstances existing before the right's appearance may be used as proofs.

Co-Authors of an Invention, Utility Model or Industrial Design

1092. Relations of co-authors of an invention, utility model or industrial design shall be established by the agreement between them.

Uncreative assistance to creation of an invention, utility model or industrial design (technical, organizational or mathematics assistance, assistance in registration of rights, etc.) does not entail co-authorship.

Work Inventions, Utility Models and Industrial Designs

1093.—(1) The right to obtain protected document for an invention, utility model, industrial design created by an employee during execution of his service duties or a concrete task of the employer (work invention) shall belong to the employer provided that it is stipulated by the contract between them.

(2) The amount, conditions and procedure of payment of remuneration to the author for work invention, utility model or industrial design shall be established by the agreement between him and the employer. In case of failure to reach the agreement, the decision shall be made by court. Where it is impossible to measure contribution of the author and the employer to the creation of work invention, utility model or industrial design, the author shall have the right to the half of profit gained or to be gained by the employer.

Form of the Contract on Transfer of Right to a Protected Document

1094. The contract on transfer of the right to protected document (concession of protected document) should be concluded in written form and be registered in the patent agency. Failure to comply with the written form or requirements of registration entails illegality of the contract.

*Form of Permission (License) to Use an Invention,
Utility Model, Industrial Design*

1095. The licensing agreement and sub-licensing contract shall be concluded in written form and be registered in the patent agency. Failure to comply with the written form or requirements on registration entails illegality of the contract.

Responsibility for Violation of a Protected Document

1096. On the basis of the request of the patent owner, violation of the protected document must be stopped, and the violator must compensate the patent owner all his losses. Instead of the losses the patent owner has the right to charge from the violator the income gained by him from the violation.

Chapter 57
Rights to New Varieties of Plants
and New Animal Breeds

Protection of Right to New Varieties of Plants and New Animal Breeds

1097.—(1) Rights to the new varieties of plants and new animal breeds (breeding achievements) shall be protected provided that the patent is granted.

(2) Requirements under which the right to obtain a patent arises, the procedure of granting the patent for breeding achievements shall be established by the law.

(3) The rules of Articles 1090—1096 of this Code shall accordingly apply to the relations connected with the rights to breeding achievements and protection of these rights, unless otherwise is stipulated by the rules of the present chapter and the law.

Rights of the Author of a Breeding Achievement to Remuneration

1098. The author of a breeding achievement who is not a patent owner shall have the right to receive the remuneration from the patent owner for the use of the breeding achievement within the term of patent validity.

The amount and conditions of payment of remuneration to the author of breeding achievement shall be established in the contract concluded between him and the patent owner.

Rights of the Patent Owner

1099. The patent owner of a breeding achievement shall have the exclusive right to use this achievement within the limits established by the law.

Obligations of the Patent Owner

1100. The patent holder of a breeding achievement shall be obliged to support appropriate variety of plant or animal breed within the validity term of the patent in a way to preserve the features indicated in the description of the variety of plant or breed of animal compiled at their registration.

Chapter 58 **Protection of Undisclosed Information from Illegal Use**

Right to Protection of Undisclosed Information

1101. A person who legally possesses technical, organizational or commercial information including production secrets (know-how) unknown to the third parties (undisclosed information) shall have the right for protection of this information from illegal exploitation unless the conditions established by Article 34 of the present Code are observed.

The right to protection of undisclosed information from illegal use arises irrespective of any formality carried out in respect of this information (its registration, receiving of certificate, etc.).

Rules on protection of undisclosed information shall not be applied in relation to the information which, in accordance with the law, cannot make up official or commercial secret (information on legal entities, rights to property and transactions with it which are subject to state registration, information subject to presentation as a state statistics reporting and others).

The right to protection of undisclosed information is valid until the conditions stipulated by Article 34 of this Code are valid.

Responsibility for Illegal Use of Undisclosed Information

1102.—(1) A person who has obtained or distributed undisclosed information or used it without legal grounds must recover losses caused in the result of illegal use to the person who legally possess the information.

Where a person illegally using undisclosed information received it from the person who has no right to distribute it, of which the acquirer of the information did not know and did not have to know (fair acquirer), the legal holder of undisclosed information shall have the right to demand him to compensate the losses caused by the use of undisclosed information after the fair acquirer became aware that the use is illegal.

(2) A person lawfully possessing undisclosed information shall be entitled to require from the person who illegally uses it, to stop this use immediately. However, the court may allow its further use under the conditions of payable exclusive license taking into consideration the means spent for its use by fair acquirer of undisclosed information.

(3) A person who independently and lawfully got the data which makes up the content of undisclosed information shall have the right to use this data irrespective of the rights of the holder of appropriate undisclosed information and does not report to him for such a use.

*Transfer of the Right to Protection of
Undisclosed Information from Illegal Use*

1103. The person possessing undisclosed information may transfer all or a part of the data, which makes up the content of this information, to another person on the basis of licensing agreement.

A licensee is obliged to undertake proper measures to protect confidentiality of the information received on the basis of the contract, and has the same rights to its protection from illegal use by third persons as a licensor has. Given that the agreement does not stipulate otherwise, the liability to preserve confidentiality of the information shall be with the licensee even after termination of the licensing agreement, provided that the relevant data continue to be undisclosed information.

Chapter 59
**Means of Individualization of Participants of the
Civil Turnover, Goods, Works and Services**

PARAGRAPH 1
TRADE NAME

Right to a Trade Name

1104.—(1) A legal entity whose trade name is registered in the established order shall have the exclusive right to use the trade name on goods, packaging, advertisements, sign boards, prospectus, bill boards, publications, official stationery and other documentation related to its activity, as well as in the course of demonstration of goods at fairs and exhibitions held in the territory of the Kyrgyz Republic.

(2) The order of registration of a trade name of a legal entity shall be determined by the normative legal acts.

Use of the Trade Name of a Legal Entity in a Trademark

1105. The trade name of a legal entity may be used in his trademark.

Effectiveness of the Right to a Trade Name

1106.—(1) The exclusive right to a trade name registered in the Kyrgyz Republic as the designation of a legal entity shall be effective in the territory of the Kyrgyz Republic.

(2) The exclusive right to a trade name registered or commonly recognized in a foreign country shall be effective within the territory of the Kyrgyz Republic in cases provided by the law.

(3) The effectiveness of the right to a trade name shall be terminated with the liquidation of a legal entity or with a change of its trade name as well as in the other cases provided by the law.

Alienation of the Right to a Trade Name

1107. Alienation or transfer of the right to the trade name of a legal entity shall be allowed only in cases of reorganization of the legal entity or the alienation of an enterprise as a whole.

The holder of the right to a trade name may authorize other person to use his trade name (grant a license). However, the licensing agreement must spell out measures excluding delusion of a consumer.

PARAGRAPH 2
TRADEMARK (SERVICE MARK)

Legal Protection of a Trademark

1108.—(1) Legal protection of a trademark (service mark) shall be granted on the basis of its registration.

(2) The right to the trademark shall be certified by a certificate.

Right to Use the Trademark

1109.—(1) The owner of the right to the trademark shall have the exclusive right to use and dispose the mark which belongs to him.

(2) Any introduction of a trademark into turnover in the order established by the law shall be considered the use of a trademark.

Consequences of Non-Exploitation of a Trademark

1110.—(1) When a trademark is not used without valid reason continuously for 3 years from the date of its registration, it may be canceled at the request of any interested person.

(2) The grant of a license to use the trademark shall be deemed its use.

Transfer of the Right to the Trademark

1111.—(1) The right to the trademark in relation of all types of goods, works and services or their parts, indicated in the certificate, may be transferred by the right holder to another person under the agreement.

Transfer of the right to the trademark shall not be allowed if it can be the reason for mislead in relation to goods or their producer.

Transfer of the right to the trademark, including its transfer on the basis of the contract or in the procedure of right-succession should be registered in the patent agency.

Form of the Agreement on Transfer of the Right to a Trademark

1112. The agreement on transfer of the right to the trademark or on granting a license should be concluded in written form and registered in the patent agency.

Failure to do it in written form and to comply with the requirement of the registration entails invalidity of the agreement.

Responsibility for Violation of the Right to a Trademark

1113. The person unlawfully using the trademark shall be obliged to stop the violation and compensate the owner of the trademark his losses.

The person unlawfully using the trademark shall be obliged to destroy designations of the trademark produced, to remove the illegally used trademark or the sign which is identical to it to the extent of confusion from the goods and their packages.

If it is impossible to fulfill the requirements of the second paragraph of this Article the relevant good shall be subject to destruction.

PARAGRAPH 3
APPELLATIONS OF ORIGIN OF GOODS

Legal Protection of Appellations of Origin of Goods

1114.—(1) Legal protection of appellations of origin of good shall be granted on the basis of its registration.

(2) Appellation of origin (indication of origin) of a good means the name of a country, settlement, locality or another geographical place used for designation of a product the special characteristic features of which are exclusively or mainly determined by natural conditions peculiar to this geographic place or by other factors or combination of natural conditions and these factors.

Appellation of origin of goods may be a historical name of a geographic place.

(3) A designation providing or including the name of a geographical object, but which is generally used in the Kyrgyz Republic as a designation of a certain type of goods not related to the place of its production, shall not be considered to be the appellation of origin of goods and is not subject to registration for the purpose of legal protection in accordance with the provisions of this paragraph. However, this does not deprive a person, whose rights are violated by unfair use of such an appellation, of the opportunity of their protection through other means stipulated by the law.

(4) Registration of the appellation of origin of goods shall be made by the patent agency.

(5) A certificate on the right to use the appellation of origin of goods shall be issued on the basis of the registration.

(6) The procedure and the conditions of registration, issuance of certificates, recognition of invalidity and termination of the validity of the registration and the certificates shall be established by the law.

The Right to Use the Appellation of the Origin of Goods

1115.—(1) A person holding the right to use the appellation of origin of goods shall be entitled to place this name on a product, package, advertisement, prospects, accounts and use it otherwise due to the introduction of this good into civil turnover.

(2) Appellation of origin of a product may be registered by several persons both jointly and in separation from each other for designation of the product which complies with the requirements of paragraphs 1 and 2, Article 1114 of this Code. The right to use the appellation of origin of good shall belong to each of these persons.

(3) Alienation and other deals on assignment of the right to use the appellation of origin of goods, as well as permission to use them on the basis of a license shall be prohibited.

Scope of the Legal Protection of Appellation of Origin of Goods

1116.—(1) Legal protection of appellation of origin of goods located on the territory of the Kyrgyz Republic shall be granted in the Kyrgyz Republic.

(2) Legal protection of the appellation of origin of goods located in another state shall be granted in the Kyrgyz Republic provided that this appellation is registered in the country of origin of goods, as well as in the patent agency of the Kyrgyz Republic and in accordance with the Code.

Responsibility for Unlawful Use of Appellation of Place of Origin of Goods

1117. —(1) A person holding the right to use the appellation of origin of goods, as well as the organizations on protection of consumer's rights may demand from the person, who illegally uses this appellation, to stop the use, to remove the illegally used appellation or designation which are identical to the extent of confusion, from the goods, packages, forms and similar documents, to destroy the produced imprint of the appellation or sign which are identical to the extent of confusion, and if its impossible—to withdraw and destroy the goods and/or packages.

(2) A person holding the right to use the appellation of origin of goods shall be entitled to require the compensation of the losses from the violator of this right.
