



PARLIAMENT OF THE REPUBLIC OF MOLDOVA

LAW

on Distribution of Copies of Works and Phonograms

No. 1459 - XV of November 14, 2002

(Unofficial translation from Romanian)

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As amended by:

the Law no. 160 of 07.07.2016

Law no.111 of 17.05.2012

Law no.205-XVI of 28.07.2005

the Law no. 154-XVI of 21.07.2005

Parliament hereby enacts this basic Law.

Chapter I

GENERAL PROVISIONS

Article 1 Subject of the law

The present law provides for the realization of the provisions of the Republic of Moldova Constitution and of the copyright and related rights legislation, the protection of interests of copyright and related rights holders, and the establishment of the administrative measures for repressing the illegal production and distribution of copies of works and phonograms.

Article 2 Field of application

- (1) This law governs the relations arising in the process of production and distribution of copies of works and phonograms.
- (2) The relations not governed by this law shall be governed by the legislation in force on Copyright and Neighboring Rights and by other normative acts.
- (3) 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.

[Art.2 modified by the Law no.111 of 17.05.2012, in force as from 26.06.2012]

Article 3 Basic concepts

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

work – audiovisual work, computer program or database;

copy of the work or phonogram – a copy of a work or a phonogram on whatever material medium, reproduced directly or indirectly from the original or other copy of a work or phonogram;

reproduction of copies of works or phonograms – making of one or more copies of the work or phonogram, under the conditions of the present law and of the copyright and related rights legislation;

distribution of copies of works or phonograms – import, export, distribution, rental or sale, in any manner or form, of the copies of works or phonograms under the conditions of this law and of the copyright and related rights legislation;

distributor of copies of works or phonograms – the natural person or legal entity that has taken the responsibility, under this law, to organize, carry out and finance the distribution of copies of works or phonograms, being previously authorized to such actions by the copyright and related rights holder in these works or phonograms;

storage of copies of works or phonograms – keeping the copies of works or phonograms in commercial spaces or annexes thereof, in other spaces or means of transport;

sleeve of the work or phonogram – part of package containing graphical representation of the information concerning the administration of rights on the work or phonogram, fixed on any material medium, which shall accompany each copy of work or phonogram;

control mark – an unique label in form of tridimensional image, having a special level of protection on exterior, made on a self-gumming and a self-destructive carrier, with unscripted alphanumerical code representing the series and number of registration of the copy of work or phonogram;

phonogram – any exclusive sound recording of performances, or of other sounds or representations thereof, except for recording of sounds included in the audiovisual work.

[Art.3 modified by the Law no.205-XVI of 28.07.05, in force as from 23.09.2005]

Article 4 Functions of the State Agency on Intellectual Property in the filed of distribution of copies of works and phonograms

(1) In order to ensure the enforcement of copyright and related rights and to realize the provisions of this law, the State Agency on Intellectual Property, hereinafter “the Agency”, shall carry out the following functions in the field of distribution of copies of works and phonograms:

[Letter a) repealed by the Law no.111 of 17.05.2012, in force as from 26.06.2012]

b) maintain and administrate the State Register of Control Marks Owners, hereinafter “the State Register”;

c) issue control marks;

d) carry out specialized expertise of copies of works and phonograms;

[Letter e) by the Law no.111 of 17.05.2012, in force as from 26.06.2012]

f) perform other tasks and services according to this law or other normative acts.

(2) The Agency shall publish in its editions the full names of the natural persons and legal entities or the names of the legal entities authorized to produce and/or distribute the copies of works or phonograms, the decisions concerning the registration or refusal to registration of the persons thereof in the State Register, other materials related to distribution of copies of works and phonograms.

[Art.4 modified by the Law no.205-XVI of 28.07.05, in force as from 23.09.2005]

Article 5 Terms for distribution of copies of works and phonograms

(1) The persons who distribute the copies of works and phonograms shall submit to the Agency a request for their inclusion in the State Register and for issuing control marks, in correspondence to the names and numbers of copies of works or phonograms meant for distribution.

(2) Distribution of copies of works or phonograms shall be permitted if the following conditions are met:

a) each copy of work and phonogram (or the sleeve thereof) contains information concerning the administration of rights on the work or phonogram and the respective control mark;

b) the distributor holds an invoice endorsed by signature and stamp of the copyright and related rights holder in works or phonograms, in which it is indicated the name, price, number of copies and amount (in Moldovan lei) for each item;

c) the distributor holds the certificate on inclusion in the State Register and the confirmation of obtaining the control marks;

d) the distributor has a written agreement, with respective enclosures, registered with the Agency in accordance with established procedure, according to which he is permitted to distribute in a certain way the respective copies of works or phonograms;

e) the distributor possess also other documents established by the Government.

Chapter II

REGISTRATION IN THE STATE REGISTER

Article 6 Registration

(1) For inclusion in the State Register, the natural persons and legal entities that produce and/or distribute the copies of works or phonograms shall submit to the Agency the following documents:

a) an application according to the established form;

b) the identity card or passport (for natural persons);

c) the statute (for legal entities);

d) the certificate of registration of the enterprise or of the organization (for legal entities);

e) the certificate of assignment of the fiscal code (for legal entities);

f) document concerning domicile (for natural persons) or headquarters (for legal entities);

g) author agreements and other legal acts concluded with the copyright and related rights holder in works or phonograms, in which the permitted modalities for production and/or distribution of copies of works and phonograms are stipulated;

h) documents indicating the address of the spaces in which the activity of production and/ or distribution shall be carried out, including of the spaces meant for storage of copies of works or phonograms;

i) other documents provided for by the State Register Regulations.

(2) Where the changes or completions are introduced in the documents specified in paragraphs (1) subparagraph b)-i), the natural persons or legal entities that produce and/or distribute copies of works or phonograms shall present to the AGEPI the documents related to the respective changes or completions as well.

(3) Documents specified in paragraph (1) subparagraph b)-i) and paragraph (2) shall be submitted in original, as well as copies thereof, for inclusion in the applicant's file.

(4) Application mentioned in paragraph (1) subparagraph a) and the copies of documents specified in paragraph (1) subparagraph b)-i) shall be verified: from natural persons - by signature of the applicant, with the presentation of the identity card or passport, from legal entities – by a signature of the applicant's official and the company's seal.

(5) Documents mentioned in paragraph (1) shall be submitted to the Agency within 30 days from the date of entering into force of this law or at least 30 days before starting the activity of distribution of copies of works or phonograms.

Article 7 Decision concerning the registration or refusal to registration

(1) The Agency shall issue the decision concerning the registration or refusal to registration in the State Register, within 30 days from the date of receiving the application.

(2) The decision concerning the refusal to registration shall be taken on the following grounds:

a) infringement of the provisions of his law or of the other normative acts;

b) copyright or related rights infringement;

c) submission of non-qualifying or unauthentic documents or materials;

(3) The decision concerning the refusal to registration may be appealed in relevant courts, according to the established procedure.

(4) Where the decision concerning the registration in the State Register comes into force, the documents submitted under the paragraph 6 are returned to the applicant.

(5) The decision concerning the refusal to registration shall not deprive the natural person or legal entity of the right to submit to the Agency of a new application after the defects are eliminated.

Article 8 Certificate of registration

(1) On the basis of the decision concerning the registration, after the inclusion in the State Register of the necessary information, the Agency shall issue the certificate of registration to the applicant according to the established form.

(2) The certificate of registration is valid for a period of three years from the date of issuance. Where in the course of the activity of the natural person or legal entity that produces and/or distributes copies of works or phonograms occurs changes, the relevant documents shall be presented to the Agency for issuance of a new certificate of registration.

(3) The certificate of registration may be withdrawn, on the basis of the Agency's decision, for a period of up to 3 months, in case of repeated infringement by the right holder registered in the State Register of the provision of this law or of the legislation in the field. The decision concerning withdrawal of registration certificate may be appealed according to the procedure established by the legislation.

[Art.8 modified by the Law no.205-XVI of 28.07.05, in force as from 23.09.2005]

Chapter III CONTROL MARKS

Article 9 Control marks

(1) Before distributing the copies of works and phonograms, the control marks shall be labeled on each item or sleeve thereof, according to the established procedure.

(2) Control marks shall attest the lawfulness and correctness of use of copies of works and phonograms and shall ensure copyright and related rights enforcement.

(3) Absence of control marks on the copies of works and phonograms shall evidence the incompetence to use such copies.

(4) Control mark shall contain an alphanumeric code, composed of a series of 2 letters and of a number of 7 digits. Depending on the material medium on which the copies of works or phonograms have been recorded, the following series of control marks are established:

a) letter "A" and one of the letters from "A" to "Z", according to the alphabet – for audio tapes (MC);

b) letter "V" and one of the letters from "A" to "Z", according to the alphabet – for video tapes (VHS);

c) letter "D" and one of the letters from "A" to "Z", according to the alphabet – for compact disks of any format (CD, DVD, etc);

d) letter "X" and one of the letters from "A" to "Z", according to the alphabet – for other material mediums which are known at present or will appear in the future.

(5) In the first 15 days of every half-year the persons specified in paragraph 5 subparagraph (1) shall present to the Agency relevant information on the distribution of copies of works and phonograms labeled with control marks.

Article 10 Manufacture of control marks

(1) Control marks are manufactured upon request of the Agency pursuant to the procedure determined by the Government. The technology of manufacturing the control marks shall ensure their one-time use only.

(2) The Government shall establish the fee for the issuance of control marks. Funds received from issuance of control marks shall be accumulated on the correspondent account of the Agency and shall be used for manufacture, registration and issuance of control marks as well as at exercising the control over the observance of this law.

[Art.10 modified by the Law no.154-XVI of 21.07.05, in force as from 23.09.2005]

Article 11 Issuance of control marks

(1) The Agency shall issue control marks on the base of its decision, after the applicant has received the certificate for inclusion in the State Register.

(2) In order to obtain control marks, the natural persons and legal entities that produce and/or distribute the copies of works or phonograms shall submit to the Agency the following documents:

a) an application according to the established form, specifying:

- name of the work and phonogram recorded in original language;
- kind of material medium on which the work or phonogram is recorded;
- name of the copyright and related rights holder;
- number of copies of works and phonograms;
- other information;

b) author agreements and other legal acts concluded with the copyright and related rights holder in works or phonograms, in which the authorized modalities of production and/or distribution of copies of works are stipulated;

c) customs documents confirming the import of copies of works or phonograms into the Republic of Moldova;

d) documents confirming the production of copies of works or phonograms in the Republic of Moldova;

e) other documents established by the Government.

[Paragraph (3) of Art.11 has been excluded by the Law no.111 of 17.05.2012, in force as from 26.06.2012]

(4) The documents mentioned in paragraph (2) shall be submitted to the Agency at least with 30 days before starting the distribution of copies of works and phonograms.

[Art.11 modified by the Law no.111 of 17.05.12, in force as from 26.06.2012]

Article 12 Decision concerning the issuance or refusal to issue control marks

(1) The Agency shall give a decision on issuance or refusal to issue control marks within 15 working days from the date of receiving the documents mentioned in paragraph 11, subparagraph (2).

(2) On the basis of the decision to issue control marks, the applicant shall remit the payment equal to the costs of needed control marks and shall submit to the Agency a copy of the payment order, after that the control marks with corresponding series and numbers, as well the confirmation on obtaining the control marks shall be given to the applicant.

(3) The decision on refusal to issue control marks shall be taken on the following grounds:

a) infringement of the provisions of his law or of the other normative acts;

b) copyright or related rights infringement;

c) submission of non-qualifying or unauthentic documents or materials;

(4) The decision on refusal to issue control marks may be appealed in relevant courts, according to the established procedure.

(4) Where the decision on refusal to issue control marks comes into force, the documents and materials submitted under the Article 11, paragraph (2) and (3) are returned to the applicant.

(5) The decision on refusal to issue control marks shall not deprive the natural person or legal entity of the right to submit to the Agency of a new application for issuance of control marks after the defects are eliminated.

Article 13 Labeling with control marks

(1) Labeling of copies of works and phonograms with control marks shall be performed by the right holder registered in the State Register.

(2) Each sleeve of the copy of the work or phonogram shall be labeled with one control mark. If the sleeve contains data on several different copies, it shall be labeled with one control mark.

(3) Imported copies of works or phonograms shall be labeled with control marks, at the importer's request, after customs clearance, before their distribution.

(4) Copies of works or phonograms subject to export shall be labeled with control marks, at the exporter's request, before their customs clearance.

(5) Customs authorities shall request the exporters, at preparation of the documents for export of copies of works or phonograms, to present documents certifying the receipt and labeling of control marks on exported copies.

(6) Distribution of copies of works and phonograms covered by this law, not labeled with control marks are prohibited.

[Art.13 modified by the Law no.205-XVI of 28.07.05, in force as from 23.09.2005]

Article 14 Distribution of copies of works and phonograms

(1) The manner of distribution of copies of works and phonograms shall be determined by the Government, at the Agency's proposal.

(2) Distribution of copies of works and phonograms shall be permitted only on condition of their labeling with control marks, and only in spaces meant for this purpose.

[Art.14 modified by the Law no.205-XVI of 28.07.05, in force as from 23.09.2005]

Article 15 Storage and transportation of copies of works and phonograms not labeled with control marks

(1) Storage of copies of works and phonograms not labeled with control marks is prohibited, excepting cases specified in paragraph (3).

(2) It is prohibited to transport copies of works and phonograms not labeled with control marks within the territory of the Republic of Moldova, excepting cases when such copies are delivered to the destination after customs clearance, as well cases specified in paragraph (3).

(3) Control marks shall not be labeled on copies of works and phonograms used by natural persons exclusively for their own purpose, according to the legislation on copyright and related rights.

Chapter IV

LIABILITY FOR VIOLATION OF THE LAW. FINAL AND TRANSITIONAL PROVISIONS

Article 16 Liability for violation of the law

(1) Use and distribution of copies of works and phonograms by infringing the copyright and related rights shall be considered illegal.

(2) Illegal counterfeit, manufacture, destruction, use or sale of control marks, illegal production or distribution of copies of works or phonograms, as well as other infringements under this law shall bear criminal and administrative responsibility in accordance with the copyright and related rights legislation.

(3) Copies of works and phonograms illegally distributed shall be confiscated in accordance with the decision of relevant courts. Copies thereof may be passed to the copyright and related rights holder, at his request. Confiscated copies of works and phonograms not requested by the copyright and related rights holder shall be destroyed according to the decision of relevant courts. The Agency shall control the procedure of destruction of confiscated copies of works and phonograms. The person found guilty shall bear the costs related to destruction.

(4) Materials and equipment used for illegal manufacture of control marks or of copies of works and phonograms shall be confiscated and passed to the state property by a decision of relevant court.

(5) Control marks illegally counterfeited, manufactured, used, labeled and/or sold shall be confiscated and destroyed, on the basis of the Agency's decision.

(6) If legal entity violates grossly and systematically this law, thereof activity shall be suspended for a period from 30 to 90 days, on the basis of the decision of relevant court.

[Art.16 modified by the Law no.205-XVI of 28.07.05, in force as from 23.09.2005]

Article 17 Observance of the provision of the present law

[Art.17 repealed by the Law no.111 of 17.05.2012, in force as from 26.06.2012]

Article 18 Final and transitional provisions

(1) This Law shall enter into force 90 days after the date of its publication in the Official Bulletin of the Republic of Moldova.

(2) Copies of works and phonograms produced or imported before the date of entering into force of this law may be distributed without labeling control marks 90 days from the publication of this law, provided that the distributors of such copies of works and phonograms possess the certificate of registration in the State Register.

(3) After entering into force of this law, copies of works and phonograms shall be distributed only in accordance with the provisions of this law.

(4) The Government:

a) in order to ensure the manufacture of control marks, shall organize, within 30 days from the date of publication of this law, a tender with the participation of relevant manufactures from different countries of the world;

b) within 60 days from the date of publication of this law, shall ensure the financing, from its reserve funds, of the manufacture and issuance of the first lot of 1 million of control marks, with further reimbursement of costs after the issuance of control marks to the users;

c) within 90 days from the date of publication of this law:

- shall elaborate and approve the Regulations on terms of manufacture, issuance of control marks and labeling thereof on copies of works and phonograms and the Regulations on inclusion in the State Register of control marks' holders;

- shall submit to the Parliament proposals for bringing the current legislation in line with this law;

- shall bring its normative acts in line with this law;

- shall ensure reexamination and abrogation of normative acts that contravene this law.

(5) The current legislation shall be applied, until it is brought in accordance with this law, in a manner not contravening this law.

CHAIRPERSON OF THE PARLIAMENT Eugenia Ostapciuc

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