



Law No. 43 of December 30, 1994,

Incorporating in Spanish Law Council Directive (EEC) No. 92/100 of November 19, 1992, on Rental Right and Lending Right and on Certain Rights Related to Copyright in the Field of Intellectual Property*

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Title I Rental and Lending Rights

(Subject Matter of Rental and Lending Rights)

Art. 1.—

(1) The provisions of this Title shall govern the right to authorize or prohibit the rental and lending of:

- (a) the originals and copies of works protected by copyright;
- (b) fixations of the performances of performers;
- (c) phonograms;
- (d) the first fixation of an audiovisual recording and copies thereof.

Those rights shall not lapse in the case of sale or any other act of distribution of the originals and copies of the works and other material specified in the foregoing paragraph.

This Law shall not include the rights of rental and lending of buildings or works of applied art.

(2) For the purposes of this Law,

- (a) “rental” of objects means making them available for use for a limited time and for direct or indirect economic or commercial advantage;

* *Official title:* Ley 43/1994, de 30 de diciembre, de incorporación al Derecho español de la Directiva 92/100/CEE, de 19 de noviembre de 1992, sobre derechos de alquiler y préstamo y otros derechos afines a los derechos de autor en el ámbito de la propiedad intelectual.

Entry into force: January 1, 1995.

Source: Boletín Oficial del Estado, No. 313, of December 31, 1994.

Note: Translation by the International Bureau of WIPO.

** Added by WIPO.

(b) “lending” of objects means making them available for use for a limited time and not for direct or indirect economic or commercial benefit, provided that the said lending takes place through the agency of establishments accessible to the public;

It shall be understood that there is no direct or indirect economic or commercial benefit when the lending done through the agency of an establishment accessible to the public gives rise to the payment of a sum that does not exceed what is necessary to cover its operating expenses;

(c) “audiovisual recordings” means fixations of a scene or sequence of images, with or without sound, whether or not the creations in question are capable of being described as audiovisual works within the meaning of Article 86 of Law No. 22/1987 of November 11, 1987, on Intellectual Property.¹

(3) For the purposes of this Title, the following ways of making objects available shall be excluded from the concepts of rental and lending:

- making phonograms or audiovisual recordings or fragments of either available for the purposes of communication to the public or broadcasting;
- making available for consultation on the spot;
- exclusively with regard to lending, the mutual making available of objects by establishments accessible to the public.

(Owners of the Rights of Rental and Lending)

Art. 2.—

(1) The exclusive right to authorize or prohibit rental and lending shall belong:

- (a) to the author in respect of the original and copies of his work;
- (b) to the performer in respect of fixations of his performance;
- (c) to the phonogram producer in respect of his phonograms;
- (d) to the producer of the first fixation of an audiovisual work in respect of the original and copies of that recording.

(2) The following shall be considered authors of an audiovisual recording for the purposes of this Law:

- (a) the director or maker;
- (b) the authors of the plot, adaptation and scenario or dialogue;
- (c) the authors of the musical compositions, with or without words, specially created for the recording.

(3) Where the authors and performers individually or collectively enter into contracts with a producer of audiovisual recordings for the production thereof, it shall be presumed that, unless otherwise specified in the contract and subject to the unrenounceable right to the equitable remuneration referred to in the following Article, they have transferred their rental rights.

¹ For the text of the Law, see *Copyright and Neighboring Rights Laws and Treaties*, SPAIN—Text 1—01 (*Editor’s note*).



(Unrenounceable Right to Equitable Remuneration)

Art. 3.—

(1) Where an author or performer has transferred or assigned his rental right in a phonogram or the original or a copy of a film to a phonogram or film producer, he shall retain the unrenounceable right to equitable remuneration therefor. Such remuneration may be collected from those who carry out the operations of rental to the public of phonograms or audiovisual recordings in their capacity as successors in title of the owners of the corresponding right to authorize or prohibit such rental and shall be payable as from January 1, 1997.

(2) The right provided for in this Article shall be asserted through entities for the administration of intellectual property rights.

(Exceptions to the Exclusive Lending Right)

Art. 4.—

(1) No authorization shall be required for lending by museums, archives, libraries, newspaper libraries, record libraries or film libraries in public ownership or which belong to public interest bodies of cultural, scientific or educational character without gainful intent or to teaching establishments incorporated in the Spanish educational system.

(2) The establishments specified in paragraph (1) of this Article shall be exempted from the payment of any remuneration for lending.

Title II **Related Rights**

(Fixation Right)

Art. 5.—

(1) Performers shall have the exclusive right to authorize or prohibit the fixation of their performances.

(2) Broadcasting entities shall have the exclusive right to authorize or prohibit the fixation of their broadcasts, whether they are transmitted by wire or by wireless means, including cable and satellite.

Cable distribution entities shall not enjoy this right when they retransmit the broadcasts of broadcasting entities.

(Reproduction Right)

Art. 6.—

(1) The exclusive right to authorize or prohibit direct or indirect reproduction shall belong to:

(a) performers in respect of fixations of their performances;

(b) producers of phonograms in respect of their phonograms;

(c) producers of the first fixations of audiovisual recordings in respect of the originals and copies thereof;

(d) broadcasting entities in respect of fixations of their broadcasts.

(2) The reproduction rights referred to in paragraph (1) may be transferred, assigned or made subject to the grant of contractual licenses.

(Broadcasting and Communication to the Public)

Art. 7.—

(1) Performers shall have the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast or is made from a previously authorized fixation.

(2) Users of a phonogram published for commercial purposes, or of a reproduction of such phonogram, which is used for wireless broadcasting or any form of communication to the public shall be under the obligation to pay a single equitable remuneration to the performers and phonogram producers, among whom it shall be shared out.

In the absence of agreement between the performers and phonogram producers, the amount referred to in the foregoing paragraph shall be shared out equally.

(3) On signing a contract for the production of an audiovisual recording between a performer and a producer of audiovisual recordings, the performer authorizes the communication of his performance to the public.

Without prejudice to the foregoing, the performer shall retain the unrenounceable right to a single equitable remuneration for the communication of his performance to the public.

The users of audiovisual recordings that are used for any form of communication to the public shall be under the obligation to pay a single equitable remuneration to the producers of audiovisual recordings and to the performers, among whom it shall be shared out. In the absence of agreement between them, the amount shall be shared out equally.

(4) The right to the single equitable remuneration referred to in paragraphs (2) and (3) of this Article shall be asserted through the entities for the administration of intellectual property rights.

(5) Broadcasting entities shall enjoy the exclusive right to authorize or prohibit the wireless retransmission of their broadcasts, and the communication thereof to the public where such communication is made in places to which the public have access against payment of an admission fee.

(Distribution Right)

Art. 8.—

(1) The exclusive distribution right shall belong to:

- (a) performers in respect of fixations of their performances;
- (b) phonogram producers in respect of their phonograms;
- (c) the producers of the first fixations of audiovisual recordings in respect of the originals and copies thereof;
- (d) broadcasting entities in respect of fixations of their broadcasts, whether transmitted by wire or wireless means, including cable and satellite.

(2) The distribution right relating to subject matter as provided for in paragraph (1) shall not be exhausted in the European Union. Such right shall only lapse when distribution takes place in the form of sale in the European Union, namely on the first such sale effected by the owner of the right or with his consent.

The provision in the foregoing paragraph shall be understood to be without prejudice to the specific provisions of Title I, in particular the second subparagraph of paragraph (1) of Article 1.

(3) The distribution right may be transferred, assigned or made subject to the grant of contractual licenses.

(Limitations)

Art. 9.—

(1) The limitations imposed for the protection of authors' rights in Chapter II of Title III of Part I of the Law on Intellectual Property shall be applicable to this Title.



(2) The provisions of Article 25 of the said Law shall be applicable to the limitation specified in Article 31(2) thereof.

Additional Provisions

(Relations Between Copyright and Related Rights)

One. The protection of related rights under this Law shall not affect the protection of copyright.

(Compensatory Remuneration)

Two. Article No. 25 of Law No. 22 of November 11, 1987, on Intellectual Property, as amended by Law No. 20 of July 7, 1992, shall henceforth read as follows:²

Transitional Provisions

(Term of Rights)

One.—

(1) Until such time as the provisions contained in Council Directive (EEC) No. 93/98 of October 29, 1993, Harmonizing the Term of Protection of Copyright and Certain Related Rights have been applied, the procedure provided for in paragraphs (2) and (3), below, shall be adhered to.

(2) The authors' rights provided for in this Law shall be protected throughout the period provided for in Chapter I in Title III of Part I of the Law on Intellectual Property.

(3) The rights of performers, phonogram producers, producers of the first fixations of audiovisual recordings and broadcasting organizations shall be protected for the period provided for in Articles 106, 111, 115 and 117, respectively, of the Law on Intellectual Property.

(Applicability of the Law)

Two. The provisions of this Law shall be understood to be without prejudice to acts of exploitation engaged in and contracts entered into prior to its entry into force.

(Application of Equitable Remuneration to Contracts Entered Into Prior to July 1, 1994)

Three. With regard to contracts entered into prior to July 1, 1994, the right to equitable remuneration referred to in Article 3 of this Law shall apply only if the authors or performers or their representatives have filed a request to that end in accordance with the provisions of the said Article 3 prior to January 1, 1997.

(Calculation of Compensatory Remuneration for Private Copying Between January 1 and December 31, 1994)

Four. For the calculation of the compensatory remuneration for private copying relating to the period between January 1 and December 31, 1994, the provisions of Law No. 20 of July 7, 1992, Amending Law No. 22 of November 11, 1987, on Intellectual Property and those of Royal Decree No. 1434 of November 27, 1992, for the implementation thereof, shall be applicable.

² Not reproduced here. See *Copyright and Neighboring Rights Laws and Treaties*, SPAIN—Text 1—01 (*Editor's note*).



Repeal Provision

(Repeal of Provisions)

Sole Provision. Such provisions, of whatever rank, as are contrary to this Law, and especially Articles 9(1), 11, 12, 14, 16, 17, 18, 19 and 37(1), and also Chapters II and III of Title II of Royal Decree No. 1434 of November 27, 1992, are hereby repealed.

Final Provisions

(Safeguarding of the Application of Other Legal Provisions)

One. The provisions of this Law shall be understood as being without prejudice to the provisions of Article 4(c) of Law No. 16 of December 23, 1993, Incorporating in Spanish Law Council Directive (EEC) No. 91/250 of May 14, 1991, on the Legal Protection of Computer Programs.

(Application of Compensatory Remuneration for Private Copying in Ceuta and Melilla)

Two. The Government shall lay down by regulation a system for the application of compensatory remuneration for private copying that takes into account the special circumstances of the markets of the cities of Ceuta and Melilla.

(Authorization to Enact Complementary Provisions)

Three. The Government is authorized to enact regulatory provisions that lay down the procedure for the fixing of the amount of equitable remuneration referred to in Transitional Provision Three when no agreement has been reached on the subject between the parties.

(Legislative Authority Accorded to the Government)

Four. The provisions of this Law shall be incorporated by the Government in the revised text on intellectual property that it will have to enact prior to June 30, 1995, by virtue of the express authorization given in Final Provision Two of Law No. 16 of December 23, 1993, Incorporating in Spanish Law Council Directive (EEC) No. 91/250 of May 14, 1991, on the Legal Protection of Computer Programs.

(Entry Into Force of the Law)

Five. This Law shall enter into force on the day following that of its publication in the Official Bulletin of the State.