

273 ACT of 15th of October 1993 on Some Conditions of Production, Dissemination and Filing of Audio-Visual Works, on Changes and Amendments of Acts and Other Legislation

The Parliament has adopted the following Act of the Czech Republic:

PART 1

Conditions of Production, Dissemination and Filing of Audio-Visual Works

Section 1

Definitions

(1) For the purpose of the present Act, the following definitions apply:

- a) audio-visual work shall be such work consisting of a sequence of mutually associated pictures, either accompanied by sound or soundless, perceivable by sight, and if accompanied by sound, also perceivable by hearing¹⁾, if designed for public dissemination²⁾ with help of technical equipment.
- b) Czech audio-visual work shall be such audio-visual work whose maker, as under Paragraph 2, a), has had or at the time of the first public showing thereof had permanent address or headquarters in the territory of the Czech Republic; Czech audio-visual work shall also be such audio-visual work in the creation of which such maker has participated,
- c) audio-visual demonstration shall be public demonstration of audio-visual work with help of technical equipment, with the exception of television broadcasting³⁾; audio-visual work shall be demonstrated publicly if demonstrated to persons not individually identified.

(2) Furthermore, for the purpose of the present Act, the following definitions shall apply:

- a) makers of audio-visual work shall be such persons which possess rights to use individual segments of audio-visual work and which have created such audio-visual work,
- b) distributors of audio-visual work shall be such persons which, based on contract and usually for consideration, provide dissemination of audio-visual work, with the

¹⁾ Art. 2 of Convention on international recording of audiovisual works, published in Collection of Acts under No.365/1992 Sb.

Sec. 6 of Act No.35/1965 Sb. on works of literature, science and art (Authorship Act), as amended by Act No.89/1990 Sb.

²⁾ Sec. 22 of Act No.35/1965 Sb., as amended by Act No.89/1990 Sb.

³⁾ Act No.438/1991 Sb., on Radio and Television Broadcasting, as amended by subsequent legislation.

Act No.483/1991 Sb. of the Czech National Council (“ČNR”), on Czech Television, as amended by Act No.36/1993 of ČNR.

exception of dissemination by television broadcasting³⁾, for entities as identified in Subsections c) to e),

- c) organisers of audio-visual demonstration shall be such persons which publicly show audio-visual work with help of technical equipment, with the exception of television broadcasting³⁾.
- d) operators of selling points of audio-visual works shall be such persons which sell multiplied copies of audio-visual works to the public.
- e) operators of lending libraries of audio-visual works shall be such persons which, for consideration, lend the public multiplied copies of audio-visual works.

Section 2

Records

(1) The Ministry of Culture (hereinafter “the Ministry) shall keep records of persons as established in Section 1, Par.2, a) and b), which have registered their businesses. Records of such persons shall constitute an information system under special legislation⁴⁾.

(2) The purpose of keeping records as under Paragraph 1 shall be to secure existence of official records for implementation of the Authorship Act⁵⁾ and the present Act.

(3) The appropriate Business Licensing Office, for the purpose of such records as established in Par. 1, shall send the Ministry a copy of the Business Licence.

Section 3

Identification of Audio-Visual Works

(1) Makers of audio-visual work shall be obliged to have identified the following information at the original carrier of audio-visual work:

- a) name of work,
- b) name and surname, or pen-name, of author(s), if such author is known and if such author has not expressly prohibited the use of his/her name,
- c) names and surnames of executive artists⁶⁾,

³⁾ Act No.438/1991 Sb., on Radio and Television Broadcasting, as amended by subsequent legislation.

Act No.483/1991 Sb. of the Czech National Council (“ČNR”), on Czech Television, as amended by Act No.36/1993 of ČNR.

³⁾ Act No.438/1991 Sb., on Radio and Television Broadcasting, as amended by subsequent legislation.

Act No.483/1991 Sb. of the Czech National Council (“ČNR”), on Czech Television, as amended by Act No.36/1993 of ČNR.

⁴⁾ Act No.256/1992 Sb., on Protection of Personal Data in Information Systems.

⁵⁾ Act No.35/1965 Sb., as amended by subsequent legislation.

Act No.2/1969 Sb., on the Establishment of Ministries and Other Central Agencies of the Czech Socialist Republic, as amended by subsequent legislation.

⁶⁾ Sec. 36, Par. 1 of Act No.35/1965 Sb.

- d) name and surname of owner(s) of copyright, if other than author(s) and/or executive artist(s),
- e) name and surname of maker, if a physical person, or its trade name, if a legal entity,
- f) place and year of production of such work, and
- g) names and surnames of co-workers participating in the production of such work, if such identification is usual.

(2) Distributor of audio-visual work shall be obliged to secure that multiplied copies of such audio-visual work should bear the maker's information as established in Paragraph 1, and further an identification of the distributor containing its name and surname, if a physical person, or its trade name, if a legal entity.

Section 4

Public Availability of Audio-Visual Works

- (1) Audio-visual works, the content of which may imperil moral formation of minors⁷⁾, shall be identified as unsuitable for viewers less than 15 or 18 years of age.
- (2) Makers of Czech audio-visual work shall be obliged to establish such category of suitability as under Par.1, for each audio-visual work produced by such makers, and to identify such category in distribution contract(s).
- (3) Distributors of audio-visual work shall be obliged to establish, and identify in contract(s) with persons as described in Section 1, Paragraph 2, c) to e), such category of suitability for each audio-visual work. In the event such category of suitability be established under Par.2, such distributor shall be obliged to observe it.
- (4) Makers, or distributors of audio-visual work, shall also be responsible for identification of category of suitability on the encasement of such audio-visual work carrier.
- (5) Organisers of audio-visual demonstrations shall be obliged to make public such category of suitability as established by makers or distributors and to check its observance by participants in such demonstration.
- (6) Operators of selling points or lending libraries of audio-visual works may not sell or lend multiplied copies of audio-visual works to persons younger than limits applicable to relevant categories of suitability as established by makers and distributors.

Section 5

Advertising at Audio-Visual Demonstrations

(1) Organisers of audio-visual demonstrations containing advertising shall be obliged to secure that such advertising be identified as such and shown separately from the rest of such demonstration.

(2) Organisers of audio-visual demonstrations shall be obliged to secure non-publication of advertising:

- a) supporting behaviour which may imperil morality or injure the interest of health protection, security and environmental protection,

⁷⁾ Convention on the Rights of the Child, as published in Collection of Acts under No.104/1991 Sb.

- b) designed for children or featuring children, if such advertising support behaviour hazardous for their health and psychic and moral formation,
- c) promoting medicaments available only on medical prescription, registered in the Czech Republic,
- d) breaching a ban established by other legislation⁸⁾.

Section 6

The National Film Archives

(1) The National Film Archives with its headquarters in Prague, established by the Ministry (hereinafter “the Archives” represents archives of special importance⁹⁾ for filing audio-visual works. The mission of the Archives shall be collecting, protection, scientific research and use of filed audio-visual records, particularly those which form part of the national cultural heritage and document the inception and development of film.

(2) The Archives shall create, on the basis of agreements concluded with owners of copyright, a special fund of selected artistic audio-visual works, to be provided on a non-profit basis to civic associations¹⁰⁾ for temporary use, the chief goal of which, in keeping with their statutes, shall be to provide their members with access to artistic audio-visual works.

(3) The right to decide on which artistic audio-visual may be included in such special fund as under Paragraph 2, shall belong to the Fund Council¹¹⁾.

Section 7

Obligation of Proffer

(1) Makers of Czech audio-visual work shall be obliged to make a proffer in writing to the Archives to purchase two new and undamaged copies of Czech audio-visual work, within 60 days following its first public demonstration. The price shall be agreed in keeping with price regulation¹²⁾.

(2) The period during which such proffer may be accepted to conclude a purchase contract as under Paragraph 1 shall be 6 months since the delivery of such proffer. In the event that the Archives fail to accept such proffer within such period, the proffer shall expire and obligation of proffer as established in Paragraph 1 shall thus be deemed implemented. The Archives shall be obliged, not later than within 7 days, to issue such person which made such proffer, with certification in writing testifying thereto. Such certification must exclude any possibility of confusing the object of such obligation of proffer.

(3) Makers of Czech audio-visual work created with help of contribution(s) made by the Fund¹³⁾ shall be obliged to submit to the Archives free of charge a sample undamaged copy of such Czech audio-visual work for filing, within 60 days following its first public demonstration.

⁸⁾ E.g. Sec. 20 of Act No.634/1992 Sb., on Consumer Protection, as amended by Act No.217/1993 Sb.

⁹⁾ Sec. 24, Par. 1 of Act No.97/1974 Sb., on Archives.

¹⁰⁾ Act No.83/1990 Sb., on Association, as amended by subsequent legislation.

¹¹⁾ Sec. 2, Par. 1 of Act No.241/1992 Sb. of ČNR, on the State Fund of the Czech Republic to Assist and Promote Czech Cinematography.

¹²⁾ Act No.526/1990 Sb., on prices.

¹³⁾ Sec. 9, Par. 1, of Act No.241/1992 Sb., of ČNR.

(4) By transferring ownership to such copies of such Czech audio-visual work as under Paragraphs 1 and 3, the Archives shall not acquire the right to any public use of such copies. This does not affect the provision of Section 6, Par.2.

(5) Obligation as established in Par. 1 and 3 shall not apply to audio-visual works produced by Czech Television¹⁴⁾ exclusively for dissemination by television broadcasting³⁾.

Section 8

Maker of audio-visual work may proffer for filing by the Archives the negative film and duplicating materials under conditions as agreed between such maker and the Archives.

Section 9

Supervision

(1) Observance of obligations as established in the present Act shall be supervised by the Ministry. In order to execute such supervision, authorised official of the Ministry shall be entitled to enter buildings, operations and business establishments belonging to persons identified in Sec. 1, Par. 2, and to require them to submit such documents and other written documentation, as well as any required explanation, if associated with the object of supervision. Such persons in question shall be obliged to allow for execution of such supervision.

(2) Authorised officials of the Ministry shall be obliged to keep confidential any facts they have learned as part of execution of such activity as under Par. 1, or in connection therewith. Such obligation shall survive their authorization.

Section 10

Penalties

(1) The Ministry shall be entitled to impose the following penalties, on:

- a) makers and distributors of audio-visual works, for breaching their obligations as under Sec. 3, Par. 1 and 2, a fine of up to Kč100,000,
- b) makers and distributors of audio-visual works, for breaching their obligations as under Sec. 4, Par. 2, 3 and 4, a fine of up to Kč10,000,
- c) organisers of audio-visual demonstrations, for breaching their obligations as under Sec. 4, Par. 5, a fine of up to Kč10,000,
- d) operators of selling points or lending libraries of audio-visual works, for breaching their obligations as under Sec. 4, Par. 6, a fine of up to Kč10,000,
- e) organisers of audio-visual demonstrations, for breaching their obligations as under Sec. 5, Par. 1 and 2, a fine of up to Kč10,000,
- f) makers of Czech audio-visual works, for breaching their obligations as under Sec. 7, Par. 1 and 3, a fine of up to Kč50,000.

¹⁴⁾ Act No.483/1991 Sb., of ČNR, as amended by Act No.36/1993 Sb., of ČNR.

³⁾ Act No.438/1991 Sb., on Radio and Television Broadcasting, as amended by subsequent legislation.

Act No.483/1991 Sb. of the Czech National Council (“ČNR”), on Czech Television, as amended by Act No.36/1993 of ČNR.

(2) When establishing the amount of such fine the Ministry shall take into consideration dangerousness and consequences of such breach; in case of physical persons, also the amount of guilt on the part of such person shall be considered.

(3) Any fine may be imposed not later than within one year following such breach of obligation is discovered by the Ministry, and not later than within three years following such breach.

(4) Any proceedings concerning imposing of such fines shall be subject to general legislation on administrative proceedings¹⁵⁾.

(5) Fines imposed as under Par. 1 represent income of the Fund. Such fines shall be exacted by the Ministry in keeping with legislation on administration of tax and fees¹⁶⁾.

PART II

Amendment to Act No. 455/1991 Sb., on Business (Business Act), as amended by subsequent legislation

Section 11

Act No. 455/1991 Sb., on Businesses (Business Act), as amended by Act No. 231/1992 Sb., Act No. 591/1992 Sb., and Act No. 600/1992 Sb., shall be amended as follows:

1. In Footnote 1 to Section 3, Par. 1, a), delete “Section 1, Paragraph 1, of Decree of the President of the Republic No. 50/1945 Sb., on Measures Concerning the Film Industry”.

2. In Section 3, Paragraph 1, c), 9, delete “film and other audio-visual”.

PART III

Amendment to Act No. 241/1992 Sb., of ČNR, on State Fund of the Czech Republic to Assist and Promote Czech Cinematography

Section 12

Act No. 241/1992 Sb., of ČNR, on State Fund of the Czech Republic to Assist and Promote Czech Cinematography, shall be amended as follows:

1. In Section 7, after sub-paragraph 1) new sub-paragraph m) shall be inserted, which - including Footnote 3a - shall read:

“m) revenue ensuing from use of works of cinematography art, in the case of which the Fund executes the copyright of the producer³⁾, which such Fund acquired based on special legislation^{3a)},

¹⁵⁾ Act No. 71/1967 Sb., on Administrative Proceedings (Administrative Statutes).

¹⁶⁾ Act No. 337/1992 Sb., on Administration of Taxes and Fees, as amended by subsequent legislation.

³⁾ Act No.438/1991 Sb., on Radio and Television Broadcasting, as amended by subsequent legislation.

Act No.483/1991 Sb. of the Czech National Council (“ČNR”), on Czech Television, as amended by Act No.36/1993 of ČNR.

^{3a)} Section 13 of Act No. .../1993 Sb., on Some Conditions of Production, Dissemination and Filing of Audio-Visual Works, on Changes and Amendments of Acts and Other Legislation.”

2. In Section 8, Paragraph 2, the second sentence shall read: “Such accounting shall be done by the organiser in a form issued by the Fund Administrator.”

3. In Section 8, new Paragraphs 3, 4, and 5 shall be inserted after Paragraph 2, which - including Footnote - shall read:

(3) Organisers of public demonstrations of works of cinematography art where admission fee is paid shall be obliged to keep special records on dates of such demonstrations, as well as amounts of surcharge collected, total amount of surcharge collected over the appropriate quarter and the date of its payment to the Fund.

(4) Any surcharge as under Par. 1, unpaid in time as under Par. 2, shall be exacted by the Fund Administrator in keeping with legislation on administration of taxes and fees^{3b)}.

(5) Authorised officials of the Fund Administrator shall be obliged to keep confidential any facts they have learned as part of execution of such activity as under Par. 4, or in connection therewith. Such obligation shall survive their authorization.

The existing Paragraph 3 shall become Paragraph 6.

4. New Section 8a shall be inserted after Section 8 which - including Footnote 3c) - shall read:

“Section 8a

(1) The Fund Administrator may impose a fine of up to Kč50,000 on organisers of public demonstrations of works of cinematography art where admission fee is paid, for breaching their obligations as under Section 8, Par. 2 and 3.

(2) When establishing the amount of such fine the Fund Administrator shall take into consideration dangerousness and consequences of such breach; in case of physical persons, also the amount of guilt on the part of such person shall be considered.

(3) Any fine may be imposed not later than within one year following such breach of obligation is discovered by the Fund Administrator, and not later than within three years following such breach.

(4) Any proceedings concerning imposing of such fines shall be subject to general legislation on administrative proceedings^{3c)}.

(5) Fines imposed as under Par. 1 represent income of the Fund. Such fines shall be exacted by the Fund Administrator in keeping with legislation on administration of tax and fees^{3b)}.

The existing sub-paragraph m) shall become sub-paragraph n).

^{3b)} PART SIX of Act No. 337/1992 Sb., of ČNR, on Administration of Taxes and fees, as amended by subsequent legislation.”

^{3c)} Act No. 71/1967, on Administrative Proceedings (Administrative Statutes).”

^{3b)} PART SIX of Act No. 337/1992 Sb., of ČNR, on Administration of Taxes and fees, as amended by subsequent legislation.”

PART IV

Interim and Final Provisions

Section 13

(1) Commercial use of Czech works of cinematography art, produced between 28th of August 1945 and 31st of December 1990¹⁷⁾, whose protection of property copyright expired on or after the date of force of the present Act¹⁸⁾, may be possible only on the basis of their original carriers for which the right to management belong to the Archives, or with a consent in writing thereof. This provision shall not affect the rights of authors of individual segments of audio-visual works.

(2) Any profit generated in connection with demonstrating such works, after deduction of expenses ensuing from obligations imposed by the present Act, shall be surrendered by the Archives to the Fund.

Section 14

State organisations “Film Studios Barrandov - Copyright” and “Film Studios Zlín - Copyright” which execute copyrights of makers of works of cinematography art¹⁹⁾, shall merge, on the date of force of the present Act, with the Fund; the Fund as their legal successor shall assume their rights and obligations from property and other relations, including rights and obligations in the sphere of intellectual property. This provision shall not affect the right to management belonging to the Archives in respect to all original carriers from which such rights and obligations ensue.

Section 15

Section 1, Section 3, Par. 2 and Section 4 of Decree of the President of the Republic No. 50/1945 Sb., on Measures Concerning the Film Industry, shall be abolished.

Section 16

The present Act shall come into force on the date of enactment.

Uhde, in his own hand

Havel, in his own hand

Klaus, in his own hand

¹⁷⁾ Decree of the Government of the Czech and Slovak Federal Republic, which repelled Governmental Decree No. 13/1962 Sb., on New Organisation of Czechoslovak Film.

¹⁸⁾ Sec. 6 and Sec. 33, Par. 4 of Act No. 35/1965 Sb., as amended by Act No. 89/1990 Sb.

¹⁹⁾ Sec. 6 of Act No. 35/1965 Sb., as amended by Act No. 89/1990 Sb.