



RECENT DEVELOPMENTS IN KYRGYZ COPYRIGHT LAW

On March 9, 2017 the Civil Code¹ of the Kyrgyz Republic and the Law on Copyright and Related Rights² were amended. The amendments include important changes for the benefit of libraries, archives, educational establishments and persons with print disabilities³, as well as new provisions relating to access to works created through public funds.

This document sets out the main amendments with short explanations and the practical effect thereof on beneficiary groups.

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¹ Part II, dated January 5, 1998 (as amended on June 8, 2017).

² Dated January 14, 1998 (as amended on March 9, 2017) See <http://kenesh.kg/ru/draftlaw/294225/show>

³ On 15 August 15 2017, the Kyrgyz Republic became party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

RIGHT OF AN AUTHOR TO ALLOW PUBLIC USE OF HIS/HER WORK ON TERMS TO BE DETERMINED BY THE AUTHOR			
Article	Text of the amendment	Commentary	Practical effect
Article 1073 of the Civil Code and Article 30 of the Copyright Law	An author may publicly declare that he or she grants a possibility to any party to use a work owned by the author on the terms and within the timeframe determined by the author. Any person has the right to use such works on the terms and within the timeframes established by the author. During the term of such declaration, it may not be withdrawn and the terms of use of the work provided in the declaration may not be changed.	This is a new provision that gives the author a possibility to license his/her work on a free-of-charge basis. The author determines the terms and timeframes of such use of their work. Therefore, the ability to issue a licence / author agreement on a free-of-charge basis has been clarified in the law. This provision is primarily a response to new models of use of works in the digital environment.	From now on, authors or other rightsholders may license their works free-of-charge. They may, for example, distribute their works under an open content licence such as a Creative Commons licence, or dedicate their work to the public domain.

OPEN ACCESS TO WORKS CREATED THROUGH PUBLIC FUNDS			
Article	Amendment	Commentary	Practical effect
Article 33-1 of the Copyright Law Property rights to a work created under public funds	1. Property rights to a work created under financing from public funds and designated to meet public or municipal needs shall belong to the Kyrgyz Republic, unless otherwise stipulated in an agreement. 2. If property rights to a work created	This is a new provision that enables works created under public funds to be made freely available. First, it gives the state ownership of works created through public funding, unless otherwise agreed.	From now on, works created from public funds can be owned by the state, which in turn may post such works online or otherwise make available in open access. In this way, it is hoped that such right of the state will help to

	<p>under financing from public funds do not belong to the Kyrgyz Republic in accordance with part 1 of this Article, the rightholder must provide, free-of-charge, a (non-exclusive) licence upon demand of the Kyrgyz Republic to use the work for the purpose of meeting public or municipal needs.</p>	<p>Second, in cases where the rights do not accrue to the state, the rightholder must grant a non-exclusive licence to the state allowing the work to be used for public needs.</p> <p>The introduction of the new provision was driven by the lack of textbooks at public secondary schools.</p> <p>Until now, the government had to obtain a licence from the rightholder to use works that were publicly funded. However, due to budget constraints the government was not always successful in negotiating the licences on favourable terms, which in some cases resulted in the situation where students had no access to the textbooks.</p>	<p>resolve the problem of lack of school textbooks in Kyrgyzstan.</p> <p>The provision will also contribute to the implementation of projects, such as Open E-Library (www.lib.kg). Open E-Library, that makes over 500 secondary school textbooks available under a Creative Commons CC BY licence, is administered by the Association of Public Libraries and the National Library after A. Osmonov.</p>
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ACCESS FOR PERSONS WITH PRINT DISABILITIES			
Article no.	Text of the amendment	Explanation	Effect
Article 4. Basic concepts (definitions)	<p>1. A beneficiary person means a person, who is blind, has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading; regardless of any other disabilities.</p> <p>Authorized entity means an entity authorized by the Government of the Kyrgyz Republic to provide education, instructional training, adaptive reading or information access on a non-profit basis. It also includes non-commercial</p>	<p>The definitions provided in the Copyright Law were supplemented with three new terms: beneficiary person, authorized entity and accessible format copy. The language tracks the definitions in the Marrakesh Treaty.</p> <p>On beneficiaries, until now the Copyright Law provided for a number of exceptions whereby only blind people, from among people with disabilities, were mentioned. Now all people with print disabilities (defined as beneficiaries) are eligible to benefit. This includes those who are blind or have low vision, have a developmental or learning disability, such as dyslexia or autism, or a physical disability such as Parkinson's disease and paralysis.</p> <p>On formats, until now a blind person could use a work without consent of the author and payment remuneration</p>	<p>Implementation of the Marrakesh Treaty into the national legislation is a significant step forward in recognizing the rights of people in Kyrgyzstan with print disabilities.</p> <p>The amount of accessible reading material will surely increase as a result.</p> <p>It will encourage greater participation in education, increase chances of employment, and help to alleviate poverty and social isolation.</p> <p>It will enable libraries of all types to develop services to people with print disabilities, and will encourage cooperation with libraries in other countries to share</p>

	<p>organizations that provide the same services to beneficiary persons as one of its primary activities.</p> <p>Accessible format copy means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without the visual impairment or other print disability.</p>	<p>only if the work was reproduced in Braille format or other systems specifically created for blind people. Now the restriction on format has been lifted. The work may be converted into any accessible format needed by the beneficiary.</p>	<p>accessible materials, avoiding duplication of effort and enabling scarce resources to be used to create more accessible books.</p>
<p>Article 20-1 Limitations and exceptions regarding accessible format copies</p>	<p>1. An authorized entity may, without the consent of the author and without payment of remuneration, make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply these to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means and undertake any actions to achieve these objectives provided the following conditions are fulfilled: 1) the authorized entity has lawful access to the work or a copy of the</p>	<p>This is a new Article in the Copyright Law that introduced a new exception for the free use of works. The language closely follows the Marrakesh Treaty, and sets out the permitted activities of authorized entities for the making, distribution and making available of accessible format copies of works.</p> <p>Authorized entities must comply with four conditions (1) the authorized entity has lawful access to the work, (2) no changes are made, other than those needed to make the work accessible, (3) copies are supplied for</p>	<p>To maximize the new opportunities, it is recommended that the Government of the Kyrgyz Republic could consider:</p> <ul style="list-style-type: none"> • undertaking communication and awareness raising of the new provisions implementing the Marrakesh Treaty, in particular among the library community and other authorized entities; • assisting authorized entities in drafting or adapting

	<p>work;</p> <p>2) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format by the beneficiary. No changes other than those needed to make the work accessible to the beneficiary person are allowed;</p> <p>3) such accessible format copies are supplied exclusively to be used by beneficiary persons;</p> <p>4) the activity of making the accessible format copy is undertaken on a non-profit basis.</p> <p>2. When carrying out the activity specified in part 1 of this Article, the authorized entity shall:</p> <p>1) establish compliance of the persons it serves with the requirements set forth for the beneficiary persons;</p> <p>2) limit to beneficiary persons and/or other authorized entities its distribution and making available of accessible format copies;</p> <p>3) undertake measures preventing</p>	<p>the exclusive use of beneficiary persons, (4) the activity is carried out on a non-profit-basis.</p> <p>In addition, the authorized entity should ascertain that the recipients are bona fide beneficiaries, limit the distribution of accessible format copies to beneficiaries or other authorized entities, discourage distribution of unauthorized copies, keep records of the handling of accessible format works.</p> <p>No authorization from the rightsholder or payment of remuneration is required.</p> <p>At the same time, beneficiaries or persons acting on their behalf may make the accessible format copies which is stipulated in Article 19.1(6) of the Copyright Law, discussed below.</p>	<p>existing internal documents in line with the new provisions of the Copyright Law.</p>
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	reproduction, distribution and making available of unauthorized copies; 4) keep records in handling copies of works.		
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USE OF A WORK FOR EDUCATIONAL PURPOSES AND BY PERSONS WITH PRINT DISABILITIES			
Article no.	Text of the amendment (excerpts)	Explanation	Effect
Article 19 of the Copyright Law Use of works without consent of an author and payment of author's remuneration	1. It is allowed, without the consent of the author or payment of remuneration, provided the name of the author whose work is used and the source is specified, to:... 2) use lawfully disclosed works and excerpts therefrom as illustrations in publications, radio and TV programs, audio and video recordings, in electronic (including digital), optical or other machine-readable forms for educational purposes to the extent justified by the purpose;... 6) make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply it to a beneficiary person by any means,	Article 19 of the Copyright law contains a list of exceptions for the free use of works. The amendment introduced in point 1(2) of Article 19 extended the format of the copies to include electronic (including digital), optical or other machine readable forms which may be freely used as illustrations alongside the use of these works in publications, radio and TV programs, audio and video recordings. Such free use is conditioned by its purpose, which should be educational. The amendment introduced in point 1.(6) of Article 19 clarified the exception (free use of works) for blind people, in compliance with the	From now on, works and excerpts of works may be used as illustrations in educational publications, radio and TV programs, audio and video recordings in electronic, digital, optical and other machine-readable forms. Persons with print disabilities, someone acting on their behalf and authorized entities may make a copy in any format needed to make the work accessible to the beneficiary.

	including by non-commercial lending or by electronic communication by wire or wireless means and undertake any actions to achieve those objectives.	provisions of the Marrakesh Treaty. The new wording of this provision allows beneficiaries or persons acting on their behalf to make accessible format copies of works.	
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USE BY LIBRARIES, ARCHIVES AND EDUCATIONAL ESTABLISHMENTS			
Article no.	Text of the amendment (excerpts)	Explanation	Main effect
Article 20 of the Copyright Law Use of works by libraries, archives and educational establishments	1. The reproduction of a single copy, for non-profit purposes, is allowed without the consent of the author or payment of remuneration provided name of the author and the source is specified: ... 3) Individual articles and small volume works lawfully published in collections, newspapers and other periodicals, and short extracts from lawfully published written works (with or without illustrations) by educational establishments for educational, training and research purposes. 2. A copy of a lawfully published work (put into public circulation) may be	The scope of the exception in Article 20 has been broadened. Until now, educational establishments could freely (i.e. without consent of author and payment of remuneration) reproduce individual articles and small volume works in a single copy only for use in the classroom. The new amendment to Article 20 allows reproduction of a work for a broader range of uses, that is, for education, training and research purposes. Until now, libraries had the right to provide temporary free use of works in digital form only on their premises. The amendment to Article 20(2)	Libraries are permitted to make digital copies of copyrighted content. Libraries can also provide access to digital works outside the premises of the library, and to engage in inter-library document supply provided that copyright law is respected, and that measures are undertaken to prevent reproduction and dissemination of unauthorized copies.

	<p>provided for temporary free use by a library, without the author's consent or payment of remuneration. Copies of works in digital format, including copies of works provided through inter-library use of library resources, may be provided for temporary use provided that the possibility to reproduce and disseminate copies of such works in digital form are excluded.</p>	<p>removed the restriction related to the premises, but obliged libraries to prevent further copying and distribution of copies of the digital work.</p> <p>In addition, the term "reprographic" has been deleted from this Article. The term "reprographic reproduction" is usually taken to mean paper copies, and no longer meets the reality and opportunities of the digital environment.</p>	<ul style="list-style-type: none"> • To enable users to enjoy access to the electronic works while safeguarding against misuse, it is recommended that libraries draft or adapt internal documents (e.g. rules, instructions) in line with the new provisions of the Copyright Law to prevent the further reproduction and distribution of such works and by applying technical protection measures, for example.
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