

Act LXXVI of 1999**on Copyright**

Modern copyright legislation that keeps up with technological development plays a decisive role in encouraging intellectual creation and preserving national and universal cultural heritage; it creates and maintains the balance between the interests of authors and other rightholders, users and the broader public, taking into account the demand for education, culture, scientific research and free access to information; and it also ensures the extensive and effective enforcement of copyright and related rights. In consideration of these aspects – in accordance with Hungary’s existing international commitments within the field of intellectual property as well as with the legislation of the European Community –, the Parliament has adopted the following act:

PART ONE

GENERAL PROVISIONS

Chapter I

Introductory provisions

*The subject matter of copyright protection***Article 1**

(1) This Act shall protect literary, scientific and artistic creations.

(2) All literary, scientific and artistic creations are protected by copyright, regardless of whether or not they are specified in this Act. Such creations are, in particular:

- a)* literary works (e.g. fiction works, technical literature, scientific works and journalistic works),
- b)* public speeches,
- c)* computer program creations and the related documentation (hereinafter referred to as ‘software’) whether fixed as source code, object code, or in any other form, including application programs and operation systems,
- d)* plays, musicals, ballets and pantomimes,
- e)* musical works with or without lyrics,
- f)* radio and television plays,
- g)* cinematographic creations and other audiovisual works (hereinafter jointly referred to as ‘cinematographic creations’),
- h)* creations produced by drawing, painting, sculpturing, engraving, lithography or in any other similar manner as well as designs therefor,
- i)* photographic works,
- j)* maps and other cartographic creations,
- k)* architectural works and plans thereof as well as the plans for building complexes and urban architecture,
- l)* designs for engineering structures,
- m)* applied art creations and designs therefor,
- n)* costume, scenery and designs therefor,
- o)* industrial design creations,
- p)* databases qualifying as collection of works.

(3) A creation shall enjoy copyright protection due to its individual and original nature deriving from the intellectual activity of the author. The protection shall not depend on any quantitative, qualitative or aesthetic characteristics or any judgment as regards the standard of the creation.

(4) Legislation, other legal instruments of state administration, judicial and administrative resolutions, administrative and other official communications and documents as well as

standards prescribed as mandatory by legislation and other similar provisions shall not be covered by the protection provided for by this Act.

(5) Copyright protection shall not extend to facts and daily news underlying announcements released in the press.

(6) Ideas, principles, theories, procedures, operating methods and mathematical operations shall not be the subject matter of copyright protection.

(7) Expressions of folklore shall not enjoy copyright protection. This provision is without prejudice to copyright protection due to the author of an individual and original work inspired by folk art.

(8) Achievements of performers, phonogram producers, radio and television organisations, film producers and makers of databases shall enjoy the protection provided for by this Act.

Scope of the Act

Article 2

The protection stipulated in this Act shall extend to works first made public abroad only if the author is a Hungarian citizen or if the author is entitled to the protection on the basis of an international treaty or reciprocity.

Article 3

To matters not regulated by this Act for the transfer, assignment, pledge of copyright and related rights and also in any other moral or economic legal relations in connection with works or other subject matter within the scope of this Act, the provisions of the Civil Code shall apply.

Copyright

Article 4

(1) Copyright shall belong to the person who has created the work (author).

(2) Without prejudice to the rights of the author of the original work, the adaptation, arrangement or translation of another author's work shall be under copyright protection, provided that it is of individual and original nature.

Works of joint authorship

Article 5

(1) If parts of a joint work created by several authors cannot be used independently, joint authors shall be entitled to copyright protection jointly and, if there is any doubt, in equal proportions; however, any of the joint authors may take action against copyright infringement independently.

(2) If parts of a joint work can also be used independently (connected works), copyright relating to the respective individual part can be exercised independently. The consent of all authors of the original joint work consisting of connected works is required if any part of that original joint work is to be connected with another work.

Collectively created works

Article 6

(1) Copyright relating to a collectively created work (e.g. national standard) belongs, as the authors' legal successor, to the natural or legal person or the business company having no legal personality, upon whose initiative and under whose direction the work has been created and who or which has made it public in his or its own name.

(2) Collectively created works are works in which the contributions of the cooperating authors are united in the resulting unified work in a manner that makes it impossible to determine the individual authors' rights separately.

Collection of works

Article 7

(1) A collection shall be under copyright protection if the selection, arrangement or editing of its content is of individual and original nature (collection of works). The protection shall apply to the collection of works even if its parts or materials do not or may not enjoy copyright protection.

(2) Regarding the entire collection of works, the copyright shall belong to the editor; however, this shall be without prejudice to the independent rights of the authors of the individual works and of the rightholders in subject matter covered by related rights included in the collection.

(3) The copyright protection of a collection of works shall not extend to the materials thereof.

Works made public anonymously or under a pseudonym

Article 8

If a work has been made public anonymously or under a pseudonym, the author's rights shall be exercised, until the author takes action, by the person who has first made the work public.

The origin and exploitation of authors' rights

Article 9

(1) The entirety of authors' rights – moral rights and economic rights – shall belong to the author from the time of the creation of the work.

(2) The author may not assign his moral rights and such rights may not devolve to another person in any other manner, and may not be waived by the author.

(3) Subject to the exceptions in Paragraphs (4) to (6), economic rights may not be assigned or may not devolve to another person, and may not be waived.

(4) Economic rights may be inherited, and the author is free to dispose thereof in case of his death.

(5) Persons acquiring economic rights by inheritance may dispose thereof in favour of each other.

(6) In the cases and under the conditions specified in this Act, the economic rights may be assigned or shall devolve. Unless otherwise provided for in the assignment contract, the person acquiring the rights may thereafter dispose of the economic rights he has acquired.

Chapter II

Moral rights

Making the work public

Article 10

(1) The author shall decide whether his work may be made public.

(2) Before making the work public, any information on its substantial content may be provided for the public only subject to the author's consent.

(3) Unless otherwise stipulated, the conclusion of a licence agreement shall imply the author's consent to the user providing information on the content of the work for the public in a manner complying with the purpose of the use.

(4) As regards a work becoming known after the author's death, it shall be presumed that the author intended his work to be made public, unless a statement to the contrary has been made by the author or his legal successor, or the contrary is proved otherwise.

Article 11

Referring to serious grounds, the author may withdraw, in writing, his authorisation to make his work public or may prohibit the continued use of his work already made public; however, he is obliged to compensate any damage having occurred till the time of such statement. This shall not prejudice the employer's right to exploit the work and shall not prevent, in the case of the assignment of the economic rights, the person acquiring the rights from uses based on the economic rights.

Indication of the author's name

Article 12

(1) The author shall have the right to be indicated on his work or in the communication relating to his work – subject to the scope and nature of the communication – as the author. Reference shall be made to the author in the event of including a part of his work in another work, and quoting or reviewing his work. The author may exercise the right to have his name indicated subject to the nature of the use and in a manner complying therewith.

(2) The name of the author of a work shall be indicated on the adaptation, arrangement or translation which is based on the author's work.

(3) The author shall be entitled to make his work public without the indication of his name or under a pseudonym. The author may require that his work having been made public with the indication of his name shall, in the case of a subsequent legitimate use, be further on used without the indication of his name.

(4) The author may request that his author's capacity shall not be called into question.

Protection of the integrity of the work

Article 13

Moral rights of the author are infringed by the distortion, mutilation or any other alteration of or other derogatory action in relation to his work which prejudices the honour or reputation of the author.

The exercise of moral rights

Article 14

(1) After the author's death, action against the infringement of the moral rights specified in this Act can be taken within the term of protection (Article 31) by the person entrusted by the author with the administration of his literary, scientific or artistic legacy, and if there is no such person or the one entrusted fails to take actions, it shall be the person having acquired the economic rights by virtue of inheritance.

(2) After the expiration of the term of protection, the affected collecting society or representative organisations of authors may take action, with reference to the violation of the author's memory, against a conduct which would be taken under the term of protection to infringe the author's right to have his name indicated on his work or in a communication related to his work.

Article 15

The user may also take action for the protection of the author's specific moral rights if the author has expressly given his consent to such action in the licence agreement.

Chapter III

Economic rights

General provisions relating to economic rights

Article 16

(1) By virtue of copyright protection, the author shall have the exclusive right to use his entire work or an identifiable part thereof in any tangible or intangible form and to authorise each and every such use. Unless otherwise stipulated in this Act, authorisation may be obtained for the use of the work by a licence agreement.

(2) The use of the particular title of the work shall also be subject to the author's authorisation.

(3) The commercial exploitation of any typical and original character appearing in the work and the authorisation of such exploitation shall also be subject to the author's exclusive right.

(4) Unless otherwise stipulated in this Act, the author shall be entitled to remuneration in return for authorising the use of his work, which remuneration – unless otherwise agreed – shall be in proportion to the revenue earned in connection with the use of the work. The author may waive his claim to remuneration only by an explicit statement to that end. Should this Act stipulate a specific form for the licence agreement to be valid, the waiver of the remuneration shall also be valid only in the specific form.

(5) In cases specified in this Act, fair remuneration shall be due to the author for the use of his work even if he has no exclusive right to authorise the use. This Act may exclude the right to waive such remuneration, and should such provision fail to obtain, the author may only waive the remuneration by an explicit statement to that end.

(6) A use shall be deemed unauthorised, in particular, if no authorisation has been given therefor by provisions of any act or by the author in a contract, or if the user makes use of the work beyond the limitations of his authorisation.

(7) Unless otherwise stipulated in this Act, the user is obliged to inform the author or his legal successor or the collecting society on the manner and extent of the use.

Article 17

As uses of the work shall be regarded in particular:

- a) its reproduction (Article 18 and 19),
- b) its distribution (Article 23)
- c) its public performance (Articles 24 and 25)
- d) its communication to the public by broadcasting or in any other manner (Articles 26 and 27),
- e) retransmission of the broadcast work to the public with the involvement of another organisation than the original one (Article 28),
- f) its adaptation (Article 29),
- g) its exhibition (Article 69).

The right of reproduction

Article 18

(1) It shall be the author's exclusive right to reproduce his work and to grant authorisation therefor. Reproduction shall be regarded to mean:

- a) the direct or indirect fixation of the work in any manner on a tangible carrier, whether definitively or temporarily, and
- b) the making of one or several copies of the fixation.

(2) As reproduction of the work shall be regarded in particular the fixation of the work in a mechanical, cinematographic or magnetic way and making copies thereof by printing, the production of a phonogram or video recording of the work, its fixation for purposes of communication to the public by broadcasting or by cable, the storage of the work in a digital form on electronic devices, and the production in a tangible form of the work transmitted through a computer network. In the case of architectural creations, the execution of the creation fixed in the plan as well as the subsequent construction shall likewise be regarded as reproduction.

Article 19

(1) The composers and lyricists may enforce their right relating to the subsequent reproduction and distribution of the reproduced copies of their non-stage musical compositions and lyrics already made public as well as of parts taken from such stage works only through their collecting society. They may waive their remuneration with an effect following the date of the distribution only and to the extent of the amount due to them. The collecting society performing the management of rights in literary and musical works shall conclude the licence agreement with the phonogram producer regarding the licence and the remuneration to be paid therefor.

(2) The provision in Paragraph (1) shall not apply to the right of adaptation and the exercise thereof.

Article 20

(1) Fair remuneration shall be due, for the private copying of their works, performances, films and phonograms, to the authors of works, the performers of performances, and the producers of films and phonograms that are broadcast in the programmes of radio and television organisations, included in the programmes of the entities communicating their own programmes to the public by cable, and put into circulation on audiovisual or audio carriers.

(2) The remuneration referred to in Paragraph (1) shall be determined by the collecting society performing the management of rights in literary and musical works in agreement with the collecting societies of other rightholders. At the determination of the remuneration, it shall be taken into account whether effective technological measures for the protection of copyright and related rights are applied on the works, performances, films and phonograms concerned (Article 95). The remuneration shall be paid by the manufacturer of blank video and audio carriers, in the case of manufacturing abroad by the person obliged under the legislation to pay customs duties, or – in the absence of obligation to pay customs duties – by the person who imports the carriers and by the first domestic distributor thereof, under joint and several liability, to the collecting society performing the management of rights in literary and musical works within eight days from the completion of the customs clearance and the payment of the customs duties, or – in the absence of obligation to pay customs duties – from the date of putting into circulation of the carriers, or – if it is earlier – from the date of having the carriers in stock with the intention of putting them into circulation. For the payment of the remuneration, all domestic distributors of the carriers concerned shall be jointly and severally liable.

(3) The obligation to pay remuneration shall not apply to

- a) putting into circulation for export purposes, and
- b) video and audio carriers applicable exclusively with devices (e.g. studio equipment, dictaphones) which are not used in their proper use for the private copying of works, performances of performers, or phonograms.

(4) In the case of audio carriers, the remuneration collected, following the deduction of expenditures, shall be distributed to the rightholders, and namely – unless otherwise agreed before 31 March every year between the affected collecting societies – forty-five per cent shall be due to the music composers and writers, thirty per cent to the performers and twenty-five per cent to the producers of phonograms.

(5) In the case of video carriers, the remuneration collected, following the deduction of expenditures, shall be distributed to the rightholders, and namely – unless otherwise agreed before March 31 of every year between the affected collecting societies – thirteen per cent

shall be due to the film, twenty-two per cent to the cinematographic creators of movie pictures, four per cent to creators of fine arts, designs and authors of photographic works, sixteen per cent to script writers, twenty per cent to composers and lyricists and twenty-five per cent to performers.

(6) The collecting society performing the management of rights in literary and musical works shall transfer the part of the remuneration, due to authors and rightholders of copyright, performers and producers of phonograms who are not represented by the said society regarding the distribution of the remuneration, to the collecting societies performing the management of rights for the rightholders involved.

(7) The rightholders may enforce their claims to remuneration only by the collecting societies performing the management of their rights, and they may renounce the remuneration only with an effect following the date of the distribution and to the extent of the amount due to them.

Article 21

(1) The authors and publishers of works which are reproduced by photocopying or in a similar manner on paper or on like carrier (hereinafter jointly referred to as 'by reprography') shall be entitled to be paid fair remuneration on private copying. The remuneration shall be paid, within the deadline indicated in the third sentence of Article 20(2), by the manufacturer of the device suitable for reprography, in the case of manufacturing abroad by the person obliged under the legislation to pay customs duties, or – in the absence of obligation to pay customs duties – by the person who imports the device and by its first domestic distributor under joint and several liability. All domestic distributors of the device concerned shall also be jointly and severally liable for the payment of the remuneration. In addition, the person operating the reprographic device for a consideration is also obliged to pay remuneration. In both cases, the remuneration shall be paid to the collecting society.

(2) The specification of the devices that may be used for reprography shall be determined by separate legislation.

(3) The remuneration referred to in Paragraph (1) shall be determined by the collecting society. When determining the said remuneration, particularly the manner of use of the device and its output characteristics and, in the case of its use for a consideration, the place of the operation, shall be taken into account.

(4) The remuneration referred to in Paragraph (1) shall not exceed 2% of the manufacturing issue price of the device suitable for reprography, or, if the device is manufactured abroad, 2% of the value for customs according to the applicable legislation.

(5) The obligation to pay remuneration shall not apply to the case where the device is put into circulation for export purposes.

(6) Of the amount of the remuneration collected that remains after the deduction of the expenses, forty per cent shall be due to the publishers. Of the remaining sixty per cent, twenty-five per cent shall be due to the authors of technical writings and scientific works, twenty-five per cent to the authors of other literary works and ten per cent to the authors of works of fine arts and photographic works. These shares of the remuneration shall be transferred to the collecting societies of rightholders.

(7) The distribution ratios determined in Paragraph (6) shall be applied unless the affected collecting societies and representative organisations agree otherwise before March 31 of each year.

(8) The authors and publishers may enforce their claims to remuneration only through the collecting societies performing the collective management of their rights, and they may renounce their remuneration only with an effect following the date of distribution and to the extent of the amount due to them.

Article 22

(1) The commercial manufacturer of the blank audiovisual and audio carriers defined in Article 20 and of the devices defined in Article 21, the person obliged under the legislation to pay custom duties for importing such carriers and devices, as well as the importer and the first domestic distributor of such carriers and devices, is obliged, before the tenth day of every

calendar month but at the latest within the deadline provided for by Article 20 (2), to inform the collecting society on the quantity imported or put into circulation as well as on the types of such carriers and devices. The collecting society may request further information on the data relating to the putting into circulation and on the sources of supply, and it may request those operating reprographic devices for a consideration to provide further data necessary for determining the amount of the fair remuneration.

(2) The failure to meet, and even the incomplete meeting of, the obligation to provide information and to supply data regulated in Paragraph (1), a flat rate amount for covering the extra expenses of the collecting society is to be paid in addition to the remuneration due, which shall be of the same amount as the remuneration due to be paid.

The right of distribution

Article 23

(1) The author shall have the exclusive right to distribute his work and to authorise others therefor. Making accessible to the public of the original copy or the reproduced copies of the work through putting into circulation or offering for putting into circulation shall be regarded as distribution.

(2) The distribution shall, in particular, imply the assignment of ownership and the rental of the copy of the work as well as the importation of the copy of the work into the country with the purpose of putting it into circulation. The possession of an infringing copy of a work for commercial purposes shall also be regarded as an infringement of the right of distribution if the possessor is aware of, or, with proper circumspection in the given case, should be aware of, the fact that the copy is the result of infringement.

(3) The right of distribution shall also extend to the lending to the public of single copies of the work. The authors of works included in phonograms may exercise this right in compliance with Article 78(2). The authors of cinematographic creations may also exercise this right only through collective management of rights. They may waive their remuneration with an effect following the date of the distribution only and to the extent of the amount due to them.

(4) Within the domain of architecture, applied art, and industrial design, the right of distribution through rental only pertains to plans and designs.

(5) If the copy of the work has been put into circulation by the rightholder or by another person expressly authorised therefor by the rightholder through sale or the assignment of ownership in any other manner within the European Economic Area, the right of distribution – with the exception of the right of rental, lending and importation – shall further on be exhausted with regard to the copy of the work thus put into circulation.

(6) If the right of rental relating to a cinematographic creation or a work included in a phonogram has been assigned by the author to the producer of the film or phonogram, or if the author authorises the producers in another manner to exercise this right, the author shall retain a claim to the producer of the film or phonogram for a fair remuneration regarding the distribution of the work through rental. This right may not be waived by the author; however, he may enforce his claim to remuneration only through a collecting society.

(7)

Article 23/A

(1) The authors of literary works as well as authors of musical works printed in sheet music distributed by lending by libraries conducting public lending activity shall have a right to fair remuneration with regard to the lending.

(2) The collecting society shall determine the remuneration in its tariff to be established annually within the limits of the amount set forth in a separate line of the budgetary chapter supervised by the Minister responsible for culture (for the purposes of this Article hereinafter referred to as 'Minister').

(3) The authors may exercise their right to remuneration only through collective management of rights. They may waive their remuneration with an effect following the date of the distribution only and to the extent of the amount due to them.

(4) Libraries shall provide data to the collecting society and to the Minister on the identification data of the copies of works provided for in Paragraph (1) that are necessary for the determination of the remuneration and the distribution thereof as well as on the number of the actual public lending acts of such copies annually, not later than the first quarter following the actual year. Separate legislation shall provide for the scope of the data necessary for the determination of the remuneration and the distribution thereof as well as for the list of libraries subject to the obligation to provide data.

(5) The distribution of the remuneration shall correspond to the number of acts of lending. The remuneration shall be due on 1 November of the year following the actual year.

The right of public performance

Article 24

(1) The author shall have the exclusive right to perform his work to the public and to authorise another person therefor. The making of the work perceptible to those present shall be regarded to mean performance.

(2) As performance shall be considered in particular

a) the performance of the work to the public by a performer in person in the presence of an audience, such as stage performance, concert, recital, reading out ('live performance');

b) making the work perceptible by any technical device or manner, such as the projection of a cinematographic creation, making the work communicated or distributed (as a copy) to the public become audible by loudspeaker or visible on screen.

(3) A performance shall be regarded to be public if it occurs in a place accessible to the public or in any other place where people other than the user's family and acquaintances gather or may gather.

Article 25

(1) On behalf of writers, composers and lyricists, the collecting society performing the management of rights in literary and musical works shall conclude a licence agreement with the user on the authorisation of the public performance of literary and artistic works already made public and on the remuneration to be paid therefor, unless the author has made a statement defined in Article 87(3).

(2)

(3) The provisions of Paragraph (1) shall not apply to the performance of literary works and musico-dramatic works intended for stage, or scenes or overviews thereof, as well as to technical literature and to longer fiction works not intended for stage purposes (e.g. novels).

(4) In the cases covered by Paragraph (1), the planned use and the alteration of the current use shall be notified to the collecting society mentioned in Paragraph (1) by the user in advance. The collecting society referred to in Paragraph (1) may inspect the use on the spot.

(5) The remuneration for a live performance – with the exception of the remuneration for music services in the catering industry – has to be paid within three days from the date of the performance. In other cases an advance payment of the remuneration for at least a quarterly period – or for the whole period if it is shorter than a quarter and the operation of the establishment is of seasonal character – is required for obtaining the licence.

(6) If the user fails to meet its notification obligation required by the provision of Paragraph (4), and, as a consequence of this, the collecting society becomes aware of the use only in the course of conducting its inspection, a flatrate amount covering the society's inspection costs shall be paid in addition to the remuneration due to be paid. The flatrate amount shall be the same amount as that of the remuneration due.

The right of communication of the work to the public

Article 26

(1) The author shall have the exclusive right to communicate his work to the public by broadcasting and to authorise another person therefor. The making of the work perceptible to people at a distance by transmitting sounds or pictures and sounds or the technical representation thereof without the use of cable or other similar device shall be regarded to mean broadcasting.

(2) Satellite broadcasting shall also be considered to be covered by the broadcasting of the work if the programme broadcast can directly be received by the public. The programme broadcast by satellite shall be regarded to be accessible to direct reception by the public if, under the responsibility and control of the radio or television organisation, programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and then to Earth for reception by the public. In the case of satellite broadcasting, the place of use of the work shall be solely in the Member State of the European Economic Area where, under the control and responsibility of the radio or television organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and then back to Earth for reception by the public. For satellite broadcasting the place of use of which is, on the basis of the preceding rule, a state outside the European Economic Area, Article 1(2)d) of Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmissions shall apply.

(3) As broadcasting shall further be regarded an encrypted broadcasting which can be directly received by the public only after programme-carrying signals have been made suitable for reception by using a device for decryption (decoder) obtained, on the basis of an agreement concluded with the original radio or television organisation, from that organisation or, with its approval, from elsewhere. The original radio or television organisation and the organisation concerned with the communication to the public using the device for decryption shall be jointly and severally liable for such use.

(4) It shall also be regarded as broadcasting of the work if the signals of the broadcast programme are encrypted by the organisation concerned with the communication to the public and the work is accessible for undisturbed perception by the members of the public only by using a decoder obtained from the said organisation on the basis of an agreement concluded with it or, with its approval, from elsewhere.

(5) A broadcast in which the programme-carrying signals are transformed in any manner in order to restrict the access thereto to a limited part of the public shall be considered as encrypted broadcast.

(6) The fixation of the work permitting its repeated broadcasting is subject to the author's special licence. Each and every use of the recording is subject to the payment of remuneration.

(7) The communication to the public of an own programme by cable or any similar device or in any like manner shall be subject, *mutatis mutandis*, to the provisions relating to broadcasting.

(8) The author shall also have the exclusive right to communicate his work to the public in a manner other than broadcasting or the means referred to in Paragraph (7) and to authorise another person therefor. This right shall in particular cover the case when the work is made available to the public by cable or any other means or in any other manner in a way that the members of the public can choose the place and time of access individually.

Article 27

(1) On behalf of writers, composers and lyricists – with the exception of the use of literary works and musico-dramatic works intended for stage, or scenes or overviews thereof, and of technical literature and longer fiction works not intended for stage purposes (such as novels) – the collecting society performing the management of rights in literary and musical works shall conclude licence agreements with the users on the authorisation of the broadcasting of a work already made public and on the remuneration to be paid therefor.

(2) In the case of satellite broadcasting, Paragraph (1) shall apply only if

a) the programme is simultaneously communicated to the public by the same radio or television organisation through terrestrial broadcasting, and

b) the author has not made a statement defined in Article 87(3).

(3) With the exception of musico-dramatic works, or scenes or overviews thereof, on behalf of composers and lyricists, the collecting society performing the management of rights in literary and musical works shall conclude licence agreements with users on the authorisation of uses covered by Article 26 – other than those mentioned in Paragraphs (1) and (2) – of non-stage musical works and lyrics not intended for stage or parts of such non-stage musical works that have been made public and on the remuneration due to be paid, unless the author has made a statement defined in Article 87(3).

Article 28

(1) The author shall have the exclusive right to rebroadcast his work communicated to the public by broadcasting and to authorise another person therefor.

(2) The author shall also have the exclusive right to authorise the simultaneous, unaltered and unabridged retransmission to the public of his work broadcast or transmitted in the programme of a radio or television organisation or of an entity communicating its own programme by cable or by any other means to the public through an organisation other than the original one.

(3) The rightholders may exercise their right referred to in Paragraph (2) only through collective management of rights and may waive their remuneration only with an effect following the date of its distribution and to the extent of the amount due to them. The remuneration shall be determined by the collecting society performing the collective management of rights in literary and musical works in agreement with the collecting societies of other rightholders. The organisation executing retransmission shall pay the remuneration determined to the collecting society performing the management of rights in literary and musical works.

(4) The collected remuneration remaining after the deduction of expenditures shall be distributed to the rightholders, and – unless otherwise agreed between the affected collecting societies before March 31 of each year – thirteen percent shall be due to film producers, nineteen percent to cinematographic creators of movie pictures, three percent to creators of works of fine arts, designs and authors of photographic works, fourteen percent to scriptwriters, fifteen and a half percent to composers and lyricists, twenty-six and a half percent to performers and nine percent to producers of phonograms.

(5) The collecting society performing the collective management of rights in literary and musical works shall transfer the part of the collected remuneration due to authors and copyright holders of types of works which are not represented by the said society regarding the distribution of the remuneration, and to performers as well as producers of phonograms, to the collecting societies of those rightholders.

(6) The remunerations for the retransmission of the works broadcast in the programme of, or communicated by cable or in any other manner by, the Hungarian public media service radio and television organisation shall be paid from the Media Support and Asset Management Fund, and this payment shall be the responsibility of the administrator of the Fund.

The right of adaptation

Article 29

The author shall have the exclusive right to adapt his work or to authorise another person therefor. The translation of the work, its stage or musical arrangement, its adaptation for a cinematographic production, the adaptation of the cinematographic creation, and any other alteration of the work as a result of which another work is derived from the original one shall be regarded to mean adaptation.

Work created under employment or other similar legal relations

Article 30

(1) Unless otherwise agreed, the delivery of the work to the employer shall imply the transfer of the economic rights upon the employer as the legal successor to the author, provided that the creation of the work is the author's duty under an employment contract.

(2) The economic rights acquired pursuant to the provision of Paragraph (1) shall be devolved upon the employer's legal successor if there has occurred such legal succession.

(3) The author shall be entitled to fair remuneration if the employer authorises another person to use the work or assigns the economic rights relating to the work to another person.

(4) The author shall remain, even in the case of the acquisition of rights by the employer, entitled to the remuneration which is due to him even after the assignment of the right of use pursuant to this Act.

(5) If the creation of the work is the author's duty under an employment contract, the delivery of the work to the employer shall be considered as an act of consent to make the work public. In the case of the author's statement aimed at withdrawing his work (Article 13), the employer is obliged to omit the author's name. The author's name shall likewise be omitted, at the author's request, if, availing himself of his employer's rights, the employer makes alterations in the work and the author does not agree therewith.

(6) Legal statements made with regard to the work created by way of fulfilment of the author's duty under an employment contract shall be laid down in writing.

(7) The provisions relating to a work created as a duty under an employment contract shall be applied *mutatis mutandis* if the work has been created by a person employed as public or civil servant, a person employed under service relationship, or a co-operative member employed under legal relations similar to employment relations.

The term of protection

Article 31

(1) Copyright shall enjoy protection during the lifetime of the author and for seventy years following his death.

(2) The seventy years' term of protection shall be calculated from the first day of the year following the death of the author and, in the case of works of joint authorship, from the first day of the year following the death of the joint author dying last.

(3) If the identity of the author cannot be determined, the term of protection shall be seventy years calculated from the first day of the year following the year in which the work was first made public. However, should the author come forward during this period of time, the term of protection shall be calculated pursuant to Paragraph (2).

(4) In the case of a work made public in several parts, the year of the first publication shall be calculated for each part individually.

(5) The term of protection of a collectively created work shall be seventy years calculated from the first day of the year following the first publication of the work.

(6) The term of protection of a cinematographic creation shall be calculated from the first day of the year following the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the director of the film, the author of the screenplay, the author of the dialogue and the author of the music specifically created for the use in cinematographic creation.

(7) If the term of protection shall be calculated from a date other than the first day of the year following the death of the author, the author dying last or the joint author, and the work is not made public within the seventy years' period following its creation, no copyright protection shall further on be due to the work.

Article 32

Copyright protection of a scope consistent with the author's economic rights shall be due to the person who, following the expiration of the term of protection or the period of time determined in Article 31(7), lawfully makes a work public previously not made public. The term of such protection shall be twenty-five years from the first day of the year following the year in which the work was first made public.

Chapter IV

Free use of the work and other limitations to copyright

General Provisions

Article 33

(1) Uses falling within the scope of free use shall not be subject to the payment of any remuneration and to any authorisation of the author. Only works made public may be used freely pursuant to the provisions of this Act.

(2) The use under the provisions relating to free use is permitted and not subject to remuneration only so far as it does not conflict with the proper use of the work and does not unreasonably prejudice the legitimate interests of the author, and it is in compliance with the requirements of fairness and is not designed for a purpose incompatible with the intention of free use.

(3) The provisions relating to free use shall not be interpreted inclusively.

(4) For purposes of the provisions of this Chapter, the use shall be regarded to serve the purposes of school education if it is implemented in accordance with the requirements of education and with the curricula applied for kindergarten, primary school, secondary school, vocational training and technical school education and the primary education of arts, as well as for higher education falling under the scope of the Act on Higher Education.

Cases of free use

Article 34

(1) Anyone is entitled to quote parts of works – to the extent justified by the character and purpose of the recipient work – by designating the source and the author specified therein.

(2) Part of a literary, musical work or film made public, or such entire works of a smaller extent as well as pictures of works of fine art, architectural, applied art and industrial design creations as well as photographic works, may be borrowed for the purposes of illustration for school education and scientific research, with the indication of the source and the author named therein, to the extent justified by the purpose and on the condition that the borrowing work is not used for commercial purposes. Borrowing shall mean the use of a work in another work to an extent that goes beyond quotation.

(3) The non-commercial reproduction and distribution of the borrowing work mentioned in Paragraph (2) shall not be subject to the author's authorisation where the borrowing work is, pursuant to the relevant legislation, qualified as a textbook or a reference book and the school education purpose is indicated on its front page.

(4) The work may be adapted for purposes of school education in the course of school classes. The authorisation of the author of the original work also shall be required for the use of the work so adapted.

Article 35

(1) A copy of the work may be made by a natural person for private purposes if it is not intended for earning or increasing income even in an indirect way. This provision shall not apply to architectural works, engineering structures, software and databases operated by a computer device, as well as to the fixation of the public performance of a work on video or audio carrier. Sheet music may not be reproduced by means of reprography [Article 21(1)] even for private purposes or in the cases mentioned in Paragraph (4)b) to d).

(2) A complete book and a periodical or daily as a whole may be copied even for private purpose only by handwriting or typewriter.

(3) It shall not be considered as free use to have a work copied by someone else by means of a computer or on an electronic data carrier, regardless of whether or not it is done for private purposes.

(4) Publicly accessible libraries, educational establishments [Article 33(4)], museums and archives as well as picture and/or audio archives qualifying as public collections shall be allowed to make a copy of a work if it is not intended for earning or increasing income even in an indirect way and if

a) the copy is required for scientific research or archiving,

b) the copy is made for public library supply or for the purpose of use provided for in Article 38(5),

c) the copy is made of a minor part of a work published or of an a newspaper or periodical article for internal purposes of the entity, or

d) the copying is allowed by the provisions of a separate act in exceptional cases and under specified conditions.

(5) Specific parts of a work published as a book as well as newspaper and periodical articles may be reproduced for purposes of school education in a number corresponding to the number of students in a class, or for purposes of exams in public and higher education in a number necessary for the said purpose.

(6) A temporary reproduction that is auxiliary or interim – and is an integral and essential part of a technological process with no independent economic significance – shall be free if its sole purpose is to enable

a) the transmission in a network between third parties by an intermediary service provider, or

b) the use of the work authorised by the author or permitted pursuant to the provisions of this Act.

(7) Ephemeral fixation of a work lawfully used by a radio or television organisation for the broadcast of its own programme if made by its own facilities shall constitute free use. Unless otherwise provided for by the contract authorising the broadcasting of the work, such a fixation shall be destroyed or deleted within three months calculated from the date it was made. Those of such fixations which are specified in a separate Act and which have an exceptional documentary character may, however, be for an indefinite term preserved in audiovisual and/or audio archives qualifying as public collections.

(8) The cases of free use mentioned in Paragraphs (1), (4), (5) and (7) shall be without prejudice to the application of Articles 20 to 22.

Article 36

(1) Parts of publicly presented lectures and other similar works as well as political speeches may be freely used for the purpose of information to the extent justified by the purpose. In the case of such uses, the source – along with the name of the author – shall be indicated, unless it proves to be impossible. For the publishing of collections of such works, the author's authorisation shall be required.

(2) Articles published on current economic or political topics or works broadcast on the same topics may be reproduced and communicated to the public – including the making available to the public [Article 26(8)] – in the press freely, provided that the author has not expressly prohibited such a use. In the case of such a use, the source – along with the name of the author – shall be indicated.

(3) Any fine art, photographic, architectural, applied art or industrial design creation may be freely used as scenery in audiovisual media services. In this case the indication of the author's name is not compulsory.

(4) In the audiovisual media service, the use in of works made for purposes of scenery or costume is subject to the author's authorisation and the indication of his name.

(5) In the case an original work of art is exhibited, or it is assigned with the participation of a dealer in works of art, such works of art may be freely reproduced and distributed for the purpose of advertising the event and to the extent it is justified by the promotion of the event, provided that it is not intended for earning or increasing income even in an indirect manner. For the definition of the terms 'original work of art' and 'dealer in works of art', Article 70(2) and (3) shall be applied.

Article 37

Certain works may be used freely for the purpose of providing information on current events to the extent justified by this purpose. In the case of such a use, the source – along with the name of the author – shall be indicated, unless it proves to be impossible.

Article 38

(1) If the performance is not intended to earn or increase income even in an indirect manner and the participants do not receive remuneration, works may be performed in the following cases:

a) by amateur artistic groups if a stage work is involved and it is performed on the basis of a published script or a lawfully used manuscript, supposing that this does not violate any international treaty,

b) for purposes of school education or at celebrations held at school,

c) within the framework of social care and care for the elderly,

d)¹

e) at religious ceremonies of churches and on church festivities,

f) at religious ceremonies and religious festivities of religious communities.

(1a) If the performance is not intended to earn or increase income even in an indirect manner, works may be performed at celebrations held at national festivities.

(2) If a use is suitable for increasing the user's (e.g. a shop or an entertainment establishment) clientele or attendance or for entertaining the customers of a shop or other types of consumers, it shall be regarded to serve the purpose of increasing income. The collection of entrance-fees, even if a different name is used therefor, shall be considered to mean earning income. Payments exceeding the incurred and justified costs in connection with the performance shall be regarded to mean remuneration.

(3)

(4) A gathering held by a commercial entity or a legal entity other than a commercial entity exclusively for its members, officers and employees shall be considered to be private.

(5) In the absence of an agreement to the contrary, works forming part of the collection of publicly accessible libraries, educational establishments [Article 33(4)], museums, archives as well as picture or audio archives qualifying as public collections, may be, for the purpose of research or private study, freely displayed to individual members of the public on the screens of dedicated terminals on the premises of such establishments, and, to this end, such works may be communicated, including their making available, to such members of the public, provided that such a use is carried out in a way and on conditions as provided for in separate legislation and it is not intended for earning or increasing income even in an indirect way.

Article 39

Nationwide reference libraries may freely lend individual copies of a work. This provision shall not apply to software and to databases operated by computer devices.

Article 40

The copies reproduced within the scope of free use shall not be distributed without the author's authorisation, except for interlibrary lending and the case defined in Article 36(5).

Article 41

(1) Any non-commercial use of a work falls within the scope of free use if the purpose of the use is to meet demands of disabled persons that are directly related to their disability and it does not exceed the extent justified by the purpose.

(2) In court, administrative and other official proceedings a work may be used for purposes of evidence, in a manner and to the extent consistent with the purpose.

(3) For the purposes of carrying out the legislative duties of the Parliament and performing the related parliamentary activities a work may be used freely in a manner and to the extent

¹ Repealed by point a) of Article 27 of the Act CLIX of 2013 (With effect from 25 October 2013)

consistent with this purpose, if the use is not intended to earn or increase income even in an indirect manner.

Chapter V

Licence agreements

General provisions for licence agreements

Article 42

(1) On the basis of a licence agreement, the author authorises the use of his work and the user is obliged to pay remuneration therefor.

(2) The parties may freely agree on the content of the licence agreement; by mutual consent they may derogate from the provisions relating to the licence agreement if this is not prohibited by this Act or other legislation.

(3) If the content of the licence agreement cannot be interpreted unambiguously, the interpretation most favourable for the author shall be accepted.

Article 43

(1) The licence agreement shall provide exclusive right to use only by an express stipulation to that end. In the case of an exclusive licence to use, only the acquirer of right may use the work, the author may not grant further authorisations for the use of the work, and even he himself remains entitled to use his work only if this is stipulated in the agreement.

(2) The licence provided for non-exclusive use prior to the conclusion of the agreement in which exclusive use is authorised shall remain valid, unless otherwise stipulated in the agreement concluded between the author and the user acquiring non-exclusive right of use.

(3) The licence to use the work may be limited to a specific domain, period of time, manner of use and extent of use.

(4) Unless otherwise provided for by legislation or agreement, the licence to use shall cover the territory of Hungary and its term shall be in compliance with the period customary in agreements concluded on the use of works similar to the subject-matter of the agreement.

(5) If the agreement does not provide for the manners of use which the licence is intended to apply to or does not provide for the licensed extent of use, the licence shall be limited to the manner and extent of use indispensably necessary for the implementation of the objectives of the agreement.

Article 44

(1) The stipulation of the licence agreement whereby the author grants a licence to the use of an indefinite number of works he is to create in the future shall be null and void.

(2) No licence to a manner of use unknown at the conclusion of the agreement may be granted. However, the method of the use evolving following the conclusion of the agreement is not to be considered a manner of use unknown at the conclusion of the agreement if what is merely involved is that a manner of use known earlier will be possible to be applied more efficiently, in more favourable conditions or in a better quality as a result of the improvement of methods.

Article 45

(1) Unless otherwise stipulated in this Act, the licence agreement shall be drawn up in writing.

(2) The drawing up of the agreement in writing shall not be obligatory if the agreement is designed for publication in a daily or periodical.

(3) If the communication to the public specified in Article 26(8) is carried out by the author, the licence agreement shall be deemed as have been made in writing if the author licenses further uses to the work via a contract concluded and fixed by electronic means.

Article 46

(1) The user may assign the licence or may grant sub-licence to a third person for the use of the work only subject to the author's express consent thereto.

(2) The licence to use shall, without the author's consent, be devolved upon the legal successor if the commercial entity authorised for the use ceases to exist or its affected organisational unit is separated therefrom.

(3) If the user confers its rights or grants sub-licence without the author's consent or the licence to use is transferred without the author's consent, the user and the acquirer of rights shall be jointly and severally liable for the fulfilment of the licence agreement.

Article 47

(1) The licence to use shall cover the adaptation of the work only if it is expressly stipulated.

(2) The licence to reproduce shall permit the user to fix the work in a video recording or phonogram or to copy it by computer or onto an electronic data carrier only if it is expressly stipulated.

(3) The licence to distribute the work shall permit the user to import copies of the work into the country for purposes of putting them into circulation only if it is expressly stipulated.

(4) The licence to reproduce the work shall, in case of doubt, cover the distribution of reproduced copies of the work. This shall not imply, however, the importation into the country of copies of the work for purposes of putting them into circulation.

Article 48

According to the general provisions of civil law, the court may amend the licence agreement even if such an agreement infringes the author's substantial lawful interest in having a proportional share in the income resulting from the use because the difference in value between the services provided by the parties becomes strikingly great as a result of the considerable increase in the demand for the use of the work following the conclusion of the agreement.

Article 49

(1) The user is obliged to make a statement on the acceptance of a work delivered to him under an agreement relating to a work to be created in the future within two months from the date of the delivery of the work. If the user returns the work to the author for corrections to be made, the term shall be calculated from the date of the delivery of the corrected work. If no statement is made by the user within the term available to him for that purpose, the work shall be considered as accepted.

(2) If the agreement was concluded on a work to be created in the future, the user shall be entitled to repeatedly return the finished work, with reference to justified grounds and by setting appropriate deadlines, to the author for purposes of correction.

(3) If the author refuses to make the corrections without serious grounds, or fails to make the corrections by the deadline set, the user may withdraw from the agreement without the payment of remuneration.

(4) If the work is unsuitable for use even after the correction, only a reduced remuneration shall be paid to the author.

Article 50

If the author has consented to the use of his work, he is obliged to make any nonessential alterations that are indispensably or obviously necessary for the use. Should the author refuse or be unable to meet this obligation, the user may make the alterations without his consent.

Article 51

(1) The author may unilaterally terminate the agreement containing an exclusive licence to use if

a) the user fails to commence the use of the work within the period determined in the agreement or – in the absence of a stipulated period – within the period reasonably to be expected in the given situation; or

b) the user exercises his rights acquired by the agreement in a manner obviously inappropriate for achieving the goals of the agreement or in a manner that is inconsistent with the intended purpose.

(2) If the licence agreement is concluded for an indefinite term or for a period longer than five years, the author may exercise his right of termination referred to in Paragraph (1) only after two years have passed from the date of the conclusion of the agreement.

(3) The author may exercise his right of termination only after he has set an appropriate deadline for the user for the fulfilment of the agreement and that deadline has expired without any result.

(4) The author may not waive his right of termination referred to in Paragraph (1) in advance; such waiver may be excluded by agreement only for a five years period following the conclusion of the agreement or, if it occurs later, following the delivery of the work.

(5) Instead of the termination of the agreement, the author may terminate the exclusivity of the licence while proportionally reducing the fee to be paid to him for the use.

Article 52

(1) If the licence agreement relating to works to be created in the future is concluded in a way that future works are referred to only by their type or character, either party may terminate the agreement with a six months' notice after the lapse of five years from the conclusion of the agreement and subsequently every five years thereafter.

(2) The author may not waive his right of termination referred to in Paragraph (1) in advance.

Article 53

(1) The author may terminate the licence agreement if, with reference to any serious grounds, he withdraws his authorisation to make his work public or forbids the further use of his work already made public.

(2) The exercise of the right of termination is subject to the author providing a security to compensate for the damage having occurred prior to the time at which the statement was made.

(3) If, following the termination of the licence agreement as provided for by Paragraph (1), the author wishes again to consent to make his work public or to its continued use, the previous user shall have the right of preemption.

(4) The rules governing the right of preemption regarding the sale of goods shall apply to the right of preemption in respect of the licence.

Article 54

The licence agreement shall cease to have effect with the lapse of the time determined in the agreement, with the emergence of the circumstances referred to in the agreement as well as after the expiration of the term of protection.

Article 55

(1) The provisions relating to licence agreement shall apply *mutatis mutandis* to agreement aimed at assigning the author's economic rights, and with derogations set out in Paragraphs (2) and (3) to the agreement which aims to license the use of performers' performances and to assign the performers' economic rights,

(2) If 50 years after the phonogram was published or, failing such publication, 50 years after it was communicated to the public, calculated from the first day following the year when

the publication or communication took place, the phonogram producer or any other person authorised by the producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public by wire or wireless means or in any like manner in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the agreement on the fixation of his performance made with the phonogram producer.

(3) The right to terminate the agreement referred to in Paragraph (2) may be exercised if the producer fails to carry out both of the acts of exploitation referred to in Paragraph (2) within a year from the notification of the performer about his intention to terminate the agreement on transfer or assignment pursuant to the previous sentence.

(4) The performer may not waive its right to termination referred to in Paragraph (2).

Publishing agreement

Article 56

(1) Under a publishing agreement, the author shall be obliged to make his work available to the publisher, and the publisher shall be entitled to publish it and put it into circulation, and shall be obliged to pay remuneration to the author.

(2) The right of publishing shall – in case of any doubt – relate to the publication of the work in Hungarian. The right of publishing exercised under the agreement shall be exclusive, except in the case of collection of works and works made for dailies and periodicals.

Article 57

(1) The inclusion of pictures in the publication of literary works shall be subject to the author's consent.

(2) If the author has consented to the inclusion of pictures (illustrations) in the publication of his work, he may refuse his consent to the use of specific pictures only with reference to serious grounds.

The licensing of use of works of authors with unknown identity or who cannot be located (orphan works)

Article 57/A

(1) The Hungarian Intellectual Property Office (hereinafter referred to as 'Office') shall grant upon request a licence in conjunction with the determination of a remuneration that is to be in compliance with the manner and extent of use to those who have taken measures that can generally be expected under the given circumstances for the search of the author with due consideration to the type of work and manner of use, and the search of the author was unsuccessful. The licence shall be effective for a maximum term of five years, within the territory of Hungary, non-exclusive, non-assignable, and shall not grant authorisation for granting further licences and for the adaptation of the work (Article 29).

(2) If the use is not intended to earn or increase income even in an indirect manner, the remuneration provided for in Paragraph (1) shall be paid after the identity or the location of the author becomes known. If the use is intended to earn or increase income even in an indirect manner, the remuneration shall be deposited with the Office. The deposit of the remuneration shall be the condition of the commencement of the use.

(3) If the identity or the location of the author becomes known during the term of the licence, the Office shall revoke the licence upon the request of the author or the user with an effect commencing on the date when the identity or the location of the author becomes known, notwithstanding that the use can be proceeded to the extent existing on the date when the identity or the location of the author has become known and for the period that remaining from the term of the licence, but not longer than one year from the date when the identity or the location of the author has become known.

(4) Paragraph (3) shall be applied *mutatis mutandis* if serious preparations have been made in regard to the use before the date when the identity or the location of the author has become

known. In this case the use may be commenced and carried on to the extent of the preparation that existed on the date when the identity or the location of the author has become known.

(5) The author may claim the remuneration due to him from the user or, if the remuneration has been deposited, the amount deposited for his benefit from the Office, for five years from the date when the licence becomes ineffective or from the date of the final resolution on the revocation. After the expiry of the five years' period, the Office shall transfer the remuneration to the collecting society that licenses the other types of uses of the work of the author who cannot be identified or located. In lack of such a society, the transfer shall be made to the National Cultural Fund (hereinafter referred to as 'NCF'). If more collecting societies license the other uses of the work of the author who cannot be identified or located, the remuneration shall be due to such societies in equal portions. The NCF shall use the remuneration transferred for the making accessible of cultural goods.

(6) If the author disputes the amount of the remuneration provided for in Paragraphs (3) to (5), the court shall have jurisdiction. The court decides in such disputes in compliance with the legal provisions applicable to copyright lawsuits.

(7) Paragraphs (1) to (6) shall not apply if the licensing of the use falls within the scope of collective management of rights.

(8) Paragraphs (1) to (8) shall also be applied to the performances of performers who cannot be identified or located.

Article 57/B

(1) The Act on the General Rules of Administrative Proceedings shall apply to the procedure of the Office provided for in Article 57/A with the following derogations:

a) the provisions of the Act on the General Rules of Administrative Proceedings on the ex officio or per request notification in relation to the commencement of the procedure shall not apply;

b) the Office shall examine the facts within the limits of the request, based on the statements and allegations of the client;

c) the provisions of the Act on the General Rules of Administrative Proceedings on the publication of resolutions, the administrator, the exemption of expenses and the judicial enforcement shall not apply;

d) no appeal, retrial or objection by the prosecutor pursuant to the Act on Prosecution Service can be lodged and no supervisory procedure can be initiated against the decision of the Office; the decision and order – where individual appeal can be lodged in accordance with the Act on the General Rules of Administrative Proceedings – of Office shall be reviewed in accordance with Article 57/C by the court in a non-litigious procedure;

e) no public hearing may be held;

f) no communication is permitted via short text messages in the proceedings, and communication in writing by way of electronic means is permitted only in the cases defined in Article 57/D.

(2) The public prosecutor may also initiate the review of the resolution of the Office; the Metropolitan Attorney's Office shall have exclusive territorial jurisdiction to file the request. The Office shall communicate its resolution also to the Metropolitan Public Prosecutors' Office.

(3) An administrative service fee defined by separate legislation shall be paid for the adjudication of the request filed under Article 57/A(1).

(4) Separate legislation shall provide for the detailed rules on the licensing of the use of orphan works, including the amount of the remuneration defined in Paragraph (3).

(5) By way of derogation from Paragraph (1)a), if it is so requested by the client requesting the proceedings, the Office shall provide information – in accordance with the Act on the General Rules of Administrative Proceedings – within eight days from the day following the day of filing the request concerning:

a) the case number, the name and contact information of the officer assigned to the case,

b) the date of the opening of the proceedings, the administrative time limit, the durations which are not included in the administrative time limit, and the procedures to be implemented in the event of the Office's failure to execute its vested authority,

c) the proceedings available for accessing to documents and making statements, and

d) the fact that the request shall be regarded as a consent to the processing of personal data, as well as to the transmission of such data to the extent necessary for proceedings related to national legal assistance.

Article 57/C

(1) The request to initiate a non-litigious procedure under Article 57/B(1)d) shall be filed within thirty days from the communication of the decision with the Office that shall forward the request together with the documents of the case to the court – with the exception of the case stipulated in (1a) – within fifteen days.

(1a) If the request raises a legal issue of fundamental importance, the Office may make a written statement on this issue and shall forward it, attached by the request and the documents of the case, to the court within thirty days.

(2) To the requirements of the request provided for in Paragraph (1), the requirements of the statement of claim shall apply *mutatis mutandis*.

(3) If the request provided for in Paragraph (1) is filed with delay, the court shall have jurisdiction to adjudicate the application for excuse.

(4) The general provisions of the Act on Civil Procedure shall apply *mutatis mutandis* to the non-litigious procedure provided for in Article 57/B (1) d) with the derogations set out in this Act and arising out of the nature of non-litigious proceedings.

(5) If review of a decision of the Office is requested on the basis of a decision of the Constitutional Court under the provisions of the Administrative Procedures Act, the time limit for filing a request for review shall open again for 30 days from the pronouncement of the decision of the Constitutional Court.

(6) In proceedings for the review of decisions taken by the Office, the Metropolitan Court shall have jurisdiction and exclusive competence.

(7) In addition to the cases determined in the general provisions of the Code of Civil Procedure, the following persons shall be excluded from participating in the proceedings or from acting as judges:

(a) persons who participated in taking the decision of the Office;

(b) relatives, as defined in the general provisions of the Code of Civil Procedure relating to the incompatibility of judges, of a person mentioned under subparagraph (a) above;

(8) The provisions of paragraph (7) shall also apply to persons drawing up the minutes and to experts.

(9) The person who filed the request shall be a party to the court proceedings.

(10) Where an opposing party has also taken part in the procedure before the Office, the court proceedings shall be initiated against that party.

(11) Where an opposing party also takes part in the court proceedings, the provisions on litigation costs shall apply *mutatis mutandis* to the advance and payment of the costs of proceedings. In the absence of an opposing party, the applicant shall advance and meet the costs.

(12) If the Office has made a written statement concerning the request for review [Article 57/C (1a) and Article 92/D (3)], the chairman of the proceeding chamber shall notify the party or parties thereof in writing.

(13) If the case can be settled on the basis of documentary evidence, the court may take a judgement without a hearing, but the party shall be heard at his request.

(14) Should the court consider the case without a hearing, but finds during the proceedings that a hearing is necessary, it may at any time order such hearing.

(15) Compromise can not be reached in the court proceedings.

(16) The court shall decide both on the merits of a case and on other matters by a judgment. The court shall repeal the decision and order the Office to start a new procedure if necessary with the exception where infringement on rules of procedure not affecting on the merits of a case.

(17) Where, after the filing of a request for review, the Office withdraws any of its decisions, the court shall terminate the proceedings. If the Office has amended its decision, the court proceedings may only continue in respect of matters still disputed.

Article 57/D

(1) Requests for granting licence to use orphan works and for the withdrawal of such licences may also be submitted by way of electronic means, using the standard electronic forms prescribed by the Office.

(2) The Office shall confirm receipt of the request transmitted by way of electronic means by sending an electronic notice to the applicant – in accordance with specific other legislation – containing an electronic file number.

(3) The Office shall forthwith examine whether or not the application received by way of electronic means according to Paragraph (1) is in compliance with the requirements laid down in legislation relating to communications maintained by way of electronic means.

(4) If transmitted electronically, the request referred to in Paragraph (1) shall be considered submitted when the automatic confirmation of the electronic receipt is sent to the applicant, unless the Office declares the document received uninterpretable and notifies the client accordingly by electronic mail.

(5) The client having sent the uninterpretable document shall confirm receipt of the notice transmitted according to Paragraph (4). If the client fails to confirm receipt of the notice within fifteen days, the Office shall send the document by post.

PART TWO

PROVISIONS RELATING TO SPECIFIC GENRES

Chapter VI

Computer program creation (software)

Article 58

(1) The provision of Article 1(6) shall also apply to the idea, principle, concept, procedure, method of operation or mathematical operation on which the interface of the software is based.

(2) The provision of Article 4(2) shall also apply to the adaptation of the software from the original program language to a different program language.

(3) The economic rights relating to software shall be assignable.

(4) The provisions of Article 30(3) and (4) shall not apply to software created by the author as a duty under an employment contract.

Article 59

(1) Unless otherwise agreed, the author's exclusive right shall not cover the reproduction, adaptation, arrangement, translation and any other modification of the software, including the correction of mistakes, as well as the reproduction of the results of these acts in so far as these acts of use are carried out by the person authorised to acquire the software in compliance with the intended purpose of the software.

(2) No provision in the licensing agreement shall prohibit the user from making a back-up copy of the software if it is necessary for the use.

(3) The person entitled to use a copy of the software may, without the author's authorisation, observe and study the operation of the software, and may make a trial use thereof in the course of its loading, displaying on a monitor, running, transmission or storage in order to get to know the idea or principle serving as a basis for any element of the software.

Article 60

(1) No authorisation of the author shall be required for the reproduction or translation of a code which is indispensable for the acquisition of the information necessary for the combined operation of an independently created software with another software, provided that

a) these acts of use are performed by the authorised user or another person entitled to use the copy of the software or a person put in charge of performing these acts by these persons;

b) the information necessary to the combined operation has not been easily accessible to the persons referred to in Item a);

c) these acts of use are limited to those parts of the software which are necessary for ensuring the combined operation.

(2) The information obtained through the application of the provision of Paragraph (1) shall not be

a) used for a purpose other than the combined operation with the independently created software;

b) communicated to another person unless this is required for the combined operation with the independently created software;

c) used for the development, production and putting into circulation of another software essentially similar as regards its form of expression, or for other acts resulting in the infringement of the copyright.

(3) The provision of Article 33(2) shall apply mutatis mutandis to the acts falling under the provisions of Paragraphs (1) and (2).

(4) The provisions of Article 34(2) and Article 38(1) shall not be applicable to software. The term defined in Article 49(1) shall be four months in the case of software.

(5) If copies of the software are obtained in the course of commercial distribution, it is not obligatory to put in writing an agreement relating to the use of the software.

Chapter VII

Database

Article 60/A

(1) For the purposes of this Act, 'database' shall mean a collection of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed by computer devices or other means.

(2) The provisions relating to databases shall be applied mutatis mutandis to the documentation necessary for the operation of the database and for accessing its content.

(3) The provisions relating to databases shall not apply to software used for the creation or operation of databases having contents accessible by computer devices.

Article 61

(1) Copyright protection shall apply to the database qualifying as a collection of works (Article 7).

(2) The economic rights relating to databases shall be assignable.

(3) The provisions of Article 30(3) and (4) shall not apply to the database created by the author as a duty under an employment contract.

Article 62

(1) The performance of acts necessary to get access to the content of the database qualifying as a collection of works and to use the content thereof in accordance with the intended purpose by a person authorised to use the database shall not be subject to the author's authorisation.

(2) If right has been obtained only for the use of a specific part of the database, the provision of Paragraph (1) shall apply to that specific part of the database.

(3) The provision of Article 33(2) shall apply mutatis mutandis to the acts falling under the provisions of Paragraphs (1) and (2).

(4) The stipulations of a licence agreement contrary to the provisions set out in Paragraphs (1) and (2) shall be null and void.

(5) No written agreement on the use of a database shall be required as obligatory if copies of the database are obtained through commercial channels.

Chapter VIII

Works ordered for advertising

Article 63

(1) The economic rights relating to a work ordered for advertising shall be assignable to the user.

(2) From the aspect of the conclusion of an agreement as regards these economic rights, in particular, the manner, the extent, the scope of territory and the term of use, the specification of the carrier of the advertisement as well as the remuneration due to the author shall be regarded as essential issues.

(3) Such works shall not fall within the scope of the collective management of rights.

(4) In the case of the use of pre-existing works for advertising, the author and the user may agree that the work shall be considered – exclusively from the aspect of the application of the provisions of Paragraphs (1) to (3) and of the use related to the domain of advertising – as a work ordered for advertising. This agreement shall become effective towards the collecting society only if the society is informed thereof by the author in writing.

Chapter IX

Cinematographic creations and other audiovisual works

General Provisions

Article 64

(1) A cinematographic creation shall be taken to mean a work which is expressed by a series of motion pictures arranged in a predetermined order whether or not accompanied by sound, irrespective of the type of carrier the work has been fixed on. Feature films produced for movie projection, television films, advertising and documentary films as well as animations and educational films shall in particular be regarded as cinematographic creations.

(2) The authors of the literary and musical works prepared for a film, the director of the film and all other persons having made creative contributions to the production of the whole of the film shall be regarded to be the authors of the cinematographic creation. This provision shall not prejudice the rights ensured by this Act of the authors of other works used in the film.

(3) The natural or legal person or the business company having no legal personality who or which, on their own behalf, initiates and organizes the creation of the film and provides therefor the necessary financial and other conditions shall be regarded to be the producer of the film (hereinafter referred to as 'the producer').

Article 65

(1) A cinematographic creation shall be considered as completed if its final version is accepted as such by the authors and the producer. The final version may not thereafter be unilaterally altered by either party.

(2) The alteration of a completed film by addition, omission or replacement or in any other form shall be subject to the authorisation of the authors and the producer.

(3) Unless otherwise agreed between the authors, the director shall represent the other authors in the exercise of the rights provided for in Paragraphs (1) and (2).

(4) Except for the rights stipulated in Paragraphs (1) and (2), the producer may also take action towards the protection of the authors' moral rights.

(5) Cinematographic creations shall not be subject to the general provisions relating to works created as a duty under an employment contract (Article 30).

Agreement for adaptation of a work for screen

Article 66

(1) Unless otherwise stipulated, pursuant to the contract concluded on the production of a cinematographic creation (hereinafter referred to as 'agreement for adaptation for screen'), the author – with the exception of the composer of a musical work with or without text – shall assign to the producer the right of use of the cinematographic creation and of licensing its use.

(2) The assignment of the right of licensing shall not extend to the economic rights provided for in Articles 20, 23 (3) and (6) and 28.

(3) Regarding each manner of use, remuneration shall be due to the author separately. The support made available to the producer for the creation of the film shall be considered as income related to the use. It shall be the producer's obligation to pay the remuneration.

(4) The producer may exercise the rights due to him under the agreement jointly with another, domestic or foreign, natural or legal person.

(5) The producer shall be accountable to the author, by manners of use, in writing and at least once a year, on the income related to the use of the cinematographic creation.

(6) Should the producer fail to start the work of adaptation for screen within four years from the acceptance of the work, or if such work is started but is not completed within a reasonable deadline, the author may unilaterally terminate the agreement and may raise claim to the payment of a proportional remuneration. Any advance payment disbursed to the author shall be considered as due to him, and the author may freely dispose of his work.

(7) If the agreement is concluded on a work to be created in the future for purposes of a film, the producer shall be obliged to notify the author in writing within six months from the delivery of the work whether he accepts it or requests it to be corrected. In the case the work is returned to the author for corrections, an appropriate deadline is to be set for performing those corrections. The producer shall be obliged to make a statement whether he accepts the corrected work within three months from the delivery of the corrected work. Should the producer fail to meet his obligation to make a statement on the acceptance of the work or of the corrected work, the work shall be considered as accepted.

(8) Within ten years from the completion of the production, the author may not enter into another contract on the production of a new film unless it is consented to by the producer. This limitation shall also extend to characteristic figures in a cartoon or puppet film and – if it is so agreed between the parties – to another work of the author with the same topic as that of the work created and used for the production of the film.

Chapter X

Creations of fine art, photography, architecture, applied art, industrial design and designs of engineering structures

Moral rights

Article 67

(1) The alteration of the design of an architectural creation or engineering structure that is made without the author's consent and influences the appearance or the intended proper use shall be regarded to be an unauthorised alteration of the work.

(2) The designer shall have the right to determine where and how his name and the date of designing should be indicated on the building or engineering structure. However, the exercise of this right shall be subject to the requirement that no unjustified and disproportionate infringement of the rights and lawful interests of the owner, the user or the operator shall thereby be caused.

(3) The author's name shall be indicated on a view if it is intended to present a specific fine art, architectural, applied art or industrial design creation or engineering structure. The author's name shall be also indicated if such creations are used for presentation in scientific educational lectures as well as for school education purposes [Article 33(4)].

(4) In the case of further uses of the design of an architectural or engineering creation in an unaltered form, only the name of the author of the original design shall be indicated.

(5) The provision of Article 34(1) shall not be applicable to the use of fine art, photographic and applied art creations.

(6) The user of the work shall tolerate the presentation of the work and the taking of photographs and video records thereof by persons authorised thereto if this is without prejudice to his equitable interests.

The cases of free use

Article 68

(1) Of a fine art, architectural and applied art creation set up with a permanent character outdoors in a public place, a view may be made and used without the author's consent and paying remuneration to him.

(2) For purposes of scientific educational lectures as well as of school education [Article 33(4)], the picture of a fine art, architectural, applied art and industrial design creation, furthermore photographic works may be used without the author's consent and paying remuneration to him.

The right of exhibition

Article 69

(1) The owner of a fine art, photographic, applied art or industrial design creation is obliged to make the work temporarily available to the author in order that he can exercise his author's right if such action is without prejudice to the owner's equitable interest.

(2) The exhibition of fine art, photographic, architectural and applied art creations shall be subject to the author's consent. The exhibition of a work forming part of a public collection shall not be subject to the author's consent and no remuneration shall therefor be due to the author.

(3) The author's name shall be indicated in the case of the exhibition of the work.

Resale right

Article 70

(1) Remuneration shall be paid if the ownership of an original work of art is assigned for a consideration by any dealer in works of art. This provision shall only apply after the first assignment of ownership of the work of art by the author. The right to the remuneration may not be waived.

(2) For the purposes of this Article, 'original work of art' means creations of fine art (e.g. pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures), creations of applied art (e.g. tapestries, ceramics, glassware) and photographic works, provided they are made by the author himself or are copies considered to be original works of art. Copies of works of art shall be considered to be original works if they have been made in limited number by the author himself or under his direction. Copies of works of art which are numbered, signed or otherwise appropriately marked by the author shall be considered to be such copies.

(3) For the purposes of this Article, a dealer in works of art shall mean any natural or legal person or business company having no legal personality distributing works of art.

(4) The remuneration shall be determined on the basis of the exchange value, which is or can be expressed in money, of the work of art (hereinafter referred to as 'sale price') net of tax and other public dues at the following rates:

a) 4 per cent for the portion of the sale price up to the amount in HUF which is equivalent to EUR 50 000;

b) 3 per cent for the portion of the sale price from EUR 50 000.01 to EUR 200 000, expressed in HUF;

c) 1 per cent for the portion of the sale price from EUR 200 000.01 to EUR 350 000, expressed in HUF;

d) 0.5 per cent for the portion of the sale price from EUR 350 000.01 to EUR 500 000, expressed in HUF;

e) 0.25 per cent for the portion of the sale price exceeding the amount in HUF which is equivalent to EUR 500 000.

(5) The total amount of the remuneration may not exceed the amount in HUF which is equivalent to EUR 12 500.

(6) The assignment referred to in Paragraph (1) shall not be subject to payment of remuneration if the sale price net of tax and other public dues (e.g. cultural contribution) does not exceed HUF 5 000.

(7) The amount in HUF shall be calculated on the basis of the official exchange rate of the National Bank of Hungary, valid on the first day of the calendar quarter of the conclusion of the contract.

(8) Where a museum obtains the ownership of an original work of art from a person other than a dealer in works of art, there shall be no obligation to pay the remuneration referred to in Paragraph (1), provided that the operating of the museum is not intended to generate or increase income even in an indirect way.

(9) The remuneration shall be paid by the dealer in works of art to the collecting society performing the management of rights in fine art and applied art. If more than one dealer in works of art is involved in the transaction of the assignment of ownership, they shall have joint and several liability for the payment of remuneration. In such a case, unless the dealers in works of art agree otherwise, the seller shall be obliged to pay the remuneration. If none of the dealers in works of art involved in the transaction participates in the transfer as a seller, the remuneration shall be paid by the buyer, unless otherwise agreed.

(10) The dealer in works of art shall be required to pay the remuneration for the agreements concluded quarterly, by the twentieth day of the month following the calendar quarter concerned, to the collecting society performing the management of rights of works in fine art and applied art. When paying the remuneration, the author's name, unless it proves to be impossible, as well as the title, and, separately for each work, the sale price and the amount of the remuneration shall be communicated. The collecting society shall pay the collected remuneration to the author of the work of art or his legal successor.

(11) For a period of three years after the conclusion of the agreement relating to the assignment determined in Paragraph (1), the collecting society may require from the dealer in works of art to provide all the information that may be necessary in order to collect the remuneration.

(12) The provisions of Paragraphs (1) to (11) shall apply to

a) any author or his legal successor who is a national of any of the Member States of the European Economic Area, as well as

b) nationals of any country outside the European Economic Area, provided that the legislation of the country of which the author or his legal successor is a national ensures resale right protection in that country for authors and their legal successors from the Member States of the European Economic Area, or

c) author or his legal successor who is not a national of any of the Member States of the European Economic Area, but who has his habitual residence in Hungary.

(13) As regards Paragraph (12)b), the statement of the Minister responsible for justice shall be followed. As regards the works of art falling under Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, the Minister responsible for justice shall issue his statement taking into account the list published by the European Commission.

Other Provisions

Article 71

As regards industrial design and interior design creations intended for industrial production purposes:

a) the right to have the name indicated may be provided for by legislation or contract by way of derogation of the provisions of this Act;

- b) the user shall have the right of exclusive use and alteration within the scope covered by the contract, however, the designer shall be consulted before the execution of any alteration;
- c) the contract shall include a provision on whether the user may use the creation with or without time limit.

Article 72

As regards portraits made to order, the consent of the portrayed person shall also be required in order to exercise the copyright.

PART THREE

RIGHTS RELATED TO COPYRIGHT

Chapter XI

The protection of neighbouring rights

The protection of performers

Article 73

(1) Unless otherwise provided for by this Act, the performer's consent shall be required for:

- a) the fixation of his unfixed performance;
- b) the broadcasting or the communication in another manner to the public of his unfixed performance, unless the performance broadcast or communicated in another manner to the public is itself a broadcast performance;
- c) the reproduction of his fixed performance;
- d) the distribution of his fixed performance;
- e) making his performance available to the public by cable or any other device or in any other manner in a way that the members of the public can choose the place and time of access individually.

(2) In the case of an ensemble of performers, the performers may exercise their rights referred to in Paragraph (1) via their representative.

(3) If the performer has consented to his performance being fixed in a cinematographic creation, by this consent – unless otherwise stipulated – he transfers upon the producer of the film [Article 63(3)] the economic rights referred to in Paragraph (1). This provision shall not prejudice the performers' claim to remuneration pursuant to Articles 20 and 28. Article 23(6) shall also apply *mutatis mutandis* to performers.

Article 74

(1) Unless otherwise provided for by this Act, remuneration shall be due to the performer for the uses mentioned in Article 73(1).

(2) The provisions of Article 27(3) shall also be applied *mutatis mutandis* in the case of performers and the collecting societies performing the management of their rights regarding the remuneration for the fixation of a performance made for the purposes of broadcasting or communication to the public [Article 26(6)] and concerning the exercise of the right provided for in Article 73(1)e).

Article 74/A

(1) Where an agreement on the fixation of a performance made with the phonogram producer provides the performer a right to claim a non-recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year directly following the 50th year after the phonogram was published or, failing such publication, the 50th year after it was communicated to the public.

The right to obtain such annual supplementary remuneration may not be waived by the performer. The right to claim a supplementary remuneration shall only be exercised through collective management of rights.

(2) Following the 50th year, the phonogram producer in order to pay the remuneration determined in Paragraph (1) shall transfer to the collective management organization the amount that corresponds to 20 % of the revenue which the phonogram producer has derived during the preceding year from the reproduction, distribution and making available [Article 76(1) c)] of the phonogram in question not reduced with costs. The phonogram producer shall provide any information which may be necessary for the distribution of the supplementary remuneration to those who are entitled to it and to their collective management organizations.

(3) Where a performer based on the agreement of the fixation of a performance made with the phonogram producer is entitled to recurring remuneration proportionate to the income resulting from the use of a performance, the performer shall have the right to obtain a remuneration following the 50th year after the phonogram was published or, failing such publication, the 50th year after it was communicated to the public. The provisions aiming the reduction of this remuneration either by advance payments or deductions defined in the agreement shall be null and void.

Article 75

(1) In the case of the uses referred to in Article 73(1), the performer shall have the moral right to have his name indicated, depending on the nature of the use and in a manner consistent therewith. In the case of an ensemble of performers, this right shall apply to the indication of the names of the ensemble, the leader of the ensemble, and the chief performers.

(2) Moral rights of the performer are infringed by the distortion, mutilation or any other alteration of or other derogatory action in relation to his performance which prejudices the honour or reputation of the performer.

The protection of phonogram producers

Article 76

(1) Unless otherwise provided for by this Act, the consent of the producer of a phonogram shall be required for the phonogram to be:

- a) reproduced;
- b) distributed;
- c) made available to the public by cable or any other means or in any other manner in a way that the members of the public can choose the place and time of access individually.

(2) Unless otherwise provided for by this Act, the producer of the phonogram shall have a right to remuneration for the uses referred to in Paragraph (1).

Article 77

(1) In the case of the broadcasting or communication to the public in any other manner of a phonogram or of its copy released for commercial purposes, in addition to the remuneration to be paid for the use of the works under copyright protection, the user must pay an additional remuneration which shall be due to the producer of the phonogram and the performer on an equal basis, unless otherwise agreed between the rightholders.

(2) For purposes of the provision of Paragraph (1), a phonogram shall be considered as released for commercial purposes if it is made available to the public in the manner provided for in Article 73(1)e) and Article 76(1)c). For purposes of the provision of Paragraph (1) and of Article 73(1)b), the use referred to in Article 28(2) shall also be regarded as communication to the public. Furthermore, for purposes of Paragraph (1), the making available of a phonogram in the presence of, or in a place open to, the public [Article 24(2)b)] shall also be regarded as communication to the public.

(3) The rightholders may enforce their claim to remuneration only through the collecting societies performing the management of their rights and they may waive their remuneration

only with an effect following the date of the distribution and to the extent of the amount due to them.

Article 78

(1) The public lending and rental of copies of a phonogram put into circulation shall be subject to the consent – in addition to that of the author of the work included in the phonogram – of the phonogram producer and – in the case of the phonogram of a performance – to that of the performer.

(2) The use determined in Paragraph (1) shall be subject to the payment of remuneration, which shall be distributed on an equal basis between the rightholders, unless they agree otherwise. The authors and the performers may enforce their claim to remuneration through the collecting societies performing the management of their rights, and may waive such remuneration following the date of its distribution only and to the extent of the amount due to them.

Article 78/A

If the agreement on the fixation of a performance made with the phonogram producer is terminated by the performer pursuant to Article 55 (2)-(3), all the rights of the phonogram producer related to the phonogram shall expire.

Article 79

The producer of the phonogram shall have the right to have his name indicated on the copies of the phonogram.

The protection of radio and television organisations

Article 80

(1) Unless otherwise provided for by this Act, it shall be subject to the consent of the radio or television organisation for its programme to be

a) broadcast or communicated to the public by other radio or television organisations or by entities concerned with communication by cable to the public;

b) fixed;

c) reproduced after fixation, if the fixation was made without its consent, or the fixation was made pursuant to Article 83(2), and the reproduction is made for a different purpose than to which Article 83(2) relates;

d) made available to the public by cable or any other means or in any other manner in a way that the members of the public can choose the place and time of the access individually.

(2) Unless otherwise provided for by this Act, the television the consent of the organisation shall be required for its programme to be communicated to the public in premises where the programme is accessible to the public for the payment of an entrance-fee.

(3) The uses referred to in Paragraphs (1) and (2) shall be subject to the payment of remuneration, unless otherwise provided for by this Act.

(4) In the case of communication by cable of an own programme to the public, Paragraphs (1) to (3) shall be applicable *mutatis mutandis*.

Article 81

In the case of uses referred to in Article 80, radio or television organisations and organisations communicating by cable their own programmes to the public shall have the right to have their names indicated.

The protection of film producers

Article 82

(1) The consent of the film producer [Article 64(3)] shall be required for the film to be

- a) reproduced;
- b) distributed, including lending to the public;
- c) made available to the public by cable or any other means or in any other manner in a way that the members of the public can choose the place and time of access individually.

(2) Unless otherwise provided for by this Act, the uses referred to in Paragraph (1) shall be subject to the payment of remuneration.

(3) Article 2 shall apply *mutatis mutandis* to the film producer.

The relationship between authors' rights and neighbouring rights

Article 83

(1) The protection of the rights covered by the provisions of this Chapter may not prejudice the protection of authors' rights in literary, scientific and art creations.

(2) No consent of the rightholders of neighbouring rights shall be required in cases where the author's consent shall not be required by this Act for the use of creations protected by copyright. When, under this Act, remuneration is due to the rightholders of neighbouring rights for the use, the first sentences of Article 16(4) and (5) pertaining to the proportional extent of the remuneration shall also apply to the rightholders of neighbouring rights.

The term of protection

Article 84

(1) The subject matters of related rights covered by the provisions of this Chapter – with the derogations set out in Paragraph (2) – shall enjoy protection for the following periods of time:

a) unfixed performances, for fifty years from the first day following the year in which the performance was held;

b) performances fixed not in phonograms, for fifty years from the first day following the year in which the performance was first put into circulation, or for fifty years from the first day following the year in which the recording was fixed if it had not been put into circulation during that term;

c) performances fixed in phonograms, for seventy years from the first day following the year in which the phonogram was first put into circulation, or for seventy years from the first day following the year in which the phonogram was fixed if it had not been put into circulation during that term;

d) phonograms, for seventy years from the first day following the year in which the phonogram was first put into circulation, or for fifty years from the first day following the year in which the phonogram was fixed if it had not been put into circulation during that term;

e) broadcast programmes or in own programmes transmitted by cable to the public, for fifty years from the first day following the year in which the programmes were first broadcasted or the transmission occurred;

f) films, for fifty years from the first day following the year in which the film was put into circulation, or for fifty years from the first day following the year in which the production of the film was completed if the film was not put into circulation during that term.

(2) The fifty years provided in Paragraphs (1) b) and f), and the 70 years set out in point c) shall be calculated from the first day following the year in which the first communication to the public occurred, if the subject matter of related rights was not put into circulation within fifty years from when the subject matter of related rights was made, but it has been communicated to the public or its communication to the public was prior to its putting into circulation. In the case of phonograms [Paragraph (1) d)] the seventy years term shall be calculated from the first day following the year in which the first communication to the public occurred if the phonogram was not put into circulation within fifty years after it was made, but it was communicated to the public during that time.

Protection of makers of databases

Article 84/A

(1) Unless otherwise stipulated in this Act, the consent of the maker of a database (Article 60/A) shall be required, affecting the whole or a substantial part of the content of the database, for

a) its reproduction by making copies thereof [Article 18(1)b)] (hereinafter referred to as 'extraction');

b) making it available to the public through distribution of copies of the database or through communication to the public – as provided for in Article 26(8) – (hereinafter referred to as 're-utilization').

(2) The distribution referred to in Paragraph (1)b) shall be understood to cover the following cases of distribution: putting into circulation through sale or by the assignment of ownership in a different manner, importation into the country for purposes of putting into circulation and rental. The provision of Article 23(5) shall apply *mutatis mutandis* to the rights of the maker of the database.

(3) The consent of the maker of the database shall be required for the repeated and systematic extraction or re-utilization of even an insubstantial part of the content of the database if it is in conflict with the proper use of the database or it unreasonably prejudices the legitimate interests of the maker of the database.

(4) The uses provided for in Paragraphs (1) to (3) shall be subject to remuneration, unless otherwise stipulated in this Act.

(5) The rights provided for in Paragraphs (1) to (3) shall apply to the maker of the database if substantial investment has been required for obtaining, verifying or presenting the content of the database.

(6) The rights provided for in Paragraphs (1) to (3) shall apply to – as the maker of the database – the natural or legal person or business company having no legal personality at whose initiative, in whose name and at whose risk the creation of the database occurred and who or which provided the necessary investments.

(7) The rights provided for in Paragraphs (1) to (3) shall apply to the maker of the database irrespective of whether or not the database enjoys copyright protection or any other legal protection. These rights shall apply to the maker of the database even if parts of, or materials in, the database do not or cannot enjoy copyright protection or any other legal protection.

(8) The rights of the maker of the database shall be without prejudice to the rights of the authors of the individual works included in the database as well as to other rights pertaining to specific materials of the content of the database.

(9) Unless otherwise stipulated in any international treaty, the maker of the database shall enjoy the protection provided for in this Act, if

a) he is a national of a Member State of the European Economic Area or is regularly resident within the territory of the European Economic Area;

b) it is a legal person or a business company having no legal personality registered in accordance with the legislation of a Member State of the European Economic Area, and its seat, the place of its headquarters or the main area of its business activity, as designated in its deed of foundation, is within the territory of the European Economic Area.

(10) In the case referred to in Paragraph (9)b), the protection provided for by this Act shall apply to the legal person or business company having no legal personality which has solely its seat designated in its deed of foundation in the territory of the European Economic Area, only if its activity is actually and continuously related to the economy of any Member State.

Article 84/B

(1) No consent of the maker of the database shall be required for the repeated or regular extraction or re-utilization of an insubstantial part of the content of the database by a person lawfully using the database made public.

(2) If the right has been acquired for the use only of a specific part of the database, the provision in Paragraph (1) shall apply only to that part.

(3) Not even the person lawfully using the database made public may perform acts which conflict with the proper use of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(4) The provisions in Paragraphs (1) and (2) shall be without prejudice to the rights of the authors of the individual works included in the database as well as to the neighbouring rights pertaining to other materials of the content of the database.

(5) Any stipulation of the licence agreement contrary to the provisions set out in Paragraphs (1) to (4) shall be null and void.

Article 84/C

(1) An extract of even a substantial part of the content of the database may be made by anyone for private purpose if it is not intended for earning or increasing income even in an indirect way. This provision shall not apply to databases operated by computer devices.

(2) A copy of even a substantial part of the content of the database may be made – in a manner and to the extent consistent with the purpose involved – for purposes of school education and scientific research, provided that reference to the source is made and the use is not intended for earning or increasing income even in an indirect way.

(3) An extraction or re-utilization of even a substantial part of the content of the database may be made – in a manner and to the extent consistent with the purpose involved – for purposes of evidence in court, administrative or other official proceedings.

(4) The provisions of Article 33 shall apply *mutatis mutandis* to the cases of free use provided for in Paragraphs (1) to (3).

Article 84/D

(1) The term of protection applying to the rights covered by this Chapter shall be the following: fifteen years from the first day of the year following the year in which the database was first made public, or for fifteen years from the first day of the year in which the database was completed if it was not made public during that term.

(2) The term of protection applying to the database as calculated according to Paragraph (1) shall recommence if the content of the database has undergone a substantial alteration as a result of which the altered database, as such, shall be regarded as one completed with substantial investment. A substantial alteration of the database may also be the result of successive additions, deletions and modifications.

Article 84/E

(1) Article 83(1) shall apply *mutatis mutandis* to the rights covered by this Chapter.

(2) If, according to the provisions of this Act, remuneration shall be due to the maker of the database, the provision in the first sentence of Article 16(4) requiring that the remuneration shall be in proportion to the use shall also apply to the maker of the database.

(3) Wherever 'neighbouring right' or 'neighbouring rights' are referred to in other legislation, this or these shall also mean the right or rights of the maker of the database, unless otherwise provided for by legislation and except for the legislation promulgating an international treaty.

PART FOUR

THE COLLECTIVE MANAGEMENT OF RIGHTS AND THE CONSEQUENCES OF THE INFRINGEMENT OF RIGHTS

Chapter XII

Collective management of copyright and rights related to copyright

Collective management of rights

Article 85

The collective management of rights shall mean the enforcement of copyright and rights related to copyright which are individually non-exercisable due to the character or circumstances of use, and which are, therefore, exercised by organisations established by rightholders for this purpose regardless of whether it is laid down by this Act or is based on the decision of rightholders. Within its competence of the collective management of rights, a collecting society shall determine the amount of remunerations and other conditions of use to licensing or the implementation of claims for remuneration [Article 16(5)]; it shall monitor how copyright works and subject matter of related rights are used; it shall collect and distribute remunerations, or transfer remunerations to other collecting societies for distribution purposes; and it shall take action if copyright or related rights are infringed.

General rules of collective management of rights

Article 86

(1) The collective management of rights shall be subject to registration.

(2) The register shall list the rights management activities a collecting society is entitled to exercise. The payment of remunerations to and the conclusion of agreements with persons or organisations other than the society registered for the management of a certain type of rights shall have no legal effect on the society and the rightholders it represents, and shall not absolve anybody from the legal consequences of copyright infringement.

Article 87

(1) If only one collecting society has been registered to manage the same economic rights of a rightholders' group, and this collecting society grants a user a licence to use or enforces claims for remuneration against the user, the user shall also be entitled to use works and subject matter of related rights of the same genre – falling under collective management of rights either under the provisions of this Act or as a result of the rightholders' decision – of all rightholders represented by the society exercising the given rights management activity while the remuneration charged for such works and the subject matter of related rights shall be paid under the same conditions (extended collective management of rights). If several collecting societies have been registered to manage the same economic rights of the same rightholders' group, the present provision shall be applied to rightholders not represented by any of them in accordance with the agreement referred to in Article 92/E(3).

(2) If, pursuant to Article 92(4), several collecting societies have been entered into the register, which – prior to their registration – did not agree which of them should issue licences to users or claim remuneration for rightholders not represented by any one of them, the concerned collecting societies may also reach an agreement thereon after registration. The agreement shall take effect after its approval by the Office. Information on the content of the agreement shall be given in accordance with the provisions laid down in Article 92/E(3). Where no agreement is reached before the end of the period for which the previous tariffs were determined, the Office shall designate the collecting society to be the extended collective rights manager of the rightholders not represented by any of them which, in general, satisfies the registration requirements the most effectively. The designation of a society is published in the Official Journal of the Office, and, if necessary, the Office shall, ex officio, accordingly modify the data of the other concerned collecting societies in the register.

(3) Extended collective rights management shall not be exercised if a rightholder – in a prior written statement addressed to the concerned collecting society – objects to the licensing of his works or subject matter of related rights by a collecting society. The collecting society shall proceed according to the statement if it is made more than three months before the end of the calendar year taking effect not earlier than the first day of the following year. The rightholder, however, shall not object to licensing his works in this manner when collective rights management is prescribed by this Act (compulsory collective rights management).

(4) If several collecting societies have been registered for the enforcement of the same claims for remuneration without authorisation rights of the same rightholders' group, the

collecting societies shall agree upon the determination of tariffs and the collection of remunerations. Information on the content of the agreement shall be given in accordance with the provisions laid down in 92/E(3). In the absence of an agreement, the Office shall designate which collecting society shall be entitled to determine the tariffs and collect the remuneration *mutatis mutandis* by reference to Paragraph (2).

(5) Where this Act refers to a collecting society exercising the collective management of rights in literary and musical copyright, such a collecting society shall mean an organisation which has been registered to exercise authorisation rights or make claims for remuneration in respect of literary and musical works according to the register of collecting societies, and which is entitled, in this respect, to pursue extended rights management. This provision shall also apply *mutatis mutandis* when this Act refers to a collecting society which exercises the collective management of copyright in creations of fine art and applied art.

Article 88

(1) Collecting societies shall be regarded to be the holders of copyright or related rights when economic rights of collective rights management are exercised and enforced by them before the court. Involvement of any other rightholder in a lawsuit is not necessary in order to enforce the collecting society's claim before the court.

(2) Collecting societies shall dispose of remuneration claims enforced through collective rights management and collected remunerations prior to their distribution among rightholders.

(3) Collecting societies may stipulate in the tariff that it authorises the use on the condition that the user pays remuneration according to the tariff and provide them with information on the used works and subject matter of related rights. This provision shall be applicable only to live performances [Article 24(2)a)] in the case of public performances.

(4) In collective rights management it shall be presumed – with the exception of authorising mechanical reproduction (Article 19) – that works and subject matter of related rights are under protection, unless proven otherwise.

(5) At the written request of a user, and against payment of costs incurred, collecting societies – in their field of competence – shall provide the user with information in writing whether the work or subject matter of related rights indicated individually by the user is under protection.

Operation and economic management of collecting societies

Article 89

(1) Collecting societies shall directly provide at least the following collective rights management services in the field of economic rights management they are responsible for:

- a) determining remunerations and other conditions of use, or participating in it; and
- b) distribution of remunerations among concerned rightholders, or collection of remunerations and transferring them to other collecting societies for distribution.

(2) Collecting societies shall maintain a database of domestic and foreign works, subject matter of related rights and rightholders in the field of rights management they are competent in.

(3) Collecting societies shall publish the following information on their websites:

- a) rules of association,
- b) rules of procedure,
- c) rules of membership,
- d) tariffs applied by them (Article 92/H),
- e) rules of distribution,
- f) annual report,
- g) list of names of their members and rightholders they are representing, and the list of organisations they have concluded representation agreements with,
- h) agreements mentioned in Articles 20 (4)-(5), Article 21 (7) and Article 28 (4), if they have such valid agreements.

(4) Collective rights management shall not be exercised as a business activity. If a collecting society performs supplementary business activity, it shall use the revenue deriving

from it – with the exception of Paragraph (8) – only for the reduction of the administrative costs of collective rights management.

(5) Collecting societies shall distribute their revenues deriving from collective rights management and reduced by justified administrative costs among rightholders according to their rules of distribution, irrespective of whether or not the rightholders are members of the society. The revenue deriving from collective rights management shall not be used for any other purposes with the exception of Paragraphs (8), (10) and (11a); no deductions may be made from remunerations to be distributed among rightholders with the exception of payment obligations imposed by legislation, or judicial or administrative resolutions.

(6) Administrative costs are justified if they incurred in the course of appropriate and reasonable management that is useful for the concerned rightholders and is needed for the exercise of collective rights management.

(7) Only justifiable administrative costs of distribution may be deducted from remunerations transferred to a collecting society of concerned rightholders for distribution purposes.

(8) Collecting societies shall not be obliged to distribute all of their revenues deriving from membership fees, remunerations not distributable owing to the fact that the rightholder cannot be identified or located, and activities falling outside of rights management. A part of such revenues may be used – in accordance with the rules of association and case-by-case decisions of the supreme bodies of collecting societies – for other, in particular social and cultural purposes in the interests of rightholders in accordance with Paragraph (11) (hereinafter referred to as ‘use of revenue in the interests of rightholders’).

(9) Remunerations may only be considered undistributable owing to the fact that the rightholder cannot be identified or located if the collecting society has taken all the necessary measures that can be expected from that society in the given situation to find the rightholder taking into account the concerned type of work or subject matter of related rights and the way of its use, and the rightholder could not be located, and if the collecting society has allocated the remunerations to which the rightholder is entitled to a separate bank account and within a year since this event the rightholder could not be identified or located. Remunerations which shall be given to a different domestic collecting society for distribution, or which shall be transferred to a foreign collecting society on the basis of a representation agreement concluded in the subject, shall not be considered undistributable and may not be used by the society obliged to give or transfer it to other societies on these grounds.

(10) The rules of distribution of collecting societies may provide for that distributable remunerations may also be used in the interest of rightholders in accordance with Paragraph (11).

(11) Maximum 25% of the revenue defined in Paragraph (8) and maximum 10% of the revenue described in Paragraph (10) may be used in the interest of rightholders. The supreme bodies of collecting societies shall decide on this question in their exclusive, non-transferable competence on a case-by-case basis in accordance with the relevant provisions of the rules of association and rules of distribution (support policy). On the basis of the decision of the supreme body, 70% of the amount to be used for the benefit of rightholders from the revenue defined in Paragraph (10) shall be used for cultural purposes in the interest of rightholders. Provisions of the support policy on the use for cultural purposes shall be in accordance with the support purposes defined in the Act on the National Cultural Fund. Collecting societies use their revenues determined in Paragraphs (8) and (10) for cultural purposes by transferring them to the NCF in accordance with the provisions defined in the Act on the National Cultural Fund and of the support policy. The proportion to be used for cultural purposes from those revenues determined in Paragraphs (8) and (10) which were collected before the subject year shall be transferred to the NCF within 60 days from the approval of the annual report.

(11a) 25% of the revenues deriving from the remunerations defined in Articles 20 and 21 shall be used for cultural purposes in the interests of rightholders. The collecting society determining the remunerations defined in Articles 20 and 21 shall transfer the amount defined in this Paragraph to the NCF within 60 days from the approval of the annual report. The NCF shall use the amount received for support purposes defined in the Act on the National Cultural Fund in favour of rightholders’ groups determined in Article 20 (4)-(5) and Article 21 (6).

(11b) It shall be without prejudice to the application of Paragraph (11a) and the obligation of transmission laid down within, if the collecting society also applies Paragraphs (8), (10)

and (11) for the revenues deriving from the remunerations defined in Articles 20 and 21. The proportion of the revenues defined in Paragraph (11) shall be calculated on the basis of the whole of the revenues deriving from the remunerations defined in Articles 20 and 21, hence the sum transferred pursuant to Paragraph (11a) shall not be reduced from this amount.

(12) Collecting societies shall distribute their operational, maintenance and other indirect costs pursuant to the provisions of the Act on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations.

(13) Collecting societies shall keep a double-entry accounting system and prepare non-simplified annual reports in accordance with the Act on Accounting. Annual reports shall be examined by an auditor. Apart from the data provided for by legislation, collecting societies shall indicate the following in the revenue and expenditure account of the given business year:

a) the amounts of distributed and undistributable remunerations by types of works or other subject matter and by economic rights,

b) administrative cost deductions by types of works or other subject matter, by economic rights and by legal title,

c) the amounts of remunerations transferred to other collecting societies for distribution purposes by types of works or other subject matter, by economic rights and by collecting societies,

d) the use of revenues defined in Paragraphs (8) and (10) in the interests of rightholders indicating the date, legal title, beneficiary, extent and other substantial conditions of the support,

e) collected membership fees,

f) funding received.

The register of collecting societies

Article 90

(1) The Office shall keep a register of collecting societies conforming to the legislation on copyright and related rights.

(2) The register of collecting societies shall include:

a) the name and address of the collecting society, and the name and address of its representative,

b) the definition of the collective rights management activity undertaken by the collecting society indicating the concerned economic rights and the type of rights management exercised,

c) the definition of the rightholders' group concerned by the collective rights management,

d) other data – as provided for by the Government Decree on the Detailed Rules on the Maintenance of the Register of Collecting Societies – required for the implementation of the objectives of collective rights management.

(3) The register of collecting societies authentically certifies recorded data mentioned in points b)-c) in Paragraph (2).

(4) The register of collecting societies may be inspected by any person and it is accessible by electronic means on the website of the Office. The data contained therein or the data deleted therefrom are publicly available, any person may record them or request a certified extract for a certain charge.

(5) As part of the register of collecting societies, the Office shall provide access to the collecting societies'

a) rules of association,

b) rules of procedure,

c) rules of membership,

d) tariffs applied (Article 92/H),

e) rules of distribution,

f) annual report,

g) agreements made pursuant to Article 20 (4)-(5), Article 21 (7) and Article 28 (4).

Conditions of entering collecting societies into the register

Article 91

(1) Only a society may be entered into the register as a collecting society.

(2) Collecting societies may be registered for the management of rights particularly in respect of the following works and subject matter:

- a) literary and musical works,
- b) other works of creative arts,
- c) cinematographic creations,
- d) performances,
- e) phonograms,
- f) performances of film producers.

(3) Derogations from the list defined in Paragraph (2) are possible to ensure the enforcement of rightholders' right to self-determination and to enhance the efficiency of rights management, and societies established for the collective management of rights not mentioned in Paragraph (2) may also be entered into the register.

(4) On the basis of agreements concluded between registered societies, the Office shall modify the data on the rights management activities performed by a registered society if the conditions of registration are met by all of the concerned societies following the modifications of the rights management activities stipulated in the agreement.

Article 92

(1) The register of collecting societies shall be open to a society:

a) which may be joined by all concerned rightholders – who commission the society to exercise the collective management of their rights – meeting the conditions laid down by the rules of association;

b) which represents a significant part of rightholders concerned by the type of collective rights management activity it exercises by the fact that

ba) these rightholders are its members or intend to join it, or

bb) these rightholders have concluded special agreements with it for the collective management of their rights, and

bc) it has concluded representation agreements with foreign organisations engaged in the collective rights management of these rightholders and being important in terms of domestic and foreign use, or it has letters of intent for the conclusion of such contracts;

c) which also represents a significant part of domestic rightholders concerned by the type of collective rights management activity it exercises pursuant to Items ba) and bb);

d) which has the appropriate expertise and experience needed for collective rights management and the maintenance of international contacts by its qualified employees;

e) which is prepared for data processing related to collective rights management;

f) whose rules of association

fa) defines collective rights management as the objective of the society,

fb) provides for the fulfilment of operational and economic requirements defined in Article 89,

fc) defines the rightholders' general meeting or the body directly elected by them as the supreme body of the society,

fd) stipulates that apart from the responsibilities defined by the Act on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations, the supreme body shall decide, in its exclusive and non-transferable competence, on the rules of distribution containing the support policy, the adoption of the rules of procedure, the definition of the annual budget and the adoption of the annual report.

(2) When determining whether a society represents the significant part of the concerned rightholders, or that out of several societies which of them represents the significant part of the concerned rightholders, the number of rightholders, the proportion of the use of their works and subject matter of related rights and the share they receive from remunerations shall be taken into account.

(3) A society shall be considered prepared for the processing of data related to collective rights management if it is able to maintain a database of rightholders it represents, works and subject matter of related rights falling within the scope of collective rights management and

the different types of use in a manner that allows for the distribution and payment of remunerations to rightholders.

(4) If more societies or a new society meeting the registration requirements request(s) registration for the management of the same economic rights of the same rightholders' group, such society or societies may be entered into the register in respect of compulsory or extended collective rights management if it does not jeopardise the functionality and effectiveness of the collective rights management system from the aspect of rightholders, users, and others obliged to pay remunerations.

(5) If the condition described in Paragraph (4) is not satisfied,

a) among more societies that one shall be registered which can best satisfy the requirements laid down in Paragraph (1) on the whole;

b) the new society shall be registered and the formerly registered shall be deleted from the register if the new society can better satisfy the requirements laid down in Paragraph (1) on the whole.

General rules of proceedings related to the register of collecting societies

Article 92/A

(1) In procedures related to the register of collecting societies, the Office shall proceed – with derogations set out in this Act – in accordance with the Act on the General Rules of Administrative Proceedings.

(2) The rules, concerning the administrator and public hearing, of the Act on the General Rules of Administrative Proceedings shall not be applied in proceedings related to the register of collective rights management societies. In such proceedings the decisions of the Office are non-appealable, neither retrial nor supervisory procedure or official request by the prosecution is possible.

(3) The detailed rules concerning the register of collecting societies shall be defined by a government decree.

Article 92/B

(1) In proceedings related to the register of collecting societies, the Office and the clients are obliged to communicate with each other electronically.

(2) The documents shall be filed electronically by using an electronic form drawn up by the Office for this purpose.

(3) The Office shall send – in the manner laid down by specific legislation – an automatic notification containing an electronic receipt number to the client on receipt of the document filed electronically.

(4) After receipt of the document filed in electronic form, the Office shall examine without delay whether it meets the legal requirements of electronic administration.

(5) The document shall be considered to have been filed on the date when the automatic notification of the electronic receipt was sent to the client, except where the Office establishes that the document received is uninterpretable and notifies the customer thereon by electronic mail.

(6) The client having sent the uninterpretable document is obliged to confirm receipt of the notification under Paragraph (5). If the client does not confirm receipt of the notification within fifteen days, the Office shall forward the document to them by post.

(7) Detailed rules concerning the electronic communication in proceedings related to the register of collecting societies shall be defined by a government decree.

(8) Requesting and providing information by short text message shall be inadmissible in proceedings related to the register of collecting societies.

Article 92/C

For the entry into the register of collecting societies and for the request for modification of any record concerning rights management activity an administrative service fee specified in a minister's decree shall be paid, which is the income of the Office.

Article 92/D

(1) In cases relating to the register of collecting societies, the court shall review in a non-litigious procedure

a) the resolution of the Office and

b) the Office's order i) refusing to grant client legal status to a client other than the client filing a request for commencing the procedure, ii) suspending the procedure, iii) imposing the procedural fine, as well as iv) excluding or restricting the inspection of documents against which individual legal remedy may be sought for according to the Act on the General Rules of Administrative Proceedings.

(2) The request for the commencement of the non-litigious procedure shall be filed with the Office within thirty days after the decision is communicated; the Office shall forward the request attached by the documents of the case – except the case regulated under Paragraph (3) – to the court within fifteen days. The elements of the request shall be governed by the rules applicable to statements of claim.

(3) If the request raises a legal issue of fundamental importance, the Office may make a written statement on this issue and shall forward it, attached by the request and the documents of the case, to the court within thirty days.

(4) If the request under Paragraph (2) was filed late, the court shall make the decision on the application for excuse.

(5) The provisions specified by Article 57/C (5)-(17) shall apply to the judicial review of the decisions set out in Paragraph (1).

(6) The general provisions of the Act on Civil Procedure shall apply to the non-litigious procedure provided for this Article with the derogations set out in this Act and arising out of the nature of non-litigious proceedings.

Procedure for the entry into the register of collecting societies

Article 92/E

(1) The procedure for the entry into the register of collecting societies shall commence upon request.

(2) All documents certifying the compliance with the conditions needed for the entry into the register shall be attached to the request. All data suitable for individual identification of the members of the society and of the rightholders wishing to join the society or concluding individual agreement therewith shall be communicated in the documents; these data shall include the members' or rightholders' full name and address or seat.

(3) The compliance with the condition set out in Article 92(4) – among others – may be certified by the agreement of the societies concerned, on which of them will grant a licence of use to the user, within the scope of the obligatory or otherwise extended collective rights management, or will enforce a claim to remuneration in respect of the rights of rightholders who are not represented by any of the societies. The entry into the register of the applicant shall be deemed also as the approval of this agreement and the content thereof shall be published in the communication under Paragraph (4).

(4) The Office shall publish the entry into the register in the Official Journal. The Office shall – as necessary but at least once a year – publish a communication on the societies being in the register and on their collective rights management activities in the Official Journal.

Deletion of collecting societies from the register

Article 92/F

(1) A collecting society shall be deleted from the register upon request or ex-officio.

(2) A society shall be deleted ex-officio from the register in the case specified in Article 92/K(6)d) and if the court deletes the society or its collective rights management activity from the authentic register of civil society organisations.

Article 92/G

(1) If the collecting society performing collective rights management prescribed by this Act is deleted from the register and no other society in the register could perform the collective rights management prescribed by this Act, the Office shall invite the rightholders concerned in a communication published on its website and in at least two national daily newspaper to initiate the entry into the register of their society as a collecting society within the time limit fixed by the Office but not later than a year.

(2) Until the time specified in Paragraph (1) has expired, the remunerations shall be paid on the basis of the tariff applied by the collecting society in the manner set out by the Office in the communication. If the entry into the register of the new collecting society is initiated within the fixed time limit and the society is entered into the register, the remunerations paid in this manner shall be distributed by the new collecting society. In the contrary case, the Office shall designate a collecting society which shall distribute the remunerations received among the rightholders after the time limit expired according to the rules of distribution effective on the date of deletion.

(3) If the entry into the register as a collecting society prescribed in this Act is not initiated within the expiry of the time limit mentioned in Paragraph (1), it shall be deemed that the rightholders concerned may permit the use individually until the new collecting society is entered into the register.

(4) In the case of deletion from the register, the collecting society shall distribute the remunerations paid until deletion is rendered final among the rightholders concerned according to the rules of distribution effective on the date of deletion.

The approval of tariff applied for collective rights management

Article 92/H

(1) The collecting society shall, to the extent it is entitled to perform collective rights management in compliance with the register, determine the remunerations in respect of each manner of use as well as the other conditions of use (hereinafter altogether referred to as 'tariff') and send them to the Office for the purpose of approval procedure mentioned in this Article not later than 1 September of each year. As starting date of the planned application, 1 January of the following year shall be determined.

(2) The tariff shall be determined and applied in accordance with the requirements of equal treatment, without any unjustified distinction of the users. When determining the extent of remunerations, all relevant circumstances of the use concerned shall be taken into account. In the course of determining the tariff, and in the procedure for the approval of the tariff, the agreement on remuneration and other conditions of use made between the parties in the procedure of the mediation board (Articles 102 to 105) shall also be taken into consideration.

(3) The tariff shall be approved by the minister responsible for justice based on the proposal of the Office after the procedure under Paragraphs (4) to (11) is carried out. The approval is the condition for the application of the tariff and for the publication in the Official Journal; it does not exclude and does not affect the applicability of other legislation concerning the tariff.

(4) The tariff shall be attached by a justification and by supporting documents. For the determination of the tariff specified in Article 20 (1) a representative survey on the extent of reproduction for private use shall also be attached. The method of survey shall be determined after consultation with the significant users and representative organisations of the users. The results of the survey shall be made available during the approval procedure of tariffs for the parties involved.

(5) The Office shall ask for the opinion of the significant users and the representative organisations of users and the Minister responsible for culture, in addition – concerning the tariff related to public performance – the Minister responsible for trade, tourism and catering trade on the tariff, after receipt thereof without delay. Concerning the remuneration specified in Articles 20 and 21, those who are obliged to pay the remuneration and their representative organisations shall be considered as users or representative organisations of users. The

opinion procedure shall be carried out within sixty days calculated from the filing of the tariff at the Office.

(6) The Office is obliged to ask for the opinion of the significant user and representative organisation of users that notifies the Office in writing within fifteen days calculated from the publication of the invitation, based on the Office's invitation published for this purpose on the Office's website in the year concerned after the filing of the tariff, on his or its intention to give opinion, and files the statement under Paragraph (7) or (8) at the same time.

(7) Significant user is any person that certifies, with a statement issued on the basis of the request submitted to the collecting society concerned, that the remuneration paid by him or it in the calendar year before the year of filing reached 5 percent of all remunerations paid on the basis of the tariff concerned or paid by any group of users determined in the tariff concerned.

(8) Representative organisation of users is any legal person having a registered membership, which performs its activity mentioned in the deed of foundation nationwide, and its activity includes the representation of the interest of the users concerned when giving opinion on tariffs, in addition it certifies – with the statement issued by the collecting society upon the request of the representative organisation – that the membership of the representative organisation includes the users affected by the tariff concerned that paid at least 10 percent of all remunerations paid on the basis of the tariff concerned or paid by any group of users determined in the tariff concerned in the calendar year before the year of filing.

(9) The collecting society shall issue the statement under Paragraph (7) or (8) after the receipt of the request of the user or the representative organisation of users without delay, and shall send it to the user or representative organisation of users having sent the request, as well as to the Office.

(9a) If more collecting societies are registered by the Office pursuant to Article 92 (4), the user and representative organisation of users qualified as significant by the collecting society registered previously concerning the tariff of the previous year shall be regarded as significant user or representative organisations of users in the procedure for the approval of the first tariff of the collecting society registered later. In the procedure for the approval of the first tariff of the new collecting society statements under Paragraph (7) or (8) shall not be attached.

(10) The Minister responsible for justice shall approve the tariff if it is in accordance with the legislation on copyright. The Minister responsible for justice shall issue a resolution on the approval within thirty days from the receipt of the proposal of the Office. The Minister shall approve any tariff only on the basis of the Government's decision, initiated by the Minister, which includes an increase of remunerations exceeding the customers' price index established by the Hungarian Central Statistical Office for the previous calendar year or which extends the range of users obliged to make payment. The resolution of the Minister is non-appealable; it is rendered final by its communication.

(11) After the approval the tariff shall be published by the collecting society in its own name in the Official Journal. Until it occurs, the tariff determined and approved for the previous period – previously published in the Official Journal – shall be applied even if the period for which this latter tariff was determined has expired. These rules shall be applied *mutatis mutandis* also in the case if the court repeals the resolution on approval of the Minister responsible for justice, on the basis of Article 92/J, with a final decision.

Article 92/I

(1) The procedure for the approval of the tariff is not qualified as an administrative procedure; the Act on the General Rules of Administrative Proceedings shall not be applied thereto.

(2) The ministers, the Office, and other parties of the procedure are obliged to communicate with each other electronically in the procedure for approval of the tariff. The Office shall communicate with collecting societies, the users and the representative organisations of users electronically.

Article 92/J

(1) Any organisation entitled to give opinion on the tariff and the collecting society concerned may request the review of the resolution on approval of the Minister responsible for justice, with reference to violation of the legislation, at the Budapest Metropolitan Administrative and Labour Court which shall decide on the request in expedited proceedings in accordance with the rules of administrative non-litigious proceedings. Article 332 (3) and (4) of the Act III of 1952 on the Code of Civil Procedure may not be applied in non-litigious proceedings. If the court repeals the resolution and orders the Minister responsible for justice to commence a new procedure, the difference between the remuneration to be paid on the basis of the resolution made in the new procedure and the remuneration to be paid on the basis of the resolution repealed shall be accounted for.

(2) If the resolution is appealed, the court may order the requesting party – who would be obliged to pay remuneration on the basis of the tariff affected by the resolution – to give a deposit. The amount of the deposit shall be equal to the remuneration to be paid on the basis of the tariff approved by the appealed resolution, or a contested or not yet paid part thereof, unless the court decides on the decrease thereof with respect of every circumstance of the case.

(3) From the aspect of appealability due to unfair terms and conditions of the contract, the tariff is not qualified as established by legislation or such that is determined in accordance with provisions of legislation. If the tariff is appealed before the court, the adverse party may be ordered by the court, upon request of the collecting society, to give a deposit. The provisions under Paragraph (2) shall be applied *mutatis mutandis* concerning the amount of the deposit.

Supervision of collective management of rights

Article 92/K

(1) Within the scope of the supervision exercised over the collective rights management activity, the Office shall inspect, according to the rules of official inspection, once a year or as needed, whether the requirements related to the entry into the register are continuously met at the collecting society and whether the rules of association, the rules of distribution and other internal bylaws are in conflict with the legislation on copyright.

(2) When inspecting whether the collecting society represents a significant part of rightholders interested in the collective rights management activity performed by the society, the statements for the accession as a member as well as the letters of intent for the conclusion of a contract for representation with a foreign organisation shall be ignored after the expiry of one year following the entry into the register.

(3) For the performance of the supervision, the collecting society shall send the following documents to the Office:

- a) rules of association,
- b) rules of procedure,
- c) rules of membership,
- d) list of members of its administrative and representative body,
- e) rules of distribution,
- f) annual report,
- g) representation agreements concluded with foreign collecting societies.

(4) The collecting society shall notify the Office in advance, in writing – simultaneously with the notification of the members – on the convocation of the supreme body and shall send the agenda and the documents related to the agenda items in connection with the supervision to the Office, and shall invite the representative of the Office to the meeting to discuss the items of the agenda related to the performance of supervision.

(5) In order to have all the data needed for the performance of supervision, the Office may invite the collecting society to make a statement. In the supervisory procedure the Office may request for an expert's opinion or may consult an expert.

(6) Within the scope of the supervision the Office – if it observes the lack of conditions needed for the entry into the register or the infringement of legislation mentioned in Paragraph (1) – shall take the following measures:

a) in addition to warning on legal consequences, it shall invite the administrative and representative body of the collecting society to restore the operation complying with the requirements for entry into the register and with the legislation on copyright, and shall fix a suitable time limit therefor;

b) submits a request to the prosecutor's office to take measures applicable within the scope of the legal supervision over the society;

c) it may impose a supervisory fine if the time limit specified in Item a) has expired unsuccessfully;

d) it shall delete the collecting society from the register and shall publish this fact in the Official Journal if

da) the measure taken under the legal supervision is unsuccessful, or no success may be expected,

db) the time limit mentioned in Item a) has expired unsuccessfully and no success may be expected from the imposition of the supervisory fine either, or

dc) the imposition or repeated imposition of the supervisory fine was not successful.

(7) If the Minister responsible for justice observes, within the scope of its duties related to the tariffs of the collecting societies, the infringement of the legislation mentioned in Paragraph (1), he shall initiate a supervisory measure at the Office. If the president or the vice-president of the NCF within the scope of its duties related to the use of revenues and other remunerations for cultural purposes [Article 89 (11) and (11a)] detects the infringement of the rules set out in paragraph (1), it shall initiate a supervisory measure at the Office.

Article 92/L

(1) The amount of the supervisory fine shall be determined with respect to all circumstances of the case, particularly to the seriousness and recurrence of the infringing behaviour, the length of time of the infringing status, as well as to the requirement for efficiency and the principle of proportionality. The supervisory fine must not exceed the fivefold amount of the supervisory fee calculated for the year preceding the year in question.

(2) The fine shall be paid within fifteen days calculated from the communication of the order imposing the fine.

(3) If the fine is not paid within the time limit, a surcharge for default shall be paid in accordance with the Act on the Rules of Taxation.

(4) The fine and the surcharge for default have to be collected as taxes.

Article 92/M

(1) In order to cover the costs arisen in connection with the supervision exercised by the Office over collective rights management, the collecting societies are obliged to annually pay supervisory fee for the Office.

(2) The supervisory fee shall be 0.3 percent of the previous year's net income of the collecting society. The supervisory fee shall be paid until the last day of the second calendar quarter. If a new collecting society is entered into the register, the supervisory fee in the year of entry into the register shall be 0.3 percent of the planned net income. In this case the supervisory fee shall be paid until the last day of the second calendar quarter following the year in question.

Article 92/N

(1) In proceedings related to the supervision over the collecting societies, the Office shall proceed – with derogations specified in this Act – in accordance with the provisions of the Act on the General Rules of Administrative Proceedings.

(2) In proceedings related to the supervision over collecting societies, those provisions of the Act on the General Rules of Administrative Proceedings which concern the administrator, public hearing, the preparation of inspection plan and inspection report, the notification prior to the on-site inspection, as well as those which concern the ex officio notification and invitations relating to the commencement of the procedure and first communication, the publication of the resolution or resolution declared executable regardless of the appeal,

moreover the register kept for the purpose of inspection have not to be applied. In these proceedings the decision of the Office is non-appealable, neither retrial, nor supervisory procedure or official request by the prosecution is possible.

(3) Detailed rules relating to the supervision over collecting societies shall be defined in a government decree.

Article 92/O

(1) In cases relating to the supervision over collecting societies the Office and the collecting societies are obliged to communicate with each other electronically.

(2) The Office shall communicate electronically with the collecting societies by applying the provisions under Article 92/B(2) to (8).

Article 92/P

(1) In cases relating to the supervision over collecting societies, the court shall review in a non-litigious procedure

a) the resolution of the Office, and

b) the Office's order i) refusing to grant any client status to a client other than the client filing a request for commencing the procedure, ii) suspending the procedure, iii) imposing a procedural fine as well as iv) excluding or restricting the inspection of documents against which individual legal remedy may be sought for according to the Act on the General Rules of Administrative Proceedings.

(2) Article 92/D (2) to (6) shall be applied to the non-litigious procedure mentioned in Paragraph (1).

(3) The general provisions of the Act on Civil Procedure shall apply to the non-litigious procedure provided for in this Article with the derogations set out in this Act and arising out of the nature of non-litigious proceedings.

Chapter XIII

The consequences of the infringement of authors' rights

Civil law consequences

Article 94

(1) If his rights are infringed, the author may – in accordance with the circumstances of the case – have recourse to the civil law remedies as follows, claiming:

a) to be established by the court that there has been an infringement;

b) that the infringement and acts directly threatening with infringement be ceased and to enjoin the infringer from any further infringement;

c) that the infringer make amends for his action by a statement or in some other appropriate manner, and, if necessary, that such amends should be given appropriate publicity by and at the expense of the infringer;

d) that the infringer provide information on parties taking part in the production, distribution or performance of goods or services affected by the infringement, as well as on business relationships established for the infringing acts;

e) the recovery of the enrichment achieved via the infringement;

f) the injurious state of affairs be terminated, the antecedent state of affairs be restored, the seizure of materials and devices used exclusively or primarily for the infringement, as well as the seizure of goods resulted from the infringement or the delivery thereof to a particular person, or the recall or definitive removal thereof from commercial circulation, or the destruction thereof.

(2) In the event of copyright infringement, the author may also claim damages under the rules of civil liability. In the event of infringement of moral rights specified in this Act, the author may demand relief for moral damages in accordance with the provisions on general rules of civil law.

(3) The author may seek the remedy referred to in Paragraph (1)b) against a person whose services are being used in connection with the copyright infringement.

(4) The author may seek the remedy referred to in Paragraph (1)d) against a person who:

a) was found in possession of the infringing goods on a commercial scale;

b) was found to be using the infringing services on a commercial scale;

c) was found to be providing on a commercial scale services used in infringing activities;

d) was indicated by the person referred to in Items a) to c) as being involved in the production, production or distribution of the goods or the provision of the services.

(5) In the course of application of Paragraph (4)a) to c), acts shall be deemed to be carried out on a commercial scale if the nature and quantity of the goods or services involved obviously indicate that they are carried out for direct or indirect commercial or other economic advantage. Pending proof to the contrary, the definition of acts carried out on a commercial scale would normally exclude acts carried out by consumers acting in good faith.

(6) The infringer under Paragraph (1)d) and Paragraph (4) or the person referred to in Paragraph (4) may be obliged, in particular, to furnish the following information:

a) the names and addresses of persons involved in the production, distribution of goods, supply and performance of services affected by the infringement and of possessors of such goods, as well as of wholesalers and retailers involved or intended to be involved in the distribution;

b) the quantities of produced, delivered, received or ordered goods or services affected by the infringement, as well as the price paid or received therefor.

(7) Upon request by the author, the court may order that the materials, devices or goods seized, or recalled or definitively removed from commercial circulation, be deprived of the infringing nature, or that they be destroyed if such removal is not possible. Under justified circumstances, the court may also order, instead of destruction, the sale of the seized materials and devices in accordance with the rules of judicial enforcement, and in this case it shall determine the disposition of the proceeds from such sale.

(8) Materials and devices used in the copyright infringement as well as infringing goods may also be seized if the infringer is not in the possession thereof, but the owner thereof was aware of the infringement or could have been aware of such with proper circumspection in the given case.

(9) The court shall order that the measures referred to in Paragraph (1)f) and in Paragraph (7) be carried out at the expense of the infringer, unless the circumstances of the given case justify derogations from this rule. The court's decision on the recall and definitive removal from commercial channels, or destruction of the infringing goods shall take into account the interests of third parties and be proportional according to the gravity of the infringement.

(10) The court may order, at the request of the author and at the expense of the infringer, appropriate measures for making the resolution public. The manner of publication shall be decided by the court. Publication shall include dissemination in a national newspaper or via the internet.

(11) If, with regard to Article 35(8), the rightholder enforces a copyright claim under Paragraph (1)e) or Paragraph (2), the remuneration imposed on the video and audio carrier used for the reproduction, if paid, shall be taken into consideration when deciding on the amount of enrichment or the extent of compensation of damages.

Article 94/A

(1) In lawsuits instituted due to infringement of a copyright, a preliminary injunction shall be considered required – unless there is any evidence presented to render the contrary probable – for the special protection of the claimant's rights, if the claimant can prove that the work is under copyright protection and that he is the author, the author's heir at law, or such a user of the work or a collecting society, that is entitled to take action against the infringement in his or its own name.

(2) Paragraph (1) shall not apply if six months has passed from the commencement of the copyright infringement, or if a period of sixty days has passed since the claimant got knowledge of the infringement and of the identity of the infringer.

(3) A request to order a preliminary injunction in the case of copyright infringement may be lodged before filing the statement of claim, and it shall be adjudged by the court in a non-

litigious procedure. Non-litigious proceedings relating to preliminary injunctions shall be governed by the provisions of this Act and the general rules of the Act on Civil Procedure, subject to the exceptions stemming from the special characteristics of non-litigious proceedings. If the claimant has initiated the lawsuit in accordance with Paragraph (7) in connection with the copyright infringement, the court expenses of the lawsuit shall be due and payable in addition to the duties paid for the non-litigious proceedings.

(4) The author – beyond the civil law claims available in connection with the infringement – may request the court to order, under the conditions applicable to preliminary injunction:

a) protective measures in accordance with the provisions laid down in the Act on Judicial Enforcement, if he is able to render it probable that any subsequent attempt for the recovery of enrichment made via the infringement or the payment of damages is in jeopardy, and the infringement is committed on a commercial scale [Article 94(5)];

b) the infringer to give notification of and to present bank, financial or commercial information and documents for the purpose of ordering the protective measures referred to in Item a);

c) the provision of security if in exchange – in lieu of demanding the cessation of the infringement – the author gives consent to the continuation of the alleged acts of infringement.

(5) The court may also order the provision of security as referred to in Paragraph (4)c) in the absence of any request on behalf of the author, provided that the author has filed a claim for the cessation of the infringement and it is rejected by the court.

(6) The court shall decide on the preliminary injunction in expedited proceedings, not to exceed fifteen days following the lodging of the request therefor. The court of second instance shall adjudge appeals against court resolutions on preliminary injunction in expedited proceedings, not to exceed fifteen days following the date of lodging the appeal.

(7) The court shall, upon request of the other party, repeal its resolution on the preliminary injunction – including those under Paragraphs (4) and (5) – adopted prior to the filing of the statement of claim, if the author does not initiate the lawsuit for copyright infringement concerning the claim affected by the preliminary injunction within fifteen days of the communication of the resolution. The court shall adopt a resolution to repeal the preliminary injunction in expedited proceedings, not to exceed fifteen days following the date of filing the request.

(8) Where one of the parties in a copyright infringement lawsuit has already rendered its statements probable to a reasonable extent, upon the request of the party providing evidence, the court may order the other party:

a) to present and allow the inspection of the documents and other material proof in his possession;

b) to give notification of and to present bank, financial or commercial information and documents in his possession if the infringement is carried out on a commercial scale [Article 94(5)].

(9) Preliminary evidence may be presented before the lawsuit is instituted if the author has already rendered the fact of infringement or the threat thereof probable to a reasonable extent. If the lawsuit has not yet been commenced, preliminary evidence may be requested at the court of the author's residence or at the court where the taking of evidence can be carried out most expediently. Resolutions on preliminary evidence may be appealed.

(10) The court shall, upon request of the other party, repeal its resolution to order preliminary evidence if the author does not initiate the lawsuit for copyright infringement within fifteen days from the date of the communication of the resolution to order preliminary evidence. The court shall adopt a resolution on the request to repeal the order on preliminary evidence in expedited proceedings, not to exceed fifteen days following the date of filing of the request.

(11) Where any delay is likely to cause irreparable harm, it shall be treated as a case of extreme urgency, and preliminary injunctions – including those under Paragraphs (4) and (5) – may be ordered without the other party having been heard. Where any delay is likely to cause irreparable harm or where there is a demonstrable risk of evidence being destroyed, it shall be treated as a case of urgency, and preliminary evidence may be ordered without the other party having been heard. Where any resolution is adopted without the other party having been heard, the other party shall be given notice when the resolution is executed. Upon being

notified of the resolution, the other party affected may request to be heard and may request that the resolution ordering the preliminary injunction or the preliminary evidence be reversed or repealed.

(12) The court may require the provision of security in connection with the ordering of preliminary evidence and – with the exception of those under Paragraph (4)c) and Paragraph (5) – of preliminary injunction.

(13) If, in the cases specified in Paragraph (4)c), Paragraphs (5) and (12), the party who is entitled to seek indemnification from the security fails to enforce his claim within three months from the date on which the resolution to repeal the order adopted in connection with the preliminary evidence or preliminary injunction, or the judgment (discontinuation order) became final, the depositor of the security may request the court to release the security.

Article 94/B

(1) Pending proof to the contrary, for the author to be regarded as such it shall be sufficient for his name to appear on the work in the usual manner.

(2) Where Paragraph (1) cannot be applied, pending proof to the contrary, the person under whose name the work is authentically registered by the Office in the voluntary register of works shall be regarded as the author, if he is able to substantiate it with an authentic instrument. The registration of the work shall be subject to the payment of an administration service fee.

(3) Where Paragraph (2) cannot be applied either, pending proof to the contrary, for a person to be regarded as the author it shall be substantiated with a private document with full probative value issued by a collecting society relying upon the database maintained by the society containing works, subject-matters protected by neighbouring rights and rightholders subject to collective rights management. These private documents may be issued by collecting societies as a voluntary service provided to their own members, upon their request and in accordance with the society's rules of association.

(4) Where Paragraph (3) cannot be applied either, pending proof to the contrary, the person who first made the work public shall be regarded as the author.

Protection against the circumvention of technological measures

Article 95

(1) The consequences of the infringement of copyright shall apply to the circumvention of effective technological measures designed to provide protection for copyright, provided that the person performing the acts referred to is aware, or, with proper circumspection in the given case, should be aware, of the fact that the aim of that act is the circumvention of the technological measure.

(2) The consequences of the infringement of copyright shall apply to the production, importation, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

a) are promoted, advertised or distributed for the purpose of circumvention of effective technological measures, or

b) have only a limited commercially significant purpose or use other than to circumvent the effective technological measures, or

c) are primarily designed, manufactured, converted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

(3) For the purpose of Paragraphs (1) and (2), the expression 'technological measures' shall mean any device, component, technological process or method that, in the proper course of its operation, is designed to prevent or impede acts which are not authorised by the copyright holder. Technological measures shall be deemed 'effective' where the use of a work is controlled by the rightholders through application of an access control or protection process, in particular encryption or other transformation of the work or a copy control mechanism, which is suitable to achieve the protection objective.

(4) The provisions of Paragraphs (1) and (2) shall not affect the application of Articles 59 and 60(1) to (3). In the case of software, Paragraph (2) shall only apply to the distribution or

possession for commercial purposes of any device, product or component whose sole intended purpose is to facilitate the unauthorised circumvention or removal of a technological solution applied for the protection of the software.

Article 95/A

(1) In the case of reprographic reproduction [Article 21(1)] for private purposes [Article 35(1)], and cases of free use provided for in Articles 34(2), 35(4) and (7) and 41, a beneficiary of such a free use may demand that the rightholder, in spite of the protection granted under Article 95 against the circumvention of technological measures, make the free use possible for him, provided that the beneficiary of the free use has lawful access to the work. If no agreement is reached between the parties on the conditions of the making the free use possible, either of the parties may initiate a procedure under Article 105/A.

(2) Paragraph (1) shall not apply where, on the basis of a contract, the work is made available to the public in a way that members of the public can choose the place and time of access individually [Articles 26(8), 73(1)e), 76(1)c), 80(1)d) and 82(1)c)].

The protection of the rights-management information

Article 96

(1) The consequences of the infringement of copyright shall apply to the unauthorised removal or alteration of any rights-management information, as well as to the unauthorised distribution, importation for distribution, broadcasting or communication to the public of works in a different manner from which rights-management information has been removed or in which it has been altered, provided that the person who commits any of such acts is aware of, or, with proper circumspection in the given case, should be aware of, the fact that by so doing he is enabling, facilitating or concealing an infringement of copyright or inducing others to commit such infringement.

(2) Rights-management information shall mean all data provided by the rightholders that identify the work, the author of the work or other holder of any right in the work, or inform about the terms and conditions of the use of the work, including any numbers or codes that represent such information, provided that such data are attached to a copy of the work or are made perceptible in connection with the communication of the work to the public.

The customs law consequences of copyright infringement

Article 97

In the case of copyright infringement, the author may, with reference to the provisions of separate legislation, require the customs authorities to take measures for preventing the dutiable goods affected by the infringement from being put into circulation.

The consequences in the case of licensed use

Article 98

(1) If the author's economic right is infringed, the person acquiring an exclusive licence pursuant to Article 43(1) may invite the author to take the necessary measures to cease the infringement. If the author fails to take measures within thirty days from the invitation, the acquirer of right is entitled to take action against the infringement on his own behalf.

(2) In the case of a non-exclusive licence, the acquirer of right is entitled to take action under Paragraph (1) only if it is expressly stipulated in the licence agreement.

The consequences of the infringement of the rights related to copyright

Article 99

The provisions of Articles 94 to 98 shall apply *mutatis mutandis* to cases of the infringement of the provisions of Chapters XI and XI/A, and to the protection of the technological measures and rights-management information provided for in those Chapters. For the purposes of Chapter XI/A, free uses defined in Article 95/A(1) shall be construed as meaning the reprographic reproduction [Article 21(1)] for private purposes stipulated in Article 84/C(1) and cases of free use provided for in Article 84/C(2) and (3).

PART FIVE

MISCELLANEOUS AND FINAL PROVISIONS

Chapter XIV

Payment of contribution after the expiration of the term of protection

Article 100

(1) After the expiry of the term of protection of copyright, the assignment of the ownership of an original work of art by a dealer in works of art shall be subject to the payment of a contribution.

(2) The contribution shall be 4 per cent of the sale price net of tax and other public dues. The provisions of Article 70 shall apply *mutatis mutandis* to the definition of the terms ‘original works of art’ and ‘sale price’, as well as to the person required to pay the contribution and to the collection and transfer of the contribution, on the understanding that the collecting society shall use the collected contribution for the purposes of supporting creative activities and contributing to the social welfare of creative artists.

(3) No contribution shall be paid if the ownership of the original work of art is obtained by or from a museum.

(4) The collecting society shall be obliged to record and administer the amount collected as contributions separately.

(5) The collecting society shall annually inform the public on the amount of the contribution and on the use thereof by means of the official gazette of the Office. To that end, the collecting society shall submit its communication to the Office not later than the second quarter following the actual year.

Chapter XV

Organisations co-operating in the settlement of copyright related legal disputes

Council of Copyright Experts

Article 101

(1) Concerning specific issues arising in copyright-related legal disputes, courts and other authorities may consult the Council of Copyright Experts operating attached to the Office requesting it to give its advisory opinion. The members of the Council shall be appointed for a five years’ term by the Minister responsible for justice in agreement with the Minister responsible for culture.

(2)

(3) Upon request, the Council of Copyright Experts may give advisory opinions also in extrajudicial procedures on issues connected with the exercise of the right of use.

(4) Where a court or other authority requests an advisory opinion from the Council of Copyright Experts, the Council shall be informed about the resolution on merits of the case by sending a copy thereof.

(5) The detailed rules of the Council’s organisation and operation shall be established by separate legislation.

Mediation Board

Article 102

If no agreement on remuneration and other terms and conditions of use is reached between the user and the rightholder, or between the users or their representative organisation and the collecting society of the rightholders, either party may turn to the Mediation Board set up pursuant to Article 103.

Article 103

(1) The provisions of Chapter II of Act LXXI of 1994 on Arbitration shall apply to the setting up of the Mediation Board, on the understanding that the members of the Mediation Board shall be appointed from among the members of the Council of Copyright Experts (Article 101).

(2) The Mediation Board shall operate within the Council of Copyright Experts.

Article 104

(1) The objective of the procedure of the Mediation Board is to facilitate the conclusion of an agreement between the parties. In the case of a procedure initiated in a dispute concerning collective management of rights, the Mediation Board shall forthwith inform the Minister responsible for justice, the Minister responsible for culture and the Office.

(2) If no agreement is reached between the parties, the Mediation Board shall draft a proposal concerning the content of the agreement which it communicates to the parties in writing.

(3) The parties may accept the agreement expressly or tacitly. It shall be regarded as a tacit acceptance if no objection is made by the parties to the Mediation Board with regard to the proposal for agreement within three months from the date of its delivery.

(4) If the Mediation Board has proceeded by infringing the provisions of Article 105, the party having sustained injury may bring an action before the court against the agreement established by the decision of the Mediation Board within three months from its entry into force.

(5) In the procedure referred to in Paragraph (4), the Metropolitan Court shall have jurisdiction and exclusive competence.

Article 105

(1) Equal treatment shall be given to the parties during the proceedings of the Mediation Board and either party shall have the possibility to present his position. The Mediation Board may not oblige the parties to participate in the proceedings and carry out acts of proceedings unless the parties have agreed thereto. As regards other matters, the Mediation Board shall itself establish its rules of proceedings – within the frameworks of the statutes referred to in Paragraph (2) – and determine its tariffs.

(2) The statutes of the Mediation Board shall be elaborated by the Council of Copyright Experts and approved by the Minister responsible for justice. Prior to the approval, the Minister supervising the Office and the Minister responsible for culture have to be consulted as regards their opinions.

Article 105/A

(1) If no agreement is reached between the beneficiary of free use and the rightholder on the conditions of making the free use possible (Article 95/A) despite the protection against the circumvention of technological measures (Article 95), any of the parties may turn to the Mediation Board.

(2) The procedure may also be initiated by the representative organisations of the beneficiaries. In such a case, the effect of the agreement concluded on the basis of the decision of the Mediation Board – unless stipulated to the contrary – shall extend to the members of such organisation, who are also beneficiaries of the free use.

(3) The provisions of Article 103 shall apply *mutatis mutandis* to the establishment of the Mediation Board on the understanding that the members of the Mediation Board shall be appointed by the president of the Council of Copyright Experts if the parties do not reach an agreement on that matter within eight days from the commencement of the procedure.

(4) Articles 104(1) and (2) and 105(2) shall apply *mutatis mutandis* to the procedure of the Mediation Board.

(5) The parties may accept the agreement proposed by the Mediation Board either explicitly or tacitly. It shall be regarded as a tacit acceptance if no objection is made by the party to the Mediation Board with regard to the proposed agreement within 30 days from its delivery.

(6) Where the Mediation Board has proceeded by violating the provisions of Article 105, the injured party may bring an action before the court against the agreement concluded on the basis of the proposal of the Mediation Board within 30 days of its conclusion.

(7) If no agreement has been reached on the basis of Paragraph (5), the beneficiary of free use may initiate a lawsuit at the court within 15 days from the expiry of the deadline provided for in Paragraph (5) and may request a court decision ordering the rightholder to make the free use possible according to the conditions stipulated in the claim.

(8) The representative organisations of the beneficiaries shall also have the right to initiate lawsuits under Paragraphs (6) and (7) – within the same deadline – on the understanding that the effect of any final court resolution shall extend to the members of these organisations, who are beneficiaries under this Act.

(9) In lawsuits initiated under this Article, the Metropolitan Court shall have exclusive competence.

(10) Article 95 shall apply *mutatis mutandis* to the technological measures to be enforced on the basis of an agreement reached or final court resolution adopted under this Article, provided that the technological measure fulfils the conditions under Article 95(3).

Chapter XVI

Final provisions

Other rightholders under copyright

Article 106

(1) Wherever the term ‘author’ is mentioned in this Act, the legal successor of the author and other rightholders under copyright shall be understood to be *mutatis mutandis* included.

(2) If the legacy of a deceased person includes copyright, the notary public shall notify the collecting society performing the collective management of rights related to the works of the deceased person on the initiation of the probate. If the affected collecting society cannot be identified or the works do not fall within the scope of collective management of rights, the notification shall be addressed to the collecting society performing the management of rights related to literary and musical works.

(3) In appropriate consideration of the provision of Paragraph (2), the notary public shall send a copy of the abridged certificate of inheritance and the Court shall send a copy of the abridged final judgement to the affected collecting society notifying it on the transfer of the copyright forming part of the legacy to the heir.

(4) The rules relating to certificates of inheritance and definitive judgements shall apply to the abridged certificate of inheritance and abridged definitive judgement, on the understanding that they may only include particulars of the transfer of the copyright forming part of the legacy to the heir.

(5) The abridged certificate of inheritance and abridged definitive judgement referred to in Paragraph (3) shall include, other than those defined in Paragraph (4), the indication ‘abridged’ as well as the purpose for which they can be used.

(6) The provision of Paragraph (5) shall be followed also when the certificate would not include any other provision than what is defined in Paragraph (4).

(7) The affected collecting society shall keep records on the heirs and provide data therefrom to the users within the limits of the legislation relating to the protection of personal data.

(8) The provisions of Paragraphs (1) to (7) shall apply *mutatis mutandis* to the rights related to copyright and the holders of such rights.

Article 106/A

The provisions of this Act related to the copyright protection and to the protection under Chapter XI/A of editors of databases qualifying as collections and of authors of databases shall be without prejudice to the operation of legislation on the protection of personal data and on the publicity of data of public interest.

Provisions relating to the entry into force of the Act and determining the transitory provisions

Article 107

(1) This Act shall enter into force on September 1, 1999; its provisions shall apply to licence agreements concluded after its entry into force.

(2) The provisions of Article 21 of this Act and the provisions in Article 22 relating to the devices used for reprography shall apply as of September 1, 2000.

(3) The provisions established by Article 111(1) and (2) shall apply to the proceedings of enforcement initiated following the entry into force of this Act.

Article 108

(1) The provisions of Article 31 shall, among others, apply to works the term of protection of which is calculated according to the provisions previously in force had expired before the entry into force of Act VII of 1994 on the Amendment of Specific Legislation relating to Copyright and the Protection of Industrial Property.

(2) The rights determined by this Act shall be due to performers, producers of phonograms, radio and television organisations and those transmitting by cable their own programmes to the public even if the twenty years' term – relating to them – calculated from the end of the year referred to by Article 84 had expired by the time of the entry into force of Act VII of 1994.

(3) If the term of protection relating to the authors' economic rights and the neighbouring rights related to copyright had expired by the time of the entry into force of Act VII of 1994, the uses performed in the period between the expiration and the time of entry into force of this Act shall be regarded as free uses, irrespective of whether these rights will again, or will not, fall under protection following the entry into force of this Act.

(4) The use referred to in Paragraph (3) will be possible to be continued – in the case of phonograms regarding copies produced prior to the entry into force – for one year more following the entry into force of this Act, but only to the extent existing at the time of the entry into force. The right of such a use performed within the framework of economic activity may only be assigned jointly with the authorised economic organisation or its organisational unit performing the use. Equitable remuneration shall be due to the rightholder for any use performed even after the entry into force of this Act.

(5) The provisions of Paragraph (4) shall be applied *mutatis mutandis* even if serious preparations have been made towards the use before the date of the promulgation of this Act, on the understanding that in this case the use may be begun and carried on to the extent of the preparation that existed at the promulgation of this Act.

(6) The adaptation, arrangement or translation performed in the period of time referred to in Paragraph (3) shall be regarded as if it had been performed with the authorisation of the author.

(7) On the use after the entry into force of this Act of the adaptation, arrangement or translation referred to in Paragraph (6), equitable remuneration shall be due to the rightholder who holds copyright in the underlying work.

(8) Any disputes concerning remuneration considered as due on the basis of the provisions of Paragraphs (3) and (7) shall be settled through judicial procedure.

(9) The right of use acquired through a licence agreement concluded prior to the entry into force of Act VII of 1994 for the full term of protection or for an indefinite period of time shall be due to the user – under the terms and conditions of the licence agreement – after the entry into force of this Act, provided that the copyright or the neighbouring right related to the copyright falls again under protection pursuant to this Act.

Article 108/A

(1) The provisions of Articles 31 and 84 – with the exception stipulated in the first sentence of Article 13(7) of Act LXXVII of 2001 – shall also apply to works and subject matter covered by neighbouring rights, the term of protection of which had not expired at least in one Member State of the European Economic Area until July 1, 1995.

(2) The provisions of Article 108(3) to (9) shall be applied *mutatis mutandis* to the works referred to in Paragraph (1), on the understanding that, for the purposes of Paragraph (1), the entry into force and promulgation of Act VII of 1994 and of this Act shall be construed as meaning the entry into force and promulgation of the Act Promulgating the International Treaty on the Accession of the Republic of Hungary to the European Union.

Article 109

Article 31(6) of Act XVI of 2013 on the Modification of Certain Acts relating to Intellectual Property shall be applied if it does not result in the shortening of the term of protection calculated according the provisions which were in effect prior to the entry into force of this Act. Article 31(6) set forth by Act XVI of 2013 on the Modification of Certain Acts relating to Intellectual Property shall also be applied to cinematographic creations the term of protection of which had already expired before the entry into force of this Act. Article 108 (3) to (9) shall also apply in this case, with the understanding that the entry into force of this Act shall replace the entry into force of Act VII of 1994.

Article 109/A

Article 90(2) and (4) and Article 93(4) to (6) of this Act set forth by Act CXLVIII of 2010 on the Modification Necessary in relation to Act XLII of 2010 on the Listing of the Ministries of the Republic of Hungary and on the Modification of Certain Acts related to Industrial Property shall be applied in the approval procedure of the tariffs commenced after January 1, 2011.

Article 110

(1) Article 89(13) of this Act set forth by Act XLXXIII of 2011 on the Modification of Certain Acts relating to Intellectual Property shall be first applied to the 2012 annual report 2012.

(2) The collecting society shall inform the Office on the fulfillment of the conditions laid down in Article 92(1) of this Act set forth by Act XLXXIII of 2011 on the Modification of Certain Acts relating to Intellectual Property, not later than May 1, 2012, by sending thereto its rules of association and the final court order taking note of the modification of its rules of association.

Article 111

(1) Provisions of this Act regarding the protection of the makers of databases that were set forth by Act XLXXIII of 2011 on the amendment of Act LXXVI of 1999 on Copyright shall also be applicable to the databases that were created between 31 December 1982 and 1 January 2002, provided that the database fulfilled the criteria for protection on 1 January 2002, laid down in Chapter XI/A, as set forth by Act XLXXIII of 2011 on the amendment of

Act LXXVI on Copyright. The rights of the maker of such a database are protected from the 1 January 2002 until 1 January 2013.

(2) For any acts of exploitation regarding the use of the database mentioned in section (1) that was performed on the basis of a contract concluded with the maker of the database before 1 January 2002, the provisions of this Act, as in force at the conclusion of the contract, shall be applicable even after 1 January 2002.

(3) Article 84(2) of this Act set forth by Act LXXVII of 2001 on the amendment of Act LXXVI of 1999 on Copyright shall not be applicable for a phonogram if the term of its protection has expired based on provisions previously in force. This provision shall not affect the applicability of Article 108.

Article 111/A

Those provisions of this Act that were set forth by Act CII of 2003 on the amendment of Certain Acts related to Industrial Property and Copyright shall apply to works, subject matter covered by neighbouring rights and database protection which, on 22 December 2002, according to the law of the Member States of the European Union, enjoyed protection or which fulfilled the criteria for protection laid down in Article 1 (2) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, with the exception of acts of exploitation performed before 1 May 2004 and the rights acquired accordingly.

Article 111/B

The provisions of this Act set forth by Act CVIII of 2005 on the amendment of Act LXXVI of 1999 on Copyright, taking into account Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, shall apply to contracts concluded after 1 January 2006.

Article 111/C

(1) Article 19(1) of this Act set forth by Act CXII of 2008 on the amendment of Act LXXVI of 1999 on Copyright shall apply to licences to use given after 1 February 2009.

(2) The remuneration the author is entitled to pursuant to Article 23/A shall be paid after the public lending of copies lent after 31 December 2010. The remuneration the author is entitled to pursuant to Article 23/A shall be distributed for the first time in 2012 based on the data provided from 1 January 2011 in accordance with Article 23/A (4).

Article 111/D

(1) The Provisions in Article 55 (2)-(3), Article 74/A (1)-(3), Article 78/A, Article 84 (1) b)-d) and (2) of this Act set forth by Act XVI of 2013 on the Modification of Certain Acts relating to Intellectual Property shall apply to those fixed performances and phonograms in relation to which the 50 years term of protection calculated from the first day set out in Article 84 has not expired by the 1st November 2013 and for fixed performances and phonograms that were made after this date.

(2) If there is no clear reference to the contrary in an agreement concluded before the 1st November 2013, it shall be effective even after the date when the 50 years term of protection defined in Paragraph (1) has expired.

(3) Those agreements that were concluded with the phonogram producer before 1st November 2013 on the fixation of a performance and which entitle the performer a recurring remuneration [Article 74/A (3)] can be amended in favour of the performer 50 years after the phonogram was published or, failing such publication, 50 year after it was communicated to the public, even if this possibility had been excluded in the agreement by the parties. If no agreement is concluded between the phonogram producer and the performer, either party may turn to the Mediation Board set up pursuant to Article 103.

Article 111/E

The right of termination referred to in Article 55 (2) of this Act set forth by Act XVI of 2013 on the Modification of Certain Acts relating to Intellectual Property in relation to agreements that were concluded after the entry into force of this Act can also be exercised only in writing.

Article 111/F

(1) The Provisions in Article 89 (11) and (11b) of this Act set forth by Act CLIX of 2013 on the Modification of Certain Acts relating to Intellectual Property shall be applied to remunerations transferred to NCF after 1st January 2014.

(2) The Provisions in Article 89 (11a) of this Act set forth by Act CLIX of 2013 on the Modification of Certain Acts relating to Intellectual Property shall be first applied to remunerations collected in 2013. The revenue which the collecting society collected in 2013 deriving from the remunerations defined in Articles 20 and 21 and which was transferred to the NCF for the use of cultural purposes before 1st January 2014, shall be deducted from the amount that is due according to the obligation of transmission defined in Article 89 (11a).

Authorisations

Article 112

(1) The Government shall be authorised to determine – taking into account the opinion of the representative organisations concerned – by a decree the range of the devices used for purposes of reprography.

(2) The Government shall be authorised to determine by a decree the detailed rules on the organisation and operation of the Council of Copyright Experts.

(3) The Government shall be authorised to determine by decree the manner and conditions of the communication and making available to the individual members of the public in the case of free use provided for in Article 38(5).

(4) The Government shall be authorised to determine by decree the detailed rules on the use of orphan works, the conditions of the fair remuneration to which the rightholder is entitled, the amount, the manner of collection and the refunding of the administration service fee to be paid for the use, and the detailed rules on the registration of the licences given for the use of orphan works.

(4a) The Government shall be authorised to determine by decree the detailed rules

a) on the registration and supervision of collecting societies as well as on the administration, record keeping, use, manner of payment and way of calculation of the amount of the supervisory fee, as well as the consequences of failing to pay such fee,

b) on the communication by electronic means in the the approval procedure of tariffs of collecting societies.

(5) The Minister responsible for justice shall be authorised to determine by a decree the detailed rules on

a) the voluntary register of works kept by the Office, after obtaining the opinion of the President of the Office, and in agreement with the Minister responsible for culture, as well as

b) the amount, collection and return of the administration service fee to be paid for procedures in connection with the voluntary register of works after obtaining the opinion of the President of the Office, and in agreement with the Ministers responsible for tax policy, culture and the supervision over the Office.

(6) The Minister responsible for justice shall be authorised to determine by a decree the amount, the collection and the refunding of the administration service fee to be paid for procedures in connection with the register of collecting societies, in agreement with the Minister responsible for tax policy, culture and the supervision over the Office, after obtaining the opinion of the President of the Office.

(7) The Minister responsible for culture shall be authorised to determine by a decree, in agreement with the Minister responsible for justice, the scope of data required to the determination and distribution of remuneration due to the author with regard to public lending under Article 23/A of this Act, as well as the list of public libraries obliged to provide data.

Compliance with the law of the European Union

Article 113

This Act ensures compliance with the following acts of the European Union:

- a) Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs;
- b) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission;
- c) Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases;
- d) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;
- e) Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art;
- f) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;
- g) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
- h) Directive 2006/116/EC of the Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights rights and Directive 2011/77/EU of the Parliament and of the Council on the amendment of Directive 2006/116/EC;
- i) Sections 6(a) and (c) of Commission Recommendation 2006/585/EC of 24 August 2006 on the digitization and online accessibility of cultural material and digital preservation.