

# Law on Copyright and Related Rights\*

(of January 14, 1998)

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## **Title I General Provisions**

### *Subject of the Law*

**1.** This Law governs the relations arising from the creation and use of scientific, literary and artistic works (copyright) and of phonograms, performances and the programs of broadcasting or cable distribution organizations (related rights).

### *Legislation of the Kyrgyz Republic on Copyright and Related Rights and International Treaties*

**2.—(1)** The legislation of the Kyrgyz Republic on copyright and related rights consists of this Law, which forms part of the Civil Code of the Kyrgyz Republic, and other legislative texts of the Kyrgyz Republic enacted pursuant to this Law.

(2) Where an international treaty to which the Kyrgyz Republic is party contains rules that differ from those set out in this Law, the provisions of the international treaty shall be applicable.

### *State Regulation of Protection for Copyright and Related Rights*

**3.—(1)** State regulation of protection for copyright and related rights shall be carried out by the State Agency of Intellectual Property of the Kyrgyz Republic (hereinafter referred to as “Kyrgyzpatent”).

(2) Kyrgyzpatent, the body responsible for State administration of the legal relationships arising from copyright and related rights, shall contribute to creating legal conditions conducive to the development of creativity in the fields of science, literature and art, shall enable authors and holders of related rights to assert their prerogatives, including the

right to take legal action, to conclude contracts for the use of copyright and shall be responsible for collecting and distributing remuneration to authors

The principal tasks, functions and powers of Kyrgyzpatent shall be laid down by this Law and by other legislative instruments of the Kyrgyz Republic.

An ordinance concerning Kyrgyzpatent shall be adopted by the Government of the Kyrgyz Republic.

(3) To contribute to the development of culture in the Kyrgyz Republic and to promote the creative activities of authors, there shall be set up a State Fund for Intellectual Property. An ordinance concerning the State Fund for Intellectual Property shall be adopted by Kyrgyzpatent.

### *Basic Concepts*

4. For the purposes of this Law, the terms given below shall have the meanings specified:

“audiovisual work” means a work consisting of a fixed series of interconnected images (with or without sound accompaniment) which is intended to be made visible and (where the images are accompanied by sound) audible with the aid of appropriate technical equipment; audiovisual works include cinematographic works and all works expressed by means comparable to cinematography (television films, video films, fixed projections, slide shows and the like), regardless of the manner in which they are initially or subsequently fixed;

“author” means the natural person whose creative effort has brought about the creation of a work;

“broadcasting” means the communication to the public of works, phonograms, performances, or programs of broadcasting or cable distribution organizations (including broadcasts of the presentation or performance) by means of transmission by radio or television (with the exception of cable television); where works, phonograms, performances or programs of broadcasting or cable distribution organizations are relayed by satellite, broadcasting means the act whereby the satellite receives signals from the ground station and retransmits those signals in such a way that works, phonograms, performances or programs of broadcasting or cable distribution organizations may be communicated to the public, independently of their actual reception by that public;

“broadcasting by a broadcasting or cable distribution organization” means a broadcast created by the broadcasting or cable distribution organization itself or, on its instructions and with its funds, by another organization;

“communicate” means to show, perform or broadcast or engage in any other act (except for the distribution of copies of a work or phonogram) whereby the works, phonograms, performances or programs of broadcasting or cable distribution organizations are made audible or visible, whether or not they are actually perceived by the public;

“communicate to the public by cable” means to communicate works, phonograms, performances or programs of broadcasting or cable distribution organizations to the public by cable, wire, optic fiber or comparable means;

“computer program” means the whole body of instructions and rules, expressed as words, numbers, codes, symbols, signs or in any other form, designed to make a computer or other data processing machine operate to produce a specific result;

“copy of a phonogram” means a duplicate of a phonogram, on whatever physical medium, made directly or indirectly from the phonogram and incorporating all or some of the sounds recorded thereon;

“copy of a work” means a duplicate of a work, regardless of the material form in which it is made;

“database” means an objective form for the representation and organization of a body of data (relating to articles, accounts, etc.) so systematized as to be susceptible of retrieval and processing with a computer;

“derivative work” means the result of intellectual creativity based on another work (translation, adaptation, stage adaptation, transformation, etc.);

“disclosure of a work” means the act performed with the author’s consent which first makes a work accessible to the public by publication, public presentation, public performance, broadcasting or other means;

“entertainment producer or director” means the person who carries out the direction of a stage, circus, puppet, variety or other performance;

“holder of copyright and(or) related rights” means either the author or the performer, where the economic rights belong to him;

or the natural or legal person to whom the economic rights have been assigned;

or a natural person other than the author or performer, or a legal person, where the economic rights belonged to him from the beginning;

“infringing copies” means copies of a work or a phonogram the manufacture or distribution of which infringes copyright or related rights and also copies of works or phonograms protected in the Kyrgyz Republic under this Law and which are imported into the Kyrgyz Republic without the consent of the holder of copyright or related rights, from States in which those works or phonograms have never been protected or have ceased to be protected;

“performance” means the presentation of works, phonograms, interpretations or renditions by means of acting or playing, recitation, singing or dancing, either live or with technical aids (broadcasting, cable television and the like) or by the showing of the images of an audiovisual work (with or without sound accompaniment) in their normal sequence;

“performer” means an actor, singer, musician, dancer or any other person who performs, sings, plays on a musical instrument or in any other way presents a literary or artistic work (including a variety turn, circus act or puppet show), and also the producer or director of a show and the conductor of an orchestra;

“phonogram” means any exclusively sound recording of performances or of other sounds that may be perceived and reproduced on any physical medium whatsoever;

“phonogram producer” means the natural or legal person that has taken the initiative of the first recording of the sounds of a performance or of other sounds and the responsibility therefor, whereby such person shall materially produce the phonogram or shall commission and pay for its production; in the absence of proof to the contrary, the natural or legal person named in the customary manner on the phonogram or on its sleeve shall be considered the producer of the phonogram;

“presentation of a work” means the fact of showing the original or a copy of a work, either direct or on a screen with the aid of a film, photographic slides, television pictures or

other technical means or the fact of showing the individual images of an audiovisual work without concern for their sequence;

“producer of an audiovisual work” means a natural or legal person who has taken the initiative of the production of a work and the responsibility therefor whereby such person shall either materially produce the work or commission and pay for its production; in the absence of proof to the contrary, the natural or legal person named in the customary manner on a work shall be considered the producer of an audiovisual work;

“publication” means the putting into circulation of copies of a work or phonogram with the consent of the author of the work or producer of the phonogram to meet the needs of the public. This term also means the making available of a work or phonogram by means of electronic information systems;

“public presentation, public performance or communication to the public” means any presentation, performance or communication of works, phonograms, performances, other productions or broadcasts of broadcasting or cable distribution organizations, either direct or with technical means, in a public place or a place in which a large number of persons not belonging to the usual family circle are present, irrespective of whether the works, phonograms, performances, other productions or broadcasts by broadcasting or cable distribution organizations are perceived at the place of the communication or in another place at the same time as the communication;

“rebroadcasting” means the broadcasting of works, phonograms, performances or programs of broadcasting or cable distribution organizations that have already been broadcast;

“recording” means the fixing, with technical aids, of sounds or images or both in a material form that permits them to be repeatedly perceived, reproduced or communicated;

“rental” means making a copy of a work or phonogram temporarily available for direct or indirect commercial profit;

“reproduction of a phonogram” means the making of one or more copies of a phonogram or part of a phonogram on any physical medium;

“reproduction of a work” means the making of one or more copies of a work or of a part of a work in any form, including the form of a sound or visual recording, or the making of one or more three-dimensional copies of a two-dimensional work, or one or more two-dimensional copies of a three-dimensional work; the storage of a work in a computer memory also constitutes reproduction;

“reprographic reproduction” means the facsimile reproduction in one or more copies, regardless of the dimensions and form thereof, of originals or copies of written or other graphic works by means of photocopying or with the aid of technical means other than those of publishing; reprographic reproduction shall not include the storage or reproduction of such copies in electronic (including digitized) or optical form or in any other machine-readable form;

“retransmission” means the simultaneous broadcasting (by cable) by a broadcasting organization of programs produced by another broadcasting organization;

“users of copyright or related rights” means book publishers, newspaper and magazine publishers, radio, television and cable distribution studios, theaters, concert halls, cinemas, video libraries, shops selling recorded audio and video cassettes and optical disks, artistic groups of whatever form, as also natural persons and users of computer programs;

“work of applied art” means a work of art in two or three dimensions applied to objects intended for practical use, whether craft works or works produced in an industrial process.

## **Title II Copyright**

### *Scope of Copyright*

**5.—(1)** Pursuant to this Law, copyright shall extend

— to works, either disclosed or undisclosed, existing in an objective form on the territory of the Kyrgyz Republic, regardless of the nationality of the authors and their successors in title;

— to works, either disclosed or undisclosed, existing in an objective form beyond the borders of the Kyrgyz Republic, in respect of which copyright is accorded to authors who are nationals of the Kyrgyz Republic and their successors in title;

— to works, either disclosed or undisclosed, existing in an objective form beyond the borders of the Kyrgyz Republic, in respect of which copyright is accorded under international treaties to which the Kyrgyz Republic is party to authors (and their successors in title) who are nationals of other States.

(2) A work shall also be considered published in the Kyrgyz Republic if, within 30 days following the date of its first publication outside the territory of the Kyrgyz Republic, it is published on that territory.

(3) Where protection is granted to a work on the territory of the Kyrgyz Republic under international treaties to which the Kyrgyz Republic is party, the authorship of the work shall be determined in accordance with the legislation of the State on whose territory the legal act occurred that gave rise to the ownership of copyright.

### *Works Protected by Copyright (Subject Matter of Copyright)*

**6.—(1)** Copyright shall extend to scientific, literary and artistic works that are the product of creative work, regardless of their purpose, merit or manner of expression.

(2) Works shall be expressed in an objective oral, written or other form enabling them to be perceived.

A work expressed in a written form or fixed by any other means on a physical medium (manuscript, typewritten text, musical score, recording made with the aid of technical means, including sound or visual recording, fixation of an image in two or three dimensions, etc.) shall be deemed to exist in an objective form whether or not it has been made accessible to other persons.

An oral or other work not fixed on a physical medium shall be deemed to exist in an objective form if it has been made perceivable to other persons (public recitation, public performance, etc.).

(3) Disclosed works and undisclosed works shall enjoy the same copyright protection.

(4) Ideas, processes, concepts, principles, systems, proposed solutions or discoveries of natural phenomena may not be protected by copyright.

(5) The subsistence of copyright shall not require the registration of a work nor the accomplishment of any other formality.

*Subject Matter of Copyright. Parts of Works,  
Derivative Works and Composite Works*

**7.—(1)** The following shall be protected by copyright:

- literary works (fiction and works of a scientific, teaching, advertising or journalistic nature, etc.);
- dramatic works and works with a scenario;
- musical works, with or without accompanying words;
- dramatico-musical works;
- choreographic and mimed works;
- audiovisual works (cinematographic films, television films and video films, slide shows and other cinematographic and television productions) and broadcast works;
- works of painting and sculpture, graphic and design works, and other works of figurative art;
- works of applied art and stage designs;
- works of architecture, urban planning and park and garden design;
- photographic works and works obtained by processes analogous to photography;
- geographical, geological and other maps, plans, sketches and other works relating to geography, topography and other sciences;
- computer programs of all kinds, including application software and operating systems;
- other works meeting the criteria set out in Article 6 of this Law.

(2) The parts of a work, the titles of works and derivative works meeting the criteria set out in Article 6 of this Law shall enjoy copyright protection.

Derivative works shall be those works which constitute the transformation of other works (translations, adaptations, annotations, analyses, summaries, reviews, stage adaptations, musical arrangements and other transformations of scientific, literary or artistic works).

Composite works shall be collections (encyclopedias, anthologies) and other composite works which by reason of the selection or arrangement of their contents constitute the result of a creative effort.

(3) Derivative works and composite works shall enjoy copyright whether or not the works on which they are based or which they themselves include enjoy copyright.

*Works and Similar Results of Human Activity  
not Protected by Copyright*

**8.** The following shall not enjoy copyright:

- official documents (laws, decrees, decisions, etc.) and official translations thereof;
- official emblems and signs (flags, armorial bearings, decorations, monetary signs, etc.);
- works of folklore;

— communications of news or communications concerning events of an everyday informational journalistic nature;

— results obtained by technical means intended for a production of a given type without the intervention of human creative activity applied directly to the creation of an individual work.

#### *Authorship of Works. Presumption of Authorship*

**9.**—(1) The author of a work is the natural person whose creative effort has led to the creation of the work.

In the absence of proof to the contrary, the person named as the author when the work is first published shall be deemed the author of the work.

(2) Where a published work is anonymous or pseudonymous (unless the author's pseudonym leaves his identity in no doubt), the publisher named on the work shall be presumed, in the absence of proof to the contrary, to represent the author and shall be empowered to defend and exercise the author's rights. This provision shall remain in force until such time as the author of the work reveals his identity and claims authorship of the work.

#### *Works of Joint Authorship*

**10.**—(1) The copyright in a work that is the product of the joint creative efforts of two or more persons shall belong jointly to the joint authors, regardless of whether the work constitutes an indivisible whole or is composed of parts, each with a relevance of its own.

A part of a work shall be deemed to have a relevance of its own if it can be used independently of the other parts of the same work.

Unless otherwise agreed between the joint authors, each author may use as he sees fit that part of the work with a relevance of its own that he has created.

(2) Relations between joint authors shall, as a rule, be the subject of a contract. Failing such contract, copyright in the work shall be exercised jointly by all joint authors and the corresponding remuneration shall be divided between them in equal shares.

If the work of the joint authors constitutes an indivisible whole, none of them shall be entitled to prohibit the use of the work without valid reason.

#### *Copyright of Compilers of Collections and Other Composite Works*

**11.**—(1) The author of a collection or any other composite work (compiler) shall enjoy copyright in the selection or arrangement of subject matter that he has made insofar as such selection or arrangement is the result of a creative effort (compilation).

The compiler shall enjoy copyright subject to respect for the rights of the authors of each work included in the composite work.

The copyright of the compiler shall not prejudice the rights of the authors of the works included in the composite work.

The authors of the works included in the composite work shall be entitled to exploit their own works independently of the composite work, unless otherwise stipulated in the authors' contract.



Notwithstanding the copyright of the compiler, any other person may make an independent selection or arrangement of the same subject matter for the purposes of creating his own composite work.

(2) The exclusive right to use encyclopedias, encyclopedic dictionaries, collections of scientific works—published in either one or more installments—newspapers, reviews and other periodical publications shall belong to the editor of such publications. The editor shall be entitled to mention his name or to require such mention whenever those publications are used.

The authors of the works included in such publications shall retain the exclusive right to use their works independently of the publication of the whole work, unless otherwise agreed by contract.

#### *Copyright of Translators and Other Authors of Derivative Works*

**12.**—(1) Translators and other authors of derivative works shall enjoy copyright in the translations, adaptations, arrangements or any other transformations made by them.

The translator or other author of a derivative work shall enjoy copyright in the work created by him, subject to the rights of the author of the work that has been translated, adapted, arranged or otherwise transformed.

(2) Notwithstanding the copyright of the translator or other author of a derivative work, other persons may make their own translations or transformations of the same work.

#### *Copyright in Audiovisual Works*

**13.**—(1) The following shall be recognized as authors of an audiovisual work:

- the author of the scenario (script writer);
- the author of the musical work (with or without words) that has been specially created for that audiovisual work (composer);
- the director or film maker;
- the director of photography;
- the art director.

(2) The conclusion of a contract for the making of an audiovisual work shall imply assignment by the authors of the work to its producer of the exclusive rights of reproduction, distribution, public performance, communication to the public by cable, broadcasting or any other public communication of the work, and also the exclusive rights of subtitling and dubbing, unless otherwise provided in the contract. Those rights shall subsist throughout the period of validity of the copyright in the audiovisual work.

The producer of the audiovisual work shall have the right to mention his name or to require such mention whenever the work is used.

(3) The author of a musical work (with or without words) created specially for the audiovisual work shall retain the right to remuneration for each public performance of the audiovisual work, for its communication to the public and for the rental of copies of the audiovisual work.

(4) The authors of the works constituting the audiovisual work, whether preexisting (for instance, the author of the novel from which the scenario is taken) or created in the making of the audiovisual work (for instance, the director of photography or the art director), shall each enjoy copyright in his own work.

(5) The master copy of a film (negatives, original recording) may not be destroyed without the consent of the author and of any holder of economic rights in the film.

#### *Copyright in Service-Related Works*

**14.**—(1) The moral rights in a work created in the performance of an assignment expressly given by the employer (service-related work) shall belong to the author of such work.

(2) The exclusive right to use a service-related work by a means determined by the object of the mission and within the limits deriving therefrom shall belong to the person with whom the author maintains a working relationship (employer) and who has assigned to him the mission that has generated the work, unless otherwise provided in the contract concluded between that person and the author.

The amount of the remuneration of the author for each type of use of a service-related work and the conditions for paying the remuneration shall be specified in the contract concluded between the author and his employer.

(3) The employer shall have the right to mention his name or require such mention in connection with any use of the service-related work.

(4) On the expiry of a 10-year period as from presentation of the work or at an earlier time, subject to the consent of the employer, the author's right to use his work and to receive remuneration shall belong to him in full, independently of the contract concluded with his employer.

(5) The provisions of this Article shall not apply to the making, in the course of service obligations or the performance of an assignment expressly given by the employer, of encyclopedias, encyclopedic dictionaries, collections of scientific works—published in one or more installments—newspapers, magazines and periodical publications (Article 11(2) of this Law).

#### *Moral Rights*

**15.**—(1) An author shall enjoy the following moral rights in relation to his work:

- right of authorship: the right to have his authorship of the work recognized;
- right to be named: the right to use the work or to authorize its use, either with the mention of his true name or his pseudonym or without any name being given, that is to say anonymously;
- right of disclosure: the right to disclose the work or to authorize its disclosure in any form, including the right to reconsider or withdraw;
- right of integrity: the right to the protection of the work, including its title, against any distortion or other derogatory act liable to prejudice the honor or dignity of the author.

(2) An author shall have the right to renounce a decision taken earlier to disclose his work (right to reconsider or withdraw), provided that the user is indemnified for any damages attributable to that decision. If the work has already been disclosed, the author shall be

required to make its withdrawal publicly known. He shall then have the right to withdraw from circulation, at his own expense, those copies of the work that have already been made. The provisions of this paragraph shall not apply to service-related works.

(3) Moral rights shall belong to the author independently of his economic rights and he shall retain them even where the exclusive right to use the work has been assigned.

### *Economic Rights*

**16.**—(1) The author shall enjoy the exclusive right to use his works in any form and by any means.

(2) The author's exclusive right to use his work shall be construed to mean the right to perform, authorize or prohibit the following acts:

- reproduction of the work (right of reproduction);
- distribution of copies of the work by any means: rental, etc. (right of distribution);
- importing of copies of the work for the purposes of distribution, including distribution of copies made with the authorization of the owner of exclusive rights (right of importation);
- presentation of the work in public (right of public presentation);
- performance of the work in public (right of public performance);
- communication of the work to the public by broadcasting or rebroadcasting (right of broadcasting);
- communication of the work to the public by cable, wire or similar means (right of communication to the public by cable);
- translation of the work (right of translation);
- adaptation, arrangement or other transformation of the work (right of adaptation).

The exclusive rights of the author in the use of a project for a design work, an architectural work, a work of urban planning or a work of park or garden design shall extend also to the practical realization of the project. Unless otherwise provided by contract, the author of an accepted architectural project shall have the right to require that the party commissioning the work allow him to take part in the realization of his project at the stage of the production of the documentary material relating to the construction or at the stage of the actual construction of the building or other structure.

(3) Where copies of a lawfully published work have been put into circulation by means of sale, their subsequent distribution shall not require authorization by the author and shall not give rise to the payment of remuneration to the author.

The right to distribute the original or copies of a work by means of rental of an audiovisual work, a computer program, a database, a work recorded on a phonogram or a musical work in the form of a score shall belong to the author independently of the ownership of such copies.

(4) The amount and manner of payment of remuneration to the author for each form of use of a work shall be determined by the author's contract and by the contracts that organizations for the collective administration of economic rights conclude with users.

(5) The rights of authors set out in paragraph (2) of this Article shall be subject to the limitations set out in Articles 18 to 26 of this Law, which shall apply insofar as the uses concerned do not unjustifiably prejudice the normal use of the work and do not, without valid reason, prejudice the legitimate interests of the author.

*Right of Access to Works of Fine Art. Resale Royalty*

**17.**—(1) The author of a work of fine art shall have the right to require of the owner of such work that he allow him to exercise the right of reproduction of his work (right of access). However, the owner of the work may not be required to deliver the work to the author to that end.

(2) The transfer of ownership of a work of fine art (whether for consideration or free of charge) from the author to a third party shall constitute the first sale of such work.

For each public resale of a work of fine art (sale by auction or at an art gallery or exhibition, in a shop, etc.) effected subsequent to the first assignment of ownership of such work, the seller shall pay the author or his heirs remuneration representing five per cent of the resale price (resale royalty). This right shall be inalienable and transferable only to the author's legal heirs or those designated in the author's will throughout the duration of the copyright.

*Reproduction of Works for Personal Purposes Without the Author's Consent and Without Payment of Remuneration*

**18.**—(1) The reproduction in one single copy of a lawfully disclosed work for exclusively personal purposes shall be authorized without need for the author's consent or payment of remuneration, except in the cases provided for in Article 26 of this Law.

(2) The provisions of paragraph (1) of this Article shall not apply

— to the reproduction of works of architecture in the form of comparable buildings and structures;

— to the reproduction of databases or substantial parts of databases;

— to the reproduction of computer programs, except in the cases provided for in Article 25 of this Law;

— to the reproduction of books (in whole) and of musical scores.

*Use of a Work Without the Author's Consent and Without Payment of Remuneration*

**19.**—(1) The following shall be authorized without the author's consent and without payment of remuneration, provided that the name of the author whose work is used and the source of the borrowing are mentioned:

1. the quotation, in the original language or in translation, for scientific or for research, polemic, critical or informational purposes and to the extent justified by the intended purpose, of extracts from lawfully disclosed works, including the reproduction of extracts from newspaper and magazine articles, in press reviews;

2. the use of lawfully disclosed works and of extracts from such works for the purpose of illustration in publications, radio or television broadcasts or sound or visual recordings of an educational nature, and to the extent justified by the intended purpose;

3. the reproduction in newspapers, the broadcasting or communication to the public by cable of articles published in newspapers or magazines on economic, political, social or religious topics, or of broadcast works of the same nature, insofar as the author has not specifically prohibited such reproduction, broadcast or cable communication;

4. the reproduction in newspapers, the broadcasting or communication to the public by cable of political speeches, addresses, lectures and other works of the same nature given in public, to the extent justified by an informational purpose; the author shall nevertheless retain the right to publish such works in collections;

5. the reproduction or communication to the public, in connection with the reporting of current events by means of photography, broadcasting or public cable communication, of works that are seen or heard in the course of such events, to the extent justified by an informational purpose; the author shall nevertheless retain his right to publish such works in collections;

6. the reproduction in Braille or by other special means for the benefit of the blind, done without gainful intent, of lawfully disclosed works, with the exception of works created specially for such means of reproduction.

(2) The export abroad by a natural person of a copy of a work for exclusively personal purposes, with the exception of works whose export may prejudice the national interests of the Republic and of which a list shall be drawn up in accordance with the prescribed procedures, shall be authorized without the author's consent or that of any other copyright holder and without payment of remuneration.

#### *Use of Works by Reprographic Reproduction*

**20.** It shall be permissible, without the author's consent and without payment of remuneration, provided that the name of the author whose work is used and the source of the borrowing are mentioned, to make a reprographic reproduction in one copy and without gainful intent

1. of a lawfully published work insofar as the reproduction is done by a library or archive service and that its purpose is to restore or replace lost or damaged copies or to place copies at the disposal of other libraries that for any reason have lost works from their own collections;

2. of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works (with or without illustration), if such reproduction is done by a library or archive service in order to meet the requirements of natural persons who will make use of the copies so obtained for study or research purposes;

3. of isolated articles or succinct works lawfully published in collections, newspapers or other periodical publications, or of short extracts from lawfully published written works (with or without illustration) if the reproduction is done by an educational establishment and the copy so obtained is intended for use in the classroom.

#### *Free Use of Works Permanently Located in a Public Place*

**21.** The reproduction, broadcasting or communication to the public by cable of architectural works, photographic works and works of fine art permanently located in a public place shall be permissible without the author's consent and without the payment of remuneration, except where the presentation of the work constitutes the main feature of such

reproduction, broadcast or communication to the public by cable, or if it is used for commercial purposes.

*Free Public Performance*

22. The public performance of musical works in the course of official or religious ceremonies and at funerals shall be permissible without the author's consent and without payment of remuneration, to the extent justified by the nature of such ceremonies.

*Free Reproduction for Judicial and Administrative Purposes*

23. The reproduction of works for the purposes of judicial or administrative proceedings, to the extent justified by such purposes, shall be permissible without the author's consent and without payment of remuneration.

*Free Ephemeral Recording by a Broadcasting Organization*

24. A broadcasting organization may, without the author's consent and without payment of additional remuneration, make an ephemeral recording of a work for which it has obtained the right of broadcasting, on condition that such organization makes the recording with its own equipment and for the purposes of its own broadcasts. The broadcasting organization shall be required to destroy such recording within six months after it has been made, except where a longer period has been agreed with the author of the recorded work. The recording may be preserved in official archives without the author's consent if it is of a purely documentary nature.

*Free Reproduction of Computer Programs and Databases.*

*Decompilation of Computer Programs*

25.—(1) Any person lawfully in possession of a copy of a computer program or database may, without permission from the author or any other holder of the exclusive right to use the work and without paying any additional remuneration,

1. make alterations to the computer program or database, where the purpose thereof is solely to ensure their operation on the user's material, and perform any act in relation to the operation of the computer program or database according to its intended purpose, including any inputting or storing in a memory (that of an individual computer or that of one of the computers in a network), and also correct obvious errors, except where otherwise provided in the contract concluded with the author;

2. make a copy of the computer program or database, provided that the copy is intended solely for archiving and for the replacement of a lawfully acquired copy in the event of the latter having been lost, destroyed or rendered useless, on the understanding that the copy of the computer program or database may not be used for purposes other than those specified in item 1 of this paragraph and that it must be destroyed should the possession of the copy of the computer program or database cease to be lawful.

(2) Any person lawfully in possession of a copy of a computer program may, without permission from the author or any other holder of exclusive rights, and without paying any additional remuneration, reproduce or convert the object code making it into a source code (decompile the program) or have such acts performed by other parties, if they are essential to ensure the interactive capabilities of a computer program independently created by that person with other programs compatible with the program so decompiled, in which case the following conditions have to be fulfilled or observed:

1. the person concerned must not previously have had access to other sources capable of providing him with the information necessary to ensure the interactive capability;
  2. the acts mentioned above must only be performed in relation to the parts of the computer program the decompilation of which is essential to the achievement of the interactive capability;
  3. information obtained by decompilation may only be used for the achievement of the interactive capability of the independently created computer program with other programs and may not be passed on to other parties, except where necessary to ensure the interactive capability of the independently created computer program with other programs and may not be used for the development of a computer program of a type essentially comparable to the decompiled computer program or for the performance of any other act prejudicial to copyright.
- (3) The application of the provisions of this Article must neither unjustifiably affect the normal use of the computer program or database or, without valid grounds, prejudice the legitimate interests of the author or any other holder of exclusive rights in the computer program or database.

*Reproduction of a Work for Personal Purposes Without the Consent  
of the Author, but Subject to Payment of Remuneration*

**26.**—(1) Notwithstanding the provisions of Articles 16, 37 and 38 of this Law, the reproduction of an audiovisual work or sound recording of a work for exclusively personal purposes shall be permissible without the consent of the author of the work, performer or phonogram producer, but subject to payment of remuneration to them.

(2) The remuneration for the reproduction referred to in paragraph (1) of this Article shall be paid by the manufacturers or importers of the equipment (sound recording equipment, video cassette recorders, etc.) and of the recording material (tape and cassettes for sound or video recording, optical discs, compact discs, etc.) used for the reproduction.

The collection and distribution of the remuneration shall be effected by one of the organizations for the collective administration of the economic rights of authors, phonogram producers and performers under an agreement concluded with such organizations (Article 45 of this Law). Except where otherwise provided in such agreement, the remuneration shall be distributed as follows: 40 per cent to authors, 30 per cent to performers and 30 per cent to phonogram producers.

The amount of the remuneration and the manner of its payment shall be determined by agreement between the aforementioned manufacturers and importers on the one hand and the organizations for the collective administration of the economic rights of authors, phonogram producers and performers on the other hand or, if the parties fail to agree, by Kyrgyzpatent.

(3) No remuneration shall be paid for the recording equipment and material referred to in the first subparagraph of paragraph (2) of this Article if they are exported or they constitute professional equipment and material not intended to be used for home recording.

*Term of Copyright*

**27.**—(1) Copyright shall have effect throughout the lifetime of the author and for 50 years after his death; this term shall be calculated as from January 1 of the year following that of death.

(2) Copyright in a work of joint authorship shall have effect during the lifetimes of the joint authors and for 50 years after the death of the last surviving joint author.

(3) Copyright in a work initially disclosed anonymously or pseudonymously shall have effect for 50 years as from January 1 of the year following that in which the work was disclosed.

If, during that period, the identity of the author of the anonymous or pseudonymous work is revealed, the terms set out in the first part of this Article shall apply.

(4) For the whole of the 50-year period referred to in paragraph (1) of this Article, copyright shall belong to the author's heirs and shall be transmitted by succession. During those same terms, copyright shall also belong to those successors in title who have acquired it by contract concluded with the author, his heirs or subsequent successors in title.

(5) Copyright in a work first disclosed within the 50 years following the death of the author shall have effect for 50 years following its disclosure. This term shall be calculated as from January 1 of the year following that of disclosure of the work.

(6) The right of authorship, the right to be named and the right of integrity shall be protected without limitation in time.

#### *Public Domain*

**28.**—(1) On expiry of the term of copyright in a work, the work shall fall into the public domain.

Works that have never enjoyed protection on the territory of the Kyrgyz Republic shall also be deemed to have fallen into the public domain.

(2) Works that have fallen into the public domain may be freely used by any person without payment of remuneration. However, the author's right of authorship, his right to be named and his right of integrity shall be respected (Article 15 of this Law).

(3) The Government of the Kyrgyz Republic shall determine the amount of the royalties to be collected by the State Fund for Intellectual Property for the use on the territory of the Kyrgyz Republic of works in the public domain.

#### *Transfer of Copyright by Succession*

**29.** Copyright shall be transferable by succession.

The moral right prerogatives referred to in Article 15 of this Law shall not be transferable by succession. The heirs of the author may assert those prerogatives without limitation in time.

Where the author has no heirs, the prerogatives concerned shall be asserted by Kyrgyzpatent.

#### *Assignment or Licensing of Economic Rights. Authors' Contracts*

**30.**—(1) The assignment or licensing of economic rights referred to in Article 16 of this Law shall be effected by means of an author's contract, except as provided in Articles 18 to 26 of this Law.



Economic rights may be the subject of an author's contract for the assignment of exclusive rights or an author's contract for the licensing of non-exclusive rights.

(2) The author's contract for the assignment of exclusive rights shall allow only that person to whom the rights have been assigned to use the work by specified means and within the limits set by the contract and shall confer on that person the right to prohibit any similar use of the work by third parties.

The right to prohibit third parties from using the work may be exercised by the author of the work where the person to whom the exclusive rights have been assigned does not assert that right.

(3) The author's contract for the licensing of non-exclusive rights shall allow the licensee to use the work under the same conditions as the holder of the exclusive right who has granted those rights to him or as other persons who have obtained permission to use the work by the same means.

(4) The rights under an author's contract shall be deemed non-exclusive if the contract contains no express provision to the contrary.

#### *Conditions Governing Authors' Contracts*

**31.—**(1) The author's contract shall specify

1. the modes of use of the work (the specific rights assigned or licensed under the contract);
2. the term and territory for which the rights are assigned or licensed;
3. the amount of the remuneration or the methods for calculating that amount for each of the modes of use of the work, the procedures and periods for paying the remuneration;
4. such other conditions as the parties may consider essential for a given contract.

If the author's contract does not specify the term for which the right is assigned or licensed, the author may terminate it on expiry of five years as from its conclusion, subject to advance notice of six months.

The author may terminate an author's contract concluded for a long period on expiry of 10 years as from its conclusion, subject to advance notice of six months given to the user in writing. This faculty shall be available to the author every 10 years.

If the author's contract does not specify the territory for which the rights are assigned or licensed, the rights under the contract shall have effect only on the territory of the Kyrgyz Republic.

(2) All rights of use of a work that are not expressly assigned or licensed under the author's contract shall be deemed not to have been assigned or licensed.

The author's contract may not relate to rights of use that are not known at the time of its conclusion.

(3) The author's contract shall specify remuneration in the form of a percentage of the revenue derived from use of the work by the intended means or, where that is not possible in view of the nature of the work or of the particular circumstances of its use, in the form of a lump sum or in any other manner.

The minimum rates for the author's remuneration shall be set by the Government of the Kyrgyz Republic. The minimum amounts of author's remuneration shall be indexed at the same time as the amounts of the minimum wage.

Where, in the author's contract for publication or any other form of reproduction of a work, remuneration is calculated as a lump sum, the contract shall specify the maximum print run of the work.

(4) The rights assigned or licensed under the author's contract may be the subject matter of a further assignment or license, in whole or in part, to third parties only if the contract expressly so provides.

(5) The author's contract may not relate to rights of use arising in connection with works that the author may create in the future.

(6) Any clause in an author's contract that imposes limits on the author regarding the future creation of works on a particular subject or in a particular field shall be deemed invalid.

(7) Any clauses in an author's contract that are contrary to the provisions of this Law shall be deemed invalid.

(8) A party that fails to fulfill its obligations under an author's contract or that does not fulfill them in the agreed manner shall be required to indemnify the other party for the prejudice caused to it.

#### *Form of Authors' Contracts*

**32.**—(1) The author's contract shall be in written form. If it relates to the use of a work in the periodical press, it may be concluded by word of mouth.

(2) Contracts for the sale of copies of computer programs or databases and contracts affording extensive access to computer programs or databases may be concluded according to the specific conditions set out in the legislation of the Kyrgyz Republic.

(3) An author's contract may be recorded with Kyrgyzpatent on the basis of an agreement between the parties. The recording of any contract shall be subject to payment of a recording fee of which the amount and conditions of payment shall be laid down by the Government of the Kyrgyz Republic.

Kyrgyzpatent shall draw up model authors' contracts.

#### *Commission Contracts*

**33.**—(1) The moral rights in a work created on a commission shall belong to the author.

(2) The exclusive right to use a commissioned work shall belong to the party identified in the commission contract.

(3) Under the commission contract, the author shall undertake to create a work under the conditions set out in the contract and to deliver it to the commissioning party.

(4) The commissioning party shall be required to pay to the author an advance on the remuneration agreed by contract. The amount of the advance and the procedure and time limits for payment shall be agreed upon in the contract by the parties.

(5) If the author does not deliver the commissioned work under the conditions laid down in the commission contract, he shall be required to indemnify the commissioning party for any material prejudice he has occasioned him.

### **Title III Related Rights**

#### *Scope of Related Rights*

**34.**—(1) The rights of performers shall be recognized in accordance with this Law if

1. the performer is a national of the Kyrgyz Republic;
2. the first performance has occurred on the territory of the Kyrgyz Republic;
3. the performance has been recorded on a phonogram protected under paragraph (2) of this Article;

4. the performance has not been recorded on a phonogram, but included in a program broadcast or transmitted by cable that is protected under paragraph (3) of this Article.

(2) The rights of phonogram producers shall be protected under this Law if

1. the phonogram producer is a national of the Kyrgyz Republic or a legal person with headquarters located on the territory of the Kyrgyz Republic;

2. the first publication of the phonogram occurred on the territory of the Kyrgyz Republic. A phonogram shall also be deemed published for the first time on the territory of the Kyrgyz Republic if it is published on that territory within 30 days of the date of its first publication in another State.

- (3) The rights of broadcasting or cable distribution organizations shall be protected under this Law if the organization concerned has its headquarters on the territory of the Kyrgyz Republic and broadcasts with the aid of transmitters located on the territory of the Kyrgyz Republic.

- (4) The rights of foreign performers, phonogram producers and broadcasting or cable distribution organizations shall be recognized on the territory of the Kyrgyz Republic in accordance with the international treaties to which the Kyrgyz Republic is party.

#### *Subject Matter of Related Rights*

**35.** Theatrical productions, performances, phonograms and broadcasts of broadcasting or cable distribution organizations, irrespective of their intention, content or value or of their means and mode of expression shall be the subject matter of related rights.

#### *Persons Enjoying Related Rights*

**36.**—(1) Performers, phonogram producers and broadcasting or cable distribution organizations shall enjoy related rights.

- (2) The producer of a phonogram or the broadcasting or cable distribution organization shall exercise their rights set out in this title within the limits of the rights that the performer and the author of the work recorded on the phonogram or broadcast or transmitted by cable have granted them by contract.

Authorization to use a performance that has been obtained from an entertainment producer or director shall not release a person from the obligation to obtain authorization from the other performers who have taken part in the performance and also from the author of the work performed.

(3) The performer shall exercise the rights specified in this Title without infringing the rights of the author of the work performed.

(4) The generation and exercise of related rights shall not be subject to compliance with any formality. The producer of a phonogram and the performer may, in order to publicize their rights, make use of a reserved rights notice which should be placed on every copy or on every sleeve of the phonogram and should consist of the following three elements:

- a circled roman letter [...]\*
- the name of the holder of the exclusive related rights;
- the year of first publication of the phonogram.

(5) The performer, phonogram producer or radio or cable distribution organization shall have the right to have the performance, representation, phonogram or broadcast entered in the official registers at any time during the term of protection of the related rights. The person who has the subject matter of a related right registered shall receive a certificate of a specified type. The registration shall be carried out by Kyrgyzpatent.

### *Rights of Performers*

**37.**—(1) Except as provided by this Law, performers shall be granted the following moral and economic rights in their performances:

- the right to be named;
- the right to protection of the performance against any distortion or other derogatory act liable to prejudice the honor or dignity of the performer;
- the right to use the performance in any form, including the right to be paid remuneration for every such form of use.

(2) The exclusive right to use a performance means the right to carry out, authorize or prohibit the following acts:

1. broadcasting or cable communication of the performance to the public insofar as the performance used for that purpose has not been broadcast previously and is not made on the basis of a recording;
2. recording a hitherto unrecorded performance;
3. reproducing the recording of a performance;
4. broadcasting or cable transmission of the recording of a performance insofar as the recording was originally made for non-commercial purposes;
5. rental of a phonogram published for commercial purposes on which a performance has been recorded with the participation of the performer. This right shall be transferred to the phonogram producer on conclusion of a contract for the recording of the performance on a phonogram; however, the performer shall retain the right to remuneration for the rental of copies of the phonogram (Article 39(2) of this Law).

(3) The exclusive right of the performer under item 3 of paragraph (2) of this Article shall not apply if

- the initial recording of the performance was made with the consent of the performer;
- the reproduction of the performance is made for the same purposes as the recording of the performance to which the performer consented;
- the reproduction of the performance is made for the same purposes as the recording made under Article 42 of this Law.

(4) The authorizations referred to in paragraph (2) of this Article shall be granted by the performer or, in the case of a group of performers, by the head of the group, in a written contract concluded with the user.

(5) The authorizations referred to in items 1, 2 and 3 of paragraph (2) of this Article shall not be necessary for the rebroadcasting of a performance, the recording for broadcasting purposes and the reproduction of that recording by broadcasting or cable distribution organizations if they are expressly provided for in the contract concluded by the performer with the broadcasting or cable distribution organization. The amount of the remuneration to be paid to the performer for such use shall likewise be specified in the contract.

(6) The conclusion of a contract for the making of a work between the performer and the maker shall constitute licensing by the performer of the rights referred to in items 1, 2, 3 and 4 of paragraph (2) of this Article.

The licensing of such rights by the performer shall be confined to the use of the audiovisual work and, unless otherwise provided in the contract, shall not extend to the rights in any separate use of the sound or the images embodied in the audiovisual work.

(7) The performer may assign or license the exclusive rights under paragraph (2) of this Article to third parties by contract.

(8) The contract for assignment or licensing of exclusive rights may be recorded with Kyrgyzpatent. The recording of any contract shall be subject to payment of a recording fee of which the amount and conditions of payment shall be laid down by the Government of the Kyrgyz Republic.

#### *Rights of Phonogram Producers*

**38.**—(1) Except as provided by this Law, a phonogram producer shall enjoy the exclusive right to use his phonogram in any form, including the right to remuneration for each such form of use.

(2) The exclusive right to use a phonogram means the right to carry out or authorize the following acts:

1. reproduction of the phonogram;
2. adaptation or any other transformation of the phonogram;
3. distribution of copies of the phonogram, for instance by sale or rental;
4. importing of copies of the phonogram for the purposes of distribution, including copies made with the authorization of the phonogram producer.

(3) Where copies of a lawfully published phonogram have been placed on the market by sale, their subsequent distribution may take place without the consent of the phonogram producer and without payment of remuneration.

The right to distribute copies of the phonogram by rental shall belong to the phonogram producer independently of the ownership of the copies.

(4) The phonogram producer may assign or license the exclusive rights referred to in paragraph (2) of this Article to other parties by contract.

(5) The contract for assignment or licensing of exclusive rights may be recorded with Kyrgyzpatent. The recording of any contract shall be subject to payment of a recording fee of which the amount and conditions of payment shall be determined by the Government of the Kyrgyz Republic.

*Use of a Published Phonogram for Commercial Purposes Without  
the Consent of the Phonogram Producer and the Performer*

**39.**—(1) Notwithstanding Articles 37 and 38 of this Law, the following shall be authorized without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on the phonogram, but against payment of remuneration:

1. public performance of the phonogram;
2. broadcasting of the phonogram;
3. communication of the phonogram to the public by cable.

(2) The collection, distribution and payment of the remuneration referred to in paragraph (1) of this Article shall be effected by one of the organizations for the collective administration of the rights of phonogram producers and performers (Article 44 of this Law) under an agreement concluded between those organizations. Except where otherwise provided in the agreement, remuneration shall be distributed equally between the phonogram producer and the performer.

(3) The amount of the remuneration and the manner of its payment shall be determined by an agreement between the user of the phonogram or the unions (associations) of users on the one hand and the organizations that manage the rights of phonogram producers and performers on the other or, where the parties fail to agree, by Kyrgyzpatent.

The amount of the remuneration shall be laid down for each type of use of the phonogram.

(4) The users of phonograms shall be required to submit programs to the organization referred to in paragraph (2) of this Article containing detailed information on the number of uses of the phonogram, together with such other information and material as is necessary for the collection and distribution of the remuneration.

*Rights of Broadcasting Organizations*

**40.**—(1) Except as provided by this Law, a broadcasting organization shall enjoy the exclusive right in relation to its program to use it in any form and to grant authorization to use it, including the right to remuneration for such authorization.

(2) The exclusive right to authorize use of a program shall mean the right of the broadcasting organization to authorize

1. the simultaneous broadcasting of the program by another broadcasting organization;
2. communication of the program to the public by cable;

3. recording of the program;
4. reproduction of the recording of the program;
5. communication of the program to the public in places where a charge is made for admission.

(3) The exclusive right of the broadcasting organization referred to in item 4 of paragraph (2) of this Article shall not extend to cases where

- the program has been recorded with the consent of the broadcasting organization;
- the program is reproduced for the same purposes as those for which it was recorded under Article 42 of this Law.

#### *Rights of Cable Distribution Organizations*

**41.**—(1) Except as provided in this Law, a cable distribution organization shall enjoy the exclusive right, in relation to its program, to use it in any form and to grant authorization to use it, including the right to remuneration for such authorization.

(2) The exclusive right to authorize use of the program shall mean the right of the cable and distribution organization to authorize

1. simultaneous cable communication of its program to the public by another cable distribution organization;
2. broadcasting of the program;
3. recording of the program;
4. reproduction of the recording of the program;
5. communication of the program to the public in places where a charge is made for admission.

(3) The exclusive right of the cable distribution organization referred to in item 4 of paragraph (2) of this Article shall not extend to cases where

- the program has been recorded with the consent of the cable distribution organization;
- the program is reproduced for the same purposes as those for which it was recorded under Article 42 of this Law.

#### *Limits of the Rights of Performers, Phonogram Producers and Broadcasting or Cable Distribution Organizations*

**42.**—(1) Notwithstanding Articles 37 to 41 of this Law, it shall be permissible, without consent from the performer, the phonogram producer and the broadcasting or cable distribution organization, and without payment of remuneration, to use a performance or a broadcast or cabled program or a recording thereof, and to reproduce phonograms

1. for inclusion in a report on current events of short extracts from the performance, the phonogram or the broadcast or cabled program;
2. for the sole purposes of teaching or scientific research;
3. as a means of quoting, in the form of short extracts, from the performance, phonogram or the broadcast or cabled program, on condition that the quotation is for

informational purposes and on the understanding that the broadcasting or cable distribution organization may only use, for the purposes of a broadcast or cabled program, copies of a phonogram published for commercial purposes if the provisions of Article 39 of this Law are complied with;

4. in the other cases of limitation of the economic rights of the authors of literary, scientific and artistic works referred to in Articles 18 to 25 of this Law.

(2) Notwithstanding Articles 37 to 41 of this Law, it shall be permissible, without the consent of the performer, phonogram producer and broadcasting or cable distribution organization, to make use of a broadcast or cabled program or a recording thereof, and also to reproduce the phonogram for personal purposes. Reproduction of phonograms shall be permissible against payment of remuneration in accordance with Article 26 of this Law.

(3) The provisions of Articles 37, 38, 40 and 41 of this Law concerning the authorization of the performer, the phonogram producer and the broadcasting or cable distribution organization shall not apply to the making of an ephemeral recording of a performance or program, to the reproduction of such recording or to the reproduction of a phonogram published for commercial purposes, if the ephemeral recording or the reproduction is made by a broadcasting organization using its own equipment and for the purposes of its own broadcasts, on condition that

1. the broadcasting organization has obtained prior authorization to broadcast the performance or the program of which an ephemeral recording is made or performed under this paragraph;

2. the ephemeral recording is destroyed within the period of time laid down for ephemeral recordings of literary, scientific and artistic works made by broadcasting organizations under Article 24 of this Law; however, a single copy may be preserved in official archives if it is of a purely documentary nature.

(4) The application of the limitations provided for in this Article shall not prejudice either the normal use of a phonogram, performance or program broadcast or transmitted by cable, or recordings thereof, or the normal use of literary, scientific or artistic works incorporated therein, and shall likewise not prejudice either the legitimate interests of the performer, the phonogram producer or the broadcasting or cable distribution organization or those of the authors of the works concerned.

#### *Term of Related Rights*

**43.**—(1) The rights of performers under this Title shall have effect for 50 years as from the first performance.

The performer's right to be named and to have the performance protected against any distortion or other derogatory act, laid down in Article 37 of this Law, shall be protected without limitation in time.

(2) The rights of phonogram producers under this Title shall have effect for 50 years as from the first publication of the phonogram or for 50 years as from the first recording thereof if it has not been published in the course of that period.

(3) The rights of broadcasting organizations under this Title shall have effect for 50 years as from the broadcast made by that organization.

(4) The rights of cable distribution organizations under this Title shall be protected for 50 years as from the cable transmission made by that organization.



(5) All periods referred to in paragraphs (1), (2), (3) or (4) of this Article shall be calculated as from January 1 of the year following that in which the legal act occurred that constituted the starting point for the period.

(6) If the performer has been rehabilitated posthumously after having been the subject of repressive measures, the period of protection of rights under this Article shall begin on January 1 of the year following that of rehabilitation.

(7) The right to authorize the use of a performance, phonogram or broadcast or cabled program and the right to remuneration shall pass to the heirs (in the case of a legal person, to the successors in title) of the performer, phonogram producer or broadcasting or cable distribution organization for the duration of the non-elapsed portion of the terms specified in paragraphs (1), (2), (3), and (4) of this Article.

## **Title IV**

### **Collective Administration of Economic Rights**

#### *Objectives of the Collective Administration of Economic Rights*

**44.**—(1) Organizations for the collective administration of the economic rights of authors, performers, phonogram producers and other holders of copyright or related rights may be set up for the exercise of the economic rights of such persons in cases where the individual exercise of the rights is hampered by difficulties of a practical nature.

Such organizations shall be set up directly by the holders of copyright or related rights and shall operate within the limits of the mandate entrusted to them and on the basis of statutes adopted according to a procedure laid down by this Law. The provisions in the statutes of an organization for the collective administration of economic rights shall satisfy the requirements of this Law. Registration of an organization for the collective administration of economic rights may be refused if the conditions laid down by this Law and by the legislation establishing the conditions for registering associations are not complied with.

(2) It shall be possible to set up either separate organizations for differing rights and differing categories of holders or organizations administering various rights on behalf of various categories of holders or an organization administering both the rights of authors and related rights.

#### *Organizations for the Collective Administration of Economic Rights*

**45.**—(1) The mandate for the collective administration of economic rights shall be entrusted either direct, by the holders of copyright or related rights, by means of written contracts or by the fact of their membership in such organization, or under appropriate contracts with foreign organizations that administer equivalent rights. Such contracts shall not constitute authors' contracts and the provisions of Articles 30 to 33 of this Law shall not apply.

Any author or his heir or any other holder of copyright or related rights protected under Title III of this Law may by contract entrust the exercise of his economic rights to a collective administration organization and the latter shall agree to exercise those rights on a collective basis if the administration of the category of rights in question forms part of its statutory activity.

Collective administration organizations shall not be entitled to engage in any commercial activity nor to engage in the use of the works and the subject matter of related rights for which they have received a collective administration mandate.

(2) The organization for the collective management of economic rights shall conclude with users a licensing contract for the use of works and of the subject matter of related rights by appropriate means. The conditions under which such licenses are granted shall be identical for all users in a given category. The organization shall not be entitled to refuse to conclude a licensing contract with a user without valid reason.

The licensing contracts shall authorize the use, by means that they specify, of all the works and subject matter of related rights on behalf of all the holders of copyright or related rights, including those who have not mandated the organization under paragraph (1) of this Article.

All users who have concluded a licensing contract shall be required to have it registered officially in accordance with the prescribed procedures; they shall then receive an official registration certificate drawn up in due form by Kyrgyzpatent.

The organization that concludes a licensing contract shall settle problems arising from the claims made by holders of copyright or related rights in connection with the use under license of their works or of the subject matter of related rights within the framework of the licensing contract.

(3) If an organization for the collective management of economic rights has remuneration in its possession that has not been claimed during the three years following the date of its collection, it may retain the remuneration and either include it in the sums that it distributes or assign it to other purposes of interest to the holders of copyright or related rights that it represents.

#### *Functions and Obligations of Organizations for the Collective Administration of Economic Rights*

**46.**—(1) An organization for the collective administration of economic rights shall, on behalf of the holders of copyright or related rights that it represents and on the basis of the mandates entrusted to it, perform the following functions:

1. negotiation with users of the amounts of remuneration and other conditions subject to which the licensing contracts are concluded;
2. conclusion with users of licensing contracts for the use of the rights whose administration forms part of its activities;
3. negotiation with users of the amounts of remuneration in those cases where it is simply responsible for collecting such remuneration without concluding a licensing contract (Article 26 and Article 39(2) and (3) of this Law);
4. collection of the remuneration provided for in the licensing contracts or that referred to in item 3 of this paragraph;
5. allocation and payment of the collected remuneration to the holders of copyright or related rights that it represents;
6. performance of any other legal act essential to the defense of the rights whose administration forms part of its activities;
7. performance of any other activity under mandates received from the holders of copyright or related rights.

(2) An organization for the collective administration of economic rights shall, in the interests of the holders of copyright and related rights that it represents, discharge the following obligations:

1. it shall use the remuneration collected under item 4 of paragraph (1) of this Article exclusively for the allocation and payment to the holders of copyright or related rights; however, the organization shall have the right to deduct from the amount of the remuneration collected a sum intended to cover expenditure actually incurred by it in the collection, allocation and payment of the remuneration together with a sum payable to a special fund established by it on the decision of its members; the Government of the Kyrgyz Republic shall lay down the amount of royalties to be collected by the State Fund for Intellectual Property for the use on the territory of the Kyrgyz Republic of works and of the subject matter of related rights;

2. it shall allocate the remuneration collected, after deduction of the sums referred to in item 1 of this paragraph, and ensure the regular payment thereof in proportion to the actual use of the works and subject matter of related rights;

3. at the same time as paying the remuneration, it shall render accounts to the holders of copyright and related rights on the use of their rights.

(3) Holders of copyright or related rights who have not mandated the organization for the collective administration of economic rights to collect remuneration in accordance with item 4 of paragraph (1) of this Article shall be entitled to require the organization to pay them the remuneration accruing to them or to exclude their works or subject matter of related rights from the licenses that it grants to users.

*Verification of the Activities Conducted by Organizations  
for the Collective Administration of Economic Rights*

**47.**—(1) All organizations for the collective administration of economic rights shall be required to furnish information to Kyrgyzpatent, to enable it to verify their activities, with respect to

1. any amendment made to its statutes or other constituent instrument;
2. any bilateral or multilateral agreements that it concludes with foreign organizations administering similar rights;
3. any decisions taken by the general meetings;
4. the annual balance sheet, the annual report, including information on unclaimed remuneration, and the results of auditing of the accounts;
5. the persons empowered to represent the organization.

(2) Kyrgyzpatent may request an organization for any additional information required to check whether its activities are in compliance with the provisions of this Law, of the legislation on associations or of any other legislative instrument, or with its statutes.

(3) Until such time as an organization for the collective administration of economic rights has been set up, Kyrgyzpatent shall undertake the functions and obligations of such organizations in accordance with this Title.

## **Title V**

### **Sanctions for Copyright and Related Rights**

#### *Infringement of Copyright and Related Rights*

**48.** Infringement of the copyright and related rights provided for by this Law shall be liable to civil, criminal and administrative sanctions under the legislation of the Kyrgyz Republic.

#### *Civil and Other Sanctions for Copyright and Related Rights*

- 49.**—(1) Copyright and related rights shall be enforced by the courts, that may order
1. recognition of the rights;
  2. restoral of the situation obtaining prior to the infringement of rights;
  3. cessation of acts that infringe or are liable to infringe rights;
  4. payment of damages;
  5. surrender, in place of the payment of damages, of revenue derived by the infringer from the infringement;
  6. payment, in place of damages or the surrender of revenue, of an indemnity amounting to between 20 and 50,000 times the minimum salary laid down by the legislation of the Kyrgyz Republic, at the discretion of the court;
  7. the adoption of such other measures provided for in legislative texts as are required for the assertion of the rights.

The choice between the measures referred to in items 4, 5 and 6 of this paragraph shall belong to the holder of copyright or related rights.

(2) In order to assert his exclusive rights, the holder of copyright or related rights may, in accordance with the established procedure, institute proceedings before a court, an arbitration tribunal or a body responsible for carrying out the enquiry or the preparatory examination, according to their competence.

(3) The court or arbitration tribunal may order the confiscation of infringing copies of a work or phonogram. Infringing copies of the work or phonogram that have been confiscated shall be destroyed unless they are handed to the holder of copyright or related rights, at his request. The court or arbitration tribunal may decide the confiscation of the materials and equipment used for the manufacture of infringing copies of the work or phonogram.

(4) Any person who intentionally or negligently destroys the original of a work of fine art, a manuscript or a master copy of an audiovisual work (negative, original recording) shall be liable for damages to the author or holder of related rights, if that person so requires, for the material and moral prejudice he has suffered, in compliance with the conditions set out in paragraph (1) of this Article.

#### *Precautionary Measures*

**50.**—(1) The court or arbitration tribunal may decide to prohibit the defendant, or the person that they have sufficient reason to suspect of infringing copyright or related rights, from performing certain acts (manufacture, reproduction, sale, rental, importing or other use

under this Law, and also transport, storage or holding with a view to the placing on the market of allegedly infringing copies of works or phonograms).

(2) The court or arbitration tribunal may order seizure, either descriptive or actual, of allegedly infringing copies of works or phonograms and also of the materials and equipment intended for their manufacture.

Where sufficient evidence has been gathered to prove infringement of copyright or related rights, the body responsible for the enquiry or examination or the court shall be required to take precautionary measures in the form of the location and descriptive seizure of allegedly infringing copies of works or phonograms, the materials and equipment intended for their manufacture and also any documents capable of proving that acts contrary to the provisions of this Law have been committed, including where appropriate in the form of actual seizure and delivery to a custodian.

## **Title VI** **Final Provisions**

### *Entry into Force of this Law*

**51.**—(1) This Law shall enter into force on the day of its publication.

(2) This Law shall apply to relationships affecting the creation and use of the subject matter of copyright or related rights that arise after its entry into force.

(3) Prior to adaptation of the legislation of the Kyrgyz Republic to this Law, the provisions of the legislative texts of the Kyrgyz Republic shall apply where they are not contrary to this Law.

(4) In the case of works and of subject matter of related rights that were not previously protected by copyright, the provisions of this Law shall apply for the period remaining up to expiry of a term of 50 years calculated as from the first lawful disclosure or as from their creation if they had not been disclosed.

(5) The term of protection for the authors' rights referred to in Article 27 of this Law shall apply to works with respect to which the term of validity of copyright had not expired prior to publication of this Law.

(6) The Government of the Kyrgyz Republic shall be responsible, within a period of three months as from publication of this Law

— for drafting and submitting to the Parliament of the Kyrgyz Republic proposals for adaptation of the legislation to this Law;

— for adapting to this Law the regulatory texts issued by the Government of the Kyrgyz Republic, the Ministries and administrations of the Kyrgyz Republic.

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\* *Official Russian title:* Закон об авторском праве и смежных правах.

*Entry into force:* January 23, 1998.

*Source:* Communication from the Kyrgyz authorities.

*Note:* Translation by the International Bureau of WIPO.

\*\* Added by the International Bureau of WIPO.

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\* This sign, not reproduced here, corresponds to a capital P in a circle (*Editor's note*).