

**Instruction "on order of reception, storage, examination and return products containing objects of copyright and related rights provided for research and expertise in the State service of intellectual property and innovation under the Government of the Kyrgyz Republic (Kyrgyzpatent)"**

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**Instruction "on the system of reception, storage, examination and return products containing objects of copyright and related rights provided for research and expertise in the State service of intellectual property and innovation under the Government of the Kyrgyz Republic (Kyrgyzpatent)"**

**I. General provisions**

1. This instruction defines the order of reception, storage, examination and return products containing objects of copyright and related rights audiovisual works, phonograms, computer programs and databases (hereinafter referred to as products) to research and expertise in intellectual property and public service innovation under the Government of the Kyrgyz Republic (hereinafter referred to as "Kyrgyzpatent").
2. Made in these instructions rules apply to products containing objects of copyright and related rights and documents received in criminal, administrative and civil cases as samples for comparative research.
3. the rules established by the present instruction, shall be mandatory for employees of Kyrgyzpatent, whose activities are related to the research and examination of goods and persons, designating examination. 4. For the purposes of these regulations the following terms have the following meaning: audiovisual work-means a work consisting of a fixed series of interconnected images (with or without sound accompaniment), designed for Visual and auditory (in the case of accompaniment sound) perception by means of appropriate technical equipment; audiovisual works include cinematographic works and all works expressed by means comparable to cinematography (television and video films, slide films and filmstrips and similar works), regardless of their method of initial or subsequent fixation; phonogram-any exclusively sound recording performances or other sounds that can be perceived.

## II. Procedure for acceptance and registration of products

5. Products and materials for the production of research and expertise to Kyrgyzpatent, provided directly by the appointing examination by order or definition, the cover letter customer service clerical work of Kyrgyzpatent. 6. provision for research and expertise falling objects is retained by the person (body) to nominate experts. 7. Products and materials are accepted only when they contain a full set of materials and products listed in order or determination, cover letter. When receiving products and materials:-counts the total number of materials and products; -check the conformity of the documents submitted their list in order or determination, the transmittal letter;

-entry in the journal received and issued to production "; -filled boxes "statement date" and "incoming number"; Products and materials that come in for research or production Kyrgyzpatent examination are taken personally by the expert, what is the instrument of transfer and receipt of products with its full description (number, type of packaging, etc.), as well as, in case of necessity is marked on the first instance ruling or determination, accompanying pis'maposle which is registered in the service. When receiving materials product packaging is not opened and there is only the appearance and condition of packing in the case of violations. In cases where a decision or determination, cover letter on the appointment of the examination are in one package, it is opened in the presence of the person appointing the expert examination. Persons that produce packaging products, to send them to research and expertise, it is recommended that these documents be placed separately.

8. 8. After considering the leadership of Kyrgyzpatent, materials are transferred to Office work service head against copyright and related rights (hereinafter referred to as the head of the Department), which passes them to the research sector. 9. List of materials and products entering the study and examination, shall be entered in the journal received and issued to production ", against expert. After receiving expert reveals the packaging products, verifies the observance of rules of preparation of materials for study and examination and correspondence are in the package objects and documents their list in order or determination, an accompanying letter of appointment study and examination. 10. In cases when opening the package is detected the lack of specified in the judgment or determination, an accompanying letter of appointment of the examination of objects or their non-conformity to the description or the number of objects sent for examination, head of sector-expert. It must be shown data that were not represented:

- Name surname;

- № of material;

- date of receipt of materials and products;

- a list of materials and products

- type of product specified in the judgment or determination, cover letter.

11. Failure to observe the rules of prepare of materials available for study and examination, their incompleteness and poor quality, lack of the materials and the products of individual objects and documents referred to in the judgment or determination, an accompanying letter of appointment of the examination, head of the 3-day term shall inform the appointing authority. If the last 10 days for these shortcomings will not solve materials returned with indication of reasons for return.

### **III. Storage of product**

12. for the safety of products and materials submitted to research and examination, the responsibility of experts, producing research and expertise. 13. safekeeping of the EA products and materials made to the study, are stored in compliance with the generally accepted rules of material storage, safes, boxes, cabinets with shutter, ensuring their safety and excluding change in appearance and properties. Access should be limited to experts who conduct research.

### **IV. Procedure and the timing of the examination**

14. the term of carrying out research and expertise is 10 working days. In the case of a submission to the research and expertise of more than 3 (three) thousands of copies of the seized products, research and examination dates may be extended up to 30 working days the leadership of Kyrgyzpatent on the petition of Chief of management of copyright and related rights. In cases where research and examination cannot be completed within specified time frames, an expert in writing notify the authority, the author of the review.

15. the responsibilities of the expert study and expertise include products containing the objects of copyright and related rights, to resolve its issues on the basis of his expertise and give an unbiased opinion on the case. 16. In the case of new issues in respect of previously investigated objects are assigned an additional examination.

17. in case of justified dissent pursuance of body examination, expert opinion, contradicted the conclusions of the expert the case materials, establishing new data that may affect the conclusions of the expert, significant violations of procedural law at the time of appointment and production expertise appointed re-reviewing.

18. When failure to comply with the requirements of procedural legislation or rules of prepare of materials and products transferred to the study and examination, examination is not possible, an expert in writing inform the appointing authority. If the authority does not take the

necessary measures to eliminate the existing shortcomings, on the expiry of 10 working days he returned materials without execution.

19. Materials and products presented on the research and expertise, can be returned to the authority, instituted the examination without execution in the event of termination of the examination necessary for various reasons. In this case, the refund is based on the written request of the authority that appointed examination.

20. In the case where an appointed examiner is not within the competence of Kyrgyzpatent and if he does not have the relevant expertise or equipment, body, General examination, immediately notified with reasons and return without execution.

21. Return of materials, presented at the study and examination, without carrying out a study on grounds not covered by the present instruction shall not be permitted.

22. The term of carrying out research and expertise is calculated from the day following the day of receipt of materials at Kyrgyzpatent and shall expire on the date of deposit of its results in the service record keeping Kyrgyzpatent.

#### **V. Registration materials sent for study and examination, Kyrgyzpatent**

24. Study and examination conducted to provide materials, designed in accordance with the applicable law and these regulations.

25. The study and examination shall be submitted:-decision or determination, cover letter of appointment; -materials that are objects of expert studies. 26. in accordance with the requirements of legislation, regulation or definition, an accompanying letter of appointment of the examination with the following information:

1) date and place of the decision or determination, a cover letter on the appointment of the examination, the name of the body, title, and name of the person appointed body examination;

2) the basis for the appointment of research and examination (a summary of the case and a description of the problem, the solution of which is assumed to be achieved on the basis of special knowledge);

3) name of institution where examination should be made;

4) questions posed to the expert;

5) Signature .

27. Materials submitted to the expert: expert study-objects (objects, documents);

samples for comparative studies and documents containing information related to the subject-matter expertise

-other materials relevant to the production of research and expertise.

## **VI. Rights and responsibilities of the expert**

28. the procedural rights, duties and responsibilities of the expert study and examination, as well as the order of clarification of the rights and responsibilities and warning them about criminal liability for refusing to present a finding or obviously falsified findings are determined by the code of criminal procedure (CCP) and the civil procedure legislation of the Kyrgyz Republic. In addition to established in articles 63, 65 of the CRIMINAL PROCEEDING CODE, 576, 577 of the code of administrative responsibility of the CD obligations, rights and responsibilities of experts examining, Kyrgyzpatent shall be governed by the job and the present instructions.

29. the expert shall:-declare his rejection on the grounds mentioned in art. 78, 79 of the CCP of the Kyrgyz Republic. However, to abandon the study and examination, he may only in case the rejection has been satisfied;

-take to conduct assigned in accordance with the procedure established by the present instruction order research and expertise to conduct a thorough, complete investigation and give the right conclusion or message that it is impossible to give an opinion on matters falling within its competence;

-to inform the leadership of Kyrgyzpatent (control) detected significant weaknesses expert rules of prepare of materials provided by the study and examination of influencing research;

-inform the leadership of Kyrgyzpatent (control) of all set forth facts evidencing the need for increased research, including new experts by organizing other studies and examinations.

30. the expert has the right to:-further familiarize themselves with the case materials submitted not related to the subject of study and examination; -change the wording of the question set out in Regulation (definition) concerning the appointment of the examination, because this question refers to them in accordance with its competence and expertise; -make petitions, requests for additional materials required to give opinions; -with the permission of the investigator be present during interrogations and other investigative activities and ask the interrogator questions related to subject matter expertise; -give an opinion and answers during questioning in their mother tongue, if he does not speak the language in which the proceedings are being conducted, and an interpreter; -get acquainted with the Protocol of his interrogation and make observations to be made in the Protocol; -indicate, including additional questions on its own initiative, in its opinion on the production.

31. the expert shall not have the right to: -to take over research and examination materials without written instruction manuals of Kyrgyzpatent. -implement the study and examination of materials not specified in Regulation (definition) cover letter on the appointment of the examination; -independently collect and confiscate materials pertaining to the case, but not granted to him in the manner prescribed by law; -store the materials of the case under investigation and examination, outside the Office; -independently to involve staff from other agencies to undertake its mandated examination; -to enter without the consent of the examination, in pursuance of any contacts with the accused (suspect), defendant, victim, witness, counsel, civil plaintiff or defendant (or their representatives) and translator; -give opinions, explanations, suggestions for issues whose resolution goes beyond its competence.

32. the expert is independent in the conduct of research material before it, spending it in strict accordance with the requirements of the law. Body, the author of the examination, may not indicate which methods and expert techniques to use during the examination. 33. the expert shall determine on its own behalf on the basis of the evaluation of the results of studies conducted in accordance with its expertise and carries the personal responsibility for it. For evasion on call in court without good reason, the expert shall bear responsibility in the manner prescribed by art. 63, 65 of the CCP of the Kyrgyz Republic. For violation of the order, terms of production research and expertise, and careless attitude to duties not involving criminal liability, an expert of Kyrgyzpatent may be liable to disciplinary action in accordance with the labour legislation of the Kyrgyz Republic.

## **VII. Arrangements for study and examination, and registration of results**

34. the expert is launching study and examination upon receipt of a written order from rukovodstvaKyrgyzpatenta, together with the regulation or definition, a covering letter on the appointment of the examination and all reports on examination of materials. If it encounters significant disruption clearance of materials for research and expertise, expert operates according to the requirements of this instruction. The expert entrusted with the task of conducting a study and examination, review the material before it. If you are installing the absence of necessary for the production of examination data, it sends a request. The petition shall be drawn up in two copies. The first copy shall be sent to the appointing authority. The second is stored in the Supervisory proceedings. In urgent cases the content of the motion can be passed to the appointing authority, expertise, by fax or by phone, but with mandatory registration in the relevant register.

35. The opinion of the expert is given in writing, set forth a clear and concise language, not allowing different interpretations, and consists of three parts: introduction, research and conclusions. In some cases, to the conclusion of the attached photographs, illustrations, diagrams, drawings, design, etc., clarify and supplement the description of the research part of

the conclusion. Each page of the conclusion and the application shall be signed by the expert (s), the signature of the expert (s) following the conclusions shall be certified by the seal of office printing of Kyrgyzpatent. Examination of objects having signs of kontrafaktnosti, there are stamp «has signs kontrafaktnosti ", printed lining and on the face of the disc (in the case of audiovisual products). Investigated materials before returning packaged, sealed and stamped the relevant stamps.

36. In the introductory part of opinion shall indicate:-the name of the examiner, its number, the date of composition; -Foundation for research and examination (judgment or determination of a cover letter on the appointment of the examination, on the letterhead of the Organization nominating expertise); -name received by research and examination materials, type of packaging and details of investigated objects; -information about the EA (expert advisor), full name, education, specialty, academic degree, position and work experience;

-the facts and matters essential to give opinions and adopted by the expert as the source data; - information about the persons present during the examination (surname, initials, procedural regulation) and the reasons for their presence. The question raised on the initiative of the expert, described also in the chapeau, but after the issues identified in the decreeing (definition) on the appointment of the examination. In the introductory part of opinion re examination notes that research and assessment is repeated, sets out information about primary expertise and motivation destination re-examination. In the case of complex or any examination in the water part of the indicated Name and venue experts, causes the integrated and Commission examination. 37. In the research section describes the research process and examination results, explain established facts. In the research section identifies background references:

-the name and content of the examination object, quantity; -signs pointing to the counterfeit nature of the products or goods; -in the study and examination of audiovisual products, use indexes kontrafaktnosti (annex 1); -description of investigative actions (interrogations, examinations, experiments, etc.) if they have the value of the original data to support conclusions. If some of the questions could not be answered in research section identifies the reasons for this. 38. the research part of the conclusion of re-examination, the expert points out the reasons for the discrepancy with the findings of primary examination, if any. 39. the Commission of experts with due diligence possible simultaneously acquainted with materials expertise, produces a examining objects and specimens. Each of the experts conducting the necessary research (through its expert specialtyall submitted materials in full, after which the experts deliberated among themselves and formulate general conclusion. The experts, who disagree with the views of other experts, or give opinions separately or make out its part of the overall conclusion, indicating the motives of differences of opinion. 40. the findings of the study

and examination are set out in the same sequence in accordance with the matters before an expert, or by reference to its inability to resolve the reasons. The sequence must match the order of the findings of the study and examination. In cases where the conclusion formulated without a detailed description of the results of the study, described in the research section, you can include references to the research part of the conclusion. 41. If none of the specified in the judgment or determination, an accompanying letter of appointment of the examination questions, the expert was unable to give an answer on the merits (at least partial message about the impossibility of giving of conclusion, which consists of three parts: introduction, reasoning and conclusions. In the introductory part sets out the information listed in paragraph 36 of the present instruction. In its statement of reasons set out in detail the reasons for the impossibility of giving of conclusion. In the operative part indicates that it could not give an answer for each delivered before an expert issue. 42. the appointing authority informs the expert examination, the impossibility of giving of an opinion on the matter in question: 1) if the evidence is insufficient to give opinions and eliminating this obstacle it was impossible; 2) if the question is beyond the expertise of the expert; 3) modern level of investigation techniques not uniquely address the question posed; 4) no handle of the question posed; 5) collectively identified signs of contradictory and insufficient to deal with the issue on the merits.

43. If an expert gives an opinion on one of the issues specified in the decision or the decision accompanying the appointment of the examination, and on the other there is reason to report that it is impossible to give an opinion, a single document is drawn up, the expert's conclusion.