

Law for the Protection of Copyright and Neighboring Rights
(Law No. 633 of April 22, 1941, as last amended by Decree Law No. 154 of May 26, 1997)*

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PART I PROVISIONS ON COPYRIGHT

Chapter I Works Protected

Art. 1. Works of the mind having a creative character and belonging to literature, music, figurative arts, architecture, theater or cinematography, whatever their mode or form of expression, shall be protected in accordance with this Law.

Computer programs shall also be protected as literary works within the meaning of Convention for the Protection of Literary and Artistic Works, ratified and enforceable pursuant to Law No. 399 of June 20, 1978.

Art. 2. In particular, protection shall extend to:

- (1) literary, dramatic, scientific, didactic and religious works, whether in written or oral form;
- (2) musical works and compositions, with or without words, dramatico-musical works, and musical variations that themselves constitute original works;
- (3) choreographic works and works of dumb show, the form of which is fixed in writing or otherwise;
- (4) works of sculpture, painting, drawing, engraving and similar figurative arts, including scenic art, even where such works are applied to industrial

products, if their artistic value is distinct from the industrial character of the product with which they are associated;

- (5) architectural plans and works;
- (6) works of cinematographic art, whether silent or with sound, provided they are not mere documentaries protected in accordance with the provisions of Chapter V of Part II;
- (7) works of photographic art and works expressed with processes analogous to photograph provided they are not simple photographs protected in accordance with the provisions of Chapter V of Part II;
- (8) computer programs, in whatever form they are expressed, provided that they are original and result from the author's own intellectual creation. Ideas and principles which underly any element of a computer program, including those which underly its interfaces, shall be excluded from the protection afforded by this Law. The term "computer program" shall include their preparatory design materials.

Art. 3. Collective works formed by the assembling of works, or part of works, and possessing the character of a self-contained creation resulting from selection and coordination with a specific literary, scientific, didactic, religious, political or artistic aim, such as encyclopedias, dictionaries, anthologies, magazines and newspapers, shall be protected as original works, independently of and without prejudice to any copyright subsisting in the constituent works or parts thereof.

Art. 4. Without prejudice to the rights subsisting in the original work, works of a creative character derived from any such work, such as translations into another language, transformations into any other literary or artistic form, modifications and additions constituting a substantial remodeling of the original work, adaptations, arrangements, abridgments and variations which do not constitute an original work, shall also be protected.

Art. 5. The provisions of this Law shall not apply to the texts of official acts of the State or of public administrations, whether Italian or foreign.

Chapter II Holders of the Right

Art. 6. Copyright shall be acquired on the creation of a work that constitutes the particular expression of an intellectual effort.

Art. 7. In the case of a collective work, the person who organizes and directs its creation shall be deemed the author.

A person who has created a derivative work shall be deemed the author of that work within the limits of his own effort.

Art. 8. A person who is shown, in the customary manner, as the author or is announced as such in the course of the recitation, performance or broadcasting of a work shall, in the absence of proof to the contrary, be deemed the author of the work.

Any pseudonym, professional name, initials or customary sign, well-known as being equivalent to a true name, shall be deemed to have the same value as such true name.

Art. 9. Any person who has performed or published in any manner an anonymous or pseudonymous work shall be entitled to assert the rights of the author until such time as the author reveals his identity.

This provision shall not apply in the case of pseudonymous as referred to in the second paragraph of the preceding Article.

Art. 10. If the work has been created by the indistinguishable and inseparable contributions of two or more persons, the copyright shall belong to all the joint authors in common.

In the absence of proof of written agreement to the contrary, the indivisible shares shall be presumed to be of equal value.

The provisions that regulate property owned in common shall be applicable. Furthermore, moral rights may be asserted at any time by any one joint author; and the work, if unpublished, may not be published nor be modified or utilized in a form differing from that of first publication, without the consent of all the joint authors. However, in the event of unjustified refusal by one or more joint authors, publication, modification or new utilization of the work may be authorized by the judicial authority upon such conditions and terms as that authority may order.

Art. 11. Copyright in works created and published under the name and at the expense of the State, the provinces or the communes shall belong to them.

In the absence of agreement to the contrary with the authors of the works published, the same right shall also belong to private legal entities of a non-profit-making character, as well as to academies and other public cultural organizations, in respect of records of their proceedings and their publications.

Chapter III Content and Duration of Copyright

Section I Economic Exploitation of Works

Art. 12. An author shall have the exclusive right to publish his work.

He shall also have the exclusive right to the exploit his work in any form or manner, whether original or derivative, within the limits laid down by this Law, particularly the exercise of the exclusive rights set out in the following Articles.

The first form of exercise of the right of exploitation shall be deemed to constitute first publication.

Art. 12bis. In the absence of any stipulation to the contrary, if a computer program has been created by an employee in the performance of his tasks or following instructions given by his employer, the latter shall have the exclusive right to exploit the program thus created.

Art. 13. The exclusive right of reproduction concerns the multiplication of copies of a work by any means, such as copying by hand, printing, lithography, engraving, photography, phonography, cinematography, and any other process of reproduction.

Art. 14. The exclusive right of transcription concerns the use of means suitable for transforming an oral work into a written work or into a work reproduced by one of the methods referred in the preceding Article.

Art. 15. The exclusive right of public performance or recitation concerns the performance or recitation, however carried out, for payment or not, of a musical, dramatic or cinematographic work or of any other work suitable for public showing and of oral works.

The performance or recitation of a work within the normal circle of the family, of a community, a school or a retirement home, shall not be deemed a public performance provided that it has not been carried out with gainful intent.

Art. 15bis.—(1) Authors shall receive reduced remuneration if the performance or recitation of their works takes place on the premises of officially constituted assistance centers or institutions, or benevolent associations, on condition that they are intended solely for members and guests and that they are not carried out with gainful intent. Failing agreement between the Italian Society of Authors and Publishers (*Società italiana degli autori ed editori*, SIAE) and the concerned associations, the amount of the remuneration shall be laid down by decree of the President of the Council of Ministers (*Presidente del Consiglio dei ministri*) issued after consultation with the Minister for Home Affairs.

(2) The criteria and conditions for ascertaining the subjective and objective circumstances justifying application of the provision in the first sentence of paragraph (1), shall be established by decree of the President of the Council of Ministers, issued in accordance with Article 17(3) of Law No. 400 of August 23, 1988, after consultation with the responsible parliamentary committees. The following in particular shall be prescribed:

- (a) verification of the fact that the above mentioned legal persons have been entered for at least two years in the registers set up by Article 6 of Law No. 266 of August 11, 1991;
- (b) the conditions for identifying the premises of such legal persons and for verifying the number of members and guests, which should be limited and determined in advance;
- (c) membership must have been obtained in a form that can be attested to and a long time before the date of the performance;
- (d) verification of the fact that the performers are giving an exclusively free performance in a spirit of solidarity based on benevolent action.

Art. 16. The exclusive right of diffusion concerns the use of any means of diffusion at a distance, such as telegraphy, telephony, radio or television broadcasting, or other like means, including communication to the public by satellite and cable retransmission.

Art. 16bis.—(1) For the purposes of this Law:

- (a) “satellite” means any satellite operating within frequency bands which, pursuant to the Law on telecommunications, are reserved for the transmission of signals intended for direct public reception or for private individual communication, provided such private reception takes place under circumstances comparable with those applying to public reception;
- (b) “communication to the public by satellite” means the distribution, under the supervision and responsibility of the broadcasting organization operating on the national territory; program-carrying signals intended for public reception as an uninterrupted direct communication sequence towards the satellite and then towards earth. If the program-carrying signals are broadcast in a coded form, communication to the public by satellite shall be deemed to exist if the means of decoding the broadcast are made available to the public either by the broadcasting organization itself or by third parties with its consent. If communication to the public by satellite takes place on the territory of a State not a member of the European Union which does not afford the level of protection laid down by this Law in respect of such system of communication to the public:
1. communication to the public by satellite shall be deemed to take place in Italy if the upwards program-carrying signals are transmitted to the satellite by a station located on the national territory. The rights afforded by this Law as regards satellite broadcasting shall be exercised in respect of the person responsible for such station;
 2. communication to the public shall be deemed to take place on the national territory if the upwards signals are transmitted by a station which is not located on the territory of a Member State of the European Union but the communication to the public by satellite is performed on behalf of a broadcasting organization located in Italy, provided such organization has its main establishment on the national territory. The rights afforded by this Law as regards satellite broadcasting shall be exercised in respect of the person responsible for such broadcasting organization;
- (c) “cable retransmission” means the simultaneous retransmission in an unmodified and integral form, intended for the public, by means of a cable or very high frequency redistribution system, of primary radio or television broadcasts, whatever their broadcasting mode, originating from another Member State of the European Union and intended for public reception.

Art. 17.—(1) The exclusive right of distribution concerns the right to market, place in circulation or make available to the public, by whatever means and for whatever purpose, a work or copies thereof, and includes, in addition, the exclusive right to introduce into the territory of the European Union, for distribution, copies of a work made in countries not members of the European Union.

(2) The free delivery of copies of a work for promotional purposes or for teaching or scientific research, when carried out and authorized by the right holder, shall not be deemed to be exercise of the exclusive right of distribution.

Art. 18. The exclusive right of translation concerns all forms of modification, adaptation and transformation of a work as referred to in Article 4.

An author shall also have the exclusive right to publish his works in a collection.

Finally, he shall have the exclusive right to make any modifications to his work.

Art. 18bis.—(1) The exclusive right of rental concerns the making available for use of originals, of copies or of carriers of copyright works for a limited period of time and for direct or indirect economic or commercial advantage.

(2) The exclusive right of lending concerns the making available for use of originals, of copies or of carriers of copyright works, for a limited period of time and for purposes other than those referred to in paragraph (1) when made through establish marks which are accessible to the public.

(3) The author shall have the exclusive right to authorize rental or lending by third parties.

(4) The above mentioned rights shall not be exhausted by any sale or other act of distribution of originals, copies or carriers of works.

(5) Even where the right of rental is assigned to a producer of phonograms or cinematographic or audiovisual works or of sequences of moving images, the author shall retain his right to fair remuneration for a rental contract concluded by such producer with third parties. Any agreement to the contrary shall be null and void. In the absence of agreement between the categories concerned as defined in the first paragraph of Rule 16 of the Regulations, the said remuneration shall be set according to the procedure provided for in Article 4 of Decree Law No. 440 of July 20, 1945.

(6) Paragraphs (1) to (4) shall not apply to plans or designs of buildings or to works of applied art.

Art. 19. The exclusive rights referred to in the preceding Articles shall be independent of each other. The exercise of any one right shall not exclude the exercise of the other rights.

They shall extend to the work in its entirety and to each of its parts.

Section II Protection of Rights in the Work in Defense of the Person of the Author (Moral Rights)

Art. 20. Independently of the exclusive rights of exploitation of the work referred to in the provisions of the preceding Section, and even after the transfer of such rights, the author shall retain the right to claim authorship of his work and to object to any distortion, mutilation or any other modification of, and other derogatory action in relation to, the work, which would be prejudicial to his honor or reputation.

However, in the case of works of architecture, the author may not oppose modifications deemed necessary in the course of construction. Further, he may not oppose other modifications which may be necessary in any such completed work. However, if the work is recognized by the competent State authority as having an

important artistic character, the author shall be entrusted with the study and execution of such modifications.

Art. 21. The author of an anonymous or pseudonymous work shall at all times have the right to reveal his identity and to have his position as author recognized by judicial procedure.

Notwithstanding any prior agreement to the contrary, the successors in title of an author who has revealed his identity shall be required to indicate the name of the author in publications, reproductions, transcriptions, performances, recitations and broadcasts, or in any other form of manifestation or announcement to the public.

Art. 22. The rights referred to in the preceding Articles shall be inalienable.

However, if the author was aware of and has accepted modifications to his work, he shall not be entitled to intervene to prevent the performance thereof or to demand its suppression.

Art. 23. After the death of the author, the right referred to in Article 20 may be asserted, without limitation of time, by his spouse and children and, in the absence thereof, by his parents and other direct ascendants and descendants, and in the absence of such ascendants and descendants, by his brothers and sisters and their descendants.

If the public interest should so require, such action may also be taken by the President of the Council of Ministers after hearing the competent professional association.

Art. 24. The right to publish unpublished works shall belong to the heirs of the author or to the legatees of such works, unless the author has expressly forbidden publication or has entrusted it to other persons.

If the author has fixed a period of time to precede publication, unpublished works shall not be published before the expiration of such period.

If more than one person is concerned by the first paragraph and there is disagreement between them, the matter shall be decided by judicial authority after hearing the public prosecutor. The wishes of the deceased person, when expressed in writing, shall in all cases be respected.

The provisions of Part III, Chapter II, Section II, shall apply to such works.

Section III Duration of Exploitation Rights

Art. 25. The exploitation rights in a work shall subsist for the life time of the author and until the end of the fiftieth calendar year after his death.

Art. 26. In the case of works referred to in Article 10 and of dramatico-musical and choreographic works and works of dumb show, the duration of the exploitation rights of each joint author and contributor shall be determined by the life time of the last surviving joint author.

In the case of collective works, the duration of the exploitation rights of each contributor shall be determined by the respective lifetimes of each contributor. The duration of the exploitation rights in the work as a whole shall be 50 years from the date

of first publication, whatever the form in which publication was effected, except in the case of magazines, newspapers and other periodical works to which the provisions of Article 30 shall apply.

Art. 27. In the case of anonymous or pseudonymous works other than those referred to in the second paragraph of Article 8, the duration of the exploitation rights shall be 50 years from the date of first publication, whatever the form in which publication was effected.

If, before expiry of such term, the author has revealed his identity or his identity has been revealed by the persons referred to in Article 23 or by persons authorized by the author, and in the manner established by the following Article, Article 25 shall apply.

Art. 27bis. [Repealed]

Art. 28. In order to enjoy the normal duration of the exploitation rights, the person concerned must reveal his identity by means of a declaration made to the Office of Literary, Scientific and Artistic Property (*Ufficio della proprietà letteraria, scientifica ed artistica*) of the Office of the President of the Council of Ministers in accordance with the applicable regulations.

The declaration shall be published in the form required by the regulations and shall have effect, as regards third parties who have acquired rights in the anonymous or pseudonymous work, as from the date of filing.

Art. 29. The duration of the exploitation rights belonging, under Article 11, to the State, the provinces, the communes, the academies or public cultural organizations, or to private legal entities of a non-profit making character, shall be twenty years as from first publication, whatever the form in which publication was effected. In the case of communications and memoranda published by academies and other public cultural organizations, the term shall be reduced to two years, after which the author shall wholly recover his right to the unrestricted disposal of his writings.

Art. 30. When parts or volumes of a given work are published separately and at different times, the duration of the exploitation rights, when fixed in years, shall run from the year of publication of each part or volume. The author shall enjoy the benefit of fractions of years.

In the case of a collective periodical work, such as a magazine or newspaper, the rights shall also be calculated from the end of the year of publication of the individual parts or issues.

Art. 31. In the case of works first published after the author's death that are not governed by the provisions of Art. 85ter, the duration of the exclusive exploitation rights shall be 70 years from the author's death.

Art. 32. Without prejudice to the provisions of Article 44, the exploitation rights in the cinematographic or assimilated work shall lapse at the end of the 70th year following the death of the last survivor of the following persons: the artistic director, the authors of the scenario, including the author of the dialogue, and the composer of the music specially created for use in the cinematographic or assimilated work.

Art. 32bis. The exploitation rights in photographic works shall lapse at the end of the 70th year following the author's death.

Art. 32ter. The duration of the exploitation rights provided for in the provisions of this Section shall be counted in every case from the first of January of the year following that of the author's death or that in which any other event provided for in this Law has occurred.

Chapter IV Special Provisions on Exploitation Rights in Certain Categories of Works

Section I Dramatico-Musical Works, Musical Compositions with Words Choreographic Works and Works of Dumb Show

Art. 33. In the absence of a special agreement between contributors in respect of operas, operettas, melologues, musical compositions with words, and dance and ballet music, the provisions of the following three Articles shall apply.

Art. 34. The author of the musical part shall be entitled to exercise the exploitation rights except for the rights deriving from the association of the parties.

The profits derived from exploitation shall be shared in proportion to the values of the respective literary and musical contributions.

For operas, the value of the musical part shall be deemed to be three quarters of the total value of the work.

For operettas, melologues, musical compositions with words, and dance and ballet music, the value of the two contributions shall be considered equal.

Subject to the provisions of the following Articles, each contributor shall be entitled to use his own work separately and independently.

Art. 35. The author of the literary part may not use his part in association with any other musical work, except in the following cases:

- (1) if, after the final text of the manuscript of the literary contribution has been sent to the composer, he does not set it to music within five years in the case of a libretto for an opera or operetta or within one year in the case of any other literary work to be set to music;
- (2) if, after having been set to music and considered by the parties as being ready for performance, the work is not performed within the periods specified in the preceding subparagraph, unless longer periods have been afforded for performance by Articles 139 and 141;
- (3) if, after a first performance, the work ceases to be performed for a period of 10 years in the case of an opera, an oratorio, a symphonic poem or an operetta, or for a period of two years in the case of any other composition.

In the cases specified in subparagraphs (2) and (3), the composer, may make use of the music in other ways.

Art. 36. In the case referred to in subparagraph (1) of the preceding Article, the author of the literary part shall recover his right of unrestricted disposal, without prejudice to any subsequent action for damages that he may take against the composer.

In the cases referred to in subparagraphs (2) and (3), and without prejudice to any action for damages referred to in the preceding paragraph, the joint rights in respect of the work which has already been set to music shall not be affected, but the work itself may not be performed without the consent of both contributors.

Art. 37. In the case of choreographic works or works of dumb show and in the case of other works consisting of music with words, dancing or mime, such as musical revues and similar works, in which the musical part does not constitute the principal function or value, the exercise of the exploitation rights shall belong, in the absence of agreement to the contrary, to the author of the choreographic or dumb show part and, in the case of musical revues, to the author of the literary part.

The provisions of Articles 35 and 36 shall apply to such works, subject to the modifications required by the provisions of the preceding paragraph.

Section II Collective Works, Magazines and Newspapers

Art. 38. In the case of a collective work, the exploitation rights shall belong, in the absence of agreement to the contrary, to the publisher of the work, without prejudice to any right deriving from the application of Article 7.

The individual contributors to collective works shall have the right to utilize their own contributions separately, provided they observe existing agreements or, in the absence of agreements, the rules set out below.

Art. 39. If, without prior contractual agreement, an article is sent to a magazine or newspaper by a person who is not a member of the editorial staff, for the purpose of reproduction, its author shall recover his right to dispose of it unrestrictedly if he does not receive notice of acceptance within one month of sending the article or, if it is not reproduced, within six months of the notice of acceptance.

In the case of an article furnished by a member of the editorial staff, the director of the magazine or newspaper may defer reproduction beyond the periods set out in the preceding paragraph. However, once a period of six months as from delivery of the manuscript has expired, the author shall be entitled to utilize the article for reproduction in a volume or as an offprint in the case of newspaper, and also in any other periodical in the case of a magazine.

Art. 40. In the absence of agreement to the contrary, a contributor to a collective work other than a magazine or newspaper shall be entitled to have his name appear in the customary manner in the reproduction of his work.

In the absence of agreement to the contrary, this right shall not be enjoyed by the editorial staff of newspapers.

Art. 41. Without prejudice to the application of Article 20, the director of a newspaper shall be entitled, in the absence of agreement to the contrary, to introduce into

an article submitted for reproduction such modifications of form as are required by the nature and aims of the newspaper.

In articles to be reproduced without mention of the name of the author, this faculty shall extend to the omission or reduction of parts of the said articles.

Art. 42. The author of an article or other work reproduced in a collective work shall be entitled to reproduce it as an offprint or to include it in a volume, provided he mentions the collective work from which it has been taken and the date of publication.

In the case of articles appearing in magazines or newspapers, the author shall also have the right, in the absence of agreement to the contrary, to reproduce them in other magazines or newspapers.

Art. 43. The publisher or director of a magazine or newspaper shall not be required to keep or return the manuscripts of unsolicited articles which have been sent to him.

Section III Cinematographic Works

Art. 44. The author of the subject-matter, the author of the scenario, the composer of the music and the artistic director shall be considered joint-authors of a cinematographic work.

Art. 45. Within the limits set out in the following Articles, the exercise of the exploitation rights in a cinematographic work shall belong to the person who has organized the production of the work.

The person who is mentioned in the cinematographic film as the producer shall be deemed to be the producer of the cinematographic work. If the work is registered in accordance with the second paragraph of Article 103, the presumption established by that Article shall prevail.

Art. 46. The exploitation rights belonging to the producer concern the cinematographic exploitation of the work produced.

In the absence of agreement to the contrary, the producer shall not make or show adaptations, transformations or translations of the produced work without the consent of the authors referred to in Article 44.

The authors of the music, the musical compositions and the words which accompany the music shall be entitled to collect directly from persons publicly showing the work separate remuneration in respect of such showing.

In the absence of agreement between the parties, the payment shall be fixed according to the applicable Regulations.

The authors of the subject matter and of the scenario and the artistic director, where they are not remunerated by a percentage of the receipts obtained from the public showing of the cinematographic work, shall, in the absence of agreement to the contrary, be entitled to receive additional remuneration when the receipts have reached a level to be fixed by contract with the producer, the form and amount of which shall be fixed by agreement between the concerned parties.

Art. 46bis.— (1) Notwithstanding the provisions of Article 46, where the distribution rights are assigned to the producer, the authors of cinematographic or assimilated works are entitled to equitable remuneration¹ from the distributing organizations for every use of the work that takes the form of communication to the public by electromagnetic waves, cable or satellite.

(2) For every use of cinematographic or assimilated works that is different from that provided for in paragraph (1) above and paragraph (5) of Article 18bis, the authors of the said works are entitled to equitable remuneration¹ from those exercising the exploitation rights for each separate act of exploitation.

(3) For every use of cinematographic or assimilated works of which the original language is not Italian, the authors of the derived works constituted by the translation or adaptation of the dialogues in Italian shall likewise be entitled to equitable remuneration.¹

(4) The remuneration¹ provided for in paragraphs (1), (2) and (3) may not be waived and, in the absence of agreement between the categories concerned as defined in the first paragraph of Rule 16 of the Regulations, shall be set according to the procedure provided for in Article 4 of Decree Law No. 440 of July 20, 1945.

Art. 47. The producer shall have the right to make such modifications to works utilized in a cinematographic work as are necessary for their cinematographic adaptation.

In the absence of agreement between the producer and one or more of the authors referred to in Article 44 of this Law, the question whether modifications effected or to be effected in a cinematographic work are necessary shall be decided by a panel of specialists designated by the President of the Council of Ministers in accordance with the applicable Regulations.

The findings of the panel shall be final.

Art. 48. The authors of a cinematographic work shall be entitled to have their names, together with their professional capacity and their contributions, mentioned in the showing of a cinematographic work.

Art. 49. The authors of the literary or musical parts of a cinematographic work may reproduce them or utilize them separately in any manner, provided no prejudice is caused to the exploitation rights belonging to the producer.

Art. 50. If the producer fails to complete the cinematographic work within a period of three years from the delivery of the literary or musical parts, or does not show the completed work within three years from its completion, the authors of those parts shall be entitled to dispose of the work itself without restriction.

Section IV Broadcast Works

¹ Payable as from January 1, 1998. (*Editor's note*)

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¹ Payable as from January 1, 1998. (*Editor's note*)

Art. 51. By reason of the nature and purpose of broadcasting as a service that is the preserve of the State, which operates the service either directly or by means of concession, the exclusive right of broadcasting, either directly or by any intermediate means, shall be governed by the following special provisions.

Art. 52. Under the conditions and within the limits set out in this and the following Articles, the organization which operates the broadcasting service shall be entitled to broadcast intellectual works from theatres, concert halls or any other public place.

Proprietors, impresarios and all persons involved in a performance, shall be required to permit such installations and technical tests as may be necessary in preparation for the broadcast.

The consent of the author shall be required for the broadcasting of new works and for the first performance in any given season of works which are not new.

A theatrical work which has been publicly performed in three different theatres or other public places shall not be deemed to be new.

Art. 53. Where the season for theatrical performances or concerts is not less than two months, the right of the organization referred to in the preceding Article may be exercised once a week in respect of theatrical performances, and once for each five or each group of five in respect of concerts.

The duration of a theatrical or concert season shall be understood to be the season announced in notices or programs published before the commencement of the season.

Art. 54. The task of ascertaining whether broadcasts comply with proper technical standards shall be the exclusive responsibility of the State organizations responsible for the supervision of broadcasting and having the powers conferred by Article 2 of Royal Decree Law of June 14, 1928, No. 1352, and of Article 2 of Royal Decree Law of February 3, 1936, No. 654, converted into the Law of June 4, 1936, No. 1552.

The name of the author and the title of the work shall be broadcast at the same time as the work itself.

Art. 55. Without prejudice to the rights of the author in connection with the broadcasting of his work, the broadcasting organization shall be authorized to record the work on a disk or metal tape or by a similar process, for the purposes of subsequent broadcasting, when this is necessitated by considerations of time or technology, provided that, after its use, the recording be destroyed or rendered unusable.

Art. 56. The author of a work broadcast in accordance with the preceding Article shall be entitled to obtain from the broadcasting organization the payment of remuneration, the amount of which, in the event of disagreement between the parties, shall be settled by the judicial authority.

No application may be made to the judicial authority until an attempt has been made to reach a settlement in the manner and form laid down by the Regulations.

Art. 57. The amount of remuneration shall be based upon the number of transmissions.

The Regulations shall determine the criteria for establishing the number and manner of deferred or repeated transmissions.

Art. 58. The author shall be entitled to equitable remuneration for the performance in public of broadcast works by means of sound radio receivers equipped with loudspeakers, of which the amount shall be determined periodically by agreement between the SIAE and the representatives of the professional organization concerned.

Art. 59. The broadcasting of intellectual works from the premises of the broadcasting organization shall be subject to the consent of the author in accordance with the provisions of Chapter III of this Part; the provisions of the foregoing Articles, except those of Article 55, shall not be applicable to such broadcasting.

Art. 60. When requested by the President of the Council of Ministers the broadcasting organization shall make special broadcasts of a cultural and artistic nature intended for other countries, subject to payment of remuneration determined in accordance with the regulations.

Section V Works Recorded on Mechanical Devices

Art. 61. An author shall have the exclusive right, within in the meaning of the provisions of Section 1 of Chapter III of this Part:

- (1) to adapt and to record his work on phonograph records, cinematographic films, metal tapes or any similar material or mechanical device for reproducing sounds or voices;
- (2) to reproduce, to distribute, to rent out or lend out or to authorize the rental or lending of copies of a work thus adapted or recorded;
- (3) to perform in public and to broadcast his work by means of a record or other mechanical device as mentioned above by cable, and to authorize communication to the public by satellite and retransmission by cable.

Assignment of the right of reproduction or the right of distribution shall not include assignment of the right of public performance or of broadcasting, nor the right of communication to the public by satellite or of retransmission by cable unless otherwise agreed.

Copyright with respect to broadcasting shall continue to be governed by the provisions of the preceding Section.

Art. 62. Copies of a phonograph record or of any like device for reproducing sounds or voices on which an intellectual work has been recorded shall not be commercially distributed unless they bear, in an indelible manner, the following particulars:

- (1) the title of the work reproduced.
- (2) the name of the author;
- (3) the name of the performing artist. Orchestral or choral groups shall be identified by their customary name;

- (4) the date of production.

Art. 63. The record or like device shall be made or utilized in such a manner that the moral rights of the author are respected within the terms of Articles 20 and 21 of this Law.

Modifications of a work necessitated by the technical requirements of recording shall be considered lawful.

Art. 64. Any authorization given to a national phonogram publishing house to utilize the masters of the State Record Library (*Discoteca di Stato*) for the purpose of making records to be distributed for sale, whether in Italy or abroad, within the terms of Article 5 of Law No. 467, of February 2, 1939, containing provisions for the reorganization of the State Record Library, shall be subject, insofar as the works recorded are protected works, to the payment of royalties in accordance with the applicable regulations.

Section VI Computer Programs

Art. 64bis.— (1) Without prejudice to the provisions of Articles 64ter and 64quater, the exclusive rights afforded by this Law with regard to computer programs shall include the right to do or to authorize:

- (a) The permanent or temporary reproduction of a computer program by any means or in any form, in part or in whole. In so far as loading, displaying, running, transmission or storage of the computer program necessitates such reproduction, such acts shall be subject to authorization by the right holder;
- (b) the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, without prejudice to the rights of the person who alters the program;
- (c) any form of distribution to the public, including the rental, of the original computer program or of copies thereof. The first sale in the European Union of a copy of a program by the right holder or with his consent shall exhaust the distribution right within the Union of that copy, with the exception of the right to control further rental of the program or of a copy thereof.

Art. 64ter.— (1) In the absence of any agreement to the contrary, the acts referred to in Article 64bis(a) and (b) shall not require authorization by the right holder where they are necessary for the use of the computer program by the lawful acquirer in accordance with its intended purpose, including error correction.

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

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

clause that is contrary to the provisions of this paragraph and of paragraph (2) shall be null and void.

Art. 64quater.— (1) The authorization of the right holder shall not be required where reproduction of the code and translation of its form within the meaning of Article 64bis(a) and (b) are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

- (a) these acts are performed by the licensee or by another person having a right to use a copy of a program, or on their behalf by a person authorized to do so;
- (b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in subparagraph (a);
- (c) these acts are confined to the parts of the original program which are necessary to achieve interoperability.

(2) The provisions of paragraph (1) shall not permit the information thus obtained:

- (a) to be used for goals other than to achieve the interoperability of the independently created computer program;
- (b) to be given to others, except where necessary for the interoperability of the independently created computer program;
- (c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

(3) Any contractual clause contrary to paragraphs (1) and (2) shall be null and void.

(4) In accordance with the provisions of the Berne Convention for the Protection of Literary and Artistic Works, ratified and enforceable by Law No. 399, of June 20, 1978, the provisions of this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the right holder's legitimate interests or conflicts with a normal exploitation of the computer program.

Chapter V Free Use

Art. 65. Articles of current interest of an economic, political or religious character, published in magazines or newspapers, may be freely reproduced in other magazines or newspapers, or may be broadcast, unless such reproduction is expressly reserved, provided mention is made of the magazine or newspaper from which they are taken, the date and the issue of the magazine or newspaper and, in the case of a signed article, the name of the author.

Art. 66. Speeches upon matters of political or administrative interest given in public assemblies or in any other public manner may be freely reproduced in magazines or newspapers, or broadcast, provided the source is mentioned, together with the name of the author and the date and place in which the speech was given.

Art. 67. Works or portions of works may be reproduced for use in judicial or administrative proceedings, provided the source or the name of the author is mentioned.

Art. 68. The reproduction of single works or of portions of works for the personal use of the reader, when made by hand or by a means of reproduction unsuitable for marketing or disseminating the work in public, shall be permitted.

The photocopying of works available in libraries, when made for personal use or for the services of the library, shall be permitted.

The distribution of such copies in public and, in general, any use of them that infringes the exploitation rights of the author shall be prohibited.

Art. 69.— (1) Loans from libraries and record libraries belonging to the State or to public authorities, made exclusively for purposes of cultural promotion and personal study, shall not require authorization by the right holder, to whom no remuneration shall be due, and shall exclusively concern:

- (a) printed copies of the works, except for operatic and music scores;
- (b) phonograms and videograms containing cinematographic or audiovisual works or sequences of moving images, with or without sound, provided that at least 18 months have elapsed since the first exercise of the right of distribution.

Art. 70. The abridgment, quotation or reproduction of fragments or parts of a work for the purpose of criticism or discussion, or for instructional purposes, shall be permitted within the limits justified for such purposes, provided such acts do not conflict with the commercial exploitation of the work.

In anthologies for school use, reproduction shall not exceed the extent specified in the regulations, that shall also lay down the manner for determining the equitable remuneration for such reproduction.

The abridgment, quotation or reproduction must always be accompanied by a mention of the title of the work and of the names of the author, the publisher and, in the case of a translation, the translator, whenever such mentions appear on the work that has been reproduced.

Art. 71. Musical groups and bands of the armed forces of the State may perform musical pieces or portions of musical works in public without payment of any fees in respect of copyright, provided the performance is not made for profit.

PART II PROVISIONS ON NEIGHBORING RIGHTS

Chapter I Rights Relating to the Production of Phonographic Records and of Analogous Contrivances

Art. 72.— (1) Without prejudice to the rights afforded authors by Part I of this Law, the producer of a phonograph record or of any similar device for reproducing sounds or voices shall have the exclusive right, for the period and under the conditions laid down in

the following Articles, to reproduce, by whatever duplication process, and distribute the records or devices he has produced. The right of distribution shall not be exhausted on the territory of the European Union, unless the first marketing of the phonogram was carried in a Member State of the European Union by the producer or with his authorization.

(2) The phonogram producer shall also have the exclusive right to rent or lend the phonograms he has produced and to authorize their rental and lending. This right shall not be exhausted by the sale or distribution in any form whatsoever of the phonograms.

Art. 73. The producer of a phonograph record or any similar device for reproducing sounds or voices, together with the artists who executed the performance recorded or reproduced on those devices, shall be entitled, independently of the rights of distribution, rental and lending belonging to them, to remuneration in exchange for the utilization, with gainful intent of the record or other device for broadcasting by radio or television, including communication to the public by satellite, in cinematography, in public dances, on public premises and on the occasion of any other public utilization of the devices. This right shall be exercised by the producer, who shall share out the remuneration among the performers concerned.

The amount of such remuneration and the scale of distribution, together with the corresponding conditions, shall be determined in accordance with the provisions of the regulations.

No remuneration shall be due for utilization for educative or informative purposes by the State administration or by institutions authorized by the State for such purposes.

Art. 73bis.— (1) The performers and the producer of the phonogram utilized shall be entitled to equitable remuneration, including when the utilization referred to in Article 73 was not effected with gainful intent.

(2) Unless otherwise agreed by the parties, the remuneration shall be calculated, collected and distributed in accordance with the regulations.

Art. 74. The producer shall be entitled to oppose any utilization of a record or similar device for reproducing sounds or voices, referred to in the preceding Article, if it was effected under conditions such as to seriously prejudice his economic interests.

At the request of the interested party, the President of the Council of Ministers may nevertheless authorize, pending a decision by the judicial authority, the use of the record or other device for reproducing sounds or voices, after technical investigation and the ordering, where necessary, of any measures needed to eliminate defects in the regularity of its utilization.

Art. 75. The duration of the rights specified in this Chapter shall be 50 years from the time of fixation. If the phonograph record or other comparable device for reproducing sounds or voices is published or communicated to the public during that period, the duration of those rights shall be 50 years following the date of first publication or, if it is earlier, from the first communication to the public of the record or comparable device.

Art. 76. Copies of a phonograph record or other device for reproducing sounds or voices shall not be marketed unless they bear the particulars specified in Article 62, where applicable, indelibly affixed to the record or device.

Art. 77. The rights set out in this Chapter may be exercised only if one copy of the record or other device has been deposited with the Office of the President of the Council of Ministers in accordance with the provisions of the regulations.

Nevertheless, the formality of deposit referred to in the first paragraph, as a condition for the exercise of the rights that belong to the producer, shall be considered fulfilled if the symbol (P), accompanied by the year of first publication, is affixed indelibly on all copies of the record or other device.

Art. 78. The person who undertakes the making of the original record or other device for reproducing sounds or voices by recording the sounds or voices live, shall be considered the producer.

The place in which the original live recording was made shall be considered the place of production.

Chapter *Ibis* Rights of Producers of Cinematographic or Audiovisual Works or of Sequences of Moving Images

Art. 78bis.— (1) The producer of a cinematographic or audiovisual work or of a sequence of moving images shall have the exclusive right;

- (a) to authorize the direct or indirect reproduction of original works and of the copies thereof;
- (b) to authorize the distribution by any means, including sale, of original works and of the copies thereof; the right of distribution shall not be exhausted on the territory of the European Union, unless the first marketing was carried out in a State of the European Union by the producer or with his authorization;
- (c) to authorize the rental or lending of original works and of the copies thereof; sale or distribution, in any form, shall not exhaust the right of rental and lending.

(2) The rights referred to in paragraph (1) shall end on the expiration of a period of 50 years from the time of fixation. If the cinematographic or audiovisual work or the sequence of moving images is published or communicated to the public during that period, the said rights shall expire 50 years from the first such publication or, if earlier, from the first such communication to the public of the cinematographic or audiovisual work or sequence of moving images.

Chapter II Rights in Radio and Television Broadcasting

Art. 79.— (1) Without prejudice to the rights afforded by this Law to authors, to producers of phonograph records and similar devices, to producers of cinematographic or audiovisual works or of sequences of moving images and to performers, persons carrying out radio or television broadcasting shall have the exclusive right:

- (a) to authorize the recording of broadcasts made by wire or over the air; this right shall not be afforded to cable operators who simply rebroadcast by cable the broadcasts of other broadcasting organizations;

- (b) to authorize the direct or indirect reproduction of the recordings of their own broadcasts;
- (c) to authorize the retransmission of their own broadcasts by wire or over the air and their communication to the public when it is carried out in a place which is accessible only on payment of an entrance fee;
- (d) to authorize distribution of recordings of their own broadcasts; this right shall not be exhausted on the territory of the European Union unless the first marketing was carried out in a member State by the right holder or with his authorization.

(2) Right holders under paragraph (1) shall also have the exclusive right of utilization of recordings of their own broadcasts for further broadcasts or rebroadcasts or for further recordings.

(3) The term “broadcasts” means broadcasts by radio and television.

(4) The terms “by wire or over the air” includes broadcasts by cable and by satellite.

(5) The duration of the rights referred to in paragraph (1) shall be 50 years from the first transmission of a broadcast.

Chapter III Rights of Performers

Art. 80.— (1) Actors, singers, musicians, dancers and other persons who play, sing, recite or perform in any manner, intellectual works, whether protected or in the public domain, shall be considered performers.

(2) Performers shall have the exclusive right, regardless of any remuneration to which they may be entitled for their live performances:

- (a) to authorize the recording of their performances;
- (b) to authorize the direct or indirect reproduction of recordings of their performances;
- (c) to authorize the broadcasting over the air and the communication to the public, in any form or manner, including by satellite, of their live performances, unless the latter were intended for broadcasting by radio or television or are already the subject of a recording for broadcasting purposes. If the recording consists of a phonograph record or similar device utilized with gainful intent, the performers shall be entitled to the remuneration referred to in Article 73; however, if the recording is not utilized with gainful intent, the performers shall be entitled to the remuneration referred to in Article 73bis;
- (d) to authorize the distribution of recordings of their performances: this right shall not be exhausted on the territory of the European Union, unless the first marketing was made in a Member State by the right holder or with his authorization;

- (e) to authorize the rental or lending of recordings of their performances and of the reproductions thereof: the performers shall retain, even when assigning the rental right to a producer of phonograms or cinematographic or audiovisual works or of sequences of moving images, the right to equitable remuneration in the event of rental agreed by the producer with third parties. Any contrary stipulation shall be null and void. In the absence of agreement between the mutual-interest body of performers and the competent union associations of the confederation of industries, the said remuneration shall be set according to the procedure provided for in Article 4 of Decree Law No. 440 of July 20, 1945.

Art. 81. Performers shall be entitled to oppose any dissemination, transmission or reproduction of their performances which might be prejudicial to their honor or reputation.

The provisions of the second paragraph of Article 74 shall be applicable.

Insofar as broadcasting is concerned, disputes arising from the application of this Article shall be regulated according to the provisions of the first paragraph of Article 54.

Art. 82. For the application of the foregoing provisions the definition of performers shall include:

- (1) persons who, in the performance of any dramatic, literary or musical work or composition, play a significant artistic part, even if in a supporting role;
- (2) the conductors of an orchestra or choir;
- (3) the orchestras or choirs as such, provided that the orchestral or choral part of the performance has artistic value in itself and is not a mere accompaniment.

Art. 83. The performers who play the leading parts in a dramatic, literary or musical work or composition shall be entitled to have their names mentioned when their performances are disseminated or transmitted and affixed indelibly to any phonograph record, cinematographic film or other like device.

Art. 84.— (1) Unless otherwise agreed by the parties, performers shall be presumed to have assigned the rights of fixation, reproduction, broadcasting (including communication to the public by satellite) and distribution, and also the right to authorize rental, on the conclusion of the contract for the production of a cinematographic or audiovisual work or sequence of moving images.

(2) The performers who play important acting parts, in the cinematographic or assimilated work, even as supporting actors, are entitled to equitable remuneration paid by distributing organizations for every use of the said work that takes the form of communication to the public by electromagnetic waves, cable or satellite.

(3) For every use of cinematographic or assimilated works different from that provided for in paragraph (2) above and in subparagraph (e) of Article 80(2), the performers referred to in paragraph (2) above shall be entitled to equitable remuneration, payable by those exercising the exploitation rights, for any separate act of exploitation.

(4) The remuneration provided for in paragraphs (2) and (3)² above may not be waived and, in the absence of agreement between the mutual-interest body of performers and the competent union associations of the confederation of industries, shall be set according to the procedure provided for in Article 4 of Decree Law No. 440 of July 20, 1945.

Art. 85. The duration of the rights provided for in this Chapter shall be 50 years from the time of performance. If a fixation of the performance is published or communicated to the public during that time, the duration of the rights shall be 50 years as from the first such publication or, if earlier, from the first such communication to the public of the fixation.

Art. 85bis.— (1) In addition to the rights laid down in this and the preceding Chapters, the holders of neighboring rights shall have the right to authorize cable retransmission pursuant to Article 110bis.

Chapter IIIbis Rights in Works Published or Communicated to the Public after the Author's Economic Rights Have Expired

Art. 85ter.— (1) Without prejudice to the author's moral rights, any person who, after the copyright protection has expired, for the first time lawfully publishes or communicates to the public a work that has not been published previously shall enjoy the exploitation accorded by the provisions of Section I of Chapter III of Title I of this Law to the extent that those provisions are applicable.

The duration of the exclusive exploitation rights referred to in paragraph (1) above shall be 25 years from the first lawful publication or the first lawful communication to the public.

Chapter IIIter Rights in Critical and Scientific Editions of Works in the Public Domain

Art. 85quater.— (1) Without prejudice to the author's moral rights, any person who in any way or by any means publishes critical and scientific editions of works in the public domain shall enjoy exclusive exploitation rights in the work resulting from the critical and analytical assessment.

(2) Without prejudice to the contractual relations binding him to the owner of the economic exploitation rights referred to in paragraph (1), the person responsible for the critical and scientific edition shall have the right to be named.

(3) The duration of the exclusive rights referred to in paragraph (1) above is 20 years from the first lawful publication in any form or by any means.

Art. 85quinquies. The term of the rights provided for in Chapters I, *Ibis*, II, III, *IIIbis* and this Chapter of Title II shall be counted in every case from the first of January of the year following that in which the event provided for in the Law occurred.

² Payable as from January 1, 1998. (*Editor's note*)

Chapter IV Rights in Designs for Stage Sets

Art. 86. The authors of designs for stage sets, which do not constitute intellectual works covered by copyright within the meaning of the provisions of Part 1, shall have a right to remuneration when such design is subsequently used in theatres other than the theater for which it was created.

This right shall subsist for five years as from the first performance in which the design is used.

Chapter V Rights in Photographs

Art. 87. The images of persons or of aspects, elements or events of natural or social life, obtained by photographic or analogous processes, including reproductions of works of figurative art and stills of cinematographic film, shall be considered photographs for the purposes of this Chapter.

This provision shall not apply to photographs of writings, documents, business papers, material objects, technical drawings and similar products.

Art. 88. The exclusive right of reproduction, dissemination and marketing of a photograph shall belong to the photographer, subject to the provisions of Section II of Chapter VI of this Part insofar as portraits are concerned, and without prejudice to any copyright in works of figurative art reproduced in photographs.

However, if the work has been produced in the execution of a contract of employment or of service, the exclusive right shall belong to the employer within the limits of the object and purpose of the contract.

In the absence of agreement to the contrary, the same shall apply in favor of the person who commissions photographs of objects in his possession, subject to the payment of equitable remuneration to the photographer by any person who commercially utilizes the reproduction.

The President of the Council of Ministers may, in accordance with the provisions of the regulations, set suitable rates for the remuneration to be paid by any user of such photograph.

Art. 89. In the absence of agreement to the contrary, transfer of the negative or similar means of reproduction of a photograph shall imply transfer of the rights referred to in the foregoing Article, provided that such rights are the property of the transferor.

Art. 90. The copies of the photograph must bear the following particulars:

- (1) the name of the photographer or, in the cases referred to in the first paragraph of Article 88, the name of the firm to which he belongs or of the person who commissioned the photograph;
- (2) the year of production of the photograph;
- (3) the name of the author of the work of art which has been photographed.

If the copies do not bear these particulars, their reproduction shall not be deemed abusive and the remuneration laid down in Articles 91 and 98 shall not become due unless the photographer proves bad faith on the part of the reproducer.

Art. 91. The reproduction of photographs in anthologies intended for school use and, in general, in scientific or didactic works, shall be lawful, subject to the payment of equitable remuneration which shall be determined in the manner provided in the regulations.

The name of the photographer and the year of production of the photograph shall be given on the reproduction if they are given on the original photograph.

The reproduction of photographs published in newspapers or other periodicals, and which concern persons or current events or matters of any public interest, shall be lawful, subject to the payment of equitable remuneration,

The provisions of the final paragraph of Article 88 shall be applicable.

Art. 92. The exclusive right in respect of photographs shall subsist for 20 years as from the making of the photograph.

Chapter VI Rights in Correspondence and Portraits

Section I Rights in Correspondence

Art. 93. Correspondence, letters, collections of letters, family and personal memoirs and other writings of like nature, having a confidential character or associated with the intimacy of private life, may not be published, reproduced or in any manner brought to the knowledge of the public without the consent of the author and, in the case of correspondence and letters, the consent also the person to whom they are addressed.

After the death of the author or of the addressee, the consent of the spouse and children or, if none exist, the consent of the parents, shall be required; if there is no spouse, child or parent, the consent of the brothers and sisters or, if none exist, the consent of the direct ascendants and descendants to the fourth degree, shall be required.

If the persons referred to indicated in the preceding paragraph are two or more in number and disputes arise between them, the judicial authority shall decide the matter, after having heard the public prosecutor.

The wishes of the deceased person, when expressed in writing, shall in all cases be respected.

Art. 94. The consent referred to in the foregoing Article shall not be necessary if knowledge of the contents of such written matter is required for the purposes of civil or penal proceedings or in connection with the defense of the honor or reputation of the person or family concerned.

Art. 95. The provisions of the preceding Articles shall apply also to letters constituting works protected by copyright, even after they have fallen into the public domain. Such provisions shall not apply to official documents and letters and to documents and letters of interest to the State.

Section II Rights in Portraits

Art. 96. Subject to the provisions of the following Article, the portrait of a person may not be displayed, reproduced or commercially distributed without the consent of such person.

After the death of the person portrayed, the provisions of the second, third and fourth paragraphs of Article 93 shall be applicable.

Art. 97. The consent of the person portrayed shall not be necessary if the reproduction of the portrait is justified by his notoriety or his holding of public office, or by the needs of justice or the police, or for scientific, didactic or cultural reasons, or when reproduction is associated with facts, events and ceremonies which are of public interest or which have taken place in public.

However, the portrait may not be displayed or commercially distributed if its display or commercial distribution would prejudice the honor, reputation or dignity of the person portrayed.

Art. 98. In the absence of agreement to the contrary, a commissioned photographic portrait may be published, reproduced or caused to be reproduced by the person photographed or by his heirs or successors in title, without the consent of the photographer, subject to the payment of equitable remuneration to the photographer by any person making commercial use of the reproduction.

If the name of the photographer appears on the original photograph, that name shall be mentioned.

The provisions of the last paragraph of Article 88 shall be applicable.

Chapter VII Rights in Engineering Projects

Art. 99. The author of engineering projects and similar works which constitute original solutions of technical problems shall, in addition to the exclusive right of reproduction of the plans and drawings of the projects themselves have the right to equitable remuneration from any person who, with gainful intent and without the consent of the author, carries out the technical project concerned.

In order to exercise his right to remuneration, the author must insert on the plan or drawing a declaration of reservation of the right and must deposit the plan or drawing with the President of the Council of Ministers in accordance with the provisions of the Regulations.

The right to remuneration afforded by this Article shall subsist for 20 years as from the date of the deposit prescribed in the second paragraph.

Chapter VIII Protection of the Title, Headings and External Appearance of Works, and of Articles and News—Prohibition of Certain Acts of Unfair Competition

Art. 100. The title of a work, when it uniquely identifies the work, may not be reproduced in connection with any other work without the consent of the author.

This prohibition shall not extend to works which are of a kind or character so far removed as to exclude all possibility of confusion.

The reproduction of headings used in periodical publications to give unique identification to the normal and characteristic features appearing thereunder shall also be prohibited, subject to the same conditions.

The title of a newspaper, magazine or other periodical publication may not be reproduced in other works of the same kind or character until two years have elapsed since cessation of its publication.

Art. 101. The reproduction of information and news shall be lawful, provided it is not effected by way of acts which are contrary to fair practice in journalism, and provided the source is given.

The following shall be deemed unlawful acts:

- (a) the reproduction or broadcasting, without authorization, of information bulletins distributed by press or information agencies before sixteen hours have elapsed from the distribution of the bulletin and, in any case, before their publication in a newspaper or other periodical authorized by such agency. For this purpose and in order for the agencies to have a right of action against persons who make unlawful utilization, bulletins must bear precise information on the day and hour of their issue;
- (b) the systematic reproduction of published or broadcast information or news, with gainful intent, by newspapers or other periodicals or by broadcasting organizations.

Art. 102. The reproduction or imitation in other works of a similar nature of headings, emblems, ornamentations, arrangements of printing signs or characters, or any other particularity of form or color in the external appearance of an intellectual work, where such reproduction or imitation is capable of creating confusion between works or authors, shall be prohibited as an act of unfair competition.

PART III COMMON PROVISIONS

Chapter I Public Registers and Deposit of Works

Art. 103. A general public register of works protected by this Law shall be established in the Office of the President of the Council of Ministers. The SIAE shall keep a special public register for cinematographic works.

Works which are subject to the requirement of deposit shall be entered in the registers, together with the name of the author, the producer, the date of publication and other particulars specified in the regulations.

The SIAE shall further be required to keep a special public register for computer programs. There shall be entered in the register the name of the holder of the exclusive

exploitation rights and the publication date of the program—publication shall mean the first exercise of the exclusive rights.

In the absence of proof to the contrary, registration shall be accepted as proof of the existence of the work and of its publication. The authors and producers entered in the register shall be deemed, in the absence of proof to the contrary, to be the authors and producers of the works attributed to them. In the case of cinematographic works, the presumption shall be applicable to the entries made in the register referred to in the second paragraph.

The keeping of the public registers shall be governed by the regulations.

The registers referred to in this Article may be kept by computerized means and equipment.

Art. 104. At the request of the interested party, instruments executed *inter vivos*, transferring in whole or in part rights afforded by this Law or constituting rights of possession or security therein, and instruments of partition or of association with respect to such rights, may also be entered in the registers in the form prescribed by the regulations.

Such entries shall also have the other legal or administrative effects that the provisions of this Law or of other special laws afford.

Art. 105. The authors and producers of works and products protected by this Law, or their successors in title, shall deposit with the Office of the President of the Council of Ministers one specimen or copy of the work or product, within the period and in the manner specified in the regulations.

In the case of dramatico-musical or symphonic works of which the orchestral scores have not been printed, it shall be sufficient to deposit one copy or specimen of the version for voice and piano or for piano only.

Deposit shall be optional for computer programs, and subject to payment of a fee.

Photographs shall not be subject to the requirement of deposit, except as provided in the second paragraph of Article 92.

Art. 106. Failure to deposit shall not prevent the acquisition or exercise of copyright in respect of works protected under the provisions of Part I of this Law or under the provisions of international conventions subject, however, in the case of foreign works, to the application of Article 188 of this Law.

Failure to deposit shall prevent the acquisition or exercise of rights in respect of the works referred to in Part II of this Law in accordance with the provisions of that Part.

The President of the Council of Ministers shall be entitled to seize a specimen or copy of any work which has not been deposited, in accordance with the regulations.

Chapter II Transfer of Exploitation Rights

Section I General Provisions

Art. 107. The exploitation rights belonging to the authors of intellectual works, together with neighboring rights of an economic character, may be acquired, sold or transferred in any manner or form allowed by law, subject to application of the provisions contained in this Chapter.

Art. 108. An author who has reached the age of 16 shall be deemed capable of accomplishing all legal acts relating to works created by him and of instituting any action in respect of them.

Art. 109. In the absence of agreement to the contrary, the transfer of one or more copies of the work shall not imply transfer of the exploitation rights afforded by this Law.

However, the transfer of a mold, an engraved plate or any similar medium used to reproduce a work of art shall be deemed, in the absence of agreement to the contrary, to include the right to reproduce the work, provided such right belongs to the transferor.

Art. 110. The transfer of exploitation rights shall be set out in writing.

Art. 110bis.—(1) Authorization for the cable retransmission of broadcasts shall be given by means of a contract between the copyright holders, the holders of related rights and the cable operators.

(2) If the cable retransmission of a broadcast is not authorized, the parties concerned may request a third party, to be chosen by common accord, to propose a draft contract. Failing such agreement, the choice shall be made by the presiding judge of the court competent for the place where any one of the parties concerned is resident or has registered offices.

(3) The proposal by the third party shall be deemed accepted if it is not challenged by any of the parties concerned within ninety days of its notification.

Art. 111. The right of publication of an intellectual work and the exploitation rights of a published work, insofar as they belong personally to the author, may not be the subject of any pledge, seizure or sequestration, either by contractual act or by way of forced execution.

Copies of the work and the proceeds of exploitation may, on the other hand, be the subject of a pledge, or be seized or sequestered, in accordance with the Code of Civil Procedure.

Art. 112. The rights belonging to the author, with the exception of the right to publish a work during his lifetime, may be expropriated for reasons of State interest.

Art. 113. Expropriation shall be ordered by Presidential Decree on a joint proposal by the President of the Council of Ministers and the Minister for Education, after hearing the Council of State.

The indemnity due to the expropriated person shall be set out in the decree of expropriation or in a subsequent decree.

The decree shall have executive force against successors in title and against third parties who are the holders of physical objects necessary for the exercise of the expropriated rights.

Art. 114. Recourse before the Council of State in its judicial capacity shall be admitted against a decree of expropriation for reasons of State interest; but disputes concerning the amount of the indemnity shall be within the competence of the judicial authority.

Section II Transmission Mortis Causa

Art. 115. After the death of the author, the exploitation rights in his work, if not otherwise disposed by the author himself, shall remain undivided between the heirs for a period of three years from the date of death, unless the judicial authority, at the request of one or more of the joint heirs, agrees, for serious reasons, that division shall be effected without delay.

When the said period has expired, the heirs may, by common accord, decide that the rights shall continue to be held in common for such period as may be fixed by them, within the limits specified by the provisions contained in the Codes.

The common ownership shall be regulated by the provisions of the Civil Code and by the provisions that follow.

Art. 116. The administration and representation of the common interests shall be entrusted to one of the joint heirs, or to some person outside the succession.

If the joint heirs fail to appoint an administrator or if they do not agree upon such appointment within one year from the effective date of succession, the administration shall, at the request of one of the joint-heirs or of the SIAE, be entrusted to the SIAE by order of the court of the place where probate was granted.

The same procedure shall be followed for the appointment of a new administrator.

Art. 117. The administrator shall be responsible for the management of the exploitation rights in the work.

However, he may not authorize new editions, translations or other transformations, nor the adaptation of the work to cinematography, broadcasting or recording on mechanical devices, except with the consent of heirs representing more than half of the value of the estate, and subject to such measures as may be taken by the judicial authority to safeguard the minority in accordance with the rules of the Civil Code relating to joint ownership.

Section III Publishing Contracts

Art. 118. The contract by which the author grants to a publisher the exercise of the right of publication of an intellectual work by way of printing, at the expense of such publisher, shall be governed, in addition to the provisions contained in the Codes, by the general provisions of this Chapter and by the special provisions that follow.

Art. 119. The contract may concern all or some only of the exploitation rights belonging to the author with respect to publication, of such scope and duration as may be provided by the laws in force at the time of the contract.

In the absence of a stipulation to the contrary, it shall be presumed that the rights transferred are exclusive.

Future rights which may be afforded by subsequent laws and which provide copyright protection of wider scope or longer duration may not be included in the transfer.

In the absence of an express stipulation, transfer shall not extend to the exploitation rights in later modifications and transformations which may be made to the work, including adaptations to cinematography, broadcasting and recording upon mechanical devices.

In the absence of an agreement to the contrary, the transfer of one or more of the exploitation rights shall not imply the transfer of other rights which are not necessarily dependent on the right transferred, even if they are included, under the provisions of this Part, in the same category of exclusive rights.

Art. 120. If the contract relates to works not as yet created, the following rules shall apply:

- (1) Any contract concerning all the works or all the works of a certain category which the author may create, without limitation in time, shall be null and void;
- (2) Without prejudice to the provisions governing employment contracts and contracts for service, contracts which relate to the transfer of exclusive rights in respect of works to be created may not extend for a term in excess of 10 years;
- (3) If the work to be created has been specified, but the term within which such work is to be delivered has not been set, the publisher may at any time request the judicial authority to set such term. If the term has been set, the judicial authority may extend it.

Art. 121. If the author should die or be unable to complete his work after a substantial and self-sufficient portion has been completed and delivered the publisher shall be entitled to consider the contract as terminated or, on payment of a proportional remuneration, to consider it as having been fulfilled insofar as concerns the delivered portion, unless the author has expressed or expresses the wish that the work should not be published except in its entirety or unless such a wish has been expressed by the persons referred to in Article 23.

If the contract is terminated at the request of the author or his heirs, the incomplete work may not be transferred to others, on pain of damages for the prejudice suffered by the publisher.

Art. 122. A publishing contract may be based on a given number of editions or a given period of time.

A contract "by edition" shall afford the publisher the right to make one or more editions during a period of 20 years from the date of delivery of the completed manuscript.

The number of editions and the number of copies of each edition shall be specified in the contract. However, alternatives may be provided for, either in respect of the number of editions and copies, or in respect of the corresponding remuneration.

Where not specified, it shall be understood that the contract relates to a single edition of not more than 2,000 copies.

A publication contract “by period” shall afford the publisher the right to produce the number of editions he may consider necessary within the specified period of time, which shall not exceed 20 years, and shall specify a minimum number of copies for each edition; in the absence of a specified number, the contract shall be null and void. The period of 20 years shall not apply to publishing contracts concerning:

- encyclopedias and dictionaries;
- sketches, drawings, vignettes, illustrations, photographs and similar works, for industrial use;
- cartographical works;
- dramatico-musical and symphonic works.

In both forms of contract, the publisher shall be free to spread the editions over such number of reprints as he may consider suitable.

Art. 123. Copies of the work shall be countersigned in accordance with the provisions of the regulations.

Art. 124. If several editions are contemplated by the contract, the publisher shall be required to notify the author, sufficiently in advance, of the probable time of exhaustion of the current edition.

He shall, at the same time, inform the author whether or not he intends to proceed with a new edition.

If the publisher has stated that he does not intend to proceed with a new edition or if, having stated his intention to proceed with a new edition, he does not do so within a period of two years from the notification of such declaration, the contract shall be considered terminated.

The author shall be entitled to damages for the failure to make a new edition, unless the publisher can show good reason therefor.

Art. 125. The author shall be required:

- (1) to deliver the work under the conditions specified in the contract and in a form which will not make printing unduly difficult or costly;
- (2) to guarantee, for the entire period of the contract, the undisturbed enjoyment of the rights granted.

In addition, the author shall have both the obligation and the right to correct the printers’ proofs, in accordance with the conditions established by custom.

Art. 126. The publisher shall be required:

- (1) to reproduce and market the work under the name of the author or as an anonymous or pseudonymous work, if so provided in the contract, in conformity with the original and according to the rules of good publishing practice,

(2) to pay the agreed remuneration to the author.

Art. 127. The publication or reproduction of the work shall take place within the period laid down in the contract; such period shall not be more than two years from the date of effective delivery to the publisher of the complete and final copy of the work.

If no period is specified in the contract, publication or reproduction of the work shall take place within two years following a written request to the publisher. However, the judicial authority may set a shorter period if justified by the nature of the work or by any other special circumstances.

Any clause waiving the setting of a period or specifying a period in excess of the maximum referred to above shall be null and void.

The maximum period of two years shall not apply to collective works.

Art. 128. If a person acquiring the right of publication or reproduction does not publish or reproduce the work within the period specified in the contract or by the court, the author shall be entitled to require that the contract be terminated.

The judicial authority may grant to the person acquiring the right an extension of time, not exceeding one half of the above-mentioned period and subject, where necessary, to a suitable guarantee. The judicial authority may also restrict the decision on termination to a part only of the provisions of the contract.

In the case of complete termination, the person who acquired the right shall return the original of the work and be required to make good any damages, unless he can show that failure to publish or reproduce took place despite the exercise of due diligence.

Art. 129. Until such time as the work is published by printing, the author may introduce therein any changes which he considers suitable, provided that they do not alter the character and purpose of the work, and provided he bears any additional expense occasioned by the changes.

The author shall have the same right in relation to new editions. The publisher shall consult the author on this matter before proceeding with new editions. In the absence of agreement between the parties, the period for carrying out changes shall be set by the judicial authority.

If the nature of the work requires it to be brought up-to-date prior to any new edition, and the author refuses so to do, the publisher may have it brought up-to-date by other persons, provided that the new edition identifies and distinguishes the work of such persons.

Art. 130. The author's remuneration shall consist of a share of the proceeds, calculated, in the absence of agreement to the contrary, as a percentage of the retail price of the copies sold. However, his remuneration may be represented by a lump sum for editions of:

- dictionaries, encyclopedias, anthologies and other works produced in collaboration;
- translations, newspaper and magazine articles;

- speeches or lectures;
- scientific works;
- cartographical works;
- musical or dramatico-musical works;
- works of figurative art.

In contracts providing for the sharing of proceeds, the publisher shall be required to render an annual account of copies sold.

Art. 131. In publishing contracts, the retail price shall be set by the publisher, after having given the author sufficient notice. The author may object to the price set or altered by the publisher if it would gravely prejudice the interests of the author or the dissemination of the work.

Art. 132. Unless otherwise agreed, the publisher may not transfer the rights he has acquired to other persons without the consent of the author, except in the event of transfer of the enterprise. However, in the latter event, the publisher may not transfer his rights if such transfer would be prejudicial to the reputation of the author or to the dissemination of the work.

Art. 133. If the work does not find a sufficient market at the price fixed, the publisher, before selling the remaining copies at a reduced price, or as waste, shall ask the author if he wishes to acquire the copies at a price calculated on the basis of the amount obtainable by sale at such a price or as waste.

Art. 134. Publishing contracts shall terminate:

- (1) on expiry of the contractual period;
- (2) if continued execution is impossible due to the lack of success of the work;
- (3) if the author dies before completion of the work, subject to the application of the provisions of Article 121;
- (4) if the work cannot be published, reproduced or marketed by reason of a judicial decision or a provision of law;
- (5) in the event of termination of the contract as provided in Article 128 or in the case referred to in Article 133;
- (6) if the work has been withdrawn from the market in accordance with the provisions of Section V of this Chapter.

Art. 135. The bankruptcy of the publisher shall not bring about termination of the publishing contract.

However, the publishing contract shall be terminated if the liquidator, within one year of the declaration of bankruptcy, does not continue the activities of the publishing business or does not transfer it to another publisher under the conditions specified in Article 132.

Section IV Contracts for Public Performances

Art. 136. Contracts by which an author grants the right to perform in public a dramatic, dramatico-musical, choreographic, dumb show or other work intended for performance shall, in addition to the general provisions contained in the Codes, be governed by the general provisions of this Chapter and by the special provisions which follow.

In the absence of provision to the contrary, the grant of any such right shall be neither exclusive nor transferable.

Art. 137. The author shall be required:

- (1) to deliver the text of the work, unless it has already been published in printed form;
- (2) to guarantee, for the duration of the contract, the undisturbed enjoyment of the rights granted.

Art. 138. The assignee shall be required;

- (1) to perform the work without addition, deletion or variation that has not been agreed to by the author and with prior announcement to the public, in the customary manner, of the title of the work and the name of the author and of any translator or arranger of the work;
- (2) to allow the author to supervise the performance;
- (3) not to change, without serious reason, the leading performers of the work and the conductors of the orchestras and choirs, if designated in agreement with the author.

Art. 139. The provisions of Articles 127 and 128 shall apply to the performance of the work except as concerns the period referred to in the second paragraph of Article 127 which, in the case of dramatico-musical works, shall be increased to five years.

Art. 140. If the assignee of the right of performance, notwithstanding the request of the author, fails to continue to perform the work after a first performance or a first cycle of performances, the author of the musical or literary portion who shows that the assignee is at fault shall be entitled to request the termination of the contract, with the consequences set out in the third paragraph of Article 128.

Art. 141. A contract for the performance of a musical composition shall be governed by the provisions of this Section, insofar as they are applicable to the nature and object of such contract.

Section V Withdrawal of Works from the Market

Art. 142. Whenever serious moral reasons arise, the author shall be entitled to withdraw his work from the market, subject to liability to compensate any persons who have acquired rights to reproduce, disseminate, perform or sell such work.

This right is personal and is not transmissible.

In order to exercise this right, the author shall notify his intention to the persons to whom he has transferred rights and to the Office of the President of the Council of

Ministers, that shall give public notice of such intention in the manner laid down by the regulations.

Within a period of one year from the last date of notification and publication, the interested parties may have recourse to judicial authority to oppose the exercise of the claim of the author or to obtain liquidation and compensation for damages.

Art. 143. If the judicial authority accepts the existence of the serious moral reasons invoked by the author, it shall prohibit the reproduction, dissemination, performance or sale of the work, subject to the payment of compensation to the interested parties, and shall set the amount of such compensation and the period for its payment.

Before the expiry of the period laid down in the final paragraph of the preceding Article, the judicial authority may provisionally order prohibition, upon request if it finds that urgent reasons exist, after payment of such security as it may deem necessary.

If the compensation is not paid within the period set by the judicial authority, the effects of the order shall automatically cease.

Continued reproduction, dissemination, performance or sale of the work after the expiry of the period allowed for recourse to the judicial authority, as laid down in the final paragraph of the foregoing Article, or after any order suspending trading in the work, shall be liable to the civil and penal sanctions under this Law for infringement of copyright.

Section VI Rights of the Author in Respect of the Increase in Value of Works of Figurative Art

Art. 144. The authors of works of figurative art, in the form of paintings, sculptures, drawings and prints, and the authors of original manuscripts shall be entitled to a percentage of the presumed amount by which the price of the first public sale of original copies of such works and manuscripts exceeds the price of first transfer.

However, the organizer of the sale, the vendor and the purchaser shall be entitled to prove that such public sale was not preceded by any act of transfer for valuable consideration or that the price of first transfer was not less than that obtained in the public sale.

Art. 145. The authors of the works referred to in the preceding Article shall also be entitled to a percentage of the higher value that the original copies of their works subsequently acquire in successive public sales, such higher value being the difference between the price at the last public sale and the price at the public sale which immediately preceded it.

Art. 146. The percentages referred to in the preceding Articles shall become due only if the selling price is in excess of 1,000 lire for drawings and prints, 5,000 lire for paintings and 10,000 lire for sculptures. They shall be payable by the owner selling the work.

Art. 147. If the price of original copies of the works referred to in this Section, at any sale not deemed public under this Law, reaches 4,000 lire for drawings and prints, 30,000 lire for paintings, and 40,000 lire for sculptures and also exceeds five times the

price of first transfer, however effected, such increase in value shall be subject to a payment of 10 per cent to the authors of the works, payable by the owner selling them.

Proof of the price paid for a work and of the conditions set out in this Article shall be the responsibility of the authors.

The percentage shall be reduced to 5 per cent if the vendor proves, in turn, that he acquired the copy at a price not less than half of that realized by him.

The provisions of Article 145 shall apply for the purpose of determining the higher value.

The provisions of this Article shall not apply to anonymous or pseudonymous works, except as provided by Article 8 of this Law in regard to the latter category of works.

Art. 148. For the purposes of the protection afforded by the foregoing Articles, replicas made by the author shall also be considered original works, but not reproductions produced in any other manner. Prints which have been taken from original engravings and are signed by the author shall be considered original works.

Art. 149. For the purposes of this Law, the following shall be considered public sales:

- (a) sales effected at shows and exhibitions authorized within the meaning of Royal Decree Law of January 29, 1934, No. 454, which became the Law of July 5, 1934, No. 1607;
- (b) sales by court order;
- (c) sales by public auction;
- (d) sales of works offered for sale at public auctions, but withdrawn as the result of private negotiations;
- (e) sales effected in connection with private exhibitions organized or carried out by third parties.

Art. 150. The rights set out in Articles 144, 145, 146 and 147 shall belong to the author and, after his death and in the absence of testamentary provisions, to his spouse and legitimate heirs to the third degree, according to the rules of the Civil Code; if there are no successors as mentioned above, the rights shall devolve upon the insurance and assistance fund of the National Authority for Insurance and Assistance to Painters and Sculptors.

Such rights shall continue for the life of the author and 50 years after his death, and may not be alienated or renounced in advance.

Art. 151. The percentage due on the price of the first public sale within the meaning of Article 144 shall be set at 1 per cent for amounts up to 50,000 lire; 2 per cent for amounts exceeding that sum and up to 100,000 lire; and 5 per cent for any larger amounts.

Art. 152. The percentages due on the increase in value determined in accordance with Article 145 shall be as follows:

- 2 per cent for increases in value not exceeding 10,000 lire
- 3 per cent for increases in value in excess of 10,000 lire
- 4 per cent for increases in value in excess of 30,000 lire
- 5 per cent for increases in value in excess of 50,000 lire
- 6 per cent for increases in value in excess of 75,000 lire
- 7 per cent for increases in value in excess of 100,000 lire
- 8 per cent for increases in value in excess of 125,000 lire
- 9 per cent for increases in value in excess of 150,000 lire
- 10 per cent for increases in value in excess of 175,000 lire

Art. 153. The person who legally presides over the public sale of works of figurative art referred to in this Section shall be required to deduct from the sale price of original copies the percentages due under Articles 144 and 145 and to pay such amounts to the SIAE under the conditions specified in the Regulations.

Until such time as payment is effected, the person who presides at the sale shall, for the purposes of the law, be deemed to be the depository of the sums deducted.

Art. 154. Works of art which, in a public sale, have reached at least the price shown in Article 146, shall be notified to the SIAE by the person who legally presides over the sale. The SIAE shall make the corresponding registration in the manner prescribed by the regulations.

In the absence of any false declaration, the registration effected shall constitute proof of the price obtained for the work.

Art. 155. The amounts referred to in the Articles of this Section may be modified by Presidential Decree.

Chapter III Legal Remedies and Penalties

Section I Civil Remedies and Penalties

§ 1. Provisions Relating to Exploitation Rights

Art. 156. Any person having reason to fear the infringement of an exploitation right belonging to him under this Law or who seeks to prevent the continuation or repetition of an infringement which has already occurred, may institute legal proceedings to ensure that his right be recognized and the infringement forbidden.

The proceedings shall be governed by the provisions of this Section and by the provisions of the Code of Civil Procedure.

Art. 157. Any person who is entitled to exercise the rights of public performance of a work intended for such performance, including a cinematographic work or a work of musical composition, may, in accordance with the provisions of the regulations, request

the Prefect of the province to prohibit any performance for which written proof of his consent is not produced.

The Prefect shall, upon request and on the basis of the notices and documents submitted to him, authorize or forbid the performance, subject to the right of the interested party to have recourse to the judicial authority for final decision within its competence.

Art. 158. Any person injured in the exercise of an exploitation right belonging to him may institute legal proceedings for the destruction or removal of the material constituting the infringement or for payment of damages.

Art. 159. The removal or destruction referred to in the foregoing Article may be effected only in respect of specimens or copies illegally reproduced or disseminated, and devices employed for reproduction or dissemination which, by their nature, are not capable of use for the reproduction or dissemination of other matter.

If a part of the specimen, copy or device in question is capable of use for the reproduction or dissemination of other matter, the interested party may, at his expense, request the separation, in his interest, of such part.

If the specimen, copy or device of which the removal or destruction is requested has special artistic or scientific value, the court may order *ex officio* that it be deposited in a public museum.

The injured party may, at any time, ask that the specimens, copies and devices to be destroyed be delivered to him and their estimated value set off against the damages due to him.

The provisions for destruction and delivery shall not apply to infringing specimens or copies acquired in good faith for personal use.

Art. 160. Removal or destruction may not be requested in the last year of the term of the right. Seizure of the work or of the product may be ordered in such case at any time up to the end of the term. If the damages arising from the infringement of the right have been paid, seizure may be authorized even before the above-mentioned date.

Art. 161. For the purposes of the proceedings referred to in the previous Articles, the judicial authority may order an inventory, a report, an expert appraisal or the seizure of all matter constituting an infringement of the exploitation right.

Seizure may not be effected in the case of works resulting from the collaboration of two or more persons, except in particularly serious cases or where the infringement is imputable to all joint authors.

In particularly serious cases, the judicial authority may also order the seizure of profits due to the author of the disputed work or product.

The provisions of this Section shall also apply to any person putting into circulation, in whatever manner, or possessing for commercial purposes, unauthorized copies of computer programs and any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any device applied to protect a computer program.

Art. 162. The measures provided for by the preceding Article shall be authorized, at the request of the interested party, by an order of the magistrate of the district in which they are to be executed, whatever the value involved; however, if litigation is pending between the parties, the measure in question shall be authorized by an order of the magistrate or, if the suit is pending before a collegiate court, by the examining judge.

In cases of urgency, the measures may also be authorized by the magistrate of the district in which they are to be executed.

The same order may require the claimant to deposit adequate security.

Except in cases of imminent danger, the judicial authority, before ruling upon the request, shall summon to chambers for a summary hearing the party against whom the measure would be executed and the party making the request.

The order shall be notified, before its execution or simultaneously therewith, to the party against whom it is to be executed. Execution shall be effected by a judicial official and, where necessary, with the assistance of one or more experts named in the order.

In the case of public performances, the limitations of days and hours specified by the Code of Civil Procedure for measures of such nature shall not apply to the execution of orders hereunder.

Art. 163. Unless otherwise decreed in the order of seizure for the purposes of penal justice, the measures referred to in the preceding Articles shall, without need for pronouncement by the judicial authority, be of no effect if, within eight days following their execution, no action has been taken before the competent court to confirm the measures in relation to the person against whom they were taken.

Art. 164. If the actions for which provision is made in this and the following Section are instituted by one of the public law entities referred to in Articles 180 to 184, the following rules shall be observed:

- (1) the officers of the above-mentioned entities may, without special authorization, institute the actions referred to above in the interests of the rights holder, on production of proof of their capacity;
- (2) such public law entities shall be relieved of the obligation to provide security for carrying out acts in respect of which security is prescribed or authorized;
- (3) such public law entities may avail themselves of the procedure for securing an injunction under the conditions specified in Articles 3 and 12 of the Royal Decree of August 7, 1936, No. 1531, in accordance with the provision of the regulations, which designates the State and public officials authorized to issue the attestations and to receive the declarations referred to in those Articles.

Art. 165. The author of a work which is the subject of an exploitation right may, even after the assignment of such right, intervene at any time, in order to protect his interests, in proceedings instituted by the assignee.

Art. 166. The court may, at the request of the interested party or *ex officio*, order the operative portion of the judgment to be published, more than once if necessary, in one or more newspapers, at the expense of the unsuccessful party.

Art. 167. The exploitation rights afforded by this Law may also be asserted in law by any person legitimately entitled to such rights.

§2. Special Provisions for Proceedings in Respect of Moral Rights

Art. 168. The provisions contained in the preceding Section shall be applicable in proceedings concerning the exercise of moral rights, insofar as the nature of such rights permits, subject to the application of the provisions of the following Articles.

Art. 169. Actions in defense of the rights relating to the authorship of a work shall give rise to removal or destruction only if the damage cannot be remedied by means of the addition or suppression of notices on the work which refer to its authorship or by other means of publicity.

Art. 170. Actions in defense of the rights relating to the integrity of a work shall give rise to removal or destruction of the deformed, mutilated or otherwise modified copy of the work only when it is not possible to restore such copy to its original form at the expense of the party wishing to avoid removal or destruction.

Section II Penal Remedies and Penalties

Art. 171. Without prejudice to the provisions of article 171bis, any person who, without having the right thereto, and for any purpose and in any form:

- (a) reproduces, transcribes, recites in public, disseminates, sells or offers for sale, or otherwise commercially distributes the work of another person, or reveals the contents of such work before it is made public, or introduces or circulates within the territory of the State copies produced abroad contrary to Italian law;
- (b) performs or recites in public or disseminates, with or without variations or additions, the work of another person intended for public performance, or a musical composition. Performance includes the public showing of a cinematographic work, the performance in public of musical compositions included in cinematographic works, and broadcasting by means of a loudspeaker operated in public;
- (c) commits the acts referred to in the preceding items by means of any form of transformation referred to in this Law;
- (d) reproduces copies or gives performances in excess of the number which he has the right to reproduce or perform;
- (e) *[Repealed]*
- (f) in violation of Article 79, retransmits by wire or by radio, or records on phonograph records or other like devices radiophonic transmissions or retransmissions, or sells the unlawfully recorded phonograph records or other devices;

shall be liable to a fine of between 100,000 lire and 4,000,000 lire.

The penalty shall be imprisonment of up to one year or a fine of not less than 1,000,000 lire if the acts referred to above are committed in relation to a work of another person which is not intended for public disclosure or by usurpation of the authorship of the work or with deformation, mutilation or other modification of the work and such acts constitute an offense against the honor or reputation of the author.

Art. 171bis.—(1) Any person who unlawfully duplicates computer programs with gainful intent, or who imports, distributes, sells, holds for commercial purposes or rents such programs, for the same purposes, being aware or having reason to believe the copies are not authorized, shall be liable to imprisonment of between three months and three years and to a fine of between 1,000,000 and 10,000,000 lire. The same penalty shall apply if the act concerns any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical device applied to protect a computer program. The penalty shall be imprisonment of not less than six months and a fine of 3,000,000 lire if the offense is serious or if the program unlawfully duplicated, imported, distributed, sold, held for commercial purposes or rented has been previously distributed, sold or rented on media bearing the mark of the Italian Society of Authors and Publishers pursuant to this Law and to the applicable regulations approved by Royal Decree No. 1369 of May 18, 1942.

(2) Conviction for any of the offenses under paragraph (1) shall include publication of the sentence in one or more newspapers and in one or more specialized magazines.

Art. 171ter.—Any person who:

- (a) unlawfully duplicates or reproduces, with gainful intent and by whatever means, works intended for cinematographic or television distribution, records, tapes or like media as well as any other media containing phonograms or videograms of cinematographic or audiovisual works or sequences of moving images;
- (b) without having participated in the duplication or reproduction, offers for sale, rents or in any manner permits use, with gainful intent, introduces with gainful intent onto the territory of the State, performs a public showing of or broadcasts by television the unlawful duplications or reproductions referred to in item (a);
- (c) sells or leases videotapes, music tapes or any other media containing phonograms or videograms of cinematographic or audiovisual works or sequences of motion pictures which do not bear the mark of the SIAE pursuant to this Law and to the applicable regulations.

shall be liable to imprisonment of between three months and three years and a fine of between 500,000 lire and 6,000,000 lire.

(2) The penalty shall be not less than imprisonment for six months and a fine of 1,000,000 lire if the offense is serious.

(3) Conviction for any of the offenses under paragraphs (1) and (2) shall include publication of the sentence in one more newspapers and in one or more specialized magazines.

(3bis) The amounts derived from the application of the fines referred to in paragraphs (1) and (2) shall be paid to the National Providence and Assistance Agency for Painters and Sculptors, Musicians, Writers and Playwrights.

Art. 171quater. Any person who, without being authorized to do so and with gainful intent:

- (a) rents or in any manner permits the use, for whatever purpose, of original specimens or of copies or of media, obtained lawfully, of copyrighted works;
- (b) records the performances referred to in Article 80 on audio, video or audiovisual media;

shall be liable, except where the act amounts to a more serious offense, to imprisonment of up to one year or a fine of between 1,000,000 and 10,000,000 lire.

Art. 172. If the acts referred to in Article 171 are committed by negligence, the penalty shall be a fine of up to 2,000,000 lire.

Any person who:

- (a) acts as an intermediary in violation of Articles 180 and 183,
- (b) fails to carry out the obligations set out in Articles 153 and 154,
- (c) violates the provisions of Articles 175 and 176,

shall be liable to the same penalty.

Art. 173. The penalties set out in the preceding Articles shall apply in all instances where the acts in question do not constitute a more serious offense under the Penal Code or other laws.

Art. 174. In penal proceedings governed by this Section, a party, who sues for civil injury, may at any time request the penal court to apply the measures and penalties set out in Articles 159 and 160.

PART IV PUBLIC DOMAIN FEES

Art. 175–179. [Repealed]

PART V PUBLIC LAW ENTITIES FOR THE PROTECTION AND EXERCISE OF AUTHOR'S RIGHTS

Art. 180. The right to act as an intermediary in any manner whether by direct or indirect intervention, mediation, agency or representation, or by assignment of the exercise of the rights of performance, recitation, broadcasting, including communication to the public by satellite, and mechanical and cinematographic reproduction of protected works, shall belong exclusively to the SIAE.

It shall pursue the following activities:

- (1) the granting of licenses and authorizations for the exploitation of protected works, for the account of and in the interests of the right holders;
- (2) the collection of the revenue from the licenses and authorizations;
- (3) the distribution of that revenue among the right holders.

The SIAE shall also pursue its activities, in accordance with the provisions of the regulations, in those foreign countries in which it possesses organized representation.

These exclusive powers shall not prejudice the right of the author or his successors in title to exercise directly the rights afforded them by this Law.

In the distribution of the proceeds referred to in item (3) of the second paragraph, a share shall be reserved for the author in all cases. The limits and the methods of distribution shall be determined by the regulations.

However, if the exploitation rights in a work may give rise to the collection of funds abroad on behalf of Italian citizens domiciled or resident within the State territory and the owners of such rights do not, for any reason, collect those funds, the SIAE shall be empowered, after the lapse of one year from the date on which liability for payment arose, to exercise the rights for the account and in the interests of the author or his successors in title.

The funds mentioned in the preceding paragraph which are collected by SIAE shall be held, after deduction of the expenses of collection, at the disposal of claimants for a period of three years. If this period elapses without such funds being claimed, they shall be paid to the National Federation of Professionals and Artists (*Confederazione nazionale professionisti ed artisti*) for the purposes of providing aid to authors, writers and musicians.

Art. 180bis.—(1) The exclusive right to authorize cable retransmission shall be exercised by copyright holders and holders of neighboring rights exclusively through the SIAE. For the holders of related rights, the SIAE shall act on the basis of specific agreements to be entered into with the Performers Mutual Fund in respect of the rights of performers and, possibly, with other collective administration societies specifically set up to manage, as their sole or main business, other neighboring rights.

(2) Such societies shall also act on behalf of holders of the same category of rights who are not members in accordance with the same criteria as applied to their own members.

(3) Right holders who are not members may claim their rights within three years of the date of cable retransmission of their works or other protected items.

(4) Broadcasting organizations shall be exempt from the obligation referred to in paragraph (1) as regards administration of the rights relating to their own broadcasts, whether they be their own rights or acquired rights.

Art. 181. In addition to the tasks set out in the foregoing Article and those imposed upon it by this Law and other provisions, the SIAE may, pursuant to its statutes, exercise other activities connected with the protection of intellectual works.

The SIAE may undertake, for the account of the State or of public or private entities, the services of ascertaining and collecting taxes, contributions and fees.

Art. 182. The SIAE shall be placed under the supervision of the President of the Council of Ministers, in accordance with the provisions of the regulations.

Its statutes shall be approved by Presidential Decree, on a proposal by the President of the Council of Ministers in consultation with the Ministers for Foreign Affairs, for Grace and Justice, for Finance and for Education.

Art. 183. The placing of Italian non-musical dramatic works with theatrical companies and enterprises shall be subject to the preliminary authorization of the President of the Council of Ministers, in accordance with the provisions of the regulations.

The author and his successors *mortis causa* shall not be required to obtain such authorization.

However, translators of foreign works shall be subject to such requirement.

The placing of such works shall be under the supervision of President of the Council of Ministers, in accordance with the provisions of the regulations.

Art. 184. Any person who places Italian non-musical dramatic works in foreign countries shall make a declaration thereof within three days to the Italian Agency for Theatrical Exchanges (*Ente italiano per gli scambi teatrali*), that shall transmit a monthly list of the declarations received, together with any observations and proposals, to the President of the Council of Ministers.

The Italian Agency for Theatrical Exchanges shall also exercise such other functions as its statutes may require.

The provisions of Article 182 shall apply to the Italian Agency for Theatrical Exchanges.

PART VI FIELD OF APPLICATION OF THE LAW

Art. 185. Subject to the provisions of Article 189, this Law shall apply to all works of Italian authors, wherever first published.

It shall likewise apply to the works of foreign authors domiciled in Italy and which are first published in Italy.

It may likewise be applied to the works of foreign authors who do not satisfy the conditions of protection set out in the preceding paragraph if the conditions set out in the following Articles are fulfilled.

Art. 186. The international conventions for the protection of intellectual works shall govern the field of application of this Law to works of foreign authors.

If the conventions contain a general requirement of reciprocity or of equality of treatment, such requirement shall be interpreted according to the rules of actual equivalence of the two protections as provided in the following Articles.³

Art. 187. In the absence of international conventions, the works of foreign authors which do not comply with the conditions set out in the second paragraph of Article 185 shall enjoy, within the limits of actual equivalence, the protection afforded by this Law, on condition that the State of which the author is a national affords to the works of Italian authors protection which is effectively equivalent.

If the foreigner is a stateless person or if his nationality is uncertain, the rule of the preceding paragraph shall apply with reference to the State in which the work is first published.⁴

Art. 188. Actual equivalence, in accordance with the following rules, shall be certified and regulated by a Presidential Decree.

The duration of protection of a foreign work shall in no case exceed that enjoyed by the work in the State of which the foreign author is a national.

If the law of that State includes a period of compulsory licensing during the term of protection, the foreign work shall be submitted to an equivalent rule in Italy.

If the law of that State makes protection subject to compliance with formalities, declarations of reservation or the deposit of copies of the work, or any other formality, the foreign work shall be subject in Italy to equivalent formalities, as determined by Presidential Decree.

The Presidential Decree may further subject the protection of the foreign work to the fulfillment of other special formalities or conditions.⁴

Art. 189. The provisions of Article 185 shall apply to cinematographic works, to phonograph records or like devices, to the rights of performers, to photographs and to engineering works, if such works or products are created in Italy or may be considered national works within the meaning of this Law or any other special law.

In the absence of the above-mentioned conditions, the provisions of Articles 186, 187 and 188 shall be applicable to such works, rights or products.⁵

PART VII STANDING CONSULTATIVE COMMITTEE ON COPYRIGHT

³ The application of this paragraph was suspended by Decree Law No. 82 of August 23, 1946.

⁴ The application of this Article was suspended by Decree Law No. 82 of August 23, 1946.

⁴ The application of this Article was suspended by Decree Law No. 82 of August 23, 1946.

⁵ The application of this paragraph was suspended by Decree Law No. 82 of August 23, 1946.

Art. 190. A Standing Consultative Committee on Copyright shall be established at the Office of the President of the Council of Ministers.

The Committee shall study matters regarding copyright or matters connected therewith and shall furnish information upon questions relating to such matters, when so requested by the President of the Council of Ministers or when special provisions so require.

Art. 191. The Committee shall consist of:⁶

- (a) a Chairman designated by the President of the Council of Ministers;
- (b) one Vice-Chairman each from the Corporations of the Professions and Arts, of Entertainment and of Stationery and Printing;
- (c) *[not applicable]*;
- (d) one representative each of the Ministries of Foreign Affairs, of Grace and Justice, of Finance and of Corporations, and two representatives of the Ministry of Education;
- (e) the director general for entertainment for the Ministry of Tourism and Entertainment, the heads of the information department and of the department for literary, artistic and scientific property in the Office of the President of the Council of Ministers;
- (f) the Presidents of the Confederations of Professionals and Artists, and of Industrialists, and three representatives of each of the above-mentioned Confederations, particularly competent in matters of copyright, as well as a representative of the Confederation of the Workers of Industry (*Confederazione dei lavoratori dell'industria*), designated by the National Confederation of Entertainment Workers.
- (g) the President of the SIAE;

⁶ Following numerous changes that have occurred, the present composition is as follows: A Chairman designated by the President of the Council of Ministers; — the Director General of information, publishing and literary, artistic and scientific property, Office of the President of the Council of Ministers; — a representative of the Office of the President of the Council of Ministers; — a representative of the Ministry of Foreign Affairs; — a representative of the Ministry of Pardons and Justice; — a representative of the Ministry of Finance; — a representative of the Ministry of Industry, Trade and Craft Trades; — a representative of the Ministry of Labor and Social Security; — a representative of the Ministry of Education; — a representative of the Ministry of Cultural and Environmental Assets; — a representative of the Ministry of Tourism and Entertainment; — the Head of the Office of Literary, Artistic and Scientific Property of the Office of the President of the Council of Ministers; — four representatives of the authors; — four representatives of the industry; — a representative of the entertainment workers; — the President of the Italian Society of Authors and Publishers; — three copyright experts designated by the President of the Council of Ministers.

(h) three copyright experts, designated by the President of the Council of Ministers;

The members of the Committee shall be appointed by decree of the President of the Council of Ministers and shall remain in office for a term of four years.

Art. 192. The Committee shall meet in ordinary session each year at a date fixed by the President of the Council of Ministers and in extraordinary session on all occasions when so requested by the President.

Art. 193. The Committee may be convened: (a) in general assembly; (b) in special commissions.

All members of the Committee shall participate in the general assemblies. The special commissions shall be set up on a case-by-case basis for the study of given questions, as directed by the Chairman.

The President of the Council of Ministers, on a proposal by the Chairman of the Committee, may also invite to meetings, but without the right to vote, persons other than members of the Committee who are particularly competent on the matters to be considered.

Art. 194. The secretariat shall be provided by the Director of the Office of Literary, Scientific and Industrial Property established by the Office of the President of the Council of Ministers.

Art. 195. The members of the Committee shall receive attendance fees for each day of sitting, in accordance with the applicable regulations.

PART VIII GENERAL, TRANSITIONAL AND FINAL PROVISIONS

Art. 196. The place in which the exploitation rights referred to in Article 12 *et seq.* of this Law are first exercised, shall be deemed the place of first publication.

As regards works of art, cinematographic works, phonograph records and other like devices for the reproduction of sounds or voices, works of photography, and any other work identified by its material form, the place of making shall be deemed the place of first publication.

Art. 197. Publication and performance contracts shall be subject to a graduated registration fee of 0.5 per cent.

Art. 198. There shall be set aside in the budget of the Office of the President of the Council of Ministers, in a special section of the ordinary part thereof, as from the budget year in which this Law comes into force, a sum of 160,000,000 lire, derived from the revenue from the fees referred to in Articles 175 and 176, to be allocated, in the manner specified in the regulations, for the aid and provident funds of the professional associations of authors, writers and musicians.

Art. 199. This Law shall apply equally to works published in any manner both before and after its entry into force.

The legal effects of acts and contracts made or concluded before its entry into force shall remain entirely unaffected and shall continue in accordance with the provisions then in force.

Art. 199bis.—(1) This Law shall also apply to computer programs created before the date of its entry into force, without prejudice to any acts concluded or to any rights acquired prior to such date.

Art. 200. Up to the entry into force of the new Code of Civil Procedure, the functions conferred by Article 162 on the examining judge shall be exercised by the President of the Division before whom the case is pending.⁷

Art. 201. The deposit and formalities in respect of works published and products made before the entry into force of this Law and which are subject for the first time to the obligation of deposit or other formalities shall be accomplished within the time limits and according to the provisions of the regulations.

Art. 202. The prices obtained from sales effected before the entry into force of this Law shall not be taken into consideration for the purposes of Article 147.

Art. 203. Special provisions relating to exclusive television rights may be issued by Presidential Decree.

Until such time as the regulations referred to in the preceding paragraph have been issued, television shall be governed by the general principles of this Law, insofar as they are applicable.

Art. 204. As from the entry into force of this Law, the Italian Society of Authors and Publishers shall assume the name SIAE (*Società italiana degli autori ed editori*).

Art. 205. The Law of March 18, 1926, No. 256, which converted into law the Royal Decree Law of November 7, 1925, No. 1950, containing provisions relating to copyright, and the successive laws amending that Law, are repealed.

The Law of June 17, 1937, No. 1251, which converted into law the Royal Decree Law of February 18, 1937, containing rules relating to the protection of the products of the phonographic industry, and the Law of June 2, 1939, No. 739, which converted into law the Royal Decree Law of December 5, 1938, No. 2115, containing special measures for recorded broadcasting of artistic performances, as well as any other laws or provisions of law contrary to and incompatible with the provisions of this Law, are also repealed.

Art. 206. The implementing regulations under this Law shall lay down the penalties for violation of its provisions.

The penalties may include a fine of not more than 320,000 lire.

This Law shall enter into force simultaneously with the regulations, which shall be promulgated within a period of six months following publication of this Law.

Within the same period, a new statute governing the SIAE shall also be issued.

⁷ The new code of Civil Procedure was approved by Royal Decree No. 1443 of October 28, 1940, that entered into force on April 21, 1942 as amended by Law No. 353/90 and Decree Law No. 432 of October 18, 1995, that was converted into Law 534/95.

We hereby order that this Law, bearing the Seal of State, shall be inserted in the Official Collection of Laws and Decrees of the Republic of Italy, and all are required to observe it and to cause it to be observed as a law of the State.
