Law of the Kyrgyz Republic
on Legal Protection of Software and Databases

TABLE OF CONTENTS

As of March 30, 1998, # 28

Chapter 1
General Provisions

General Terminology

1. General terms used in this Law are as follows:

● *software* is an objective form of presenting aggregation of data and orders aimed at functioning of computers with the purpose of obtaining a certain result;

● *database* is an objective form of presenting and arrangement of aggregation of data, systematized in such a way that these data could be found and processed with the help of a computer;

● *adapting of software or database* is introduction of changes made exclusively with the purpose of providing functioning of software or database in specific technical facilities of the user or under the administration of specific programs of the user;

● *modification (processing) of software or database* is any changes other than adapting;

● *original text* is a text written in any programming language not altered by any compiler;

● *object code* is a program obtained in the result of reorganization of the original text into machine code;

● *compilation of software* is the technical device which includes transformation of the original text into the object code in order to study the structure and code the software program;

● *de-compilation of software* is a technical device which includes transformation of the object code into the original text for the purpose of studying the structure and coding of the software;

● *reproduction of the software or database* is manufacturing of one or more copies of the software or database in any material form as well as their saving in computer memory;

● *distribution of software or database* is granting an access to software or database reproduced in any material form, including by means of a network or other ways, as well as by means of sale, rent, lease, lending, including import for any of these purposes;

● *public release (publication) of software or database* is provision of copies of the software or database to an indefinite number of people under the consent of the author (including by means of computer saving, and issue of the printed text) under condition that the number of such copies meets the needs of this circle of persons taking into account the nature of the works mentioned;

● *use of the software or database* is a public release, reproduction, distribution and other actions to introduce them into economic turnover (including in modified form). Transmission of the information through mass media on the published software or database shall not be considered as use of software or database;

In the present Law the right owner shall be understood as an author, his heir, and any natural person or legal entity who possesses exclusive economic rights acquired by virtue of the law or an agreement.

Relationships Regulated by this Law

2. This Law shall regulate relationships with respect to creation, legal protection and use of software and database.

Software and database shall be referred to objects of copyright according to the present Law. Software shall be provided with legal protection as to works of literature, and database—as to compilations.

The State Intellectual Property Agency under the Government of the Kyrgyz Republic (hereinafter—Kyrgyzpatent) shall provide state regulation in the area of software and database protection.

Object and Conditions of Legal Protection of Software and Database

3. Copyright shall extend to any software and databases both released and never published, presented in the objective form regardless of their material bearer, purpose and merits.

Copyright shall extend to the software and databases that are the results of creative activity of an author. The creative nature of author's activity shall be implied until proved otherwise.

Legal protection granted by this Law shall extend to all kinds of software (including operational systems and program complexes), which may be expressed in any language and in any form, including original texts, and an object code.

Legal protection granted by this Law shall extend to the databases which are the result of creative labor on collection and arrangement of data. Databases shall be protected regardless of whether the data on which they are based or which they include are the objects of copyright.

Legal protection granted by this Law shall not extend to the ideas and principles which lay in the basis software or database or some of their elements, including ideas and principles of arranging interface and algorithms, as well as programming languages.

Copyright to software and databases shall not be related to the property right to their material carrier. Any assignment of rights to the material carrier shall not entail the transfer of any rights to software or databases.

Conditions for Recognition of Copyright

4. Software or database shall be eligible for copyright by virtue of the mere fact of their creation. In order to recognize and exercise copyright to software or database depositing, registration or meeting of other formalities shall not be required.

Since the first public release of software or database the right owner, in order to give notice of his rights, may use the copyright mark, consisting of three elements:

- letter C in a circle or round parenthesis;

- denomination (name) of the right owner;

- year of the first publication of software or database.

Copyright to Database

5. Copyright to database consisting of materials other than objects of copyright shall belong to the persons who have created the database.

Copyright to database shall be recognized provided that the copyright to each of the work, included in this database is observed.

Copyright to each of the works included in the database shall be retained. These works may be used regardless of such database.

Copyright to database shall not prevent other persons to independently select and arrange works and documents included in this database.

Validity Term of Copyright

6. Copyright shall become effective from the moment of creation of software or database and shall be effective throughout the lifetime of the author and for 50 years after his death starting from January 1 as of the year following the year of author's death.

Expiration of the effective term of copyright to software or database created in co-authorship shall be calculated from the date of death of the last surviving co-author.

Copyright to software, database released anonymously or under the pseudonym shall be effective from the moment of their public release during 50 years. If during the established term the author of software or database released anonymously or under pseudonym reveals his/her identity, or if the author's pseudonym leaves no doubt of his personality, than the protection term provided by the first item of this Article shall apply.

Personal non-economic rights of the author to software or database shall be protected without time limits.

Scope of this Law

7. Copyright to software or database first publicly released on the territory of the Kyrgyz Republic or not released, but staying on its territory in any objective form, shall be effective on the territory of the Kyrgyz Republic. It shall be recognized as belonging to the author, his heirs or other legal successors of the author regardless of citizenship.

Copyright shall be recognized as belonging to the citizens of the Kyrgyz Republic whose software or database have been publicly released or is located in some objective form on the territory of a foreign state or as belonging to their legal successors.

Copyright to software or database first released or staying in some objective form on the territory of the foreign state shall be recognized as belonging to other persons in accordance with international treaties of the Kyrgyz Republic.

Chapter 2
Copyrights

Authorship

8. Author of software or database shall be a physical person by whose creative labor they have been made.

If the software or database is created by the joint creative activity of two or more physical persons than regardless of whether the program or database consist of elements each of which has an independent significance or is indivisible, then each of these persons shall be recognized as an author of such software or database.

In the event that the software or database elements have an independent meaning each of the authors shall have the copyright to the part created by him.

Personal Non-Economic Rights

9. The author of the software or database regardless of his economic rights shall enjoy the following personal non-economic rights:

● right of authorship, i.e. the right to be considered the author of the software or database;

● right to a name, i.e. the right to determine the form of indication of author's name in the software, database: under his own name, conditional name (pseudonym) or anonymously;

● right to inviolability (integrity), i.e. the right to protection of both the software itself or database and their denominations against various distortions or other infringements capable of inflicting harm to the honor and dignity of the author.

Economic Rights

10. The author of software or database or another legal successor shall enjoy the exclusive right to carry out and (or) to permit performance of following actions:

● public release of software or database;

● reproduction of software or database (in full or in part) in any form, in any way;

● distribution of software or database, including rent;

● modification of software or database including translation of software or database from one language into another;

● other use of software or database.

The order of exercising the rights which belong to several authors of software or database or other right owners is determined by the agreement between them. In the default of such agreement, each of them may use protected object on his own, but has no right to provide the agreement on full concession of all economic rights without consent of other right owners. In the event the agreement on provision of the full concession of all economic rights is not concluded, the argument between them may be solved in legal form.

Transfer of Economic Rights

11. Economic rights to software or database may be assigned in full or in part to other natural persons or legal entities by agreement.

The agreement shall be concluded in writing and must contain the following conditions: the scope of assigned rights and the way of using the software or database, procedure of payment and amount of remuneration, territory and effective term of the agreement.

The agreement on assignment of economic rights or a licensing agreement for the registered software or database shall be registered with Kyrgyzpatent.

The agreement on transfer of economic rights to software or database is not valid without registration at Kyrgyzpatent.

Economic rights to software or database shall be assigned by succession pursuant to the procedure established by the Law.

Economic Rights to Software or Database Created in the Course of Execution of Work Duties

12. Economic rights to software or database created in the course of execution of work duties or under the assignment of the employer shall belong to the employer unless otherwise is provided by the agreement between him and the author.

Procedure of payment and amount of remuneration shall be established by the agreement between the author and the employer.

Right to Registration

13. The right owner of all the economic rights to software or database may register his software or database directly or through his representative during the effective period of copyright upon his wish by way of submitting an application to Kyrgyzpatent.

Registration of Software or Database

14. Application for official registration of software or database (hereinafter referred to as application for registration) shall refer to one software or one database.

Application for registration must contain:

● application for official registration of software or database with the indication of right owner as well as the author, unless he refused to be mentioned as such and their place of location (place of residence);

● deposited documents identifying the software or database, including an abstract with mandatory information on documentation developed for software or database; the abstract for database shall indicate decoding of the subject area, source of data, composition, name and content of each separate file of the whole database, number of separate records of each file, data retrospective;

● document confirming the payment of the registration fee in the established amount or grounds for exemption from the payment of registration fees and for reduction of its amount.

Rules of filing the application for registration shall be determined by Kyrgyzpatent.

After receipt of an application for registration Kyrgyzpatent shall check the availability of the documents required and their compliance with the requirements set forth in paragraph 2 of this Article.

Within two months after filing the application, the applicant shall be entitled to update, add and make changes in the materials of the application.

Consideration of the application shall be made within six months.

Should the results of the examination be positive, Kyrgyzpatent shall enter the software or database into the software state register of the Kyrgyz Republic or the database State register, publish the information about registered software or database in the official bulletin of Kyrgyzpatent and grant the certificate on official registration to the applicant.

Procedures for official registration, forms of certificates on official registration, content of the data indicated therein shall be established by Kyrgyzpatent. Kyrgyzpatent shall also define the list of data to be published in the official bulletin.

The information entered into the Software State Register of the Kyrgyz Republic and the Database State Register of the Kyrgyz Republic shall be considered authentic until otherwise is proved.

The liability for authenticity of the indicated information shall be with the applicant.

Registration fees shall be paid for execution of actions related the official registration of software or database, contracts and publication of information.

Amounts, deadlines of payment of registration fees and grounds for exemption from payment thereof or reduction of their amounts shall be established by the Government of the Kyrgyz Republic.

All the financial resources accumulated on the Kyrgyzpatent account, including those in foreign currency, shall be used by Kyrgyzpatent to cover costs related to activities envisaged in this article and also for equipment, establishment and use of automated system, for training and motivation of the staff.

Chapter 3
Use of Software and Database

Use of Software or Database Under the Contract With the Right Owner

15. Third persons (users) shall use software or database pursuant to the contract with the right owner, except for cases of resale, transfer of the property right in any way or any other rights to the copy of software or database after the sale or any other transfer of the property right to this copy is allowed without consent of the right owner and without payment of additional remuneration.

The contract for use of software or database shall be formalized in writing.

When selling and providing access to software or database to mass users special procedures shall be applied, particularly by setting forth standard conditions for the use determined by the right owner.

Free Reproduction and Adapting of Software or Database

16. A person lawfully owning the copy of software or database shall be entitled, without additional authorization of the right-owner to accomplish any actions connected with the functioning of software or database in accordance with its purpose, including saving and storing in the memory of a computer and correcting obvious mistakes. Saving and storing in the memory of the computer shall be allowed in relation to one computer or one user in the network unless otherwise is provided by the contract with the right owner.

With the exception of provisions of paragraph 3, Article 10 of this Law, a person lawfully owning a copy of software or database shall be entitled, without the consent of the right owner and without the payment of additional remuneration to:

● make adapting of software or database;

● make or order to make copies of software or database provided that this copy has only archive purposes and, if necessary (in case when the original of the software or database was lost, destroyed or became not suitable for use) for substitution of lawfully purchased copy. In this case the software or database can not be used for other purposes and must be destroyed in case if the further use of this software or database ceases to be lawful.

A person lawfully owning the copy of the software shall be entitled without the consent of the right owner and without payment of additional remuneration to de-compile or entrust to de-compile the software with the purpose to study coding and structure of this program provided that:

● information necessary for interaction of independently developed by this person software with other programs is not available from other sources;

● information received in the result of this de-compilation may be used only for arranging interaction of independently developed by this person software with other programs, but not for creation of the new software with significantly similar exterior with the de-compiled software or for realization of any other action violating the copyright;

● de-compilation is accomplished in relation only to those parts of the software which are necessary for arranging such interaction.

Chapter 4
Protection of Rights

Infringement of Copyright.
Counterfeit Copies of Software or Database

17. Infringement of the requirements provided by the Law on protection of copyright to software and database shall entail civil, administrative and criminal liability pursuant to the legislation of the Kyrgyz Republic.

Copies of software or database that are manufactured or used in violation of copyright shall be deemed counterfeit copies.

Copies of software or database protected in the Kyrgyz Republic under this Law that are imported in the Kyrgyz Republic from a state in which this software or database has never been protected or has ceased to be protected by the law, shall also constitute counterfeit copies.

Protection of Rights to Software or Database

18. Author of software or database or other right owners have the right to require:

● recognition of rights;

● restoration of the position which existed prior to the infringement of the right and cessation of the actions that infringe the right or create the threaten of its infringement;

● recovery of the losses caused, the amount of which shall include revenues illegally obtained by the infringer;

● payment of compensation by the infringer in the amount from 50 to 20 000 times of the minimum monthly wage set up by the legislation of the Kyrgyz Republic, in cases of infringement for the purpose to make profit instead of recovery of losses;

● undertake other measures stipulated in the normative acts and related to the protection of their rights.

The right holders may apply to court in order to protect their rights.

Besides the recovery of losses or payment of compensation, the court may impose a fine in the amount of 10 % from the amount assigned by court in favor of the plaintiff, to the income of the republican budget of the Kyrgyz Republic;

Court may order the confiscation of counterfeit copies of software or database as well as materials and equipment used for their reproduction and manufacture and destruction thereof or transfer to the republican budget of the Kyrgyz Republic or to the plaintiff at his request as compensation for losses.

Seizure of Counterfeit Copies of Software or Databases

19. Copies of software or databases manufactured, reproduced, distributed, sold, imported or used otherwise or intended for use in violation of the rights of authors of software and databases, and of other right owners, may be seized pursuant to the procedure established by the legislation of the Kyrgyz Republic.

Protection of Rights to Software and Database in Foreign Countries

20. The author or any right owner may seek legal protection of software or database in foreign countries after registration of a respective application at Kyrgyzpatent. Non compliance with this provision shall entail the liability provided in the legislation of the Kyrgyz Republic.

Expenses related to obtaining legal protection of software or database in foreign countries shall be covered by the person seeking such protection or other natural or legal entity pursuant to the agreement with him.

Rights of Foreign Physical Persons and Legal Entities

21. Foreign physical persons and legal entities shall enjoy the rights provided by this Law equally with natural persons and legal entities of the Kyrgyz Republic by virtue of international treaties of the Kyrgyz Republic or on the basis of the principle of reciprocity.

International Treaties

22. Where an international treaty to which the Kyrgyz Republic is signatory stipulates other rules then those set force in this Law, the provisions of an international treaty shall apply.

Implementation of the Present Law

23. The Law shall come into force from the moment of its publication.

(Erkin—Too; Svobodnyie Gory, April 4, 1998, # 41—42).

Until the legislation of the Kyrgyz Republic is in compliance with the present Law, normative legal acts of the Kyrgyz Republic in the part which do not contradict with the present Law shall apply.

The Law of the Kyrgyz Republic "On Legal Protection of Software and Database" shall expand to the relations connected with development and use of software and database which appeared after implementation of the present Law.

The Government of the Kyrgyz Republic is entrusted to bring to compliance all their normative acts with the present Law.

The President of the Kyrgyz Republic
A. Akaev