

Law No. 93 of February 5, 1992

Provisions for the benefit of phonographic companies and remuneration for private, non-profit-making reproduction *

TABLE OF CONTENTS **

	<i>Article</i>
Organization of Phonographic Activity	1
Use of Phonograms	2
Rights in Recordings Made Without Gainful Intent	3
Mutual Association of Performers	4
Rights of Performers	5
Remuneration Payable But Not Paid	6
Non-Distributable Remuneration.....	7
Access to Phonograms in Schools	8

Organization of Phonographic Activity

Art. 1.—(1) Phonograms, including musical phonograms, recorded on disc, tape or a comparable medium constitute, as instruments for the dissemination of culture, goods in the national interest.

(2) Companies that produce phonograms are industrial businesses and as such shall enjoy, according to their size, facilities available for the benefit of large, medium-sized and small industrial businesses.

Use of Phonograms

Art. 2.—(1) The use of phonograms by radio and television organizations is subject to the provisions contained in Articles 72, 73, 74, 75, 76, 77 and 78 of Law No. 633 of April 22, 1941, as subsequently amended.

* *Italian title:* Legge 5 febbraio 1992, n. 93. Norme a favore delle imprese fonografiche e compensi per le riproduzioni private senza scopo di lucro.

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Note: Translation by the International Bureau of WIPO.

** Added by the International Bureau of WIPO.

(2) If it is established at the judicial level that the remuneration payable for the rights referred to in Article 73 of Law No. 633 of April 22, 1941, as subsequently amended, has not been paid, the decision may be taken not only to order payment of the said remuneration, but also to prohibit use of the phonograms for a period of not less than 15 days and not more than 180 days.

(3) If it is established at the judicial level that the use of phonograms is prejudicial to the phonogram producer in terms of Article 74 of Law No. 633 of April 22, 1941, an administrative fine of not less than 500,000 lire and not more than 10,000,000 lire may be imposed in addition to the definitive prohibition of their use.

Rights in Recordings Made Without Gainful Intent

Art. 3.—(1) Without prejudice to the provisions of Law No. 633 of April 22, 1941, as subsequently amended, authors and phonogram producers, the original producers of audiovisual works and the producers of videograms, and their successors in title, are entitled to claim, by way of remuneration for the private reproduction of phonograms and videograms done for personal use and without gainful intent, a share in the selling price to the retailer of tapes or comparable sound and video recording media (music cassettes, videocassettes and other media) and of sound recording apparatus.

(2) The remuneration mentioned in paragraph (1) shall be determined according to the following rates:

(a) 10 per cent of the selling price to the retailer of tapes or comparable sound recording media (music cassettes and other sound media);

(b) 5 per cent of the selling price to the retailer of tapes or comparable video recording media (videocassettes and other video media);

(c) 3 per cent of the selling price to the retailer of sound recording apparatus.

(3) Remuneration is payable by any person who produces in or imports into the territory of the State, for commercial purposes, tapes or comparable sound and video recording media or sound recording apparatus.

(4) The remuneration mentioned in paragraphs (1) and (2) for tapes or comparable sound recording media and for sound recording apparatus shall be paid to the Italian Society of Authors and Publishers (SIAE), which shall distribute it, after deduction of all costs, through, among others, the associations representing the categories concerned, in the proportion of 50 per cent for the authors and their successors in title and 50 per cent for the phonogram producers.

(5) Phonogram producers shall pay 50 per cent of the remuneration awarded them under paragraph (4) to the performers concerned.

(6) The remuneration mentioned in paragraphs (1) and (2) for tapes or comparable video recording media shall be paid to SIAE, which shall distribute it, after deduction of all costs, through, among others, the most representative of the category associations, in the proportion of one-third for the authors, one-third for the original producers of audiovisual works and one-third for the videogram producers; the latter shall set aside 5 per cent of the remuneration awarded each of them to the Mutual Association of

Performing Artists (IMAIE), mentioned in Article 4, for the activities and aims referred to in Article 7(2).

Mutual Association of Performers

Art. 4.—(1) IMAIE has been formed by those union organizations that are the most representative at the national level of the categories of performers who are signatories of collective agreements. Its aim, according to its statutes, is to safeguard the rights of performers and protect and promote the collective interests of the said categories of performers.

(2) IMAIE shall, within the 30 days following the publication of this Law in the *Gazzeta Ufficiale* (Official Journal) of the Italian Republic, file a request to be recognized as a legal entity.

(3) Pursuant to Article 2459 of the Civil Code, the Minister of Tourism and Entertainment shall appoint the President of the Audit Board of IMAIE, and the Minister of Labor and Social Welfare shall appoint a member of the said Board.

(4) The creation and operation of IMAIE shall be provided for without drawing on the State budget.

Rights of Performers

Art. 5.—(1) Without prejudice to the provisions contained in the Decree of the President of the Council of Ministers of September 1, 1975, published in the *Gazzeta Ufficiale* (Official Journal) of the Italian Republic, issue No. 252 of September 20, 1975, the remuneration payable to performers under the first paragraph of Article 73 of Law No. 633 of April 22, 1941, as subsequently amended, and under Article 3(5) of this Law shall be paid to IMAIE by the producers of phonograms or by the associations representing the category to which they belong, who or which shall moreover hand over to IMAIE such documentation as is necessary for the identification of successors in title.

(2) IMAIE shall determine the amount of the remuneration referred to in paragraph (1) that is payable to each performer according to criteria specified in an agreement concluded between the associations representing the producers of phonograms category and the union organizations most representative of the categories of performers who are signatories of national collective agreements. The said agreement shall moreover determine the procedure for the collection and payment of remuneration.

(3) Before the end of the first month of each quarter, IMAIE shall inform the entitled persons of the amount of remuneration payable to them for the previous quarter, and shall in addition publish a list of the names of successors in title in the *Gazzeta Ufficiale* (Official Journal) of the Italian Republic.

(4) Performers or their successors in title have the right to payment by IMAIE of the remuneration owed to them under this Article, after deduction of all costs, within the 1,085 days following publication of the list mentioned in paragraph (3).

(5) On the expiration of the time limits specified in paragraph (4) of this Article, sums relating to rights that have not been exercised shall revert to IMAIE and be used for the activities and aims referred to in Article 7(2).

Remuneration Payable But Not Paid

Art. 6.—(1) Remuneration payable to performers under the first paragraph of Article 73 of Law No. 633 of April 22, 1941, as subsequently amended, that has not been paid on the date of the entry into force of this Law shall be paid to IMAIE by the producers of phonograms or by the associations representing the phonogram producer category, who or which shall moreover pass on to the above-mentioned mutual association such documentation as is necessary for the entitled persons to be identified. The foregoing shall be without prejudice to the provisions contained in the Decree of the President of the Council of Ministers of September 1, 1975, published in the *Gazzeta Ufficiale* (Official Journal) of the Italian Republic, issue No. 252 of September 20, 1975.

(2) IMAIE shall determine the amount of the remuneration mentioned in the first paragraph above, which shall be payable to each performer according to criteria specified in an agreement concluded between the associations representing the phonogram producer category and the union organizations most representative of the categories of performers that are signatories of national collective agreements. The said agreement shall moreover determine the procedure for the collection and payment of remuneration.

(3) Within the 180 days following the conclusion of the agreement referred to in paragraph (2), IMAIE shall inform entitled persons of the amount of the remuneration payable to them and shall in addition publish a list of the names of entitled persons in the *Gazzeta Ufficiale* (Official Journal) of the Italian Republic.

(4) Performers or their successors in title have the right to payment by IMAIE of the remuneration owed them under this Article, after deduction of all costs, within the 1,905 days following publication of the list mentioned in paragraph (3).

(5) On the expiration of the time limits specified in paragraph (4) of this Article, sums deriving from rights that have not been exercised shall revert to IMAIE and be used for the activities and aims referred to in Article 7(2).

Non-Distributable Remuneration

Art. 7.—(1) Remuneration as referred to in Articles 5 and 6 that relates to rights whose owners are not identifiable shall revert to IMAIE.

(2) IMAIE shall use the sums referred to in paragraph (1) above and those referred to in Articles 3(6), Article 5(5) and 6(5) for study and research activities and for the purposes of promotion, training and professional assistance for the benefit of performers.

Access to Phonograms in Schools

Art. 8.—(1) Within the 180 days following the date of the entry into force of this Law, the Minister of National Education shall enact provisions to promote school access to phonograms, including music phonograms, recorded on disc, tape and any comparable

medium as a means of disseminating culture and encouraging education, and shall establish criteria and programs according to the budgetary credits already authorized.

This Law, bearing the seal of the State, shall be included in the official collection of normative instruments of the Italian Republic. All persons are bound to observe it and cause it to be observed as a law of the State.
