

**LAW OF THE REPUBLIC OF MOLDOVA ON
COPYRIGHT AND NEIGHBOURING RIGHTS
no. 293-XIII of November 23,1994 (Amended by
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Chapter I General Provisions

Legal Basis

Art. 1. - (1) Copyright and neighbouring rights and the protection and sanction of those rights shall be governed by the Constitution, by this Law and by other texts.

(2) This Law governs the relations that arise from the creation and use of literary, artistic and scientific works (copyright) and from the creation and use of performances, phonograms and the broadcasts of radio and television organisations (neighbouring rights).

International Treaties

Art. 2. Where an international treaty to which the Republic of Moldova is party contains rules different from those specified in this Law, the provisions of the international treaty shall apply.

Basic Concepts Art.

3. For the purposes of this Law:

- *author* means the natural person whose creative effort has led to the creation of a work;

database means a compilation of data or other materials both in a mechanically readable form and in other form, which by selection and arrangement of contents represents the result of a creative work;

audiovisual work means a work consisting of a series of coherent frames (recorded with or without sound) giving an impression of movement and which is intended for audiovisual perception (when recorded with sound);

collective work means a work created by more than one natural person at the initiative and under the direction of a natural or legal person who will publish the work under his own name;

derived work means the result of creative intellectual effort based on a preexisting work (translation, adaptation, stage adaptation, transformation, etc.);

computer means an electronic or similar device capable of processing information;

exploitation means any publication, public communication, public show, public performance, recording, rental, reproduction, broadcast, retransmission or other actions carried out using in any form and in any way copyright and neighbouring rights, as well as folklore expressions;

public communication (communication for general information) means the transmission by air, including by satellite, by cable or by any other means, of frames, sounds or frames and sounds of works, performances, phonograms or broadcasts of broadcasting or cable distribution organisations where such frames or sounds may be perceived by persons outside the usual family circle and their close acquaintances in places sufficiently distant for the frames or sounds not to be perceivable without such transmission. Communication of codified signals shall represent a transmission by air when the decoding means are offered to the public by the air broadcasting organisation or with its consent;

public show means the showing of an original or a copy of a work, a performance or a broadcast of a broadcasting or cable distribution organisation either directly or on a screen

by means of a film, a slide, a frame or any other device or process (except for transmission by air or by wire) where the work, the representation or performance may be perceived by persons outside the usual family circle and their close acquaintances; the public presentation of an audiovisual work consists in the showing of individual frames of an audiovisual work irrespective of order;

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

phonogram means any exclusively sound recording of performances, or of other sounds or representations thereof, except for recording of sounds included in the audiovisual work; a duplicate of a phonogram on any material medium whatsoever, made directly or indirectly from another phonogram and incorporating all or some of the sounds recorded on such phonogram, constitutes a copy of a phonogram;

performer means an actor, narrator, singer, musician, dancer or any other person who performs, sings, narrates or executes in any other way a literary or artistic work, or folklore expressions;

public performance means the presentation of works, performances, phonograms or broadcasts of broadcasting or cable distribution organisations, by reciting, playing, singing or any other means of expression either in a live show or with the aid of a device or process of any kind (except for transmission over the air or by wire) where the works, performances, phonograms or broadcasts may be perceived by persons outside the usual family circle and their close acquaintances;

recording means the fixing, by technical means, of sounds or frames, or representations thereof, or of both in a material form that permits them to be repeatedly perceived, reproduced or communicated;

rental means the transfer of ownership of an original or of a copy of a work or of a phonogram for a fixed period of time for direct or indirect profit;

information on rights administration means any information, provided by the right holder, identifying the work or any other object protected by the present law, the author or another right holder, or information on work or another object exploitation conditions, as well as any figures and codes containing such information, taking into account that any such pieces of information are shown on the work copy or on another object protected by the present law, or which occur in relation with the publication or public communication of such work or of the object concerned;

technical means of copyright and neighbouring rights protection means any technical equipment or its components which control the access to works or to objects of neighbouring rights, thus preventing or limiting the actions unauthorised by the holders whose rights are protected by the present law on copyright and neighbouring rights;

organisation for collective administration of economic rights means specialised legal person, established directly by copyright or neighbouring right holders, registered according to legislation, carrying out the collective administration of economic rights in accordance with the present law, within the terms of reference mandated to it by the copyright or neighbouring right holders;

audio-visual producer means natural or legal person, on whose initiative and responsibility the audio-visual work is created;

phonogram producer means the natural or legal person on whose initiative and responsibility the first fixation of a performance sounds, of other sounds or of some sound representations is made;

computer program means a set of instructions and commands expressed in words, codes or diagrams presented in machine-readable form and which may operate a computer

with a view to a specific aim or result; this concept covers both the preparatory material produced during development of the program and the audiovisual displays generated by the program;

publication means the causing to appear or putting into circulation of a work or a phonogram with the consent of the author or other holder of the copyright or neighboring rights, in sufficient quantity to satisfy the needs of the public; this concept also covers the lawful making available of a work or of a phonogram by computerized means;

reproduction means the making of one or more copies of a work or of a phonogram in any material form whatsoever, including an audio or video recording, and the recording of a work or of a phonogram with a view to temporary or permanent storage in an electronic (including digital) or optical form or in any other machine-readable form;

reprographic reproduction means the facsimile reproduction of the original of a written or other graphic work, whether in the same format, enlarged or reduced, by means of photocopying or with the aid of other technical means, except those of publishing; reprographic reproduction does not include recording in an electronic (including digital) or optical form or in any other machine-readable form;

retransmission means the simultaneous broadcasting (or cable transmission) by a broadcasting or cable distribution organisation of programs of another broadcasting or cable distribution organisation;

holder of copyright or neighbouring rights means either the author or performer or a natural person other than the author or performer or a legal person who enjoys the economic rights.

Chapter II Copyright

General Provisions

Art. 4.-(1) This Law shall protect as copyright works of the mind created in the literary, artistic and scientific fields, expressed in any material form that permits their reproduction, whether they have been disclosed or not, and whatever their form, purpose, value or means of reproduction.

(2) An author shall enjoy exclusive rights in his work by the sole fact of having created such work. Copyright shall subsist and shall be asserted without requiring registration of the work or the carrying out of any other action or formality.

(3) Copyright shall comprise prerogatives of an economic nature and prerogatives of a moral nature.

(4) Copyright shall subsist independently of any right of ownership in the physical object in which the corresponding work is expressed. Acquisition of such object shall not afford the owner of the object any of the rights afforded by this Law to authors.

Scope of Copyright

Art. 5.-(1) Copyright protection shall extend to

(a) works, irrespective of place of first publication, of which the copyright holder is a natural or legal person of the Republic of Moldova;

- (b) works published for the first time in the Republic of Moldova whatever the nationality of the holder of copyright in such works;
- (c) other works, in accordance with the international treaties to which the Republic of Moldova is party.

(2) A work shall be deemed published for the first time in the Republic of Moldova if it has been published in the country within 30 days of the date of its first publication abroad.

Works Protected by Copyright

Art. 6. -(1) Copyright shall extend to literary, artistic and scientific works expressed in the following forms:

- (a) written form (manuscript, typewritten text, musical score, etc.);
- (b) oral form (public recitation, public performance, etc.);
- (c) audio or video recording (mechanical, magnetic, digital, optical, etc.);
- (d) figurative form (drawing, sketch, painting, plan, industrial design, still from a cinematographic film or television or video film, photograph, etc.);
- (e) three-dimensional form (sculpture, model, mock-up, structure, etc.);
- (f) any other form, known or as yet unknown.

(2) Copyright protection shall extend to

- (a) literary works (books, brochures, articles, computer programs, etc.);
- (b) dramatic or dramatico-musical works, scenarios or storyboards, librettos, film synopses;
- (c) musical works, with or without words;
- (d) choreographic works and mimed works;
- (e) audiovisual works (cinematographic films, television and video films, static projections, etc.);
- (f) works of painting and sculpture, graphic works and other works of fine art;
- (g) works of architecture, town planning and park and garden design;
- (h) works of applied art;
- (i) photographic works and works obtained by processes analogous to photography;
- (j) maps, plans, sketches and three-dimensional works relating to geography, topography, architecture and other scientific fields;
- (k) derived works and composite works (translations, adaptations, arrangements and other transformations of literary, artistic or scientific works, instrumental adaptations of musical works, and encyclopaedias, anthologies, collections, databases, etc.); derived works and composite works shall be protected by copyright regardless of any protection that may attach to the works from which they are derived or to the works they include;
- (1) other works.

(3) The protection of computer programs shall extend to all types of programs (including operating systems) whatever the language and form in which they are expressed, including source code and object code.

(4) Copyright shall extend to architectural solutions (works) with respect to both the whole and to their various elements, including works created on commission.

Creations Not Protected by Copyright

Art. 7.-(1) Copyright shall not extend to

- (a) Official documents (laws, court decisions, etc.) or to the official translations thereof;
- (b) State emblems and official signs (flags, armorial bearings, decorations, monetary signs, etc.);
- (c) Folklore expressions;
- (d) Daily news and facts of simple informational nature.

(2) The mode of expression rather than ideas, processes, functioning methods or mathematical concepts as such shall be protected by copyright.

*Acknowledgement of Authorship; Presumption of
Authorship; Registration of Works*

Art. 8.-(\) In the absence of proof to the contrary, the person or persons under whose name a work has been disclosed shall be deemed to be the authors thereof.

(2) A holder of rights may have his rights acknowledged by means of a copyright notice which should be placed on each copy of the work and should consist of the following three elements:

- (a) a circled capital letter C: ©;
- (b) the name (or designation) of the holder of the exclusive rights;
- (c) the year of first publication of the work.

(3) The holder of exclusive rights in a work, whether disclosed or not, may have his rights entered in the official registers at any time during the subsistence of copyright.

(4) An official certificate shall be issued to the person who registers a work. Pursuant to Article 4(2) and paragraph (1) of this Article, the certificate shall not imply a presumption of authorship. However, in the event of a dispute, it may constitute a presumption of authorship for the court in the absence of proof to the contrary.

(5) Official registration of a literary, artistic or scientific work shall be effected by the National Copyright Agency.

Moral Rights

Art. P.-(l) An author of a work shall enjoy the following moral rights:

- (a) the right of authorship - the right to be acknowledged as the author of his work and the right to require such acknowledgement, including the placing of his name on all copies of a published work or reference to his name at each public performance of a work where such is physically possible;
- (b) the right to be named - the right of the author to decide how he is to be designated in relation to use of his work (by his true name, a pseudonym or anonymously);
- (c) the right to respect for the integrity of his work;
- (d) the right to respect for his reputation - the right to protection of his work against any distortion, mutilation or other derogatory act liable to prejudice his honor and dignity as an author;
- (e) the right to disclose his work or to authorize or prohibit disclosure in any form whatsoever, including the right to reconsider or the right of withdrawal. Withdrawal of a work from the trading network consequently to the changing of the author's principles shall

be permissible provided that the author pays in advance the damages incurred by the holder of the right to exploit the work.

(2) Moral rights shall be inalienable; if an author transfers his economic rights, he shall maintain his moral rights.

Economic Rights

Art. 10.-(\) An author or other holder of copyright shall enjoy the exclusive right to exploit his work in any form and by any means.

(2) The exclusive right to exploit a work means the right to perform, authorize or prohibit the following acts:

- (a) reproduction of the work;
- (b) distribution of copies of the work by sale, rental or in any other way;
- (c) importing of copies of the work for the purposes of distribution, including copies made with the authorization of the author or other holder of copyright;
- (d) presentation of the work in public;
- (e) public performance of the work;
- (f) communication of the work to the public, including by retransmission;
- (g) translation of the work;
- (h) transformation, adaptation, arrangement or any like modification of the work;
- (l) communication of the work for general information in such a manner as to enable all public representatives to access the work, on their own choice, from any place and at any time (the right to public communication in interactive regime, including by Internet);
- (j) communication of the work by air (including by satellite) or by cable.

(3) The right to distribute by rental the original or copies of an audiovisual work, a computer program, a database, a work fixed on a phonogram or a musical work in the form of a score shall belong to the author or other holder of copyright independently of the right of ownership in such copies.

(4) The exclusive rights of an author in the exploitation of a project for architecture, town planning or park and garden design shall also extend to the practical implementation of such project.

(5) The amount and manner of payment of remuneration due to the author for each form of exploitation of his work shall be laid down in the author's contract or in the contracts which the organisations for the collective administration of economic rights conclude with users.

Works of Joint Authorship

Art. 11.-(\) Copyright in a work which is the result of the joint creative effort of two or more persons shall belong in common to the joint authors, regardless of whether the work constitutes an indivisible whole or is composed of parts.

(2) A part of a work shall be deemed independent if it may be used separately from the other parts of the work.

(3) Each of the joint authors shall maintain copyright in the part of the work he has created if that part is independent, and he may use it as he sees fit.

(4) The relations between the joint authors should be covered by a contract. In the absence of such contract, all the joint authors shall enjoy jointly the copyright in the work and the corresponding remuneration shall be divided between them proportionately to everybody's contribution, if it can be determined.

Copyright in Audiovisual Works

Art. 12.-(I) The following shall be recognized as authors or joint authors of an audiovisual work:

- (a) the author of the scenario (scriptwriter);
- (b) the film director;
- (c) the composer of any musical work (with or without words) created specifically for the audiovisual work;
- (d) the cameraman;
- (e) the artistic director.

(2) The author of a preexisting work that has been incorporated, after transformation or unchanged, in an audiovisual work shall also be deemed a joint author of such audiovisual work.

(3) Unless otherwise laid down by contract, the conclusion of an author's contract for creating an audiovisual work shall imply assignment, in exchange of an equitable remuneration, by the joint authors to the producer of such work of the following exclusive rights of exploitation: the rights of reproduction, distribution, presentation to the public, public performance, communication for general information in interactive regime, communication to the public and the rights of subtitling and dubbing.

(4) The producer of an audiovisual work shall be entitled to advertise his name or designation or to require that it be advertised in respect of any exploitation of the work.

(5) The provisions of paragraph (3) of this Article shall apply with respect to the other authors who have made a creative contribution to the making of the audiovisual work.

(6) Notwithstanding the provisions of paragraph (3) of this Article, the scriptwriter, the scene director, the cameraman, the scene painter, the author of a musical work, with or without words, specifically created for an audiovisual work shall maintain the right to remuneration for each public performance or each communication to the public of the work as also for any rental of copies of the audiovisual work.

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

Copyright in Composite Works

Art. 13.-(I) The compiler of a collection or any other composite work shall enjoy copyright in the compilation or arrangement he has made of the materials if such selection or arrangement constitutes the result of a creative effort.

(2) The copyright of the compiler shall not prejudice the rights of the authors of each work included in the composite work.

(3) The authors of the works included in a composite work shall have the right to exploit their works independently of the composite work unless otherwise laid down in the author's contract.

(4) Notwithstanding the copyright of the compiler, any other person may make an independent compilation or an independent arrangement of the same materials for the purpose of creating his own composite work.

(5) Selections containing various informative materials (articles and information, allocutions and essays, diagrams and tables, etc.), if such selection or arrangement constitutes the result of an intellectual activity, shall be protected as such. Protection shall not extend to numerical data nor to the content of the informative materials included in the selection.

Copyright in Derived Works

Art. 14.-(1) Translators and other authors of derived works shall enjoy copyright in the translations, adaptations, arrangements or other transformations made by them.

(2) The copyright of a translator or other author of a derived work shall not prejudice the rights of the author of the work that has been translated, adapted, arranged or otherwise transformed.

(3) Notwithstanding the copyright of the translator or other author of a derived work, any other person may carry out his own translation or transformation of the same work.

Copyright in Collective Works

Art. 15.-(1) Natural or legal persons who publish encyclopaedias, dictionaries, collections of scientific works - appearing periodically or regularly - newspapers, reviews and other periodicals shall enjoy an exclusive right to exploit such collective works as a complete entity. Such persons shall have the right to advertise their name or designation or to require that it be advertised in relation to any exploitation of such collective works.

(2) Unless otherwise agreed in the author's contract, the authors of works included in a collective work shall maintain their exclusive rights in their own works and may exploit them independently of the collective work as a whole.

Right of Access to Works of Fine Art; Resale Royalty

Art. 16.-(1) Reproduction of a work of fine art for commercial purposes shall be permitted under the contract signed with the author.

(2) The author of a work of fine art shall have the right to require the owner of the work to allow him the possibility of reproducing 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.

(3) Creation and distribution of a work of fine art containing a portrait shall be permitted with the consent of the represented person or testamentary heirs of the represented person.

(4) For each public resale of the original of a work of fine art (sale by auction or at an art gallery, exhibition, shop, etc.), the vendor shall be required to pay to the author or his heirs remuneration representing 5% of the resale price (resale royalty) where such price is at least 20 times the minimum wage.

(5) This right shall be inalienable during the lifetime of the author and may be transferred only to the legal or testamentary heirs of the author, for the duration of copyright.

*Transfer of Copyright by Succession;
Term of Copyright*

Art. 17. -(1) Copyright shall be transferred by succession.

(2) An author may, in accordance with procedures identical to those for the appointment of an executor, specify the person to whom he entrusts the protection of the author's rights in his works after his death. That person shall fulfil his mandate throughout his life.

(3) Copyright shall have effect throughout the lifetime of the author and for 50 years after his death computed as from January 1 of the year following that of his death, except in the cases referred to in paragraphs (4), (5) and (7) of this Article.

(4) Copyright in audiovisual works shall be protected for 50 years and copyright in works of applied art for 25 years computed from the day of lawful publication of such works or from the day of their creation if they have not been published, or computed as from January 1 of the year following that of publication or of creation of the work.

(5) Copyright in an anonymous or pseudonymous work shall have effect for 50 years after publication of the work computed as from January 1 of the year following that of publication of the work, except with regard to the works referred to in paragraph (4) of this Article. If the author of an anonymous or pseudonymous work reveals his identity or if his identity becomes obvious during that period of time, the provisions of paragraphs (3) and (4) of this Article shall apply.

(6) A publisher who has lawfully published an anonymous or pseudonymous work shall be deemed under this Law to represent the author and to be empowered, to that end, to assert the rights and legitimate interests of the author.

(7) Copyright in a posthumous work shall be protected for 50 years as from the day of first publication of the work, with the proviso that publication shall have taken place within 30 years following the death of the author; this provision shall not apply to the works referred to in paragraph (4) of this Article.

(8) Copyright in a work of joint authorship shall be protected until the death of the last surviving joint author and, after his death, for 50 years computed from January 1 of the year following that of his death.

(9) The moral rights of authors shall be protected without limitation in time. After the death of an author, the protection of his moral rights shall be assumed by his heirs and by the organisations duly authorized to assume the defence of authors' rights. Such organisations shall also assume protection of moral rights in the absence of heirs or where the copyright of the heirs has terminated.

(10) On expiry of the term of copyright, works shall fall into the public domain.

(11) Works in the public domain may be used freely subject to respect for the moral rights of the author. The Government may determine the amount of the royalties to be paid into the cultural funds (literary, musical, fine art fund, etc.) for the use of works of nationals of the Republic of Moldova that are in the public domain.

(12) If the term of protection for a work by a foreign author that is used in the Republic of Moldova is greater, under the laws of the country of the author, than the term set out in this Article, the term of protection laid down by this Law shall apply; if it is lesser, the term of protection laid down by the laws of the country of the author shall apply.

Copyright in Works Created in the Execution of Duties

Art. 18.-(\) The moral rights in a work created in the execution of explicit instructions from an employer or service duties (service creation) shall belong to the author of such work.

(2) Unless otherwise agreed by contract, the exclusive right to exploit a service creation by the means appropriate to the purpose of the instructions shall belong for a period of three years to the employer on behalf of whom the work has been created. On expiry of this period, the economic rights shall revert to the author.

(3) The amount of remuneration due to the author for each type of use of a service creation shall be laid down by contract between the author and the employer.

(4) The name of the author shall be shown each time the service creation is used, where physically possible. The employer shall also have the right to require his name (or designation) to be shown each time the service creation is used.

Use of the Works of Authors by Other Persons

Art. 19. (1) The use by other persons of an author's work, unchanged, after transformation or in translation, shall require a contract to be concluded with the author or his successors in title, except in the cases referred to in Articles 20 and 23 of this Law. The limitations provided for with respect to authors' rights shall apply on condition that the use shall not prejudice normal exploitation of the work nor the rights and legitimate interests of the authors.

The author of a literary work, dramatic, dramatico-musical and/or musical work, recorded as a phonogram or included into an audiovisual work shall be entitled to a royalty for each public resale of the copies of this work. The amount of the royalty shall be determined by agreement between the beneficiary and the author or by license granted by the organisation for the collective administration of economic rights.

Chapter III Limitations on Economic Rights

Reproduction of Works for Personal Use

Art. 20.-(1) The reproduction of a single copy of a lawfully published work shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration if made by a natural person for his own exclusive personal use and in compliance with the conditions set out in paragraph (3) of this Article.

- (2) The faculty afforded by paragraph (1) of this Article shall not extend to reproduction
 - (a) of a work of architecture in the form of a building or similar construction;
 - (b) a database;
 - (c) a computer program, except in the cases referred to in Article 23;
 - (d) of a complete book, a musical score or the original of a work of fine art;
 - (e) unauthorised reproduction of works brought to the knowledge of the public by public communication, in interactive regime.

(3) The holder of copyright in a work that has been reproduced in accordance with paragraph (1) of this Article shall be entitled to compensatory remuneration. Such remuneration in the amount of 3% of the retail sale price shall be paid by enterprises (including manufacturers or importers) of recording appliances (sound recording equipment, video recorders, etc.) and mediums (texts and cassettes for sound or video recording, optical discs, compact discs, etc.) used for reproduction.

(4) The collection, distribution and payment of the compensatory remuneration shall be undertaken by the organisations for the collective administration of the economic rights of authors, performers and phonogram producers, in accordance with an agreement concluded by such organisations. Unless otherwise stated in such agreement, the remuneration shall be shared as follows: 40% to authors, 30% to performers and 30% to phonogram producers.

(5) The amount of the compensatory remuneration and the manner of payment shall be determined by agreement between the above-mentioned enterprises (including manufacturers or importers), on the one hand, and the organisations for the collective administration of the economic rights of authors, performers and phonogram producers, on the other.

(6) The compensatory remuneration shall be shared amongst the authors of the works referred to in paragraph (3) of this Article, where it may be assumed that their works have been subject to reproduction for personal use, and the other holders of copyright or neighbouring rights in such works.

(7) No compensatory remuneration shall be paid in respect of the equipment and recording mediums referred to in paragraph (3) of this Article where they are exported, where they constitute professional equipment not intended for home recording or where they are imported by a natural person for his own exclusive use.

(8) With the author's consent or with the consent of another copyright holder and without paying any royalty, the temporary reproduction of the work shall be allowed subject to the following conditions:

- a) the reproduction shall be carried out in the process of digital broadcasting of the work or during the action by which the work saved in digital form becomes accessible for perception;
- b) the reproduction shall be initiated by the natural or legal person who, upon copyright holder's consent or under the provisions of the present law, has the right in the above-mentioned digital broadcasting or in the action assuring work accessibility to perception;
- c) reproduction shall accompany the digital broadcasting or the action assuring work accessibility to perception within the normal operation process of the used equipment and shall entail automatic removal of the copy, excluding finding and exploitation of the work for any other purposes, except for cases specified in subparagraphs (a) and (b).

*Reprographic Reproduction by Libraries;
Archive Services and Teaching Establishments*

Art. 21.-(V) It shall be permissible without the consent of the author or other holder of copyright and without payment of remuneration, but subject to mention of the name of the author whose work is used and of the source of the borrowing, to make reprographic reproduction in one copy, without gainful intent and to the extent justified by the aim pursued,

(a) of a lawfully published work if the reproduction, in one copy, is made by a library or an archive service and if its purpose is to replace copies that have been lost, destroyed or have become unusable or to make a copy available to other libraries or similar archive services in order to replace in their own collections works that have been lost, destroyed or have become unusable, where it is impossible to obtain copies of the work through usual channels;

(b) of isolated articles and other succinct works or of short extracts of written works (save for computer programs) that have been lawfully published if such reproduction, in one copy, is made by a library or archive services to meet the needs of natural persons who use the copy so obtained for the purpose of study or research or for their own personal use;

(c) of isolated articles and other succinct works or of short extracts of written works (save for computer programs) that have been lawfully published if such reproduction is made by a teaching establishment and the copy so obtained is intended for use in the classroom.

(2) Reprographic reproduction as referred to in paragraph (1)(b) and (c) of this Article shall be permitted on condition that no reprographic reproduction license is offered by an organisation for the collective administration of the economic rights of authors in such a manner that the library, archive service or teaching establishment is aware or should be aware thereof.

Free Use of Works

Art. 22.-(1) The following shall be authorized without the consent of the author or other holder of copyright and without payment of remuneration, but subject to mentioning the name of the author whose work is used and the source of the borrowing:

(a) quotation in the original language or in translation, in articles or studies, press reviews or radio and television programs of a critical, polemic, teaching, scientific or informational nature, of extracts from lawfully published works; in order to be authorized without payment of remuneration, the length of quotations may not exceed,

for an isolated extract (prose): 400 words,
 for more than one extract from the same work: in the case of prose, 300 words for each extract, but not more than one author's sheet in all; in the case of poetry, 40 lines, subject to the extract not constituting more than one quarter of the work of poetry concerned;

(b) reproduction for informational purposes in the press, on radio or television, in the original language or in translation, of extracts of published works (on condition that they form part of a report), of addresses given in public, of reports, and of published articles concerning matters of economic, political, social or religious current affairs; broadcasting and cable distribution organisations may only make ephemeral recordings of such works (for a period of time not exceeding six months);

(c) reproduction in Braille for the use of the blind of published works, except for works especially created for such means of reproduction;

(d) public performance, during official or religious ceremonies or during funeral services of lawfully published works of music;

(e) reproduction of works for the purposes of legal or administrative proceedings, to the extent justified by such purposes;

(f) reproduction or communication to the public of works of architecture, photographic works and works of fine art permanently located in a public place, except where presentation of the work constitutes the main purpose of the reproduction or if it is used for commercial purposes.

(2) The exporting of a copy of a work by a natural person for his own exclusive use shall be permitted without the consent of the author or other holder of copyright and without payment of remuneration.

*Reproduction of Computer Programs;
 Decompilation of Computer Programs*

Art. 23.-(1) Any person lawfully in possession of a copy of a computer program may, without the consent of the author and without payment of royalty,

(a) make alterations to the computer program or the database where they are necessary for use of the equipment of the user, or correct any obvious errors, except as otherwise provided by contract;

(b) make a backup copy of the computer program provided that the copy is intended either to replace a lawfully held copy if such copy has been lost, deteriorated or rendered unusable;

(c) examine, study and experiment the way in which the computer program functions with the view to determining the ideas and principles which are at the basis of each element of the program, if this is carried out during any permissible action of launching for execution, showing on computer screen, execution, forward or saving of the program.

(2) A backup copy of a computer program may not be used for any purposes other than those referred to in paragraph (1) of this Article and shall be destroyed in the event of possession of the copy of the computer program or of the database ceasing to be lawful.

(3) Any person who lawfully holds a copy of a computer program may, without the consent of the author or other holder of copyright, decompile the computer program

(reproduce and translate the object code to source code) in order to achieve interoperability of the program with other computer programs, on condition

(a) that the information needed for interoperability is not already available to the person concerned from other sources;

(b) that the acts concerned are limited to those elements of the original program whose decompilation is essential to ensure interoperability;

(c) that the information obtained by means of decompilation is used solely for the above-mentioned purposes and that it is neither communicated to other persons nor used to produce a computer program similar to the original program or to perform any other act that infringes copyright.

(4) Computer programs shall be protected as literary works, regardless of their form and manner of expression. The author of a computer program shall enjoy all moral rights and economic rights referred to in Articles 9, 10 and 17.

Chapter IV **Authors' Contracts**

Transfer of Economic Rights by Author's Contract

Art. 24.-(1) The economic rights referred to in Article 10 may be transferred by the author or other holder of copyright by means of an author's contract.

(2) Economic rights may be the subject of an author's contract for the transfer of exclusive rights (exclusive license) or an author's contract for the transfer of non-exclusive rights (non-exclusive license):

(a) under an exclusive license, the sole licensee may use the work by specified means and within the limits laid down by the contract and has the right to authorize or prohibit similar use of the work by other parties;

(b) under a non-exclusive license, the licensee may use the work in the same way as other persons who have obtained authorization to use it by the same means, with no right to allow or to prohibit other persons from using this work in any form and in any manner.

(3) Unless otherwise agreed by contract, the rights under an author's contract shall be deemed non-exclusive.

Conditions and Form of Authors' Contracts

Art. 2J.-(1) An author's contract shall be concluded in written form and shall set out the types of use of the work (the rights transferred by the contract), the term of the contract and the territory for which rights are transferred, the amount of remuneration or the conditions for determining such amount for each of the types of use of the work, the conditions and time limits for payment of the remuneration and any other conditions considered essential by the parties. An author's contract on exploitation of publicized works in periodic press may also be concluded verbally.

(2) If an author's contract does not stipulate the territory for which a right is transferred, such transfer shall have effect on the territory of the Republic of Moldova only.

(3) If an author's contract does not stipulate its term of validity, it shall be deemed concluded for three years as from the date of conclusion if it concerns use of a work in its original form or for five years if it concerns use of a work in a modified form or in translation.

(4) The National Copyright Agency shall draw up model authors' contracts in collaboration with the organisations concerned.

(5) Any clauses in an author's contract that are contrary to the provisions of this Law shall be deemed null and void; the conditions set out in this Law shall apply in place thereof.

(6) Any clause in an author's contract that restricts the author's future faculty to create works on a given subject or in a given field shall be null and void.

(7) An author's contract shall define the remuneration in the form of a percentage of the revenue obtained from the use of the work by the envisaged means, in the form of a lump sum, in accordance with a scale or in any other way. The Government, on the initiative of the State Agency for Copyright, in common agreement with creation unions, shall set the minimum tariffs for the author's royalties and the manner in which they shall be applied. Where such rates have been fixed, no author's contract may foresee payment of lower remuneration.

Chapter V **Neighbouring Rights**

Holders of Neighbouring Rights; *Scope of Neighbouring Rights*

Art. 26.-(Y) Performers, phonogram producers and broadcasting and cable distribution organisations shall be the holders of neighbouring rights. Neighbouring rights shall be exercised without prejudice to author's rights.

(2) Phonogram producers and broadcasting and cable distribution organisations shall exercise their rights under this Law on the basis of a contract concluded with the authors and performers (or group of performers) who perform the work that is recorded on a phonogram or is broadcast over the air or by cable.

(3) The generation and exercise of neighbouring rights shall not be subject to compliance with any formality. In order to advertise their rights, phonogram producers and performers may place a reservation on each copy of a phonogram or on each phonogram sleeve, to be comprised of the following three elements:

(a) a circled capital letter P:

(b) the name (designation) of the holder of the exclusive neighbouring rights;

(c) the year of first publication of the phonogram.

(4) The rights of performers shall be protected in accordance with this Law if

(a) the performer is a national of the Republic of Moldova;

- (b) the first performance took place on the territory of the Republic of Moldova;
- (c) the performance was fixed on a phonogram meeting the conditions set out in paragraph (5) of this Article;
- (d) the performance has not been fixed on a phonogram, but is included in a program broadcast by a broadcasting or cable distribution organisation meeting the conditions set out in paragraph (6) of this Article.

(5) The rights of phonogram producers shall be protected in accordance with this Law if

- (a) the phonogram producer is a national of the Republic of Moldova or a legal person with headquarters in the Republic of Moldova;
- (b) the phonogram was published for the first time in the Republic of Moldova or was published here within 30 days of the date of its first publication in another State.

(6) The rights of broadcasting and cable distribution organisations shall be protected in accordance with this Law if the organisation has its headquarters in the Republic of Moldova and broadcasts from transmitters located on the territory of the Republic of Moldova.

(7) The neighbouring rights of foreign natural and legal persons shall be protected in accordance with the international agreements to which the Republic of Moldova is party.

Rights of Performers

Art. 27.-(I) A performer shall enjoy the following moral rights and economic rights with respect to his performance:

- (a) the right to be named;
- (b) the right to respect for his reputation - the right to protection of his performance against any mutilation or distortion or other derogatory act liable to prejudice his honor or dignity;
- (c) the right to exploit his performance in any form, including the right to remuneration for each form of use.

(2) A performer shall enjoy the exclusive right to authorize or to prohibit the following acts:

- (a) recording of a performance not previously recorded;
- (b) direct and indirect reproduction, in any form and in any manner, of his performances recorded on phonograms;
- (c) broadcasting of the performance by air or by cable or making any other communication of it to the public, including by retransmission, except where a recording of the performance for which he has given his consent or a performance that has been broadcast over the air or by cable is used for that purpose;
- (d) rental of the original and copies of performances registered on phonograms, even after their distribution, with the performer's consent and notwithstanding the property right on copies;
- (e) distribution by sale or by other way of transmission of property right of the original and copies of performances recorded on phonograms;
- (f) communication for general information, by cable or by radio-electric communication means, of the performance recorded on phonogram in such a way as to enable all the

representatives of the public, on their own choice, to access the performance from any place and at any time (the right to public communication in interactive regime, including by Internet).

(3) The authorizations referred to in paragraph (2) of this Article shall be given by the performer or, in the case of a collective performance, by the leader of the group or other person appointed by the group, by means of a written contract concluded with the user.

(4) The authorizations referred to in paragraph (2)(a) to (c) of this Article shall not be required for the rebroadcasting of a performance, recording for the purposes of broadcasting and reproduction of such recording by a broadcasting or cable distribution organisation if such authorizations are explicitly contained in the contract concluded by the performer with such organisation. The amount of the remuneration to be paid to the performer for such use shall also be stipulated in the contract.

(5) Conclusion of a contract to create an audiovisual work by a performer and the director shall imply transfer by the performer of the rights referred to in paragraph (2) of this Article.

(6) The director of an audiovisual work shall not be entitled to use the sound or the images fixed in such work separately unless such is foreseen in the contract.

(7) The exclusive right to exploit a performance created pursuant to explicit instructions by the employer or to service duties shall belong to the person to whom the interpreter is bound by employment contract **for a period of three years**, unless otherwise provided in such contract.

(8) A performer may transfer the exclusive rights afforded by paragraph (2) of this Article to other persons by contract.

Rights of Phonogram Producers

Art. 28 -(1) A phonogram producer shall enjoy the exclusive right to exploit his phonogram in any form, including the right to remuneration for each type of use of the phonogram.

(2) The exclusive right to exploit a phonogram shall mean the right to authorize or prohibit

- (a) direct or indirect reproduction, in any form and any manner, of the phonograms;
- (b) distribution of copies of the phonogram (by sale, rental, etc.);
- (c) adaptation or any other transformation of the phonogram;
- (d) importation for the purposes of distribution of copies of the phonogram, including copies made with the authorization of the phonogram producer.
- (e) communication for general information, by cable or by radio-electric communication means, of the phonogram in such a way as to enable all the representatives of the public, on their own choice, to access the phonogram from any place and at any time (the right to public communication in interactive regime, including by Internet).

(4) The right to distribute copies of a phonogram by rental shall belong to the phonogram producer irrespective of any right of ownership in the copies.

(5) A phonogram producer may transfer the exclusive rights afforded by paragraph (2) of this Article to other persons by contract.

Rights of Broadcasting and cable Distribution Organisations

Art. 29.-(1) A broadcasting or cable distribution organisation shall enjoy the exclusive right to exploit its broadcast in any form, including the right to remuneration for each type of use of the broadcast.

(2) The exclusive right to exploit a broadcast shall mean the right to authorize or to prohibit

- (a) recording of the broadcast;
- (b) reproduction of a recording of the broadcast;
- (c) simultaneous broadcasting of the broadcast by another broadcasting or cable distribution organisation;
- (d) communication of the broadcast to the public over the air or by cable;
- (e) communication of the broadcast to the public in places to which a charge is made for admission.
- (f) communication for general information, by cable or by radio-electric communication means, of the broadcast in such a way as to enable all the representatives of the public, on their own choice, to access the broadcast from any place and at any time (the right to public communication in interactive regime, including by Internet).

Limitation of the Rights of Performers, Phonogram Producers and Broadcasting and Cable Distribution Organisations

Art. 30.-(1) Notwithstanding the provisions of Articles 27 to 29 of this Law, it shall be permissible to use a performance, a phonogram or a program broadcast or transmitted by cable, or recordings thereof, without the consent of the performer, the phonogram producer or the broadcasting or cable distribution organisation and without payment of remuneration.

- (a) in order to quote short extracts of the performance, the phonogram or the program broadcast or transmitted by cable, on condition that the quotation is made for the purposes of science, research, polemics, criticism or information and that it remains commensurate with such aims;
- (b) in teaching or scientific research as an illustration in the form of short extracts;
- (c) for inclusion in the reporting of current events of short extracts from the performance, the phonogram or the program broadcast or transmitted by cable;
- (d) in the cases referred to in Article 22.

(2) It shall be permissible, without the consent of the performer, the phonogram producer or the broadcasting or cable distribution organisation, for natural persons to use performances, broadcasts or recordings thereof or to reproduce phonograms for personal purposes. Such acts shall be subject to payment of remuneration as set out in Article 20.

(3) Application of the limitations on neighbouring rights shall in no way prejudice either the normal exploitation of the subject matter of neighbouring rights or normal exploitation of the works incorporated therein and shall not prejudice either the legitimate interests of the

performer, the phonogram producer or the broadcasting or cable distribution organisation or those of the authors of the works involved.

Use of Phonograms Published for Commercial Purposes

Art. 31.-(1) The following acts shall be permitted without the consent of the producer of a phonogram published for commercial purposes and of the performer whose performance is recorded on such phonogram, subject to payment of remuneration:

- (a) public performance of the phonogram;
- (b) communication of the phonogram over the air;
- (c) communication of the phonogram by cable;
- (d) retransmission of the phonogram.

(2) For the purposes of this article, a phonogram brought to the knowledge of the public, by cable or by radio-electric communication means, in such a way as to enable all the representatives of the public, on their own choice, to access the phonogram from any place and at any time, shall be deemed published for commercial purposes.

(3) The collection, distribution and payment of the remuneration referred to in paragraph (1) of this Article shall be carried out by one of the organisations for the collective administration of the rights of phonogram producers and performers, in accordance with an agreement concluded by those organisations. Unless otherwise stipulated in the agreement, the remuneration thus collected shall be distributed as follows: 40% to the authors, 30% to the performers and 30% to the phonogram producers.

(4) The amount of the remuneration applicable to each type of use of a phonogram and the manner of its payment shall be determined by agreement between the user of the phonogram or the unions (associations) of users, on the one hand, and the organisations for the collective administration of the rights of phonogram producers and performers, on the other, or, if the parties do not reach an agreement, by a body specially empowered to that effect.

(5) For didactic and scientific purposes, educational and scientific institutions, as well as libraries shall have the right, without the phonogram producer's consent, to select and to make use of a limited volume (not more than 100 copies per institution) of collections of phonograms with musical, literary and scientific works out of the phonograms lawfully released into free civil circulation by their first sale, subject to the following conditions:

- a) the package of the used collection shall contain the list of used creations, the names of music and text authors, the name of the performer (group of performers) and the name of the producer of the used phonogram, the number of the reproduced copies, the title and the address of the producer of the respective collection and the date of reproduction;
- b) the royalties shall be paid by the organisation for collective administration of economic rights which issued the respected license. The amount of the royalties shall constitute 50% of the minimum tariff set by legislation for usage in such a manner of phonograms for commercial purposes.

Ephemeral Recording of a Performance or of a Program Broadcast by a Broadcasting or Cable Distribution Organisation

Art. 32. A broadcasting or cable distribution organisation may, without the consent of the performer, the phonogram producer or the broadcasting or cable distribution organisation concerned, make an ephemeral recording of a performance or a broadcast and reproduce such recording

(a) if it has obtained prior authorization to broadcast the performance or program concerned by the ephemeral recording it wishes to make or to reproduce;

(b) if it makes such ephemeral recording and reproduces it using its own facilities and for its own broadcasts;

(c) on condition that it destroys such recording at the latest on expiry of the period of time referred to in Article 22(1)(b) with respect to ephemeral recordings of literary, artistic or scientific works.

Term of Neighbouring Rights

Art. 33.-(1) The rights of performers referred to in Article 27 shall have effect for 50 years as from the first performance. The performer's right to be named and his right for respect for his reputation shall be protected without limitation in time.

(2) The rights of phonogram producers referred to in Article 28 shall have effect for 50 years as from first publication of the phonogram or for 50 years as from its first recording if the phonogram is not published during that period.

(3) The rights of broadcasting or cable distribution organisations referred to in Article 29 shall have effect for 50 years as from the broadcasting or cable transmission of the program by such organisation.

(4) The periods of time referred to in paragraphs (1), (2) and (3) of this Article shall be computed as from January 1 of the year following that in which the legal event that initiates the period has occurred.

(5) The rights afforded by this Chapter shall pass to the heirs (in the case of a legal person, to his successors in title) of the performer, the phonogram producer or the broadcasting or cable distribution organisation, for the remainder of the periods of time referred to in paragraphs (1), (2) and (3) of this Article.

(6) After the death of a performer, the protection of his moral rights shall be assumed in accordance with Article 17(9).

**Chapter VI Collective Administration of
Economic Rights**

*Functions of State Agencies in the Protection of
Copyright and Neighbouring Rights*

Art. 34.-(1) The National Copyright Agency shall be responsible for protecting the rights of authors and holders of neighbouring rights.

(2) The National Copyright Agency shall have the following main functions:

- (a) draw up national policies in the field of copyright and neighbouring rights legislation and submit proposals to improve such legislation;
- (b) ensure compliance with the legislation applicable in that field, as well as confiscation of copies of works or phonograms presumed to be pirated; draw up, where necessary, official reports on infringement of copyright and/or neighbouring rights in accordance with the Minor Offences Code;
- (c) provide legal assistance to the holders of copyright and neighbouring rights;
- (d) represent the Republic of Moldova in the international organisations that are concerned with the protection of copyright and neighbouring rights;
- (e) effect the registration of works in accordance with Article 8(3) to (5);
- (f) notice the registration of the organisations for the collective administration of economic copyright and neighbouring rights, as well as to control their activity;
- (g) carry out any other task assigned to it by the Government.

The National Copyright Agency

Art. 34/1 - (1) The National Copyright Agency has the status of a legal person and is answerable to the Government.

(2) The National Copyright Agency is managed by the Director General, appointed and dismissed by the Government.

(3) The Regulation of the National Copyright Agency shall be elaborated in accordance with the present Law and shall be approved by the Government.

*Establishment of Organisations for the
Collective Administration of Economic Rights*

Art. 35.-(1) Where the individual exercise of copyright and neighbouring rights encounters difficulties, there shall be established organisations for the collective administration of economic rights. Such organisations shall operate in accordance with this Law, on the basis of statutes and within the limits of the powers they receive from the holders of copyright and neighbouring rights (authors of literary, artistic or scientific works, performers, phonogram producers, etc.).

(2) The operation of the organisations for the collective administration of economic rights shall be self-financed.

(3) There may be established either organisations administering a specific type of right on behalf of various categories of holder or organisations administering various rights on behalf of a single category of copyright holder or organisations administering various rights for various categories of holder.

(4) If for collective administration of a category of economic copyright or neighbouring rights several organisations for collective administration of economic rights are created, the licenses for exploitation of copyright or neighbouring rights shall be issued to beneficiaries by one of these organisations, with the written consent of the others. In the lack of such

agreement, the State Agency on Copyright shall decide, in the manner established by the Government, which of these organisations shall issue licenses to beneficiaries, provided that this organisation:

- a) includes the majority of national right holders (not less than 51%);
- b) has at its disposal the repertoire of its members and contractors;
- c) has the capacity to administrate collectively the economic copyright and neighbouring rights on the entire territory of the country, including the rights of foreign right holders;
- d) has at its disposal real mechanisms of accumulation, distribution and payment of royalties;
- e) meets other requirements set by the Government.

(5) Organisations for the collective administration of economic rights shall be established directly and freely by the holders of copyright or neighbouring rights who shall either become members of the organisation or shall empower it by written contract.

(6) Organisations for the collective administration of economic rights shall be authorized neither to carry out a commercial activity nor to exploit the works and subject matter of neighbouring rights for which they have received powers of collective administration.

(7) An organisation that has granted a license shall be required to settle any dispute arising from an economic claim asserted by the holder of copyright or neighbouring rights with regard to the users concerning exploitation of a work or of the subject matter of neighbouring rights under license.

*Functions and Obligations of Organisations for
the Collective Administration of Economic Rights*

Art. 36.-(1) Organisations for the collective administration of economic rights shall assume, on behalf of the holders of copyright and neighbouring rights they represent and on the basis of the powers given to them, the following functions:

- (a) issue to beneficiaries licenses for exploitation of works or objects protected by neighbouring rights, the economic rights on which have been mandated to these organisations for collective administration;
- (b) negotiate with beneficiaries the amount of royalties for exploitation of works or objects protected by neighbouring rights and other licensing conditions;
- (c) negotiate with users the amount of remuneration in those cases where they are only responsible for collecting such remuneration, without being empowered to grant licenses;
- (d) collect the remuneration stipulated by the licenses they grant and the remuneration referred to in paragraph (1)(c) of this Article;
- (e) distribute and pay in time and equitably the royalties accumulated on the basis of licenses issued for exploitation of works or objects protected by neighbouring rights, the economic rights on which have been mandated to these organisations for collective administration;
- (f) perform any legal act essential for the defence of the rights for whose administration they are responsible;
- (g) perform any other activity pursuant to the powers received from the holders of copyright and neighbouring rights.

(2) The organisations for the collective administration of economic rights shall be entitled to require users of works or of subject matter of neighbouring rights to provide them with the programs and other duly certified documents specifying the works used and the revenue obtained; they may also require payment of remuneration within given time limits.

(3) An organisation for the collective administration of economic rights shall be obliged in the interests of the holders of copyright and neighbouring rights:

(a) to use the remuneration obtained exclusively for distribution and payment to the holders of copyright and neighbouring rights; however, an organisation shall be entitled to deduct from the amount of the remuneration obtained an amount intended to cover the actual expenditure incurred for the collection, distribution and payment of remuneration and an amount intended for a special fund set up by the organisation on a decision by its members;

(b) to distribute, after deduction of the amounts referred to in paragraph (3)(a) of this Article, the remuneration obtained and effect its regular payment, in proportion to the actual use of works and subject matter of neighbouring rights;

(c) simultaneously with the payment of the remuneration, to render accounts to the holders of copyright and neighbouring rights of the use of their rights.

(4) An organisation for the collective administration of economic rights shall be entitled to dispose of the amounts of remuneration obtained from users that have not been claimed within three years of the day on which they have been paid into its account, either by adding them to the amounts to be distributed or by allocating them to other purposes for the benefit of the holders of copyright and neighbouring rights that it represents.

(5) The holders of copyright and neighbouring rights who have not given powers to an organisation for the collective administration of economic rights for the collection of remuneration in accordance with paragraph (1)(d) of this Article shall be entitled to require such organisation to pay to them the remuneration due to them or to require it to exclude their works and subject matters of neighbouring rights from the licenses it grants to users.

(6) The organisation for collective administration of economic rights shall provide the State Agency on Copyright with the following documents in order to be checked:

- a) bilateral and multilateral agreements with foreign organisations administrating analogical rights;
- b) decisions of General Assemblies;
- c) annual balance, annual report and results of the audit carried out by auditing companies;
- d) information about the persons empowered to represent it;
- e) repertoire of available works and objects protected by neighbouring rights, list of holders whose rights it administers, including their amendments, as well as the contracts signed with right holders and beneficiaries;
- f) information on accumulation, distribution and payment of royalties, including on non-received royalties and the reasons of failure to distribute and to pay such royalties to respective right holders;
- g) other documents necessary to verify the compliance of the activity of the organisation with the present law.

Chapter VII Infringement of Copyright and Neighbouring Rights

Infringement of Copyright and Neighbouring Rights; Infringing Copies of Works and Phonograms

Art. 37.-(1) Any use of a literary, artistic or scientific work that infringes the copyright or neighbouring rights afforded by this Law shall be unlawful.

(2) Copies of a work or a phonogram the manufacture or distribution of which infringes copyright or neighbouring rights shall constitute infringing copies.

(3) Copies of works or phonograms protected under this Law in the Republic of Moldova which are imported without the consent of the holder of copyright or neighbouring rights from States in which the works or phonograms have never been protected or have ceased to be protected shall also constitute infringing copies.

(4) Infringing copies of a work or phonogram may be confiscated by court decision or by an arbitration award. Destruction of the materials and equipment used in their manufacture may also be ordered, depending on the nature of the infringement of copyright and neighbouring rights.

(5) Infringing copies of a work or phonogram that have been confiscated may be handed on request to the holder of copyright or neighbouring rights. Where the holder of copyright or neighbouring rights has not requested that the infringing copies of a work or phonogram be handed to him, they shall be sold or destroyed by court decision or arbitration award. Confiscated materials and equipment used in the manufacture of infringing copies shall become the property of the State by court decision or arbitration award.

(6) Infringing copies of a work or phonogram that have been lawfully acquired by other persons shall not be subject to confiscation.

Circumvention of technical means of protection of copyright and neighbouring rights or modification of information on administration of copyright and neighbouring rights

Article 37/1.- (1) The following actions, whether or not infringing, in any way, the copyright or the neighbouring rights as a result of their performance, shall be deemed infringements of the legislation of the Republic of Moldova on copyright and neighbouring rights:

- a) circumvention of technical means of copyright and neighbouring rights protection;
- b) manufacture, import, distribution (sale, renting, etc.), advertising of any equipment or components thereof, holding for commercial purposes and for service provision of any equipment or components thereof:
which are advertised or proposed for sale for the purpose of circumvention of technical means of protection of copyright and neighbouring rights;

- the final objective of exploitation and/or the result of exploitation thereof is the circumvention of technical means of protection of copyright and neighbouring rights;
 - which initially are intended, adjusted or executed for the purpose of giving the possibility or facilitating the circumvention of technical means of protection of copyright and neighbouring rights;
- any of the actions specified below, if the person carrying out such actions knew or should have known that their performance stimulates, allows, contributes or hides the infringement of copyright or neighbouring rights:
- deletion or modification without the authorisation of the right holder of the information on administration of copyright and neighbouring rights;
 - distribution, import for distribution purposes, public communication, communication for general information in interactive regime of works and other objects protected by the present law, from which information on administration of copyright and neighbouring rights has been deleted without the right holder's authorisation.

(2) Actions referred to in paragraph (1) of this article shall be sanctioned under the provisions of the Minor Offences Code and the Penal Code.

Remedies in Copyright and Neighbouring Rights

Art. 38.-(1) A holder of exclusive rights, whether copyright or neighbouring rights, may require a person infringing his right

- (a) to acknowledge those rights;
- (b) to restore the situation that existed prior to infringement of his rights and to cease committing the acts that infringe or are liable to infringe his rights;
- (c) to pay damages, including damages for loss of earnings;
- (d) to surrender, in place of payment of damages, the revenue obtained through the infringement;
- (e) to pay an indemnity, in place of damages or surrender of revenue, of between 500 and 500.000 Moldovan Lei.

(2) The holder of copyright or neighbouring rights may choose freely between the measures set out in paragraph (1)(c) to (e) of this Article.

(3) Any person who infringes copyright or neighbouring rights shall be liable to the civil, administrative and criminal sanctions provided by law.

(4) An author or a holder of neighbouring rights whose moral rights have been infringed may take legal action against the infringer for:

- (a) the necessary corrections to the work and publication in the press, or notification by any other means, of the reinstatement of the author or holder in his rights;
- (b) prohibition to publish the work or injunction to cease distribution of the work and confiscation of published copies;
- (c) material damages for the moral prejudice suffered.

(5) Any person who knowingly or by negligence destroys the original of a work of fine art, a manuscript or a master copy of an audiovisual work (negative, original recording)

shall, if the author or holder of neighbouring rights so requires, make good the material and moral prejudice suffered, in accordance with the provisions of paragraphs (1), (3) and (4) of this Article.

(6) Before examining the case on its merits, the court may issue an order enjoining the defendant, or the person that it has good reason to believe is infringing copyright or neighbouring rights, from performing certain acts: manufacture, reproduction, sale, rental, importation, etc.

(7) If a legal person commits an isolated or a systematic serious infringement of copyright or neighbouring rights, the court may order a suspension of activities of up to 30 days and, in accordance with administrative law.

(8) The court shall be required to order the descriptive or actual seizure of all allegedly infringing copies of works or phonograms together with the materials and equipment used for their manufacture and reproduction.

(9) Where sufficient evidence of an infringement of copyright or neighboring rights has been gathered, the body responsible for the inquiry or examination of the case shall be required to take the necessary measures to locate and effect descriptive seizure

- (a) of the allegedly infringing copies of works or phonograms;
- (b) of the materials and equipment used in their manufacture and reproduction;
- (c) of the accounts and other documents that may provide evidence of the acts performed contrary to this Law.

(10) The customs authorities shall be entitled to seize copies of works or phonograms that have been the subject of attempted unauthorized importation or exportation. If such copies of works or phonograms prove to be infringing, the court may order any one of the measures referred to in paragraph (1)(c) to (e) of this Article against the infringer.

(11) Natural persons holding copyright or exclusive neighbouring rights who themselves institute legal proceedings or who empower the National Copyright Agency or an organisation for the collective administration of economic rights to do so on their behalf shall be exempted from court costs. The court may decide in such case to sentence the person found guilty of infringement of copyright or neighbouring rights to pay the court costs in accordance with the conditions and in the amount laid down by law.

Chapter VIII

Welfare Law Protection of Authors and Holders of Neighbouring Rights

Guarantees in Respect of Economic Rights

Art. 39.-(1) This Law aims to strengthen the legal, economic and welfare guarantees afforded to authors and holders of neighbouring rights in the exercise and protection of their potential for intellectual creativeness and for the defence of their moral rights and their economic rights.

(2) The economic rights of authors and holders of neighbouring rights shall be protected in accordance with the laws on remuneration for work. The remuneration of authors shall not be subject to value-added tax. The natural or legal person who exploits the objects protected by copyright or neighbouring rights shall pay all compulsory deductions for social assurance related to payment of royalties.

(3) In order to protect the economic rights of authors and holders of neighbouring rights from the effects of inflation, the minimum rates for authors laid down for the creation, publication and first public performance of a work shall be indexed to the development of the minimum wage.

(4) The organisations for the collective administration of economic rights may establish welfare funds and other funds of which the assets shall not be subject to taxation.

Independent Creator

Art. 40.-(I) Independent creator (composer, writer, painter, director, cameraman) means a person who, having training and professional experience in the field of creation concerned, exercises an intellectual activity in an independent manner and does not maintain standing employment relationships with any legal person.

(2) The profession of independent creator presumes maximum freedom in the choice of working and resting arrangements and in the field of application of the potential for intellectual creativeness.

(3) In the event of inability to work, an independent creator shall be entitled to the indemnities paid to him by the authors' society of which he is a member.

(4) The State shall pay to independent creators a retirement pension, an invalidity pension, for the loss of family support and in the other cases provided for by law.
