

Law on Intellectual Property*

[Extracts**]

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** Only the provisions concerning copyright, as well as the provisions concerning intellectual property in general, are reproduced here. Those concerning industrial property are published in *Industrial Property Laws and Treaties*, ECUADOR— Text 1-001.

*** Added by the International Bureau of WIPO.

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Ecuadorian Institute of Intellectual Property (IEPI)	

¹ See Industrial Property Laws and Treaties, ECUADOR— Text 1–001 (Editor’s note).

² Not reproduced here (*Editor’s note*).

³ See Industrial Property Laws and Treaties, ECUADOR— Text 1–001 (Editor’s note).

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PRELIMINARY TITLE

1. The State shall recognize, regulate and guarantee intellectual property acquired in accordance with the Law, the Decisions of the Commission of the Andean Community and international treaties in force in Ecuador.

Intellectual property consists of the following:

1. copyright and related rights;
2. industrial property, which itself encompasses the following among other things:
 - (a) inventions;
 - (b) industrial designs;
 - (c) layout-designs (topographies) of integrated circuits;
 - (d) undisclosed information and commercial and industrial secrets;
 - (e) trademarks, service marks and commercial slogans;
 - (f) the distinctive features of stores and business establishments;
 - (g) trade names;
 - (h) geographical indications;
 - (i) any other intellectual creation intended for agricultural, industrial or commercial use;

3. new varieties of plants.

The provisions of this Law shall neither limit nor obstruct the rights enshrined in the Convention on Biological Diversity or in any laws enacted by Ecuador on that subject.

2. The rights conferred by this Law shall apply equally to nationals and foreigners, whether residing in Ecuador or not.

3. The Ecuadorian Institute of Intellectual Property [*Instituto Ecuatoriano de la Propiedad Intelectual*] (IEPI) is the administrative body competent to sponsor, promote, provide for, protect and defend, on behalf of the Ecuadorian State, the intellectual property rights recognized in this Law and in international treaties and conventions, without prejudice to civil and criminal actions on such matters, which shall be brought before the Judiciary.

BOOK I

TITLE I COPYRIGHT AND RELATED RIGHTS

Chapter I Copyright

Section I General Principles

4. The rights of authors and of others holding title to their works are hereby recognized and guaranteed.

5. Copyright shall come into being and be protected by virtue of the mere fact of the creation of the work, regardless of its merit, purpose or means of expression.

All works, performances, productions or broadcasts shall be protected, regardless of the country of origin of the work or the nationality or residence of the author or owner of rights. This protection shall likewise be recognized regardless of the place of publication or disclosure.

The recognition of copyright and related rights shall not be subject to registration or deposit or to compliance with any formality.

Related rights arise from the need to ensure the protection of the rights of performers and phonogram producers.

6. Copyright shall be independent of and compatible and susceptible of combination with

- (a) the ownership and other rights inherent in the physical medium in which the work is incorporated;
- (b) any industrial property rights that may subsist in the work;
- (c) any other intellectual property rights recognized by law.

7. For the purposes of this Title, the terms listed below shall have the following meanings:

Anonymous work: A work in which the identity of the author is not mentioned at his own wish.

Audiovisual work: Any creation expressed by a series of associated images, either with or without incorporated sound, which is intended mainly to be shown with the aid of projection

apparatus or any other means of communicating the images and sound, regardless of the characteristics of the material medium in which it is embodied.

Author: The natural person who makes the intellectual creation.

Broadcast: The dissemination over a distance of sounds, images or both by any known or yet to be known medium or process, with or without the use of satellites, for reception by the public. It also includes the production of signals from a ground station for a broadcasting or telecommunication satellite.

Broadcasting: Communication to the public by wireless transmission. Broadcasting includes that which passes through a satellite from the injection of the signal, both in the upward stage (uplink) and in the downward stage (downlink) of the transmission, until such time as the program carried by the signal becomes accessible to the public.

Broadcasting organization: A person, whether natural person or legal entity, who decides on broadcasts and lays down the conditions for radio or television broadcasting.

Collection: Set of things commonly belonging to the same class or type.

Collective work: A work created by two or more authors on the initiative and responsibility of a person, whether natural person or legal entity, who publishes or discloses it in his own name, in which it is not possible to identify the authors or recognize their contributions.

Compilation: Grouping within a single body of scientific or literary text of various laws, items of information or other material.

Computer program (software): Any sequence of instructions or information intended to be directly or indirectly used in an automated reading device, computer or electronic or similar contrivance capable of processing data, for the performance of a function or task or the production of a specific result, whatever the form in which it is expressed or fixed. The computer program includes also the preparatory documentation, flowcharts and diagrams, the technical documentation and users' manuals.

Contract work: The product of a contract for the making of a particular work, without there having been any employment or work relations between the author and the person commissioning the work.

Copy: Physical medium embodying the work or production, including both that resulting from original fixation and that resulting from an act of reproduction.

Database: A compilation of works, facts or data in printed form in a computer storage unit or in any other form.

Disclosure: The act of making the work available to the public for the first time, with the author's consent, by any known or yet to be known means or process.

Distribution: The making available to the public of the original or copies of the work by means of sale, rental, public lending or any other known or yet to be known form of transfer of ownership, possession or tenancy of the said original or copy.

Domestic environment: Framework for family gatherings that take place in the residential house that serves as the natural location of the home.

Ephemeral recording: The temporary audio or audiovisual fixation of a performance or broadcast, effected by a broadcasting organization with its own facilities and used for its own broadcasts.

Expressions of folklore: Productions embodying characteristic elements of the traditional cultural heritage, consisting of the whole store of literary and artistic works created on the national

territory by unknown or unidentified authors who are presumed to be nationals of the country or members of its ethnic communities, which are handed down from generation to generation in such a way that they reflect the traditional artistic or literary aspirations of a community.

Fair use: Such use as does not interfere with the normal exploitation of the work or prejudice the legitimate interests of the author.

Fixation: The incorporation of signs, sounds or images, or the digital representation thereof, in a material medium that permits them to be read, perceived, reproduced, communicated or used.

License: Authorization or permit, granted by the owner of the rights to the user of the work or other protected production, for the use of the said work in a particular way and in conformity with the terms agreed upon in the contract. It does not transfer ownership of the rights.

Ownership: The status of the natural person or legal entity as owner of the rights recognized by this Book.

Performer: The person who presents, sings, reads, recites, interprets or in any other way performs a work.

Phonogram: Any exclusively audio fixation of the sounds of a performance or of other sounds, or of the digital representation thereof. Phonographic, magnetic and digital recordings are copies of phonograms.

Phonogram producer: A person, whether natural person or legal entity, on whose initiative and responsibility and under whose coordination the sounds of a performance or other sounds, or digital representations thereof, are first fixed.

Posthumous work: In addition to those not published during the lifetime of the author, those that have been published during his lifetime if on his death, the author has left them in a revised, completed, annotated or corrected state in such a way that they qualify to be new works.

Producer: A person, whether natural person or legal entity, who takes the initiative and responsibility for and assumes the coordination of the production of a work, for instance an audiovisual work or a computer program.

Publication: The production of copies placed at the disposal of the public with the consent of the owner of the rights concerned, provided that the availability of such copies allows the reasonable needs of the public to be satisfied, due account being taken of the nature of the work.

Publisher: The person, whether natural person or legal entity, who by virtue of a written contract with the author or his successor in title undertakes to effect the publication and disclosure of the work for his own account.

Related rights: The economic rights owned by performers, phonogram producers and broadcasting organizations in relation to communication to the public.

Reproduction: The fixing of the work in any medium or by any process, whether known or yet to be known, including temporary or permanent digital storage, and the production of copies of all or part thereof.

Retransmission: The re-emission of a signal or program received from another source, effected by the dissemination of signs, sounds or images, either by wireless transmission or by cable, wire, optic fiber or any other known or yet to be known process.

Successor in title: The person, whether natural person or legal entity, who on whatever ground has acquired rights recognized in this Title.

Three-dimensional work or work of fine art: An artistic creation whose purpose is to appeal to the senses of the person contemplating it, such as a painting, drawing, engraving or

lithograph. For the purposes of this Law, the definition does not include photographs, architectural works and audiovisual works.

Unpublished work: A work that has not been disclosed with the consent of the author or his successors in title.

Videogram: The fixed form of an audiovisual work.

Work: Any original intellectual creation capable of being disclosed or reproduced in any known or as yet unknown form.

Work of applied art: An artistic creation with utilitarian functions or incorporated in a utilitarian article, whether a work of handicraft or one produced on an industrial scale.

Work of joint authorship: A work created jointly by two or more natural persons.

Section II

Subject Matter of Copyright

8. Copyright protection shall cover all works of the mind in the literary or artistic field, regardless of their type, form of expression, merit or purpose. The right recognized by this Title shall be independent of the ownership of the material object in which the work is embodied, and their enjoyment and exercise shall not be subject to the requirement of registration or compliance with any other formality.

Protected works shall include the following among other things:

- (a) books, pamphlets, printed matter, correspondence, articles, short stories, tales, poems, histories, critiques, essays, messages, theater scripts, cinematographic works, television programs, lectures, speeches, lessons, sermons, pleadings in court, memoranda and other works of similar nature, expressed in whatever form;
- (b) collections of works, such as anthologies or compilations and databases of all kinds which, by reason of the selection or arrangement of their contents, constitute intellectual creations, without prejudice to the copyright subsisting in the said material or data;
- (c) dramatic and dramatico-musical works, choreographic and mimed works and generally all staged works;
- (d) musical compositions with or without words;
- (e) cinematographic works and any other audiovisual works;
- (f) sculptures and works of painting, drawing, engraving and lithography, and graphic short stories, cartoons and comics, including sketches or mockups and other three-dimensional works;
- (g) projects, plans, models and designs for architectural works and works of engineering;
- (h) illustrations, graphs, maps and drawings relating to geography, topography and science in general;
- (i) photographic works and works expressed by processes analogous to photography;
- (j) works of applied art, except that their artistic value may not be dissociated from the industrial character of the object in which they are incorporated;
- (k) computer programs;
- (l) adaptations, translations, arrangements, revisions, updates and annotations; compendia, summaries and excerpts and other transformations of a work that have been made on

the express authority of the authors of the original works, and without prejudice to their rights.

Without prejudice to the industrial property rights, the titles of radio or television programs and newsreels, newspapers, magazines and other periodical publications shall be protected for a year following the appearance of the last issue or the public airing of the last program, except in the case of annual publications or productions, in which case the term of protection shall be three years.

9. Without prejudice to the rights subsisting in the original work and the corresponding authorization, the following shall also qualify for protection as derived works, provided that they possess the characteristics determining originality:

- (a) translations and adaptations;
- (b) revisions, updates and annotations;
- (c) summaries and excerpts;
- (d) musical arrangements;
- (e) all other transformations of a literary or artistic work.

Creations or adaptations based on a tradition expressed within a group of individuals and reflecting the expressions of the community concerned, its identity, its values handed down by word of mouth, by imitation or by other means, whether use is made of literary language, music, games, mythology, rituals, customs, crafts, architecture or other skills, shall respect the rights of the communities in accordance with the Convention that prevents the exportation, importation or transfer of cultural property and also the treaties adopted under the auspices of WIPO for the protection of such expressions against unlawful exploitation.

10. Copyright also protects the form of expression by which the ideas of the author are described, explained, illustrated or incorporated in his works.

The following do not qualify for protection:

- (a) the ideas embodied in the works, processes, operating methods or mathematical concepts in themselves, systems or the ideological or technical content of scientific works or the industrial or commercial exploitation thereof;
- (b) legal and regulatory provisions, judicial decisions and the enactments, agreements, deliberations and rulings of public bodies, including official translations thereof.

Section III Owners of Rights

11. Only a natural person may be an author. Legal entities may be owners of copyright as provided in this Book.

The ownership of rights shall be determined according to the provisions of the law of the country of origin of the work, in accordance with the provisions of the 1971 Paris Act of the Berne Convention.

12. The person whose name, pseudonym, initials, sign or other identifying mark appears on the work shall be presumed, in the absence of proof to the contrary, to be the author or owner thereof.

13. In a work of divisible joint authorship, each co-author shall be the owner of the rights in the part of which he is the author, unless otherwise agreed.

In a work of indivisible joint authorship, the rights shall belong jointly and *pro indiviso* to the co-authors, unless otherwise agreed.

14. Copyright shall not form part of any marital regime, and may be freely administered by the spouse who is the author or the successor in title to the author. However, the economic benefits deriving from exploitation of the work shall form part of the assets of the marital partnership.

15. Unless otherwise agreed, ownership of the copyright in a collective work shall be deemed to belong to the person, whether natural person or legal entity, who has organized, coordinated and directed the work, who may exercise the moral rights in relation to the exploitation of the work in his own right.

That person, whether natural person or legal entity, shall be considered the owner of the rights in a collective work who is mentioned as such on the work.

16. Unless otherwise agreed or specially provided in this Book, the ownership of works created in the course of employment relations shall accrue to the employer, who shall be authorized to exercise the moral rights in connection with the exploitation of the work.

In works created on commission, ownership shall accrue to the commissioning party in a non-exclusive form whereby the author shall retain the right to exploit them in a manner different from that provided for in the contract, provided that this causes no unfair competition.

17. In an anonymous work, the publisher whose name appears on the work shall be considered the representative of the author and shall be authorized to exercise and assert his moral and economic rights until such time as the author reveals his identity and justifies his authorship.

Section IV

Content of Copyright

Part I Moral Rights

18. The following shall constitute unrenounceable, inalienable, unattachable and imprescriptible rights of the author:

- (a) the right to claim authorship of his work;
- (b) the right to keep the work unpublished or anonymous or to demand that his name or pseudonym be mentioned whenever it is used;
- (c) the right to object to any distortion, mutilation, alteration or modification of the work that might prejudice his honor or reputation;
- (d) the right of access to the sole or a rare copy of the work that is in a third party's possession with a view to exercising the right of disclosure or any other right that may accrue to him;
- (e) the right to claim indemnification for damages and prejudice, independently of the other actions provided for in this Law, in the event of violation of any of the rights provided for in the foregoing subparagraphs.

This right shall not allow it to be demanded that the work be moved, and access to the work 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.

On the death of the author, the exercise of the rights provided for in [subparagraphs \(a\) and \(c\)](#) above shall accrue to his successors in title without limitation in time.

The successors in title may exercise the right provided for in [subparagraph \(b\)](#) for a period of 70 years following the author's death.

Part II Economic Rights

19. The author shall enjoy the exclusive right to exploit his work in any form and to derive profit therefrom, subject to the limitations provided for in this Book.

20. The exclusive right of exploitation of the work shall in particular include the right to effect, authorize or prohibit the following:

- (a) reproduction of the work in any form or by any process;
- (b) communication of the work to the public by any medium serving to disseminate words, signs, sounds or images;
- (c) distribution of originals or copies of the work to the public by means of sale, rental or lease;
- (d) importation;
- (e) translation, adaptation, arrangement or other transformation of the work.

The exploitation of the work in any form, and especially in any of the forms enumerated in this Article, shall be unlawful without the express authority of the owner of the copyright, subject to the exceptions specified in this Law.

21. Reproduction shall be deemed to consist in the fixing or replication of the work in any medium or by any process that is known or may yet become known, including temporary or permanent digital storage in such a way as to permit perception or communication of the work or the production of copies of all or part of it.

22. Communication to the public shall be understood to mean any act by which two or more persons, whether in the same place or not, may, at a time individually chosen by them, have access to the work without the prior distribution of copies to each one of them, as in the following cases:

- (a) stage performances, recitals, dissertations and public performances of dramatic; dramatico-musical, literary and musical works in any medium or by any process;
- (b) the public projection or showing of cinematographic and other audiovisual works;
- (c) the broadcasting or communication to the public of any works by any medium that serves to disseminate, by wireless means, signs, sounds or images, or the digital representation thereof, whether simultaneously or not.

The transmission of coded program-carrying signals is likewise an act of communication to the public in so far as means of decoding the signals are made available to the public by the broadcasting organization or with its consent.

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

- (d) transmission of works to the public by wire, cable, optic fiber or other comparable medium, whether on subscription or not;
- (e) the retransmission of a broadcast work by radio, television or any other wire or wireless means where it is effected by an entity different from the original one;
- (f) the emission, transmission or reception of the broadcast work in a place accessible to the public by means of any appropriate device;
- (g) public presentation and exhibition;

- (h) public access to computer databases by telecommunication where the said databases incorporate or constitute protected works;
- (i) the diffusion by any known or yet to be known process of signs, words, sounds or images, or the representation thereof, or other forms of expression of works.

Any communication shall be considered public where it goes beyond the strictly domestic circle.

23. By virtue of the right of distribution the owner of the copyright is entitled to make the original or copies of the work available to the public by means of sale, rental, public lending or any other form of transfer.

Rental means the making available of originals and copies of a work for use for a limited time in exchange for a direct or indirect economic or commercial benefit. The act of making available for exhibition purposes and of doing so for consultation on the spot shall be excluded from the concept of rental for the purposes of this provision.

Lending means the making available of originals and copies of a work through establishments accessible to the public for use for a limited time without direct or indirect economic or commercial benefit. The exclusions specified in the foregoing paragraph shall likewise apply to public lending.

The right of distribution by sale shall be exhausted on the first such sale, and solely with respect to successive resales within the country, but the exclusive right to authorize or prohibit the rental and public lending of the copies sold shall be neither exhausted nor otherwise affected.

The author of an architectural work or work of applied art may not object to the owner renting the building or work.

24. The right of importation shall entitle the owner of the copyright to prohibit the introduction into Ecuadorian territory, including by analog and digital transmission, of the original or copies of protected works, without prejudice to the same prohibition being available in relation to unlawful copies. This right may be exercised either in order to prevent the entry of the original and copies at border crossings or in order to secure the withdrawal from circulation or the suspension of distribution of such copies as may have already entered. This right shall not affect copies that form part of personal baggage.

25. The owner of the copyright shall have the right to apply, or demand that others apply, such means of technical protection as he considers appropriate, by the incorporation of devices or contrivances, the coding of signals or other tangible or intangible protection systems, to prevent the violation of his rights or make it impossible. Acts consisting in the importation, manufacture, sale, rental, servicing or distribution of or any other dealing in apparatus or means of deciphering or decoding coded signals or of evading or otherwise disabling the protection incorporated by the copyright owner, done without his consent, shall be assimilated to copyright infringement for the purposes of such civil actions and also for the exercise of such precautionary measures as may be appropriate, without prejudice to whatever penalties may be applicable to the offense.

26. Any of the following acts shall likewise constitute violations of the rights provided for in this Book:

- (a) the removal or alteration of electronic rights management information without the appropriate authority;
- (b) the distribution, importation or communication to the public of the original or copies of the work in the knowledge that electronic rights management information has been removed or altered without authority.

Electronic rights management shall be taken to mean that embodied in copies of works or appearing in connection with the communication of a work to the public which identifies the work,

the author, the owners of any copyright or related right or information on the terms and conditions governing the use of the work, as well as the number and codes that represent such information.

27. The exclusive right of exploitation, or any of its forms individually, shall be susceptible of transfer and generally any act or contract provided for in this Law or possible under civil law. In the case of transfer, on whatever ground, the acquirer shall enjoy and exercise ownership. The transfer shall specify the forms to which it relates, in such a way that the assignment of the right of reproduction does not constitute assignment of the right of communication to the public, or vice versa, except where expressly stated.

Disposal of the physical object shall not imply any assignment or authorization in relation to the copyright in the work embodied in it.

The transfer of the exploitation rights in future works shall be valid if they are identified either specifically or by genre, but in that case the contract may not have a term in excess of five years.

Section V

Special Provisions on Certain Works

Part I Computer Programs

28. Computer programs shall be considered literary works and protected as such. That protection shall be granted independently of whether or not they have been stored in a computer and regardless of the form in which they are expressed, namely in man-readable form (source code) or in machine-readable form (object code), and whether or not they are operating programs or application programs, including flowcharts, plans, users' manuals and generally those elements that determine the structure, sequence and organization of the program.

29. The owner of a computer program is the producer, namely the person, whether natural person or legal entity, who takes the initiative in and responsibility for the making of the work. The person whose name appears in the usual way on the original or copies of the work shall be considered the owner thereof, in the absence of proof to the contrary.

The owner shall in addition be entitled to exercise the moral rights in the work, including the right to decide on its disclosure, in his own name.

The producer shall have the exclusive right to make, or to authorize or prohibit the making of, modifications to or successive versions of the program and also programs derived from it.

The provisions of this Article may be amended by agreement between the authors and the producer.

30. The acquisition of a copy of a computer program that has been lawfully brought into circulation shall give its owner the exclusive right to do the following:

- (a) make a copy of the machine-readable version of the program (object code) for security or back-up purposes;
- (b) store the program in the internal memory of the equipment, whether or not the stored program is lost when the equipment is switched off, for the sole purpose of using the program and to the extent necessary;
- (c) adapt the program for exclusive personal use, unless expressly prohibited and provided that the use is confined to the normal use provided for in the license. The acquirer may not on any ground transfer the physical medium embodying the program so adapted, or use it in any other way without express authority, according to general rules.

The authority of the owner of the rights shall be sought for any other use, including reproduction for the purposes of personal use or exploitation of the program by two or more persons via networks or other comparable systems that are known or may yet become known.

31. A computer program shall not be considered rented when it is not the essential subject matter of the contract. The program shall be considered the essential subject matter when the operational viability of the subject matter of the contract is directly dependent on the computer program supplied with it, as in the case of a computer that is rented with built-in programs.

32. The only exceptions to copyright applicable to computer programs shall be those laid down in [Articles 30](#) and [31](#).

The provisions contained in this Part shall be so interpreted that their application does not prejudice the normal exploitation of the work or the legitimate interests of the owner of the rights.

Part II Audiovisual Works

33. Unless otherwise agreed, the following shall be considered co-authors of an audiovisual work:

- (a) the director or maker;
- (b) the authors of the plot, the adaptation and the screenplay and dialogue;
- (c) the author of the music specially composed for the work;
- (d) the artist in the case of animated cartoons.

34. Without prejudice to the copyright in the existing works that may have been adapted or reproduced, the audiovisual work shall be protected as an original work.

The authors of the existing works may exploit their contributions in a different genre, but the right to exploit the joint work, and also the right to exploit the works specially created for the audiovisual work, shall belong exclusively to the owner within the meaning of the following Article.

35. The producer, namely the person, whether natural person or legal entity, who takes the initiative in and responsibility for the making of an audiovisual work, shall be considered the owner of the said work. In the absence of proof to the contrary the person, whether natural person or legal entity, whose name appears in the usual form on the work shall be considered the producer.

The owner shall in addition be entitled to exercise the moral rights in the work, including the right to decide on its disclosure, in his own name.

All the foregoing shall be understood as being without prejudice to the express stipulations and reservations made between the authors and the producer.

Part III Architectural Works

36. The author of an architectural work may object to changes that alter the aesthetic or functional properties of his work.

Such alterations as may be necessary during or after the construction work shall require only authorization by the architect who designed the project, who may not deny such authorization unless he considers that the proposed alteration would affect the aesthetic or functional properties of his work.

The acquisition of an architectural project shall imply the right of the acquirer to carry out the projected work, but the written consent of its creator shall be necessary, in terms specified by him and in accordance with the Law on the Exercise of the Profession of Architect [*Ley de Ejercicio Profesional de la Arquitectura*], for its use in other works.

Part IV Works of Three-Dimensional Art and Other Works

37. The acquirer of a physical object that incorporates a work of art shall, unless otherwise agreed, have the right to display the work in public in any connection.

38. Where the original of a work of three-dimensional art, or the original manuscript of a writer or composer, is resold by public auction, or where a dealer in such works intervenes directly or indirectly in such a resale in the capacity of buyer, seller or broker, the seller shall pay the author or his heirs, as appropriate, a share corresponding to five per cent of the selling price unless otherwise agreed. That right shall be unrenounceable and inalienable.

39. Those responsible for trading establishments, the dealer or any other person who has intervened in the resale shall be jointly liable with the seller for the payment of the said royalty, and shall give notice of the sale to the corresponding management society, or failing that to the author or his successors in title, within three months, enclosing the documents that relate to the settlement of the transaction.

40. The portrait or bust of a person may not be placed on the market without the consent of the said person, or after his death that of his successors in title. Publication of a portrait shall be free, however, where it is done solely for scientific, educational or cultural purposes or in connection with news or events that are in the public interest or have taken place in public.

41. The author of a photographic work or the taker of an ordinary photograph of a person must have the authorization of the person photographed, or after his death that of his successors in title, for the exercise of his copyright or related rights, as the case may be. The authorization shall be in writing and shall refer specifically to the type of use of the likeness that has been authorized. Nevertheless, use of the image shall be lawful where it has been taken in the normal course of public events and serves cultural or information purposes, or takes place in connection with news or events in the public interest.

The exceptions provided for in the foregoing paragraph shall not affect the copyright in the work of which the image forms part.

Section VI Transfer and Assignment of Rights

Part I Transfer on Death

42. Copyright shall pass on to heirs and legatees in accordance with the provisions of the Civil Code.

43. For any exploitation of the work in whatever medium to be authorized, the consent of the heirs who represent the majority shall be required.

Where the majority make use of the work or exploit it they shall deduct from the overall economic proceeds whatever costs have been incurred and shall hand over to those who were not able to give their consent the share accruing to them.

Part II Contracts for the Exploitation of Works

I. Contracts in General

44. Contracts authorizing the use or exploitation of works by third parties shall be executed in writing, shall be for a consideration and shall be for such term as they may specify, but may be renewed indefinitely by common consent between the parties.

45. The various forms of exploitation of the work shall be mutually independent, and because of that contracts shall be deemed to relate only to those forms of exploitation that are expressly

stated and to the territorial scope specified in the contract. All rights regarding which no express stipulation has been made shall be considered reserved, and in the absence of any provision on territorial scope it shall be taken to be the territory of the country in which the contract was executed.

Assignment of the right of reproduction shall constitute assignment also of the right of distribution by sale of those copies whose reproduction has been authorized where this may be naturally inferred from the contract or is essential for the purpose of the contract to be fulfilled.

46. Exclusive assignment of copyright shall confer on the assignee the right of exclusive exploitation of the work, which shall be binding on both third parties and the author himself. It shall also confer on the assignee the right to grant assignments or licenses to third parties and to enter into any transaction or contract for the exploitation of the work, without prejudice to the corresponding moral rights.

In the case of non-exclusive assignment, the assignee shall be authorized to exploit the work in the manner specified in the contract.

47. Without prejudice to the provisions on works created in the course of dependent employment relations, any assignment of economic rights in all works that the author may create in the future shall be null and void except where those works are clearly specified in the contract and where the term thereof does not exceed five years.

Any stipulation whereby the author undertakes not to create any work in the future shall likewise be null and void.

48. The owner of the copyright may also grant non-exclusive and non-transferable exploitation licenses to third parties. The acquisition of copies of works that are marketed by virtue of the corresponding license shall imply the acquirer's consent to the terms of such licenses.

49. The person, whether natural person or legal entity, who has commissioned magazine articles, studies, photographs, other graphic work or other works susceptible of publication in newspapers, periodicals or other mass communication media shall have the right to publish the said works in the medium specified in the commission contract, and also to authorize or prohibit the use of the work in media similar or equivalent to those of its original publication. This shall be without prejudice to the author's right of exploitation in different media that do not compete with the original publication.

Where such works have been made in the course of dependent employment relations, the author shall retain the right to independent publication in the form of a collection.

The provisions of this Article may only be amended by common consent between the parties.

II. Publishing Contracts

50. A publishing contract is a contract whereby the author or his successors in title assign to another person, called the publisher, the right to publish and distribute the work on his own account, at his own risk and on agreed terms.

51. Where the author has previously entered into a publishing contract in relation to the same work, or where the work has been published with his authorization or knowledge, he shall bring these circumstances to the publisher's notice before the contract is entered into. If he fails to do so, he shall be liable for any damages and prejudice that might result.

52. The publisher may not publish the work with abridgements, additions, deletions or any other alterations without the written consent of the author.

53. The author shall retain the right to make such corrections, amendments, additions or improvements to his work as he considers appropriate prior to printing.

Where the alterations make the edition more costly, the author shall be obliged to defray the costs incurred on account of them, unless otherwise agreed. Where the alterations entail fundamental changes to the content or form of the work and are not accepted by the publisher, the work shall be considered withdrawn, and the author shall be obliged to pay for any damages and prejudice to third parties.

54. Where there is no agreement on the selling price of each copy, the publisher shall be entitled to set it.

55. Where the publishing contract sets a fixed period for termination and where on its expiry the publisher still has unsold copies of the work, the author may purchase them at cost price plus 10 per cent. That right may be exercised within 30 days following the expiry of the period, after which the publisher may continue to sell the copies on the same terms.

56. The publishing contract shall end, regardless of its specified term, when the edition is out of print.

57. The publisher's right to publish one or more works by the same author separately shall not entitle him to publish them together. Conversely, the publisher's right to publish an author's works together shall not entitle him to publish them separately.

58. Any person who publishes a work shall be obliged to give at least the following information in a visible place on all the copies:

- (a) the title of the work and name or pseudonym of the author, a statement that the work is anonymous, or the name of the compiler or adapter or author of the version concerned, as the case may be;
- (b) the reserved rights notice, with an indication of the name of the copyright owner, the abbreviated name of the management society that represents him where it so requires, and the year and place of first publication;
- (c) the names and addresses of the publisher and printer;
- (d) the International Standard Book Number (ISBN), in accordance with [Article 7](#) of the Book Promotion Law [*Ley de Fomento del Libro*].

59. The publisher is prohibited from publishing a number of copies greater than that agreed with the author and, if he does so, the author may demand payment for the greater number of copies actually published, without prejudice to any sanctions and compensation that might be appropriate.

60. The publisher shall present the author or his representative, as provided in the contract, with the appropriate statements of account. In any case, the author or his representative shall have the right to inspect the account books and sales records of those who publish, distribute or sell such printed works, which information the publishers, distributors and sellers are obliged to keep.

61. Bankruptcy of the publisher shall not terminate the contract except where the printing of the work has not started. The rights of the bankrupt publisher may not be assigned if the author or the dissemination of his work would thereby be prejudiced.

62. The foregoing provisions shall apply, except where the nature of the exploitation of the work preclude such application, to publishing contracts for musical works.

63. Unless expressly agreed otherwise, the publisher or subcontracted publishers or licensees, as the case may be, shall be entitled to authorize or prohibit the inclusion of the work in phonograms, its synchronization for advertising purposes or any other form of exploitation similar to those authorized by the publishing contract, without prejudice to the author's rights and the obligation to pay him the remuneration agreed in the contract once the publisher's share has been deducted.

64. The author shall be under the obligation to guarantee the authorship and originality of the work.

III. Phonographic Recording Contracts

65. A phonographic recording contract is a contract whereby the author of a musical work or his representative, or the publisher or the appropriate collective administration society authorizes a phonogram producer, against remuneration, to record or fix a work for reproduction on a phonographic disc, magnetic tape, digital medium or any other comparable device or mechanism for the purposes of reproduction and the sale of copies.

66. Unless otherwise agreed, the author's remuneration shall be proportional to the value of the copies sold and shall be paid periodically.

67. Phonogram producers shall state the following on the physical media in which their phonograms are embodied:

- (a) the title of the work, the names of the authors or their pseudonyms and that of the author of the version, as the case may be;
- (b) the names of the performers, instrumental or choral ensembles shall be mentioned;
- (c) the reserved rights notice in the form of the circled P symbol followed by the year of first publication;
- (d) the business style of the phonogram producer, or the mark identifying him or it;
- (e) the phrase: "All rights of the author and phonogram producer are reserved. Any reproduction, rental or lending to the public, or any form of public communication of the phonogram is prohibited";
- (f) as a compulsory feature, the printed serial number of the production run.

Any information that cannot be included for want of sufficient space on the labels of the copies shall be compulsorily printed on the jacket, sleeve or inlay card.

68. The provisions contained in [Articles 64](#) and [66](#) shall be applicable as appropriate to the literary work that has been used as the text for a musical work or for recital or reading and subsequent fixing on a phonogram for the purposes of reproduction and sale.

IV. Performance Contracts

69. A performance contract is a contract whereby the owner of the rights in an intellectual creation assigns the right, or otherwise authorizes a natural person or legal entity, to perform the work on such terms as have been agreed.

Such contracts may be entered into for a specified term or for a specified number of public performances.

The provisions on the performance contract shall be applicable to other forms of communication to the public, as appropriate.

70. Where the author's share has not been specified by contract, he shall be entitled to a minimum of 10 per cent of the total value of admissions to each performance and 20 per cent of those to the inaugural performance.

71. Where the impresario interrupts payments of the share accruing to the author, the competent authority, at the request of the copyright owner or his representative, shall order the suspension of performances of the work or the retention of the proceeds from admissions.

Where the same impresario has other works by different authors performed, the authority shall provide for the retention of the surpluses from collection, after the royalties for the works concerned and other costs have been met, up to the total of the amount owed to the unpaid author. In any event that author shall have the right to terminate the contract and withdraw the work from the impresario's control, and shall be entitled to bring such other actions as may be appropriate.

72. In the absence of contractual provision, it shall be presumed that the impresario has acquired the exclusive right to have the work performed for six months following the inaugural performance, and for six further months without exclusivity.

73. The impresario may terminate the contract, forfeiting any advances that he may have paid the author, if the performance of the work is stopped on account of poor audience reception of the first three performances, or unforeseen circumstances, *force majeure* or any other circumstance beyond the impresario's control.

74. The competent public officials shall not allow public presentations and performances if the authority of the owners of the works is not submitted.

V. Broadcasting Contracts

75. A broadcasting contract is a contract whereby the owner of the rights in an intellectual creation authorizes a broadcasting organization to transmit his work.

These provisions shall apply also to transmissions effected by wire, cable, optic fiber or another comparable means.

76. The authorization of the transmission of a work does not confer the right to broadcast it again or exploit it in public, unless otherwise agreed. The express authorization of the owners shall be required for the transmission of a work either to or in an external location.

VI. Contracts for Audiovisual Works

77. Exploitation of an audiovisual work by videocassette, cinema, television, broadcasting or any other means shall require prior agreement with the authors or performers, or where appropriate a contract entered into with the relevant management societies.

78. The distribution or showing of the audiovisual work may not be negotiated unless there has been a prior agreement with the collective management societies and the performers which fully guarantees payment of the performance royalties accruing to them.

VII. Advertising Contracts

79. Advertising contracts are contracts whose purpose is the exploitation of works for advertising purposes or for the identification of announcements or promotional material in any medium of communication.

Without prejudice to what is specified by the parties, the contract shall permit the communication of announcements or publicity for a period of up to six months following the first such communication, with each additional six-month period having to be paid for separately.

The contract shall specify the material medium in which the work is to be reproduced in the case of the reproduction right, and the number of copies constituting the print run where applicable. Every additional print run shall be by express agreement.

The provisions on publishing contracts, contracts for phonographic recording and contracts for audiovisual productions shall be subsidiarily applicable to these contracts.

Section VII

Limitation of and Exceptions to the Author's Economic Rights

Part I Term

80. Economic rights shall last for the lifetime of the author and for 70 years following his death, regardless of the country of origin of the work.

In the case of works of joint authorship, the term of protection shall run from the date of the death of the last surviving co-author.

In the case of posthumous works, the period of 70 years shall begin to run on the date of the author's death.

Where the author of an anonymous work does not make himself known in the course of the 70 years following the date of first publication, the work shall pass into the public domain. If, before that period expires, the name of the author is revealed, the provisions of the first paragraph of this Article shall apply.

If the identity of the author of a work published under a pseudonym is not known, it shall be considered anonymous.

If a collective work is disclosed in parts, the term of protection shall run from the date of publication of the last installment, part or volume.

81. If the ownership of a work belongs to a legal entity from the time of its creation, the term of protection shall be 70 years counted from the date of the making, disclosure or publication of the work, whichever is latest.

Part II Public Domain

82. On expiry of the terms of protection provided for in this Section, the works concerned shall pass into the public domain and consequently may be exploited by any person, subject to respect for the moral rights therein.

Part III Exceptions

83. The following acts, which shall not require authorization by the owner of the rights or be subject to any remuneration, shall exclusively be lawful subject to respect for proper practice and provided that the normal exploitation of the work is not adversely affected or the owner of the rights prejudiced thereby:

- (a) inclusion in a given work of fragments of other, different works in written, audio or audiovisual form, and also that of isolated works of three-dimensional, photographic, figurative or other character, provided that the works have already been disclosed and that their inclusion is by way of quotation or for analysis, comment or critical assessment; such use may only take place for teaching or research purposes to the extent justified by the purpose of the incorporation, and the source and the name of the author of the work used shall be stated;
- (b) the performance of musical works at official events connected with State institutions or religious ceremonies where attendance is free of charge, provided that the participants in the communication receive no specific remuneration for their involvement in the event;
- (c) the reproduction, distribution and communication to the public of articles and comments on current events and matters of collective interest that are disseminated by social communication media, provided that the source and the name of the author are

given if the original article mentions them, and that no reserved rights notice has been included;

- (d) dissemination by the press or broadcasting for informative purposes of lectures, speeches and similar works disclosed at assemblies, public meetings or public debates on matters of general interest;
- (e) the reproduction of news of the day or miscellaneous news items that have the character of mere press information published by the press or broadcast, provided that the origin is stated;
- (f) the reproduction, communication and distribution of works permanently located in public places by means of photography, painting, drawing or any audiovisual process, provided that the name of the author of the original work and the place in which it is located are mentioned, and that the purpose is strictly the dissemination of art, science and culture;
- (g) the reproduction in a single copy of a work forming part of the permanent collection of a library or archive for the sole purpose of replacing it where necessary, in so far as the said work is not available commercially;
- (h) ephemeral recordings that are immediately destroyed after broadcasting;
- (i) the reproduction or communication of a disclosed work for the purpose of judicial or administrative proceedings;
- (j) the parodying of a disclosed work, provided that this does not carry the risk of confusion with that work, or do harm to the work or to the reputation of the author or performer, as the case may be;
- (k) lessons and lectures given in universities, colleges, schools and teaching and training centers in general, which may be annotated and collected by those to whom they are addressed for their personal use.

84. The physical ownership rights in a letter shall belong to the person to whom it was addressed, but its author shall retain all intellectual rights in it. The person to whom it was addressed may, if he has failed to obtain the permission of the author or his heirs or successors in title in spite of reasonable effort, apply to the court for authorization to disclose it in such manner and to such extent as may be necessary to defend his personal honor.

Chapter II *Related Rights*

Part I General Provision

85. The protection of related rights shall in no way affect copyright protection, nor may it be interpreted to the detriment of that protection.

86. The owners of related rights may invoke all the provisions of this Book for the protection of the rights provided for in this Section, with the exception of those whose nature precludes their application or regarding which this Section contains an express provision.

Part II Performers

87. Without regard to the economic rights and even after the transfer thereof, performers shall enjoy, in relation to their live performances or performances fixed on phonograms, the right to be identified as such, except where omission is dictated by the manner in which the performance is used, and also the right to object to any distortion, mutilation or other alteration of their

performances in so far as such acts may be prejudicial to their reputation. Those rights shall not lapse on the death of their owners.

88. Performers shall have the right to authorize or prohibit the communication to the public of their live performances, and also the fixing of their performances and the reproduction of the fixations by any means or process.

89. Notwithstanding the provisions of the foregoing Article, performers may not object to the communication of their performances to the public when they constitute a broadcast performance in themselves, or where the communication is done from a fixation made with their prior consent and published for commercial purposes.

Without prejudice to the exclusive right accorded them by the foregoing Article, performers shall have the right, in the cases provided for in the foregoing paragraph, to receive remuneration for the communication to the public of a phonogram containing their performances.

Unless otherwise agreed, remuneration collected pursuant to the foregoing paragraph shall be shared equitably between the phonogram producers and the performers in accordance with international conventions, independently of the economic rights of the author that are already provided for in the articles relating thereto.

90. Performers who take part together in one and the same performance shall designate a representative for the exercise of the rights recognized in this Part. In the absence of such designation they shall be represented by the conductor or leader of the vocal or instrumental ensemble who took part in the performance.

91. The term of protection of the rights of performers shall be 70 years, counted from the first of January of the year following that in which the performance took place or in which it was fixed, as the case may be.

Part III Phonogram Producers

92. Phonogram producers shall have the exclusive right to effect, authorize or prohibit the following:

- (a) direct or indirect reproduction of their phonograms by any means and in any form;
- (b) distribution to the public;
- (c) importation, by any means, of lawful and unlawful reproductions of phonograms.

93. Exclusive licenses granted by the phonogram producer shall specify the rights that the licensee is authorized to exercise, in order to prove the legitimacy of the latter's dealings with the appropriate administrative and judicial authorities.

94. Phonogram producers shall likewise have the exclusive right to effect, authorize or prohibit wire or wireless communication to the public.

95. A common management society may be formed for the collection of the remuneration accruing to authors, phonogram producers and performers for the communication to the public of their works, phonograms and performances, as the case may be.

96. The term of protection of the rights of the phonogram producer shall be 70 years, counted from the first of January of the year following the date of first publication of the phonogram.

Part IV Broadcasting Organizations

97. Broadcasting organizations shall have the exclusive right to effect, authorize or prohibit the following:

- (a) retransmission of their broadcasts by any means or process;

- (b) fixation and reproduction of their broadcasts, including that of any isolated image where it was first made accessible to the public in the broadcast;
- (c) communication of their broadcasts to the public where it is done in places to which they have access against payment of an admission charge.

98. The broadcast referred to in the foregoing Article shall include the production of program-carrying signals destined for a broadcasting satellite, and also distribution to the public by an entity that relays or distributes the broadcasts of others that have been received from such a satellite.

99. It shall not be lawful without the authority of the broadcasting organization concerned to decode program-carrying satellite signals, receive them for profit-making purposes or disseminate them, or to import, distribute, sell, rent or in any way offer to the public apparatus or systems capable of decoding such signals.

100. For the purposes of the enjoyment and exercise of the rights provided for in this Part, comparable protection shall be accorded as appropriate to stations that relay programs to the public by wire, cable, optic fiber or any other similar means.

101. The term of the protection of the rights of broadcasting organizations shall be 70 years, calculated from the first day of the year following the date of the broadcast or transmission.

Part V Other Related Rights

102. The producer of motion pictures, with or without sound, that are not creations susceptible of description as audiovisual works shall have the exclusive right to effect, authorize or prohibit reproduction, communication to the public or distribution, including that of photographs taken in the course of the production of the audiovisual recording. This right shall last for 70 years counted from the first day of the year following the date of making, disclosure or publication, as the case may be.

Audiovisual recordings shall be understood to be fixations of moving pictures, with or without sound, that cannot be described as audiovisual works.

103. Any person who takes an ordinary photograph or by means of a comparable process makes another fixation that does not have the character of a photographic work shall enjoy the exclusive right to effect, authorize or prohibit the reproduction, distribution and communication to the public thereof on the same conditions as the creators of photographic works. This right shall last for 25 years counted from the first day of the year following the date of the making, disclosure or publication, as the case may be.

104. The person who first publishes an unpublished work that is in the public domain shall have the same exploitation rights in it, for a period of 25 years counted from the first day of the month following publication, as would have accrued to the author.

Part VI Remuneration for Private Copying

105. The private copying of works fixed on phonograms or videograms, and also the reprographic reproduction of printed literary works, shall be subject to compensatory remuneration in accordance with the provisions of this Part. That remuneration shall become payable by virtue of the distribution of physical media capable of embodying a sound or audiovisual fixation or of apparatus for the reproduction of phonograms or videograms, or of equipment for reprographic reproduction.

The remuneration shall accrue in equal parts to the authors, performers and phonogram producers in the case of phonograms and videograms, and shall likewise accrue in equal shares to the authors and publishers in the case of literary works.

Compensatory remuneration for the private copying of phonograms and videograms shall be collected by a single collecting agency common to authors, performers and phonogram and videogram producers, the sole corporate purpose of which shall be the collection on their behalf of the compensatory remuneration for private copying. In the same way, the collection of the compensatory fees for reprographic reproduction shall be carried out by a single collecting agency common to authors and publishers.

These management bodies shall be authorized by the IEPI and shall abide by the provisions of this Law.

106. The compensatory remuneration provided for in the foregoing Article shall be paid by the manufacturer or importer at the time of placing the following on the market:

- (a) tapes or other material capable of embodying a sound or audiovisual fixation;
- (b) reproduction equipment.

The percentage rate of compensatory remuneration for private copying shall be calculated according to the price of the recording material or reproduction apparatus, and shall be determined and laid down by the Board of Directors of the IEPI.

107. The person, whether natural person or legal entity, who offers material capable of embodying a sound or audiovisual fixation or reproduction apparatus to the public without having paid compensatory remuneration may not distribute the said material and apparatus and shall be jointly answerable with the manufacturer or importer for the payment of the remuneration, without prejudice to the right of the IEPI or of the competent courts, as the case may be, to withdraw the merchandise in question from the market until the said remuneration has been settled.

Failure to pay compensatory remuneration shall be punished with a fine corresponding to 300 per cent of what should have been paid.

Producers of phonograms or the owners of rights in the works to which this paragraph relates, or their licensees, shall not be liable for this remuneration in respect of material that they import.

108. Private copying shall be understood to mean the domestic copying of phonograms or videograms, or reprographic reproduction in a single copy carried out by the original acquirer of a lawfully circulating phonogram or videogram or literary work, for the exclusive purpose of non-profit-making use by the natural person who does it. Such copies may not on any account be used in a manner contrary to proper practice.

Private copying done on material or with reproduction apparatus for which compensatory remuneration has not been paid constitutes a violation of the relevant copyright and related rights.

Chapter III

Collective Management Societies

109. Collective management societies are legal entities under private law without gainful intent whose corporate purpose is the collective management of the economic rights of authors or related rights or both.

Membership of a collective administration society is voluntary for owners of copyright or related rights.

110. Collective management societies are obliged to administer the rights entrusted to them and are authorized to exercise them according to the conditions laid down in their own statutes, in the mandates entrusted to them and in the contracts that they have entered into with foreign counterparts, as the case may be.

The powers of representation conferred under the foregoing Article shall not detract from the right of the owners of rights to assert directly such rights as may be accorded to them in this Book.

111. Where there are two or more collective management societies for a given type of work, a single collecting agency shall be formed whose corporate purpose shall be exclusively the collection of royalties on behalf of the constituent members. Where the management societies do not agree to the formation and organization of and their representation on a collecting agency, its designation and composition shall be a matter for the National Directorate of Copyright.

112. Collective management societies shall be authorized by the National Directorate of Copyright and subject to its inspection, supervision and control. The National Directorate of Copyright may, either *ex officio* or at the request of a party, take control of a collective administration society if it does not conform to the provisions of this Chapter and the Regulations. Where it does take control, acts and contracts have to be authorized by the National Director of Copyright in order to be valid. The following shall be requirements for collective management societies to be licensed to operate:

- (a) the statutes of the applicant society must meet the requirements laid down in this Chapter;
- (b) the data submitted and information supplied must show that the applicant society meets the prescribed conditions for efficient administration of the rights that are to be entrusted to its management.

113. Without prejudice to the provisions of the applicable legal provisions, the statutes of a management society shall in particular specify

- (a) the conditions for the admission to membership of the owners of rights who apply for it and prove their eligibility;
- (b) the fact that the General Assembly, composed of members of the society, is the supreme governing body and has been given prior authorization to approve tariff regulations and rule on the percentages to be set aside for administrative costs. That percentage may not in any event exceed 30 per cent of sums collected, the balance having to be distributed equitably among the various owners of rights in proportion to the actual exploitation of works, performances or phonograms, as the case may be.

114. Collective management societies are obliged to publish their financial statements annually in a nationally circulated communication medium.

115. Where the management society fails to fulfill its objectives or the provisions of this Chapter, the National Directorate of Copyright may suspend its operating license, in which case the management society shall retain its legal personality solely for the purpose of remedying the said non-fulfillment. Where it fails to do so within a maximum period of six months, the Directorate shall revoke its operating license.

Without prejudice to the foregoing, in all cases of suspension of an operating license, the society concerned may, under the supervision of the National Directorate of Copyright, collect royalties for the authors that it represents.

The proceeds from collection shall be deposited in a separate account in the name of the National Directorate of Copyright, and shall be transferred to the society once the decision to reinstate its operating license has been taken.

116. Collective management societies shall establish the tariffs for licensing the use of the works or productions that constitute its repertoire. The tariffs established by collective management societies shall be published in the Official Register by order of the National Directorate of

Copyright, provided that the requirements of form laid down in the statutes and in this Chapter for the introduction of the tariffs have been met.

117. Collective management societies may negotiate with organizations of users and may enter into tariff-setting contracts with them. Any interested party may acquaint himself with the tariffs if he so requests by writing to the management society concerned.

118. All broadcasting organizations and generally any person who habitually engages in any act of communication to the public shall keep catalogues, registers or monthly records which shall specify, in the order of dissemination, the titles of the works disseminated and the names of their authors or the owners of the corresponding copyright and related rights, and shall submit them to each of the management societies and to the single agency set up to collect royalties for communication to the public, for the purposes laid down in this Law.

The administrative, police or municipal authorities, which in every case perform the functions of supervision and inspection and in the course of their work learn of activities liable to give rise to the remuneration specified in the foregoing Article are obliged to inform the management societies accordingly.

119. Any person who exploits a work or production without having been granted the corresponding rights or the appropriate exploitation license shall pay, by way of indemnification, a surcharge of 50 per cent on the standard fee, calculated for the entire time during which the exploitation took place.

The same provision shall apply to collective management societies where they have granted licenses for works that they do not represent, having in any event to assure the licensee of undisturbed use and enjoyment of the corresponding rights.

BOOK II

INDUSTRIAL PROPERTY

Chapter I

Protection of Inventions

120. Inventions in all fields of technology shall be protected by the grant of invention or utility model patents.

All protection given to industrial property shall likewise ensure the protection of the country's biological and genetic heritage; consequently, the grant of product or process patents that relate to elements of the said heritage shall be conditional on those elements having been acquired legally.

Chapter II

Patents

Section I

Patentability Requirements

121. A patent shall be granted for any invention of either a product or a process in any field of technology, provided that it is new, involves an inventive step and is industrially applicable.

122. An invention is new when it is not anticipated by prior art.

Prior art consists of everything that has been made accessible to the public by written or oral description, use or any other means prior to the filing date of the patent application, or where applicable the date of recognized priority.

For the sole purpose of determining novelty, prior art shall be regarded as including also the contents of any patent application pending before the National Directorate of Industrial Property whose filing or priority date is earlier than the priority date of the patent application under examination.

No account shall be taken, when patentability is ascertained, of disclosure of the contents of the patent within the year prior to the filing date of the application in the country, or within the year preceding the priority date if priority has been claimed, in so far as the said disclosure is attributable to

- (a) the inventor or his successor in title;
- (b) an office responsible for the grant of patents in any country that contravenes applicable legal provisions by publishing the contents of the patent application filed by the inventor or his successor in title;
- (c) a third party, including public officials or State agencies, who may have obtained the information directly or indirectly from the inventor or his successor in title;
- (d) an official order;
- (e) a manifest abuse to the detriment of the inventor or his successor in title;
- (f) the fact that the applicant or his successor in title has shown the invention at an officially recognized exhibition or fair, or where for academic or research purposes it has had to be made public for development to continue. In that case the person concerned shall, on filing his application, submit a declaration stating that the invention actually was shown, together with the appropriate certificate.

A pending patent application that has not been published shall be treated as undisclosed information and protected as such under this Law.

123. An invention shall be regarded as involving an inventive step if it would not have been obvious to a specialist with normal skills in the corresponding field, or cannot be obviously deduced from the state of the art.

124. An invention shall be considered industrially applicable where its subject matter may be produced or used in any productive activity, including services.

125. The following shall not be considered inventions:

- (a) discoveries, scientific principles and theories and mathematical methods;
- (b) material that already exists in nature;
- (c) literary and artistic works, or any aesthetic creation;
- (d) schemes, rules and methods for conducting intellectual activities, playing games or doing business, and also computer programs or computer software in so far as they do not form part of an industrially applicable invention;
- (e) methods of presenting information.

126. The following are expressly excluded from patentability:

- (a) inventions whose commercial exploitation necessarily has to be prevented in the interest of public policy or morality, including the protection of the health or life of persons or animals, the preservation of plants and the avoidance of serious damage to the environment or ecosystem;
- (b) diagnostic, therapeutic and surgical methods for treating persons or animals;

- (c) plants and animal breeds, and also essentially biological processes for breeding plants or animals.

For the purposes of the provisions of [subparagraph \(a\)](#) above, the following shall be considered contrary to morality and therefore unpatentable:

- (a) processes for cloning human beings;
- (b) the human body and its genetic identity;
- (c) the use of human embryos for industrial or commercial purposes;
- (d) processes for the modification of the genetic identity of animals that cause them to suffer without any substantial medical benefits to human beings or animals being obtained thereby.

Section II Owners

127. The right to the patent shall belong to the inventor. That right shall be transferable by *inter vivos* transaction or on death.

The owners of patents may be natural persons or legal entities.

If two or more persons have made an invention jointly, the right shall belong jointly to all of them or to their successors in title.

A person who has confined himself to lending assistance in the making of the invention, without actually contributing inventive activity, shall not be considered either an inventor or a joint inventor.

Where two or more persons make the same invention independently of each other, the patent shall be granted to the one who files the first application or who claims the earliest priority, or to his successor in title.

128. Any person having a legitimate interest may claim and demand the status of true owner of a patent application, either before the National Directorate of Industrial Property in accordance with the established procedure for opposition or before the competent court, at any time up to three years following the grant of the patent.

129. The right to a patent for an invention made in fulfillment of a contract shall belong to the principal or employer, unless otherwise provided.

The same provision shall apply where a work contract does not require the employee to engage in inventive activity, if the said employee has made the invention using data or facilities made available to him by reason of his employment.

In the case provided for in the foregoing paragraph, the employee inventor shall have the right to a single payment of equitable remuneration in which due regard shall be had to the information and facilities provided by the firm and the personal input of the worker, and also the industrial and commercial importance of the patented invention, which, in the absence of agreement between the parties, shall be determined by the competent court on the advice of the IEPI. In the circumstances provided for in the first paragraph of this Article, the employee inventor shall have a similar right where the invention is of exceptional importance and goes beyond the implicit or explicit subject matter of the work contract. The right to remuneration provided for in this paragraph is unrenounceable.

In the absence of contractual provision or agreement between the parties on the amount of the said remuneration, it shall be set by the competent court on the advice of the IEPI. That remuneration shall be unrenounceable.

Where inventions have been made in the course or on the occasion of academic activity in universities or educational institutions, or with the use of the facilities or under the direction thereof, ownership of the patent shall accrue to the university or educational institution unless otherwise specified. The person who conducted the research shall be entitled to the remuneration provided for in the foregoing paragraphs.

Where in the case of inventions made in the course of employment relations the employer is a legal entity in the public sector, the latter may surrender part of the economic benefits of the innovations to its employee inventors in order to stimulate research activity. Those entities that receive public sector finance for their research shall reinvest part of the royalties that they receive for the marketing of such inventions with a view to generating a steady supply of research funds and stimulating researchers by making them participants in the proceeds from their innovations.

130. The inventor shall have the right to be mentioned as such in the patent; he may also object to such mention.

Section III Grant of Patents

131. The first application for a patent validly filed in a Member Country of the World Trade Organization or Member Country of the Andean Community or a party to the Paris Convention for the Protection of Industrial Property, or to any other treaty or convention to which Ecuador is also party that recognizes a right of priority having the same effect as that provided for in the Paris Convention, or in another country that grants reciprocal treatment to applications from countries members of the Andean Community, shall confer on the applicant or his successor in title a right of priority for a period of one year, counted from the date of the application, within which to apply for a patent for the same invention in Ecuador.

The application filed in Ecuador may not claim the priority of subject matter not included in the priority application, although the text of the specification and the claims do not necessarily have to correspond.

132. The application for a patent shall be filed with the National Directorate of Industrial Property and shall contain the elements required by the Regulations.

133. The application shall be accompanied by the following:

(a) the title or name of the invention, with its description, an abstract, one or more claims and whatever plans and drawings may be necessary.

Where the invention refers to biological material that cannot be properly identified in the description, that material shall be deposited with a depositary institution authorized by the IEPI;

(b) proof of payment of the prescribed fee;

(c) a copy of the patent application filed abroad where priority is claimed;

(d) any other elements that may be required by the Regulations.

134. The National Directorate of Industrial Property shall, on receiving the application, except where the documents referred to in [subparagraphs \(a\) and \(b\)](#) of the foregoing Article have not been filed, certify the date and time at which the application was filed and shall assign a serial number to it which must be consecutive and continuous. If the said documents are missing, the application shall not be accepted for processing, neither shall it be granted a filing date.

135. The description shall be sufficiently clear and complete for a person skilled in the technical field concerned to be able to carry it out.

136. The patent application may only relate to one invention or group of inventions so interrelated that they constitute a single inventive concept.

137. The applicant may, before the publication referred to in [Article 141](#), divide, amend, specify or correct the application, but he may not alter the subject matter of the invention or broaden the content of the national disclosure.

Every divisional application shall be accorded the filing date and, where applicable, the priority date of the divided application.

138. The National Directorate of Industrial Property or the applicant for a patent may suggest that the subject matter of the application be changed from an invention patent into a utility model patent or vice versa.

The converted application shall retain the filing date of the original application, and shall be subjected to the processing prescribed for the new title.

139. Where the application is withdrawn prior to publication, the file shall be kept in reserve.

140. The National Directorate of Industrial Property shall examine within the 15 working days following its filing whether the application complies with the requirements of form specified in this Chapter.

If it emerges from the examination that the application does not meet the said requirements, the National Directorate of Industrial Property shall inform the applicant so that he may complete it within a period of 30 days from the date of notification. The said period shall be renewable once for the same amount of time without loss of priority. On expiry of that period without any response from the applicant, the National Directorate of Industrial Property shall declare the application abandoned.

141. An extract from the application shall be published in the Intellectual Property Gazette before the month following that in which the application was completed, except where the applicant requests deferment of publication for up to 18 months.

Until such time as publication takes place, the file shall be in abeyance and may only be inspected by third parties with the applicant's consent or where the applicant has initiated judicial or administrative proceedings against third parties on the basis of the application.

142. Within a period of 30 working days following the publication date, any person having a legitimate interest may make one submission of objections, with a statement of reasons, capable of challenging the patentability or ownership of the invention.

The period mentioned in the foregoing paragraph may be extended by a period of the same duration at the request of the party interested in filing opposition if he proves his need to inspect the description, claims and background of the application.

Any person who files opposition without a statement of grounds shall be liable for damages and prejudice, which may be sought before the competent court.

143. If opposition is filed within the period provided for in the foregoing Article, the National Directorate of Industrial Property shall inform the applicant so that, within 30 working days from the date of notification, which period may be extended once for the same amount of time, he may present his arguments if he sees fit, submit documents or redraft the claims or description of the invention.

144. The National Directorate of Industrial Property shall be obliged to conduct an examination of the patentability of the invention within a period of 60 days from the expiry of the periods specified in [Articles 142](#) and [143](#). For the purposes of that examination, it may request reports from experts or scientific or technological bodies considered competent to issue an opinion on the novelty, inventive step and industrial applicability of the invention. It may also, if it sees fit, request reports from the competent national offices of other countries. All the information shall be

brought to the notice of the applicant, in order to guarantee his right to be heard under the conditions laid down in the Regulations.

The National Directorate of Industrial Property may recognize the findings of such examinations as technical rulings attesting the invention's compliance with patentability criteria.

The technical rulings issued by the competent offices of countries or international organizations with which the IEPI has signed cooperation and technical assistance agreements shall be recognized by the National Directorate of Industrial Property for the purposes of the grant of the patent.

145. Where the final examination is favorable, the certificate attesting the grant of the patent shall be issued. If it is partly unfavorable, the patent shall be granted only in respect of the claims, accepted in a duly reasoned decision. If it is unfavorable the grant shall be refused, also by virtue of a reasoned decision.

146. The patent shall have a term of 20 years counted from the filing date of the application.

147. The International Patent Classification established by the Strasbourg Agreement of March 24, 1971, as updated and amended, shall be used for the ordering and classification of patents.

The class or classes to which a given invention belongs shall be decided by the National Directorate of Industrial Property in the certificate of grant, without prejudice to any information that the applicant may have given.

Section IV Rights Conferred by the Patent

148. The scope of the protection conferred by the patent shall be determined by the content of the claims. The description and drawings or plans and any other element filed with the National Directorate of Industrial Property shall be used to interpret the claims.

Where the subject matter of the patent is a process, the protection afforded by the patent shall extend to products obtained directly by means of the process.

149. The patent shall confer on its owner the right to exploit the invention exclusively and to prohibit third parties from engaging in any of the following acts without his consent:

- (a) manufacturing the patented product;
- (b) offering the patented product for sale, selling it or using it, or importing it or storing it for any of those purposes;
- (c) using the patented process;
- (d) carrying out any of the acts mentioned in [subparagraphs \(a\)](#) and [\(b\)](#) in relation to a product obtained directly by means of the patented process;
- (e) supplying or offering means of putting the patented invention into practice;
- (f) any other act or fact that has the effect of making all or part of the patented invention, or its effects, available to the public.

150. The owner of a patent may not exercise the right provided for in the foregoing Article in any of the following circumstances:

- (a) where the use takes place in a private circle and on a non-commercial scale;
- (b) where the use takes place for non-profit-making purposes at an exclusively experimental, academic or scientific level;

- (c) in the case of the importation of a patented product that has been placed on the market in any country with the consent of a licensee or of any other authorized person.

Section V Invalidation of the Patent

151. The Intellectual Property Committee of the IEPI may, either *ex officio* or at the request of a party, invalidate the registration of a patent in the following cases by means of the review procedure:

- (a) if the subject matter of the patent is not an invention in terms of this Chapter;
- (b) if the patent has been granted for an unpatentable invention;
- (c) if it has been granted to a person who is not the inventor;
- (d) if a third party, acting in good faith prior to the filing date of the application for the grant of a patent or the date of any priority claimed, has been manufacturing the product or using the process for commercial purposes within the country, or has made substantial preparations for engaging in manufacture or use for such purposes;
- (e) if the patent has been granted by means of some other violation of the law that has materially brought about the grant or if it has been granted on the basis of inaccurate or false data, information or particulars.

152. The competent court shall invalidate a patent where it corresponds to one of the cases provided for in the foregoing Article where a complaint is filed after the expiry of the period laid down in the law for the conduct of the review procedure and before 10 days have elapsed following the date of grant of the patent, except where the review procedure has already taken place previously and resulted in final rejection.

Section VI Lapse of the Patent

153. In order to keep the patent, or where applicable the pending patent application, in force, the fees prescribed by virtue of this Law shall be payable.

Before declaring the lapse of the patent, the National Directorate of Industrial Property shall grant a period of six months for the interested party to effect payment of the fees referred to in the foregoing paragraph.

Section VII Compulsory Licensing

154. On a pronouncement by the President of the Republic concerning the existence of reasons of public interest, emergency or national security, and only for as long as such reasons prevail, the State may subject the patent to compulsory licensing at any time, in which case the National Directorate of Industrial Property may grant such licenses as may be applied for, without prejudice to the right of the owner of the patent to be remunerated in accordance with the provisions of this Section. The owner of the patent shall be given prior notice of the grant of the license in order that he may assert his rights.

The decision to grant a compulsory license shall specify the scope or extent thereof, and shall in particular specify the period for which it is granted, the subject matter of the license and the amount and payment conditions of royalties, without prejudice to the provisions of [Article 156](#) of this Law.

The grant of a compulsory license for reasons of public interest shall not diminish the right of the owner of the patent to continue to work it.

155. At the request of the party and on a judicial ruling, the National Directorate of Industrial Property may grant compulsory licenses when practices are invoked that have been judicially declared contrary to free competition, and in particular where they constitute an abuse by the owner of the patent of his dominant position in the market.

156. The grant of compulsory licenses shall in any event be subject to the following:

- (a) the prospective licensee must prove that he has tried to obtain authorization from the owner of the rights on reasonable terms and conditions, and that either his attempts have met with no response or have been responded to negatively within a period of not less than six months from the formal request in which such terms and conditions were mentioned in such a manner as to permit the owner of the patent to take a decision;
- (b) the compulsory license shall not be exclusive and may not be either transferred or sublicensed otherwise than with the part of the business that serves for its industrial exploitation and with the consent of the owner of the patents; that consent shall be evidenced in writing and registered with the National Institute of Industrial Property;
- (c) the compulsory license shall be granted mainly to supply the domestic market in cases where the goods concerned are not produced in or imported into the country, or the territory of a Member Country of the Andean Community or any other country with which Ecuador has a customs union or other agreement of equivalent effect;
- (d) the licensee shall recognize the right of the owner of the patents to royalties for the non-exclusive working of the patent on the same business terms as would have been applicable in the case of a voluntary license. Those terms may not be less than those offered by the prospective licensee under [subparagraph \(a\)](#) of this Article and, in the absence of agreement between the parties and after notification of the decision of the National Directorate of Industrial Property on the grant of the license, shall be set by the said Directorate;
- (e) the license shall be immediately revoked where the licensee fails to meet payments and other obligations;
- (f) the compulsory license shall be revoked, either *ex officio* or on a reasoned request from the owner of the patent, where the circumstances that gave rise to it cease to obtain, without prejudice to the adequate protection of the legitimate interests of the licensee.

157. At the request of the owner of the patent or the licensee, the conditions of licenses may be amended by the National Directorate of Industrial Property where new circumstances dictate, and in particular where the owner of the patent grants another license on terms more favorable than those of the compulsory license.

158. Licenses that do not comply with the provisions of this Section shall be devoid of effect.

With respect to voluntary licenses, due regard shall be had to the provisions of [Book III](#)⁴, [Section V](#), of the Acts and Contracts on Industrial Property and New Plant Varieties.

Chapter III *Utility Models*

159. A utility model patent shall be granted for any new form, configuration or arrangement of the elements of any artefact, tool, instrument, mechanism or other object or of any of the parts

⁴ See footnote 2 (*Editor's note*).

thereof which makes for better or different operation, use or manufacture of the object incorporating it or confers on it any usefulness, advantage or technical effect that it did not have previously, and any other new creation susceptible of industrial application that does not have sufficient inventive content for the grant of a patent.

160. Processes and materials excluded from patent protection may not be protected as utility models; likewise sculptures, works of architecture, paintings, engravings, prints or any other objects of purely aesthetic character shall not be considered utility models.

161. The provisions on patents shall be applicable to utility models as appropriate.

162. The term of protection of utility models shall be 10 years from the filing date of the application.

Chapter IV *Protection Certificates*

163. Any inventor who has an invention project under development and who in order to test or construct any mechanism is obliged to make his idea public may request a protection certificate which the National Directorate of Industrial Property shall grant him direct for a period of one year prior to the filing date of the patent application.

The holder of a protection certificate shall enjoy the right of priority for the filing of a patent application within the year following the date of grant of the certificate.

164. The request shall be filed with the National Directorate of Industrial Property and shall contain the elements prescribed by the Regulations. A description of the invention project and any other documents necessary for its interpretation shall be filed with the request.

Provided that the request complies with the prescribed requirements, the National Directorate of Industrial Property shall grant the protection certificate on the filing date thereof.

Chapter V *Industrial Designs*

165. New industrial designs shall be registrable.

Any combination of lines, shapes or colors shall be considered an industrial design and any three-dimensional shape, whether or not associated with lines or colors, shall be considered an industrial model, where either serves as a pattern for the manufacture of an industrial or craft product and differs in its specific configuration from similar ones.

Those industrial designs shall not be registrable whose appearance is dictated entirely by technical or functional considerations, and which do not embody any contribution made by the designer to give them a special appearance without altering their function or purpose.

166. Industrial designs shall not be new if, prior to the date of the application or validly claimed priority, they have been made accessible to the public by description, use or any other means.

Novelty shall not exist by virtue of the mere fact of the designs showing secondary differences in relation to earlier creations, or the fact that they are intended for another purpose.

167. The application for registration of an industrial design shall contain the requisite elements specified by the Regulations and shall be accompanied by a graphic or photographic reproduction of the industrial design and such other documents as the Regulations may prescribe.

The procedure for the registration of industrial designs shall be that laid down in this Law for the grant of patents, as appropriate. The examination of novelty shall take place only where opposition is filed.

168. The National Directorate of Industrial Property shall issue a certificate of industrial design registration. The registration shall have a term of 10 years from the filing date of the application.

169. The International Classification established by the Locarno Agreement of October 8, 1968, as amended and updated, shall be used for the ordering and classification of industrial designs.

170. The first application validly filed in a Member of the World Trade Organization, a country party to the Paris Convention for the Protection of Industrial Property, a Member Country of the Andean Community or a country party to any other treaty or convention to which Ecuador is also party and which recognizes a right of priority having the same effects as that provided for in the Paris Convention, or in another country that grants reciprocal treatment to applications from Member Countries of the Andean Community, shall confer on the applicant or his successor in title a right of priority for a period of six months from the date of the application within which to file an application for registration in Ecuador.

171. The registration of an industrial design shall entitle its owner to prohibit third parties from using and exploiting the said design. The owner of the registration shall have the right to prevent third parties not having his consent from manufacturing, importing, offering for sale, selling, placing on the market or commercially using goods that reproduce the industrial design, or from producing or marketing articles with industrial designs that show only secondary differences in relation to the protected design or are similar in appearance.

172. In the review procedure, the Intellectual Property Committee of the IEPI may, either *ex officio* or at the request of a party, invalidate the grant of registration of the industrial design in the following cases:

- (a) where the subject matter of the registration is not an industrial design within the meaning of this Law;
- (b) where the registration has been granted in violation of the requirements laid down in this Law.

173. The competent court may invalidate an industrial design that corresponds to any of the cases provided for in the foregoing Article in response to a claim filed after expiry of the period laid down in this Law for the initiation of the review procedure and before five years have expired from the date of grant of the registration concerned, except where a review procedure has taken place previously and resulted in final refusal.

Chapter VI

Layout-Designs (Topographies) of Semiconductor Circuits

174. Integrated circuits and layout-designs (topographies) shall be protected as provided in this Chapter. To that end the following definitions shall be observed:

- (a) “integrated circuit” means a product incorporating a semiconducting material in either its final or an intermediate form where the elements, at least one of them being an active element, and all or some of the interconnections form an integral part of the body or surface of a piece of material, the purpose of which is to perform an electronic function;

- (b) “layout-design (topography)” means the three-dimensional arrangement of the elements, expressed in any form, at least one of them being an active element, and of all or some of the interconnections, of an integrated circuit, or such a three-dimensional arrangement designed for an integrated circuit that is to be manufactured;
- (c) a layout-design (topography) shall be understood to be “fixed” in an integrated circuit where its incorporation in the product is sufficiently permanent or stable for the design to be perceived or reproduced for a period of more than temporary duration.

175. Exclusive intellectual property rights shall subsist in layout-designs (topographies) that are original in the sense that they are the result of intellectual effort on the part of the creator and are not commonplace among the creators of layout-designs (topographies) and the manufacturers of integrated circuits at the time of their creation.

A layout-design (topography) that consists of a combination of elements or interconnections that are commonplace shall also be protected where the combination, viewed as a whole, meets the conditions specified in the foregoing paragraph.

Layout-designs (topographies) whose design is dictated solely by the functions of the circuit to which it is applied shall not be eligible for protection.

The protection conferred by this Chapter shall not extend to ideas, processes, systems, operating methods, algorithms or concepts.

The rights of the owner in an integrated circuit shall be applicable independently of whether the circuit is incorporated in a product.

176. The person, whether natural person or legal entity, on whose initiative and responsibility a layout-design (topography) has been created or developed shall be entitled to the protection recognized in this Chapter. The owners shall be covered as from the moment of creation.

177. Layout-designs (topographies) may be registered with the National Directorate of Industrial Property. That registration shall be declaratory in character and shall constitute a presumption of ownership in favor of the person who has obtained registration.

Where the layout-design has not been registered, the burden of proving ownership shall be on the person who claims it.

178. On the filing of an application for registration, the National Director of Industrial Property shall ascertain whether it complies with the aspects of form prescribed by the Regulations, and in particular whether the information supplied is sufficient to identify the layout-design (topography), and shall grant the corresponding certificate of registration without further processing.

179. Protection shall be retroactive to the date of creation of the layout-design (topography), regardless of whether or not it has been registered.

The term of the protection recognized in this Chapter for layout-designs (topographies) shall be 10 years, counted from the date of first commercial exploitation anywhere in the world. Nevertheless, the said protection shall not be for less than 15 years following the date of creation of the layout-design (topography).

180. The owner of the registration of a layout-design (topography) shall have the exclusive right to do, authorize or prohibit the following:

- (a) reproduce, by optical or electronic means or by any other known or yet to be known process, the layout-design (topography) or any of the parts thereof that complies with the originality requirement laid down in this Chapter;

- (b) exploit by any means, including importation, distribution and sale, the protected layout-design itself or an integrated circuit incorporating the protected layout-design (topography) or an article incorporating the said integrated circuit in so far as it contains an unlawfully reproduced layout-design;
- (c) any other form of exploitation of integrated circuits and layout-designs (topographies) for commercial or profit-making purposes.

Any of the aforementioned acts shall be considered unlawful if they are not performed with the prior written consent of the owner.

181. The following acts performed without authorization from the owner shall not be considered unlawful:

- (a) reproduction of the layout-design (topography) carried out by a third party for the sole purpose of research or teaching or evaluation and analysis of the concepts or techniques, the flowchart or the organization of the elements incorporated in the layout-design (topography) in the process of development of a layout-design (topography) which is itself original;
- (b) incorporation by a third party of a layout-design (topography) in an integrated circuit, or any of the acts mentioned in the foregoing Article, where the third party, on the basis of evaluation or analysis of the first layout-design (topography) develops a second layout-design (topography) that meets the originality requirement provided for in this Chapter;
- (c) importation or distribution of semiconductor products or integrated circuits that incorporate a layout-design (topography) where such objects are sold or otherwise lawfully brought into commercial channels by the owner of the protected layout-design or with his written consent;
- (d) importation, distribution or sale of an integrated circuit that incorporates an unlawfully reproduced layout-design (topography) or in relation to any article that incorporates such an integrated circuit, where the person who performs or orders those acts did not know or did not have reasonable grounds to believe, on acquiring the integrated circuit or the article incorporating the integrated circuit, that it incorporated an unlawfully reproduced layout-design (topography). This exception shall no longer apply as from the moment at which the person referred to in this subparagraph has received from the owner or his representative a written communication on the unlawful origin of the said incorporation; in that case he may dispose of the object in which the layout-design (topography) has been incorporated, with the obligation to pay the owner a reasonable royalty, which, in the absence of agreement, shall be set by the competent court.

182. The owner of the rights in a layout-design (topography) may transfer it, assign it or license it in accordance with the provisions of this Law.

For the purposes of this Book, the sale, distribution or importation of a product incorporating an integrated circuit constitutes an act of sale, distribution or importation of the said integrated circuit in so far as it contains the unauthorized copy of a protected layout-design (topography).

Chapter VII

Undisclosed Information

183. Undisclosed information relating to trade or industrial secrets or any other kind of confidential information shall be protected against acquisition, use or disclosure that has not been authorized by the owner in so far as

- (a) the information is secret in the sense that, as a whole or in the exact configuration or arrangement of its elements, it is not generally known or readily accessible to those persons who belong to the circles that are usually concerned with the type of information involved;
- (b) the information has an actual or potential commercial value attributable to its secrecy;
- (c) given the circumstances, the person who legally has control over it has taken reasonable steps to keep it secret.

Undisclosed information may in particular relate to the nature, characteristics or purposes of goods, to production methods or processes or to means or methods of distributing or marketing goods or rendering services.

Also eligible for protection as undisclosed information is the technological content of manufacturing and production processes in general, and knowledge of the use and application of industrial techniques deriving from the knowledge, experience or intellectual skill kept confidential by a given person which enables him to secure or maintain a competitive or economic advantage over third parties.

For the purposes of this Chapter, the natural person or legal entity having legitimate control over the undisclosed information shall be considered the owner thereof.

184. The owner may institute the actions provided for in this Law to prevent undisclosed information from being made public, acquired or used by third parties, to stop any acts leading or bound to lead to such disclosure, acquisition or use, and to secure appropriate indemnification for such unauthorized disclosure, acquisition or use.

185. Without excepting other action contrary to proper custom or practice, the disclosure, acquisition or use of undisclosed information in a manner contrary to this Law may in particular be the result of

- (a) industrial or commercial espionage;
- (b) failure to meet a contractual or legal obligation;
- (c) breach of confidence;
- (d) inducement to commit any of the acts mentioned in [subparagraphs \(a\), \(b\) and \(c\)](#);
- (e) acquisition of undisclosed information through a third party who knew, or only through negligence did not know, that such acquisition constituted one of the acts mentioned in [subparagraphs \(a\), \(b\), \(c\) and \(d\)](#).

186. Liability for the unauthorized disclosure, acquisition or use of undisclosed information in a manner contrary to proper and legal usage and practice shall attach not only to those who directly engage in such acts but also to those who derive benefit from such acts or practices.

187. The protection of undisclosed information provided for in [Article 173](#) shall last for as long as the circumstances specified therein continue to obtain.

188. Information shall not be regarded as passing into the public domain or being disclosed by legal ruling where it is supplied to an authority by a person who has it in his possession in so far as the purpose is to obtain licenses, permits, authorizations, registration or any other official instruments.

The authority concerned shall be obliged to preserve the secrecy of such information and to take steps to ensure its protection against any unfair use.

189. Any person who has undisclosed information in his possession may transfer it to a third party or authorize a third party to use it. The authorized user shall be under the obligation not to

disclose it by any means, unless otherwise agreed with the person who transferred the secret to him or authorized him to use it.

190. Any person who, by reason of his work, employment, responsibility or position or who in the conduct of his profession or in his business dealings has access to undisclosed information shall refrain from using it and disclosing it without the consent of the owner and without just cause, as determined by the competent court, even where his employment relations or the conduct of his profession or his business dealings have come to an end.

191. If, as a condition of marketing approval for pharmaceutical products or agricultural chemicals that are used by new chemical entities that themselves produce chemicals, the submission of test data or other undisclosed information is required, which data or information has been obtained only with considerable effort, the authorities shall protect those data against any improper use, except where it is necessary to protect the public and where the necessary steps are taken to ensure the protection of the data against any improper use.

The party seeking marketing approval may specify what data or information the authorities may not disclose.

No one other than the person who submitted the data referred to in the foregoing paragraph may, without that person's authorization, use such data in support of an application for the approval of a product for as long as the information has the characteristics mentioned in this Chapter.

192. For the purposes specified in the foregoing Article, the competent authorities shall abstain from demanding undisclosed information if the product or compound has been registered or certified earlier for marketing in another country.

193. The undisclosed information may be deposited with a notary public in an envelope sealed with sealing wax; the notary public shall notify the receipt thereof to the IEPI.

The aforesaid deposit shall not however constitute proof against the owner of the undisclosed information if that information has in any way been taken from him by the person who has made the deposit, or if the information has been supplied to him by the owner under some contractual arrangement.

Chapter VIII *Trademarks*

Section I **Requirements for Registration**

194. A trademark shall be understood to be any sign that serves to distinguish goods or services on the market. Signs that are sufficiently distinctive and susceptible of graphic representation may be registered as trademarks.

Advertising slogans may also be registered as trademarks provided that they do not contain allusions to similar goods or trademarks or expressions that might prejudice such goods or trademarks.

Associations of producers, manufacturers, service providers, organizations or groups of persons that have been legally established may register collective trademarks to distinguish the goods or services of their members on the market.

195. Signs may not be registered as trademarks where they

- (a) cannot be trademarks in terms of [Article 184](#);
- (b) consist of the usual shape of the goods or their packaging, or of shapes or characteristics dictated by the nature of the operation of the product or service concerned;

- (c) consist of shapes that lend a functional or technical advantage to the product or service to which they are applied;
- (d) consist solely of a sign or of information that could serve in trade to designate or describe some characteristic of the product or service concerned, including laudatory expressions relating to them;
- (e) consist solely of a sign or of information that constitutes the generic or technical name of the product or service concerned, or is a common or usual designation used for it in everyday language or in the business usage of the country;
- (f) consist of a color in isolation without any outline to give it a specific shape, except where it is shown to have acquired distinctiveness as a means of identifying the goods or services for which it is used;
- (g) are contrary to the law, morality or public policy;
- (h) are liable to deceive business circles or the general public as to the nature, origin, method of manufacture, characteristics or suitability for use of the goods or services concerned;
- (i) reproduce or imitate a protected appellation of origin, constitute a national or foreign geographical indication liable to mislead regarding the goods or services to which it is applied, or which in use might mislead the public as to the origin, provenance, properties or characteristics of the goods for which the trademarks are used;
- (j) reproduce or imitate the name, armorial bearings, flags and other emblems, acronyms, denominations or abbreviated denominations of any State or international organization, where they are officially recognized, without the permission of the competent authority of the State or of the international organization concerned. Nevertheless, such signs may be registered where they do not cause any confusion regarding the existence of a link between the sign in question and the State or organization concerned;
- (k) reproduce or imitate signs, seals or official hallmarks indicating control or warranty, except where their registration is applied for by the competent body;
- (l) reproduce coins or banknotes that are legal tender within the territory of the country or of any other country, or securities and other business documents, seals, imprints or postage or tax stamps in general;
- (m) consist of the denomination of a plant variety protected either within the country or abroad, or of a denomination essentially derived therefrom, except where the application is filed by the same owner.

Where the signs are not intrinsically capable of distinguishing the goods or services concerned, the National Directorate of Industrial Property may make registrations subject to the distinctiveness that they have acquired through use for the identification of the applicant's goods or services.

196. Signs may likewise not be registered as trademarks where they violate third-party rights, such as those

- (a) that are identical, or so similar as to risk causing confusion in the mind of a consumer, to a trademark previously filed for registration or registered by a third party for the protection of the same goods or services, or goods or services regarding which its use might cause confusion or association with the said trademark, or might harm its owner by diluting the trademark's distinctiveness or commercial value or constitute unfair exploitation of its prestige or that of its owner;

- (b) that are identical or so similar to a protected trade name that they are liable to cause confusion in the minds of consumers;
- (c) that are identical or so similar to an advertising slogan filed for registration or registered earlier by a third party that they are liable to cause confusion in the minds of consumers;
- (d) that constitute a reproduction, imitation, translation, transliteration or transcription, either total or partial, of a sign that is well known within or outside the country, regardless of the goods or services to which it is applied, when its use would be liable to cause confusion or association with that sign, to exploit its notoriety improperly or to dilute its distinctiveness or commercial value.

A sign shall be understood to be well known where it is identified by the relevant sector of the consuming public within the country or internationally.

This provision shall not be applicable where the applicant is the lawful owner of the well-known trademark;

- (e) that are identical or similar to a sign of high renown, regardless of the goods or services for which the registration is sought.

A sign shall be understood to be of high renown where it is known to the general public within the country or internationally.

This provision shall not apply where the applicant is the lawful owner of the trademark of high renown;

- (f) that consist of the full name, pseudonym, signature, title, nickname, caricature, likeness or portrait of a natural person other than the applicant, or of a person who is identified by the relevant sector of the public as being a person other than him, except where proof is given of the consent of that person or of his heirs;
- (g) consist of a sign that suggests infringement of copyright, except where the consent of the owner of the copyright has been obtained;
- (h) consist of, include or reproduce medals, prizes, diplomas or other awards, except where filed by the persons who present them.

197. In order to ascertain whether a trademark is well known, the following criteria among others shall be taken into account:

- (a) the extent to which it is known in the relevant sector of the public to be a distinctive sign for the goods or services for which it is used;
- (b) the scale and scope of the dissemination and advertising or promotion of the trademark;
- (c) the age of the trademark and the constancy of its use;
- (d) analysis of the production and marketing of the goods or services that lend distinction to the trademark.

198. In order to ascertain whether a trademark is of high renown, due regard shall be had, among other things, to the same criteria as in the foregoing Article, but the trademark must be known to the general public.

199. Where the trademark consists of a geographical name, the product may not be marketed, or the service may not be rendered, without a visible and clearly legible mention of the place of manufacture of the product or origin of the service.

200. The first validly filed application for the registration of a trademark in a Member Country of the World Trade Organization or member country of the Andean Community or country party to the Paris Convention for the Protection of Industrial Property or to another treaty or convention to which Ecuador is also party and which recognizes a right of priority having the same effects as that provided for in the Paris Convention, or in another country that grants reciprocal treatment to applications from Member Countries of the Andean Community, shall give the applicant or his successor in title the right of priority for a period of six months, counted from the date of the application, for applying for registration of the same trademark in Ecuador. The said application may not relate to goods or services different from or additional to those mentioned in the first application.

The same right of priority shall be available by virtue of the use of a trademark at an officially recognized exhibition held within the country. The period of six months shall be calculated from the date on which the goods or services bearing the trademark concerned were first displayed, which shall be attested by a certificate issued by the competent authority responsible for the exhibition.

Section II Registration Procedure

201. The application for registration of a trademark shall be filed with the National Directorate of Industrial Property, shall relate to a single international class of goods or services and shall comply with the requirements specified in the Regulations.

202. The following shall be enclosed with the application:

- (a) proof of payment of the prescribed fee;
- (b) a copy of the first application for trademark registration filed abroad where priority is claimed;
- (c) any other documents that may be prescribed by the Regulations.

203. Where registration of a collective trademark is applied for, the following shall be enclosed in addition:

- (a) a copy of the statutes of the association, organization or group of persons applying for registration of the collective trademark;
- (b) a copy of the rules used by the applicant seeking registration of the collective trademark to exercise control over the goods or services;
- (c) a mention of the conditions on which and the manner in which the collective trademark is to be used;
- (d) a list of members.

Once registration of a collective trademark has been secured, the association, organization or group of persons shall inform the National Directorate of Industrial Property of any change that may occur.

204. The National Directorate of Industrial Property shall, on receipt of the application, except where the document referred to in [Article 202 \(a\)](#) is enclosed, certify the date and time of its filing and assign to it a serial number which must be consecutive and continuous. If the document referred to in [Article 202 \(a\)](#) is missing, the application shall not be accepted for processing and no filing date shall be accorded to it.

205. The applicant for registration of a trademark may amend his original application at any stage in the prosecution thereof to the time of publication, but only with respect to secondary elements. He may likewise remove or restrict the goods or services specified. He may also expand

the list of goods or services within the same international class up to the time of the publication referred to in [Article 207](#).

The National Directorate of Industrial Property may at any stage in the processing call upon the applicant to make alterations to his application. That request for alterations shall be processed in accordance with the provisions of the following Article.

On no account may the application be amended to change the sign.

206. Once the application has been accepted for prosecution, the National Directorate of Industrial Property shall examine, within 15 working days after the filing thereof, whether it complies with the requirements of form specified in this Chapter.

If it emerges from the examination that the application does not comply with the requirements of form, the National Directorate of Industrial Property shall notify the applicant so that, within a period of 30 days following the notification, he may remedy the defects.

If the defects have not been remedied within the period specified, the application shall be rejected.

207. If the application for registration meets the requirements of form, the National Directorate of Industrial Property shall order it to be published once in the Intellectual Property Gazette.

208. Within the 30 working days following publication, any person having a legitimate interest may file a duly reasoned opposition to the registration applied for. Any person claiming to have a legitimate interest in filing opposition may seek an extension of 30 working days within which to do so.

209. The National Directorate of Industrial Property shall not entertain oppositions included in any of the following cases:

- (a) they are filed outside the prescribed time;
- (b) they rely exclusively on an application whose filing or validly claimed priority date is later than the application for trademark registration that is being opposed;
- (c) the opposition relies on the registration of a trademark that has coexisted with that for which registration is sought where the latter application for registration was filed by the person who was its last owner during the six months following the expiry of the period of grace in order to secure renewal of his registration.

210. The National Directorate of Industrial Property shall notify the applicant accordingly so that, within the 30 working days following the notification, he may present his arguments if he sees fit.

On expiry of the period referred to in this Article, the National Directorate of Industrial Property shall rule on the oppositions and on the grant or refusal of registration of the trademark, which ruling shall be set down in a duly reasoned decision. At any time prior to the issue of the ruling, the parties may negotiate an agreement which shall be binding on the National Directorate of Industrial Property. If however the parties consent to the coexistence of identical signs for the protection of the same goods or services, the National Directorate of Industrial Property may object if it considers that the general interests of consumers are adversely affected thereby.

211. On expiry of the period provided for in [Article 198](#) without any opposition having been filed, the National Directorate of Industrial Property shall proceed to conduct the examination of registrability and to grant or refuse registration of the trademark. The corresponding decision shall be duly supported by reasons.

212. Registration of a trademark shall have a term of 10 years from the date of grant, and may be renewed for successive 10-year periods.

213. Renewal of a trademark registration shall be sought from the National Directorate of Industrial Property within the six months prior to the expiry of the registration. Nevertheless, the owner of the trademark shall have a period of grace of six months from the expiry date of the registration within which to apply for renewal. During the period in question, the trademark registration shall remain in full force.

Renewal shall require only the filing of the relevant application and shall be granted without further processing on the same terms as the original registration.

214. The trademark registration shall lapse as of right where the owner does not apply for renewal within the prescribed period extended by the period of grace.

215. The Nice International Classification of June 15, 1957, as updated and amended, shall be used to determine the international classes for trademark registration.

The International Classification referred to in the foregoing paragraph shall not determine whether goods or services are similar to or different from each other.

Section III Rights Conferred by the Trademark

216. The right to exclusive use of a trademark shall be acquired by registration with the National Directorate of Industrial Property.

The trademark shall be used as registered. The only variations allowed shall be those that entail only minor amendment or alteration of the registered sign.

217. The registration of the trademark shall confer on its owner the right to proceed against any third party who uses it without his consent, and especially performs, in relation to goods or services that are identical or similar to those for which the trademark has been registered, any of the following acts:

- (a) use in trade of a sign identical or similar to the registered trademark in relation to goods or services that are identical or similar to those for which it has been registered, where the use of the sign is liable to cause confusion or do the owner economic or commercial harm or cause the distinctiveness of the trademark to be diluted.

The risk of confusion shall be presumed in the case of an identical sign used to distinguish identical goods or services;

- (b) sale, offering or stocking for sale or marketing of goods, or the offering of services, under the trademark;
- (c) importation or exportation of goods under the trademark;
- (d) any other act which, by its nature or purpose, could be considered comparable or susceptible of assimilation to those provided for in the foregoing subparagraphs.

The trademark owner may prohibit all the acts specified in this Article, regardless of whether they are carried out on digital communication networks or via other known or yet to be known channels of communication.

218. Third parties may, provided that the use is made in good faith and does not constitute use as a trademark, use on the market, without the consent of the owner of the registered trademark, their own names, addresses or pseudonyms, a geographical name or any other specific information concerning the nature, quality, quantity, purpose, value, place of origin or time of production of

their goods or rendering of their services, or other characteristics thereof, provided also that the use is confined to identification or information purposes and is not capable of misleading the public as to the origin of the goods or services.

Registration of the trademark shall not give its owner the right to prohibit a third party from using the trademark to advertise, offer for sale or indicate the existence or availability of legitimately marked goods or services, or from using it to indicate the compatibility or suitability of spare parts or accessories usable with the goods bearing the registered trademark, provided that the use is made in good faith, is confined to the purpose of informing the public with a view to sale and is not liable to mislead it or confuse it as to the corporate origin of the goods concerned.

219. The right conferred by registration of the trademark does not give its owner the means of prohibiting the entry into the country of goods bearing the said owner's trademark or that of his licensee or any other person authorized for the purpose where they have been sold or otherwise lawfully brought into circulation on the national market of any country.

Section IV Cancellation of Registration

220. The registration of a trademark shall be cancelled at the request of any interested party where, without just cause, it has not been used by its owner or his licensee in at least one of the Member Countries of the Andean Community or in any other country to which Ecuador is bound by treaties in force on the subject during the three consecutive years preceding the date on which the cancellation proceedings are brought. Cancellation of a registration for want of use of the trademark may also be sought as a defense in infringement, opposition or invalidation proceedings brought on the basis of the unused trademark.

The following shall be considered proof of the use of a trademark:

- (a) business invoices that show the regularity and volume of marketing prior to the bringing of the action for cancellation of the registration for non-use;
- (b) inventories of stocks of the merchandise identified by the trademark, their existence being certified by a company of auditors that shows the regularity of production or sale prior to the date on which the cancellation proceedings for non-use of the trademark are brought;
- (c) any other suitable means of proof to attest the use of the trademark.

Proof of use of the trademark shall be the responsibility of the owner of the registration.

Registration may not be cancelled where the owner shows that the non-use is due to *force majeure*, unforeseen circumstances or restrictions on imports or other official enactments of restrictive character that are imposed on the goods and services protected by the trademark.

221. There shall be no cause for cancellation of the registration of a trademark where it has been used only in relation to one or some of the goods or services protected by the registration.

222. The registration of a trademark shall also be cancelled at the request of the lawful owner where the trademark is identical or similar to another that has come to be well known or has acquired high renown by the time of the application for registration.

223. Where a request for cancellation has been received, the owner of the registered trademark shall be notified accordingly so that, within a period of 30 working days from the notification, he may make such statements and submit such documents as he considers fit to prove use of his trademark.

On expiry of the period referred to in this Article, a duly-reasoned decision shall be issued ruling on whether or not to cancel the trademark registration.

224. A trademark shall be understood to be in use where the goods or services that it distinguishes have been brought into circulation or are available on the market under it in the quantity and form that are normally appropriate, due regard being had to the nature of the goods or services and the means by which their commercialization on the market takes place.

Subject to the provisions of the foregoing paragraph, a trademark shall also be considered in use in the following cases:

- (a) where it is used to distinguish goods or services intended solely for export;
- (b) where it is used by a duly authorized third party, even if the authorization or license has not been registered;
- (c) where genuine goods have been placed and distributed on the market under the registered trademark by persons other than the owner of the registration.

It shall not be a ground for cancellation of registration of a trademark where it is used in a manner that differs from that in which it was registered but only in matters of detail or elements that do not alter its original distinctive character.

225. A person who has secured cancellation of a trademark shall have a preferential right to have it registered if he applies for registration within the three months following the date on which the decision finding for cancellation is confirmed or becomes a matter of record, as the case may be.

226. The owner of a trademark registration may renounce his rights either wholly or in part. If the renunciation is total, the registration shall be cancelled. Where it is partial, the registration shall be limited to the goods or services to which the renunciation does not relate.

Renunciation shall not be allowed if there are registered third-party rights, except with the express consent of the owners of the said rights.

Renunciation shall be binding on third parties only where a marginal note had been made concerning it in the original registration.

Section V

Invalidation of Registration

227. By means of the review procedure the Intellectual Property Committee of the IEPI may declare the trademark registration invalid in the following cases:

- (a) where registration has been granted on the basis of false data or documents that were essential to grant;
- (b) where registration has been granted in violation of [Articles 194](#) and [195](#) of this Law;
- (c) where registration has been granted in violation of [Article 196](#) of this Law;
- (d) where registration has been obtained in bad faith. The following in particular shall be considered instances of bad faith:
 1. where a representative, distributor or user connected to the owner of a trademark registered abroad applies for and obtains registration in his name of that trademark, or another that might be confused with it, without the express consent of the owner of the foreign trademark;
 2. where the application for registration has been filed or the registration obtained by a person whose customary activity is the registration of trademarks for marketing;
- (e) where registration has been obtained in violation of the established procedure or where any other violation of the law has materially influenced its grant.

228. The competent court may declare the trademark registration invalid where it is included in one of the cases provided for in [subparagraphs \(a\), \(c\), \(d\) and \(e\)](#) of the foregoing Article in response to a complaint filed after the period laid down in this Law for the initiation of the review procedure has expired and before 10 years have elapsed from the date of grant of the registration of the trademark, except where the review procedure has been initiated earlier and review finally refused.

In the case provided for in [subparagraph \(b\)](#) of the foregoing Article, the complaint may be filed at any time after the period laid down in this Law for the initiation of the review procedure has expired and provided that review has not been finally refused. In that case the request for invalidation may be filed by any person.

The invalidation of a registration shall be notified to the National Directorate of Industrial Property for the making of a marginal annotation in the Register.

Chapter VII

Trade Names

229. Trade name shall be understood to mean a sign or denomination that identifies a business or economic activity of a natural person or legal entity.

230. Trade names shall be protected without mandatory registration.

The right to the exclusive use of a trade name shall arise from at least six months of public and continuous *bonafide* use of the said name in trade.

Trade names may be registered with the National Directorate of Industrial Property, but the right to exclusive use thereof shall be acquired in the manner provided for in the foregoing paragraph. Registration shall however constitute a presumption of ownership in favor of its owner.

231. No sign or denomination may be adopted as a trade name that is liable to be confused with another previously used by another person or with a registered trademark.

232. The registration process for a trade name shall be that laid down for the registration of trademarks, but the duration of the registration shall be indefinite.

233. The owners of trade names shall have the right to prevent third parties, without their consent, from using, adopting or registering trade names or signs identical or so similar to them that they might create a risk of confusion or association.

234. The provisions of this Law on trademarks shall be applicable as appropriate to trade names. The provisions on well-known trademarks and trademarks of high renown shall apply to trade names that enjoy comparable notoriety or high renown.

Chapter VIII

Trade Dress

235. Any set of colors, shapes, presentations, structures and designs characteristic of and specific to a business establishment that identifies and distinguishes it in the presentation of services or sale of products shall be considered trade dress.

236. Trade dress shall be protected in the same way as a trade name.

Chapter IX

Geographical Indications

237. A geographical indication shall be understood to be that which identifies a product as originating in the territory of a country or in a region or locality in that territory where a particular

quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, including both natural and human factors.

238. The use of geographical indications in connection with natural, agricultural, craft or industrial goods shall be reserved exclusively for the producers, manufacturers and craftsmen who have their production or manufacturing establishments in the locality or region designated or suggested by the indication or appellation concerned.

239. The right of exclusive use of Ecuadorian geographical indications shall be recognized on the basis of the corresponding declaration issued by the National Directorate of Industrial Property. Their use by unauthorized persons shall be considered an act of unfair competition, even in cases where they are accompanied by expressions such as “*género*” (“kind”), “*clase*” (“type”), “*tipo*” (“make”), “*estilo*” (“style”), “*imitación*” (“imitation”) and other similar expressions that also create confusion in the mind of the consumer.

240. Indications may not be declared geographical indications where they

- (a) do not conform to the definition contained in [Article 237](#);
- (b) are contrary to morality or public policy or liable to mislead the public as to the origin, nature, method of manufacture or characteristics or qualities of the goods concerned;
- (c) are common or generic indications serving to distinguish the product concerned, being considered such by those acquainted with the subject or by the general public.

241. The declaration of protection of a geographical indication shall be issued *ex officio* or at the request of persons who prove that they have a legitimate interest therein, by which are meant those persons, whether natural persons or legal entities, who devote themselves directly to the extraction, production or development of the product or the goods that are to be covered by the geographical indication. The authorities of the central or sectoral administration shall likewise be considered interested parties when the geographical indications concerned relate to their own areas of concern.

242. The request for the declaration of protection of a geographical indication shall be filed with the National Directorate of Industrial Property and shall contain the particulars specified in the Regulations.

243. Where the request is accepted for processing, the procedure prescribed for the registration of trademarks shall be applied.

244. The validity of the declaration that confers exclusive rights of use in a geographical indication shall be determined by the continuance of the circumstances that gave rise to it. The National Directorate of Industrial Property may revoke the declaration where the circumstances that gave rise to it change. Interested parties may request it once again when they consider that the circumstances determining its protection obtain once again.

245. The request to make use of a geographical indication shall be filed with the National Directorate of Industrial Property by persons who devote themselves directly to the extraction, production or development of the goods distinguished by the geographical indication and engage in that activity on the territory specified in the declaration.

246. The National Directorate of Industrial Property shall, either *ex officio* or at the request of a party, cancel the authorization to use a geographical indication, after the person who obtained it has been heard, if the conditions prescribed in this Chapter were not present when it was granted or if those conditions cease to be present thereafter.

247. The National Directorate of Industrial Property may declare the geographical indications of other countries protected where the request is filed by those of their producers, extractors,

manufacturers or craftsmen who have a legitimate interest, or by their authorities. Geographical indications must have been declared such in their countries of origin.

The protected geographical indications of other countries shall not be considered common or generic terms with which to distinguish any product for as long as the protection subsists.

BOOK III PLANT VARIETIES

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BOOK IV UNFAIR COMPETITION

284. Any fact, act or enterprise that is contrary to fair dealing or practice in the conduct of economic activities shall be considered unfair competition.

The expression economic activities shall be understood in the broad sense that encompasses the work of professionals such as attorneys, doctors and engineers and those engaged in the conduct of any profession, craft or official duty in other areas.

For the definition of fair practice, reference shall be had to the criteria of national trade; nevertheless, in the case of acts or practices engaged in the context of international operations, or those that have links to two or more countries, the criteria determining fair practice that prevail in international trade shall be observed.

285. Acts to be regarded as constituting unfair competition shall in particular be those that are capable of creating confusion, regardless of the medium used, regarding the establishment, goods, services or commercial or industrial activity of a competitor; false assertions made in the course of trade that are liable to discredit the establishment, goods or services or commercial or industrial activity of a competitor and any other act liable to damage or dilute the intangible assets or reputation of the business; indications or assertions whose use in the course of trade might mislead the public as to the nature, manner of manufacture, characteristics, suitability for use or quality of the goods or the services rendered, or the disclosure, acquisition or use of secret information without the consent of the person responsible for it.

Such acts may relate among other things to trademarks, whether registered or not, trade names, business identifiers, the appearance of goods or establishments, the presentation of goods or services, celebrities or well known fictional characters, processes for the manufacture of goods, advantages of goods or services for specific purposes, qualities, quantities or other characteristics of goods or services, the geographical origin of goods or services, the conditions on which goods or services are offered or supplied, advertising that imitates, shows disrespect for or denigrates the competitor or his goods or services, unprovable comparative advertising and boycotting.

Dilution of intangible assets shall be understood to mean the lessening of the distinctiveness or advertising value of a trademark, trade name or other business identifier, the appearance of a product or the presentation of goods or services, or of a celebrity or well known fictional character.

286. Any act or practice shall likewise be considered an act of unfair competition, regardless of any actions that may be appropriate for violation of undisclosed information, where it takes place in the course of economic activities and consists in or has the effect of

⁵ See footnote 2 (*Editor's note*).

- (a) unfair commercial use of undisclosed test findings or other secret data whose production has required a considerable effort and which have been submitted to the competent authority for the purpose of obtaining marketing approval for pharmaceutical products or agricultural or industrial chemicals;
- (b) the disclosure of such data, except where it is necessary to protect the public and where action is taken to ensure the protection of the data against any unfair commercial use;
- (c) the unauthorized retrieval, for unfair use in trade, of data whose production has required considerable effort.

287. Without prejudice to any other legal action that might be available, any aggrieved natural person or legal entity may bring the actions provided for in this Law, including provisional or precautionary measures.

The measures referred to in the foregoing paragraph may also be sought by labor unions or professional associations that have a legitimate interest in protecting their members against acts of unfair competition.

TITLE I

PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Chapter I

General Principles

288. The violation of any of the intellectual property rights established by this Law shall give rise to the institution of civil and administrative proceedings, without prejudice to any criminal action that might be available where the act has been categorized as an offense.

The administrative protection of intellectual property rights shall be governed by the provisions of [Book V](#) of this Law.

289. In the event of infringement of the rights recognized by this Law, the following may be sought:

- (a) the cessation of the infringing acts;
- (b) the permanent confiscation of the goods or other objects resulting from the infringement, the definitive withdrawal of the merchandise constituting the infringement from commercial channels, and also its destruction;
- (c) the definitive confiscation of the apparatus and other means used to commit the infringement;
- (d) the definitive confiscation of the apparatus and other means used to store copies;
- (e) indemnification for damages and prejudice;
- (f) reparation in any other form for the effects caused by the violation of the rights;
- (g) the total value of procedural costs.

The rights laid down in international treaties in force in Ecuador may also be demanded, especially those specified in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization.

290. For the owner of the copyright or related rights recognized by this Law to be recognized as such before any judicial or administrative authority, it shall be sufficient for the name or

pseudonym or any other denomination that leaves no doubt as to the identity of the natural person or legal entity concerned to appear in the usual way on or in connection with the work, performance, production or broadcast.

291. No authority, natural person or legal entity may authorize the use of a work, performance, phonographic production or broadcast or any other production protected by this Law, or lend support for its use, if the user does not have the express prior permission of the owner of the rights or his representative. He or it shall be jointly liable in the event of non-compliance.

292. Where the violation of rights takes place on digital communication networks, joint liability shall attach to the operator or any other person, whether natural person or legal entity, who has control over a computer system connected to the said network by means of which the communication, reproduction, transmission or any other act in violation of the rights provided for in this Law is permitted, promoted or facilitated, provided that the party concerned is aware or has been warned of the possible infringement, or could not have been unaware of it without serious negligence on his part.

It shall be understood that a person has been warned of the possibility of infringement when notice thereof, with a statement of reasons, has been served on him.

The operators or persons, whether natural persons or legal entities, referred to in this provision shall be exempted from liability for whatever acts they perform and technical measures that they take with a view to avoiding the occurrence or continuation of the infringement.

293. The owner of rights in trademarks, trade names or new plant varieties who establishes that the Inspectorate of Companies or Banks [*Superintendencia de Compañías o de Bancos*] has approved the adoption by companies under its supervision of a denomination that includes signs identical to the said trademarks, trade names or new plant varieties may apply to the IEPI through the appropriate channels of appeal for the suspension of the use of the denomination or business style in question in order to remove all risk of confusion or improper use of the protected sign.

The IEPI shall give notice to the parties and to the Inspectorate of Companies or Banks of the relevant ruling; the company shall have a period of 90 days from notification of the ruling by the IEPI within which to adopt another denomination or business style, which period may be extended once for the same amount of time provided that there is good reason for such extension.

Where a new denomination or business style is not adopted within the period specified in the foregoing paragraph, the Inspectorate shall proceed to wind up or liquidate the company.

Chapter II

Intellectual Property Litigation

Section I

Hearings

294. Jurisdiction for the hearing of disputes on this subject shall belong in the first instance to the district intellectual property magistrates [*Jueces Distritales de Propiedad Intelectual*] and in the second instance to the district intellectual property courts [*Tribunales Distritales de Propiedad Intelectual*].

Cassation appeals lodged in this field shall be heard by the Special Intellectual Property Chamber of the Supreme Court of Justice [*Sala Especializada en Propiedad Intelectual de la Corte Suprema de Justicia*].

295. District Intellectual Property Tribunal [*Juzgado Distrital de Propiedad Intelectual*] No. 1 and also District Intellectual Property Court No. 1, shall have their jurisdictional headquarters in the

city of Quito, and shall exercise jurisdiction over the provinces of Pichincha, Imbabura, Carchi, Cotopaxi, Tungurahua, Chimborazo, Bolívar, Pastaza, Napo and Sucumbíos.

District Intellectual Property Tribunal No. 2 and District Intellectual Court No. 2 shall have their jurisdictional headquarters in the city of Guayaquil, and shall exercise jurisdiction over the provinces of Guaya, Los Ríos, El Oro and Galápagos.

Distinct Intellectual Property Tribunal No. 3 and District Intellectual Property Court No. 3 shall have their jurisdictional headquarters in the city of Cuenca, and shall exercise jurisdiction over the provinces of Azuay, Loja, Cañar, Morona Santiago and Zamora Chinchipe.

Distinct Intellectual Property Tribunal No. 4 and District Intellectual Property Court No. 4 shall have their jurisdictional headquarters in the city of Portoviejo, and shall exercise jurisdiction over the provinces of Manabí and Esmeraldas.

296. Intellectual property jurisdiction shall be determined according to the rules laid down in [Articles 27, 28, 29 and 30](#) of the Code of Civil Procedure and in this Article.

The judges of the place in which the infringement has been committed shall likewise be competent to hear these actions.

In the case of transmissions via satellite, the infringement shall be understood to have been committed either in the place in which the transmission started or in the place in which the signal has mainly been made accessible to the public.

In the case of infringements committed over digital communication networks, the said infringements shall be considered committed either in the place in which the computer systems referred to in [Article 292](#) are located or in the place in which the transmission has mainly been made accessible to the public.

297. Intellectual property actions shall be prosecuted in summary verbal proceedings subject to the modifications provided for in this Chapter.

298. In judgments on this subject matter it shall be permissible for there to be related cross-actions, which shall be ruled upon in the judgment handed down without the prosecution of the case being altered thereby. The cross-action shall be brought in the conciliation hearing, after the complaint has been answered. In the hearing itself the plaintiff shall answer the cross-action. If he fails to do so, this shall constitute outright rejection of the factual and legal grounds.

299. If, during the period, for submitting evidence, the production of testimonials is requested, the judge shall specify the day and hour for them to be submitted in an oral hearing, at which time the party who requested the testimonials shall formulate his questions and the other party may cross-examine.

300. Where expert opinion is required, an expert shall be designated by each party to the proceedings, except where the parties agree on the designation of a single expert.

Without prejudice to the expert or experts submitting their report or reports in writing, either of the parties may request of the court that the said expert or experts attend a hearing in order to speak on the questions formulated by the parties.

It shall be a cause for removal of district intellectual property judges, in addition to the causes provided for in the law, where they violate their mandate as specified in these provisions.

301. All the evidence requested within the appropriate period shall be submitted within the 30 days following its expiry, except where the parties request an extension by common consent.

302. The judge shall have the right to order the submission of evidence that is either available to the opposing party or in his possession, to which end he shall specify the day, place and time of such submission. Where the party called upon fails to submit the evidence the judge may, in order

to settle the matter, rely on such information as may have been supplied to him by the party who asked for the evidence.

Where either of the parties fails to supply information or access codes or in any way hinders the verification of apparatus, equipment or other media in which unauthorized reproductions may be stored, it shall be presumed that they violate intellectual property rights.

Where the case relates to violation of a process patent, the burden of proof on the lawfulness of the process used for the manufacture of the product shall be on the defendant.

303. Indemnification for damages and prejudice shall include losses sustained and loss of profit caused by the infringement. The amount of unrealized income shall be determined according to the following criteria among others:

- (a) the profits that the owner would have earned if the violation had not taken place;
- (b) the profits that the infringer earned as a result of the violation;
- (c) the price, remuneration or royalty that the infringer would have had to pay the owner for lawful exploitation of the infringed rights;
- (d) the reasonable costs, including fees for professional advice and assistance incurred by the owner in relation to the dispute.

304. Condemnatory rulings in civil actions for violation of intellectual property rights shall in addition impose on the infringer a fine of three to five times the total value of the copies of works, performances, productions or broadcasts, or of the royalties to which the owner of the rights would otherwise have been entitled for the lawful exploitation of that or other intellectual property material.

The fines collected under this provision shall be paid in a proportion of one-third to the IEPI and one-third to the owner of the rights infringed, with the remaining third distributed as follows:

- (a) the budget of the Judiciary;
- (b) the Solidarity Fund;
- (c) the promotion of science and technology through the IEPI.

Section II

Provisional and Precautionary Measures

305. Provisional and precautionary measures relating to intellectual property shall be processed according to **Section XXVII, Title II, Book II** of the Code of Civil Procedure, subject to the modifications provided for in this Section.

306. The judge shall order the case to be removed to a higher court where evidence is given of specific, concordant indications that would lead to the reasonable presumption of actual or imminent violation of the intellectual property rights recognized by this Law, or information leading to a reasonable and well-founded fear of their actual or imminent violation, given the provisional or precautionary nature of the measure and the infringement that may be involved.

The judge shall determine whether the requesting party is the owner of the rights, to which end account shall be taken of the presumptions provided for in this Law. In the absence of information supplied with the request that allows ownership to be presumed, the sworn statement enclosed with the request for the purpose shall suffice.

307. The judge shall demand of the plaintiff, given the circumstances, that he deposit a bond or sufficient security to protect the plaintiff and prevent abuse.

308. In order to prevent the infringement of any of the rights provided for in this Law from occurring or continuing, to prevent merchandise, including imported merchandise, from entering commercial channels, or to preserve relevant evidence relating to the alleged infringement, the courts shall be entitled to order, at the request of a party, such provisional or precautionary measures as may be necessary, according to the circumstances, for the urgent protection of the said rights, including the following:

- (a) immediate cessation of the unlawful activity;
- (b) suspension of the activity consisting in use, exploitation, sale, offering for sale, importation or exportation, reproduction, communication or distribution, as the case may be;
- (c) any other measure that would prevent the continued violation of rights.

A confiscation order may be issued on the income earned by means of the infringing activity, property guaranteeing payment of indemnification and the goods or merchandise violating an intellectual property right, and also on the equipment, apparatus and other means used to commit the infringement and the originals that served for the reproduction or communication.

Retention may be ordered in respect of money owed for exploitation or remuneration.

A ban on leaving the country shall be ordered where the defendant has no domicile or permanent establishment in Ecuador.

309. Immediate cessation of the unlawful activity may include the following:

- (a) suspension of the infringing activity or prohibition of the infringer from resuming it, or both;
- (b) provisional closure of the premises or establishment, which shall be ordered where the infringing merchandise or unlawful copies represent a substantial part of the usual business of the infringer;
- (c) withdrawal of the merchandise, unlawful copies or infringing objects from the market, and their judicial deposit;
- (d) disablement of materials or objects connected with the infringement, and where necessary destruction of molds, plates, printing blocks, instruments, negatives, plants or parts thereof and other material intended for the use of patented inventions, the printing of trademarks, unauthorized reproduction or communication, or anything used predominantly to facilitate the removal or disablement of any technical protection or electronic information device, the intended use thereof being mainly for acts in violation of any intellectual property rights;
- (e) any other measure that proves necessary for the urgent protection of intellectual property rights, given the nature and circumstances of the infringement.

310. The measures shall be carried out in the presence of the judge, if the plaintiff so requests, who may be assisted by the necessary experts or IEPI officials and whose ruling on the proceedings shall be set down in the appropriate record and shall be used for implementation. The order issued by the judge under the foregoing Article shall mean that no further formality or additional ruling is required for whatever practical intervention may be necessary for the full implementation of the precautionary measure, including the breaking of locks or seals, without prejudice to the judge's right at the time of the proceedings, to order any other precautionary measure that might prove necessary for the urgent protection of rights, either *ex officio* or at the verbal request of a party.

311. Requests filed for the ordering of a precautionary measure, and the corresponding rulings, shall be in the reserved category and shall have reserved status and shall not be notified to the party proceeded against until after implementation.

312. Where the plaintiff states that proof of the violation of rights calls for prior judicial inspection, the judge may so provide without notifying the opposing party and may in the course of the inspection order the appropriate precautionary measures. To that end he shall agree with the officials who have to implement the measures.

313. In the case of works electronically fixed on digital data devices or by comparable processes, or those that are difficult to access or liable to do serious harm to the defendant, the judge may if he sees fit after consulting the plaintiff, order that the confiscated property remain in the custody of the defendant after having been identified, itemized and recorded, without prejudice to the confiscation of fixations on removable carriers.

The judge may place seals on the property identified, itemized and recorded.

314. When the precautionary measure has been carried out, the complaint shall be notified to the defendant and the judge shall order the start of the period for the submission of evidence provided for in **Article 917** of the Code of Civil Procedure.

The precautionary measures shall lapse if, within a period of 15 days of their having been carried out, the main action is not brought.

In cases where provisional measures are revoked or lapse owing to action or omission on the part of the plaintiff, or where it is subsequently established that there has been no infringement or threat of infringement of an intellectual property right, the competent court shall order the plaintiff, at the request of the defendant, to provide indemnification for damages and prejudice.

315. Judges who do not comply with the provisions of **Article 73** of the Code of Civil Procedure within the 48 hours following receipt of the complaint, or without good reason refuse to take a precautionary measure, shall be liable to the owner of the rights for any harm done, without prejudice to such criminal action as may be appropriate.

316. In order to protect trade secrets or confidential information in the course of the implementation of the precautionary measures provided for in this Law, only the judge or the expert or experts appointed by him shall have access to the information, codes or other material to the extent absolutely necessary for the implementation of the measure. Those persons may be present on the defendant's side whom he has delegated, while the plaintiff may be assisted by his legal representative. All those who in that way have access to such information shall be under the obligation to observe absolute discretion and shall be liable to the actions that this and other laws specify for the protection of trade secrets and confidential information.

317. Officials appointed by the IEPI may intervene as experts either in the implementation of precautionary measures or in the evidentiary proceedings. The judge shall be obliged at a party's request to seek the intervention of such officials as experts.

318. Judges shall in addition abide by the procedures and measures laid down in international intellectual property conventions or treaties in force in Ecuador in so far as they are applicable. Judges shall be exempt from liability under **Article 48 paragraph 2** of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Chapter III *Offenses and Sanctions*

319. Any person shall be punished with imprisonment for three months to three years and to a fine of 500 to 5,000 constant value units (UVCs), due account being taken of the degree of financial

prejudice caused, who in violation of intellectual property rights stocks, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports

- (a) a product covered by an invention or utility model patent obtained within the country;
- (b) a product manufactured by means of a process covered by a patent obtained within the country;
- (c) a product embodying an industrial design registered within the country;
- (d) a new plant variety registered within the country, and also its reproductive or vegetative propagating material;
- (e) a layout-design (topography) registered within the country, a semiconductor circuit incorporating such a layout-design (topography) or an article incorporating such a semiconductor circuit;
- (f) a product or service that uses an unregistered trademark identical or similar to a well-known trademark or trademark of high renown that is registered within or outside the country;
- (g) a product or service that uses an unregistered trademark identical or similar to a trademark registered within the country;
- (h) a product or service that uses an unregistered trademark or geographical indication identical or similar to a geographical indication registered within the country.

In the cases provided for in [subparagraphs \(g\)](#) and [\(h\)](#), the goods or services for which the unregistered sign is used must be identical or similar to those protected by the marks or geographical indications registered within the country.

320. Those persons shall be punished with the same sanction as that specified in the foregoing Article who, in violation of intellectual property rights,

1. disclose, acquire or use trade or industrial secrets or confidential information;
2. use in connection with goods or services or business transactions trademarks or geographical indications that are not registered within the country and constitute an imitation of well-known distinctive signs or signs of high renown that are registered within the country or abroad and might reasonably be confused with the original;
3. use, in connection with goods or services or business transactions, trademarks or geographical indications constituting imitations of distinctive signs registered within the country that might reasonably be confused with the originals to distinguish goods or services that could be substituted for the protected ones.

321. Those persons shall be punished with imprisonment for a month to two years and a fine of 250 to 2,500 UVCs, due account being taken of the degree of financial prejudice caused, who, in violation of intellectual property rights, use trade names in which they have not acquired rights that are identical to trade names well known to the public within the country or trademarks registered within the country, or to well-known trademarks or trademarks of high renown registered within the country or abroad.

The sanction specified in the foregoing paragraph shall likewise be imposed on persons who, in violation of intellectual property rights, use a trade dress identical or similar to a trade dress that is well known to the public within the country.

322. Those persons shall be punished with imprisonment for a month to two years and a fine of 250 to 2,500 UVCs, due account being taken of the degree of financial prejudice caused, who, in violation of intellectual property rights,

- (a) manufacture, market or stock labels, seals or packages that feature trademarks of high renown or well-known trademarks registered within the country or abroad;
- (b) manufacture, market or stock labels, seals or packages that contain trademarks or appellations of origin registered within the country;
- (c) separate, remove, replace or appropriate labels, seals or packages that embody lawful trademarks with a view to using them for products of different origin.

The same sanction shall be imposed on those who stock, manufacture, use for commercial purposes, offer for sale, sell, import or export articles that contain false information on the nature, origin, method of manufacture, quality, characteristics or suitability for use of the goods or services concerned, or contain false information concerning awards or other distinctions.

323. Those persons shall be punished with imprisonment for three months to three years and a fine of 500 to 5,000 UVCs, due account being taken of the degree of financial prejudice caused, who stock, manufacture, use for commercial purposes, offer for sale, sell, import or export counterfeit products identified by trademarks of high renown or well-known trademarks registered either within or outside the country, or by marks registered within the country.

The sanction specified in the foregoing paragraph shall likewise be imposed on those who fill containers identified by another's trademark with spurious goods.

324. Those persons shall be punished with imprisonment for three months to three years and a fine of 500 to 5,000 UVCs, due account being taken of the degree of financial prejudice caused, who, in violation of copyright or related rights,

- (a) alter or mutilate a work, including by the removal or alteration of electronic rights management information;
- (b) register, publish, distribute, communicate or reproduce, wholly or in part, another's work as being their own;
- (c) reproduce a work;
- (d) communicate works, videograms or phonograms to the public, either wholly or in part;
- (e) bring into the country, stock, offer for sale, sell or rent, or in any other way bring into circulation or make available to third parties, unlawful reproductions of works;
- (f) reproduce a phonogram or videogram and generally any protected work, and also the performances of performers, either wholly or in part and with or without imitation of the outward features of the original, or bring into the country, stock, distribute, offer for sale, sell, rent or in any other way bring such unlawful reproductions into circulation or make them available to third parties;
- (g) bring into the country, stock, offer for sale, sell or rent, or in any other way bring into circulation or make available to third parties, reproductions of works, phonograms or videograms in which rights management information has been altered or removed.

325. Those persons shall be punished with imprisonment for a month to two years and a fine of 250 to 2,500 UVCs, due account being taken of the degree of financial prejudice caused, who, in violation of copyright or related rights,

- (a) reproduce a number of copies of a work greater than that authorized by the owner;
- (b) bring into the country, stock, offer for sale, sell or rent, or in any other way bring into circulation or make available to third parties, reproductions of works in numbers exceeding those authorized by the owner;
- (c) retransmit by any means the broadcasts of broadcasting organizations;

- (d) bring into the country, store, offer for sale, sell or rent, or in any other way bring into circulation or make available to third parties, apparatus or other devices intended for deciphering or decoding coded signals or in any other way circumventing or disabling technological protection measures applied by the owner of the rights.

326. Those persons shall be punished with imprisonment for a month to two years and a fine of 250 to 2,500 UVCs who unlawfully obstruct, fail to heed or prevent the implementation of a provisional or precautionary measure.

327. The following shall be aggravating circumstances in addition to those provided for in the Criminal Code:

- (a) the fact of the infringer having been warned of the violation of rights;
- (b) the fact of the infringing goods being a potential health hazard;
- (c) the fact of the infringements being perpetrated on unpublished works.

328. The infringements provided for in this Chapter shall be punishable and investigable *ex officio*.

329. Civil and criminal actions shall be statute-barred in accordance with the provisions of the Civil Code and Criminal Code respectively, with the exception of actions for violation of moral rights, which are imprescriptible. In the absence of proof to the contrary and for the purposes of the statute-barring of an action, the date on which the infringement was committed shall be understood to be the first day of the year following the last edition, reprint, reproduction, communication or other use of a work, performance, production or broadcast.

330. In all the cases provided for in this Chapter, seizure shall be ordered in respect of all material that has directly or indirectly served for the commission of the offense, the confiscation of which may be ordered by the criminal judge at any time during the summary proceedings and shall be ordered in the decree opening the plenary proceedings.

331. The proceeds from the fines specified in this Chapter shall be assigned in equal shares to the judiciary and to the IEPI, the latter using at least 50 per cent of its share for training and education programs on intellectual property.

BOOK V

ADMINISTRATIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

332. The enforcement and observance of intellectual property rights are in the public interest. The State, acting through the Ecuadorian Institute of Intellectual Property (IEPI), shall exercise the administrative protection of intellectual property rights and shall ensure their enforcement and observance.

333. The IEPI, acting through the National Directorate, shall, *ex officio* or at the request of a party, exercise inspection, supervisory and punitive functions to prevent and repress violations of intellectual property rights.

334. Any person affected by the violation or possible violation of intellectual property rights may apply to the IEPI for the adoption of the following measures:

- (a) inspection;
- (b) request for information;
- (c) punishment of violations of intellectual property rights.

335. Inspections shall be undertaken by National Directors or their delegates as specified in the Regulations. At the time of the inspection, and as a condition of it being validly conducted, the copy of the administrative document in which it was ordered and, where applicable, the application from the affected person, shall be tendered.

Applications submitted for precautionary measures shall be held in reserve until after they have been implemented and, even afterwards, the authorities shall take the necessary measures to preserve the confidentiality of undisclosed information that has had to be provided in the course of the proceedings.

336. If in the course of the proceedings it is found, or even presumed (*prima facie*), that an intellectual property right has been violated or that there are circumstances that unequivocally point to the imminent possibility of such violation, a detailed inventory shall be duly drawn up of the material, of whatever kind that is connected with the violation. A record shall be taken of the material inspected by such means as allow its state to be best appreciated.

This measure may include the immediate removal of labels that clearly violate intellectual property rights, without prejudice to the seizure and deposit of the merchandise or other objects that violate patent, trademark or other intellectual property rights.

The IEPI, acting through the regional directorates competent for the subject matter concerned, may take any precautionary measure for the urgent protection of the rights referred to in this Law if the application for the measure is accompanied by the evidence referred to in [Article 306](#). Such measures shall be provisional in character and subject to revocation or confirmation as provided in [Article 339](#).

337. When the violation of intellectual property rights is presumed, the IEPI may request that any information be given it that will enable it to rule on the existence or non-existence of such a violation. The information shall be submitted within a period not exceeding 15 days, counted from the date of notification.

338. With the exception of the provisional precautionary measures adopted under [Article 336](#), the party against whom the proceedings are directed shall be heard before any decision is taken. If considered appropriate, a hearing may be convened at which the interested parties may express their views.

339. On the completion of the investigative process, the IEPI shall issue a reasoned decision. If it is found that intellectual property rights have been violated, the infringer shall be punished with a fine of 20 to 700 UVCs, and the adoption of any of the precautionary measures provided for in this Law may be ordered or those taken provisionally may be confirmed.

If there is a presumption of an offense having been committed, a copy of the administrative proceedings shall be sent to the competent criminal court and to the Public Prosecutor.

340. The IEPI shall impose the same sanction as is provided for in the foregoing Article on any persons who obstruct or hinder the implementation of the acts, measures or inspections ordered by the IEPI, or who fail to send the information requested within the period allowed.

341. Where a legally protected work is announced or in any known way communicated to the public without the appropriate authority having been obtained, the owner of the rights may apply to the National Directorate of Copyright and Related Rights for its prohibition, which shall be ordered immediately. For those purposes it shall be presumed from the mere fact of the owner of the rights lodging a protest that the organizer, impresario or user does not have the proper authority.

342. The Administrators of Customs and all those who have control over the entry or exit of merchandise into or from Ecuador shall be under the obligation to prevent goods that in any way violate intellectual property rights from entering or leaving.

If they do not prevent the entry or export of such goods at the request of the interested party, they shall be considered accomplices in the offense committed, without prejudice to the appropriate administrative sanction.

When, either *ex officio* or at the request of a party, they prevent the entry or export of any product violating intellectual property rights, they shall make it known in a detailed report to the President of the IEPI, who, within five days shall confirm or revoke the measure taken. On confirmation of the measure, the goods shall be placed at the disposal of a criminal court.

Where the Administrator of Customs or any other competent official has refused to take the measure requested or has not made a statement within a period of three days, the party concerned may, within the following three days, directly call upon the President of the IEPI to order it.

Any party ordering the measure may demand security in accordance with the following Article.

343. Without prejudice to the provisions of the foregoing Article, any of the National Directors, depending on his area of jurisdiction, may order, at the request of a party, the suspension of the entry or export of any product that in any way violates intellectual property rights.

The ruling shall be issued within a period of three days following the request. If it is considered necessary or appropriate, it may be provided that the requesting party shall provide sufficient security. If no security is provided within a period of five days after it has been requested, the measure shall be void.

At the request of the party affected by the suspension, the National Director of the IEPI shall, depending on the circumstances, order the holding of a hearing to examine the merchandise and where appropriate to revoke the measure. If the measure is not revoked, he shall order the referral of the entire proceedings to a criminal court.

344. Without prejudice to the provisions of this Law, the Statute on the Legal-Administrative Regime of the Executive shall be applied to administrative proceedings.

345. The forces of law and order, and especially the judicial police, shall be obliged to lend such assistance to the officials of the IEPI as they may request for the discharge of their duties.

ECUADORIAN INSTITUTE OF INTELLECTUAL PROPERTY (IEPI)

Chapter I Aims of the Institute

346. The Ecuadorian Institute of Intellectual Property (IEPI) is hereby created as a legal entity under public law, with its own assets, administrative, economic, financial and operational autonomy and headquarters in the city of Quito, which shall be responsible for pursuing the following aims on behalf of the State:

- (a) to sponsor the protection and defense of the intellectual property rights recognized in national legislation and international treaties and conventions;
- (b) to promote and further intellectual creation, both in its literary, artistic or scientific form and in its industrial applications, and also disseminating technical know-how within cultural and production sectors;
- (c) preventing acts and situations that might adversely affect intellectual property and free competition, and also ensuring that the principles laid down in this Law are complied with and respected.

Chapter II *Organization and Functions*

Section I **General Provisions**

347. The IEPI shall have the following organs:

- the President;
- the Management Board;
- the Intellectual Property Committee;
- the National Directorate of Industrial Property;
- the National Directorate of Copyright and Related Rights;
- the National Directorate of New Plant Varieties.

348. The other provisions governing the organization and operation of the IEPI shall be set down in the Regulations under this Law and in its own rules of procedure.

Section II **President of the IEPI**

349. The President of the IEPI shall be appointed by the President of the Republic and shall have a term of office of six years. He shall be its legal representative and shall have direct responsibility for its technical, financial and administrative management.

In the event of resignation, permanent absence or any other impediment that makes him incapable of continuing to carry out his duties, the President of the Republic shall immediately proceed to appoint his replacement, whose term of office shall likewise be six years. In the event of temporary incapacity or absence, the President shall be replaced by the National Director specified by the Management Board.

350. To be President of the IEPI it shall be necessary to hold a university degree, possess demonstrable professional expertise and experience in intellectual property fields and meet the other requirements specified in the Regulations.

351. The duties and powers of the President shall be the following:

- (a) to be the legal representative of the IEPI;
- (b) to ensure that the laws and international conventions on intellectual property are compiled with and implemented;
- (c) to draw up the annual budget of the IEPI and submit it to the Management Board for approval;
- (d) to appoint and remove the National Directors, Secretary General and other IEPI staff;
- (e) to propose outlines and strategies for the international negotiations that the National Government conducts in the field of intellectual property, and also to form the groups of negotiators for the purpose in consultation and agreement with the Ministry for Foreign Affairs;
- (f) to order border measures as provided in this Law;
- (g) to deal with enquiries regarding the application of intellectual property provisions. The replies dealing with the enquiries shall be binding on the IEPI in each specific case

submitted. The enquiries may not relate to matters that, on the date on which they are made, are pending before an IEPI organ;

- (h) any others that may be specified in this Law and the Regulations.

Section III Management Board

352. The Management Board is the controlling and consultative organ of the Institute, and shall be responsible for the following duties:

- (a) setting and approving fees;
- (b) approving the budget of the Institute;
- (c) pronouncing on draft amendments to this Law, to the Regulations and to international treaties on intellectual property;
- (d) proposing draft amendments to the Law or Regulations to the President of the Republic;
- (e) appointing and removing members of the Intellectual Property Committee in accordance with this Law and the Regulations;
- (f) enacting such provisions as may be necessary for the full implementation of this Law;
- (g) any others that may be specified in the Law and Regulations.

353. The Management Board shall be composed of

- (a) the President of the Ecuadorian Institute of Intellectual Property, who shall preside;
- (b) the Minister of Foreign Trade, Industrialization and Fisheries, or his delegate;
- (c) the Minister of External Relations or his delegate;
- (d) the Minister of Education and Culture or his delegate;
- (e) a representative of the Board of Chambers and Associations of Production, or his alternate;
- (f) one representative each for the collective management societies and the labor organizations concerned with copyright or related rights, or his alternate;
- (g) a representative designated by the Council of Universities and Polytechnical Schools (CONUEP), or his alternate.

Resolutions of the Management Board shall be adopted by a favorable vote of at least five of its members.

Section III National Directorates

354. The National Directors shall exercise the titular leadership of the various National Directorates. They shall be appointed for a period of six years and may be reelected indefinitely. In the event of the lack or temporary absence of a National Director, the President of the IEPI shall designate the official to be substituted for him.

355. In order to be a National Director it shall be necessary to be an attorney or doctor of jurisprudence with proven professional experience in the subject area concerned, and to meet the other requirements specified in the relevant Regulations.

356. The National Directorates shall be responsible for the administrative application of this Law and other legal provisions on intellectual property within their area of competence.

357. The following appeals shall be available against final administrative acts and those that prevent further prosecution that are pronounced by National Directors:

- request for reinstatement, before the official who pronounced the ruling;
- appeal, to the Intellectual Property Committee;
- appeal for review, to the Intellectual Property Committee.

The lodging of these appeals is not essential for the administrative route to be exhausted, and the actions provided for in the Law on Contentious Administrative Jurisdiction [*Ley de la Jurisdicción Contencioso Administrativa*] may therefore be brought directly against final administrative acts or those preventing further prosecution that are pronounced by National Directors.

Appeals shall be granted with staying and returnable effect within the administrative jurisdiction.

The District Courts of Administrative Litigation may, *ex officio* or at the request of a party, suspend the execution of the measure appealed against where the said execution might cause prejudices that are impossible or difficult to remedy.

358. The National Directorate of Copyright and Related Rights shall have the following responsibilities:

- (a) organization and administration of the National Register of Copyright and Related Rights;
- (b) administration of the administrative processes provided for in this Law in matters concerning copyright and related rights;
- (c) approval of the statutes of societies for the collective management of copyright and related rights, issue or suspension of their operating licenses, and the exercise of supervisory, inspection and control functions in relation to such societies, with intervention, where necessary;
- (d) exercise of such other responsibilities as may be provided for in this Law and the Regulations in the field of copyright and related rights.

359. The National Directorate of Industrial Property shall have the following responsibilities:

- (a) administration of the processes of grant, registration or deposit, as the case may be, of patents, utility models, industrial designs, trademarks, slogans, trade names, trade dress, geographical indications, layout-designs of semiconductor circuits (topographies) and other forms of industrial property that are provided for in the corresponding legislation;
- (b) ruling on the grant or refusal of registration;
- (c) processing of and ruling on such oppositions as may be filed;
- (d) administration of such other administrative processes as may be provided for in this Law in the field of industrial property;
- (e) exercise of such other responsibilities as may be provided for in this Law and Regulations in the field of industrial property.

There shall be a single act of industrial property registration that confers rights of national scope. Consequently, the National Director of Industrial Property shall be the sole authority competent to rule on the grant or refusal of industrial property registration at the national level.

360. The National Directorate of New Plant Varieties shall have the following responsibilities:

- (a) administration of the processes of filing and the recognition of rights in new plant varieties;
- (b) ruling on the grant or refusal of registration;
- (c) processing of and ruling on such oppositions as may be filed;
- (d) conduct of such other administrative processes as may be provided for in this Law in the field of new plant varieties;
- (e) organization and operation of a national center for the deposit of new plant varieties, or delegation of that activity to private enterprise;
- (f) exercise of such other responsibilities as may be provided for in this Law and the Regulations in matters concerning new plant varieties.

361. The Management Board may distribute the competence of National Directorates depending on the subject matter and according to the various forms of intellectual property, and alter their names accordingly.

Also, for the purpose of ensuring the exercise of the IEPI's administrative supervision, the Management Board may create regional subdirectorates and specify the limits of their administrative jurisdiction.

The National Directors may, depending on their areas of competence, order border measures according to the provisions of [Article 351](#) of this Law.

Section IV

Intellectual Property, Industrial Property and Plant Varieties and Copyright Committees

362. The Intellectual Property, Industrial Property and Plant Varieties and Copyright Committees shall each be composed of three members designated by the Management Board of the IEPI.

The members of these Committees shall have a term of office of six years and shall meet the same requirements as for being a Minister of the High Court.

The Management Board shall likewise designate the corresponding substitute members who shall replace the main members in the event of temporary or permanent absence.

363. At the request of the President of the IEPI, the Management Board may divide the Intellectual Property, Industrial Property and Plant Varieties and Copyright Committees by the creation of specialized chambers specialized according to subject matter, and thereby increase the number of Committee members.

364. The Intellectual Property, Industrial Property and Plant Varieties and Copyright Committees shall have the following responsibilities:

- (a) dealing with enquiries made by National Directors concerning oppositions filed against a given application for the grant or registration of intellectual property rights;
- (b) dealing with request for review and appeals;
- (c) dealing with requests for the cancellation of the grant or registration of intellectual property rights, without prejudice to the provisions of [Article 277](#);
- (d) such other responsibilities as may be specified in this Law.

Decisions of the Intellectual Property, Industrial Property and Plant Varieties and Copyright Committees shall be taken by a majority vote, with abstentions, if any, being compulsorily set down in the record.

365. No administrative appeal shall lie from decisions of the Intellectual Property, Industrial Property and Plant Varieties and Copyright Committees other than the request for reinstatement, which shall be heard by the same Committees as handed down the previous ruling, but shall not be necessary for the administrative route to be exhausted. The actions provided for in the Law on Contentious Administrative Jurisdiction may be brought against decisions of the Committees.

Section V Economic Resources and Fees

366. The IEPI shall have financial autonomy. No authority shall be permitted to divert to other ends funds that have been collected by the IEPI or set aside for its operation.

367. The following shall constitute the assets and resources of the IEPI:

- (a) the property that it acquires on whatever ground;
- (b) the proceeds from the collection of the fees specified in this Law;
- (c) the proceeds from fines, as provided in this Law;
- (d) the proceeds from the sale of the Intellectual Property Gazette or such other publications as may be issued;
- (e) any others provided for in the Law.

368. Fees shall be charged for the following acts and services:

- (a) the filing of applications for the recording, registration or grant of rights;
- (b) the filing of requests for renewal or amendment of registrations;
- (c) the registration of contracts;
- (d) the certification of the grant or registration of rights;
- (e) the grant of certified copies of any document or administrative instrument;
- (f) the issue of official search certificates requested of the IEPI;
- (g) examinations prior to the grant of invention or utility model patents and the registration of new plant varieties;
- (h) expert studies carried out by the IEPI;
- (i) proceedings engaged in for the exercise of administrative protection;
- (j) the filing of oppositions;
- (k) the bringing of administrative appeals;
- (l) requests for cancellation;
- (m) the supply of information on magnetic media;
- (n) the upkeep of registers;
- (o) the maintenance of live samples;
- (p) the use of technological information.

369. The fees provided for in the foregoing Article shall be expressed as general minimum living wage units and set by the Management Board of the IEPI, due account being taken of the proportionality of the fee to the cost of the service and its efficiency. Fees shall be collected and administered by the IEPI.

FINAL TITLE

General Provisions

370. In cases where this law provides the possibility of lengthening or extending a period or time limit, such extension shall be understood to have been granted by the competent administrative authority by virtue of the interested party having applied for it.

Periods that end on public holidays shall expire on the first working day thereafter.

371. Neither legalization nor authentication shall be required of pending documents or applications for the registration of any form of intellectual property when priority is claimed.

372. Without prejudice to the provisions of this Law, the provisions contained in international conventions or treaties on intellectual property that are in force in Ecuador shall be applicable.

In the application and interpretation of provisions on intellectual property, preference shall be given to those that confer greater protection. Consequently, no provision of national legislation or international treaties may be invoked or interpreted in such a way as to discredit, limit, prejudice, lessen or otherwise adversely affect the level of protection accorded to the owners of intellectual property rights.

373. The IEPI shall have coercive jurisdiction for the collection of the fines and fees provided for in this Law.

374. Any dispute on intellectual property shall be submitted to arbitration or mediation in conformity with the Law on Arbitration and Mediation [*Ley de Arbitraje y Mediación*] published in Official Register [*Registro Oficial*] No. 145 of September 4, 1997.

For the above purposes the IEPI shall be authorized to sign the relevant arbitration settlement without having to consult the Public Prosecutor of the State.

375. District intellectual property judges shall be appointed in accordance with **Article 3** of the Law Organizing the Judiciary [*Ley Orgánica de la Función Judicial*] and shall have jurisdiction over the subject matter provided for in this Law.

376. With a view to guaranteeing the protection of the country's biological and genetic heritage as provided in the Constitution and this Law, acquisition shall be considered legal where it meets the requirements for access to the biological and genetic resources specified in the Constitution and this Law, decisions of the Andean Community and international conventions and treaties.

Collective Rights

377. A *sui generis* system of collective intellectual rights of ethnic groups and local communities shall be introduced.

Its protection, development mechanisms and application shall be subject to a special law enacted for the purpose.

Repeal Provisions

378. All legal or regulatory provisions that conflict with this Law, and the following texts in particular, are repealed:

1. Law on Copyright [*Ley de Derechos de Autor*], published in Official Register No. 149 of August 14, 1976;
 - (a) Supreme Decree No. 2821 [*Decreto Supremo No. 2821*], published in Official Register No. 735 of December 20, 1978, and its amendment by Law No. 161, published in Official Register No. 984 of July 22, 1992;
 - (b) Regulations under the Law on Copyright [*Reglamento a la Ley de Derechos de Autor*], published in Official Register No. 495 of December 30, 1977, and all other executive decrees of ministerial agreements concerned with the subject matter that in any way conflict or are incompatible with the provisions of this Law;
2. Law on Trademarks [*Ley de Marcas de Fábrica*], published in Official Register No. 194 of October 18, 1976;
3. Law on Patents for the Exclusive Exploitation of Inventions [*Ley de Patentes de Exclusiva Explotación de Inventos*], published in Official Register No. 195 of October 19, 1976;
4. **Article 5** of Supreme Decree No. 2241 [*Decreto Supremo No. 2241*] of October 6, 1964, published in Official Register No. 360 of October 26, 1964.

TRANSITIONAL PROVISIONS

First. Until such time as the corresponding Regulations are issued, the Regulations under Decisions of the Commission of the Andean Community shall continue to apply in so far as they are not incompatible with the provisions of this Law.

Second. Until such time as the Management Board of the IEPI issues the corresponding decision, the fees for services governed by Ministerial Agreement No. 0106 [*Acuerdo Ministerial No. 0106*] of April 18, 1997, published in Official Register No. 48 of April 21, 1997, shall apply. Those fees shall be collected direct by the IEPI as from the date of entry into force of this Law and shall be set aside for its operation.

Revenue generated by application of the Ministerial Agreement referred to in the foregoing paragraph or by the charging of the fees set by the Management Board of the IEPI through publication in the Intellectual Property Gazette shall be distributed in a proportion of 60 per cent to the IEPI and 40 per cent to the MICIP for the purposes of Executive Decree No. 386 [*Decreto Ejecutivo 386*] of June 10, 1997.

Third. This Law shall apply to all works, performances, productions, broadcasts or other subject matter of copyright or related rights, and to the layout-designs of semiconductor circuits, referred to in this Law and created prior to its entry into force, provided that they have not passed into the public domain. The date on which they will pass into the public domain, once this Law has been promulgated, shall be determined by reference to the terms of protection specified in it.

Pending applications shall be settled in accordance with this Law.

Fourth. Any industrial property right validly granted under the legislation prevailing prior to the date of entry into force of this Law shall subsist throughout the time for which it was granted.

Applications pending before the National Directorate of Industrial Property shall be settled in accordance with this Law, without prejudice to the provisions of [Article 372](#).

Fifth. Within the six months following the promulgation of this Law, existing administration societies shall align their statutes and operation on the provisions of this Law and submit the relevant documents to the National Director of Copyright of the IEPI for registration. Those

administration societies that have received operating licenses shall be entitled to set tariffs. Until that time the tariffs authorized by the Ministry of Education and Culture shall prevail.

Sixth. The staff currently carrying out their duties under the Law on the Civil Service and Administrative Careers [*Ley de Servicio Civil y Carrera Administrativa*] at the National Directorate of Industrial Property of the Ministry of Foreign Trade, Industrialization and Fisheries, at the National Copyright Registry of the Ministry of Public Education, and those working on new plant varieties at the National Livestock Farming Directorate of the Ministry of Agriculture and Animal Husbandry shall have their posts transferred, including all acquired rights and obligations, to the IEPI.

With respect to staff working under contracts for the rendering of services, reference shall be had to the clauses of the said contracts.

Seventh. Officials and employees currently working at the National Directorate of Industrial Property, Copyright and Plant Breeders whose continued employment at the IEPI does not suit that institution shall receive compensation of 30 million sucres and, in addition, the equivalent of their average monthly income calculated in relation to all payments made to them in the previous year multiplied by six and by the number of years or fractions of years of service in the public sector, up to a maximum of 160 million sucres.

Eighth. The assets currently available to the National Directorate of Industrial Property and those relating to new plant varieties at the National Livestock Farming Directorate of the Ministry of Agriculture and Animal Husbandry, and also those of the National Copyright Registry, shall become the property of the IEPI.

Ninth. The budgetary allocations intended for the National Directorate of Copyright, the National Copyright Registry and the Plant Varieties Administration Unit of the National Livestock Farming Directorate of the Ministry of Agriculture and Animal Husbandry shall be reallocated to the Ecuadorian Institute of Intellectual Property for its 1998 accounting year.

Tenth. The Supreme Court of Justice, acting under **item 17 of Article 12** of the Law Organizing the Judiciary, shall organize the district intellectual property tribunals and courts, which shall assume all jurisdiction conferred on them by this Law. Until such time as the district intellectual property tribunals and courts have been created, the District Courts of Administrative Litigation shall hear intellectual property cases relating in accordance with the provisions of this Law and the competencies provided for in it, with the exception of precautionary measures, which shall be heard by civil judges.

Eleventh. Independently of the assertion of the economic rights by the appropriate administration society, collection under the economic rights for the communication to the public, by whatever medium, of musical works with or without words and dramatico-musical works shall be the responsibility of a single entity constituted by the Society of Ecuadorian Authors and Composers (SAYCE) and the Association of Phonogram Producers of Ecuador (ASOTEC), which shall collect by virtue of its status as collective administration society.

Until such time as the single collecting entity starts to operate, SAYCE shall continue to collect the royalties concerned.

The single collecting entity shall be constituted within the 60 days following the formation of the Management Board of the IEPI.

Twelfth. Those persons, whether natural persons or legal entities, who distribute videograms to the public by the sale or hiring or rental of copies, either in their own right or through the associations concerned, shall have a period of three years from the publication of this Law in the Official Register within which to submit to the IEPI an inventory of all the works that they are distributing, together with the licenses and proof of relevant royalty payments or exemptions.

Legalization of the corporate activity mentioned in the foregoing paragraph shall in no way preclude respect for and collection and payment of copyright as from the entry into force of this Law.

Thirteenth...⁶

Fourteenth...⁶

Fifteenth. The appointments provided for in [subparagraphs \(e\) and \(f\) of Article 353](#) shall be made by each of the electoral colleges within the 15 days following the publication of this Law. The Management Board shall be formed within the 30 days following the entry into force of this Law.

Sixteenth. For decentralization and deconcentration to become effective, it shall be essential that the National Directorate and the Regional Subdirectorates be provided with all the budgetary, technological and human resources that will permit the efficient administration of their action, especially with respect to access by telecommunication to the National Directorate's database and the possibility of recording the exact filing times of applications online. Regional Subdirectorates may not operate until such computer and technological resources are installed as will enable them to enter applications in the National Directorate's database in the course of the act of filing.

FINAL PROVISIONS

1. The President of the Republic shall, within the constitutional period of 90 days, issue the appropriate Regulations for the implementation of this Law.

2. This Law shall, by virtue of its special character, prevail over any other law that conflicts with it.

⁶ Provision concerning plant varieties, not reproduced here (*Editor's note*).

⁶ Provision concerning plant varieties, not reproduced here (*Editor's note*).

\$\$\$ 3 See footnote 1 (*Editor's note*).