

# V. Conclusion

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## 1. Summary

Based on the analysis of the answers provided by the key state institutes working in the ICH field (in particular the representatives of the Kazakh National University of Arts, the Kazakh Institute of Literature and Art named after M.O.Auezov under the Ministry of Science and Education of the Republic of Kazakhstan, and the Institute of Cultural Politics and Art Studies under the Ministry of Culture and Information of the Republic of Kazakhstan) for ICHCAP, we came to conclusion that there is a number of problematic issues in terms of legal protection of IP rights in the process of ICH information building and sharing.

It is important to mention that certain areas of the questionnaire were filled out by the respondents rather scarcely, and these sections lacked sufficient descriptions, such as the paragraphs focusing on the projects carried out by the institutes in the field of ICH intellectual property issues, which in turn, draws our attention towards the existence of a need to develop concrete and precise state policy and the lack of a systematic approach and qualitative experience of the government in dealing with ICH safeguarding o by means of legal tools.

Of course, this gap is easily explained by the fact that Kazakhstan just recently became a State Party to the Convention, and as any other country of the former Soviet Union, it is still in transitioning from a closed economy to an open market.

Therefore, the priorities of implementing state policy in the ICH field shall first underline the specific character of the ICH elements, which should ultimately produce a reasonable outcome in the form of a properly drawn and effectively functioning protection mechanism based on the state programme 'Madenimura'. Current legislation of the Republic of Kazakhstan, mainly the Law of the Republic of Kazakhstan 'On Culture', advocates common protection policy with respect to all elements of cultural heritage with no differentiation margin between its tangible or intangible properties.

The answers provided in the questionnaire point out that the institutes fully conduct ICH-related activities, such as collecting, acquiring, decrypting, codifying, digitising, using, and disseminating data, but most of these activities are carried out without the application of national legislation to protect intellectual property rights.

Protecting intellectual property rights is being discussed modestly because such questions seem unclear in the respondents' perception, whereas all the questionnaires refer to the absence of appropriate legal standards of protection as well as the need of legal consultation.

In our opinion, this phenomenon has several causes.

First of all, there is a lack of specialists dealing with such specific issues of intellectual property law. There is also the need to allocate funds for such purposes. Indeed, to conduct such work, there should be financial support provided for specialists in copyright and other rights-related fields. In addition, there should be a registration of rights for secondary users in the established order, the development of various agreements on the assignment of rights, and transference of the ICH elements from one holder to another.

This refers to the registration of the compilers' rights on the use of databases, collections of works, photo albums, video and audio records, phonograms, and other works created as a result of intellectual and creative human effort.

For the abovementioned reasons the issues of legal protection in these organisations are still at the initial stages of development as it is evidenced by the brief description of projects realised and implemented by institutes within their exclusive jurisdiction.

It should be noted that the activities of most of these institutions are financed from the state budget, meaning that the realisation of most relevant projects is funded by government sources, which limits their functional autonomy in certain ways.

## **2. Conclusion**

Acknowledging all the outlined problematic areas reflected in this report, it is important to note that the Ministry of Culture and Information of the Republic of Kazakhstan in cooperation with the UNESCO agencies operating in Kazakhstan (National Commission of the Republic of Kazakhstan for UNESCO and ISESCO, UNESCO Observatory in Central Asia, Kazakhstan National Federation of UNESCO Clubs), renown national experts in the field of ICH, and

communities concerned are currently involved in the process of developing the National Concept on the Safeguarding and Popularisation of Kazakhstani ICH.

Taking into account all of the recommendations listed, we stand by the opinion that adopting the Concept on the national level shall facilitate in efficiently implementing long- and short-term state ICH projects, simultaneously fostering a more functional environment in the sphere of intellectual property rights protection.

As a result of implementing the abovementioned Concept, the most significant outcome would be the support of ICH bearers who are responsible for maintaining a spiritual connection between generations, disseminating traditional knowledge and skills as well as the rituals and norms of family life and social behavior, and overall contributing to safeguarding the ICH accumulated and possessed by the ethnically and religiously diverse population of Kazakhstan.

In this regard, we assume that, under the circumstances of recently ratifying the 2003 UNESCO Convention, the next strategic step towards the safeguarding and popularising Kazakhstani ICH following the adoption of the National Concept would be creating and legally registering a national ICH inventory list, compiling an electronic database on the basis of this list and its centralised management by the public body or its subordinate agency, and providing free access of the public concerned to the registry of the new ICH elements as well as the regular informational updates collected as a result of specialised surveys, field trips, and other ICH-related events.

The Ministry of Culture and Information of the Republic of Kazakhstan in this regard is a key state entity to centralising all the efforts and endorsing effective public policy in the sphere of ICH protection.

Moreover, joint collaborations between the Ministry of Culture and Information, the Ministry of Science and Education, the Ministry of Justice, and other relevant state entities shall contribute to the creation of a more favorable environment for ICH bearers, institutions functioning in this sphere, and the general public, simply because even the most outstanding and enthusiastic scientists and experts on ICH do not possess any legal authority to carry through such mass-scale projects and policies on the provision of the ICH protection.

With the adoption of the Concept on Safeguarding of the National ICH, the government of Kazakhstan shall assign to its subordinate ministries tasks to

work out gaps, such as the absence of proper financing, the lack of legal and financial support for ICH bearers, a low awareness index in the questions concerning intellectual property rights; a dysfunctional system of providing legal expertise and proper training courses for the personnel of ICH-related institutes and communities, and many other relevant issues.

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