LAW OF THE KYRGYZ REPUBLIC "ON THE LEGAL PROTECTION OF SOFTWARE AND DATABASES"

LAW OF THE KYRGYZ REPUBLIC

On the legal Protection of Software and Databases

(Version of the Laws of the Kyrgyz Republic of February 27, 2003, N 46 and March 31, 2005, N 58)

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Section 1.

GENERAL PROVISIONS

Article 1. General Terminology

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 physical or juridical person who possesses exclusive proprietary rights acquired by virtue of the law or an agreement.

Article 2. Relationships Regulated by this Law

This Law shall regulate relationships connected with 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.

Article 3. Object and Conditions of Legal Protection of Software and Database

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

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 otherwise is not proved.

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 underlie software or database or some of their elements, including ideas and principles of arranging interface and algorithms, as well as languages of programming.

Copyright to software and databases shall not be connected with the right of ownership to their material carrier. Any assignment of rights to the material carrier shall not entail the assignment of any rights to software or databases.

Article 4. Conditions for Recognition of Copyright

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.

Article 5. Copyright to Database

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.

Article 6. Term of Copyright

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

Expiration 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 is not doubtful due to his personality, than the protection term provided by the first item of this Article shall apply.

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

Article 7. Scope of the Law

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 .

Section 2.

COPYRIGHTS

Article 8. Authorship

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 significance each of the authors shall have the copyright to the part created by him.

Article 9. Personal Non-property Rights

The author of the software or database regardless of his proprietary rights shall enjoy the following personal non-property rights:

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

Article 10. Economic Rights

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 that 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 propriety rights without consent of other right owners. In the event the agreement on provision of the full concession of all propriety rights is not concluded, the arguement between them may be solved in legal form.

Article 11. Transfer of Proprietary Rights

Proprietary rights to software or database may be assigned in full or in part to other physical or juridical persons 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 proprietary rights or a licensing agreement for the registered software or database shall be registered with Kyrgyzpatent.

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

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

Article 12. Proprietary Rights to Software or Database Created in the Course of Execution of Service Duties

Proprietary rights to software or database created in the course of execution of service 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.

Article 13. Right to Registration

The right owner of all the proprietary rights to software or database may register his software or database directly or through his representative during the effective period of copyright at his sole discretion by way of submitting an applicationto Kyrgyzpatent.

Article 14. Registration of Software or Database

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

Registration application 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;the abstract shall include mandatory information on documentation developed for software or database; the abstract for database shall indicate decoding of the subject sphere, 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 fees due, or grounds for exemption from the payment of registration fees and for reduction of its amount.

Kyrgyzpatent shall determine rules of filing the application for registration.

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 respectively, 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 connected with 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 of activities envisaged in this article and also for creating, equipping and using an automated system, for training and motivating the staff.

Section 3.

USE OF SOFTWARE OR DATABASE

Article 15. Use of Software or Database under the Contract with the Right Owner

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 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.

Article 16. Free Reproduction and Adapting of Software or Database

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 forfeited, 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 program 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 order 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 compiling new software with significantly alike exterior with the de-compiled software or for completion 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.

Section 4.

PROTECTION OF RIGHTS

Article 17. Infringement of Copyright. Counterfeit Copies of Software or Database

Infringements 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.

Article 18. Protection of Rights to Software or Database

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, the amount of which shall include revenues illegally obtained by the infringer;

* payment of compensation by the infringer in cases of infringement aimed at gaining profit instead of recovery of losses in the amount of 50 to 20 000 times of the minimum monthly wage set up by the legislation of the Kyrgyz Republic, in cases of infringement with the aim of making profit instead of covering losses;

* taking other measures envisaged in regulations connected with protecting their rights;

* for protecting their rights they can turn to the court;

* the surrender, in addition to covering losses or paying compensation , penalty in the amount of 10 % of 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.

Article 19. Seizure of Counterfeit Copies of Software and Databases

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.

Article 20. Protection of Rights to Software and Database in Foreign Countries

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 to seek such protection or other natural or legal entity pursuant to the agreement with him.

Article 21. Rights of Foreign Physical Persons and Legal Entities

Foreign physical and legal entities shall enjoy the rights provided by this Law equally with natural 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.

Article 22. International Treaties

Where an international treaty to which the Kyrgyz Republic is signatory stipulates rules that are differ from those set force in this Law, the provisions of an international treaty shall apply.

Article 23. Implementation of the present Law

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

2. Until the legislation of the Kyrgyz Republic is in compliance with the present Law, normative legal acts of the Kyrgyz Republic which don't contradict the present Law shall be used.

3. The Law of the Kyrgyz Republic " On the legal Protection of Software and Database" covers relations connected with developing and use of software and database which appeared after implementation of the present Law.

4. The Government of the Kyrgyz Republic shall be authorized to put all their normative acts and regulations in compliance with the present Law.