

# Law of September 23, 1975, on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations\*

(as last amended on September 8, 1997)

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## Section I Introductory Provisions

*Art. 1.* For the purposes of this Law,

- (a) “performers” means actors, singers, musicians, dancers, and other persons who perform, sing, recite, declaim, play or in any other way execute literary or artistic works;
- (b) “phonogram” means any exclusively sound fixation of the sounds of a performance or of other sounds;
- (c) “producer of phonograms” means the person, whether natural person or legal entity, who first fixes the sounds of a performance or other sounds;

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\* *French title:* Loi du 23 septembre 1975 sur la protection des artistes interprètes ou exécutants, des producteurs de phonogrammes et des organismes de radiodiffusion.

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*Source:* Communication from the Luxembourg authorities.

*Note:* Translation by the International Bureau of WIPO.

\*\* Added by the International Bureau of WIPO.

- (d) “reproduction” means the making of one or more copies of a fixation;
- (e) “copy” means a medium containing sounds taken directly or indirectly from a phonogram and incorporating all or a substantial part of the sounds fixed on that phonogram;
- (f) “distribution to the public” means any act whose purpose is to offer copies or make copies available, directly or indirectly, to the general public or any part thereof;
- (g) “broadcasting” means the dissemination of sounds or images and sounds by means of electromagnetic waves for the purposes of reception by the public;
- (h) “rebroadcasting” means the simultaneous transmission by a broadcasting organization of another broadcasting organization’s broadcast;
- (i) “rental” means the making available of originals and reproductions of protected works or other protected productions for use for a limited time and for a direct or indirect economic or commercial advantage;
- (j) “lending” means the making available of originals and reproductions of protected works or other protected productions for use for a limited time where there is no direct or indirect economic or commercial advantage and where the act is performed by establishments accessible to the public;
- (k) “satellite” means any satellite operating on frequency bands that are reserved, under the telecommunications legislation, for the broadcasting of signals for reception by the public or for non-public individual communication; in the latter case, however, it is necessary that the individual reception be possible under conditions comparable to those of the first case;
- (l) “communication to the public by satellite” means the act of introducing, under the supervision and responsibility of the broadcasting organization, of program-carrying signals for reception by the public into an uninterrupted chain of communication leading up to the satellite and returning to earth; where the program-carrying signals are sent in coded form, there is communication to the public by satellite on condition that the device for decoding the broadcast is made available to the public by the broadcasting organization or with its consent.

## **Section II**

### **Protection of Performers**

*Art. 2.* Performers shall enjoy the protection provided for in this Law where:

- (a) the performance takes place on the territory of the Grand Duchy;
- (b) the performance is fixed on a phonogram protected under [Article 7](#);
- (c) the performance, not being fixed on a phonogram, is disseminated in a broadcast that is protected under [Article 9](#).

*Art. 3.*—(1) In the cases provided for in [Article 2](#), the performers participating in the performance have the right to authorize or prohibit:

- (a) the broadcasting and communication to the public of their performance, including communication by satellite, except where the performance used for the broadcasting or communication to the public is itself already a broadcast performance or is given by means of a fixation;
- (b) the fixation of their unfixed performance on a physical medium;
- (c) the direct or indirect reproduction of a fixation of their performance;
- (d) the distribution of the fixation of their performance.

This right shall be exhausted only in the event of a first sale within the European Union, by the performer or with his consent, of the fixation of his performance;

- (e) the rental and lending of the fixation of their performance.

Performers who assign their rental rights in a phonogram or in a first fixation of a film retain the right to equitable remuneration for the rental.

Notwithstanding the first sentence of [subparagraph \(e\)](#), the performer may not prohibit public lending. However, the performers shall be entitled to remuneration for such lending on conditions laid down in a Grand-Ducal regulation which shall fix the amount of the said remuneration and specify the categories of lending establishments exempted from the payment thereof.

(2) In the absence of proof to the contrary, the consent of the performer to the broadcasting of his performance shall be deemed to constitute consent to rebroadcasting, to fixation for broadcasting purposes and to the reproduction of such a fixation for broadcasting purposes.

(3) Where a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used for a broadcast by means of electromagnetic waves, or for any communication to the public, the user shall make a single payment of equitable remuneration, which shall be shared among the performers and the phonogram producers concerned.

(4) The rights provided for in [paragraph \(1\)](#) above may be transferred, assigned or licensed by contract.

*Art. 4.*—(1) Where two or more performers take part in one and the same performance, it shall be sufficient that the consent provided for in the foregoing Article be given by the administrative or artistic authority to which the group is responsible, or failing that, by the leader of the said group.

(2) Consent shall in all cases be deemed to have been given where the person who has received it did not have sufficient reason to suspect that it did not come from the person entitled to give it under [paragraph \(1\)](#) of this Article.

*Art. 5.* Without prejudice to the application of [Article 3\(2\)](#), and in the absence of a specific *inter partes* agreement, the engagement contract shall determine the extent to which and the conditions on which the employer may make use of the services provided by a performer as part of the obligations incumbent on him by virtue of the said contract.

*Art. 6.* Where a contract for the production of a cinematographic or audiovisual work is concluded, in either individual or collective form, between the performers and the producer of a cinematographic or audiovisual work, the performer covered by the contract shall be deemed, subject to contractual clauses to the contrary, to have assigned the rights specified [in Article 3\(1\)](#), without prejudice to the right to remuneration for rental.

### **Section III**

## **Protection of Producers of Phonograms**

*Art. 7.* The producer of phonograms shall enjoy the protection provided for in this Law where:

- (a) he is a Luxembourg national or, in the case of a legal entity, it has its registered office on the territory of the European Union or of a Member State of the World Trade Organization;
- (b) the first fixation of the sounds took place entirely on the territory of the European Union or of a Member State of the World Trade Organization.

*Art. 8.* In the cases provided for in [Article 7](#), producers of phonograms shall have the right to authorize or prohibit:

- (a) the direct or indirect reproduction of their phonograms;
- (b) the importation of their phonograms where such importation is intended for distribution to the public;
- (c) the distribution of their phonograms to the public by any means; this right of distribution shall be exhausted only in the case of a first sale of the phonogram in the European Union by the producer or with his consent;
- (d) the rental and lending of their phonograms.

Notwithstanding [paragraph \(d\)](#) above, the producer of phonograms may not prohibit public lending. However, producers of phonograms have the right to remuneration for such lending on conditions laid down in a Grand-Ducal regulation which shall fix the amount of the said remuneration and specify the categories of lending establishments exempted from the payment thereof.

(1) The rights provided for in this Article may be transferred, assigned or licensed by contract.

### **Section IV**

## **Protection of Broadcasting Organizations**

*Art. 9.* The broadcasting organization shall enjoy the protection provided for in this Law where:

- (a) its registered office is located on the territory of the Grand Duchy;
- (b) the broadcast is transmitted by a transmitter located on that territory;
- (c) the broadcast has been emitted from a ground station, working with a communications satellite, located on that territory, or on any other territory, with the aid of a frequency allocated to the Grand Duchy on such a satellite.

*Art. 10.* In the cases provided for in [Article 9](#), the broadcasting organizations have the right to authorize or prohibit:

- (a) the retransmission and redistribution by satellite, and also the communication to the public, of their broadcasts where that communication is effected in places accessible to the public against payment of an admission charge;
- (b) the fixation of their broadcasts on a physical medium, including the fixation of single images of their television broadcasts, whether transmitted by wire or by wireless means, including cable or satellite;
- (c) the reproduction of a fixation of their broadcasts, whether transmitted by wire or by wireless means, including cable or satellite;
- (d) the distribution of the fixation of their broadcast, whether transmitted by wire or by wireless means, including cable or satellite; this right shall be exhausted only in the case of the first sale of the fixation of their performance in the European Union.

## **Section V**

### **General Provisions**

*Art. 11.* The protection provided for in this Law leaves intact and in no way affects the copyright in the literary and artistic works protected by the Law of March 29, 1972. Consequently, no provision of this Law may be interpreted as affecting those rights.

*Art. 12.—(1)* The term of the protection provided for in this Law is 50 years from:

- (a) the first of January of the year following the end of the year of the first fixation in the case of phonograms and performances fixed thereon; however, if the phonogram is lawfully published or communicated to the public during that time, the rights shall expire 50 years after the date of the first such event;
- (b) the first of January of the year following the end of the year in which the performance took place in the case of performances not fixed on phonograms; however, if a fixation of the performance is lawfully published or lawfully communicated to the public during that time, the rights shall expire 50 years after the date of the first such event;
- (c) the first of January of the year following the end of the year in which the first broadcast took place in the case of radio broadcasts, regardless of whether the broadcast was made by wire or wireless means, including cable or satellite.

(2) The foregoing shall be without prejudice to any longer term of protection deriving from other legal provisions.

(3) The term of protection shall likewise be extended to 50 years where the owner of the right is a national of a Member State of the European Union or of the World Trade Organization. The term of protection shall apply to all works and all performances that were protected in at least one Member State on July 1, 1995.

(4) The term of protection specified in [subparagraphs \(a\) to \(c\) of paragraph \(1\)](#) shall apply also where the owners are not nationals of a State of the European Union or of the World Trade Organization, in which case the term shall end not later than on the expiry date of the protection granted in the other country of which the owner is a national, provided that it may not exceed the term provided for in this Article.

(5) The terms of protection provided for in this Article and the methods of calculating them may be amended by Grand-Ducal regulation.

*Art. 13.*—(1) The protection provided for in this Law may not be claimed:

- (a) in the case of private use;
- (b) in the case of use, in the reporting of a current event, of a performance, phonogram or broadcast that constitutes all or part of the said event;
- (c) in the case of the fixing by a broadcasting organization, using its own facilities and for the purposes of its own broadcasts, on condition that, in the case of a performance, the organization has secured from the performers the broadcasting authorization required by this Law. The fixation and the reproductions thereof shall be destroyed or neutralized within the three months following the performance so fixed. However, the fixation may be preserved in official archives if it possesses exceptional documentary character. The procedure for this preservation shall be laid down in a public administration regulation;
- (d) in the case of use solely for educational or scientific research purposes.

(2) The protection provided for in this Law may likewise not be claimed in the case of use which, if it related to a literary or artistic work protected by the law of March 29, 1972, would be lawful without the author's authorization and without remuneration.

*Art. 14.* Subject to the exceptions provided for in this Law, the provisions thereof shall apply to both total and partial uses of a performance, phonogram or broadcast.

## **Section VI**

### **Penal Provisions**

*Art. 15.* Malicious or fraudulent violations of the rights provided for in this Law shall be punished with a fine of 5,000 to 100,000 francs and to a term of imprisonment of one month to six months, or to only one of those penalties. In the event of a second or subsequent offense within five years, the penalties shall be doubled.

Those who knowingly import or distribute to the public, stock or display for sale on Luxembourg territory copies of phonograms made without the consent of the producer thereof shall be liable to the same penalties.

Confiscation of the offending discs and the materials that served or were intended to serve for the commission of the infringement, even where they were not the property of the condemned person, shall be pronounced against the said condemned person.

The provisions of Book I of the Criminal Code and also the Law of June 18, 1879, as amended by the Law of May 16, 1904, entrusting the court and tribunals with the assessment of extenuating circumstances, shall be applicable.

*Art. 16.* Infringements of this Law may not be prosecuted otherwise than on a complaint by the person claiming to be an aggrieved party.

Should the plaintiff desist prior to any condemnatory judgment, the public action shall lapse. Lapse shall be subject to the payment of court costs, including the cost of the judgment declaring the public action lapsed.

## **Section VII**

### **Application of International Conventions**

*Art. 17.* The rights of performers, producers of phonograms and broadcasting organizations in their performances, phonograms and broadcasts that are not provided for in this Law shall be governed by the international conventions to which the Grand Duchy is party.

## **Section VIII**

### **Final Provisions**

*Art. 18.*—(1) Any entity exercising any one of the rights provided for in this Law otherwise than in conformity with [Article 4](#) on behalf of two or more performers or two or more producers of phonograms must obtain authorization. Where the entity is established abroad, it is obliged in addition to have a general agent domiciled in the Grand Duchy to represent it within the country in both judicial and extrajudicial matters. The general agent must be approved.

The authorization and approval, which are prescribed on pain of the foreclosure of any action, shall be granted by the member of the Government responsible for copyright.

(2) The entity established abroad shall produce a copy of the power of attorney given to its general agent. The power of attorney shall specify unambiguously the powers accorded, which must include that of representing the entity in judicial matters.

Any adjournments or notifications that are to be notified to an entity established abroad may be served on the general agent at his domicile, which shall determine jurisdiction for all actions that may arise out of this Law, and more especially for those that are based on contracts concerning rights provided for in this Law where those contracts are entered into in the Grand Duchy with natural persons or legal entities



established therein and relating either to inhabitants of the Grand Duchy or to businesses located therein.

The domicile of the general agent shall likewise serve to determine the time limits to be observed with respect to all adjournments or notifications.

(3) Any contract shall be regarded as having been entered into in the Grand Duchy for the purposes of this Law where it relates to contracts relating to rights provided for therein and is entered into with a user residing or established in the Grand Duchy.

(4) Any clauses in contracts that depart from the foregoing provisions shall be null and void.

(5) The entities referred to in [paragraph \(1\)](#) shall draw up a list of entitled persons represented by them and shall keep it up to date.

This list may be consulted by entertainment promoters, broadcasting organizations and, generally, all users and all those having an interest therein. In the case of entities established abroad, the list shall remain on deposit with the general agent.

The member of the Government responsible for copyright may accord exemptions from the obligations provided for in the foregoing two paragraphs insofar as lists deposited abroad may be consulted by users through the agency of Luxembourg entities or general agents of entities established abroad.

(6) Any authorization issued by a performer or producer of phonograms stating that he still has the right to which the authorization relates shall be considered valid except where the beneficiary of the authorization knew or should have known that the person who gave it no longer had the right so to dispose of it.

(7) A Grand-Ducal regulation shall specify the conditions governing the authorization and approval provided for in this Article and the conditions on which the entities referred to may carry on their activity.

*Art. 19.*—(1) The provisions of this Law shall enter into force three months after their publication in the *Mémorial*.

(2) The provisions of this Law shall not apply to performances and broadcasts that took place, or to phonograms produced, prior to the date of its entry into force.

(3) This Law shall apply to all works protected according to the above provisions, and the protection of which has not yet expired on the date of its entry into force.

This Law shall apply solely to future acts of exploitation, on the basis of current contracts, that relate to all phonograms, works protected by copyright, performances, broadcasts and first fixations of films on the date of its entry into force.

It shall not apply to acts of exploitation based on contracts concluded and having ended prior to the time limit for incorporation of the European Directive, namely July 1, 1994.

With regard to contracts concluded prior to that date, the right to equitable remuneration for rental shall apply only if the performer has, or those representing him have, filed a request to that effect prior to December 31, 1997.



The owners of rights shall be deemed to have authorized the rental or lending of protected works proved to have been made available to third parties to that end, or proved to have been acquired prior to the entry into force of this Law.

*Art. 20.* The term of protection shall apply to all works and all performances that on July 1, 1995, were protected in at least one Member State of the European Union.

This Law shall be without prejudice to acts of exploitation performed prior to the date of entry into force thereof.

Works and performances that passed into the public domain before July 1, 1995, and have already been freely exploited may continue to be exploited by the same persons, who shall be exempted from the payment of royalties insofar as they continue to use the same modes of exploitation.

The protection of this Law shall apply also:

- (a) to fixations of the performances of performers, and to reproductions of those fixations, and also to the broadcasting and transmission to the public of the said performances;
- (b) to the rights of producers of phonograms in the direct or indirect reproduction of their phonograms;
- (c) to broadcasting organizations with respect to the fixation, the reproduction of fixations and the rebroadcasting and transmission to the public of television broadcasts produced prior to the entry into force of the TRIPS Agreement, constituting Annex 1C of the Agreement Establishing the World Trade Organization (WTO), signed at Marrakesh on April 15, 1994, and approved by the Law of December 12, 1995, if, on that date, those productions have not yet passed into the public domain because their term of protection has expired.