

**Copyright and Related Rights Act (O.G. 167/2003)**

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I.  
INTRODUCTORY PROVISIONS

Subject Matter of the Act

1. This Act regulates:
  1. copyright—rights of authors with respect to their works in the literary, scientific and artistic domains;
  2. related rights:
    - a. rights of performers to their performances;
    - b. rights of producers of phonograms to their phonograms;
    - c. rights of film producers (producers of videograms) to their videograms;
    - d. rights of broadcasting organizations to their broadcasts;
    - e. rights of publishers to their publications;
    - f. rights of producers of databases to their databases;
  3. administration (individual and collective) of copyright and related rights;
  4. protection of copyright and related rights in the case of infringement;
  5. territory of the application of the Act.

Copyright and Related Rights

2.—(1) Copyright shall belong, by its nature, to a natural person who has created a copyright work.



(2) A right of performers shall belong, by its nature, to a natural person who has performed a work in the literary or artistic domain, or the expressions of folklore.

(3) The holder of other related rights may be any natural and legal person, unless provided otherwise by law.

(4) Copyright and related rights may be limited against the will of their holders only under conditions and in a manner provided by law.

#### Disclosure, Publication, the Public and Public Use

3.—(1) A copyright work or a subject matter of a related right shall be considered disclosed if it has been made available to the public with the consent of the right holder.

(2) A copyright work or a subject matter of a related right shall be considered published if, with the consent of the right holder, copies of that work or subject matter of a related right respectively have been offered to the public or put into circulation in the quantity sufficient to satisfy reasonable needs of the public.

(3) The public, under this Act, shall mean a larger number of persons that are outside the usual circle of persons closely tied with family or other personal relations.

(4) Public use of copyright work shall be considered any use of a copyright work and a subject matter of related rights that is accessible to the public, or such use in the area that is accessible to members of the public, as well as, providing to members of the public access to the work and subject matters of related rights at a time and from a place individually chosen by them.

#### Relation Between Copyright and Related Rights

4.—(1) The protection of related rights under this Act shall leave intact and shall in no way prejudice the protection of copyright. No provision of this Act concerning the protection of related rights shall be construed in a way to prejudice the protection of copyright. The exercise of the performers' rights of communication to the public of fixed performances referred to in Article 125, item 4, indent 2 of this Law must not prejudice the exercise of copyright.

(2) The provisions of this Act concerning the definitions of author's economic rights, as well as the right to a remuneration for reproduction of works for private or other personal use, and the right to a remuneration for public lending, exceptions and limitations of copyright, the beginning of the terms of protection and the effects of expiration of copyright, a legal transaction of copyright, and the relation between copyright and property right shall apply *mutatis mutandis* to related rights, unless otherwise specially provided for them, or arising from their legal nature.



## II. COPYRIGHT

### Chapter 1 Subject Matters

#### Copyright Work

5.—(1) A copyright work is an original intellectual creation in the literary, scientific and artistic domain, having an individual character, irrespective of the manner and form of its expression, its type, value or purpose, unless otherwise provided by this Act.

(2) Copyright works are in particular:

- works of language (written works, oral works, and computer programs;
- musical works with or without words;
- dramatic or dramatico-musical works;
- choreographic works and works of pantomime;
- works of visual art (in the field of painting, sculpture, and graphics), irrespective of the material they are made of, and other works of visual arts;
- works of architecture;
- works of applied art and industrial design;
- photographic works and works produced by a process similar to photography;
- audiovisual works (cinematographic works, and works created in a manner similar to cinematographic creation);
- cartographic works;
- presentations of a scientific or technical nature such as drawings, plans, sketches, tables, etc.

(3) The subject matter of copyright may be any copyright work, except the one, which cannot be such work by its nature, and the one for which the provisions of this Act provide that it cannot be the subject matter of copyright.

(4) The subject matter of copyright is the work as a whole, including an unfinished work, the title of a work, and the parts thereof that fulfill the pre-conditions set out in paragraph (1) of this Article.

(5) The title of the work, which doesn't fulfill the pre-conditions for being the subject matter of copyright, and which has already been used for a certain work, shall not be used for the same kind of work, if such title is likely to create confusion as to the author of the work.





### Alterations

**6.—**(1) Translations, adaptations, musical arrangements and other alterations of a work, which are original individual intellectual creations, shall be protected as independent works.

(2) Translations of official texts in the domain of legislation, administration and judiciary, shall be protected, unless made for the purpose of officially informing the public and are not disclosed as such.

(3) Provisions of paragraph (1) of this Article shall not affect the rights of the authors of the works, which have been altered.

### Collections and Databases

**7.—**(1) Collections of independent works, data or other materials, such as encyclopedias, collections of documents, anthologies, databases, and the like, which by reason of the selection or arrangement of their constituent elements constitute personal intellectual creations of their authors shall be protected as such.

(2) The protection enjoyed by the database referred to in paragraph (1) of this Article, shall not extend to its contents and shall in no way prejudice the rights subsisting in the works and subject matters of related rights included in the collection.

(3) Databases, under this Act, are collections arranged according to certain system or method, the elements of which are individually accessible by electronic or other means.

(4) The protection provided under this Act for databases, shall not apply to computer programs used in the making of electronic databases or in the operation thereof.

### Non-Protected Creations

**8.—**(1) The subject matter of copyright shall include expressions and not ideas, procedures, methods of operation or mathematical concepts as such.

(2) The subject matter of copyright shall not include:

1. discoveries, official texts in the domain of legislation, administration, judiciary (acts, regulations, decisions, reports, minutes, judgments, standards, and the like) and other official works and their collections, which are published for the purpose of officially informing the public;

2. news of the day and other news, having the character of mere items of press information;

(3) Folk literary and artistic creations in their original form shall not be the subject matter of copyright, but their communication to the public are subject to the payment of remuneration, as for the communication to the public of protected copyright works. The remuneration shall be the revenue of the budget, and shall be used for improving the creativity in the field concerned.

## Chapter 2 Authors

### The Author

- 9.**—(1) The author of the work is a natural person who has created the work.
- (2) Copyright in a work belongs to its author by the mere act of creation of the work.

### Authors of Compound Works

- 10.**—(1) If two or more authors join their created works for the purpose of a joint use, each of them shall keep the copyright in his own work.
- (2) Mutual relations between authors of the compound works shall be regulated by a contract. Unless otherwise provided by a contract or by rules set out in Article 167, paragraph (1), all the authors of a compound work shall be considered to be entitled to an equal share in the remuneration to be obtained for the use of such compound work.

### Co-Authors

- 11.**—(1) Co-authors of a work are the persons who created the work jointly, and whose contributions cannot be used independently.
- (2) Co-authors shall have a joint copyright in the created work, so a part of such copyright calculated in proportion to the whole copyright (co-authors' shares) shall belong to each of them.
- (3) In doubt concerning co-authors' shares, they shall be considered to be equal.
- (4) The consent of all the co-authors shall be needed for the publication, use and alteration of such work. An individual co-author shall not refuse to give his consent for the reason, which is contrary to the principle of conscientiousness and fairness, nor shall undertake any action, which unreasonably prejudices or could be prejudicial to the legitimate interests of other co-authors. If the consent of all the authors concerning publication, use or alteration of their work has not been achieved, the decision to that effect shall be made by the court, at a request of any of the co-authors.
- (5) A share of each co-author in the benefits deriving from the use of the work corresponds to his co-author's part, unless otherwise provided for by a contract regulating their mutual relations.



Presumption of Authorship and Exercise of Copyright  
Where the Author is Anonymous

**12.**—(1) The author is presumed to be a person whose name, pseudonym, artist's mark or code appears in the customary manner on the copies of the work or at the disclosure of the work, until proven to the contrary.

(2) If the author is not known, nor can he be defined under the provision of paragraph (1) of this Article, it shall be considered that entitled to exercise copyright is:

1. for a published work—the publisher who has lawfully published the work;
2. for a disclosed but unpublished work—the person who has lawfully disclosed the work.

(3) Provisions of paragraph (2) of this Article shall cease to apply once the author's identity has become known, in which case the publisher respectively the person who disclosed the work, shall transfer to the author the economic benefits derived from the exercise of his right, according to the rules concerning legal status of a fair possessor who must deliver an object to its owner, unless otherwise provided by a contract.

**Chapter 3**  
**Content of Copyright**

Content of Right

**13.**—(1) Copyright includes moral rights, economic rights and other rights of authors.

(2) Copyright shall protect personal and intellectual ties of the author with his work (moral rights of the author), economic interests of the author in respect of his copyright work (economic rights of the author) and other interests of the author in respect of his work (other rights of the author).

(3) The author is entitled to remuneration for each use of his work, unless otherwise provided by this Act or by a contract.

3.1.  
MORAL RIGHTS

Right of First Disclosure

**14.**—(1) The author shall have the right to determine whether, when, where and under what circumstances his work will be disclosed for the first time.

(2) Until the work is disclosed, the author shall have the right to reveal to the public the content or description of his work.



### Right of Recognition of Authorship

**15.**—(1) The author shall have the right to be recognized and indicated as the author of the work.

(2) A person who publicly uses a copyright work, shall be obliged to indicate the author at each use, unless the author has declared in a written form that he does not want to be indicated, or if the manner of a certain use is such that prevents the indication of the author.

### Right of Respect for the Work and Honour or Reputation of the Author

**16.** The author shall have the right to oppose to any distortion, mutilation and similar modification of his work, and to destruction and any use of the work, in a manner which is prejudicial to his honor or reputation.

### Right of Revocation

**17.**—(1) The author shall have the exclusive right to revoke a right of exploitation of his copyright work and its further use, compensating the damages to the user of such right, where further use would be prejudicial to his honor or reputation. Such right shall also be exercised by the author's heirs, if the author decided so in his will, or if they prove that the author, prior to his death, had been entitled and tried to exercise such right, but was prevented from doing so.

(2) The revocation referred to in paragraph (1) of this Article shall be effective from the day when the author deposits the security for the compensation for damages referred to in paragraph (3) of this Article.

(3) The user of the right of exploitation of copyright work shall, within three months as from the receipt of the notification of revocation, communicate to the author the amount of outstanding costs incurred to him in the preparation for the use of his work up to the day of receipt of such notification. If the holder of the right of exploitation of a copyright work fails to do so, the notification of revocation shall become effective at the expiration of the time limit referred to in this paragraph.

(4) If, within ten years as from his exercise of the right of revocation, the author decides to resume the exploitation of the work in respect to which he exercised his right of revocation, he shall be required to offer such right, under previous conditions, first to the person to whom such right was revoked.

(5) The author may not renounce the right of revocation.

(6) The provisions of this Article shall not apply to electronic databases and computer programs.

## 3.2.

## ECONOMIC RIGHTS OF THE AUTHOR

## In General

**18.** The author shall have the exclusive right to do with his copyright work and the benefits deriving from it whatever he likes, and to exclude any other person from it, unless otherwise provided by the law. This right includes in particular:

- right of reproduction (right of multiplication);
- right of distribution (right to put into circulation);
- right of communication of the work to the public;
- right of alteration.

## Reproduction

**19.**—(1) The right of reproduction is the exclusive right of making (manufacturing) one or more copies of copyright works, in whole or in part, directly or indirectly, temporarily or permanently, by any means and in any form. The right of reproduction includes fixation which shall mean the fixing of copyright works in the material or other corresponding medium.

(2) A copyright work is fixed and reproduced in particular by graphic procedures, photocopying and other photographic procedures with the same effect, by sound or visual recording, by building respectively carrying out works of architecture, by storage of the work in electronic form, and by fixing of the work transmitted by computer's net on a material medium.

## Distribution and Rental

**20.**—(1) The right of distribution is the exclusive right to put into circulation the original or copies of the work by sale or otherwise, and to offer them to the public for such purpose.

(2) The first sale of the original or copies of the work or other form of transfer of ownership, by the author or with his consent, in the territory of the Republic of Croatia shall exhaust the right of distribution in respect such original and such copies respectively, for the territory of the Republic of Croatia. The exhaustion of the distribution right shall not cause expiration of the right of rental of a copyright work, the right of the author to authorize or prohibit the export to or the import from a certain country of the original or copies of the work, and the right to remuneration for public lending of the work under Article 33 of this Act. In respect of collections, the exhaustion of the distribution right extends only to further sale.



(3) The rental, under this Act, shall mean the making available for use of the original or copies of the work, for a limited period of time, and for direct or indirect economic or commercial benefit.

(4) The right of rental of a copyright work, under this Act, shall not apply to already made architectural works and works of applied art.

(5) The author who has disposed of his right of rental to a producer of phonograms or to a film producer, or to any other person retains the right to receive equitable remuneration for the rental of his copyright work. The author may not renounce the right to the equitable remuneration. The remuneration for rental shall be paid by the person renting the copyright work.

#### Communication of the Work to the Public

**21.** The author shall have the exclusive right to communicate his work to the public. This right includes in particular:

- right of public performance;
- right of public stage presentation;
- right of public transmission;
- right of public communication of fixed works;
- right of public presentation;
- right of broadcasting;
- right of rebroadcasting;
- right of public communication of broadcasting;
- right of making available to the public.

#### Public Performance

**22.** The right of public performance is the exclusive right to communicate to the public:

1. works in the domain of literature or science by live reading or reciting (the right of public recitation);
2. musical works by live performance (the right of public musical performance).

#### Public Stage Presentation

**23.** The right of public stage presentation is the exclusive right to communicate to the public dramatic, dramatico-musical, and choreographic works or works of pantomime, by their live stage presentation.



### Public Transmission

**24.** The right of public transmission is the exclusive right to communicate a recitation, a music performance or a stage presentation of a work to the public that is outside the place where the work is recited, performed or presented on stage live, by loudspeaker, screen or any other technical device.

### Public Communication of a Fixed Work

**25.** The right of public communication of a fixed copyright work is the exclusive right to communicate to the public a work which is fixed in a phonogram or videogram, by such phonogram or videogram.

### Public Presentation

**26.** The right of public presentation is the exclusive right to communicate to the public the works of visual arts, architecture, applied arts and industrial designs, a photographic or audiovisual work, and a cartographic work, or a presentation of scientific or technical nature, by technical devices.

### Broadcasting

**27.—(1)** The right of broadcasting is the exclusive right to communicate a copyright work to the public by radio or television program-carrying signals, intended for reception by the public, either by wireless means (including satellite), or by wire (including cable or microwave systems).

(2) A satellite, for the purposes of this Act, means any satellite operating on frequency bands which are reserved for the broadcasts of signals for reception by the public, or for closed, point-to-point communication. If point-to-point communication is concerned, the circumstances in which individual reception of the signals takes place must be comparable to those in which public reception of the signals takes place.

(3) Communication to the public by satellite, referred to in paragraph (1) of this Article, exists where under the control and responsibility of the broadcasting organization program-carrying signals intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(4) Where the program-carrying signals referred to in paragraph (2) of this Article are encrypted, communication to the public shall be deemed to have occurred on condition that the means for decrypting such signals are provided to the public by the broadcasting organization, or with its consent.

### Rebroadcasting

**28.** The right of rebroadcasting is the exclusive right to a simultaneous, unaltered and unabridged communication to the public of a broadcast of a work:

1. where made by a broadcasting organization other than the one who initially broadcasted a work;
2. where made by cable or microwave system (cable retransmission).

### Public Communication of Broadcasting

**29.** The right of public communication of broadcasting is the exclusive right to communicate to the public a broadcast work, by a loudspeaker, screen or similar technical device.

### Making Available to the Public

**30.** The right of making available to the public is the exclusive right to communicate a work to the public by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

### Alterations of the Work

**31.** The right of alteration is the exclusive right to translate, adapt, musically arrange or otherwise transform a work.

## 3.3.

### OTHER RIGHTS OF THE AUTHOR

#### 3.3.1.

#### *Rights to Remuneration*

#### Right to Remuneration for Reproduction of a Work for Private or Other Personal Use

**32.—(1)** Where a work may be reproduced without the author's authorization under Article 82 of this Act, the author whose works are, due to their nature, expected to be reproduced without authorization, by photocopying or by recording on sound, visual or text fixation mediums, for private or other personal use, shall have the right to an appropriate remuneration upon sale of technical appliances and blank audio, video or text fixation mediums.

(2) Apart from the right referred to in paragraph (1) of this Article, the authors shall have a right to an appropriate remuneration to be obtained from a physical or legal person who provides services of photocopying against payment.





(3) Any other reproduction techniques are assimilated to photocopying, and any other appliances providing the same effect are assimilated to appliances for sound or visual recording.

(4) The remuneration referred to in paragraph (1) of this Article shall be paid by manufacturers of appliances for sound and visual recording, manufacturers of appliances for photocopying, manufacturers of blank audio, video or text fixation mediums, and jointly and severally with them importers of appliances for sound and visual recording, photocopying, blank audio, video or text fixation mediums, unless such imports concerns small quantities intended for private and non-commercial use, forming part of personal luggage. If the mentioned appliances and objects are not produced in the Republic of Croatia, the remuneration shall be paid by the importer.

(5) The obligation to pay the appropriate remuneration referred to in paragraph (1) shall arise:

1. in respect of the first sale in the Republic of Croatia or import in the Republic of Croatia of new appliances for sound and visual recording;
2. in respect of the first sale in the Republic of Croatia or import in the Republic of Croatia of new blank audio or video fixation media;
3. in respect of the first sale in the Republic of Croatia or import in the Republic of Croatia of new photocopying appliances.

(6) The remuneration referred to in paragraph (2) of this Article shall be paid according to information on the number of photocopies made.

(7) Authors may not renounce the rights to remuneration referred to in paragraphs (1) and (2) of this Article.

#### Right to Remuneration for Public Lending

**33.**—(1) The author shall have the right to equitable remuneration where the original or copies of his work of which further distribution is admissible, has been lent through public libraries.

(2) The lending, under this Act, shall mean making available for use for a limited period of time and without direct or indirect economic or commercial benefit.

(3) Provisions referred to in paragraphs (1) and (2) of this Article shall not apply to:

1. buildings and works of applied art;
2. works that are mutually lent by institutions referred to in paragraph (1) of this Article.

(4) The author may not renounce the right referred to in paragraph (1) of this Article.



(5) By way of derogation from the provision of paragraph (1) of this Article, authors of databases shall have the exclusive right of public lending of the original or copies of their databases.

### 3.3.2.

#### Droit de suite (*Resale right*)

##### In General

**34.**—(1) If the original of a work of visual art is resold, the author shall have the right to equitable share in the selling price for each time his original is resold after its first alienation by the author.

(2) The right referred to in paragraph (1) of this Article shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as public auctions, art galleries or other art dealers.

(3) On an exceptional basis, the provision referred to in paragraph (1) of this Article shall not apply, where the seller is an art gallery which has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed equivalent value of EUR 10 000 in kunas.

##### Original of a Work of Visual Art

**35.**—(1) The original of the work of visual art, referred to in Article 34, paragraph (1) of this Act, shall mean a work of visual art such as picture, collage, painting, drawing, engraving, print, lithography, sculpture, tapestry, ceramic, glassware or photography, where created by the author himself.

(2) Copies of works of visual art which have been made in limited numbers by the artist himself or under his authority, shall be considered to be originals of works of visual art, referred to in paragraph (1) of this Article. Such copies shall normally be numbered, signed or authorized by the author.

##### Amount Belonging to the Author

**36.**—(1) A seller who resales the work referred to in Article 35 of this Act, at a price exceeding the equivalent amount of EUR 500 in kunas, shall pay to the author the equivalent amount in kunas of:

1. 5% for the portion of the selling price from EUR 500,00 to 50.000,00;
2. 3% for the portion of the selling price from EUR 50.000,01 to 200.000,00;
3. 1% for the portion of the selling price from EUR 200.000,01 to 350.000,00;
4. 0,5% for the portion of the selling price from EUR 350.000,01 to 500.000,00;



5. 0,25% for the portion of the selling price exceeding EUR 500 000,00;

(2) The total amount which by virtue of the provision referred to in paragraph (1) of this Article belongs to the author, shall not exceed the equivalent amount of EUR 12.500,00 in kunas. Base for calculation of such amount shall be the selling price net of tax.

(3) If the resale of the original has been effected through a public auction, art gallery or by intermediary of any other art dealer, the organizer of the public auction, the owner of the art gallery respectively the art dealer, shall share liability with the seller for the payment of the amount belonging to the author.

#### Renouncement, Transferability and Execution of the *Droit de Suite*

37.—(1) The author cannot renounce his *droit de suite*.

(2) *Droit de suite* shall not be transferred by legal transactions during the author's life. After the death of the author, *droit de suite* passes on to his heirs, and the remuneration therefrom shall be paid to them.

(3) *Droit de suite* shall not be subject to execution.

#### Right to Receive Information

38. For a period of three years after the resale of his work, the author shall have the right to require from any person referred to in Article 34, paragraph (2) of this Act, to furnish any information that is necessary in order to secure payment of the amount that belongs to him in respect of the resale.

#### 3.3.3.

#### *Other Additional Rights*

#### Right of Access to the Work

39.—(1) The author shall have a right to require from the owner or direct possessor of the original or a copy of his work to allow him access to the work, if such access is necessary for making copies of the work or its alteration under the provision of Article 31, paragraph (1) of this Act, and is not contrary to any legitimate interests of the owner respectively possessor.

(2) Provisions of paragraph (1) of this Article do not oblige the owner or direct possessor to deliver to the author the original respectively a copy of the work.

#### Right to Prohibit Public Exhibitions of the Work

40.—(1) The author of an undisclosed work of visual art, applied art, industrial design, and an undisclosed photographic work, has upon alienation of the original or a copy of his work, the right to prohibit to its owner to exhibit the work to the public.



(2) The author shall prohibit the public exhibition referred to in paragraph (1) of this Article, in the written form.

(3) The author shall not have the right referred to in paragraph (1) of this Article, if the work belongs to a museum, gallery or other similar public institution.

## **Chapter 4 Copyright in Legal Transactions**

### 4.1.

#### BASIC PROVISIONS

##### Inheritance of Copyright

**41.**—(1) Copyright shall be inheritable.

(2) All the rights that would belong to the author shall belong to his heirs, unless otherwise provided by this Law.

(3) General rules on inheritance shall apply to all other matters related to inheritance of copyright, which are not regulated by this Law.

##### Transferability of Copyright

**42.**—(1) Copyright shall not be transferable, except by inheritance and transfer for the benefit of coheirs in the case of dissolution of community of heirs.

(2) Other dispositions of copyright shall be allowed, unless otherwise provided by this Act.

##### Execution

**43.**—(1) Copyright shall not be subject to execution. Only economic benefits acquired in the use of a copyright work may be subject to execution, unless otherwise provided by this Act.

(2) If the author has, by non-finishing of work or non-publishing of manuscript, breached a contractual obligation, he shall not be forced to carry it out, but shall be liable for damage resulting from it.

##### Disposition of Copyright by Granting a Right of Exploitation

**44.**—(1) The author may grant to another person a right of exploitation of a copyright work or may entrust him the exercise of copyright by a contract, by giving the authorization for use, or by other legal transaction.



(2) The author may grant to another person a right on the basis of which she/he will be able to use a copyright work in any or in a certain manner (the right of exploitation of a copyright work). The right of exploitation may be granted as an exclusive or a non-exclusive right, limited in terms of content, time or space.

(3) The holder of the exclusive right of exploitation may use a copyright work in a manner, which complies with the content of his right, and exclude any other person, including the author, from such use, unless otherwise provided by this Act. When granting the exclusive right of exploitation, it may be defined that the author reserves the right of use of the copyright work.

(4) The non-exclusive right of exploitation shall entitle its holder to use the copyright work in a manner which complies with the content of his right, but it does not entitle him to prevent other persons from any use of that work.

(5) If the manner of use of a copyright work hasn't been expressly indicated when the right was granted, it shall be considered that the person acquiring the right has acquired a right to use a copyright work in a manner necessary to satisfy the purpose of a legal transaction on the basis of which the right has been acquired. If from the purpose of the legal transaction it cannot be established whether the right was granted as an exclusive respectively a non-exclusive right, limited as to territory, it shall be considered that it was granted as a non-exclusive right for the territory of the Republic of Croatia.

(6) The author shall refrain from acts that would impede the holder of the right of exploitation to exercise his right.

#### Non-Exercise of the Exclusive Right of Exploitation

**45.** If the holder of the exclusive right of exploitation does not exercise his right or exercises it insufficiently, prejudicing thereby legitimate interests of the author, the author may demand revocation of the exclusive right of exploitation. The author shall not have such right, if the holder of the exclusive right of exploitation proves that he is not responsible for the reasons causing the non-exercise of the right.

#### Later Grant of the Exploitation Right

**46.** Later grant of the exploitation right, even the exclusive one, shall not prejudice the earlier granted exploitation right, either exclusive or non-exclusive, unless otherwise provided by a contract on the grant of an earlier right.

#### Transfer of the Right of Exploitation

**47.—(1)** The right of exploitation may be transferred without the author's authorization from one person to another within transfer of the entire business or the part thereof constituting the entirety.



(2) Where the right of exploitation can be transferred without the author's authorization the person acquiring the right of exploitation shall have joint liability for carrying out the obligation which the person transferring such right has in respect of the author.

#### Granting of Further Rights of Exploitation

**48.** The holder of the exclusive right of exploitation may, on the basis of his right, grant to another person further right of exploitation only with the written authorization of the author. The author may not refuse to give his authorization, if it would be contrary to conscientiousness and fairness. The authorization shall not be necessary if the right of exploitation has been granted only for the sake of its exercising for the benefit of the author.

#### Disposition of Copyright by Entrusting the Administration Thereof

**49.**—(1) By entrusting the exercise of copyright the author authorizes other person to exercise it for his account. Copyright may be administered for the account of the author on the basis of a legal transaction by which the author entrusts the administration of his right, or, directly, by virtue of the law, complying with the pre-requisites therefor provided by the law.

(2) It shall be considered that the author has entrusted the administration of his particular right to the collecting society which deals with the respective right, if the society administers such right for his benefit and for the benefit of other authors, their respective rights.

#### Renouncement of Copyright

**50.** The author may not renounce his copyright.

#### 4.2.

#### GENERAL PART OF THE CONTRACTUAL COPYRIGHT

#### Copyright Contracts

**51.** A contract on the basis of which the right of exploitation of copyright (copyright contract) is acquired shall be concluded in a written form, unless otherwise provided by this Act.

#### Content of Copyright Contracts

**52.**—(1) A copyright contract shall specify at least the work it concerns, the manner of use, and the person authorized to use the work (a user).

(2) A copyright contract may also be concluded in respect of a work which is not yet created, provided that it defines the type of the work, the manner of use, and the time limit for the delivery of the future work.



(3) A contractual provision concerning the grant of the right of use of all author's future works shall be null and void.

#### Fixing of the Amount of Remuneration for the Use of a Copyright Work

**53.** If the amount of remuneration has not been fixed by a legal transaction, or if the fixed amount of remuneration is not equitable, or if it has not been fixed under the provision of Article 162 of this Act, the author shall be entitled to equitable remuneration. An equitable remuneration shall be the one that has to be given fairly at the time of concluding a legal transaction, taking account of the type and scope of the use of a copyright work, its financial success in it, the kind and size of the work, the duration of use, the existence of agreement between the relevant associations of authors and the relevant association of users fixing the amount of equitable remuneration, as well as other elements on the basis of which a decision on the amount of equitable remuneration can be made.

#### Right of the Author to Modify a Contract for the Purpose of More Fair Share in the Profit

**54.—(1)** If the profit derived from use of the work is obviously disproportional to the agreed or fixed remuneration, the author shall be entitled to demand the modification of the agreement for the purpose of fixing more equitable share in the profit deriving from the use of his work.

(2) The author may not renounce the right referred to in paragraph (1) of this Article.

#### Application of Regulations on Obligatory Relations

**55.** The provisions of the Law regulating obligatory relations shall apply to all the matters related to copyright contracts which are not regulated by this Act.

### 4.3.

#### SPECIAL PART OF CONTRACTUAL COPYRIGHT LAW

#### 4.3.1.

#### *Publishing Contract*

#### In General about the Contract

**56.—(1)** By a publishing contract the author undertakes to grant to the publisher the right of reproduction of his particular work by printing or other similar process, and the right of distribution of the copies of the work (the right of publication), while the publisher undertakes to publish the work as agreed, and to pay to the author the agreed remuneration, unless otherwise provided by a contract, as well as to take care about a successful distribution of the copies of the work, and to provide the author with the information on the distribution of



his work. A publishing contract shall contain a provision on the duration of the right of publication.

(2) Unless otherwise provided by a publishing contract, it shall be presumed that the publisher has the exclusive right to publish the work.

(3) The presumption referred to in paragraph (2) of this Article shall not apply to the right of publication of Articles for daily or periodical press or publications.

#### Right of Translation and other Rights

**57.** By the contract referred to in Article 56 of this Act, the author may grant to the publisher the right of translating his work in a certain language, and the right to publish such translated work, as well as other economic rights.

#### Verification of Accuracy of Information

**58.**—(1) The author shall have the right to control, at any time, the publisher's business records and documentation, to verify the accuracy of information provided to him by the publisher.

(2) The author shall be authorized to require from the third person who has reproduced the work for the publisher, information concerning the number of copies made of his work, and such person shall be obliged to provide complete and true information to that effect.

#### Exception to the Rule Concerning Obligatory Written Form of a Contract

**59.** A publishing contract relating to the publication of articles, drawings and other author's contributions in daily and periodical press or publications, does not need to be made in a written form (petty publishing contract).

#### Conclusion of Contracts Through an Agent

**60.** An agent of the author may conclude a publishing contract only for such works as are expressly indicated in the author's power of attorney.

#### Fixing the Amount of Royalty

**61.**—(1) If the royalties are fixed as a percentage of the retail price of the copies sold, the publishing contract must specify a minimum number of such copies of the first edition, and a minimum royalties which the publisher has to pay to the author regardless of the number of copies sold.

(2) If the royalties are set as a lump sum, the publishing contract must specify the total number of copies agreed upon to be printed. If this number is not agreed upon, and unless otherwise deriving from fair commercial usage or circumstances of the case, the publisher may publish not more than 500 copies of the work.





### Other Elements of the Contract

**62.** A publishing contract may also contain in particular:

- a time limit within which the author is required to deliver his correct manuscript or other original of the work. Unless otherwise provided by a contract, this time limit shall be one year from the date of the conclusion of the contract;
- a time limit within which the publisher is required to publish the work. Unless otherwise provided by a contract, this time limit shall be one year from the date of delivery of the manuscript or other original of the work;
- the number of the editions which the publisher is authorized to publish. Unless otherwise provided by a contract, the publisher shall have the right to publish only one edition;
- a time limit within which the publisher is required to publish a new edition, if stipulated by a contract. Unless otherwise provided by a contract, this time limit shall be one year from the date of delivery of such written request by the author;
- a provision concerning the ownership over a manuscript or other original. A manuscript or other original shall remain in possession of the author, unless he undertakes to give it to the possession of the publisher by virtue of a contract;
- appearance and design of the copies of the work

### Improvements and other Alterations of the Work

**63.** Unless otherwise provided by a publishing contract, the publisher shall be required to allow the author to make improvements or other alterations to his work when new editions are prepared, provided this does not alter the character of the work.

### Destruction of the Manuscript and of the Prepared Edition

**64.**—(1) If a manuscript of other original of the work is destroyed after its delivery to the publisher, by fault of the publisher or by force majeure, the author shall be entitled to the remuneration that would belong to him if the work had been published. If the author has another copy of the work, he shall deliver it to the publisher, at the publisher's expense.

(2) If a prepared edition of the work is completely destroyed by force majeure before it was put into circulation, the publisher shall be entitled to prepare a new edition, and the author shall have the right to remuneration only for the destroyed edition.

(3) If a prepared edition of the work is partially destroyed by force majeure before it was put into circulation, the publisher shall be entitled to reproduce, without payment of remuneration to the author, only such number of copies as were destroyed.

### Publisher's Priority Right

**65.**—(1) A publisher, who has acquired the right to publish the work, has among other publishers who offer equal terms, the priority right to publish the work in an electronic or any other form.

(2) A publisher who intends to use the right referred to in paragraph (1) of this Article, shall submit his offer to the author, within 30 days as from the date of receipt of the author's written invitation.

(3) The publisher's priority right referred to in paragraph (1) of this Article, shall last until the expiration of a period of two years as from the date of the conclusion of a publishing contract.

### Termination by Rescindment of Publishing Contract

**66.**—(1) The author may demand the rescindment of a publishing contract if the publisher does not publish the work within the stipulated time or does not proceed to publish a new edition within the stipulated time or term determined by law.

(2) If the contract is rescind due to publisher's fault, the author shall have, apart from the right to compensation for damages, the right to keep the remuneration received, or to demand payment of the stipulated remuneration.

(3) A publisher may demand the rescindment of the publishing contract and claim damages, if the author does not deliver to the publisher a manuscript or other original of the work within the time limit stipulated by a contract or by the law.

### Destruction of Copies of the Work

**67.**—(1) A publisher who intends to sell the unsold copies of the work for recycling, or otherwise destroy them, or withdraw them from circulation, he shall first offer the buy off thereof to the author, at the price he would have obtained if copies were sold for recycling. If he fails to do so, he shall incur responsibility for the infringement of moral right of the author.

(2) If the author does not accept the publisher's offer referred to in paragraph (1) of this Article, or accepts to purchase only a certain part of unsold copies, the publisher may sell the remaining copies for recycling.

#### 4.3.2.

### *Performance Contract*

#### In General about the Contract

**68.**—(1) By a contract of performance, an author gives the user the authorization for publicrecitation of the work or public performance of his musical work, in the manner and



under conditions provided by a contract, while the user undertakes to pay to the author a stipulated remuneration for the right acquired, unless otherwise provided by a contract.

(2) Provisions concerning a performance contract shall also apply to broadcasting and rebroadcasting, public communication of a broadcasting, public communication, public transmission and making available to the public of non-stage literary and musical works.

#### Other Obligations of a User

**69.** A user of the work shall be required to allow the author to access the performance of the work, to provide for adequate technical conditions that assure respect of moral rights of the author, and to provide the author or his agent with a list of performed works, and to inform the author of the profit derived from the performance of his work, unless otherwise provided by a contract.

#### Rescindment of Authorization

**70.** The authorization for public recitation, respectively public performance of a musical work, shall be rescinded if the user does not use the work in the manner and under conditions as provided by the authorization.

#### 4.3.3.

#### *Contract on Stage Presentation of the Work*

#### In General about the Contract

**71.—(1)** By a contract on stage presentation, an author grants to the user the right of public stage presentation of a certain work, while the user undertakes to present the work on stage in the manner, within a time limit and under conditions provided by a contract, and to pay remuneration, unless otherwise provided by a contract.

(2) The provisions concerning a contract on stage presentation shall also apply to broadcasting and rebroadcasting, public communication of a broadcasting, public communication, public transmission and making available to the public of stage presentations of the work, as well as public performance of stage works in the non-stage manner.

#### Other Obligations of Users

**72.** The provisions of Articles 69 of this Act shall apply *mutatis mutandis* to the contract on stage presentation of a copyright work.



#### 4.3.4.

#### *Contract on the Creation of Copyright Work Made on Commission*

##### In General about the Contract

**73.** By a contract on the creation of a copyright work on commission, an author undertakes to create a certain work and deliver a copy of such work to the person commissioning the work, while the latter undertakes to pay to the author a stipulated remuneration, unless otherwise provided by the contract.

##### Content of the Contract

**74.**—(1) The contract on the creation of copyright work made on commission shall also specify characteristics, elements and time limits for delivering the commissioned work.

(2) Unless otherwise provided by this Act or by a contract, the copyright in the commissioned work shall be retained by the author without limitations.

#### 4.3.5.

#### *Copyright Works Created in the Framework of Employment Contract*

##### Copyright Work Created in the Course of Employment

**75.** Copyright work created in the course of employment shall, under this Act, mean the work created by an author—an employee in the execution of his duties with a certain employer or following the instructions given by him. The relations with regard to a copyright work created in the course of employment shall be regulated by this Act, by an employment contract or by other act regulating the employment.

##### Rights to Use the Copyright Work Created in the Framework of an Employment Contract

**76.** If copyright works are created in the course of employment, the employment contract shall specify, among other things, whether the employer acquires the right to use the copyright works, and if he acquires it, it shall specify in particular the scope and duration of such right. Unless otherwise provided by this Act, or by an employment contract or by other act regulating employment, the copyright in the work created in the course of employment shall be retained by the author without limitations.

## Chapter 5 Relation Between Copyright and Ownership

### In General

**77.**—(1) Copyright is autonomous and independent from ownership and other property rights in an object on which the work is fixed.

(2) Ownership and other proprietary rights in an object on which a copyright work is fixed shall not be, without the authorization of the holder, exercised contrary to copyright, unless otherwise provided by this Act.

### Independence of Legal Transactions

**78.**—(1) Disposition of copyright shall not affect the ownership in an object on which the work is fixed, unless otherwise provided by the law or a contract.

(2) Disposition of ownership in an object on which the copyright work is fixed, shall not affect the copyright in such work, unless otherwise provided by the law or a contract.

### Destruction of Copyright Work

**79.**—(1) The owner of an original of a copyright work who knows or has reasonable grounds to know that the author or any of the co-authors has a special interest in saving such original from destruction, shall be obliged, before destructing it, to notify them about the destruction and shall offer them to buy off the original at a price equivalent to its real value. Where the return of the original to the possession of the author is not possible, the owner shall allow the author to make a copy of the work in a corresponding manner. If the author does not want to buy off the original, the owner is free to destroy it, but shall, at the author's request, allow him to photograph it before destruction.

(2) The owner of objects containing copies of a copyright work shall not have obligations referred to in paragraph (1) of this Article, unless he knows or have reasonable grounds to know that neither the original nor other copies of that work exist.

(3) The owner of the object on which a copyright work has been fixed without his consent, may destroy the object, without obligations referred to in paragraphs (1) and (2) of this Article.

(4) The provisions set out in paragraphs (1) and (2) of this Article shall not apply to works of architecture. The owner of a work of architecture shall only be obliged to notify the author about the destruction, and shall allow him, at his request, to photograph the work and shall deliver to him a copy of the design of the work.

(5) In respect of alterations of a work of architecture the interests of its owner must be taken into account. The author of a work of architecture shall not oppose to alterations of his work of architecture, which are necessitated by severe reasons such as safety or technical



reasons. Where the work of architecture need reconstruction, his author shall not oppose to the use of other materials, if the materials used in the construction thereof proved to have deficiencies, or if such materials could not be obtained, or if they can be obtained only with disproportionate difficulties or expenses. In such a case the author, where the work is designated by his name, shall be entitled to demand that the owner of the building, beside the name of the author make a note concerning alterations of the work and the time they were made.

(6) If the owner acts contrary to the provisions of this Article, he shall incur responsibility for the infringement of the author's moral rights.

## **Chapter 6**

### **Content Limitations on Copyright**

#### Common Provisions

**80.** Disclosed copyright work may be used without the author's authorization, or without the author's authorization and without payment of remuneration, only in the cases which are expressly stipulated in this Act. The provisions concerning the limitations referred to in this Chapter cover only such uses of a copyright work which do not conflict with regular use of the work and do not unreasonably prejudice the legitimate interests of the author.

#### Temporary Acts of Reproduction of the Work

**81.** Temporary acts of reproduction of the work, which are transient or incidental, and constitute an integral and essential part of a technological process, whose sole purpose is to enable a transmission in a network between third parties by an intermediary, or authorized use of the work, and which have no independent economic significance, shall be excluded from the exclusive right of reproduction referred to in Article 19, paragraph (1) of this Act. The provisions of this Article shall not affect the provisions of Article 97 of this Act.

#### Reproduction of the Work for Private or other Personal Use

**82.** A natural person may reproduce a work in any medium, if he does so for private use, which has no direct or indirect commercial purpose, or if he does so also for other personal use in the form of photocopying and if this copy is not intended for or accessible to the public. It shall not be permitted to reproduce the whole book, unless the copies of such book have been sold out for at least two years, graphic editions of musical works (hereinafter: sheet music), electronic databases, cartographic works, nor the building of architectural structures, unless otherwise provided by this Act or a contract.



### Ephemeral Recordings

**83.**—(1) Broadcasting organization, which has the authorization to broadcast a work, may record it on audio, video or text fixation mediums, by means of its own facilities and for its own needs (ephemeral recordings).

(2) Broadcasting organization is obliged to destroy its ephemeral recordings referred in paragraph (1) of this Article, at the latest one month after such a broadcast, or deposit them in its own or public official archive, where such recordings have particular documentary value.

(3) Ephemeral recordings that are deposited in accordance with paragraph (2) of this Article, may not be rebroadcast without the authorization of the right holder.

### Restrictions for the Benefit of Particular Institutions

**84.** Public archives, public libraries, educational and scientific institutions, preschool educational institutions and social (charitable) institutions pursuing non-commercial purposes may reproduce the work from their own copy to any media in not more than one copy.

### Collections Intended for Teaching or Scientific Research

**85.**—(1) It shall be permitted to reproduce on paper or any similar medium and distribute particular portions (parts) of lawfully disclosed works, or integral short works from the domain of science, literature and music, as well as disclosed individual works of visual arts, architecture, applied arts and industrial design, photographic or cartographic works, and presentations of scientific or technical nature, in the form of a collection which contains contributions of several authors, and which is, by its contents, and systematization exclusively intended for teaching or scientific research, as long as the source is indicated, unless the author expressly prohibits it. Reproduction and distribution of particular parts of copyright works shall not be considered as infringement referred to in Article 16 of this Act, unless the disclosure of particular part would be prejudicial for the honor or reputation of the author.

(2) The authors of the works included in the collection referred to in paragraph (1) of this Article, are entitled to an appropriate remuneration for the reproduction and distribution of their works.

### Use of Copyright Works by Disabled Persons

**86.** The use of copyright works for the benefit of people with a disability shall be permitted, where the work is reproduced in a manner directly related to the disability of such people to the extent required by the specific disability, and where such reproduction is expressly of a non-commercial nature.



### Use of Copyright Works for Judicial, Administrative or Other Official Proceedings

**87.**—(1) It shall be permitted to reproduce a work for the use in judicial, administrative and, except for collections, in arbitration or other official proceedings.

(2) The provisions of paragraph (1) of this Article shall apply *mutatis mutandis* to communication to the public of copies of the works, which are made for the purpose of official proceedings.

### Use of the Works for Teaching

**88.** It shall be permitted to publicly perform a work or to present it at stage in the form of direct teaching or at school events, to the extent justified by the educational purpose thereof to be achieved by such communication, where the tickets are free of charge, where the performers receive no payment (remuneration) for their performance, and where the works are not used for direct or indirect economic or commercial benefit by the educational institution, the organizers or third persons.

### Use of Copyright Works for the Purpose of Informing the Public

**89.**—(1) It shall be permitted, to the extent necessary for informing the public on current events by press, radio or television, to reproduce, to distribute and to communicate to the public:

1. works that are part of current event that is being reported on, provided that the work is used to the extent justified by the purpose and manner of reporting on current events;

2. newspapers' Articles on and photographs of current political, economical or religious topics, which are released through other media of public communication, provided that the author has not expressly prohibited such use, and that the work is used to the extent justified by the purpose and manner of reporting;

3. public political, religious or other speeches made at state or local governmental bodies, religious institutions or at state or religious ceremonies, as well as excerpts from public presentations;

(2) In all the cases referred to in paragraph (1) of this Article, the source and authorship shall be indicated.

### Quotations

**90.**—(1) It shall be permitted to make quotations of excerpts from a work, which has already been lawfully made available to the public for purposes of scientific research, teaching, criticism, polemics, revision, review to the extent justified by the purpose to be achieved and in accordance with fair practice, provided that the source and the name of the author are indicated.





### Reproduction of Works Permanently Located in Public Places

**91.**—(1) It shall be permitted to reproduce the works, which are permanently located on streets, squares, parks or other places that are accessible to the public, and to distribute and communicate to the public such reproductions.

(2) The works referred to in paragraph (1) of this Article may not be reproduced in a three-dimensional form.

(3) The source and authorship shall be indicated on the copies referred to in paragraph (1) of this Article, unless such indication is not possible.

### Reproduction of Architectural Structure

**92.** The provisions referred to in Article 91, paragraph (1) of this Act shall apply only in respect of outer appearance of the architectural structure.

### Posters and Catalogues

**93.**—(1) To organizers of public exhibitions or auctions it shall be permitted, for the purpose of promoting and to the extent necessary for such purpose, to reproduce on posters and in catalogues for such exhibitions or auctions, and to distribute by means of such posters and catalogues the works of visual arts, architecture, applied art, industrial designs and photographic works, which are displayed at a public exhibition or auction or are intended for such display.

(2) In the catalogues referred to in paragraph (1) of this Article, the source and authorship shall be indicated.

### Parodies and Caricatures

**94.** It shall be permitted to transform the work into a parody or caricature to the extent necessary for the purpose thereof, by indicating the work being transformed and its author.

### Use of the Work for the Purpose of Presentation and Testing of Equipment

**95.** Shops which sell phonograms or videograms, or equipment for audio and video reproduction or reception, shall be allowed to record the works on audio, video or text fixation mediums, to communicate the works from such mediums, as well as to communicate the broadcast works, to the extent necessary for presenting to direct buyers or for testing the functioning of phonograms or films or for the reparation thereof.

### Erasure of Recordings

**96.** The recordings made by virtue of the provision referred to in Article 95 of this Act shall be erased without delay.



### Use of a Database

**97.**—(1) A lawful user of a database or of a copy thereof shall be allowed to perform all acts of using , if this is necessary for the access to the content of the database and its normal use.

(2) If a user is authorized only in respect of a part of the database, he shall be allowed to reproduce and alter only that part.

(3) Any contractual provision contrary to the provisions of paragraphs (1) and (2) of this Article shall be null and void.

### Obligations of the Right Holder

**98.**—(1) Where the use of a work without the author's authorization is allowed under Articles 82—87 of this Act, and where the use of the work or the access to it are prevented by the application of technological measures referred to in Article 175 of this Act, the authors respectively other persons , who applied such measures or who are authorized or have a possibility to remove them, shall be obliged, by providing special measures or concluding contracts, enable the users or their societies access to such works and the use thereof in accordance with the limitations referred to in Articles 82—87 of this Act. The provisions of this paragraph shall not apply to computer programs.

(2) If the right holders or other persons referred to in the previous paragraph fail to comply with the provisions laid down in paragraph (1) of this Article, the works shall be used by the application of measures, which shall be provided by the Minister competent for the State Intellectual Property Office (hereinafter: the Minister).

(3) The technological measures applied voluntarily by right holders under this Act, including those applied in implementation of voluntary agreements, and technological measures applied in implementation of measures referred to in paragraphs (1) and (2) of this Article shall enjoy the legal protection under Article 175 paragraph (1) of this Article.

(4) The provisions referred to in paragraphs (1) and (2) of this Article shall not apply to works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

## Chapter 7 Time Limitations of Copyright

### General Provision on Duration of Copyright

**99.** Copyright shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully disclosed, unless otherwise provided by this Act.



#### Term of Copyright for Co-Authors' Work

**100.**—(1) If the co-authors referred to in Article 11 of this Act are the holders of joint authorship in the created work, the term referred to in Article 99 of this Act shall be calculated from the death of last surviving co-author.

(2) For audiovisual works, the term referred to in Article 99 of this Act shall be calculated from the death of the last of the following persons to survive: the principal director, the author of the screen play, the author of the dialogue, and the composer of music specifically created for use in the audiovisual work.

#### Term of Copyright for Anonymous Work

**101.** Copyright in anonymous works shall run for 70 years after the work is lawfully disclosed. If the author discloses his identity during such period, the term of protection set out in Article 99 of this Act shall apply.

#### Term of Copyright for Pseudonymous Work

**102.** Copyright in pseudonymous works shall run for 70 years after the work is lawfully disclosed. Where a pseudonym leaves no doubt as to the identity of the author, the term of protection set out in Article 99 of this Act shall apply.

#### Term of Copyright for the Work Disclosed in Series

**103.** Where a work is disclosed in volumes, parts, installments, issues or episodes and the term of protection runs from the time when the work was lawfully disclosed, the term of protection shall run for each such item separately.

#### Term of Copyright for Undisclosed Work

**104.** Where the term of protection is not calculated from the death of the author, and where the work is not lawfully disclosed, the copyright shall terminate within seventy years from the creation of the work.

#### Calculation of Terms

**105.** Terms of copyright laid down in this Act shall be calculated from the first day of January of the year following the year in which the relevant event has occurred.

#### Effects of Expiration of Terms

**106.**—(1) By the termination of copyright, a copyright work shall become the public good, and may be used freely, with the obligation of recognizing authorship, paying respect to the work, and to the honor or reputation of the author.



(2) Against those who do not comply with the obligation referred to in paragraph (1) of this Article the author's heirs, the associations of the authors the author belonged to, other persons having legal interest in it and the Croatian Academy of Arts and Science, shall be entitled to demand the termination of infringement of such obligation.

## Chapter 8 Special Provisions for Computer Programs and Audiovisual Works

### 8.1.

#### SPECIAL PROVISIONS FOR COMPUTER PROGRAMS

##### Subject Matter of Protection

**107.** A computer program, under this Act, shall be protected as the work of language if it is original in the sense that it is the author's own intellectual creation. The term "computer program" shall comprise the expression of a computer program in any form, including its preparatory design material. Ideas and principles, which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright.

##### Computer Program Created in the Course of Employment

**108.** If a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all the economic rights in the program so created, unless otherwise provided by a contract.

##### Right of the Author of Computer Program

**109.—(1)** The author of a computer program shall have, according to the provisions of Chapter 3, Title II of this Act, the exclusive right to do or to authorize:

1. the permanent or temporary reproduction of a computer program by any means and in any form, in part or in whole; this includes loading, displaying, running, transmission or storage of a computer program which necessitate its reproduction;
2. the translation, adaptation, arrangement and any other alteration of a computer program, and the reproduction of the results thereof, without prejudice to the right of the person who alters the program;
3. any form of distribution of the original or copies of a computer program, including the rental thereof.

(2) The provisions of Articles 17, 32 and 82 of this Act shall not apply to computer programs. Computer programs shall not be subject to public lending, unless otherwise provided by a contract.

### Exceptions

**110.**—(1) In the absence of specific contractual provisions the acts referred to in Article 109, paragraph (1), items 1 and 2 of this Act, shall not require authorization by the rightholder, where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including for error correction.

(2) The making of a back-up copy by a person having a right to use the computer program may not be prevented by a contract insofar as it is necessary for that use.

(3) The person having a right to use a copy of a computer program shall be entitled, without the authorization of the author, to observe, study or test the functioning of a program in order to determine the ideas and principles that underlie any element of the program, if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(4) Any contractual stipulation contrary to the provisions of paragraphs (2) and (3) of this Article shall be null and void.

### Decompilation

**111.**—(1) If the reproduction of the code and translation of its form, according to the provision of Article 109, paragraphs (1) and (2) of this Act, are indispensable to obtain the information necessary to achieve the interoperability of an independently created program with other programs, the authorization of the right holder shall not be required, provided that:

1. these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf, by a person authorized to do so,

2. the information necessary to achieve interoperability has not previously been readily available to the persons referred to in item 1 of this paragraph, and

3. these acts are confined only to those parts of the original program which are necessary to achieve interoperability.

(2) Information obtained through application of the provisions of paragraph (1) of this Article may not be:

1. used for goals other than to achieve the interoperability of the independently created computer program;

2. transferred to other persons, except when necessary for achieving the interoperability of the independently created program; or

3. used for the development, production or marketing of another program substantially similar in its expression, or for any other act that infringes copyright.



(3) The provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner that unreasonably prejudices legitimate interests of the right holder or conflicts with a normal use of the computer program.

(4) Any contractual provision contrary to the provisions of this Article shall be null and void.

#### Special Measures of Protection

**112.** Infringements of the rights in a computer program shall constitute, in particular:

1. any act of distribution of a copy of a computer program, knowing, or having reason to believe, that it is an infringing copy;

2. the possession, for commercial purposes, of a copy of a computer program, knowing, or having reason to believe, that it is an infringing copy;

3. any act of distribution, or the possession for commercial purposes, of any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of a technical device serving as protection of a computer program.

#### Continued Application of Other Legal Provisions

**113.** The provisions of this Act regarding the protection of computer programs shall be without prejudice to any other legal provisions, such as those regulating the protection of inventions by patents, protection of layout designs of semi-conductor products, trademarks, unfair competition, protection of trade secrets or contractual obligations.

### 8.2.

#### SPECIAL PROVISIONS FOR AUDIOVISUAL WORKS

##### Audiovisual Works

**114.** Audiovisual works, under this Act, are cinematographic, television, documentary, animated, advertising or other films, and other audiovisual works expressed by sequence of images giving the impression of movement, with or without a sound, irrespective of the type of the medium on which they are fixed.

##### Audiovisual Adaptation

**115.—(1)** The right of adaptation of a copyright work into an audiovisual work (the right of audiovisual adaptation) shall be acquired by a contract on audiovisual adaptation. Unless otherwise provided by the contract it shall be considered that the exclusive right of audiovisual adaptation has been acquired.

(2) If the right of adaptation of a copyright work has been acquired as the exclusive right, the author of the adapted work shall retain:

1. the exclusive right of new audiovisual adaptations of the adapted work, which he may exercise after the expiration of twenty years from the conclusion of the contract referred to in paragraph (1) of this Article;
  2. the exclusive right of further alteration of the audiovisual work into any other artistic form;
  3. the right to an equitable remuneration for any rental of a videogram containing the adapted work.
- (3) The author cannot renounce the right referred to in paragraph (2) of this Article.

#### Co-Authors of Audiovisual Work

**116.**—(1) As co-authors of an audiovisual work shall be considered:

1. the principal director,
2. the author of screenplay,
3. the author of dialogue,
4. the principal cameraman,
5. the composer of music specifically created for use in such work.

(2) If a drawing or animation represents an essential element of an audiovisual work, the principal drawer respectively the principal animator shall be considered as a co-author of that work.

(3) If another natural person proves that his original intellectual creation is an essential part of the audiovisual work and that he would be recognized as a co-author of that work under the general rules, this person will be recognized as a co-author of the audiovisual work.

#### Authors of Contributions to Audiovisual Work

**117.** A music composer, a principal drawer or a principal animator, who is not considered the co-author of an audiovisual work according to the provision laid down in Article 116 of this Act, a scenographer, a costume designer, a face makeup artist, an editor and other authors that participate in the creation of an audiovisual work, shall have the copyright in their individual contributions (authors of contributions).

#### Contract on Audiovisual Production

**118.**—(1) A contract on audiovisual production regulates the relations between the film producer, the co-authors of an audiovisual work and the authors of contributions thereof, as well as the relations between the authors of an audiovisual work.

(2) Unless otherwise provided by the contract on audiovisual production between the film producer and the authors of contributions, it shall be considered that the film producer



acquires all the economic rights of such authors to the extent necessary to fulfill the purpose of the contract.

(3) If the co-authors have entrusted their right of rental to the film producer by the contract referred to in paragraph (1) of this Article, they shall retain the right to an equitable remuneration for the rental of an audiovisual work.

(4) Notwithstanding the provisions laid down in paragraph (2) of this Article, the authors of contributions shall retain the right to use individually their contributions to an audiovisual work, provided that the rights of film producers are not prejudiced thereby.

(5) Co-authors of an audiovisual work cannot renounce the rights referred to in paragraph (3), and authors of contributions cannot renounce the rights referred to in paragraph (4) of this Article.

(6) The provisions of Article 17, Article 47, paragraph (1), and Article 48 of this Act shall not apply to audiovisual works.

#### Report on Remuneration for Rights to Audiovisual Work

**119.** The film producer of an audiovisual work must at least once a year submit to the co-authors a report on the profits for each form of use of the work.

#### Completed Audiovisual Work

**120.**—(1) An audiovisual work shall be deemed completed when, according to the agreement between the principal director and the film producer, the first standard copy of the work, which is the subject matter of the contract on production, is finished.

(2) The destruction of the master of the first standard copy of the audiovisual work shall be prohibited.

(3) If any of the co-authors or authors of contribution refuses to continue to collaborate in creation of the audiovisual work, or if he is unable to continue to collaborate due to force majeure, he may not oppose to the use of his contribution already made, for the purpose of completion of such work. Such author shall have respective copyright as to the contribution to the audiovisual work he has already made.

#### Rescinding of Contract

**121.**—(1) If the film producer of an audiovisual work does not complete the work within five years from the conclusion of the contract on the audiovisual production of such work, or if he does not distribute the completed work within two years from the time of its completion, the co-authors may demand that the contract be rescinded, unless any other term has been stipulated in the contract.

(2) In the case referred to in paragraph (1) of this Article, the co-authors and authors of contributions retain the right to obtain remuneration.





### III. RELATED RIGHTS

#### Chapter 1 Rights of Performers

##### Performers

**122.** Performers are actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore. A director of theatrical performance and a conductor of an artistic ensemble shall be also deemed performers.

##### Representative of an Artistic Ensemble

**123.—**(1) Performers who are members of an artistic ensemble may authorize, in a written form, one of their members or a third person to represent them in the exercise of their performer's right.

(2) The authorization referred to in paragraph (1) of this Article shall require the consent of the majority of members of an artistic ensemble, unless otherwise provided in the internal rules of the ensemble. It shall be deemed that performers who are not members of an ensemble but participate in a particular performance of that ensemble also have given their consent.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to conductors, soloists, directors of theatrical performances and players of leading roles, who are not members of the ensemble, unless otherwise agreed between them and the artistic ensemble.

##### Moral Rights of Performers

**124.—**(1) A performer shall have the right to be recognized and indicated as such, respectively to decide whether his name, or other indication of his identity will be indicated at the time his performance is used.

(2) A person who publicly uses a performance shall at any use indicate a performer, except where the performer declares in a written form that he does not want to be indicated as such.

(3) A performer shall be deemed a person whose name, pseudonym, artist's mark or code is regularly indicated on the copies of a performance or at its disclosure, until proven to the contrary.



(4) A performer shall have the right to oppose to any destruction, distortion, mutilation or similar modification of his performance, and any use of the performance, which is or might be prejudicial to his honor or reputation.

#### Exclusive Economic Rights of Performers

**125.** A performer shall have the exclusive right:

1. to fix his unfixed performance;
2. to reproduce his fixed performance;
3. to distribute, including the rental, of his fixed performance;
4. to communicate to the public his unfixed and fixed performance including in particular :
  - the right of broadcasting and rebroadcasting
  - the right of public communication of fixed performances and broadcasting
  - the right of public transmission
  - the right of public presentation
  - the right of making available to the public

#### Right to Remuneration for Rental

**126.** A performer, who entrusts his rental right to a producer of phonograms or to a film producer, shall retain his right to an equitable remuneration for the rental of his fixed performance. The performer may not renounce the right to an equitable remuneration. A remuneration for the rental shall be paid by the person renting the performance.

#### Remuneration for Broadcasting and Public Communication of a Performance

**127.—(1)** A performer shall be entitled to a share in a single equitable remuneration for broadcasting and any other communication to the public of his fixed performance.

(2) The single equitable remuneration referred to in paragraph (1) of this Article consists of individual remunerations which belong to the performers and the producers of phonograms.



### Right to Remuneration

**128.**—(1) A performer shall be entitled to an equitable remuneration for any audio or audiovisual recording of his fixed performance for private or other personal use, as referred to in Article 32, paragraph (1) of this Act.

(2) A performer shall be entitled to an equitable remuneration, where his fixed performance in respect of which further distribution is allowed is lent by intermediary of public libraries. The provisions of Article 33 paragraphs (2) and (4) of this Act shall apply *mutatis mutandis* to such right.

### Use of Performance for Completion of Audiovisual Work

**129.** If a performer refuses to complete his performance in an audiovisual work, or if he is unable to do so due to force majeure, he may not oppose to the use of his performance already made, for the purpose of completion of such audiovisual work. Such a performer shall have respective rights as to the contribution he has already made.

### Performance Given in the Framework of an Employment Contract

**130.**—(1) A performance made in the course of employment shall, under this Act, mean a performance given by a performer—an employee in the execution of his duties with a certain employer or following the instructions given by him. The relations in respect to a performance given in the course of employment shall be regulated by this Act, by an employment contract, or any other act regulating employment.

(2) If a performance is given in the course of employment, the employment contract shall specify, among other things, whether the employer acquires the right to use the performance, and if it acquires it, it shall specify in particular, the scope and duration of such right. Unless otherwise provided by this Act, or by an employment contract or by other act regulating employment, the performer's right in the performance shall be retained by the performer without limitations.

### Duration of Rights

**131.** The economic rights of a performer shall run for 50 years as from the date of the performance. If, within this term, a fixation of the performance has been lawfully published or lawfully communicated to the public, the rights shall run for 50 years as from the date of the first such publication or from the first such communication to the public, whichever occurred earlier.



## Chapter 2 Right of Producers of Phonograms

### Definitions

**132.**—(1) A phonogram shall mean the fixation of the sounds of a performance or of other sounds or of representations of sounds, other than in the form of fixations incorporated in audiovisual works. Fixation, within the meaning of this Article, shall mean the embodiment of sounds, or of the representations thereof, in a medium from which they can be listened, reproduced or communicated through a device. The rights in a phonogram are not in any way limited with its embodiment in a videogram.

(2) Producer of a phonogram, under this Act, is a natural or a legal person, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds or of the representations of sounds. It shall be considered that the producer of a phonogram is the one whose name respectively company name is indicated as the holder of the rights of phonogram producers on the phonogram.

### Rights of the Producers of Phonograms

**133.**—(1) A producer of phonograms shall have the exclusive right:

1. to reproduce his phonograms;
2. to distribute his phonograms, including the rental, but except the right under Article 20 paragraph (5);
3. to make available to the public of his phonograms.

(2) Disposition with the rights of phonogram producers shall be free. The right of phonogram producers shall in no way prejudice the copyright and the right of performers.

### Right to Remuneration for Public Lending

**134.** A producer of phonograms shall have the right to an equitable remuneration for lending of his phonograms respectively the copies thereof, by intermediary of public libraries.

### Right to Remuneration for Broadcasting and Public Communication of Phonograms

**135.**—(1) A producer of phonograms shall be entitled, in accordance with the provision laid down in Article 127, paragraph (2) of this Act, to a share in a single equitable remuneration for broadcasting and any other communication to the public of his phonograms published for commercial purposes.



Right to Remuneration for Reproductions of Phonograms  
for Private or other Personal Use

**136.** A producer of phonograms shall be entitled to an equitable remuneration for each audio recording of his phonograms for private or other personal use, as referred in Article 32, paragraph (1) of this Act.

Duration of Rights

**137.** The rights of a producer of phonograms shall run for 50 years as from the date of the first fixation of a phonogram. If the phonogram is lawfully published during this period, the rights shall run for 50 years as from the date of the first such publication. If the phonogram is not published during this period but is lawfully communicated to the public, the rights shall run for 50 years as from the date of the first such communication to the public.

**Chapter 3**  
**Rights of Film Producers (Rights of Producers of Videograms)**

Film Producer and a Videogram

**138.—(1)** A film producer (a producer of videograms), under this Act, is a natural or legal person, who or which in its own name takes the initiative, raises funds, organizes and takes the responsibility for making of the first fixation of an audiovisual work, as well as of sequences of moving images accompanied by sound or without sound (videogram). A film producer shall be deemed the one whose name or company name is regularly indicated as the holder of the rights of the videogram producer on a videogram, until proven to the contrary.

(2) A videogram shall be, under this Act, a fixation of an audiovisual work, as well as of a sequence of moving images accompanied by sound or without sound.

Rights of Film Producers

**139.—(1)** A film producer, in respect of copies of his videogram shall have the exclusive right of:

1. reproduction;
2. distribution, including the right of rental, except the right under Article 20(5);
3. public presentation;
4. making available to the public.

(2) Disposition with the right of the film producer shall be free. The right of film producers shall in no way prejudice the copyright, the right of performers and the right of phonogram producers.



### Right to Remuneration for Public Lending

**140.** A film producer shall be entitled to an equitable remuneration for the lending of videograms by intermediary of public libraries.

### Right to Remuneration for Reproductions of Videograms for Private or other Personal Use

**141.** A film producer shall be entitled to an equitable remuneration for any audio and visual reproduction of his videograms for private and other personal use, as referred in Article 32, paragraph (1) of this Act.

### Duration of Rights

**142.** The rights of film producers shall run for 50 years as from the date of the first fixation of a videogram. If the videogram is lawfully published or lawfully communicated to the public during this period, the rights of the film producer shall run for 50 years as from the date of the first such publication or the first such communication, whichever occurred earlier.

## Chapter 4 Right of Broadcasting Organizations

### Rights of Broadcasting Organizations

**143.—(1)** A broadcasting organization shall have the exclusive right:

1. to rebroadcast its broadcasts by wire or wireless means;
2. to fix its broadcasts;
3. to reproduce its fixed broadcasts;
4. to distribute its fixed broadcasts, except their rental and lending;
5. to publicly communicate its broadcasts if such communication is accessible to the public against payment of an admission;
6. to make available to the public of its fixed broadcasts.

(2) A cable distributor who merely retransmits by cable the broadcast of broadcasting organizations is not a broadcasting organization under the provisions of this Chapter.

(3) Disposition with the right of broadcasting organizations shall be free. The right of broadcasting organizations shall in no way prejudice the copyright, the right of performers nor the right of film producers.



### Duration of Rights

**144.** The rights of broadcasting organizations shall run for 50 years counting from the date of the first broadcast irrespective of whether it is by wire or wireless means.

## **Chapter 5 Rights of Publishers in their Editions**

### Right to Remuneration for Reproduction of its Written Editions for Private or other Personal Use

**145.**—(1) The publishers shall have an own right to a remuneration for any reproduction of their written editions for private and other personal use, equal to the right of the author to a remuneration as referred in Article 32, paragraph (2) of this Act.

(2) The right to a remuneration referred to in paragraph (1) of this Article shall run for 50 years as from the date of the lawful publication of the work, and may be freely disposed with.

### Right in the First Edition of Undisclosed Free Works

**146.**—(1) A person who for the first time lawfully publishes or communicates to the public still undisclosed work in which the copyright has expired, shall enjoy the right equal to the economic rights of the author under this Act.

(2) The right referred to in paragraph (1) of this Article shall run for 25 years as from the date of the first lawful publication of the work, or its communication to the public, and may be freely disposed with.

## **Chapter 6 Rights of Producers of Databases**

### Database, Producer of Databases

**147.**—(1) A database, under this Chapter of the Act, shall mean a collection of independent works, data or other materials in any form, arranged in a certain systematic or methodical way and individually accessible by electronic or other means, whereby either the obtaining, verification or presentation of its contents requires a qualitatively and/or quantitatively substantial investment in terms of resources, time and efforts engaged.

(2) A producer of database is a natural or legal person, who or which takes the initiative and risk of the investment referred to in paragraph (1) of this Article.

(3) The protection of a database shall be independent of its protection by copyright or any other right.

(4) Disposition with the right of the producers of databases shall be free. The right of the producers of databases shall in no way prejudice the copyright, the right of performers, the right of producers of phonograms, the right of film producers, nor the right of broadcasting organizations.

#### Subject Matter of Protection

**148.**—(1) A subject matter of protection shall, according to the provisions of this Chapter, include:

1. the whole contents of a database;
2. any qualitatively and/or quantitatively substantial part of the contents of a database;
3. qualitatively and/or quantitatively insubstantial parts of the contents of a database, when these parts are used repeatedly and systematically, which conflicts with a normal use of the database or which unreasonably prejudice the legitimate interests of the producer of the database.

(2) The protection regulated by this Article shall not apply to computer programs used in the making of databases, or for the operation of databases, which are accessible by electronic means.

#### Rights of Producers of Databases

**149.**—(1) Producer of a database shall have the exclusive right to do or to authorize:

1. reproduction of his database;
2. distribution of copies of his database, including the rental thereof, except the right under Article 20 paragraph (5) of this Act, and excluding any form of public lending;
3. making available to the public of his database;
4. other forms of communication to the public of his database.

(2) The exhaustion of the distribution right extends only to the resale.

#### Exceptions

**150.** An authorized user of a disclosed database may, without the authorization of its producer, use the substantial parts of its contents in the case:

1. referred to in Article 149, item 1 of this Act for private use of a non-electronic database;
2. referred to in Article 149, item 1 of this Act for use intended for teaching or scientific research, provided that the source is indicated and to the extent justified by the non-commercial purpose;





3. referred to in Article 149, items 1, 2, 3, and 4 of this Act for use required for public safety, or for administrative or judicial proceedings.

#### Rights and Obligations of Authorized Users

**151.**—(1) An authorized user of a database, which is made available to the public may not be prevented to use insubstantial parts of its contents for any purposes. Where the authorized user is authorized to use only a part of the database, this paragraph shall apply only to that part.

(2) An authorized user of a database which is made available to the public may not perform acts which conflict with a normal use of that database, or which unreasonably prejudice the legitimate interests of its producer.

(3) An authorized user of a database made available to the public may not cause prejudice to the holder of a copyright or related right in respect of the works or subject matter contained in that database.

(4) Contractual provisions, which are contrary to paragraphs (1), (2) and (3) of this Article shall be null and void.

#### Duration of Rights

**152.** Rights of the producer of a database shall run for 15 years as from the date of the completion of the making of the database. If the database is lawfully made public during this period, the rights shall run for 15 years as from the first such disclosure.

#### Duration in Case of Substantial Change

**153.** Any qualitative or quantitative substantial change of the contents of a database, which is a qualitative or quantitative substantially new investment in contents of the database, shall result with a new term of protection referred to in paragraph (1) of this Article. A substantial change of the contents a database shall also include gradual additions, deletions and modification of the database.

### IV.

#### ADMINISTRATION OF RIGHTS

##### Activity Related to the Exercise of Copyright and Related Rights

**154.**—(1) The exercise of copyright respectively related rights (hereinafter: administration of rights) shall include the following tasks, in particular:

– giving authorizations for the use of the subject matter of copyright and related rights (subject matters of protection), where this authorization is required by the law;



- collecting of remunerations for the use of the subject matter of protection, where used in consideration of remuneration;
- distributing of collected royalties among the right holders;
- supervising the use of the subject matter of protection;
- initiating and carrying out protection proceedings in the case of infringement of rights having been exercised;

(2) The exercise of rights may include all or some of the activities referred to in paragraph (1) of this Article.

#### Individual Exercise of Rights

**155.**—(1) The exercise of rights that relates to an individual use of a subject matter of protection, in accordance with the respective contract between the right holder and the user of the subject matter of protection, shall be exercised by the right holder himself or through a representative.

(2) The tasks of an authorized representative may be exercised by an attorney at law, a specialized legal person for the administration of copyright and related rights, and a society referred to in Article 157 of this Act.

(3) A specialized legal person referred to in paragraph (2) shall be a company, which shall have at least one employee, having a degree of the faculty of law.

#### Collective Administration of Rights

**156.**—(1) Collective administration of rights may include the following:

1. Rights of authors:

*a.* right of public performance, right of public transmission, right of public communication of a fixed work, right of broadcasting, right of rebroadcasting, right of public communication of a broadcasting and right of making available to the public of non-stage musical and literary works;

*b.* right of reproduction (audio recording) of musical works;

*c.* right of distribution, including the right of rental and the right to a remuneration referred to in Article 20 paragraph 5 of this Act;

*d.* right to a remuneration for public lending;

*e.* droit de suite when the original works of art are being resold;

*f.* right to remuneration for reproduction of a work for private or other personal use;

*g.* right to a remuneration referred to in Article 85 paragraph (2) of this Act;



*h.* right to a remuneration for communication to the public of folk literary and artistic creations.

2. Right of performers:

- a.* right of public communication of a fixed performance and broadcastings;
- b.* right of public presentation of a fixed performance;
- c.* right of broadcasting and rebroadcasting of a fixed performance;
- d.* right of making available to the public of a fixed performance;
- e.* rental right of a fixed performance, and the right to a remuneration referred to in Article 20 paragraph (5) of this Act;
- f.* right to a remuneration for public lending of a fixed performance;
- g.* right to a remuneration for reproduction of a fixed performance for private or other personal use.

3. Rights of producers of phonograms:

- a.* right of making available to the public of a phonogram;
- b.* right to a remuneration for broadcasting and public communication of a phonogram;
- c.* right of rental of a phonogram;
- d.* right to a remuneration for public lending of a phonogram;
- e.* right to a remuneration for reproduction of a phonogram for private or other personal use.

4. Rights of film producers:

- a.* right to a remuneration for public lending of a videogram;
- b.* right to a remuneration for reproduction of a videogram for private or other personal use.

5. Rights of publishers:

- a.* right to a remuneration for reproduction of his written editions for private or other personal use.

(2) The right of broadcasting and rebroadcasting referred to in paragraph (1), items *1a)* and *2c)*, the right to a remuneration for broadcasting referred to in paragraph (1) item *3b)* the rental right referred to in items *1c)*, and where it regards recorded musical works, *2e)* and *3c)*, the right to a remuneration for public lending referred to in items *1d)*, *2f)*, *3d)* and *4a)*, and the right to a remuneration for reproduction for private and other personal use referred to in items *1f)*, *2g)*, *3e)*, *4b)*, *5a)*, shall be administered only through a collecting society.



(3) The provisions referred to in paragraph (2) of this Article shall not apply to cable retransmission, where it concerns the broadcasting organization in respect of their own transmissions, irrespective of whether the rights concerned are their own or have been transmitted to them by other holders of copyright and related rights.

#### Collecting Societies

**157.**—(1) Collective administration of rights may be carried out by a society of the right holders, which has the authorization granted by the State Intellectual Property Office (hereinafter: the Office) for performing such activity.

(2) The authorization referred to in paragraph (1) of this Article shall be granted by the Office to a society which:

- a. has its principle place of business in the Republic of Croatia;
- b. has adequate premises, equipment and technical service with at least one employee with a degree of the Faculty of Law;
- c. is engaged in the administration of rights as its only activity, unless its other engagements relate to the cultural or art activities, and to the activities aiming at professional or social interests of its members.

(3) A collecting society shall administer the rights in its own name and for the account of the right holders.

#### Exercise of Rights Through the Society

**158.**—(1) A collecting society may administer one, two or more kinds of rights that usually relate to a particular category of the holders of copyright or related rights.

(2) A collecting society may entrust certain kind of tasks regarding the administration of rights to some other society referred to in Article 157, paragraph (1) of this Act, in the form of a written contract. The entrusted society shall administer the rights in the name and for the account of the originally engaged collecting society, or it administers the rights in its own name and for the account to the originally engaged collecting society.

(3) A collecting society may entrust the administrative, technical or accessory works to another natural or legal person, in the form of a written contract.

#### Authorization for the Administration of Rights

**159.**—(1) The collective administration of rights referred to in Article 156 of this Act, with respect to the same category of right holders can be entrusted by the Office to one collective society only, and that to a society to which the most right holders have given their powers of attorney for the administration of their rights, and which has the most contracts on mutual representations with foreign collective societies, all in accordance with the professional criteria referred to in Article 169, paragraph (2) of this Act.



(2) It shall be presumed that the society referred to in paragraph (1) of this Article has powers of attorney of all domestic and foreign right holders of a respective category, unless a right holder has explicitly notified the society, in a written form, not to administer his rights.

(3) A collecting society shall inform a user, upon his request, of the right holders whose rights it does not administrate based on the notification referred to in paragraph (2) of this Article.

#### Authorization for Use

**160.**—(1) A natural respectively a legal person shall, prior to starting to use the subject matter of protection, submit to a competent collecting society a request for the authorization of such use. The request shall include information on the type and circumstances of the use (such as manner, place and time of the use, and other information required for establishing the amount of remuneration).

(2) The collecting society shall give to a user its authorization for the use of the subject matter of protection for the administration of which it has been authorized. The authorization shall include the indication of the types of rights to which it applies, conditions of use in terms of manner, place and time, and the amount of remuneration for the use, where the use is subject to payment of remuneration.

(3) A user shall submit to a collecting society, without delay, the information relating to any change of circumstances of such use or of its termination, in order to change the conditions or to withdraw the authorization.

(4) A natural or a legal person who or which enables the use of her or its premises to another person who uses subject matters of protection in such space, shall check whether that person has the corresponding authorization for the use of the subject matter of protection. Where a natural or a legal person has enabled the use of her or its premises to a person having not such authorization, knowing or having reasons to know that subject matters of protection will be used in such premises shall be jointly and severally liable to pay a corresponding remuneration for the use of the subject matter of protection.

#### Collecting of Information

**161.** In case of insufficient information on or an unauthorized use of the subject matter of protection, the competent governmental bodies or other legal entities, shall submit the information from their own evidences that relate to the administration of rights under this Act to the collecting societies, at their request.

#### Remuneration for the Use of Subject Matters of Protection

**162.**—(1) A remuneration for the use of the subject matter of protection shall be regulated by a contract between a collecting society and a user of the subject matter of protection, or between a collecting society and a society of users respectively their chamber.



(2) If the remuneration is not fixed in accordance with paragraph (1) of this Article, it shall be paid according to the tariffs adopted by a collecting society.

(3) Collecting societies shall, prior to adopting their tariffs, submit the proposal thereof for consideration to and the declaration by the Croatian Chamber of Commerce, the Croatian Chamber of Trade (hereinafter referred to as: the Chambers) and the associations of broadcasting organizations gathering the majority of users of subject matters of protection (hereinafter: the Associations of Broadcasting Organizations).

(4) If the Chambers and Associations of Broadcasting Organizations fail to furnish a written declaration to a collecting society within 30 days, it shall be deemed that they do not oppose to the proposed tariffs.

(5) If a collecting society does not accept or only partially accepts the objections of the Chambers, and Associations of Broadcasting Organizations it shall, within 15 days of delivery of such written objections, request from the Council of Experts on Royalties for Copyright or Related Rights (hereinafter referred to as: the Council of Experts) for their respecting opinion. The Council of Experts shall, within 30 days of delivery thereof, render its opinion.

(6) Until the procedure for adopting the tariffs referred to in paragraphs (3), (4) and (5) of this Article is completed, the royalties shall be paid as an advance payment in accordance with the approved tariffs or the proposed tariffs if the tariffs for particular subject matter of protection are not approved.

(7) The opinion of the Council of Experts referred to in paragraph (5) of this Article shall contain its evaluation of whether the tariffs relate to the rights for which a collecting society has the authorization for the administration granted by the Office, and whether the royalties conform to the fundamental principles referred to in Article 165 of this Act. If the Council of Experts fails to give its opinion within the period referred to in paragraph (5) of this Article, it shall be deemed that it agrees with the proposed tariffs.

(8) After the completion of the procedures referred to in this Article, the tariffs shall be made public in the Official Gazette of the State Intellectual Property Office.

### Mediation

**163.**—(1) The Council of Experts shall also act as a mediator between the broadcasting organizations and cable operators in the cases of conclusion of the contracts on cable retransmission.

(2) If the broadcasting organization and a cable operator fail to agree on the contents of the contract on cable retransmission of a broadcast of such broadcasting organization, each of the mentioned parties may call upon the mediation of the Council of Experts in respect of the conclusion of this contract. The Council of Experts will, as a mediator in negotiations, assist the parties to achieve the agreement. The Council of Experts shall be authorized to submit proposals to the parties concerning the regulation of their mutual relations. The proposals shall be submitted in person, or by registered mail. If none of the parties expresses its opposition by a registered mail within three months as from the receipt of the proposal, it



shall be considered that both parties accept such proposal, and shall include it in the contract on cable retransmission.

(3) The broadcasting organization and the cable operator shall enter, conduct and finish negotiations regarding a contract on cable retransmission in good faith. They shall be liable for any abuse of negotiations or negotiating positions, or their rights in compliance with the general legal regulations.

#### Structure and Responsibilities of the Council of Experts

**164.**—(1) The Council of Experts shall consist of a president and four members. They shall be appointed by the Government of the Republic of Croatia, on the proposal given by the minister, for the period of four years. A president and the members shall be selected from among the renowned experts, who may contribute to the achievement of objectives of the Council of Experts owing to their accomplishments so far and expertise in issues related to the implementation of copyright and related rights.

(2) The minister shall initiate the procedure of election of the president and members, by a public invitation.

(3) If the minister considers the proposed candidates as not adequate to assure the appropriate structure of the Council of Experts, he may repeat the election procedure.

(4) The Council of Experts renders its opinions on a session by the majority of votes of all its members.

(5) The Council of Experts may, prior to delivering its opinions, invite other competent persons having expertise in certain issues, to attend the sessions, without the right to vote. The sessions of the Council of Experts may also be attended, without the right to vote by the officials and other officers of the Office dealing with the subject matter of the session.

(6) The president, the members of the Council of Experts as well as the invited experts shall have the right to a compensation for their work. The compensation shall be paid by the parties involved in the respecting matter in the equal shares, unless otherwise decided by the Council of Experts.

(7) The Council of Experts shall adopt its Rules of Procedure. The amount of the compensation referred to in paragraph (6) of this Article shall be prescribed by the minister.

#### Principles for Establishing the Amount of Royalties by Tariffs

**165.**—(1) If the use of the subject matter of protection is essential for the activity of a user in a way that its activity depends on such use, as it is in cases of broadcastings, concert, dance or other uses of the subject matter against payment, the amount of royalties shall be fixed in principle as a percentage of the income respectively earning from such use.



(2) If the use of the subject matter of protection results with no income respectively earning, the amount of royalties may be fixed as a percentage of expenses of the use, such as remunerations or salaries of performers, or expenses incurred for the utilization of premises, or other like expenses.

(3) In addition to the royalties fixed as a percentage, the minimum amount of royalties shall be specified.

(4) If a user fails to submit to a collecting society the information required for fixing the royalties as a percentage, such collecting society may establish the amount of royalties according to information collected in compliance with Article 161 of this Act.

(5) If the use of the subject matter of protection is not essential for a user, but is useful or enjoyable (accommodation facilities, exposition places, transport means and certain catering objects) the royalties shall be set as a lump sum for permanent and occasional uses.

(6) When deciding on the amount of a lump sum and royalties referred to in paragraph (3) of this Article, circumstances of the use of the subject matter of protection shall be taken into account, such as the type of the use, place and geographical location, category and size of the facilities, duration and number of the uses, and difference in prices regarding a user's business.

#### Distribution of Royalties

**166.**—(1) The distribution of collected royalties to the right holders shall be generally carried out in accordance with the information on the use of the subject matter of protection.

(2) A user shall submit to a collecting society, complete information relating to a place and time of the use of a particular subject matter of protection for the reason of distribution of collected royalties, within a time limit stipulated in a contract on use. If such contractual provision is not anticipated, a user shall submit such information to a collecting society within 15 days from the date of the use.

(3) If distribution based on the information on the use is not possible, or if such distribution would obviously be uneconomical, the distribution may be carried out by the application of a method of sampling corresponding to the greatest extent to the actual use.

#### Rules Relating to the Distribution of Royalties

**167.**—(1) A collecting society shall have rules relating to the distribution of collected royalties adopted by a body established by the statute of that society.

(2) The rules shall contain in particular provisions concerning:

– fixation of a share of a particular right holder in collected royalties, which may be supportive to the subject matter of protection which has particular cultural and national value;





– fixation of royalties after deduction of cost incurred in exercising of the right, the allocation for funds provided by law, the statute of the society or by international contracts on mutual representation of collecting societies;

– terms for accounting and payment of distributed royalties.

(3) The collected royalties shall be only used in accordance with the rules referred to in paragraph (2) of this Article.

(4) Contracts on distribution concluded between the right holders of the same work shall override the rules of distribution.

(5) Total costs of a collecting society may amount to no more than 30% of the collected royalties.

(6) Accounting and distribution of royalties shall be carried out at least once a year.

(7) Statement of accounts regarding distribution shall be established by a competent body of a collecting society, and audited and evaluated by an authorized auditor.

(8) A collecting society shall deliver to the Office its statement of account regarding distribution referred to in paragraph (7) of this Article within 15 days as from receipt of the auditing report.

#### Supervision of Use of the Subject Matter of Protection

**168.**—(1) A collecting society may supervise the use of the subject matter of protection in respect of which it has the authorization granted by the Office.

(2) Users of the subject matter of protection shall provide a collecting society with information relevant for the administration of rights, and enable the inspection of relevant documents.

(3) At a request of a collecting society, the state administration bodies responsible for inspections, and the customs services, as well as, competent police administrations and police stations shall provide it assistance in supervising the use of the subject matter of protection.

(4) At a request of an author, respectively a collecting society the competent police administration or a police station shall prohibit the performance using subject matters of protection, if its organizer has not the authorization of the author, respectively collecting society.

#### Activities of the Office with Regard to the Collective Administration of Rights

**169.**—(1) The Office shall grant authorizations to the collecting societies referred to in Article 157 of this Act.

(2) The Minister shall prescribe the professional criteria and procedure of granting the authorization referred to in paragraph (1) of this Article.



(3) The Office shall keep the records of the collecting societies.

(4) The Office shall revoke the authorization referred to in paragraph (1) of this Article, if a society fails to comply with the prescribed criteria, and if seriously and repeatedly violates the provisions of this Act. In such case, prior notice in writing shall be given to the collecting society by the Office, and the Office shall set a time limit of 30 days for the collecting society to eliminate the found irregularities.

(5) A decision on the grant of the authorization for collective administration, and a decision of revocation of such authorization shall be published in the Official Gazette of the Office. The revocation of the authorization referred to in paragraph (4) of this Article shall take effect on the 30th day as from its publication.

(6) The Office conducts inspection of the collecting societies.

#### Inspection Authorizations

**170.**—(1) When conducting the inspection referred to in Article 169, paragraph (6) of this Act, an officer of the Office, responsible for carrying out inspection procedure (hereinafter: inspector) shall be authorized to require insight in the documents and business records regarding the collective administration of rights.

(2) If during the inspection the inspector finds that a collecting society administrates the rights contrary to the issued decision or contrary to the provisions of this Act, he shall, in the form of a decision, order such deficiencies and irregularities to be eliminated, within a certain time limit.

(3) If the deficiencies and irregularities are not eliminated within the prescribed time limit, the inspector shall file a request for initiation of a misdemeanor procedure in respect of the offence referred to in Article 191 of this Act, or he shall revoke the authorization referred to in Article 169, paragraph (4) of this Act.

(4) Based on a report on the matter, the inspector may file a request for the misdemeanor procedure on the basis of his finding, and irrespective of the time limit prescribed in the decision for the elimination of deficiencies.

(5) The inspector shall inform the state administration office, keeping the entry of the society in the register of societies, about the taken measures set out in paragraphs (2), (3), and (4) of this Article.

#### Professional and Other Activities of the Office

**171.** The Office performs professional, technical and administrative activities related to the establishment and operation of the Council of Experts on Royalties for Copyright respectively Related Rights, and other activities within its competence in this field.



V.  
PROTECTION OF RIGHTS IN THE CASE OF  
THE INFRINGEMENT THEREOF

Right to Protection

**172.**—(1) The holder of a right under this Act, which has been unlawfully infringed shall be entitled to protection of such right.

(2) Unless specially provided by this Act, a right to protection referred to in paragraph (1) of this Article shall entitle its holder to claim from the person who have infringed his right or from her/his general successor to desist from acts infringing such right, and further omission of such and the like acts (cease of disturbance), remedy of damages (compensation for damages), payment of compensation for unauthorized use, payment of penalty provided by law, reimbursement of all the benefits acquired *sine causa* by infringements of rights (*locupletatio sine causa*), establishment of the committed infringement and the publication of the valid judgment by which the court has even partially complied with the claim for the protection of the right under this Act.

(3) In addition to the original right holder under this Act, entitled to adequate protection shall also be the persons who have acquired a right derived from such rights on the basis of a legal transaction, and in compliance with the contents and nature of such derived right.

(4) The right to protection shall pass on to heirs.

(5) Where there are several holders of the same right under this Act, each of them is entitled to the protection of his right against other holders.

(6) Provisions laid down in paragraphs (1), (2) and (3) of this Article shall apply *mutatis mutandis* also where there is a likelihood of infringement of such rights.

(7) Creations resulting from the infringement of rights under this Act shall not enjoy protection provided by this Act.

(8) The provisions of this Article shall not affect the claims provided by other provisions of this Act.

Solidarity

**173.**—(1) Where a right under this Act has been infringed each of the right holders of the same right may claim protection of the infringed right against third persons as if he is the only right holder, unless otherwise provided by this Act. He may claim the furnishing of a complete file from third persons only according to obligatory rules on undivided obligations. When the infringer meets the demands of one of the right holders, his liability towards the other right holders of the same rights, also terminates. In case of a pending court proceeding, the right holders of the same rights shall be considered to be a single party in such proceeding.



(2) If several persons have jointly infringed any of the rights under this Act, their liability shall be joint and several.

#### Protection of Rights Administered Collectively and Evidence of the Infringement Thereof

**174.**—(1) Collecting societies shall be entitled to initiate and carry out in its own name the court and administrative proceedings for the protection of such rights, under this Act, which they have been granted authorization to administer collectively.

(2) Where the collecting society proves an infringement of the rights which, under this Act, it is authorized to administrate collectively, the infringement of the rights of particular right holders administered collectively shall not be necessarily established.

#### Protection of Technological Measures

**175.**—(1) The circumvention of effective technological measures designed to protect the rights provided by this Act infringes such rights, unless otherwise specially provided by this Act.

(2) The circumvention of technological measures represent, under this Act, also manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of technology, computer programs, devices, products or components, or the provision of services which:

- are promoted, advertised or marketed for the purpose of circumvention of technological measures,
- have only a limited commercially significant purpose or use other than to circumvent technological measures,
- are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

(3) A request may be filed against a person who knew or had reasonable grounds to know that she or he was circumventing or enabling the circumvention of technological measures . It shall be considered that the person who acts in the manner described in paragraph (2) of this Article has a reasonable grounds to know that she or he is circumventing or enabling the circumvention of technological measures.

(4) For the purposes of this Act, technological measures shall mean any technology, computer program, device, product or component thereof that in the normal course of its operation is designed to prevent or restrict acts, which are not authorized by the rightholder under this Act. The technological measures shall be considered effective where the use of a protected work or other subject matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective.



- (5) The provisions of this Article shall not apply to computer programs.

#### Protection of Rights-Management Information

**176.**—(1) Copyright and related rights under this Act, shall be also infringed by a person who knowingly, without authority, removes or alters any electronic right-management information, produces, distributes, imports for the purpose of putting them on the market, broadcasts, communicates to the public or makes available to the public a copyright work and subject matter of related rights from which the electronic right-management information has been removed or altered without the authorization of a right holder, and who knows or has reasonable grounds to know that she or he causes, enables, facilitates or conceals the infringements of the rights under this Act.

(2) Right-management information, under this Act, shall mean, any information provided by the right holders identifying a copyright work respectively a subject matter of related rights, the right holder, the terms and conditions for use, and their relevant numbers and codes, where they are indicated on a copy of a copyright work or subject matter of related rights under this Act or when they appear in connection with their communication to the public.

#### Claim for Desistance from Infringement

**177.**—(1) A right holder under this Act whose right has been infringed may claim the desistance from or the prohibition of such or like infringement.

(2) To exercise his right referred to in paragraph (1) of this Article, it shall be sufficient that the right holder invokes it, and proves that the defendant disturbs him. If the defendant claims that he has the right to undertake what disturbs the rightholder, he shall prove it.

#### Claim for Damages

**178.** If the infringement of any rights under this Act resulted with damages, the right holder is entitled to claim compensation for damages, in accordance with the general rules on compensation for damages.

#### Claim for Compensation for Unauthorized Use and Claim for Benefits Acquired by Unauthorized Use

**179.**—(1) If the unauthorized use of a work or a subject matter of related rights has infringed the right of a rightholder under this Act, the rightholder or a collecting society administering respective rights may claim remuneration which is usually obtained for such use or a royalty prescribed by the tariffs referred to in Article 162, paragraph (2).

(2) The right which is administered collectively shall be considered infringed as described in paragraph (1) of this Article, where the work or the subject matter of related



rights are used without a contract or without the authorization of a collecting society or where a contract or an authorization are not valid.

(3) If the unlawful use of any rights under this Act resulted with a benefit, the right holder shall be entitled to claim the benefit so acquired, in accordance with the rules on *locupletatio sine causa*.

#### Claim for Publication of Court Decision

**180.** A person whose right under this Act has been infringed, shall be entitled to claim that a valid court decision, complying even partially with the claim for the protection of such right, be published in public media at the infringer's expense. The court shall, at the plaintiff's proposal, decide in what public medium the decision shall be published and whether the decision would be published entirely or partially. If the court decides that only a part of its decision shall be published, it shall be at least a sentence, and the part of the decision indicating the kind of the infringement and the infringer of the respective right.

#### Claim for Destruction, Alteration or Delivery of Copies Resulting from Infringement and Objects by Means of which Infringement is Committed

**181.**—(1) The holder whose exclusive right under this Act has been infringed is entitled to claim the destruction or alteration of all the unlawfully made copies or such copies put on the market or intended to be put on the market.

(2) Instead of the measure referred to in paragraph (1) of this Article, the person whose right under this Act has been infringed is entitled to claim that the infringer who is in possession of the copies referred to in paragraph (1) of this Article or is their owner, deliver such copies against compensation which shall not exceed the costs of the manufacture thereof.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply to architectural works only where there is a justified reason for the destruction or delivery thereof.

(4) If the measures referred to in paragraphs (1), (2) and (3) of this Article are in a certain case disproportional with the nature and intensity of the infringement, and the infringement may be repaired otherwise, the court may order other necessary measures for such a case. In such a case, the right holder is entitled at least to reimbursement in the amount not lesser than he would obtain for the authorized use of the respective right.

(5) The measures referred to in paragraphs (1) and (2) of this Article shall not apply to separable parts of copies, of which the manufacture and putting on the market are not unlawful.

(6) The provisions of this Article shall apply *mutatis mutandis* also to the objects, which are used in or intended for the manufacture of copies, infringing the rights under this Act, or which are exclusively or predominantly intended therefor.



(7) The provisions of this Article shall not apply if destruction of the objects referred to in paragraph (6) of this Article would cause greater damage than the damage caused by the infringement of the rights under this Act, unless it concerns the objects, which are exclusively or predominantly intended for the infringement of the rights under this Act.

(8) The claims referred to in this Article in respect of third fair persons shall be subject to statute of limitations within 3 years, as from the right holder learned about the unlawful manufacture of the objects, or their putting on the market, or that they are intended for putting on the market, and not later than within 5 years as from the unlawful manufacture or putting on the market thereof.

#### Claim in the Case of Infringement of the Right to Claim the Indication of the Author and Performer

**182.**—(1) In addition to the claims provided by this Act, the author and the performer, whose name, pseudonym or other artist's mark, is not indicated with the use of his copyright work respectively his performance, or is indicated incorrectly or insufficiently, may claim from persons using the work or performance, to indicate them subsequently respectively correctly as the author or the performer.

(2) The provisions of the previous paragraph shall apply *mutatis mutandis* where, contrary to prohibition, the author or the performer is indicated with the use of the work or with the use of the performance.

(3) The author respectively the performer shall not be entitled to claims referred to in this Article, if the work respectively the performance is used with their authorization, and if that use is such that it prevents the indication of the author respectively the performer.

#### Penalty

**183.**—(1) The person whose economic right or the right under Chapter 3.3 Other Rights of Authors under this Act have been infringed intentionally or by gross negligence, is entitled to claim payment of up to double amount of remuneration (penalty) which is contractually agreed upon or if not contractually agreed upon, of the corresponding regular remuneration for such use from the person who infringed his right intentionally or by gross negligence.

(2) In the case referred to in paragraph (1) of this Article it shall not be proved that the damage did not occur.

(3) In case that the actual damage is in excess of the amount of penalty referred to in paragraph (1) of this Article, the right holder has a right to claim the difference to full actual damages.



### Limitation of Actions

**184.**—(1) The right to protection of rights under this Act shall not be subject to the statute of limitations, unless otherwise provided by this Act.

(2) The claims under this Act, which are by their nature obligatory, and for which special time limit as to statute of limitations is not provided, shall be subject to statute of limitations according to the general rules to that effect.

### Provisional Measures

**185.**—(1) At a proposal of an authorized person who makes it likely that a right under this Act, has been infringed or that there is likelihood of imminent infringement of such rights, the court may order, in particular:

- provisional seizure or exclusion from circulation of objects respectively means infringing such rights or serving for the infringement, or resulting from the infringement, or of objects and means that may serve as evidence of the committed infringement of such rights,
- prohibition of continuation of acts which might infringe such rights, or are infringing such rights,
- prohibition of a performance unlawfully using the rights provided by this Act.

(2) The court shall order a proposed provisional measure, if the other party, at the invitation by the court, and upon the proposal of the authorized person, fail to submit the relevant document or other proof showing that she or he does not infringe the respective right.

(3) If there is a risk that the later presentation of evidence on the infringement of the rights under this Act may be difficult or prevented, or if there is a risk of irreparable damage, or if there is a demonstrable risk of ineffectiveness of provisional measures provided in paragraph (1) of this Article, the court shall order such measures without prior notification of the other party (*inaudita altera parte*).

(4) The corresponding provisions of the Law on Execution shall be applied to any matter concerning the ordering of provisional measures, not regulated by this Act.

### Boarder Measures

**186.** On a request of the right holder of a copyright respectively a related right or of a collecting society under this Act, who make it likely that the import, export, or crossing of the border line of certain goods would infringe the rights under this Act, the customs authorities shall take appropriate measures in accordance with special customs regulations regarding the procedure in respect of goods infringing the intellectual property rights.





### Duty to Provide Information

**187.**—(1) Any person who, in the course of his business, learns of an infringement of a right under this Act, shall, at a request of a right holder respectively a collecting society, provide without delay any information and evidence related to the committed infringement, and in particular information regarding the origin of infringing copies and the manner of their putting on the market. Duty to provide information includes in particular, informing of the name and address of manufacturers, suppliers or previous owners of such copies, and information on the amount of such reproduced, distributed, received or ordered infringing copies.

(2) Where the person referred to in paragraph (1) of this Article fails to give the required information or evidences in his possession, she or he shall liable for damages that may be caused by his failure to comply.

(3) The provision of paragraph (1) of this Article shall not apply in respect of persons who would in a civil proceeding have the right to refuse to testify or to answer to particular questions.

## VI. PENAL PROVISIONS

### 1. Criminal Acts

#### Infringement of The Right of Distributor of Encrypted Satellite Signal

**188.**—(1) Who without the authorization of a lawful distributor of the encrypted satellite signal, manufactures, imports, distributes, rents or otherwise makes available to the public, respectfully provides services of installing tangible or intangible device or system for decoding such signal, if he knows or have reasonable grounds to know that the device or system serves primarily for decoding an encrypted satellite signal, shall be punished by a fine or by imprisonment up to three years.

(2) If the commitment of the criminal act referred to in paragraph (1) of this Article has resulted in a substantial financial gain or has caused a substantial damage, and the perpetrator has acted with the aim of acquiring such financial gain or causing such damage, he shall be punished by imprisonment from six months up to five years.

(3) Who receives an encrypted satellite signal that has been decoded without the authorization of its lawful distributor or further distributes such signal, if he knows or has reasonable grounds to know that such signal is decoded without authorization, shall be punished by a fine.

(4) If the commitment of the criminal act referred to in paragraph (3) of this Article has resulted in a substantial financial gain or has caused a substantial damage, and the perpetrator

has acted with the aim of acquiring such financial gain or causing such damage, he shall be punished by a fine or by imprisonment up to three years.

(5) The objects intended or used for the commitment of the criminal act or resulting from the commitment of the criminal act referred to in paragraph (1) and (2) of this Article shall be seized and destroyed.

## 2.

### Misdemeanors

#### Infringement of Copyright and Related Rights

**189.**—(1) Any legal entity shall be punished for a misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas, if it:

1. without the authorization of the author discloses for the first time or prior to disclosure reveals to the public the content or description of the work, or uses the work without indication of the authorship unless the author has declared in a written form that he does not want to be indicated, or if certain use is such that prevents the indication of the authorship, or without the authorization distorts, mutilates or otherwise modifies a copyright work, or uses the work in a manner that is or would be prejudicial to the author's honor or reputation (Articles 14—16),

2. without the authorization of the author, or other copyright holder or a collecting society reproduces, distributes, stores, or undertakes other acts for the purpose of distribution, or otherwise communicates to the public a copyright work, or alters it, or uses the work without paying remuneration, or otherwise unlawfully uses the work (Articles 18—33),

3. distributes or possesses for commercial purposes a copy of a computer program, knowing or having reasons to believe that it is the infringing copy, distributes or possesses for commercial purposes any means the sole intended purpose of which is to facilitate unauthorized removal or circumvention of a technical device for the protection of a computer program (Article 112).

4. without indication of the name, pseudonym or any other artist's mark of a performer, unless the performer has declared in a written form that he does not want to be indicated, or if certain public use is such that prevents such indication, publicly uses his performance, or without the authorization of a performer distorts, mutilates or otherwise modifies the performance, or uses the performance in a manner that is or would be prejudicial to performer's honor or reputation (Article 124),

5. without the authorization of a performer or of a collecting society fixes its unfixed performances, reproduces, distributes, stores or undertakes other acts for the purpose of distribution rents, publicly transmits performer's unfixed performances, publicly communicates by phonograms or films, publicly presents, broadcasts or rebroadcast performer's unfixed and fixed performances, makes available to the public, or otherwise unlawfully uses his performance (Article 125),



6. without the authorization of a producer of phonograms or of a collecting society reproduces, distributes, stores or undertakes other acts for the purpose of distribution, rents, makes available to the public or otherwise unlawfully uses his phonogram (Article 133),

7. without the authorization of a film producer or of a lawful distributor to whom the film producer has transferred his right reproduces, distributes, stores or undertakes other acts for the purpose of distribution, rents, publicly presents, makes available to the public or otherwise unlawfully uses the original of a film or its copies (Article 139),

8. without the authorization of a broadcasting organization rebroadcasts its broadcasts by wireless means or by wire, reproduces, distributes, stores or undertakes other acts for the purpose of distribution, publicly communicates a broadcast against payment of an entrance ticket, makes available to the public or otherwise unlawfully uses the fixations of its broadcasts (Article 143),

9. without the authorization of a lawful distributor of the encrypted satellite signal, manufactures, puts into circulation, distributes, rents, makes available to the public, installs or adapts a device or a system for decoding of encrypted satellite signal, or receives an unlawfully decoded satellite signal or otherwise unlawfully uses the encrypted satellite signal (Article 188),

10. without the authorization of a publisher and without paying him a remuneration photocopies for private or other personal use his written editions (Article 145),

11. without the authorization of a maker of databases reproduces, distributes, rents, makes available to the public, communicates to the public or otherwise unlawfully uses his databases (Article 149),

12. circumvents the technological measures for the protection of copyright and related rights (Article 175),

13. removes or alters the electronic right-management information on copyright and related rights (Article 176).

(2) A responsible person in the legal entity shall be punished for the misdemeanors referred to in paragraph (1) of this Article by a fine amounting from 2.000,00 up to 10.000,00 kunas.

(3) A natural person, including a tradesman or a single man commercial entity shall be punished for the misdemeanors referred to in paragraph (1) of this Article by a fine amounting from 2.000,00 up to 10.000,00 kunas.

(4) The objects resulting from the commitment of misdemeanors referred to in paragraph (1) of this Article shall be seized and destroyed, and the objects intended for or used in the commitment of misdemeanors referred to in paragraph (1) of this Article shall be seized.

(5) A legal or a natural person, including a tradesman and a single man commercial entity who commit the misdemeanors referred to in paragraph (1) of this Article in the course



of their business activity, may be pronounced a safety measure prohibiting the performance of their business activities, or the part thereof infringing a copyright or a related right, for a period of one year, if the committed misdemeanor is especially serious, owing to the manner of commitment, its consequences, repeated commitment or other circumstances of the committed misdemeanor which make it particularly severe.

#### Failure to Provide Information to a Collecting Society

**190.**—(1) Any legal entity which does not submit to the collecting society under this Act the complete information regarding the use of the rights which are collectively administered by such society within 15 days from the date of such use, unless otherwise provided by a legal transaction, shall be punished for a misdemeanor by a fine amounting from 3.000,00 up to 30.000,00 kunas.

(2) A responsible person in the legal entity shall be punished for the misdemeanors referred to in paragraph (1) of this Article by a fine amounting from 1.000,00 up to 5.000,00 kunas.

(3) A natural person, including a tradesman or a single man commercial entity shall be punished for the misdemeanors referred to in paragraph (1) of this Article by a fine amounting from 1.000,00 up to 5.000,00 kunas.

#### Unauthorized Collective Administration of Rights

**191.**—(1) Any legal entity which without the authorization, or contrary to the authorization of the competent authority performs the collective administration of rights, shall be punished for a misdemeanor by a fine amounting from 5.000,00 up to 50.000,00 kunas.

(2) A responsible person in the legal entity shall be punished for the misdemeanor referred to in paragraph (1) of this Article by a fine amounting from 1.000,00 up to 5.000,00 kunas.

#### Misdemeanors Committed for Economic Benefit

**192.**—(1) If any legal entity commits the misdemeanors under this Act for economic benefit, it shall be punished by a fine amounting from 10.000,00 up to 75.000,00 kunas.

(2) A responsible person in the legal entity shall be punished for the misdemeanors referred to in paragraph (1) of this Article by a fine amounting from 4.000,00 up to 10.000,00 kunas.

(3) A natural person, including a tradesman or a single man commercial entity shall be punished for the misdemeanors referred to in paragraph (1) of this Article by a fine amounting from 4.000,00 up to 10.000,00 kunas.



### Limitation of Actions

**193.** The procedures regarding misdemeanors under this Act may not be initiated after the expiration of three years as from the commitment of a misdemeanor, and pronounced sentences regarding misdemeanors may not be executed after the expiration of two years as from the day the decision on the misdemeanor becomes valid.

## VII. TERRITORY OF APPLICATION OF THIS ACT

### In General

**194.**—(1) Protection under this Act shall be enjoyed by the authors and holders of related rights who are nationals of the Republic of Croatia or have their principle place of business in the Republic of Croatia.

(2) Foreign natural or legal persons (foreigners) shall enjoy the same protection as is enjoyed by the persons referred to in paragraph (1) of this Article within the scope of obligations assumed by the Republic of Croatia under international agreements or on the basis of factual reciprocity.

(3) Regardless of the provisions of paragraphs (1) and (2) of this Article, foreigners, under this Act, shall enjoy the protection:

1. with respect to the works written in Croatian language;
2. with respect to moral rights—in any case;
3. with respect to droit de suite and rights to databases as the subject matter of related rights—based on factual reciprocity.

(4) Without prejudice to paragraphs (2) and (3) a foreign person shall not have more extensive protection in the Republic of Croatia than it has in the state of which he is a national or in which he has its principal place of business, if the persons referred to in paragraph (1) of this Article have in the state of the foreign person less extensive protection than they have been granted under this Act.

### Authors

**195.** In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection under this Act shall be enjoyed by foreign authors:

1. who have a habitual residence in the Republic of Croatia;
2. with respect to the works of architecture which are built in the territory of the Republic of Croatia and the works of visual arts, which are firm integral parts of a real estate located in the territory of the Republic of Croatia.



### Performers

**196.** In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection, according to Article 194 paragraph (4) of this Act, shall be enjoyed by the performers, who have their habitual residence in the Republic of Croatia.

### Producers of Phonograms and Film Producers

**197.** In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection, according to Article 194, paragraph (4) under this Act, shall be enjoyed by the foreign producers of phonograms and film producers where their phonogram respectively videogram is first fixed in the Republic of Croatia.

### Broadcasting Organizations

**198.** In addition to persons referred to in Article 194 paragraphs (2) and (3) of this Act, the protection according to Article 194, paragraph (4) of this Act, shall be enjoyed by the foreign broadcasting organizations that transmit their broadcasts through transmitters located in the territory of the Republic of Croatia.

### Comparison of Terms of Protection

**199.**—(1) The terms of protection under this Act shall apply to foreign authors who enjoy protection under this Act, but the terms of protection shall expire not later than on the day when the protection expires in the state of which these authors are nationals, and shall not exceed the terms under this Act.

(2) Within the scope of application of international treaties, the terms of protection under this Act shall apply to foreign holders of related rights who enjoy protection under this Act, but the terms of protection shall expire not later than on the day when the protection expires in the state of which these holders are nationals or in which they have their principle place of business, and shall not exceed the terms under this Act.

### Special Provisions Concerning Communication to the Public by Satellite

**200.**—(1) Protection under this Act shall be enjoyed by the authors and holders of related rights according to Article 194, paragraph (4) of this Act, whose work or subject matter of related rights has been communicated to the public by satellite, when, under the control and responsibility of a broadcasting organization, the relevant program-carrying signals have been introduced in the Republic of Croatia in an uninterrupted chain of communication, to a satellite and down to the earth.

(2) The protection under this Act shall apply also when the condition referred to in paragraph (1) of this Article has not been fulfilled, provided that:



1. an uplink station from which the program-carrying signals are transmitted is located in the Republic of Croatia, or
2. a broadcasting organization, which commissioned the communication to the public by satellite, has its seat in the Republic of Croatia.

#### Stateless Persons

**201.**—(1) Authors and holders of related rights that have no nationality or whose nationality cannot be determined, shall enjoy equal protection under this Act as the nationals of the Republic of Croatia, if they have their habitual residence in it.

(2) If they have not their habitual residence in the Republic of Croatia, they shall enjoy equal protection as the nationals of the state in which they have their habitual residence.

### VIII.

#### TRANSITIONAL AND FINAL PROVISIONS

##### Provision on the Application of the Act to the Rights Existing Before its Entry Into Force

**202.**—(1) This Act shall apply to all copyright works, performances and broadcasts of broadcasting organizations in respect of which the rights have not expired before the date on which this Act enters into force.

(2) This Act shall apply to phonograms and to performances fixed thereon, for which 50 years as from their first fixation, respectfully lawful publication or lawful communication to the public, have not expired counting from the beginning of the calendar year in which this Act entered into force.

(3) This Act shall apply to videograms and publishers' editions, as subject matter of related rights, which have been first fixed respectfully lawfully published after the entry into force of this Act.

(4) This Act shall apply to databases, as subject matter of related rights, which were produced after January 1, 1983.

(5) All the rights acquired before the entry into force of this Act, including those acquired under Articles 19—23 of the Copyright Law (Official Gazette of the Republic of Croatia nos. 9/1999, 76/1999, 127/1999 and 67/2001) shall remain intact, and collecting societies' tariffs (price lists) shall apply even after the entry into force of this Act.

(6) The provisions of the Copyright Law (Official Gazette of the Republic of Croatia nos. 9/1999, 76/1999, 127/1999 and 67/2001) shall apply for three years as from the date of entry into force of this Act to copyright works created after this Act entered into force in the framework of employment contracts concluded before the entry into force of this Act.

(7) All the legal transactions made after the entry into force of this Act, which are not in compliance with the provisions of this Act on Copyright in Legal Transactions shall be null



and void, if their contents cannot be brought under the provisions of this Act on Copyright in Legal Transactions.

(8) Collecting societies shall apply for the grant of the authorization referred to in Article 157 of this Act within 12 months as from the date of entry into force of this Act.

#### Special Provision on Computer Programs and Databases

**203.** The provisions of this Act on computer programs and databases shall also apply to computer programs and databases created before the date on which this Act entered into force, provided such application is without prejudice to contracts concluded and rights acquired before that date.

#### Pending Procedures

**204.** Pending procedures regarding the protection of the rights laid down in Articles 177—182 of this Act, initiated before the date of entry into force of this Act, shall be carried out in compliance with the provisions being in force up to the date of entry into force of this Act.

#### By-Law Provisions

**205.**—(1) The Minister shall enact:

1. Regulations on Professional Criteria and Procedure of Granting Authorizations for Collective Administration of Rights, referred to in Article 169 paragraph (2) of this Act;
2. Regulations on Compensations for Operation of the Council of Experts and Rules of Procedure of the Council of Experts, referred to in Article 164, paragraph (8) of this Act within 6 months as from the date of entry into force of this Act, and shall lay down measures referred to in Article 98, paragraph (2) within one year as from the date of entry into force of this Act.

(2) The Minister shall enact the regulations and the measures referred to in paragraph (1) of this Article, in line with the prior opinion of the Office.

#### Obligation of Furnishing a General Account

**206.** Collecting societies shall, within six months after the entry into force of this Act, furnish to the Office the first revised general statement of account regarding the distribution of royalties, referred to in Article 167, paragraph (8) of this Act.

#### Cease of the Validity of Legal Regulations

**207.**—(1) On the date this Act enters into force, the Copyright Law (Official Gazette of the Republic of Croatia NN Nos. 53/1991, 58/1993, 9/1999—Consolidated text, 76/1999,





127/1999 and 67/2001), and the Law on Publishing Activity (Official Gazette of the Republic of Croatia NN No. 28/1983) shall cease to be in force.

(2) By-law regulations which have been in force up to the date of entry of this Act into force, shall apply up to the enactment of the by-law regulations under this Act, unless contrary to this Act.

#### Entry into Force of this Act

**208.** This Act shall enter into force on the eight day following its publication in “*Narodne novine*”—the Official Gazette of the Republic of Croatia.