

UNESCO
WORLD ANTI PIRACY OBSERVATORY

AZERBAIJAN

| | |
|--|-----------|
| I. LEGISLATION | 3 |
| 1. Copyright laws | 3 |
| 2. Other laws | 3 |
| 3. Latest developments and perspectives | 3 |
| 4. Summary of legislation | 4 |
| 5. International treaties | 8 |
| II. MEASURES AND REMEDIES | 8 |
| 1. Copyright infringement | 8 |
| 2. Remedies to protect copyright holders | 8 |
| 3. Provisional measures | 9 |
| 4. Penalties for copyright infringement | 10 |
| 5. Requirements for foreign persons | 10 |
| III. ENFORCEMENT | 10 |
| 1. Enforcement authorities | 10 |
| 2. Enforcement at the boarder | 11 |
| IV. PUBLIC AWARENESS | 11 |
| 1. Awareness campaigns and actions | 11 |
| 2. Promotion of legal exploitation | 11 |
| 3. Associations and organizations with awareness-raising purpose | 12 |
| 4. Best practices | 12 |
| V. CAPACITY-BUILDING | 12 |
| 1. Training | 12 |
| 2. Establishment of specialized units and intersectoral groups | 12 |

| | |
|----------------------|-----------|
| 3. Best practices | 12 |
| VI. OTHER | 13 |
| 1. TPM/DRM | 13 |
| 2. Licensing schemes | 13 |
| 3. Optical discs | 13 |
| 4. Hotlines | 13 |
| 5. Contact details | 13 |

I. Legislation

1. Copyright laws

Intellectual property rights are recognized by the Republic of Azerbaijan as basic human rights according to Article 30 of the Constitution of the Republic.

Copyright and neighbouring rights in Azerbaijan are protected through:

- The [Law on Copyright and Related Rights](#) (1996) ([In Azeri](#))
- The Law on the legal protection of topographies of integral circuits (2002);
- The Law on the legal protection of expressions of the Azerbaijan folklore (2003); and
- The Law on the legal protection of data bases (2004).

Besides the laws mentioned above, provisions on copyright and related rights are included in the Civil Code of the Republic of Azerbaijan, and the Law on Culture, Law on Cinematography, Law on Publishing, Law on Mass Media, Anti-monopoly law, Law on Protection of Consumer's Rights and Law on Advertising.

Measures to prevent violations of intellectual property rights such as civil, administrative or criminal, are also included in the legislation acts on copyright and related rights of the Republic of Azerbaijan.

2. Other laws

Measures concerning illegal use of copyright and related rights subject matter, as well as sanctions for violation of copyright are included in the Criminal Code (entered into force on September 1, 2000), the Civil Code (entered into force on September 1, 2000), the Administrative Code (entered into force on September 1, 2000) and the Customs Code (entered into force on August 1, 1997).

3. Latest developments and perspectives

The Law on Copyright and Related Rights was amended to prevent violation of copyright and to strengthen anti-piracy measures. It takes into consideration the provisions of the TRIPS Agreement as well as the directives of the European Union.

A draft "Law on Enforcement of Intellectual Property and Fight Against Piracy" was prepared by the Copyright Agency and is expected to be adopted soon. The draft proposes stamping each copy of a copyrighted work with special serial numbers.

After the adoption of this new law, international identification standard numbers (ISBN, ISSN, ISAN, ISRC and etc.) for subject matter protected by intellectual property rights (IPR) will be used. The Copyright Agency has also proposed the creation of an Anti-piracy State Commission. A "State Program for Development of copyright and other IPR in the Republic of Azerbaijan for 2009-2012" ("Intellectual Property State Program") is currently being prepared.

Also, in view of strengthening the enforcement of intellectual property rights, the Copyright Agency has prepared a draft for amendments to be introduced to the Administrative Code and the Criminal Code of the Republic of Azerbaijan. It will be presented shortly to the Government.

4. Summary of legislation

The Law on Copyright and Related Rights governs the relations arising in the territory of the Republic of Azerbaijan concerning the creation and utilization of scientific, literary and artistic works (copyright) and performances, phonograms, programs of broadcasting or cable distribution organizations (related rights) (Article 1 of the Law on Copyright and Related Rights).

- *Exclusive rights of the authors and of the owners of neighbouring rights*

Exclusive Rights of authors

According to Article 14 of the Law on Copyright and Related Rights, the author shall enjoy the following personal rights in relation to his works:

- the right to have his authorship of the work recognized (right of authorship);
- the right to exploit the work or to authorize the exploitation thereof, either with the mention of his true name or his pseudonym or without any name being given, that is to say anonymously (right to be named);
- the right to the protection of the work, including the title thereof, against any distortion or other derogatory act liable to prejudice his honour or dignity (right to the protection of the author's reputation); and
- the right to disclose the work or to authorize the disclosure thereof in any form (right of disclosure), including the right to disavow or withdraw.

Personal rights are indivisible, inalienable and shall belong to the author independently of his property rights, and the author shall retain them even where the exclusive right to exploit the work is assigned.

The author shall have the right to renounce an earlier decision to disclose the work (right to disavow or withdraw), provided the user is indemnified for any damages, including lost earnings, attributable to the said decision. If the work has already been disclosed, the author shall be bound to make the said withdrawal known to the public. He shall then have the right to withdraw from circulation, at his own expense, those copies of the work that have already been made.

According to Article 15 of the Law on Copyright and Related Rights, except cases according to this law, the author or other legal holder have the following exclusive rights:

- reproduction of the work direct and indirect (right of reproduction);
- distribution of original and copies of the work through sale, and other transfer of ownership (right of distribution);
- importation of copies of the work for the purpose of distribution, (including that of copies made with the permission of the owner of exclusive rights) (right of importation);
- presentation of the work in public (right of public presentation)
- rental of original or copies of the work (right of rental);
- performance of the work in public (right of public performance);
- public performance with the purpose of communication of the work to the public, including public performance by broadcasting or cable relaying (right of public communication);
- communication of the work to the public, including first broadcast or subsequent broadcast (right of broadcasting);
- communication of the work to the public, including first broadcast or subsequent broadcast by cable, wire or other similar means (right of communication to the public by cable);
- translation of the work (right of translation); and
- adaptation, arrangement or other transformation of the work (right of adaptation) .

Article 16 of the Law on Copyright and Related Rights provides that the author of a work of fine art shall have the right to demand the owner of the work to allow him the access to his work (e.g.: through reproduction), provided the owner is not bound to deliver the work.

The transfer of ownership of a work of fine art (whether for consideration or free of charge) from the author to a third party shall constitute the first sale of that work.

Authors are also granted the so-called resale right. That right is inalienable and transferable only to the author's legal heirs throughout the duration of the copyright.

According to Article 5.1 of the Law on Copyright and Related Rights copyright extends to scientific, literary and artistic works that are the product of creative work, disclosed or undisclosed but being in any objective form, regardless of purpose, cost, content, merit and manner of expression.

Article 11 of the Law on Copyright and Related Rights provides that the translators and other authors of derived works shall enjoy copyright in translations, adaptations, arrangements or any other transformations made by them.

For **audiovisual works**, article 12 of the Law on Copyright and Related Rights provides that directors, scriptwriters, art directors, cameramen and authors of musical works shall be recognised as authors (co-authors) of an audiovisual work.

Authors of the work created before, arranged or included as part of the audiovisual work shall also be considered as co-authors of an audiovisual work.

The producer of the audiovisual work shall have the right to mention his name or to demand such mention whenever the work is exploited.

The authors of the works constituting the audiovisual work (with or without words) shall retain the right to remuneration of his musical work from each public performance, informing and also rent of copies.

Exclusive right of the owners of neighbouring rights

Section III provides protection for related rights.

The subjects of related rights are performers, producers of phonograms and broadcasting entities (article 32).

The origin and exercise of related rights shall not be subject to compliance with any formality.

The producer of a phonogram and the performer may, in order to publicize their rights, make use of a reserved rights notice which should be placed on every copy or on every sleeve or inlay card of the phonogram and should consist of the following three elements:

- a circled capital letter R: (R);
- the name of the owner of the related rights; and
- the year of first publication of the phonogram.

Article 33 provides that the **performer** shall be granted the following personal (non-property) and property (economic) rights in relation to his performance:

- the right to be named;
- the right to the protection of the performance against any distortion or other derogatory act liable to prejudice his honour or dignity;
- except as provided in this Law, the exclusive right to exploit the performance in any form, including the right to be paid remuneration for every such form of use.

The exclusive right to exploit the performance means the right to perform or authorize the following acts:

- recording of a hitherto unrecorded performance;
- reproduction of the recording of a performance, except the cases of reproduction made with consent of the performer for the same purposes for which the consent of performer for this record was received;
- broadcasting or cable communication of the performance or public communication of performance except cases of using records of performances made earlier under agreement with the performer, or where performance had been broadcasted previously; and
- rental of a published phonogram, including participation of the performer.

Article 34 provides that the **phonogram producer** shall enjoy the exclusive right to exploit his phonogram in any form, including the right to remuneration for every such form of use.

The exclusive right to exploit the phonogram shall mean the right to perform or authorize the following acts:

- reproduction of the phonogram;
- distribution of copies of the phonogram, for instance by sale or rental;
- importation of copies of the phonogram for the purposes of distribution, including copies made with the authorization of the producer of the phonogram in question;
- adaptation or any other transformation of the phonogram.

Article 35 provides that the **broadcasting entity** shall enjoy the exclusive right in relation to its program, to exploit it in any form and to grant authorization to use it, including the right to remuneration for such grant.

The exclusive right to authorize use of its program shall mean the right of the broadcasting entity to authorize:

- the recording of the program;
- the reproduction of the recording of the program, except in cases in which the program has been recorded with the consent of the broadcasting entity and the program is reproduced for the same purposes as those for which it was recorded;
- the simultaneous broadcasting of the program by another broadcasting organization;
- the communication of the program to the public by cable; and
- the communication of the program to the public in places where a charge is made for admission.

- *Exceptions and limitations to copyright*

Article 7 of the Law on Copyright and Related Rights states that the following are not subject to copyright protection:

- official documents (laws, court decisions, other texts of legislative, administrative or judicial character) and their official translations;
- state emblems and official signs (flags, armorial bearings, decorations, monetary signs and other State symbols and official signs);
- works of folklore; and
- communications concerning events and facts that have informational character.

In Articles 18-24 of the Law on Copyright and Related Rights it shall be permissible to use a work for a definite purpose without the author's consent and without payment of royalty, provided the name of the author whose work is used and the source of the borrowing are mentioned.

The exceptions apply in the following cases:

- Research or private study;
- Educational use;
- Replace or conserve library or archival copies of works;
- Informatory purposes;
- Scientific purposes;
- Judicial or official purposes;
- Official Ceremonies; and
- Broadcasting (definite parts of works for short term).

- *Protection of foreign works*

The Republic of Azerbaijan is a member of the Berne Convention. Foreign nationals, as a result, can be protected and receive the same treatment as nationals under the condition that their country is also a member of the Berne Convention (Article 3 paragraph 8 of the Law on Copyright and Related Rights).

- *Period of copyright protection*

According to Article 25(1) of the Law on Copyright and Related Rights, copyright arises from creation of the work and shall have effect throughout the lifetime of the author and for 50 years after his death.

According to Article 39, the terms of related rights are as follows:

- The rights of the performer shall have effect for 50 years following the first performance.;
- The right of phonogram producer shall have effect for 50 years following the first publication of the phonogram, or for 50 years following the first recording thereof if it has not been published in the course of that period; and
- The rights of the broadcasting (cable distribution) organization shall have effect for 50 years following the date of the first broadcast effectuated by the organization.

- *Registration*

Copyright protection does not depend on formalities. Failure to deposit the work or any act of disposal relating to it does not prejudice the author's rights provided for under the Copyright Law and related legislation.

Copyright holders who wish to register their work may do so in the Agency. In this case, the copyright holders are given a certificate. This certificate cannot be considered as a presumption of authorship. In disputable situations, in the absence of proof, the registration of a work shall be recognized by the court.

Article 5 provides that in order to have his rights recognized, the owner may use a copyright sign which should be placed on every copy of the work and should consist of the following three elements:

- encircled capital letter C - ©;
- the name of the owner (physical or legal) of the exclusive rights; and
- the year of first publication of the work

5. International Conventions and Treaties

Azerbaijan is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention for the Protection of Literary and Artistic Works](#), in force since June 4, 1999
- [Rome Convention for the Protection of Literary and Artistic Works](#), in force since October 5, 2005
- [Universal Copyright Convention](#), in force since April 4, 1997

Azerbaijan was a member of the UNESCO Universal Copyright Convention from 1973 and after obtaining independency it continued participation in this Convention from 1997.

- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#), in force since September 1, 2001
- [WIPO Copyright Treaty](#) (WCT), in force since April 11, 2006
- [WIPO Performances and Phonograms Treaty](#) (WPPT), in force since April 11, 2006

Azerbaijan has not incorporated the TRIPS Agreement yet, as it is still not a member of the World Trade Organization, but negotiations in this field are ongoing.

II. Measures and Remedies

1. Copyright infringement

According to article 44(2) of the Law on Copyright and Related Rights, 'copies of a work or phonogram that are manufactured or distributed in violation of copyright and related rights shall be deemed counterfeit copies'.

Without the consent of the author or any other legal holder using the work in different forms and ways (e.g.: reproduction, distribution, reprint, public presentation, public performance, public announcement, publication, or republication, translation, transformation of the work, payment of the royalty) perverting the content of a work or disordering any personal rights (right of authorship, right for the author to protect his reputation, right to be named, right of disclosure) is a violation.

2. Remedies to protect copyright holders

Civil Remedies

According to article 45 of the Law on Copyright and Related Rights, the holder of copyright and/or related rights may bring an action in court to protect his exclusive rights.

Upon consideration of disputes connected with copyright, the court may, in addition to general methods of civil law protection apply, upon demand of the claimant, the following measures:

- the surrender, in place of the payment of damages, of income derived by the infringer from the infringement;

- payment, in place of damages or the surrender of income, of an indemnity in an amount from 100 to 50,000 times the conditional units

The Court could impose the following sanctions:

- a compensation;
- confiscation of materials and equipments used for the production of piracy copies; and
- confiscation and destruction of piracy copies.

According to articles 50, 50-1, 50-2 and 50-3 of the Administrative Code, the party infringing copyright may be fined by the courts from 15 manat to 40 manat.

Criminal Remedies

According to articles 165, 165-1, 165-2, and 165-3 of the Criminal Code, the courts could:

- sentence a person offending copyright and any other intellectual property rights to a penalty amounting to 100-500 manat depending on the gravity, and
- sentence a person offending copyright and any other intellectual property rights to imprisonment for 3 years.

The new draft Law on Intellectual Property Rights and against the piracy, which was prepared and presented to the Government by the Agency, includes remedies available to the copyright holder.

3. Provisional measures

Provisional measures are provided for the following purposes:

- preventing the production of pirated and counterfeit copies;
- preventing the importation of pirated copies at the borders; and
- preserving the proofs in case of a possible copyright infringement.

According to article 45 (3) and (4) of the Law on Copyright and Related Rights”, the court can order:

- the seizure, confiscation and forfeiture of the equipments and materials used to product piracy goods, and
- the seizure or destruction of those materials, without paying any compensation to the infringer, while taking into account the heaviness of the infringement and the legal interests of other persons.

Article 158 of the Civil Code of the Republic of Azerbaijan provides the plaintiff with the temporary options of injunction and seizure to prevent copyright infringements. When the defendant is unaware of the application made by the plaintiff, he must immediately be informed about the decision pursuant to Article 159 of the Civil Code.

There are concrete norms ensuring the temporary measures on the Law “About Intellectual Property rights and against the piracy”. The law takes into consideration the TRIPs Agreement. Under Article 9 of the draft law (“Temporary measures”). In turn, the court has the right to come to a decision about express and efficient measures in compliance with the corresponding legislation.

4. Penalties for copyright infringement

Civil Penalties

The penalties available to the court are:

- damages (article 45 (2) of the Law on copyright and related rights), and
- fines from 15 manat to 40 manat (article 50 of the Administrative Code).

Criminal Sanctions

Penalties do not include payment of court expenses, payment of attorneys' fees nor profits of which the copyright holder has been deprived. According to article 45(2) of Law on "Copyright and related rights," the available penalties are:

- fine from 100 to 500 manates (article 165 of the Criminal Code);
- public work from 160 hours to 240 hours; and
- fine from 500 to 1000 manats or imprisonment for up to 3 years for any second infringements.

5. Requirements for foreign persons

Foreign persons are not required to obtain any special approvals or engage any special agents. According to Article 3 of the Law on copyright and related rights, the provisions of the law are applied to both Azerbaijani citizens and persons residing in Azerbaijan, as well as to foreign rightholders pursuant to international treaties to which Azerbaijan is a party.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The main authority responsible for copyright enforcement is the court and the Copyright Agency of the Republic of Azerbaijan (Articles, 40, 44 and 46 of the Law on copyright and related rights.).

b) Enforcement bodies entitles to act ex-officio in copyright infringement cases

The enforcement bodies are entitled to act ex-officio in copyright infringement cases (Articles 40, 44, 46 of the Law on Copyright and Related Rights and Articles 216, 221 and 223 of the Civil Procedure Code).

c) Courts dealing with copyright cases

According to Articles 24-26 of the Civil Procedure Code, the courts dealing with copyright cases in the Republic of Azerbaijan are the general courts or the arbitration courts.

2. Enforcement at the border

The enforcement at the borders is regulated by the Customs Code of Azerbaijan, which takes into account the provisions of the Law on Copyright and Related Rights. Certain procedures concerning enforcement at the border are defined in Articles 27.1 and 27.2 of the Civil Procedure Code.

According to Article 186.6 of the Civil Procedure Code, the customs authority can postpone for 10 days the transfer of the works at the borders if it might be believed that they are infringing copyright. The indicated term may be increased to 20 days on appeal. Prompt written information should be provided to the applicant about the decision taken and the reasons for the postponement.

According to Article 186.12 of the Civil Procedure Code, certain measures may be taken also when they are based on other legislative acts concerning confiscation or destruction of infringing goods. For example, if the infringer is also responsible for the breach of Article 50 of the Administrative Misdemeanor Code and of Article 165 of the Criminal Code, the courts can order the confiscation or destruction of the goods which are proved to be pirated or counterfeited, on the ground of these provisions.

According to Articles 7.9, 8.5 and 8.52 of the Statute of the Copyright Agency of the Republic of Azerbaijan, the Copyright Agency may provide assistance when copyrighted goods are being transferred through borders. It may also determine whether a copyrighted good is infringed or not, and whether it shall be registered by the customs authorities.

IV. Public Awareness

1. Awareness campaigns and actions

A number of efforts have been made to help protect copyright.

International conferences, seminars and other meetings were held with WIPO, CISAC, the European Union TACIS Programmes, as well as with representatives of the private sector and other NGOs. Awareness-raising campaigns are organized on the occasion of the World Book and Copyright Day and the World International Intellectual Property Day.

A regional seminar, Intellectual Property as a Tool for Economic Development, was held in Baku in 2006, with the participation of the Russian Federation, Kazakhstan, Kyrgyzstan, Georgia and Turkey, as well as WIPO.

An international seminar, "The fight against piracy and the protection of intellectual property rights in Azerbaijan and the EU," was held in Baku in 2009.

2. Promotion of legal exploitation

In March 2005, the large training program for Azerbaijani copyright enforcement officials, U.S. Government and European and U.S. copyright rightholders' organizations, was held in an effort to improve enforcement.

3. Associations and organizations with awareness-raising purpose

Information not available

4. Best practices

Information not available

V. Capacity-building

1. Training

Information not available

2. Establishment of specialized units and intersectoral groups

An “Intellectual property centre” was established by the State Copyright Agency to improve the fight against piracy.

There are NGOs acting in the field of intellectual property.

The media also plays an awareness-raising role. In coordination with the State Copyright Agency, it publishes information on piracy rates, and measures taken as well as information on specific piracy cases.

Currently Articles 15, 40 and 44-47 of the Law on Copyright and Related Rights provide enough tools to fight against piracy. The draft law on Intellectual property rights and fight against piracy elaborated by the State Copyright Agency aims to improve the coordination between the relevant government authorities, as well as the administrative and criminal procedures.

The State Copyright Agency submitted the proposal to the Government of Azerbaijan to create a State Commission, which would implement operational measures to enable government authorities to coordinate better among themselves in the fight against piracy and in the improvement of IPR provisions.

The State Copyright Agency implemented different measures to reinforce the legal education in regards to piracy and to increase the related bodies’ experts’ professional skills

According to Article 44(1) of the Law on Copyright and Related Rights the competent collective management entities have the right to demand to discontinue actions violating copyright and related rights. NGOs may demand for discontinuing the production (preparation) and distribution of pirated (counterfeit) goods which cause the violation of copyright, within their competences. Such organizations take close part in the protection of copyright.

3. Best practices

Information not available

VI. Other

1. TPM/DRM

No protection of technical protection measures is provided for by the Law on Copyright and Related Rights. Such protection is proposed in the draft law elaborated by the Copyright agency.

2. Licensing schemes

Information not available

3. Optical discs

Information not available

4. Hotlines

Several “hotlines” have been created to help collect information concerning copyright infringements and to assist the Copyright Agency in rapidly addressing the problems. Every author or his heir may dial a special “hotline” during specific hours.

5. Contact details

Copyright Agency of the Republic of Azerbaijan

Website: http://www.copag.gov.az/index_en.shtml