



# Revised Law on Intellectual Property, regularizing, clarifying and harmonizing the applicable statutory provisions

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## **PART I AUTHORS' RIGHTS**

### **Title I General Provisions**

(Originating Fact)

Art. 1.

The intellectual property in a literary, artistic or scientific work shall belong to the author thereof by virtue of the sole fact of its creation.

(Content)

Art. 2.

Intellectual property shall comprise rights of personal and economic character which shall confer on the author full control over and the exclusive right to the exploitation of the work, without any limitations other than those specified in the Law.

(Characteristics)

Art. 3.

Authors' rights shall be independent, compatible and susceptible of combination with:

- 1 the ownership of and other rights pertaining to the physical object in which the intellectual creation is embodied.
- 2 any industrial property rights that may exist in relation to the work.
- 3 the other intellectual property rights recognized in Part II of this Law.

(Disclosure and Publication)

Art. 4.

For the purposes of the provisions of this Law, "disclosure" of a work means any expression thereof which, with the author's consent, first makes it accessible to the public in whatever form, and "publication" means the disclosure that is effected by the making available to the public of a sufficient number of copies of the work for its needs, estimated according to the nature and purpose of the work, to be reasonably satisfied.

### **Title II Ownership, Subject Matter and Content**

#### *Chapter I Ownership*

(Authors and Other Beneficiaries)

Art. 5.

(1) The natural person who creates any literary, artistic or scientific work shall be considered the author thereof.

(2) Nevertheless, the protection that this Law confers on the author may be enjoyed by legal entities under the circumstances expressly provided for therein.

(Presumption of Authorship, Anonymous or Pseudonymous Works)

Art. 6.

(1) In the absence of proof to the contrary, that person shall be presumed the author who is identified as such on the work by the inclusion of his name, signature or identification mark.

(2) Where the work is disclosed anonymously or under a pseudonym or sign, the exercise of the intellectual property rights shall accrue to the person, whether natural person or legal entity, who reveals it with the author's consent for as long as the latter does not reveal his identity.

(Works of Joint Authorship)

Art. 7.

(1) The rights in a work that is the unitary result of the collaboration of two or more authors shall belong to all of them.

(2) Disclosure and alteration of the work shall require the consent of all the co-authors. In the absence of agreement, the court shall decide.

Once the work has been disclosed, none of the co-authors may without justification withhold his consent to its exploitation in the manner in which it has been disclosed.

(3) Subject to the terms of the agreement between the co-authors of the work of joint authorship, they may exploit their contribution separately in so far as the joint exploitation is not thereby prejudiced.

(4) The intellectual property rights in a work of joint authorship shall belong to all the authors in proportions determined by them. In the absence of provisions in this Law, the rules laid down in the Civil Code on joint ownership shall apply to such works.

(Collective Works)

Art. 8.

A work shall be considered a collective work where it is created on the initiative and under the direction of a person, whether natural person or legal entity, who edits it and publishes it under his name, and where it consists of the combination of contributions by various authors whose personal contributions are so integrated in the single, autonomous creation for which they have been made that it is not possible to ascribe to any one of them a separate right in the whole work so made.

In the absence of agreement to the contrary, the rights in the collective work shall vest in the person who publishes it and discloses it in his name.

(Composite Works and Independent Works)

Art. 9.

(1) A new work that incorporates a pre-existing work without the collaboration of the author of the latter shall be considered a composite work, subject to the rights accruing to that author and subject also to the requirement of his authorization.

(2) A work that constitutes an autonomous creation, even if published in conjunction with other works, shall be considered an independent work.

## Chapter II Subject matter

### (Original Works and Titles)

#### Art. 10.

(1) The subject matter of intellectual property shall be all original literary, artistic or scientific creations expressed in any manner or medium, whether tangible or intangible, that is known at present or may be invented in the future, including the following:

- (a) books, pamphlets, printed matter, correspondence, writings, speeches and addresses, lectures, court pleadings, academic treatises and any other works of the same nature;
- (b) musical compositions with or without words;
- (c) dramatic and dramatico-musical works, choreographic and mimed works and theatrical works in general;
- (d) cinematographic works and any other audiovisual works;
- (e) sculptures and works of painting, drawing, engraving or lithography, picture stories, cartoons or comics, including drafts or sketches therefor, and other works of three-dimensional art, whether applied or not;
- (f) projects, plans, models and drawings of architectural works and works of engineering;
- (g) graphs, maps and figures relating to topography; geography and science in general;
- (h) photographic works and works expressed by a process analogous to photography;
- (i) computer programs;

(2) The title of a work shall be protected as part of the work when it is original.

### (Derived Works)

#### Art. 11.

The following shall also be the subject of intellectual property, without prejudice to the copyright in the original work:

- 1 translations and adaptations;
- 2 revisions, updated editions and annotations;
- 3 compendia, summaries and extracts;
- 4 musical arrangements;
- 5 all kinds of transformation of a literary, artistic or scientific work.

### (Collections)

#### Art. 12.

Collections of the works of other people, like anthologies, and of other elements or data which by the selection or arrangement of their contents constitute intellectual creations, shall also be the subject of intellectual property within the meaning of this Law, without prejudice to any rights of the authors of the original works.

### (Exclusions)

#### Art. 13.

Legal or regulatory provisions and the drafts thereof, judgments of jurisdictional bodies and acts, agreements, deliberations and rulings of public bodies, and official translations of all such texts, shall not be the subject of intellectual property.

*Chapter III*  
*Content*

**Section 1**  
**Moral Rights**

(Content and Characteristics of Moral Rights)

Art. 14.

The author is invested with the following unrenounceable and inalienable rights:

- 1 The right to decide whether his work is to be disclosed, and if so in what form.
- 2 The right to determine whether such disclosure should be effected in his name, under a pseudonym or sign or anonymously.
- 3 The right to demand recognition of his authorship of the work.
- 4 The right to demand respect for the integrity of the work and to object to any distortion, modification or alteration of it or any act in relation to it that is liable to prejudice his legitimate interests or threaten his reputation.
- 5 The right to alter the work subject to respect for the acquired rights of third parties and the protection requirements of goods of cultural interest.
- 6 The right to withdraw the work from circulation for reasons of changed intellectual or moral convictions, after indemnification of the holders of exploitation rights for damages and prejudice.

If the author later decides to resume exploitation of his work, he shall give preference, when offering the corresponding rights, to the previous holder thereof, and shall offer terms reasonably similar to the original terms.

- 7 The right of access to the sole or a rare copy of the work, when it is in another person's possession, for the purpose of the exercise of the right of disclosure or any other applicable right.

The aforesaid right shall not allow the author to demand the moving of the work, and access to it shall be had in the place and manner that cause the least inconvenience to the possessor, who shall be indemnified where appropriate for any damages and prejudice caused him.

(Entitlement to Exercise Rights Mortis Causa)

Art. 15.

(1) On the death of the author, the exercise of the rights specified in items 3 and 4 of the foregoing Article shall pass, without limitation in time, to the person, whether natural person or legal entity, to whom the author has expressly entrusted it by testamentary provision. In the absence of such provision, the exercise of the rights shall pass to his heirs.

(2) The same persons mentioned in the foregoing paragraph may, in the order given therein, exercise the right specified in item 1 of Article 14, in relation to the work not disclosed during the lifetime of the author and for a period of 70 years following his natural or declared death, without prejudice to the provisions of Article 40.

(Alternative Entitlement to Exercise Rights Mortis Causa)

Art. 16.

Where there are no persons as mentioned in the foregoing Article, or the whereabouts of such persons is unknown, the State, the Autonomous Communities, local corporations and public bodies of cultural character shall be empowered to exercise the rights provided for therein.

## Section 2 Exploitation Rights

(Exclusive Rights of Exploitation and Forms of Exploitation)

Art. 17.

The author is invested with the exclusive exercise of the rights pertaining to the exploitation of his work in whatever form and especially the rights of reproduction, distribution, communication to the public and alteration, which may not be exercised without his authorization, except where this Law so provides.

(Reproduction)

Art. 18.

Reproduction means the incorporation of the work in a medium that enables it to be communicated and copies of all or part of it to be made.

(Distribution)

Art. 19.

(1) Distribution means the making available to the public of the original or of copies of the work by means of sale, rental or lending or in any other manner.

(2) Where distribution is effected by means of sale within the area of the European Union, the rights shall lapse on the first such sale, but only in relation to successive sales effected within the said area by the owner of the rights or with his consent.

(3) Rental means the making available of the originals and copies of a work with a view to use for a limited time for direct or indirect economic or commercial benefit.

Making available for the purposes of display, communication to the public by means of phonograms or audiovisual recordings, including fragments of either, and making available for consultation on the spot, are excluded from the concept of rental.

(4) Lending means the making available of the originals and copies of a work with a view to use for a limited time for neither direct nor indirect economic or commercial benefit, providing that such lending is effected through establishments accessible to the public. It shall be understood that there is no direct or indirect economic or commercial benefit when lending carried out by an establishment accessible to the public gives rise to the payment of a charge not exceeding that necessary to cover its operating costs. The operations mentioned in the second paragraph of paragraph (3) above, and those that take place between establishments accessible to the public, are excluded from the concept of lending.

(5) The provisions of this Article relating to rental and lending shall not apply to buildings or to works of applied art.

(Communication to the Public)

Art. 20.

(1) Communication to the public means any act whereby two or more persons are afforded access to the work without prior distribution of copies to each of them.

Communication shall not be considered public where it takes place in a strictly domestic environment that is not an integral part of or connected to a dissemination network of any kind.

(2) The following in particular shall be considered acts of communication to the public:

- (a) Stage performances, recitations, dissertations and public performances of dramatic, dramatico-musical, literary and musical works by any means or process.
- (b) The public projection or showing of cinematographic and other audiovisual works.

- (c) The transmission of any works by radio or any other means serving for the wireless dissemination of signs, sounds or images. The concept of transmission shall include the production of program-carrying signals destined for a satellite where the reception thereof by the public is not possible otherwise than through an entity different from the original one.
- (d) The broadcasting or communication to the public by satellite of any works, that is, the act of emitting, subject to the control and responsibility of the broadcasting organization, program-carrying signals intended for reception by the public in an unbroken chain of communication towards the satellite and from it to the ground. The normal technical processes relating to program-carrying signals shall not be considered breaks in the chain of communication. Where the program-carrying signals are emitted in coded form, there shall be communication to the public by satellite whenever decoding devices are made available to the public by the broadcasting organization or with its consent.

For the purposes of the provisions of the foregoing two paragraphs, satellite means any satellite that operates on frequency bands reserved by telecommunications legislation for the distribution of signals for reception by the public or for non-public individual communication, provided in the latter case that the circumstances in which individual reception of the signals takes place are comparable to those applicable in the first case.

- (e) The transmission of any works to the public by wire, cable, optic fiber or other comparable process, whether on subscription or not.
- (f) The retransmission of the broadcast work by any of the media mentioned in the foregoing subparagraphs, and by a transmitting body different from the original one, of the broadcast work. Retransmission by cable means the simultaneous, unaltered and integral retransmission, by cable or microwaves, of the original broadcasts or transmissions, including those effected by satellite, of broadcast or televised programs intended for reception by the public.
- (g) The emission or transmission of the broadcast work, by means of any appropriate instrument, in a place accessible to the public.
- (h) The public exhibition of works of art or reproductions thereof.
- (i) Public access to computer databases by means of telecommunication, where such databases incorporate or constitute protected works.

(3) Communication to the public by satellite on the territory of the European Union shall be governed by the following provisions:

- (a) Communication to the public by satellite shall occur only in the Member State of the European Union in which, subject to the control and responsibility of the broadcasting organization, the program-carrying signals are incorporated in the unbroken chain of communication referred to in subparagraph (d) of paragraph (2) of this Article.
- (b) Where communication to the public by satellite occurs on the territory of a State not belonging to the European Union in which there is not the level of protection specified in this paragraph (3) for such a system of communication, the following shall be taken into account:
  - 1 If the program-carrying signal is sent to the satellite from an uplink signal station located in a Member State, the communication to the public by satellite shall be regarded as having occurred in that Member State. In such a case the rights established in relation to the satellite broadcast may be asserted against the person who operates the station that emits the upward signal.
  - 2 If an uplink signal station located in a Member State is not used, but a broadcasting organization established in a Member State has commissioned the satellite broadcast, the said act shall be regarded as having occurred in the Member State in which the broadcasting organization has its principal establishment; in such a case the rights established in relation to the satellite broadcast may be asserted against the broadcasting organization.
- (c) Communication to the public by satellite authorized by a co-producer(s) shall require prior authorization by the other co-producer(s) who might be prejudiced for reasons of linguistic exclusiveness or comparable reasons in the event of the work consisting solely of images.

(4) The retransmission by cable defined in the second subparagraph of paragraph (2)(f) of this Article within the territory of the European Union shall be governed by the following provisions:

- (a) The retransmission on Spanish territory of emissions, broadcasts by satellite or initial transmissions of programs initiated in other Member States of the European Union shall take place, as far as the copyright is concerned, in accordance with the provisions of this Law and pursuant to the terms of contractual agreements, whether individual or collective, signed between the owners of rights and cable distribution companies.
- (b) The right belonging to the owners of copyright to authorize cable distribution shall be exercised exclusively through an entity for the administration of intellectual property rights.
- (c) In the case of owners who have not entrusted the management of their rights to an entity for the administration of intellectual property rights, those rights shall be asserted through the entity that administers rights in the same category.

When there are two or more administration entities for the rights in the category concerned, the owners may entrust the management of those rights to any of the said entities.

The owners referred to in the present subparagraph (c) shall enjoy the rights and be under the obligations deriving from the agreement concluded between the cable distribution company and the entity to which they are regarded as having delegated the administration of their rights, on the same footing as the owners of rights who have entrusted the administration of those rights to the entity. They may likewise claim their rights from the administration entity referred to in the foregoing paragraphs of the present subparagraph (c) within the three years following the date on which the protected work was distributed by cable.

- (d) When the owner of rights authorizes the initial emission, satellite broadcast or transmission on Spanish territory of a protected work, it shall be presumed that he consents not to exercise his rights individually, where applicable, in relation to the cable distribution of the said work, but to assert them in accordance with the provisions of the present paragraph (4).
- (e) The provisions of subparagraphs (b), (c) and (d) of the present paragraph (4) shall not apply to the rights exercised by broadcasting organizations in relation to their own emissions, satellite broadcasts or transmissions, regardless of whether the said rights are theirs or have been transferred to them by other owners of copyright.
- (f) Where, for want of agreement between the parties, it is not possible to enter into a contract for the authorization of cable distribution, the parties may apply to the Intellectual Property Mediation and Arbitration Board for mediation.

The provisions of Article 153 of this Law and those of the Royal Decree implementing those provisions shall be applicable to the mediation provided for in the foregoing paragraph.

- (g) Where either of the parties abuses his negotiating position to prevent the initiation or prosecution in good faith of negotiations for the authorization of cable distribution, or without valid justification obstructs the negotiations or mediation referred to in the foregoing subparagraph, the provisions of Part I, Chapter I, of Law 16 of July 17, 1989, on the Defense of Competition shall apply.

(Transformation)

Art. 21.

(1) The transformation of the work shall include its translation or adaptation and any other alteration of its form from which a different work is derived.

(2) The intellectual property rights resulting from such transformation shall vest in the author of the latter, without prejudice to the rights of the author of the preexisting work.

(Selections or Complete Works)

Art. 22.



The licensing of the exploitation of his works shall not prevent the author from publishing them together in a selection or complete collection.

(Independence of Rights)

Art. 23.

The exploitation rights provided for in this Section shall be independent of each other.

**Section 3**  
**Other Rights**

(Resale Royalty)

Art. 24.

(1) The authors of works of three-dimensional art shall have the right to collect from the seller a share in the price of any resale effected by the latter at auction, in a commercial establishment or through the agency of a broker or dealer.

The provisions of the foregoing paragraph shall not apply to works of applied art.

(2) The author's share mentioned shall be three per cent of the resale price, and the right to collect it shall arise where the said price equals or exceeds 300,000 pesetas per work sold or per set of works capable of being regarded as having unitary character.

(3) The right laid down in paragraph (1) of this Article shall be unrenounceable, shall be transferred solely by succession *mortis causa* and shall lapse after 70 years have passed since the first of January of the year following that in which the natural or declared death of the author occurred.

(4) Auctioneers, directors of commercial establishments or dealers who have had a part in the resale shall give notice thereof to the corresponding administration entity or, as appropriate, to the author or to his successors in title, within two months, and shall provide the documentation necessary for the corresponding settlement to be made. Likewise, where they are acting on the account or instructions of the seller, they shall be jointly liable with the seller for the payment of the rights, to which end they shall withhold the appropriate share from the price. They shall in any event be considered depositaries of the amount of the said share.

(5) Actions to assert the right to the aforementioned auctioneers, directors of commercial establishments, dealers and brokers shall be statute-barred after three years following the notice of the resale. Where the said period expires without the amount of the author's share having been claimed, the said amount shall be credited to the Fine Arts Support Fund which shall be established, and the rules of which shall be laid down, by regulation.

(Right to Remuneration for Private Copying)

Art. 25.

(1) Reproduction carried out exclusively for private use, as authorized in subparagraph 2 of Article 31 of this Law, by means of non-typographical technical apparatus or instruments, of works publicly exploited in the form of books or publications assimilated thereto by regulation for those purposes, and also in the form of phonograms, videograms or other sound, visual or audiovisual media, shall give rise to a single equitable remuneration for each of the three forms of reproduction mentioned, payable to the persons specified in subparagraph (b) of paragraph (4) of this Article and intended to compensate for the intellectual property royalties that are not received on account of the said reproduction. This entitlement shall be unrenounceable for authors and performers.

(2) The remuneration shall be determined for each form of reproduction in relation to the equipment, apparatus and material required for carrying out the reproduction that is manufactured on Spanish territory or acquired outside the said territory for commercial distribution or use therein.

(3) The provisions of the foregoing paragraphs shall not be applicable to computer programs.

(4) With regard to the legal obligation referred to in paragraph (1) of this Article:

(a) “debtors” means the manufacturers in Spain, and also the acquirers outside Spanish territory for commercial distribution or use therein, of equipment, apparatus and material that permits any of the forms of reproduction provided for in paragraph (1) of this Article.

The successive distributors, wholesalers and retailers who acquire the said equipment, apparatus and material shall, with the debtors who have supplied it, be jointly responsible for the payment of the remuneration, except where they give proof of having actually paid the remuneration to the latter, and without prejudice to the provisions of paragraphs (13), (14) and (19) of this Article.

(b) “creditors” means the authors of the works publicly exploited in any of the forms mentioned in paragraph (1) of this Article, together, in the respective cases and forms of reproduction, with the publishers and phonogram and videogram producers and the performers whose performances have been fixed on the said phonograms and videograms.

(5) The amount of the remuneration to be paid by each debtor shall be that resulting from the application of the following rates:

(a) equipment or apparatus for book reproduction:

- 1 7,500 pesetas for equipment or apparatus with a copying capacity of up to nine copies per minute.
- 2 22,500 pesetas for equipment or apparatus with a copying capacity of ten to 29 copies per minute.
- 3 30,000 pesetas for equipment or apparatus with a copying capacity of 30 to 49 copies per minute.
- 4 37,000 pesetas for equipment or apparatus with a copying capacity of 50 copies per minute or more.

(b) equipment or apparatus for phonogram reproduction: 100 pesetas per unitary recording;

(c) equipment or apparatus for videogram reproduction: 1,100 pesetas per unitary recording;

(d) sound reproduction material: 30 pesetas per hour of recording or 0.50 pesetas per minute of recording;

(e) visual or audiovisual recording material: 50 pesetas per hour of recording or 0.833 pesetas per minute of recording.

(6) The following shall be exempted from the payment of remuneration:

(a) the producers of phonograms or videograms and broadcasting organizations for equipment, apparatus or material intended for the pursuit of their activity, provided that they have the required authorization to effect the said reproduction of works, performances, phonograms or videograms, as the case may be, in the course of that activity, which fact they shall prove to the debtors and to any persons jointly responsible with them, by means of a certificate from the administration entity or entities concerned in the event of the equipment, apparatus or material having been acquired on Spanish territory;

(b) natural persons who acquire the said equipment, apparatus and material outside Spanish territory under the arrangements for travellers and in such a quantity that it may be reasonably presumed that they are intended for private use on the said territory.

(7) The right of remuneration referred to in paragraph (1) of this Article shall be asserted through entities for the administration of intellectual property rights.

(8) Where two or more administrative entities are involved in the management of one and the same kind of remuneration, they may engage in dealings with the debtors for all matters concerning the collection of royalties, whether contentious or not, by joint and several representation, in which case the provisions governing community property shall be applicable to the relations between the said entities. In that case also, the administration entities may become associated and constitute a legal entity under the laws in force for the purposes specified.

(9) The administration entities of creditors shall communicate to the Ministry of Culture the name or business style and address of the individual representative or of any association that has been formed. In the

latter case, they shall in addition submit the documents proving the formation of the said association, with an itemized account of its member organizations in which the name and address thereof shall be given.

The provisions of the foregoing paragraph shall be applicable to any change of sole representative or any change in the association formed, in their addresses and in the names and capacities of the administration entities, whether represented or associated, and also in the event of amendment of the statutes of the association.

(10) The Ministry of Culture shall exercise control over the administration entity or entities or, as the case may be, over the representative or association responsible for the management of the collection of royalties, in the manner laid down in Article 154 of the Law, and where appropriate shall publish in the Official Bulletin of the State an account of the representative entities or managing associations, specifying their addresses, the kind of remuneration for which they are responsible and the administration entities that they represent or that are associated with them. Such publication shall be carried out whenever a change occurs in the particulars specified.

For the purposes specified in Article 154 of the Law, the administration entity or entities or, as the case may be, the management representative or association appointed, shall be obliged to submit to the Ministry of Culture, on June 30 and December 31 of each year, a detailed account of settlement declarations and of payments made as referred to in paragraph 12 of this Article and corresponding to the preceding six-month period.

(11) The obligation to pay remuneration shall arise in the following circumstances:

- (a) for manufacturers and acquirers of equipment, apparatus and material outside Spanish territory for commercial distribution therein, at the time when the transfer of ownership on the part of the debtor occurs or, as the case may be, when the assignment of the use or enjoyment of any of them occurs;
- (b) for the acquirers of equipment, apparatus and material outside Spanish territory that is intended for use therein, from the moment of acquisition thereof.

(12) The debtors mentioned in subparagraph (a) of paragraph (11) of this Article shall submit to the corresponding administration entity or entities or, where applicable, to the representative or association mentioned in paragraphs (7) to (10) inclusive of this Article, within the 30 days following the end of every calendar quarter, a settlement declaration which shall specify the numbers and technical characteristics, as required by paragraph (5) of this Article, of the equipment, apparatus and material regarding which the obligation to pay remuneration has arisen in the course of the said quarter. The same detail shall be used to deduct the amounts corresponding to equipment, apparatus and material destined to be taken out of Spanish territory and those relating to such as is exempted under the provisions of paragraph (6) of this Article.

The debtors mentioned in subparagraph (b) of paragraph (11) of this Article shall file the settlement declaration provided for in the foregoing paragraph within five days after the obligation arose.

(13) Distributors, wholesalers and retailers as referred to in the second item of paragraph (4)(a) of this Article shall comply with the obligation provided for in the first subparagraph of paragraph (12) of this Article with respect to equipment, apparatus and material acquired by them on Spanish territory from debtors that have not invoiced and passed on to them the corresponding remuneration.

(14) Unless otherwise agreed, the payment of remuneration shall be effected:

- (a) by the debtors mentioned in subparagraph (a) of paragraph (11) within the month following the date of the end of the period for the filing of the settlement declaration referred to in the first subparagraph of paragraph (12);
- (b) by other debtors and by distributors, wholesalers and retailers in relation to the equipment, apparatus and material referred to in paragraph (13) of this Article, at the time of the submission of the settlement declaration, without prejudice to the provisions of paragraph (9) thereof.

(15) The debtors, and where applicable those jointly responsible with them, shall be considered depositaries of the remuneration credited until such time as it is actually paid as provided in paragraph (14) above.

(16) For the purposes of the monitoring of the payment of remuneration, the debtors mentioned in subparagraph (a) of paragraph (11) of this Article shall state separately on their invoices the amount of that



remuneration, which they shall pass on to their clients and retain for payment in accordance with the provisions of paragraph (14).

(17) The obligations relating to the invoicing and passing on of remuneration to clients, as laid down in the foregoing paragraph, shall apply to the distributors, wholesalers and retailers, being jointly responsible with the debtors. They shall also fulfill the obligation to hold and to pay, provided for in the said paragraph, in the circumstances provided for in paragraph (13).

(18) In no case shall distributors, wholesalers and retailers, being jointly responsible with the debtors, accept from their respective providers the supply of equipment, apparatus and material subject to remuneration if it is not invoiced in accordance with the provisions of paragraphs (16) and (17) of this Article.

(19) Without prejudice to the provisions of the foregoing paragraph, where the amount of remuneration is not specified in an invoice, it shall be presumed, in the absence of proof to the contrary, that the remuneration payable for the equipment, apparatus and material specified has not been paid.

(20) In the circumstances described in the foregoing paragraph, and in any other case of non-payment of remuneration, the administration entity or entities or, as the case may be, the management representative or association may, without prejudice to any civil and criminal actions that may be available to them, apply to the court, using the procedure laid down in Article 137 of this Law, for the seizure of the equipment, apparatus and material concerned. The property thus seized shall be held against payment of the remuneration claimed and such indemnification for damages and prejudice as may be appropriate.

(21) The debtors and those jointly responsible with them shall allow the administration entity or entities or, as the case may be, the management representative or association, to oversee operations subject to remuneration and those affected by the obligations imposed by paragraphs (12) to (20) inclusive of this Article. Consequently, they shall provide the data and documents necessary to verify the actual fulfillment of the said obligations, and especially the accuracy of settlement declarations submitted.

(22) The administration entity or entities or, as the case may be, the management representative or association, and also the represented or associated entities themselves, shall respect the principles of commercial confidentiality or discretion regarding any information to which they may be privy in the exercise of the rights provided for in paragraph (21).

(23) The Government shall specify by regulation the types of reproduction that should not be regarded as for private use for the purposes of the provisions of this Article, the equipment, apparatus and material exempted from the payment of remuneration owing to the specific nature of the use or exploitation for which they are intended, such requirements as may derive from the development of technology and of the market sector concerned, and the distribution of remuneration in each of the fields of activity among the different categories of creditors, in order that they in turn may distribute them among themselves, due regard being had to the provisions of Article 149 of this Law.

### **Title III**

#### **Duration and Limitations**

##### *Chapter I*

##### *Duration*

(Duration and Calculation)

Art. 26.

The exploitation rights in the work shall last for the lifetime of the author and 70 years following his natural or declared death.

(Duration and Calculation in the Case of Posthumous, Pseudonymous and Anonymous Works)

Art. 27.

(1) The exploitation rights in anonymous or pseudonymous works referred to in Article 6 shall last for 70 years following the lawful disclosure thereof.

Where, before the said period expires, the author becomes known either because the pseudonym adopted by him leaves no doubt as to his identity or because he himself reveals it, the provisions of the foregoing Article shall apply.

(2) The exploitation rights in works that have not been lawfully disclosed shall last for 70 years following the creation thereof in cases where the term of protection is not calculated as from the natural or declared death of the author or authors.

(Duration and Calculation in the Case of Works of Joint Authorship and Collective Works)

Art. 28.

(1) The exploitation rights in works of joint authorship as defined in Article 7, including cinematographic and other audiovisual works, shall last for the lifetime of the co-authors and 70 years following the natural or declared death of the last surviving co-author.

(2) The exploitation rights in collective works as defined in Article 8 of this Law shall last for 70 years following the lawful disclosure of the protected work. Nevertheless, if the natural persons who created the work are identified as authors in the versions of the work that are made accessible to the public, the provisions of Articles 26 or 28(1) shall be applied, as appropriate.

The provisions of the foregoing paragraph shall be without prejudice to the rights of identified authors whose identifiable contributions are contained in the said works, to which contributions Article 26 and paragraph (1) of this Article shall be applied as appropriate.

(Works Published in Parts)

Art. 29.

In the case of works disclosed in parts, volumes, installments or separate issues that are not independent and the protection terms of which start when the work has been lawfully disclosed, the said term shall be calculated separately for each such component.

(Calculation of the Term of Protection)

Art. 30.

The terms of protection provided for in this Law shall be calculated from the first of January of the year following that of the natural or declared death of the author or that of the lawful disclosure of the work, as appropriate.

## *Chapter II* *Limitations*

(Reproduction Without Authorization)

Art. 31.

Works already disclosed may be reproduced without the author's authorization in the following cases:

- 1 as a consequence of or by way of evidence in a judicial or administrative proceeding;
- 2 for the private use of the copier, without prejudice to the provisions of Articles 25 and 99(a) of this Law, and provided that the copy is not used for either collective or gainful purposes;
- 3 for the private use of sightless persons, provided that the reproduction makes use of the Braille system or another specific process, and that the copies are not used for gainful purposes.

(Quotations and Summaries)

Art. 32.

It shall be lawful to include in one's own work fragments of the works of others, whether of written, sound or audiovisual character, and also to include isolated works of three-dimensional, photographic, figurative or comparable art character, provided that the works concerned have already been disclosed and that they are included by way of quotation or for analysis, comment or critical assessment. Such use may only be made for teaching or research purposes and to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work shall be stated.

Periodical compilations made in the form of press summaries or reviews shall be treated as quotations.

(Articles on Topical Subjects)

Art. 33.

(1) Studies and articles on topical subjects disseminated by the mass communication media may be reproduced, distributed and communicated to the public in any other media of the same type, subject to a mention of the source and of the author if the study was published under a byline and provided that no reserved copyright notice appeared on the original. All the foregoing shall be without prejudice to the author's right to collect the agreed remuneration or, in the absence of agreement, such remuneration as is considered equitable.

In the case of literary collaboration, it shall in all cases be necessary to obtain the due authorization of the author.

(2) Lectures, addresses, court pleadings and other works of the same character that have been delivered in public may also be reproduced, distributed and communicated, provided that such uses are made for the sole purpose of informing on current events. The latter condition shall not apply to speeches made at parliamentary sessions or meetings of public bodies. In any case, the author's right to publish such works in a collection shall be reserved.

(Use of Works in News Reporting)

Art. 34.

Any work capable of being seen and heard in connection with the reporting of current events may be reproduced, distributed and communicated to the public, but only to the extent justified by the informatory purpose.

(Use of Works Located in Thoroughfares)

Art. 35.

Works permanently located in parks, streets, squares or other public places may be freely reproduced, distributed and communicated by means of paintings, drawings, photographs and audiovisual processes.

(Cable, Satellite and Recording for Technical Purposes)

Art. 36.

(1) The authorization to broadcast a work shall include transmission of the broadcast by cable where such transmission is effected simultaneously and entirely by the original body and without exceeding the bounds of the geographical area specified in the said authorization.

(2) The said authorization shall likewise include the incorporation of the work in a program beamed to a satellite whereby the work may be received through a body different from the original one, provided that the author or his successor in title has authorized the latter body to communicate the work to the public, in which case the original broadcaster shall in addition be exempted from the payment of any remuneration.

(3) The licensing of the public communication of a work, where such communication is effected by means of broadcasting, shall entitle the broadcasting organization to record the work using its own facilities and for its own wireless broadcasts, in order to achieve its purpose of effecting, once and once only, the authorized communication to the public. Further broadcasts of the works so recorded shall require the licensing of the reproduction and the communication to the public.

(4) The provisions of this Article shall be understood as being without prejudice to those of Article 20 of this Law.

(Free Reproduction and Lending in Specific Establishments)

Art. 37.

(1) The owners of copyright may not object to reproductions of works where they are made without gainful intent by museums, libraries, record libraries, film libraries, newspaper libraries or archives which are in public ownership or form part of institutions of cultural or scientific character, and where the reproduction is effected solely for research purposes.

(2) Museums, archives, libraries, newspaper libraries, record libraries or film libraries in public ownership or belonging to institutions of general cultural, scientific or educational interest without gainful intent, or to teaching institutions integrated in the Spanish educational system, shall not require the authorization of the owners of copyright or pay remuneration to them for the loans that they make.

(Official Acts and Religious Ceremonies)

Art. 38.

The performance of musical works in the course of official State events, events instituted by public bodies and religious ceremonies shall not require the authorization of the holders of the rights, provided that the public may attend them free of charge and that the performers who take part in them do not collect specific remuneration for their performances.

(Parodies)

Art. 39.

The parody of a disclosed work shall not be considered a transformation that requires the consent of the author, provided that it involves no risk of confusion with that work and does no harm to the original work or its author.

(Protection of the Right of Access to Culture)

Art. 40.

If, on the natural or declared death of the author, his successors in title exercise his right of non-disclosure of the work in a manner contrary to the provisions of Article 44 of the Constitution, the court may order appropriate measures at the instigation of the State, the Autonomous Communities, local corporations, public institutions of cultural character or any other person having a legitimate interest.

## **Title IV Public Domain**

(Conditions Governing the Use of Works in the Public Domain)

Art. 41.

The expiration of the exploitation rights in works shall cause the works to fall into the public domain.

Works in the public domain may be used by any person provided that the authorship and integrity of the work are respected in the manner specified in items 3 and 4 of Article 14.

## Title V Transfer of Rights

### *Chapter I General provisions*

#### (Transfer Mortis Causa)

Art. 42.

The exploitation rights in the work shall be transferred *mortis causa* by any of the means recognized in law.

#### (Transfer Inter Vivos)

Art. 43.

(1) The exploitation rights in the work may be transferred by *inter vivos* transaction, the transfer being limited to the right or rights transferred, to the means of exploitation expressly provided for and the time and territorial scope specified.

(2) Failure to mention the time shall limit the transfer for five years, and failure to mention the territorial scope shall limit it to the country in which it is effected. Where the conditions governing the exploitation of the work are not mentioned specifically and categorically, the transfer shall be limited to such exploitation as is necessarily deduced from the contract itself and is essential to the fulfillment of the purpose of the contract.

(3) Any global transfer of exploitation rights in all the works that the author may create in the future shall be null and void.

(4) Any stipulations whereby the author undertakes not to create any work in the future shall be null and void.

(5) The transfer of exploitation rights shall not apply to methods of use or means of dissemination that do not exist or are unknown at the time of the transfer.

#### (Minors Living Independently)

Art. 44.

Authors under 18 and over 16 years of age who live independently with the consent of their parents or guardians or with the authorization of the person or institution responsible for them shall be fully competent to transfer exploitation rights.

#### (Written Form)

Art. 45.

Any transfer shall be evidenced in writing. If, after having been formally called upon to do so, the transferee fails to meet this requirement, the author may choose to terminate the contract.

#### (Proportional and Lump Sum Remuneration)

Art. 46.

(1) The transfer granted by the author for a consideration shall entitle him to a proportional share in the proceeds of exploitation, the amount thereof being agreed upon with the transferee.

(2) Nevertheless, the payment of a lump sum to the author may be provided for in the following cases:



- (a) when, on account of the manner of exploitation, there is great difficulty in the calculation of the proceeds, or where their verification either is impossible or would incur costs out of proportion to the eventual rewards;
- (b) where the use of the work is of secondary character in relation to the activity or the material object for which it is intended;
- (c) where the work, being used with others, does not constitute an essential element of the intellectual creation in which it is embodied;
- (d) in the case of the first or sole edition of the following, previously undisclosed works:
  - 1 dictionaries, anthologies and encyclopedias;
  - 2 prologues, annotations, introductions and presentations
  - 3 scientific works;
  - 4 material for the illustration of a work;
  - 5 translations;
  - 6 reduced-price popular editions.

(Action for the Review of Inequitable Remuneration)

Art. 47.

Where in the case of a transfer for a lump sum the author's remuneration is manifestly out of proportion to the profits obtained by the licensee, the former may apply for a review of the contract and, in the absence of agreement, may apply to the court for the award of equitable remuneration in the light of the circumstances of the case. That faculty may be exercised within the ten years following the transfer.

(Transfer of Exclusive Rights)

Art. 48.

The transfer of exclusive rights shall be granted with an express statement of that character and shall grant to the transferee, within its assigned scope, the right to exploit the work to the exclusion of any other person, including the transferor himself, and, unless otherwise agreed, the right to grant non-exclusive authorizations to third parties. It shall also confer on him the right, which shall be independent of that of the owner effecting the transfer, to institute proceedings for violations that affect the powers that have been assigned to him.

The transfer shall place the transferee under the obligation to make all the necessary arrangements for the licensed exploitation to be effective, depending on the nature of the work and the practices prevailing in the professional, industrial or commercial field concerned.

(Transfer of the Transferee's Exclusive Rights)

Art. 49.

The transferee holding exclusive rights may further transfer his rights to another person with the express consent of the transferor.

In the absence of such consent, the transferees shall be jointly responsible to the first transferor for the obligations arising out of the transfer.

No consent shall be necessary where the transfer occurs as a result of the liquidation, or a change in the ownership, of the corporate transferee.

(Non-Exclusive Transfer)

Art. 50.

(1) The non-exclusive transferee shall have the right to make use of the work according to the terms of the transfer and in competition both with other transferees and with the transferor himself. His rights shall be intransferable except in the circumstances provided for in the third paragraph of the foregoing Article.

(2) Non-exclusive authorizations granted by administration entities for the use of works from their repertoires shall in all cases be intransferable.

(Transfer of the Rights of a Salaried Author)

Art. 51.

(1) The transfer to the producer of the exploitation rights in a work created by virtue of employment relations shall be governed by the terms agreed upon in the contract, which shall be made in writing.

(2) In the absence of an agreement in writing, it shall be presumed that the exploitation rights have been granted exclusively and with the scope necessary for the exercise of the customary activity of the producer at the time of the delivery of the work made by virtue of the said employment relations.

(3) In no event may the producer exploit the work in a manner or for purposes different from those deriving from the purposes specified in the preceding two paragraphs.

(4) The remaining provisions of this Law shall apply *mutatis mutandis* to the aforesaid assignments in so far as the purpose and subject matter of the contract so determine.

(5) The ownership of the rights in a computer program created by a salaried worker in the course of his duties or on instructions from his employer shall be governed by the provisions of Article 97(4) of this Law.

(Transfer of Rights for Periodical Publications)

Art. 52.

In the absence of provision to the contrary, the authors of works reproduced in periodical publications shall retain their right to make use of those works in any form that does not prejudice the normal exploitation of the publication in which they have been inserted.

The author may make use of his work as he sees fit if it has not been reproduced within a period of one month following its dispatch to or acceptance in daily publications, or within a period of six months in the case of other publications, unless otherwise agreed.

The remuneration of the author of the said works may consist of a lump sum.

(Pledging and Attachment of Copyright)

Art. 53.

(1) The exploitation rights in the works protected under this Law may be pledged in accordance with the laws in force.

(2) The exploitation rights accruing to the author may not themselves be attached, but the profits or benefits therefrom may be attached, being regarded as salary for the purposes of both the order of priority for attachment and deductions or unattachable amounts.

(Credits from the Assignment of Exploitation Rights)

Art. 54.

Money credits arising from the licensing of exploitation shall be treated on the same footing as those earned by way of salary or other pay in bankruptcy proceedings brought by the licensees, subject to a limit of two annual amounts.

(Unrenounceable Benefits)

Art. 55.

Except as provided in the Law itself, any benefits granted to authors and to their successors in title under this Title shall be unrenounceable.

(Transfer of Rights to the Owners of Certain Physical Media)

Art. 56.

(1) The person who obtains ownership of the medium in which the work has been incorporated shall not have any exploitation right in that work by virtue of that ownership alone.

(2) Nevertheless, the owner of the original of a work of three-dimensional art or a photographic work shall have the right to display the work in public, even if it has not been disclosed, except where the author has expressly excluded that right in the instrument of disposal of the said original. In any event, the author may oppose the exercise of that right by applying for such of the precautionary measures provided for in this Law as are appropriate where the work is displayed in a manner prejudicial to his honor or professional reputation.

(Application in Preference to Other Provisions)

Art. 57.

The licensing of copyright for exploitation by means of publication or performance or the production of audiovisual works shall in all cases be governed by such of the specific provisions in the present Part I as are appropriate and, where there are no such provisions, by those laid down in this Chapter.

The licensing of rights for each of the various modes of exploitation shall be evidenced in independent documents.

*Chapter II*  
*Publishing contracts*

(Concept)

Art. 58.

Under a publishing contract the author or his successors in title assign to the publisher, against economic compensation, the right to reproduce his work and the right to distribute it. The publisher undertakes to carry out those operations on his own account and at his own risk under the agreed conditions and subject to the provisions of this Law.

(Future Works, Commissioning of a Work and Contributions to Periodical Publications)

Art. 59.

(1) Future works may not be covered by the publishing contract provided for in this Law.

(2) The commissioning of a work shall not be the subject of a publishing contract, but any remuneration that may be agreed upon shall be considered an advance on the royalties accruing to the author from publication, if it occurs.

(3) The provisions of this Chapter shall likewise not apply to contributions to periodical publications, except where, as appropriate, the nature and object of the contract dictate.

(Written Form and Minimum Contents)

Art. 60.

The publishing contract shall be made in writing and shall in all cases specify:

- 1 whether the assignment by the author to the publisher is of exclusive character;
- 2 its territorial scope;

- 3 the maximum and minimum numbers of copies constituting the print-run or each of the print-runs agreed upon;
- 4 the manner of distribution of copies and those that are reserved for the author, for reviews and for the advertising of the work;
- 5 the remuneration of the author, determined according to the provisions of Article 46 of this Law;
- 6 the time limit for the putting into circulation of the copies constituting the sole or first edition, which may not exceed two years from the time at which the author delivers the work to the publisher in a form suitable for the reproduction thereof to be effected;
- 7 the time limit by which the author must deliver the original of his work to the publisher.

(Causes of Invalidity and Rectification of Omissions)

Art. 61.

(1) Any contract that is not made in writing, and a contract that does not specify the limits required under (3) and (5) of the foregoing Article shall be null and void.

(2) Omission of the time limits specified in (6) and (7) of the foregoing Article may be the subject of proceedings on the part of the contracting parties to compel each other mutually to remedy the shortcoming. In the absence of agreement, the court shall set the appropriate time limits, taking due account of the circumstances of the contract, the steps taken by the parties with respect to its implementation, and custom.

(Publication in Book Form)

Art. 62.

(1) In the case of the publication of a work in book form, the contract shall in addition specify the following particulars:

- (a) the language or languages in which the work is to be published;
- (b) where appropriate, the advance royalties to be paid by the publisher to the author;
- (c) the form or forms of publication and, where appropriate, the collection of which they are to form a part.

(2) Failure to specify the language or languages in which the work is to be published shall give the publisher the right to publish it only in its original language.

(3) Where the contract provides for publication of work in more than one official Spanish language, publication in one of them shall not exempt the author from his obligation to publish it in the others.

If, after five years have elapsed since the author delivered the work to the publisher, he has not published it in all of the languages provided for in the contract, the author may terminate the contract in respect of the languages in which the work has not been published.

(4) The provisions of the foregoing paragraph shall apply also to translations of foreign works in Spain.

(Exceptions to Article 60.6)

Art. 63.

The limitation of the period provided for in item 6 of Article 60 shall not apply to editions of the following types of work:

- 1 anthologies of the works of others, dictionaries, encyclopedias and equivalent compilations;
- 2 prologues, epilogues, presentations, introductions, annotations, commentaries and illustrations relating to the works of others.

(Obligations on the Publisher)

Art. 64.

The publisher shall be under the obligation:

- 1 to reproduce the work in the agreed form, without making any alteration to which the author has not consented, and with the inclusion on the copies of the name, byline or sign that identifies him;
- 2 to submit proofs from the print–run to the author, unless otherwise agreed;
- 3 to proceed with the distribution of the work within the period and under the conditions specified;
- 4 to ensure that the work is exploited continuously and that its commercial distribution conforms to the usual practice in the publishing profession.
- 5 to remit to the author the remuneration specified, and, where that remuneration is proportional, at least once a year in the appropriate final settlement, the composition of which he shall give an account. He shall provide the author, annually, with a certificate specifying the particulars of the manufacture, distribution and stocks of copies; to that end, if the author so requests, the publisher shall submit the corresponding supporting documents to him;
- 6 To return to the author the original of the work published under the contract once the typesetting and printing operations have been completed.

(Obligations on the Author)

Art. 65.

The author shall be under the obligation:

- 1 to deliver the work to be published to the publisher in the appropriate form for reproduction and within the agreed time limit;
- 2 to be answerable to the publisher for the authorship and originality of the work, and for the peaceful exercise of the rights assigned to him;
- 3 to correct the proofs of the print–run, unless otherwise agreed.

(Amendments to the Contents of the Work)

Art. 66.

During the period of correction of proofs, the author may make such amendments to the work as he considers essential, provided that they do not alter its character or purpose or substantially increase the cost of the edition. In any event, the publishing contract may specify a maximum percentage of corrections in relation to the whole work.

(Author's Rights in the Case of Remaindering and Destruction of the Edition)

Art. 67.

(1) The publisher may not, without the author's consent, remainder the edition before two years have elapsed since the copies were first placed in circulation.

(2) If, when that period has elapsed, the publisher decides to remainder the balance of the copies, he shall formally notify the author, who may choose to acquire them subject to payment of a premium over the remainder price, or, in the case of proportional remuneration, collect ten per cent of the amount invoiced by the publisher. The option must be exercised within the 30 days following receipt of the notification.

(3) If, after the same period, the publisher decides to destroy the balance of the copies of an edition, he shall also notify the author, who may demand that all or some of the copies be delivered to him free or charge within a period of 30 days following the notification. The author may not put the said copies to commercial use.

(Termination)

Art. 68.

(1) Without prejudice to the indemnification to which he is entitled, the author may terminate the publishing contract in the following circumstances:

- (a) where the publisher fails to produce the edition of the work in the agreed time and under the agreed conditions;
- (b) where the publisher fails to comply with any of the obligations specified in items 2, 4 and 5 of Article 64, in spite of an express demand from the author calling on him to do so;
- (c) where the publisher proceeds to remainder or destroy the remaining copies of the edition without meeting the requirements laid down in Article 67 of this Law;
- (d) where the publisher assigns his rights to a third party without permission;
- (e) where, if more than one edition has been provided for and the last edition produced is out of print, the publisher does not produce the next edition within one year of having been called upon to do so by the author; an edition shall be considered out of print for the purposes of this Article when the number of unsold copies is less than five per cent of the total number of the edition, and in any event if it is below 100;
- (f) in the event of the liquidation, or change of ownership, of the publishing firm, in so far as the reproduction of the work has not been put in hand, with repayment of any advances already paid.

(2) Where the exploitation of the work is suspended because the activity of the publisher has ceased or as a result of bankruptcy proceedings, the judicial authority may, at the author's instigation, set a period for the resumption of such exploitation, the publishing contract being terminated if that should not occur.

(Causes of Lapse)

Art. 69.

The publishing contract shall lapse on the following grounds in addition to the general grounds for the lapse of contracts:

- 1 on termination of the agreed period;
- 2 on the sale of all the copies, if such was the purpose of the publication;
- 3 on the expiration of ten years from the assignment if remuneration has been agreed upon exclusively as a lump sum, in accordance with the provisions of Article 46(2)(d) of this Law;
- 4 in any event, 15 years after the author has placed the publisher in a position to carry out the reproduction of the work.

(Effects of Lapse)

Art. 70.

On the expiration of the contract and unless otherwise provided, the publisher may, within the next three years and regardless of the manner of distribution agreed upon, dispose of any copies that he may still have in his possession. The author may acquire them for 60 per cent of their public retail price or for whatever price may be decided upon by expert opinion, or he may choose to make a preferential bid for the applicable selling price.

Such disposal shall remain subject to the conditions laid down in the expired contract.

(Music Publishing Contract)

Art. 71.

Publishing contracts for musical or dramatico–musical works, for which in addition the publisher is granted rights of communication to the public, shall be governed by the provisions of this Chapter subject to the following:

- 1 The contract shall be valid even if it does not specify the number of copies; nevertheless, the publisher shall manufacture and distribute copies of the work in sufficient quantity to meet the normal requirements of the exploitation agreed upon in accordance with established practice in the music publishing profession.
- 2 For symphonic and dramatico–musical works, the time limit provided for in item 6 of Article 60 shall be five years.
- 3 The provisions of paragraph (1)(c) of Article 68 and of items 2, 3 and 4 of Article 69 shall not be applicable to this type of contract.

(Verification of Print–Runs)

Art. 72.

A number of copies of each edition shall be subject to the verification of print–runs according to a procedure to be laid down by regulation after the professional sectors concerned have been heard.

Failure by the publisher to comply with the requirements laid down for the aforesaid purpose shall entitle the author or his successor in title to terminate the contract; without prejudice to any liability that the publisher may have incurred.

(General Contract Conditions)

Art. 73.

Authors and publishers may, through the administration entities responsible for their intellectual property rights or, if they have none, through the associations that represent them, agree on general conditions for publishing contracts, subject to respect for the law.

### *Chapter III* *Stage and musical performance contracts*

(Concept)

Art. 74.

Under the contract provided for in this Chapter, the author or his successors in title assign to a natural person or legal entity the right to perform in public a literary, dramatic, musical, dramatico–musical, mimed or choreographic work against economic compensation. The assignee shall undertake to effect the communication of the work to the public under the conditions agreed upon and subject to the provisions of this Law.

(Contractual Forms and Maximum Term)

Art. 75.

(1) The parties may enter into the contract for a fixed term or for a specified number of communications to the public.

In any event, the term of the assignment of exclusive rights may not exceed five years.

(2) The contract shall specify the period within which the sole or first communication of the work is to be effected. That period may not exceed two years following the date of the contract or, as appropriate, of the author having placed the producer in a position to effect the communication.

Where such a period has not been specified, a period of one year shall be deemed to have been granted. Where the subject matter of the contract is the stage performance of the work, the period concerned

shall be the duration of the theater or opera season corresponding to the time of the conclusion of the contract.

(Restrictive Interpretation of the Contract)

Art. 76.

Where the contract has not specified the types of performance authorized, they shall be limited to recitation and performance in theaters, halls or areas in which a sum of money is charged for admission.

(Obligations on the Author)

Art. 77.

The author is obliged:

- 1 to deliver the text of the work to the producer, where appropriate with the fully orchestrated score, if it has not been published in printed form;
- 2 to be answerable to the licensee for the authorship and originality of the work and for the undisturbed exercise of the rights granted him.

(Obligations on the Assignee)

Art. 78.

The assignee is obliged:

- 1 to accomplish the communication of the work to the public within the period agreed or specified under paragraph (2) of Article 75;
- 2 to effect the communication without subjecting the work to alterations, additions, abridgements or deletions that have not been agreed to by the author, and under technical conditions that do not prejudice the latter's moral rights;
- 3 to allow the author or his representatives to inspect the public performance of the work, and to attend it free of charge;
- 4 to remit punctually to the author the agreed remuneration, which shall be determined according to the provisions of Article 46 of this Law;
- 5 to submit to the author or his representatives the exact program of communications to the public, and, when the remuneration is proportional, a statement of proceeds. The assignee shall likewise allow them to verify the said programs and statements.

(Guarantee of Payment of Remuneration)

Art. 79.

The producers of public entertainments shall be considered depositaries of the remuneration payable to the authors of the communication of their works where that remuneration consists of a proportional share in the proceeds. They shall make the said remuneration available to the authors or to their representatives every week.

(Implementation of the Contract)

Art. 80.

Except where they have agreed otherwise, the parties shall be subject to the following rules with respect to the implementation of the contract:

- 1 It shall be the responsibility of the assignee to obtain the copies necessary for the communication of the work to the public. Those copies shall be initialled by the author.



- 2 The author and the assignee shall agree between themselves on the selection of the main performers and, in the case of orchestras, choirs, dance ensembles and comparable groups of performers, the conductor or director.
- 3 The author and the assignee shall agree on the drafting of the publicity for the communications to the public.

(Causes of Termination)

Art. 81.

The contract may be terminated at the author's discretion in the following circumstances:

- 1 where the producer who has acquired exclusive rights, after having started public performances of the work, suspends them for a year;
- 2 where the producer fails to comply with the obligation mentioned in item 1 of Article 78;
- 3 where the producer fails to comply with any of the obligations specified in items 2, 3, 4 and 5 of the said Article 78 after having been called upon to do so by the author.

(Causes of Lapse)

Art. 82.

In addition to the general grounds for the lapse of contracts, the performance contract shall lapse when, in the case of the first performance of a work, stage performance being the sole form of communication contemplated in the contract, the said work has been clearly rejected by the public, and where such an eventuality has been provided for in the contract.

(Public Performance of Musical Compositions)

Art. 83.

The performance contract whose subject is the public performance of a musical composition shall be governed by the provisions of this Chapter, in so far as the nature of the work and the form of communication authorized permit.

(Special Provisions for the Assignment of the Right of Communication to the Public by Broadcasting)

Art. 84.

(1) The assignment of the right of communication to the public of the works referred to in this Chapter by means of broadcasting shall be governed by the provisions thereof, with the exception of item 1 of Article 81.

(2) Unless otherwise agreed, the said assignment shall be understood to be limited to a single broadcast of the work, effected by wireless means with the transmitting facilities of the authorized broadcasting organization and within the territorial scope specified in the contract, without prejudice to the provisions of Article 20 and paragraphs (1) and (2) of Article 36 of this Law.

(Application of the Foregoing Provisions to Simple Authorizations)

Art. 85.

The authorizations that the author grants to a producer so that the latter may effect a communication of his work to the public, without being obliged to effect it, shall be governed by such of the provisions of this Chapter as are applicable thereto.

## Title VI Cinematographic and Other Audiovisual Works

(Concept)

Art. 86.

(1) The provisions enacted under this Title shall be applicable to cinematographic and other audiovisual works, understood as being creations expressed by means of a series of associated images, with or without incorporated sound, that are intended essentially to be shown by means of projection apparatus or any other means of communication to the public of the images and of the sound, regardless of the nature of the physical media in which the said works are embodied.

(2) All the works defined in this Article shall hereinafter be referred to as audiovisual works.

(Authors)

Art. 87.

The following shall be the authors of the audiovisual work within the meaning of Article 7 of this Law:

1. the director or maker;
2. the authors of the script and the adaptation, and those of the scenario or dialogue;
3. the authors of the musical compositions, with or without words, that are created specially for the work.

(Presumed Assignment of Exclusive Rights and Limitations)

Art. 88.

(1) Without prejudice to the rights accruing to the authors, the contract for the production of the audiovisual work shall be presumed to assign to the producer, subject to the limitations specified under this Title, the exclusive rights of reproduction, distribution and communication to the public, and also the rights of post-synchronization or subtitling of the work.

Nevertheless, for cinematographic works the express authorization of the authors shall always be necessary for their exploitation by means of the furnishing to the public of copies in whatever mode or format for use within the family circle, or by means of communication to the public by broadcasting.

(2) Unless otherwise provided, the authors may make use of their individual contributions separately, provided that the normal exploitation of the audiovisual work is not thereby prejudiced.

(Presumption of Assignment in the Case of Transformation of a Pre-existing Work)

Art. 89.

(1) It shall be presumed that, by virtue of the contract for the transformation of a pre-existing work that is not in the public domain, the author thereof assigns to the producer of the audiovisual work the exploitation rights therein as provided in Article 88.

(2) Unless otherwise agreed, the author of the pre-existing work shall retain his right to exploit it in the form of graphic publication and stage performance and, in any event, he may make use of it for any other audiovisual work during the 15 years following the delivery of his contribution to the producer.

(Remuneration of Authors)

Art. 90.

(1) The remuneration of the authors of the audiovisual work arising from the assignment of the rights specified in Article 88, and also any that may accrue to the authors of the preexisting works, whether or not they have been transformed, shall be calculated separately for each of the forms of exploitation authorized.

(2) Where the authors referred to in the foregoing paragraph have signed contracts with a producer of audiovisual recordings for the production of such recordings, it shall be presumed that, unless otherwise agreed in the contract and subject to the unrenounceable right to equitable remuneration referred to in the following paragraph, they have transferred their right of rental.

The author who has transferred or assigned to a producer of phonograms or audiovisual recordings his right of rental in relation to a phonogram or original or copy of an audiovisual recording shall retain the unrenounceable right to receive equitable remuneration for the rental thereof. Such remuneration shall be payable by those who carry out the operations of rental to the public of phonograms or audiovisual recordings in their capacity as successors in title to the owners of the corresponding right to authorize such rental, and which have been implemented since January 1, 1997.

(3) In any event, and regardless of what may have been agreed in the contract, where the audiovisual work is shown in public places against payment of an admission charge, the authors mentioned in paragraph (1) of this Article shall be entitled to collect from those who show the work in public a percentage of the proceeds from the said public showing. The organizers may deduct the amounts payable by way of such remuneration from those that have to be paid to the licensors of the audiovisual work.

Where the audiovisual work is exported, the authors may assign the said right for a lump sum if it is impossible or extremely difficult for them to exercise the right effectively in the importing country.

The operators of public halls or projection rooms shall periodically make the sums collected for the said remuneration available to the authors. For that purpose, the Government may introduce the appropriate supervisory procedures by regulation.

(4) The duly authorized projection, showing or transmission of an audiovisual work by any process without the charging of admission shall give the authors the right to collect such remuneration as is appropriate according to the general tariffs laid down by the corresponding administration entity.

(5) In order to facilitate the author's exercise of the rights accruing to him from the exploitation of the audiovisual work, the producer shall, at least once a year and at his request, provide him with the necessary documentary material.

(6) The rights provided for in paragraphs (3) and (4) of this Article shall be unrenounceable and intransferable by *inter vivos* transactions, and shall not be applicable to the authors of audiovisual works of promotional character.

(7) The rights provided for in paragraphs (2), (3) and (4) of this Article shall be exercised through entities for the administration of intellectual property rights.

(Insufficient Contribution by an Author)

Art. 91.

Where an author's contribution is not completed on account of unjustified refusal on his part or for reasons of *force majeure*, the producer may make use of the part already completed, subject to respect for the said author's rights therein, and without prejudice to any indemnification that may be appropriate.

(Final Version and Modifications Thereto)

Art. 92.

(1) The audiovisual work shall be considered completed when the master copy has been made in accordance with the terms of the contract between the director or maker and the producer.

(2) Any modification of the master copy of the audiovisual work by addition, deletion or alteration of any element thereof shall require the prior authorization of those who have agreed on the said master copy.

Nevertheless, in contracts for the production of audiovisual work intended essentially for communication to the public by broadcasting, it shall be presumed, unless otherwise specified, that the authors have assigned the authorization to make such alterations to the work in the form in which it is to be

broadcast as are strictly dictated by the manner of programming the medium, without prejudice in any event to the right recognized in item 4 of Article 14.

(Moral Rights and Destruction of the Original Medium)

Art. 93.

(1) The moral rights of authors may only be exercised in relation to the master copy of the audiovisual work.

(2) The destruction of the original medium in which the audiovisual work in its final version is incorporated is prohibited.

(Radio Works)

Art. 94.

The provisions under this Title shall be applicable as appropriate to radio works.

## Title VII Computer Programs

(Legal Regime)

Art. 95.

The copyright in computer programs shall be governed by the provisions under this Title and, where not specifically provided for therein, by such of the provisions of this Law as may be applicable.

(Subject Matter of Protection)

Art. 96.

(1) For the purposes of this Law, “computer program” means any sequence of instructions or data intended for either direct or indirect use in a data processing system to perform a function or task or to obtain a specific result, regardless of its form of expression and recording.

For the same purposes, the expression “computer programs” shall cover also the preparatory documentation thereof. The technical literature and manuals for the use of a program shall enjoy the same protection as is afforded to computer programs themselves under this Title.

(2) The computer program shall be protected only if it is original in the sense that it is the author’s own intellectual creation.

(3) The protection provided for in this Law shall apply to any form of expression of a computer program. The protection shall likewise extend to any and all successive versions of the program, and also to derived programs, with the exception of those created for the purpose of doing harm to a computer system.

Computer programs that form part of a patent or utility model shall, without prejudice to the provisions of this Law, enjoy whatever protection may accrue to them by operation of the legal regime governing industrial property.

(4) The ideas and principles underlying any of the elements of a computer program, including those underlying its interfaces, shall not be protected by copyright in terms of this Law.

(Ownership of Rights)

Art. 97.

(1) The natural person or group of natural persons that has created a computer program, or the legal entity considered the owner of the copyright in the cases expressly provided for in this Law, shall be considered the author thereof.

(2) In the case of a collective work, unless otherwise agreed, the person, whether natural person or legal entity, who edits and discloses it under his name shall have the status of author.

(3) The copyright in a computer program that is the unitary result of collaboration between two or more authors shall be their joint property, and shall belong to all of them in proportions determined by them.

(4) Where a salaried worker creates a computer program in the course of duties entrusted to him or on instructions from his employer, the ownership of the corresponding exploitation rights in the computer program so created, including both the source program and the object program, shall belong exclusively to the employer, unless otherwise agreed.

(5) Protection shall be granted to all persons, whether natural persons or legal entities, who meet the requirements laid down in this Law for the protection of copyright.

(Term of Protection)

Art. 98.

(1) Where the author is a natural person, the term of the exploitation rights in a computer program shall, depending on the circumstances, be that provided for in Chapter I of Title III of this Part.

(2) Where the author is a legal entity, the term of the copyright referred to in the foregoing paragraph shall be 70 years, counted from the first of January of the year following that of the lawful disclosure of the program or that of its creation if it has not been disclosed.

(Content of Exploitation Rights)

Art. 99.

Without prejudice to the provisions of Article 100 of this Law, the exclusive rights in the exploitation of a computer program by the person who is the owner thereof in terms of Article 97 shall include the right to do or authorize the following:

- (a) total or partial reproduction, including for personal use, of a computer program by any means and in any form, whether permanent or temporary. Where the loading, display, operation, transmission or storage of a program calls for such reproduction, the authorization to do so, which is granted by the owner of the rights, must have been obtained;
- (b) translation, adaptation, arrangement or any other transformation of a computer program, and the reproduction of the results of such acts, without prejudice to the rights of the person who transforms the program;
- (c) any form of distribution to the public, including the rental of the original computer program or of copies thereof.

For the above purposes, where assignment of the use of a computer program occurs, it shall be understood, in the absence of proof to the contrary, that the assignment is non-exclusive and intransferable, it being likewise presumed that assignment has taken place only to meet the needs of the user. The first sale in the European Union of a copy of a program by the owner of the rights or with his consent shall exhaust the right of distribution of the said copy, subject to the right to control over the subsequent rental of the program or of a copy thereof.

(Limitations of the Right of Exploitation)

Art. 100.

(1) The authorization of the owner shall not be required, in the absence of a contractual provision to the contrary, for reproduction or transformation of a computer program, including the correction of errors, where those acts are necessary for the use of the program according to its intended purpose by the lawful user.

(2) The making of a reserve copy by the person who holds the right to use the program may not be prevented by contract in so far as it is necessary for such use.

(3) The lawful user of the copy of a program shall be entitled to observe, study or verify the operation thereof, without prior authorization from the owner, for the purposes of ascertaining the ideas and principles underlying any element of the program, provided that this is done in the course of any of the operations of loading, display, operation, transmission or storage of the program that he is entitled to perform.

(4) Unless otherwise agreed, the author may not object to the assignee who holds the exploitation rights carrying out or authorizing the carrying out of successive versions of his program, or of programs derived therefrom.

(5) The authorization of the owner of the rights shall not be necessary where the reproduction of the code and the translation of its form as provided in subparagraphs (a) and (b) of Article 99 of this Law is essential to the securing of the necessary information for achieving interoperability of an independently created program with other programs, provided that the following requirements are met:

- (a) such acts must be performed by the legitimate user or by any other person authorized to use a copy of the program, or, in their name, by a duly authorized person;
- (b) the information necessary to achieve interoperability must not have been previously made readily and rapidly available to the persons referred to in the foregoing subparagraph;
- (c) the said acts must be confined to those parts of the original program that are necessary for the achievement of interoperability.

(6) The exception provided for in paragraph (5) of this Article shall be applicable in so far as the information so obtained:

- (a) is used solely for the achievement of the interoperability of the independently created program;
- (b) is communicated to third parties only where essential to the interoperability of the independently created program;
- (c) is not used for the development, production or commercialization of a program substantially similar in its expression, or for any other act that infringes copyright.

(7) The provisions contained in paragraphs (5) and (6) of this Article may not be interpreted in a manner that permits their implementation to prejudice unjustifiably the legitimate interests of the owner of the rights or is contrary to the normal exploitation of the computer program.

(Protection of Register Entries)

Art. 101.

The rights in computer programs, and also in their successive versions and in derived programs, may be recorded in the Intellectual Property Register. It shall be laid down by regulation what elements of registered programs may be laid open to public inspection.

(Infringement of Rights)

Art. 102.

For the purposes of this Title and without prejudice to the provisions of Article 100, those persons shall be considered infringers of copyright who, without authorization from the owner thereof, perform the acts provided for in Article 99, and who in particular:

- (a) bring into circulation one or more copies of a computer program when they know or can assume that they are unlawful;
- (b) stock for commercial purposes one or more copies of a computer program when they know or can assume that they are unlawful;
- (c) bring into circulation or stock for commercial purposes any instrument whose sole purpose is the unauthorized removal or disablement of any technical device used to protect a computer program.

(Protection Measures)

Art. 103.



The owner of the rights recognized under this Title may bring the actions and institute the proceedings that are provided for in general terms in Title I, Part III of this Law, and more specifically the measures contemplated in the second paragraph of item 3 of Article 107 and in item 3 of Article 136 in conjunction with item 2 of Article 134 of this Law.

(Safeguarding of the Application of Other Legal Provisions)

Art. 104.

The provisions under this Title shall be understood as being without prejudice to any other legal provisions such as those concerning patent rights, trademark rights, unfair competition, trade secrets, the protection of semiconductor products or contractual obligations.

## **PART II OTHER INTELLECTUAL PROPERTY RIGHTS**

### **Title I Rights of Performers**

(Definition of Performers)

Art. 105.

“Performer” means the person who presents, sings, reads, recites, interprets or executes a work in any form. The director of a stage performance and the conductor of an orchestra shall have the rights conferred on performers under this Title.

(Fixing)

Art. 106.

- (1) The performer shall have the exclusive right to authorize the fixing of his performances.
- (2) Such authorization shall be granted in writing.

(Reproduction)

Art. 107.

- (1) The performer shall have the exclusive right to authorize the direct or indirect reproduction of fixations of his performances.
- (2) Such authorization shall be granted in writing.
- (3) The said right may be transferred or assigned or be licensed by contract.

(Communication to the Public)

Art. 108.

- (1) The performer shall have the exclusive right to authorize the communication of his performances to the public, except where any such performance constitutes in itself a performance transmitted by broadcasting or made from a previously authorized fixation.

Such authorization shall be granted in writing.

Where the communication to the public takes place by satellite or cable and in the manner provided for in paragraphs (3) and (4) of Article 20 and corresponding provisions of this Law, those provisions shall apply.

(2) The users of a phonogram published for commercial purposes, or of a reproduction of such a phonogram that is used for any form of communication to the public, shall be under the obligation to pay a single amount of equitable remuneration to the performers and to the producers of phonograms, which shall be shared out between them. In the absence of agreement between them on such sharing, it shall be in equal parts.

(3) The users of the audiovisual recordings that are used for the acts of communication to the public provided for in subparagraphs (f) and (g) of paragraph (2) of Article 20 of this Law shall be under the obligation to pay a single amount of equitable remuneration to the performers and to the producers of audiovisual recordings, which shall be shared out between them, in the absence of agreement between them on such sharing, it shall be in equal parts.

The users of audiovisual recordings that are used for any act of communication to the public different from those referred to in the foregoing paragraph shall also be under the obligation to pay a single amount of equitable remuneration to the performers.

(4) The right to the single amounts of equitable remuneration referred to in paragraphs (2) and (3) of this Article shall be exercised through entities for the administration of intellectual property rights. The exercise of the rights through the appropriate administration entities shall include negotiation with users, the calculation, collection and distribution of the corresponding remuneration and any other action necessary to ensure the effectiveness of the said rights.

#### (Distribution)

##### Art. 109.

(1) The performer shall have the exclusive right, in relation to the fixation of his performances, to authorize the distribution thereof according to the definition laid down in item 1 of Article 19 of this Law. That right may be transferred or assigned or be licensed by contract.

(2) Where distribution takes place by means of sale within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales effected within the area by the owner of the right or with his consent.

(3) For the purposes of this Title, “rental of fixations of performances” means making them available for use during a limited time and for direct or indirect economic or commercial benefit.

Making available for the purposes of display, for communication to the public by means of phonograms or audiovisual recordings, including fragments of either, and for consultation on the spot, shall be excluded from the concept of rental in the following circumstances:

- 1 Where the performer, either individually or with others, concludes contracts with a producer of audiovisual recordings, for the production of such recordings, it shall be presumed that, unless otherwise agreed in the contract and subject to the unrenounceable right to the equitable remuneration referred to in the following item, he has transferred his rental rights.
- 2 The performer who has transferred or assigned to a producer of phonograms or audiovisual recordings his rental rights in a phonogram, or an original or copy of an audiovisual recording, shall retain the unrenounceable right to receive equitable remuneration for the rental thereof. Such remuneration shall be payable by those who conduct the operations of rental to the public of phonograms or audiovisual recordings in their capacity as successors in title to the owners of the corresponding rights to authorize such rental, and shall come into effect as from January 1, 1997.

The right provided for in the foregoing item shall be exercised through entities for the administration of intellectual property rights.

(4) For the purposes of this Title, “lending of fixations of performances” means making them available for use for a limited time without direct or indirect economic or benefit, provided that the said lending takes place through establishments accessible to the public.

It shall be understood that there is no direct or indirect economic or commercial benefit when the lending effected by an establishment accessible to the public gives rise to the payment of a sum not exceeding the amount necessary to cover operating expenses.



The operations mentioned in the second subparagraph of paragraph (3) above, and those conducted between establishments accessible to the public, shall be excluded from the concept of lending.

(Employment or Commission Contract)

Art. 110.

Where the performance is given in compliance with an employment or commission contract, it shall be understood, unless otherwise specified, that the employer or commissioning party acquires therein such exclusive rights to authorize reproduction and communication to the public as are provided for under this Title and may be deduced from the nature and subject of the contract.

The provisions of the foregoing paragraph shall not apply to the remuneration rights recognized in paragraphs (2) and (3) of Article 108 of this Law.

(Collective Representative)

Art. 111.

Performers who collectively take part in one and the same performance, such as the members of a musical ensemble, choir, orchestra, ballet troupe or theater company, shall designate one of their number to be their representative for the grant of the authorizations mentioned under this Title. For such designation, which shall be set down in writing, the majority consent of the performers shall prevail. This obligation shall not extend to soloists or to orchestra conductors or directors of stage performances.

(Term of Exploitation Rights)

Art. 112.

The exploitation rights conferred on performers shall have a term of 50 years, counted from the first of January of the year following that of the performance.

Nevertheless, if, in the course of that period, a recording of the performance is lawfully published, the rights in question shall expire 50 years after the publication of the said recording, counted from the first of January of the year following that in which it occurred.

(Other Rights)

Art. 113.

The performer shall enjoy the right to have his name mentioned in connection with his performances and to object, throughout his life, to any distortion, mutilation or any other act in relation to his performance that might adversely affect his standing or reputation. On his death, and during the 20 years thereafter, the exercise of the aforesaid rights shall accrue to his heirs.

The express authorization of the performer shall be necessary for the post-synchronization of his performance in his own language.

## **Title II** **Rights of Phonogram Producers**

(Definitions)

Art. 114.

(1) "Phonogram" means any fixation of exclusively the sound of the performance of a work or of other sounds.

(2) The producer of a phonogram is the natural person or legal entity on whose initiative and responsibility the aforesaid fixation is first made. If the operation takes place within an enterprise, the owner thereof shall be considered the producer of the phonogram.

(Reproduction)

Art. 115.

The phonogram producer shall have the exclusive right to authorize the direct or indirect reproduction thereof.

That right may be transferred or assigned or be licensed by contract.

(Communication to the Public)

Art. 116.

(1) Where communication to the public takes place by satellite or cable and in the manner provided for in paragraphs (3) and (4) respectively of Article 20 of this Law, those provisions shall be applicable.

(2) The users of a phonogram published for commercial purposes, or of a reproduction of that phonogram used for any form of communication to the public, shall be under the obligation to pay a single amount of equitable remuneration to the phonogram producers and performers, the amount of which shall be shared out between them. In the absence of agreement between them on such sharing, it shall be in equal parts.

(3) The right to the single amount of equitable remuneration referred to in the foregoing paragraph shall be exercised through entities for the administration of intellectual property rights. The exercise of that right through the relevant administration entities shall include negotiation with users, the calculation, collection and distribution of the corresponding remuneration and any other action necessary to ensure the effectiveness of the said right.

(Distribution)

Art. 117.

(1) The phonogram producer shall have the exclusive right to authorize the distribution, according to the definition laid down in item 1 of Article 19 of this Law, of phonograms and copies thereof. That right may be transferred or assigned or be licensed by contract.

(2) Where distribution occurs by means of sale in the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales effected within the area by the owner of the right or with his consent.

(3) The right of distribution shall be regarded as including the right to authorize the importation and exportation of copies of the phonogram for marketing purposes.

(4) For the purposes of this Title, "rental of phonograms" means making the phonograms available for use for a limited time and for direct or indirect economic or commercial benefit.

Making available for the purposes of display, for communication to the public by means of phonograms or fragments thereof and for consultation on the spot shall be excluded from the concept of rental.

(5) For the purposes of this Title, "lending of phonograms" means making them available for use for a limited time without direct or indirect economic or commercial benefit, provided that the said lending takes place through establishments accessible to the public.

It shall be understood that there is no direct or indirect economic or commercial benefit when the lending effected by an establishment accessible to the public gives rise to the payment of a sum not exceeding the amount to cover operating expenses.

The operations mentioned in the second subparagraph of paragraph (4) above, and those that take place between establishments accessible to the public, shall be excluded from the concept of lending.

(Right to Bring Action)

Art. 118.

In cases of infringement of the rights recognized in Article 115 and 117, the right to institute the appropriate proceedings shall belong to both the producer of phonograms and the transferee of the said rights.

(Term of Exploitation Rights)

Art. 119.

The term of the exploitation rights conferred on producers of phonograms shall be 50 years, counted from the first of January of the year following that of recording.

Nevertheless, if, within the said period, the phonogram is lawfully published, the rights in question shall expire after 50 years following the said publication, counted from the first of January of the year following the date in which publication occurred.

**Title III**  
**Rights of Producers of Audiovisual Recordings**

(Definitions)

Art. 120.

(1) "Audiovisual recordings" means fixations of a scene or sequence of images, with or without sound, whether or not they constitute creations susceptible of description as audiovisual works within the meaning of Article 86 of this Law.

(2) "Producer of an audiovisual recording" means the person, whether natural person or legal entity, who takes the initiative of and assumes responsibility for the said audiovisual recording.

(Reproduction)

Art. 121.

The producer of the first fixation of an audiovisual recording shall have the exclusive right to authorize the direct or indirect reproduction of the original and copies thereof.

This right may be transferred or assigned or be licensed by contract.

(Communication to the Public)

Art. 122.

(1) The producer of audiovisual recordings shall have the right to authorize the communication to the public thereof.

When communication to the public takes place by cable in the manner provided for in paragraph (4) of Article 20 of this Law, that provision shall be applicable.

(2) The users of audiovisual recordings that are used for the acts of communication to the public provided for in subparagraphs (f) and (g) of paragraph (2) of Article 20 of this Law shall be under the obligation to pay a single amount of equitable remuneration to the producers of audiovisual recordings and to the performers, among whom the said amount shall be shared out. In the absence of agreement between them on such sharing, it shall be in equal parts.

(3) The right to the single payment of equitable remuneration referred to in the foregoing paragraph shall be exercised through entities for the administration of intellectual property rights. The exercise of the said right through the administration entities concerned shall include negotiation with the users, the

calculation, collection and distribution of the corresponding remuneration and any other action necessary to ensure the exercise of the said rights.

(Distribution)

Art. 123.

(1) The producer of the first fixation of an audiovisual recording shall have the exclusive right to authorize the distribution, according to the definition laid down in item 1 of Article 19 of this Law, of the original and of copies thereof. That right may be transferred, assigned or be licensed by contract.

(2) Where distribution takes place by means of sale within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales effected within the area by the owner of the rights or with his consent.

(3) For the purposes of this Title, “rental of audiovisual recordings” means making them available for use for a limited time and for direct or indirect economic or commercial benefit.

Making available for the purposes of display, for communication to the public by means of the first fixation of an audiovisual recording and copies thereof, including fragments of either, and for consultation on the spot shall be excluded from the concept of rental.

(4) For the purposes of this Title, “lending of audiovisual recordings” means making them available for use for a limited time without direct or indirect economic or commercial benefit, provided that the said lending takes place through establishments accessible to the public.

It shall be understood that there is no direct or indirect economic or commercial benefit when the lending effected by an establishment accessible to the public gives rise to the payment of a sum not exceeding the amount necessary to cover operating expenses. The operations mentioned in the second subparagraph of the foregoing paragraph (3), and those effected between establishments accessible to the public, shall be excluded from the concept of lending.

(Other Exploitation Rights)

Art. 124.

The exploitation rights in photographs taken during the process of production of the audiovisual recording shall also belong to the producer.

(Term of Exploitation Rights)

Art. 125.

The term of the exploitation rights conferred on the producers of the first fixation of an audiovisual recording shall be 50 years after publication, counted from the first of January of the year following that of the making thereof.

Nevertheless, if during the said period the recording is lawfully published, the rights mentioned shall expire 50 years following publication, counted from the first of January of the year following the date on which the said publication occurred.

**Title IV**  
**Rights of Broadcasting Organizations**

(Exclusive Rights)

Art. 126.

(1) Broadcasting organizations shall enjoy the exclusive right to authorize:

- (a) The fixing of their broadcasts or transmissions on any sound or visual medium. For the purposes of this subparagraph, the fixing of any isolated image shown in the course of the broadcast or transmission shall be considered included.  
Cable distribution enterprises shall not enjoy this right when they retransmit the broadcasts or transmissions of broadcasting organizations.
- (b) The reproduction of fixations of their broadcasts or transmissions.  
This right may be transferred or assigned or be licensed by contract.
- (c) The retransmission of their broadcasts or transmissions by any technical process.
- (d) The communication to the public of their radio broadcasts or transmissions where such communication occurs in places to which the public may have access against payment of a sum of money as an admission charge or for a ticket.  
Where communication to the public takes place by satellite or cable and in the manner provided for in paragraphs (3) and (4) of Article 20 of this Law, those provisions shall be applicable.
- (e) The distribution of fixations of their broadcasts or transmissions.  
Where distribution takes place by means of sale within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales effected within the area by the owner of the rights or with his consent.  
This right may be transferred or assigned or be licensed by contract.
- (2) The concepts of broadcasting and transmission shall include the operations mentioned in subparagraphs (c) and (e) respectively of paragraph (2) of Article 20 of this Law, and also the concept of retransmission and dissemination to the public by an entity that relays or disseminates another's broadcasts received through any of the satellites mentioned.

(Term of Exploitation Rights)

Art. 127.

The exploitation rights conferred on broadcasting organizations shall have a term of 50 years, counted from the first of January of the year following that of the first making of a broadcast or transmission.

## **Title V** **Protection of Ordinary Photographs**

(Protection of Ordinary Photographs)

Art. 128.

Any person who makes a photograph or other reproduction produced by means of a process analogous to photography shall, when neither has the character of protected work in terms of Part I, enjoy the exclusive right to authorize its reproduction, distribution and communication to the public on the same terms as are accorded by this Law to the authors of photographic works.

That right shall have a term of 25 years counted from the first of January of the year following the date of the making of the photograph or reproduction.

## **Title VI** **Protection of Specific Editorial Productions**

(Unpublished Works in the Public Domain and Unprotected Works)

Art. 129.

(1) Any person who lawfully discloses an unpublished work that is in the public domain shall have the same exploitation rights in it as would have accrued to the author thereof.

(2) Similarly, the publishers of works not protected by the provisions of Part I of this Law shall enjoy the exclusive right to authorize the reproduction, distribution and communication to the public of the said editions, provided that they can be distinguished by their typographical composition, layout and other editorial characteristics.

(Term of Rights)

Art. 130.

(1) The rights recognized in paragraph (1) of the foregoing Article shall have a term of 25 years counted from the first of January of the year following that of the lawful disclosure of the work.

(2) The rights recognized in paragraphs (2) of the foregoing Article shall have a term of 25 years counted from the first of January of the year following that of publication.

## **Title VII Common Provisions**

(Copyright Safeguard Clause)

Art. 131.

The rights recognized in this Part II shall be understood as being without prejudice to those accruing to authors.

(Subsidiary Application of the Provisions of Part I)

Art. 132.

The provisions contained in Section II of Chapter III of Title II and in Chapter II of Title III, both in Part I of this Law, shall apply subsidiarily, *mutatis mutandis*, to the rights provided for in this Part.

## **PART III PROTECTION OF THE RIGHTS RECOGNIZED IN THIS LAW**

### **Title I Actions and Procedures**

(Injunctions and Urgent Precautionary Measures)

Art. 133.

The owner of the rights recognized in this Law may, without prejudice to any other action that may be available to him, apply for an injunction restraining the unlawful activity of an infringer and claiming indemnification for material and moral damages caused, under the conditions laid down in Articles 134 and 135.

He may likewise apply for the ordering of precautionary measures for immediate protection as provided in Article 136.

(Restraining of the Unlawful Activity)

Art. 134.

(1) The restraining of the unlawful activity may include:

- (a) suspending the infringing exploitation;
  - (b) prohibiting the infringer from resuming it;
  - (c) withdrawing from the market and destroying unlawful copies;
  - (d) disabling, and where necessary destroying, any molds, plates, printing blocks, negatives and other material intended solely for the reproduction of the unlawful copies, and of the instruments whose sole purpose is to facilitate the unauthorized removal or neutralization of any technical device used to protect a computer program;
  - (e) removing, or placing seals on, apparatus used for unauthorized communication to the public.
- (2) The infringer may request that the copies and material mentioned, where they are susceptible of other uses, be destroyed or disabled only to the extent necessary to prevent unlawful exploitation.
- (3) The owner of the rights infringed may apply for the surrender to him of the copies and material referred to at their cost price, with a corresponding reduction of his indemnification for damages.
- (4) The provisions of this Article shall not apply to copies acquired in good faith for personal use.

(Indemnification)

Art. 135.

The aggrieved party may choose, for his indemnification, between the profits that he would presumably have made had the unlawful use not occurred and the remuneration that he would have collected through having authorized exploitation.

Moral prejudice shall afford entitlement to indemnification even where there is no evidence of economic prejudice. The amount of the indemnification shall be determined according to the circumstances of the infringement, the seriousness of the harm done and the extent of unlawful dissemination of the work.

Claims for damages as referred to in this Article shall be statute-barred after five years from the time at which they could legitimately have been filed.

(Precautionary Measures)

Art. 136.

In the event of infringement or where there are good and reasonable grounds to fear that infringement is imminent, the judicial authority may, at the request of the owners of the rights recognized under this Law, decree such precautionary measures as may be necessary, according to the circumstances, for the immediate protection of the rights concerned, and especially:

- (1) the accounting and deposit of revenue earned through the unlawful activity or, where appropriate, the posting or deposit of amounts payable by way of remuneration;
- (2) suspension of the work of reproduction, distribution and communication to the public, as appropriate;
- (3) seizure of copies produced or used and of material used solely for the reproduction or communication to the public. In the case of computer programs, seizure of the instruments referred to in subparagraph (c) of Article 102 may be allowed;
- (4) seizure of the equipment, apparatus and materials referred to in paragraph (20) of Article 25 of this Law.

(Procedures)

Art. 137.

The precautionary measures for immediate protection provided for in the foregoing Article shall be given precedence and shall be taken in accordance with the following provisions:

- 1 Those first-instance courts shall be competent in whose jurisdiction the infringement has occurred or may reasonably be expected to occur, or copies considered unlawful have been discovered, at the discretion of the party applying for the measures. Nevertheless, once the

main claim has been filed, the court with which it has been filed shall have sole jurisdiction over everything relating to the measure adopted.

Likewise, where the measure is sought at the time of the filing of the application for the corresponding declaratory judgment or during the substantiation thereof, the judge or court competent to entertain the application or already hearing the suit shall have jurisdiction.

- 2 The measure shall be applied for in writing, with the signature of the interested party or his legal or voluntary representative, intervention on the part of the Public Prosecutor or counsel being unnecessary except in cases provided for in the second paragraph of item 1 above.
- 3 During the ten days following the filing of the written claim, notice of which shall be given to the parties, the judge shall hear the parties involved in the claim, and in all cases shall pronounce in a ruling on the day following that of the expiration of the aforesaid period. The ruling shall be subject to appeal without staying effect.  
Notwithstanding the foregoing, in the case of the protection of computer programs, the judge may procure such reports or order such investigations as he considers appropriate before the written claim is notified to the parties.
- 4 Any of the parties may apply for a judicial recognition procedure which, if it is allowed, shall take place immediately.
- 5 Before or in its judgment, the court may, if it sees fit, demand sufficient security of the applicant to cover any prejudice and costs that may arise.
- 6 If the measures have been applied for before the institution of proceedings, the latter shall be instituted within the eight days following the grant of the measures. In any case, the applicant may renew his claim for precautionary measures wherever new evidence concerning the infringement appears or proof that was previously lacking comes to light.

(Criminal Proceedings)

Art. 138.

The precautionary measures provided for in Article 136 may be granted in the course of criminal proceedings instituted for infringement of the rights recognized in this Law.

Proceedings shall be conducted according to such of the provisions of Article 137 as are relevant.

The measures mentioned shall not prevent the institution of such other measures as may be provided for in the legislation on criminal procedure.

## **Title II** **Intellectual Property Registry**

(Organization and Operation)

Art. 139.

(1) The General Registry of Intellectual Property shall be the only such body for the entire national territory. Its organization shall be provided for by regulation, which shall in any event include the organization and functions of the Central Registry under the authority of the Ministry of Culture and the common provisions on registration and measures for coordination and information among all the competent public administrations.

(2) The Autonomous Communities shall determine the structure and operation of the Registry in their own territories, and shall take charge of the keeping of the Register, in all cases complying with the common provisions referred to in the foregoing paragraph.

(Registration Procedure)

Art. 140.



(1) The intellectual property rights in works and other productions protected by this Law may be the subject of entries in the Intellectual Property Register.

(2) The Registrar shall consider applications filed and the legality of registrable instruments and contracts, having the right to refuse or suspend the making of the corresponding entries. Appeal from decisions of the Register shall lie direct to the civil courts.

(3) In the absence of proof to the contrary, it shall be presumed that the rights registered exist and belong to their owner in the form specified in the relevant entry.

(4) The Register shall be public, without prejudice to such limitations as may be introduced by virtue of the provisions of Article 101 of this Law.

### **Title III**

#### **Symbols or Notices of Reserved Rights**

(Symbols or Notices)

Art. 141.

The owner or exclusive transferee of an exploitation right in a work or production protected by this Law may place on it the circled letter C symbol before his name, accompanied by the place and year of the disclosure of the said work or production.

Likewise, on copies of phonograms or on their packaging the name of the producer or his transferee may be preceded by the circled letter P symbol and accompanied by the year of the publication.

The symbols and references mentioned shall be so placed and presented that they show clearly that the rights of exploitation are reserved.

### **Title IV**

#### **Entities for the Administration of the Rights Recognized in this Law**

(Requirements)

Art. 142.

Legally constituted entities that intend to devote themselves, either in their own or in another name, to the administration of exploitation rights or other economic rights on behalf of and in the interest of two or more authors or other owners of intellectual property rights shall seek the appropriate authorization from the Ministry of Culture, which if granted shall be published in the Official Bulletin of the State.

Such entities may have no gainful intent and, by virtue of the authorization, may exercise the intellectual property rights entrusted to their administration and shall have the rights and be under the obligations laid down in this Title.

(Conditions of Authorization)

Art. 143.

(1) The authorization provided for in the foregoing Article shall only be granted where the following conditions are fulfilled:

- (a) the statutes of the applicant entity meet the requirements laid down in this Title;
- (b) it is apparent from the particulars given and the information considered that the applicant entity fulfills the conditions necessary for it to ensure sufficient administration, throughout the national territory, of the rights to be entrusted to it for administration;
- (c) the authorization is in the general interest of intellectual property protection in Spain.

(2) In determining whether the conditions laid down in subparagraphs (b) and (c) of the foregoing paragraph have been fulfilled, due regard shall in particular be had to the number of owners of rights who have undertaken to entrust the entity with the administration of those rights in the event of authorization being granted, the volume of potential users, the suitability of its statutes and the means whereby it proposes to achieve its aims, the potential efficacy of its administration abroad, and where appropriate the reports of administration entities that have already been authorized.

(Revocation of Authorization)

Art. 144.

Authorization may be revoked by the Ministry of Culture should any circumstance arise or become apparent that would have been a cause for denial of authorization, or where the administration entity commits a serious breach of its obligations as set forth in this Title. In all three situations, prior notice shall be given by the Ministry of Culture, which shall set a time limit of at least three months for the situation reported to be remedied or rectified.

Revocation shall come into effect three months after its publication in the Official Bulletin of the State.

(Qualification)

Art. 145.

Once authorized, administration entities shall be qualified, in such terms as are determined by their own statutes, to exercise the rights entrusted to their administration and to assert them in all manner of administrative or judicial proceedings.

For the purposes specified in Article 503 of the Law on Civil Procedure, the administration entity shall be obliged to bring to the proceedings a copy of its statutes, and also a certificate attesting its administrative authorization. The defendant may exclusively allege, subject to due substantiation, the lack of representative qualification of the plaintiff or of authorization by the owner of the exclusive rights, or failure to pay the corresponding remuneration.

(Statutes)

Art. 146.

Without prejudice to the provisions of other texts that may be applicable to them, the following shall be laid down in the statutes of every administration entity:

- (1) the denomination, which may not be either identical or confusingly similar to that of another entity;
- (2) its objective or aims, with a specification of the rights administered, provided that it may not conduct its activity outside the scope of the protection of intellectual property rights;
- (3) the types of owner of rights covered by the administration, and where appropriate the various categories of such owners for the purposes of their participation in the management of the entity;
- (4) the conditions governing the acquisition and loss of membership. In all cases, the members must be owners of the types of right that the entity is responsible for administering, and the membership must not be below ten;
- (5) the rights of members, and in particular the voting system, which may be worked out according to weighting factors that afford a reasonable limitation of multiple ballots. In matters concerning the sanction of exclusion from membership, voting power shall be equal;
- (6) the duties of members and the disciplinary regime governing them;
- (7) the governing and representative organs of the entity and the competence of each such organ, and also the provisions governing the convening, constitution and operation of those of

collegiate character, it being expressly prohibited to adopt agreements on matters not appearing on the agenda;

- (8) the procedure for the election of administrators from among the members;
- (9) the initial capital and planned economic resources;
- (10) the rules to which systems for the distribution of sums collected are to be subject;
- (11) the system for supervision of the economic and financial administration of the entity;
- (12) The manner of disposal of the capital or resulting net assets in the event of liquidation of the entity, which may not in any circumstances be shared out among the members.

(Obligation to Administer Intellectual Property Rights in Trust)

Art. 147.

Administration entities shall be obliged to agree to administer the copyright and other intellectual property rights that are entrusted to them according to their objective or aims. They shall discharge that trust in accordance with their statutes and whatever other provisions are applicable.

(Administration Contract)

Art. 148.

(1) The owners of rights shall entrust the entity with the administration of their rights by means of a contract having a term not exceeding five years which may be renewed indefinitely; neither the administration of all forms of exploitation nor the global administration of all future works or productions may be imposed as obligations.

(2) Entities shall lay down adequate provisions in their statutes to ensure administration that is free of influence on the part of users of its repertoire, and to avoid the giving of undue preference in the use of those works.

(Distribution of Sums Collected)

Art. 149.

(1) The distribution of sums collected shall be effected equitably among the owners of the works or productions used, according to a system laid down in the statutes which rules out any arbitrary action.

(2) Administration entities shall reserve to the owners of rights a share in the sums collected that is proportionate to the use of their works.

(Social Action)

Art. 150.

(1) Administration entities shall promote welfare activities or services for the benefit of their members, either themselves or through non-profit-making entities, and shall arrange activities for the training and promotion of authors and performers.

(2) Administration entities shall devote to the activities and services referred to in the foregoing paragraph, in equal shares, the percentage of the remuneration referred to in Article 25 of this Law that is determined by regulation.

(Accounting Documents)

Art. 151.

Within the six months following the close of each financial year, the entity shall draw up a balance sheet corresponding to that period and an account of activities engaged in during it.

Without prejudice to the provisions in applicable texts, the balance sheet and accounting documents shall be audited by legally competent accountants or accounting firms appointed by the General Assembly

of the entity held in the previous year or in the year of its establishment. The statutes shall lay down the procedure for the appointment of a replacement auditor in the event of a vacancy.

The balance sheet, bearing a note to the effect that it has or has not been given a favorable report by the auditor, shall be placed at the disposal of the members at the legal domicile and regional branches of the entity not less than 15 days in advance of the appointed date for the General Assembly at which it is to be approved.

(Other Obligations)

Art. 152.

(1) Administration entities shall be obliged:

- (a) to enter into a contract with any person who so requests, unless there is justification for not doing so, for the grant of non-exclusive authorizations in respect of the rights under administration, on reasonable terms and subject to remuneration;
- (b) to lay down general tariffs to determine the remuneration payable for the use of its repertoire, which shall include reductions for the benefit of cultural bodies without gainful intent;
- (c) to enter into general contracts with associations of users of its repertoire whenever such associations request and are representative of the sector concerned.

(2) In so far as the parties fail to reach agreement, the corresponding authorization shall be considered granted if the applicant pays subject to reservations, or lodges with a judicial officer, the amount charged by the administration entity in conformity with the general tariffs.

(3) The provisions of the foregoing paragraphs shall not be applicable to the administration of rights relating to literary, dramatic, dramatico-musical, choreographic or mimed works, or to single uses of one or more works of any kind, which require separate authorization by the owner.

(4) Administration entities shall likewise be obliged to assert the right to equitable remuneration corresponding to the various circumstances provided for in this Law, and to assert the right to authorize cable distribution.

(Intellectual Property Mediation and Arbitration Commission)

Art. 153.

An Intellectual Property Mediation and Arbitration Commission is hereby created at the Ministry of Culture for the exercise of the mediation and arbitration functions entrusted to it by this Law, having the character of a collegiate body of national scope.

(1) The mediation functions of the Commission shall be the following:

- (a) to collaborate in negotiations, on reference to it by the parties, where they have not succeeded in concluding a contract, with a view to the authorization of the cable distribution of a broadcast, owing to a failure to agree on the part of the owners of intellectual property rights and cable distribution companies;
- (b) to submit proposals to the parties where appropriate.

All the parties shall be regarded as agreeing to the proposal referred to in the foregoing subparagraph if none of them expresses an objection within a period of three months. In such a situation the finding of the Commission shall produce the effects provided for in Law 36 of December 6, 1988, on Arbitration, and shall be susceptible of appeal before the civil courts.

The proposal and any objection to it shall be notified to the parties in accordance with the provisions of Article 58 and 59 of Law No. 30 of November 26, 1992, on the Legal Regime for Public Administrations and on Common Administrative Procedure.

The mediation procedure, and also the composition of the Commission for the purposes of mediation, shall be laid down by regulation, provided that in all cases two representatives of the entities for the administration of the intellectual property rights under negotiation and two representatives of the cable distribution enterprises shall be entitled to form part of the said Commission in any business that concerns them.

(2) The arbitration functions of the Commission shall be the following:

- (a) to bring about the settlement, on reference to it by the parties, of any conflicts which, according to the provisions of paragraph (1) of the foregoing Article, may occur between administration entities and associations of users of their repertoires, or between the said entities and broadcasting organizations. Reference to the Commission by the parties shall be voluntary and shall be expressly recorded in writing;
- (b) to set an amount in lieu of the general tariffs, for the purposes specified in paragraph (2) of the foregoing Article, at the request of an association of users or a broadcasting organization where the said association or organization submits, for its part, to the jurisdiction of the Commission with the aim specified in subparagraph (a) of this paragraph.

(3) The procedure and composition of the Commission shall be laid down by regulation for the exercise of its arbitration function, provided that in all cases two representatives of the administration entities and two representatives of the association of users or of the broadcasting organization shall have the right to form part of the said Commission in any business that concerns them.

The decision of the Commission shall be binding and enforceable on the parties.

The provisions of this Article shall be without prejudice to any action that may be brought before the competent jurisdiction. Nevertheless, reference to the Commission shall prevent judge and courts from hearing the dispute submitted for arbitration until such time as the arbitral decision has been handed down, and then only when the party concerned applies for a judicial ruling by filing the appropriate objection.

(Powers of the Ministry of Culture)

Art. 154.

(1) In addition to having the power to grant or revoke authorization as provided in Articles 143 and 144, the Ministry of Culture shall be responsible for ensuring compliance with the obligations and requirements laid down in this Law.

To that end, the Ministry of Culture may demand any kind of information from administration entities, order inspections and audits and appoint a representative to attend their General Assemblies, administrative boards or equivalent organs with the right to speak but not to vote.

(2) Without prejudice to the provisions of other applicable texts, amendments to the statutes of administration entities shall be submitted, once they have been approved by the relevant General Assembly, to the Ministry of Culture for approval, which shall be considered granted if no decision to the contrary is notified within three months following submission.

(3) Administration entities shall be obliged to communicate to the Ministry of Culture the appointment and the termination of the appointment of their administrators and agents, the general tariffs and amendments thereto, general contracts entered into with associations of users and those concluded with foreign organizations of the same type, and the documents mentioned in Article 151 of this Law.

## PART IV SCOPE OF THE LAW

(Authors)

Art. 155.

(1) The intellectual property rights of Spanish authors and also those of authors who are nationals of other Member States of the European Union shall be protected in accordance with this Law.

The following shall also enjoy the same rights:

- (a) nationals of other countries ordinarily resident in Spain;
- (b) nationals of other countries not ordinarily resident in Spain for those of their works that are published on Spanish territory for the first time or within 30 days of having been published in another country. Nevertheless, the Government may restrict the scope of this principle in the

case of nationals of States that do not afford sufficient protection to the works of Spanish authors in comparable circumstances.

(2) All authors of audiovisual works, whatever their nationality, shall have the right to collect proportional remuneration for the showing of their works as provided in Article 90(3) and (4). Nevertheless, in the case of nationals of States that do not afford an equivalent right to Spanish authors, the Government may rule that the sums paid by exhibitors to administration entities in that connection shall be used for purposes of cultural interest to be laid down by regulation.

(3) Nationals of other countries shall in all cases enjoy the protection available under the international conventions and treaties to which Spain is party and, should there be none, shall be treated in the same way as Spanish authors when Spanish authors are themselves treated in the same way as nationals in the country concerned.

(4) For works whose country of origin is another country in terms of the Berne Convention and whose author is not a national of a Member State of the European Union, the term of protection shall be the same as that granted in the country of origin of work, provided that it may not in any case exceed that granted under this Law for the works of authors.

(5) The moral rights of the author, whatever his nationality, are hereby recognized.

(Performers)

Art. 156.

(1) The rights recognized in this Law to Spanish performers shall be protected regardless of the place in which their performances take place, as shall those accruing to performers who are nationals of other Member States of the European Union.

(2) Performers who are nationals of other countries shall enjoy the same rights as those recognized in this Law in any of the following cases:

- (a) where they are ordinarily resident in Spain;
- (b) where their performances take place on Spanish territory;
- (c) where their performances are recorded on phonograms or audiovisual materials that are protected under this Law;
- (d) where their performances are incorporated, without having been recorded, on radio broadcasts that are protected under this Law.

(3) Performers who are nationals of other countries shall in all cases enjoy the protection available under the international conventions and treaties to which Spain is party and, should there be none, shall be treated in the same way as Spanish performers when Spanish performers are themselves treated in the same way as nationals of the country concerned.

(4) The terms of protection provided for in Article 112 of this Law shall likewise be applicable to the owners mentioned who are not nationals of the European Union, provided that their protection in Spain is guaranteed by an international convention. Nevertheless, without prejudice to the international obligations that are applicable, the term of protection shall expire on the date provided for in the country of which the owner is a national, provided that the term may not in any case exceed that laid down in the aforementioned Article.

(Producers, Makers of Ordinary Photographs and Publishers)

Art. 157.

(1) The producers of phonograms and of audiovisual works or recordings, the makers of ordinary photographs and the publishers of the works mentioned in Article 129 shall be protected under this Law in the following cases:

- (a) where they are Spanish citizens or enterprises domiciled in Spain, and also where they are citizens of another Member State of the European Union or enterprises domiciled in another Member State of the European Union;

- (b) where they are nationals of other countries and the said works are published in Spain for the first time or within 30 days of having been published in another country. Nevertheless, the Government may restrict the scope of this principle in the case of nationals of States that do not afford sufficient protection to the works or publications of Spaniards in comparable circumstances.

(2) In all cases the owners referred to in subparagraph (b) of the foregoing Article shall enjoy the protection accruing to them under the international conventions and treaties to which Spain is party and, should there be none, shall be treated in the same way as the producers of phonograms and those of audiovisual works or recordings, the makers of ordinary photographs and the publishers of the works mentioned in Article 129 when they in turn are treated in the same way as nationals in the country concerned.

(3) The terms of protection provided for in Articles 119 and 125 of this Law shall likewise be applicable to the owners mentioned who are not nationals of the European Union, provided that their protection is guaranteed in Spain by an international convention. Nevertheless, without prejudice to the international obligations that are applicable, the term of protection shall expire on the date provided for in the country of which the owner is a national, provided that the term may not in any case exceed that laid down in the foregoing Articles.

#### (Broadcasting Organizations)

Art. 158.

(1) Broadcasting organizations domiciled in Spain or in another Member State of the European Union shall enjoy the protection provided for in this Law in respect of their broadcasts and transmissions.

(2) Broadcasting organizations domiciled in other countries shall in all cases enjoy the protection available under the international conventions and treaties to which Spain is party.

(3) The terms of protection provided for in Article 127 of this Law shall likewise be applicable to the owners mentioned who are not nationals of the European Union, provided that their protection in Spain is guaranteed by an international convention. Nevertheless, without prejudice to the international obligations that are applicable, the term of protection shall expire on the date provided for in the country of which the owner is a national, provided that the term may not in any case exceed that laid down in the aforementioned Article.

## ADDITIONAL PROVISIONS

#### (Legal Deposit)

First.

The legal deposit of works of creation as traditionally recognized in Spain shall be governed by such regulatory provisions as are in force or may be enacted in the future by the Government, without prejudice to the powers accruing to the Autonomous Communities in appropriate cases.

#### (Revision of the Percentage and Amount Under Article 24(2))

Second.

The revision of the percentage and of the amount referred to in Article 24(2) of this Law shall be effected in the General Budget Law of the State.

#### (Revision of the Amounts under Article 25(5))

Third.



The Ministries of Culture, of Industry and Energy and of Commerce and Tourism shall be authorized to adjust the amounts laid down in Article 25(5) of this Law every two years to prevailing market conditions, technological development and the official consumer price index.

(Frequency of the Remuneration Under Article 90(3) and Delegalization)

Fourth.

Amounts collected in remuneration proportional to proceeds as provided for in Article 90(3), shall be made available to the authors weekly.

The Government may amend the said period on a proposal by the Ministry of Culture.

## TRANSITIONAL PROVISIONS

(Acquired Rights)

First.

Those amendments introduced by this Law that prejudice rights acquired under the former legislation shall not have retroactive effect subject to the following provisions.

(Rights of Legal Entities Protected by the Law of January 10, 1879, on Intellectual Property)

Second.

Those legal entities that under the Law of January 10, 1879, on Intellectual Property had acquired original ownership of intellectual property rights in a work shall exercise the exploitation rights within a period of 80 days following the publication thereof.

(Acts and Contracts Under the Law of January 10, 1879, on Intellectual Property)

Third.

Acts performed and contracts entered into under the Law of January 10, 1879, on Intellectual Property, shall be fully effective in accordance therewith, but any clauses thereof by which exploitation rights are assigned in respect of all works that the author may create in the future, and also those by which the author undertakes to create no works in the future, shall be null and void.

(Authors Deceased Before December 7, 1987)

Fourth.

The exploitation rights in works created by authors deceased before December 7, 1987, shall have the term provided for in the Law of January 10, 1879, on Intellectual Property.

(Application of Article 38 and 39 of the Law of January 10, 1879, on Intellectual Property)

Fifth.

Without prejudice to the foregoing provision, authors whose works were provisionally or finally in the public domain in accordance with the provisions of Article 38 and 39 of the Law of January 10, 1879, on Intellectual Property shall be subject to the application of the provisions of this Law, without prejudice to the rights acquired by other persons under the earlier legislation.





(Applicability of Articles 14 to 16 to Authors of Works Created Prior to the Law of November 11, 1987, on Intellectual Property)

Sixth.

The provisions of Articles 14 to 16 of this Law shall be applicable to the authors of works created prior to the entry into force of Law 22 of November 11, 1987, on Intellectual Property.

(Regulations of September 3, 1880, for the Implementation of the Law of January 10, 1879, on Intellectual Property)

Seventh.

The Regulations of September 3, 1880, for the implementation of the Law of January 10, 1879, on Intellectual Property, and any other regulatory provisions on intellectual property shall remain in force in so far as they do not conflict with the provisions of this Law.

(Settlement of Special Situations Regarding Computer Programs)

Eighth.

The provisions of this Law shall be applicable to computer programs created prior to December 25, 1993, without prejudice to acts already performed and rights already acquired prior to that date.

(Application of the Equitable Remuneration for Rental to Contracts Entered into Prior to July 1, 1994)

Ninth.

With regard to contracts entered into prior to July 1, 1994, the right to equitable remuneration for rental shall apply only if the authors or performers, or their representatives, have filed a request to that end, in accordance with the provisions of this Law, prior to January 1, 1997.

(Rights Required in Relation to Certain Exploitation Rights)

Tenth.

The provisions of this Law on the rights of distribution, fixation, reproduction and communication to the public shall be understood as being without prejudice to acts of exploitation performed and contracts entered into prior to January 1, 1995, or to the provisions of subparagraph (c) of Article 99.

(Settlement of Special Situations Concerning the Temporary Application of the Provisions on Communication to the Public by Satellite)

Eleventh.

(1) For international co-production contracts entered into prior to January 1, 1995, between a co-producer from a Member States and one or more co-producers from other Member States or from other countries, the co-producer(s) who wishes to give authorization for communication to the public by satellite, or his assignee, shall obtain the prior consent of the owner of the exclusive rights, regardless of whether the latter is a co-producer or an assignee, where the following circumstances all obtain:

- (a) the contract provides expressly for a system of division of the exploitation rights among the co-producers by geographical areas for each of the means of dissemination to the public, without making a distinction between the regime applicable to communication by satellite and that applicable to other communication media;
- (b) Communication to the public by satellite of the joint production is implicitly prejudicial to the exclusive rights, notably regarding linguistic exclusiveness, of one of the co-producers or his assignees in a particular territory.

(2) The application of the provisions of Articles 106 to 108, 115 and 116, 122 and 126 of this Law shall be understood to be without prejudice to exploitation arrangements made and contracts entered into prior to October 14, 1995.

(3) The provisions concerning communication to the public by satellite shall be applicable to all phonograms, acts, broadcasts and first fixations of audiovisual recordings that on July 1, 1994, were still protected by the legislation of Member States on intellectual property rights, and which on that date met the criteria to which protection under the provisions concerned was subject.

(Temporary Application of the Provisions on Satellite Broadcasting)

Twelfth.

(1) The rights referred to in Articles 106 to 108, 115 and 116, 122 and 126 of this Law shall be governed where applicable by the tenth transitional provision and by the ninth transitional provision.

(2) The provisions of this Law concerning the right of communication to the public by satellite shall be fully applicable to exploitation contracts in force on January 1, 1995, as from January 1, 2000.

(3) The provisions referred to in paragraph (3) of the eleventh transitional provision shall not apply to contracts in force on October 14, 1994, that are due to expire before January 1, 2000. On that date the parties may renegotiate the contract conditions according to the said provisions.

(Settlement of Special Situations Regarding the Term of Protection)

Thirteenth.

(1) This Law shall not affect any act of exploitation engaged in prior to July 1, 1995. The intellectual property rights established under this Law shall not give rise to payments on the part of persons who have, in good faith, undertaken the exploitation of works and corresponding acts during the time at which the said works were in the public domain.

(2) The terms of protection provided for in this Law shall apply to all works and acts that were protected in Spain or at least in a Member State of the European Union on July 1, 1995, by virtue of the corresponding national provisions on intellectual property rights, or those that meet the criteria determining qualification for protection under the provisions of this Law governing the right of distribution as far as works and performances are concerned, and the rights of fixation, reproduction and communication to the public as far as performances are concerned.

(Application of the Transitional Provisions of the Civil Code)

Fourteenth.

The transitional provisions of the Civil Code shall be applicable to matters not covered by these provisions.

## SOLE REPEAL PROVISION

(Scope of Repeal Provisions)

(1) Provisions contrary to the provision of this Law are hereby repealed, including the following in particular:

- (a) Royal Decree of September 3, 1880, approving the Regulations for the implementation of the Law of January 10, 1879, on Intellectual Property: Chapters V and VI of Title I.
- (b) Royal Decree 1434 of November 27, 1992, elaborating on Articles 24, 25 and 140 of Law 22 of November 11, 1987, on Intellectual Property: Articles 9(1), 11, 12, 14, 16, 17, 18, 19 and 37(1), and also Chapters II and III of Title II.

- (2) The following provisions remain in force:
- (a) Law 9 of March 12, 1975, on Books, where not repealed by Law 22 of November 11, 1987, on Intellectual Property or by Royal Decree 875 of March 21, 1986.
  - (b) Royal Decree of September 3, 1880, approving the Regulations for the implementation of the Law of January 10, 1879, on Intellectual Property: Chapters I, II, III, IV, VII, VIII, IX, X and the transitional provision of Title I; Chapters I, II and III of Title II.
  - (c) Decree 3837 of December 31, 1970, on the attachment of cinematograph film.
  - (d) Decree 2984 of November 2, 1972, introducing the obligation to affix the ISBN number on all types of book and pamphlets.
  - (e) Royal Decree 3223 of September 1, 1983, regulating the sale, distribution and display to the public of audiovisual material.
  - (f) Royal Decree 448 of April 22, 1988, regulating the dissemination of cinematograph film and other audiovisual works embodied in videographic media.
  - (g) Royal Decree 479 of May 5, 1989, regulating the composition and operating procedure of the Arbitration Commission on Intellectual Property, where not amended by Royal Decree 1248 of July 14, 1995.
  - (h) Royal Decree 484 of March 30, 1990, on the public selling price of books;
  - (i) Royal Decree 1584 of October 18, 1991, approving the rules of the General Registry of Intellectual Property, in so far as it was declared in force in paragraph (3) of the sole transitional provision of Royal Decree 733 of May 14, 1993.
  - (j) Royal Decree 1434 of November 27, 1992, elaborating on Articles 24, 25 and 140 of Law 22 of November 11, 1987, on Intellectual Property, in the form given them by Law 20 of July 7, 1992, where not amended by Royal Decree 325 of February 25, 1994, or repealed by this repeal provision.
  - (k) Royal Decree 733 of May 14, 1993, approving the rules of the General Registry of Intellectual Property.
  - (l) Royal Decree 325 of February 25, 1994, amending Article 15(2) of Royal Decree of 1434 of November 27, 1992, elaborating on Articles 24, 25 and 140 of Law 22 of November 11, 1987, on Intellectual Property, in the form given them by Law 20 of July 7, 1992.
  - (m) Royal Decree 1694 of July 22, 1994, for the adaptation to Law 30/1992 on the Legal Regime Governing Public Administrations and Common Administrative Procedure of Royal Decree 1584 of October 18, 1991, approving the Rules of the General Registry of Intellectual Property.
  - (n) Royal Decree 1778 of August 5, 1994, for the alignment on Law 30 of November 26, 1992, on the Legal Regime Governing Public Administrations and the Common Administrative Procedure of the regulatory provisions concerning the procedures of grant, amendment and lapse of authorizations.
  - (ñ"ñ) Royal Decree 1248 of July 14, 1995, partially amending Royal Decree 479 of May 5, 1989, regulating the composition and operating procedure of the Arbitration Commission on Intellectual Property.
  - (o) Royal Decree 1802 of November 3, 1995, introducing the system for the calculation of the compensatory remuneration for private copying in the cities of Ceuta and Melilla.
  - (p) Order of June 23, 1966, introducing the basic provisions to which advertising contracts in the cinema medium have to conform;
  - (q) Order of October 30, 1971, approving the rules of the Hispanic Bibliographic Institute.
  - (r) Order of March 25, 1987, regulating the Spanish ISBN Agency.
  - (s) Order of April 3, 1991, elaborating on the provisions of Royal Decree 2332 of September 1, 1983, regulating the sale, distribution and display to the public of audiovisual material.



## **SOLE FINAL PROVISION**

(Regulatory Development)

The Government is authorized to enact the provisions for the regulatory development of this Law.